

Parliamentary Joint Committee on Corporations and Financial Services

ANSWERS TO QUESTIONS ON NOTICE

19 November 2019

Question No: 010
Topic: Retail super fund fine - GoogleAdWords
Reference: Hansard page 31 and 32

Question:

Mr FALINSKI: Mr Shipton, recently ASIC successfully fined a retail super fund \$12½ thousand for advertising on Google AdWords, where if somebody put in the term 'industry superannuation' an ad came up for that fund. What power did you use to do that?

Mr Shipton: I'll have to refer to a colleague, but in the absence of that level of detail I'll have to take it on notice.

Mr FALINSKI: Okay. Is this a power that you intend to apply equally across the board, or just to retail superannuation funds?

Mr Shipton: Firstly, I'm taking that precise matter on notice, because we've got hundreds of cases at any particular time. But I do want to take this opportunity to assure you that we take our obligations seriously with regard to enforcing the law across the board for any type. We are agnostic as to the type of superannuation fund and we are agnostic as to the label they may or may not attach to themselves. Our focus really is on trustee obligations, and that agnostic approach is our strategy.

Senator O'NEILL: That's the way it should be, Mr Shipton. Well done.

Answer:

In 2015, ASIC took infringement notice action against BT Funds Management Ltd (BT) for two separate misleading online advertising campaigns. Each infringement notice imposed a penalty of \$10,200 (the penalty that applied at the time, the amount payable for an infringement notice has subsequently increased). The first infringement notice related to claims about BT's performance. However, the second infringement notice related to BT's use of Google AdWords.

In particular, the second infringement notice was issued for the inclusion of the words "*Industry Super Australia*" in the headlines of BT advertisements published on search result pages generated via www.google.com.au from 29 October 2014 to 17 November 2014.

ASIC was concerned that BT misled consumers into believing that BT had an affiliation with Industry Super Australia (ISA), an organisation which manages collective projects on behalf of fifteen industry super funds. BT has never had an affiliation with ISA.

ASIC imposed an infringement notice under s12GXA of the ASIC Act 2001, because we considered that BT had contravened an infringement notice provision being s12DB(1)(f) of the ASIC Act (false or misleading representations). Further detail is included in [15-149MR](#).

ASIC has taken infringement notice action against both industry and retail funds. For example, in 2015, retail fund Equity Trustees Limited (EQT) was also subject to an infringement notice from ASIC (along with the promoter of the Good Super superannuation fund, Como Financial Services Pty Ltd): see [15-039MR](#). In 2014, industry fund Media Super

Limited was the subject of infringement notice action (see [14-001MR](#)) and more recently, HostPlus Pty Ltd received an infringement notice from ASIC in 2019 (see [19-106MR](#)).