

Australian Consumer Law Journal

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keywords: Coles attitude to DISABLED customers; the Coles SALUTE; Coles gesture; law of supermarket **express lane**; Trade Practices representation by Coles; intended to attract custom; misrepresentation; no intention by Coles to ensure representation true, or even partly reliable;

Coles salute to DISABLED CUSTOMERS



Illustration 1: Coles express lane. HAIGPHOTO



Illustration 2: **Coles** contempt for customer with camera. See our caption competition [no prizes] at <http://austlawpublish.com/austlawpublishcolesandwesfarmers.html#fullfingerphoto> /. See Layla caught in middle of expletive following on page 5. HAIGPHOTO

We had intended launching our Consumer Law Journal with the article following about Supermarkets' express lane [Haigphoto top right] when

our photographer Haig, presented us with this image of the **Coles** salute to customers. This photo seems to exemplify the attitude of **Coles'** staff to customers including their attitude to the concept of an “express lane”, the major topic of this issue. This photo will lead also our concurrent issue of the Australian Corporations Law Journal ISSN 1321-747X [ACorpLJ]. This salute displays explicitly the attitude of **Coles** staff including that of a previous manager of this **Coles** store, one Linda Maree Wease, when that attitude lead to her lies, her cover-up and her CRIMINAL PERJURY. This was all brought, with conclusive proof, to the attention of **Coles** Senior management in the Head Office of **Coles** in Melbourne. **Coles** sacked her [or gave her the option of resigning]. They knew all the details, but, although another person was being criminally prosecuted as a result of her lies and perjury, and that was known to **Coles**, **Coles** Senior Management chose to conceal the truth. That is hardly the sign of a good corporate citizen. That is the lead story in our concurrent ACorpLJ.

Coles Express Lane

Consider the event which so many ordinary Australians have probably often experienced: Picking up one item at the supermarket and paying for it via the “express lane” only to find that an inconsiderate person with well over the set limit, has decided to cause others inconvenience in the express lane, because there is a big queue at the normal checkouts. If people are unsure of the number of articles they have, surely they can COUNT them.

Well, our recently confirmed official photographer for Australian Law Publishers Pty Ltd, Haig, was in the “express lane” queue when a person with more than the 12 items presented to one of the express lane checkouts. The sign states 12 items or less [is the correct English “fewer” no longer important?]. Although Haig is disabled, he can count past 12, and do it accurately. Haig is never backward. That may be a consequence of his disability or his being disabled. Haig counted past 12. Haig says that rather than tell people they are wrong, he asks them the question, the answer to which will confirm the person as being wrong. The cash registers have an item

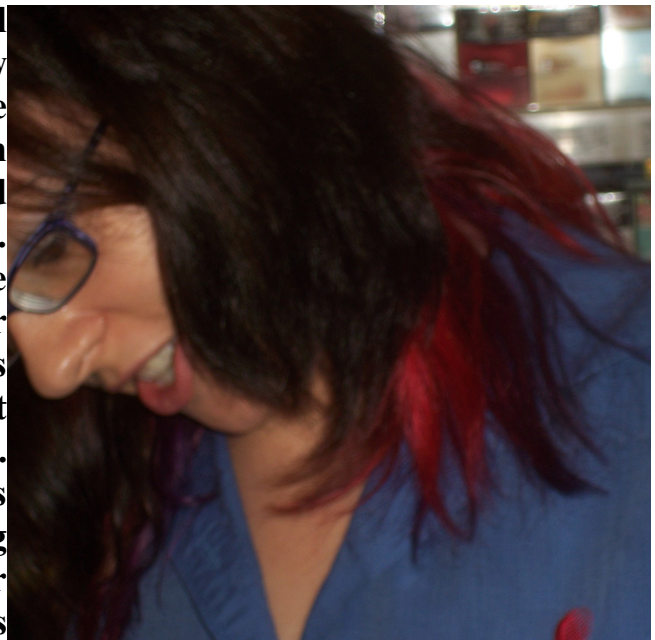


Illustration 3: Coles checkout operator, "have a nice day", shy and trying to hide. HAIGPHOTO

counter. The checkout lass can therefore know the number. He asked her the number of items. She said “13” with a smile. [Haig tells us there were more. We challenge you, Coles, to confirm the number. If **Coles** wishes to check, we can supply the approximate time to within one minute (by **Coles'** cash register timing) and the precise cash register number.] The woman customer with the excess number then moved closer to her to whisper to her and they both had a giggle. Coles checkout lass's response to Haig when he commented to her that that was the “express lane”, was, “have a nice day”.

Haig says that was one of the few occasions when he did not have his camera with him. He realized there was a story there for one of our journals. He knew we needed to illustrate it. He left and returned with his camera to photograph the checkout and the operator. See the included photo #3 above, where she tried to hide. Then the lass at the adjoining checkout, decided to buy in with “you can't take our photo without our permission”. This is the common fallacy that we highlighted in our [Australian Privacy Law Journal ISSN 1834-5611](#) 26

March, 2007 issue #200701 as [.pdf](#) [168Kb] [where we detailed the conduct of Judy Magub, who announced her resignation, without good reason, just 11 days after publication]. [We had been targeting Magub since our OPEN LETTER of 20061212 for her improper actions. Our targeting her was a reaction to her targeting others by her improperly acting as their elected representative.]



Illustration 4: Shy Layla buys in. Checkout not yet closed, but soon would be. HAIGPHOTO

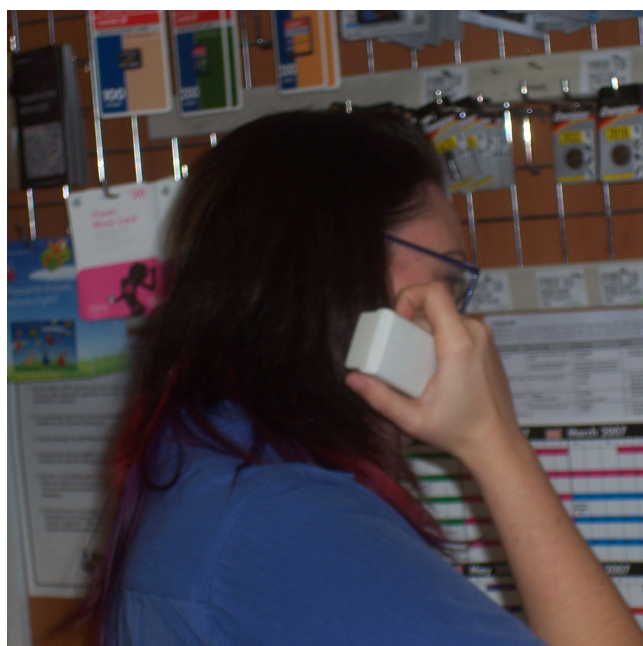


Illustration 5: Calling the manager. HAIGPHOTO

That outburst was by a lass called Layla. Just to be able to illustrate the story, he took her photo also. She tried to hide, and they called the manager. He confirmed that Haig was correct and they were wrong; Haig did not need their permission. Haig was unable to obtain a clear photo of her on that occasion.

On a later day in **Coles** store, Haig had his camera with him, on this occasion, so decided to obtain a clear photo of Layla. There is a delay with a digital camera between pressing the



Illustration 6: The MANAGER. HAIGPHOTO

shutter button, and the camera taking the picture, as it does its calculations as to light intensity, flash setting and focus of major topic. Layla uttered a loud expletive, after Haig clicked the button. The picture caught the expletive; see #7 HAIGPHOTO. She was serving an elderly woman at the time. That elderly woman looked stunned at Layla's expletive. We agree that Haig is perfectly in his legal rights to

take photos of people when they are performing work in a public environment.

We believe these events are a reflection upon **Coles** and **Coles'** staff training. These events would never have arisen and Haig would have had no need or desire to take photos, if **Coles** had instructed their staff correctly. This just confirms the public realization that the **Coles'** culture at Myers was able to be greatly improved since its take-over by private equity partners.



Illustration 7: Layla caught in middle of the expletive. HAIGPHOTO

The point of this article is **Coles'** attitude to express lanes, and the law, if any, relevant to “express lanes”. When the lass who served the customer with excess items, was trying to avoid having her photographed taken, she stated that whoever lined up and presented at the “express lane” check-outs, and how many items they had, had nothing to do with the staff. She said it was for the “customers” to determine.

Let us consider the law. The sign, “12 items or less”, is a sign placed there by **Coles**. One important question is the reason that **Coles** placed it there and designed the store that way. Attracting more customers would have to high on the list of reasons. Trade Practices applies. Because little

monetary value would probably ride on any one event, we expect that that would explain that we could not find any cases where the precise law had been finally determined as *ratio* of a decision.

Clearly, the reasons **Coles** designed the store in that way was to attract extra custom. That representation/suggestion that that lane will be quick because all customers in that queue have the nominated number of items or fewer, was intended to give more customers less uncertainty. People will know this for future reference and know that if they are in a hurry, they will be able to quickly stop and pick up the article they want at that supermarket, and be on their way. That supermarket is doing itself a disservice if it allows cheats to inconvenience other customers, because it will tend to lose some custom. As has been shown with the Myers turnaround since sold by **Coles**, **Coles** has many ineffective procedures operating within its stores.

Most people would believe that that sign is a representation by **Coles**. If it is not true, it is a misrepresentation. It is contrary to Trade Practices for Corporations to make false representations. Well, courts have determined that representations about future events by corporations are not representations.

The number of people who will line up in that queue and the number of articles they will have are a future events. We, at AuLP, believe that there is an implicit representation by **Coles** that **Coles** wants that only those customers meeting that criteria will use that lane, and that **Coles** *will take appropriate measures within its capability, to ensure that other customers are not inconvenienced.*

What is the capability of **Coles**. Firstly, they can train their staff. The Myer turnaround has shown that **Coles** is ineffective in this. We, at AuLP believe **Coles** has done a great disservice to Layla in that they had not given her guidance, but apparently just employed her and “let her loose”; let her learn from her mistakes. In our current litigious environment, corporations cannot do this.

It appears **Coles** has a confrontational approach. On both occasions when Haig was completely within his legal rights, but **Coles** staff were acting extremely inappropriately, the **Coles** approach was to tell Haig to “leave the store, you are now trespassing, we have called the police”. The first occasion was by the MANAGER as shown in *Illustration 6*. and the second occasion occurred at the time the leading “**Coles Salute**” photo was taken. [Maybe Layla was silently but *figuratively* saying, *Illustration 2. front page*,

“so THERE”.]



Illustration 8: Kristy attempting to avoid being photographed.

HAIGPHOTO

On the second occasion, a Supervisor called “Kristy”, resorted to the same approach: “leave the store, you are now trespassing, we have called the police”. She was very smart, and added, “You can wait for them on the footpath.” Kristy apparently did not wish to be photographed. As Haig says, photographs are great EVIDENCE. We agree. We suggest to **Coles** that it leaves itself open to legal suit from Haig. Haig has advised us that he intends to make complaint to the Human Rights and Equal Opportunity Commission [HREOC], that **Coles** have discriminated against him as he is

disabled.



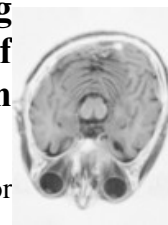
Illustration 9: Kristy being photographed while attacking a determined Haig: determined to capture the evidence. Kristy, in the middle of the word “leave ...”.

HAIGPHOTO

Haig has a long beard and wears an old weather beaten hat most of the time, day and night. He does look “unusual”. Some may say odd. Haig seems reasonably relaxed about that. Haig is disabled having sustained head injuries and having undiagnosed Obstructive Sleep Apnoea [OSA] for decades. Haig is very intelligent. He has often had in depth discussions on many topics with our Editor-in-Chief [EC], who confirms Haig is a very bright and well read man. Haig explains that his hat and beard camouflages the fact that he has a substantially deformed skull. He has

shown us an MRI of his skull and has authorized our using it to illustrate his odd appearance and to illustrate the reason he is as he is. As Haig explains it, he can do nothing about it. We can confirm that Sec 4 of the Disability Discrimination Act 1992 (Cth) [DDA] is the definition section and (e) of the definition of Disability reads:

“disability, in relation to a person, means: (e) the malfunction, malformation or disfigurement of a part of the person’s body;.



The skull shown in the MRI would have to be “malformed” and produce “disfigurement”. We know the HREOC has been corrupt for decades. We may gain more material for our journals with this complaint to HREOC.