

# HP invents a novel way to get penalised \$3 million

*Hewlett-Packard Australia was penalised \$3m by the Federal Court and ordered to pay the ACCC's costs in the amount of \$200,000. Senior Associate, Bill Fragos discusses the case and provides some suggestions for businesses.*

## The allegations

The ACCC brought proceedings against Hewlett-Packard Australia (HP) for making false or misleading representations to consumers and retailers regarding consumer guarantee rights. The allegations concerned representations that:

- the remedies available to consumers were limited to the remedies available at HP's discretion
- consumers were required to have their product repaired multiple times before they were entitled to a replacement
- the warranty period for HP products was limited to a specified express warranty period
- consumers were required to pay for remedies outside the express warranty period
- products purchased online could only be returned to HP at HP's sole discretion
- HP was not liable to reimburse a retailer if the retailer failed to obtain permission from HP before giving a consumer a refund or replacement.

The representations were made by HP staff working at various call centres. HP had written scripts containing these representations and that set out in HP's internal guidelines for call centre staff to communicate to callers.

## The decision

These representations were false or misleading and breached provisions of the Australian Consumer Law.

The ACCC and HP reached a settlement on the allegations and agreed facts for the Court to determine penalty.

The Court regarded the conduct as serious and recognised the need to deter both HP and others from engaging in the same type of conduct. The Court made orders requiring HP to make consumer redress, issue corrective advertising (which also appears at HP's website) and implement a trade practice compliance programme.

## Other ACCC cases

This decision follows one from 2011 where MSY Technology Pty Ltd and four related companies received penalties totalling \$203,500 for making false or misleading representations regarding consumer warranties.

Currently before the Federal Court are proceedings against 9 Harvey Norman franchisees in relation to alleged false or misleading representations of consumer guarantees.

## Suggestions

The decision is an important one as it reinforces the need for companies, especially multi-national companies to comply with Australia's consumer laws. The ACCC is a proactive regulator and is particularly concerned with representations being made to consumers regarding consumer guarantees.

It is important for companies to seek and receive clear and specific advice on consumer laws and especially with respect to consumer guarantees. Further, it is necessary for staff to be trained appropriately, accurate information distributed and to have a sound trade practices compliance programme in place.

Websites and terms and conditions containing warranties and guarantees should accurately reflect the provisions of the Australian Consumer Law. With the proliferation of social media, consumers will not hesitate to comment on companies who invent ways to not comply with consumer laws. Further, it is no excuse that multi-nationals operating in multiple countries that may have different consumer laws find it difficult or impractical to comply with those laws.

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