

MLP706

LAW & POLICY OF MISLEADING CONDUCT

Cases, Principles & Worked Exam Answers

Deakin University | Juris Doctor

ACL | Passing Off | Injurious Falsehood | Safety Defects | Defamation

60+
Cases

6
PIRAC Answers

9
Topics

Exam Tips
Every Entry

— SAMPLE PREVIEW —

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HOW TO USE THESE NOTES

These notes combine both MLP706 source files into one document. Every topic includes the legal principle, statute provisions section by section, key cases, and an exam tip. The worked PIRAC answers in Part 8 replicate the exact exam format required in MLP706.

Indigo border card	Case or principle — title, held, principle
Green row	Held / outcome of case
Amber row	Exam Tip — when and how to use this authority
Teal-header table	Statutory provision framework (statute by statute)
Teal italic list	Topic-grouped case authority list
Indigo PIRAC block	Worked exam answer in the required PIRAC format

PART 1 — ACL S 18: MISLEADING OR DECEPTIVE CONDUCT

ACL s 18 — Framework & Key Principles

s 18(1): A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

Strict liability: No fault or intention required. Intention to mislead is irrelevant — *Parkdale Custom Built Furniture v Puxu* (1982) 149 CLR 191; *S & I Publishing v Australian Surf Lifesaver*.

Test: Objective: what impression does the conduct create on the ordinary reasonable member (ORM) of the target audience (TA)? — *Campomar v Nike* (2000) 202 CLR 45; *Self Care v Allergan* (2023).

Dominant impression: Courts assess the overall impression, not isolated words or literal truth — *Henjo Investments v Collins Marrickville*; *Self Care v Allergan*.

Fine print: A small or fleeting disclaimer will NOT neutralise a powerful headline claim — *ACCC v TPG Internet* (2013) 250 CLR 640; *ACCC v BoostTel*.

Future reps: See s 4 ACL — a future representation is deemed misleading unless the maker had reasonable grounds at the time.

Scientific: Efficacy or 'clinically proven' claims require adequate scientific foundation — *GSK v Reckitt Benckiser*.

ACCC v TPG Internet Pty Ltd (2013) 250 CLR 640 | Headline Claims & Fine Print

Held: TPG advertised broadband at '\$29.99/month' but the headline price required an expensive phone bundle disclosed only in fine print. The dominant impression was misleading. Fine print contradicting a headline claim is generally insufficient to cure the misleading impression.

EXAM TIP *TPG is the most cited case for 'headline vs fine print'. The qualifier must be CLEAR, PROXIMATE and PROMINENT — not buried or fleeting. Use in every packaging/ad question where a disclaimer is raised as a defence.*

Campomar Sociedad Limitada v Nike International Ltd (2000) 202 CLR 45 | ORM of Target Audience

Held: The test is the reaction of the ordinary or reasonable member of the target audience — not the most gullible or the most sceptical. For mass market goods, consumers are not expected to be especially careful. Courts assess the range of reasonable reactions within that TA group.

EXAM TIP *Always define the TA first. Mass market TA = less scrutiny (Coles, TPG). Specialist TA = more (Parkdale furniture). Vulnerable TA = extra protection (Unique International College — distressed students).*

Self Care IP Holdings Pty Ltd v Allergan Australia Pty Ltd (2023) | Dominant Impression — Most Recent Authority

Held: Courts assess the dominant impression conveyed by conduct as a whole — not isolated words or literal meaning. Confirmed the objective contextual evaluation approach. Get-up, layout, fonts, colour and visual presentation all considered holistically.

EXAM TIP Cite *Self Care* as the most recent High Court authority on s 18. Pair with *Campomar* for ORM/TA and *TPG* for fine print. In get-up and packaging questions: courts look at the whole product, not just the offending claim.

PART 8 — WORKED PIRAC ANSWERS (PREVIEW)

Superb Spices — s 18 ACL: Misleading Packaging (30 marks)

Issue: Does Superb Spices' packaging (oversized jar + 'Double – x 2 – the Size') contravene s 18 ACL?

Rule: s 18: strict; objective; dominant impression controls (Campomar; Self Care; TPG). Intention irrelevant (Parkdale; S&I; Publishing). Survey evidence supportive but not required (Homart v Careline). Visual packaging assessed holistically — get-up, font, size, placement (Guy v Crown No 2).

Application: TA = supermarket spice consumers including recent immigrants with limited English; ORM relies on visual cues, not small print (TPG; ACCC v Coles). REPRESENTATION: 'Double – x 2' + oversized jar = expectation of ~100g (double the standard 50g jar) though it holds 75g. DOMINANT IMPRESSION: Bold text + oversized jar = 100g expectation. '75g' in fine print insufficiently prominent (TPG). Low-value item = fleeting consumer attention (ACCC v Cadbury Schweppes). SURVEY: Choosy's interviews confirm purchasers believed 'double' = 100g (Homart). MISLEADING: Real not remote chance of deception (Global Sportsman). False impression from packaging itself — not consumer folly (ACCC v Get Qualified). Intention irrelevant (S&I; Publishing).

Conclusion: Likely contravention of s 18 ACL. Small '75g' label and accurate pricing do not dispel the dominant false impression created by the headline claim and oversized jar.

Fruitful Flours vs Superb Spices — Passing Off (10 marks)

Issue: Has Superb Spices committed the tort of passing off against Fruitful Flours' 'Delight Spice' through its 'Delightful Spiceful' product?

Rule: Three elements: (1) Reputation in the relevant market at the time of conduct — Reckitt & Colman v Borden (Jif) [1990] 1 WLR 491; ConAgra v McCain; Hansen v Bickfords. (2) Misrepresentation likely to deceive a substantial portion of the public into believing D's goods are P's or associated — Reckitt v Borden; Kettle Chip v Apand. (3) Damage — diversion of sales or erosion of goodwill — Deckers Outdoor v Farley. Intention not required but supports inference.

Application: REPUTATION: 'Delight Spice' since 1985; popular; featured in Australian CWS cookbook; wide supermarket distribution → strong goodwill. MISREPRESENTATION: Names share 'Delight' and 'Spice'; close phonetic rhythm. Imagery: cheerful kitchen icons (smiling mixing bowl vs smiling sun on mixer). Slogan near-paraphrase. Same shelf space. CEO stated 'inspired by Fruitful Flours'. DAMAGE: Sales decline since Superb's entry = diversion of custom and dilution of goodwill.

Conclusion: Passing off likely established. Fruitful Flours can prove all three elements. Similarities in name, imagery, slogan and market positioning outweigh minor differences.

— END OF SAMPLE PREVIEW —

This sample includes the cover, full table of contents, the How to Use guide, Part 1 (ACL s 18 framework) in full, and two worked PIRAC answers.

The full notes cover all 9 parts — 60+ cases, 6 worked PIRAC answers, full statutory frameworks, topic-grouped case lists and exam tips across every MLP706 topic.

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