

## **Buzzle Operations Pty Ltd (in liq) v Apple Computer Australia Pty Ltd (2010) 77 ACSR 410**

<https://lawcasesummaries.com/knowledge-base/buzzle-operations-pty-ltd-in-liq-v-apple-computer-australia-pty-ltd-2010-77-acsr-410/>

### **Facts**

- Buzzle Operations Pty Ltd (**Buzzle**) was a reseller of Apple computer products. Buzzle was formed from various other resellers in September 2000.
- Buzzle's formation depended on Apple's consent to transfer contractual rights from the original resellers to Buzzle. Apple imposed various conditions on Buzzle in exchange for its consent.
- Apple had various representatives who participated in Buzzle's management meetings.
- Buzzle also gave an office to one of Apple's executives. This executive regularly met with Buzzle's executives.
- Eventually Buzzle failed and made payments to Apple. Apple called in receivers in 2001.
- In February 2002, liquidators were appointed and sought to recover funds from Apple on the basis uncommercial transactions and insolvent trading.
- Liquidators alleged that Apple was actually an officer of Buzzle for the reasons above.

### **Issues**

- Did Apple participate in making decisions for Buzzle?
- Was Apple an officer of Buzzle because of its ability to significantly affect Buzzle's financial operations, standing and position?
- Was Apple liable for insolvent trading as shadow directors of Buzzle?

### **Held**

- The NSW Supreme Court held that Apple was not an officer of Buzzle.
- Apple was only acting to protect its own commercial interests and Apple was not actually participating in decision making at Buzzle.
- Only two members of Buzzle's board were in regular contact with Apple and its finance director.
- All relevant decisions were made by Buzzle's entire board.
- Although Apple could affect Buzzle's financial standing, it not have official capacity to do so within Buzzle's corporate governance structure.

### **Quotes**

"Any bank or financial institution of significant worth, or any wealthy person or company, had the same capacity. They have the capacity to affect the financial standing of every company. It would be absurd to say that on that account, the Commonwealth and State Governments, every bank, wealthy company and

wealthy individual, is an 'officer' of every other company owing duties to that company."

(White J at page 437 [124])

### **Full Text**

The full text is available here:

[http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NSWSC/2010/233.html?stem=0&synonyms=0&query=title\(Buzzle%20Operations%20and%20Apple%20Computer%20\)](http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NSWSC/2010/233.html?stem=0&synonyms=0&query=title(Buzzle%20Operations%20and%20Apple%20Computer%20))

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