



Update

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Carbon Claims Found To Be Misleading

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Prime Carbon engages in the offsetting of carbon emissions produced by commerce and industry, via environmentally sustainable farming and industry practices and mechanisms. More recently however, it developed its 'soil enhancement and carbon sequestration program' which aims to sequester carbon from the atmosphere and store it in agricultural land. If adopted and embraced by farmers the hope is to generate sustainable land and farm management practices, which would result in the generation of carbon credits. In developing the program, Prime Carbon offered three main services. First, it facilitated the design for carbon sequestration. Second, it created a method of managing the specific amounts of carbon dioxide sequestered from the environment. Finally, the company assisted in the registration and marketing of those carbon credits.

Following an action initiated by the Australian Competition and Consumer Commission (**ACCC**) against the sole director of Prime Carbon, the Federal Court found Prime Carbon guilty of engaging in misleading conduct and making false

representations in contravention of the Act. More specifically, Justice Spender made three main findings. First, between July 2008 and December 2009 Prime Carbon had claimed that it had an affiliation with the National Stock Exchange of Australia when it in fact did not. Second, between July and December 2008, Prime Carbon made misrepresentations regarding the National Environment Registry Pty Ltd (**NER**), a company through which Prime Carbon supplied some of its services, including that NER was regulated by the Australian Government when it was not and that NER entered into an arrangement with the Chicago Environment Registry when it had not. Third, the company's director was also found to be knowingly concerned in the contravening conduct. Accordingly, the court made further orders that required the director to undertake compliance training and Prime Carbon to publicise the court's order through letters to the company's customers and to provide a notice on its website.

The findings in this case are another instance of the ACCC's cracking down on corporations that utilise environmentally friendly claims.

The need to consider carefully the accuracy and support for any statements in respect of "green" credentials has never been greater.

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