

**JANSSEN-CILAG PTY LIMITED V PFIZER PTY LIMITED (1992) ATPR 41-186**

Federal Court of Australia – 8 September 1992

**FACTS**

The Federal Court found that certain representations made by the Pfizer contravened s52 of the Trade Practices Act and granted injunctions against Pfizer to restrain the further making of these representations.

**ISSUE**

Whether the entitlement to recover loss or damage under s82 of Trade Practices Act is confined to a person who relied on the representation which constituted a contravention of a provision of Part IV or V of the Act.

**FINDINGS**

There is nothing in the language or the purpose of the Act to suggest that the right of an applicant to damages under s82 is confined to the case where he relied upon or was personally influenced by the conduct of Pfizer. The words are of general application and are not confined to person who rely on the representations which constitute contraventions of provisions of Pt IV and V of the Act.

**QUOTE**

Lockhart J:

*"Section 82(1) should not be given a restricted meaning to be available only to the person who suffers loss or*

*damage by reason of his own reliance upon the representations which constituted the relevant contravention of Part IV or V; nor for that matter should it be given an extended meaning which strains the language used by the legislature.*

*But a person who suffers damage by reason of or as a result of the conduct of the contravener (albeit that that person does not himself rely upon the representations) is not to strain the language of the subsection, but to interpret it according to its ordinary and natural meaning.*

*For a person to recover under the section he must suffer loss or damage by reason of or as a result of the contravention. There is nothing unduly wide about that."*

**IMPACT**

This interpretation of this provision will allow rival traders to claim against other companies for loss suffered as a result of misrepresentations under s52 of Trade Practices Act, so long as they may prove loss related to the misrepresentation.

© Doyles Construction Lawyers 2015

This publication is intended to be a report on recent cases in the construction, development and engineering industries. This publication is not intended to be a substitute for professional advice, and no liability is accepted. This publication may be reproduced with full acknowledgement.

Jim Doyle  
1800 888 783

[jdoyle@doylesconstructionlawyers.com](mailto:jdoyle@doylesconstructionlawyers.com)  
[www.doylesconstructionlawyers.com](http://www.doylesconstructionlawyers.com)