

Terms and Conditions Land Online Trader in Difficulty in Australia

IN SHORT

The Ruling: A computer retailer was ordered to pay a fine for violating the Australian Consumer Law.

The Impact: Businesses must ensure that the terms and conditions in their warranty notices comply with the law, or risk an Australian Competition and Consumer Commission ("ACCC") enforcement action.

The Australian Federal Court ordered computer reseller MSY Technology to pay a \$750,000 fine to the ACCC for misrepresenting consumers' rights on remedies for faulty goods. This is the second time that MSY has been found to be in contravention of the Australian Consumer Law, having previously been fined for misleading warranty notices.

In 2010, MSY received a letter from the ACCC in relation to complaints raised by consumers. The ACCC and MSY agreed the terms and conditions the company would use going forward. At some point in 2013, these government-approved terms and conditions were replaced with terms and conditions that misrepresented consumers' rights to a repair, replacement or refund where a product developed a fault. Specifically, MSY represented that it reserved the right to choose whether to offer customers repairs, replacements or refunds for faulty parts, and also whether it wanted to offer any remedy at all. The ACCC also alleged that MSY told customers that administration fees would be charged for warranty work.



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In addition to penalties, the ACCC sought an injunction and a compliance program to ensure that the error could not occur for a third time.

Consumer Guarantees

The Australian Consumer Law provides a number of guarantees that apply to any good or service offered for sale in Australia. As discussed in our [Alert in May 2016](#), these protections apply even when the seller is not Australia-based and the product is sold online.

If a good or service fails to meet a guarantee, consumers have rights against the supplier and, in some cases, the manufacturer. When the problem with the good or service is minor, the supplier can choose between providing a repair or offering the consumer a replacement or a refund. When there is a major failure, the consumer can reject the goods or services and either choose a refund or a replacement, or ask for compensation for any drop in value of the goods or services.

These consumer rights cannot be excluded, restricted or modified. Making false representations as to the rights provided under these guarantees is also prohibited.

Risks for Businesses

The government has repeatedly demonstrated its willingness to bring actions to ensure that the consumer guarantees provided in the Australian Consumer Law are respected and upheld. Businesses that do not carefully ensure that their terms and conditions comply with the law very clearly risk legal action.

The court's October 25, 2017, decision can be found on its [website](#).

TWO KEY TAKEAWAYS

1. Consumer guarantees apply to any products or services offered to Australian consumers irrespective of

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the location of the vendor and the origin of the good or service.

2. Consumer guarantees cannot be excluded, restricted or modified.



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