

# I'm not lithium: Duracell maker guilty of contempt

14 April 2016

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In the matter of *Energizer Australia Pty Ltd v Procter & Gamble Australia Pty Ltd* [2016] FCA 347, the Federal Court of Australia yesterday declared Procter & Gamble Australia Pty Ltd, the maker of Duracell batteries, guilty of contempt of Court for breaching a Court Order and fined it \$40,000.

In breach of an Order made by Justice Nicholas of the Federal Court of Australia made on 10 November 2014 requiring it to cease broadcasting a television commercial containing the words "Australia's #1 Longest Lasting Alkaline Battery", Procter & Gamble Australia Pty Ltd, through inadvertence, caused the television commercial for Duracell Ultra battery products containing these words to be broadcast 954 separate times on 23 consecutive days.

Justice Nicholas accepted that the breach, although a clear contempt of Court, was a not intentional and there was no wilful disobedience by Procter & Gamble Australia Pty Ltd. Nevertheless, his Honour imposed a fine of \$40,000 in order to vindicate the Court's authority and to bring home to litigants that are bound by an injunction that they must take adequate and continuing steps to ensure that injunctions are complied with. His Honour stated that the fine would have been much more substantial if there had been any element of intention or recklessness.

The breach of the Order in this case was caused by a failure of diligence by Procter & Gamble. This decision is a timely reminder that a party who is subject to a Court Order is under a duty to take adequate and continuing steps to ensure compliance with the Order. A high level of diligence is required.

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