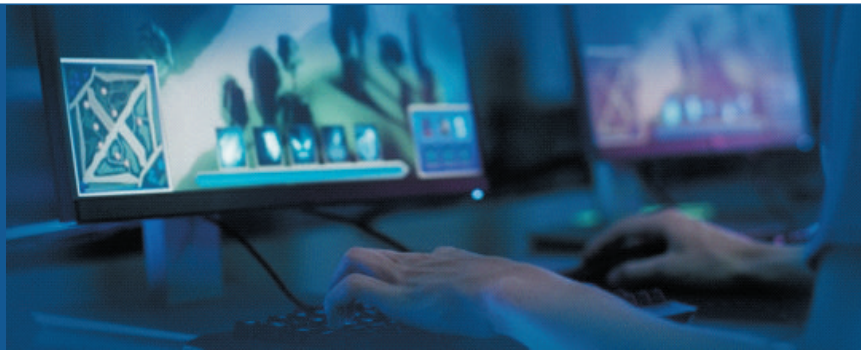




Game Over: Australian High Court Dismisses Valve's Appeal of Penalty

As a result of its dismissal of an appeal from video game publisher Valve in April 2018, the High Court of Australia has affirmed that overseas-based companies that sell to Australia must abide by the Australian Consumer Law ("ACL"). This decision sets an important precedent in Australia, reflecting the view of the Australian Competition and Consumer Commission ("ACCC") that overseas corporations selling to Australian consumers should be bound under the ACL. With the ACCC taking a far more active regulatory role than the regulators in many other countries, it has now become even more important to remain informed about Australia's consumer laws.

Background

Valve is a United States-based entertainment, software and technology company that provides an online computer game distribution platform, "Steam." The Steam platform has approximately 2.2 million users in Australia. Although Valve does not have any physical retail stores in Australia, and operates predominantly out of the state of Washington, it does sell computer games digitally to Australian consumers.

The ACCC commenced action against Valve for breaches of the ACL in 2014. In 2016, the Federal Court of Australia held that Valve had engaged in misleading or deceptive conduct by making misrepresentations to its Australian customers about certain guarantees under the ACL. Although the company was operating mainly outside of Australia, by offering its online products and making representations to Australian consumers, Valve was seen to have been carrying on business in Australia.

Valve appealed the decision, which was dismissed by the Full Federal Court in 2017. The Full Federal Court found that Valve had carried on business in Australia and was therefore bound by the ACL. As a result, the company was held to have engaged in misleading or deceptive conduct and was forced to pay a \$3 million penalty.

Valve sought special leave to the High Court of Australia to appeal the decision of the Full Federal Court. In April 2018, the High Court ended the four-year battle by dismissing the application for special leave. Consequently, the decision of the Full Federal Court to bind Valve by the ACL and require the company to pay a \$3 million penalty for breach is now final.

Impact of the Decision

Under Australian law, consumers purchasing a product online are entitled to the same automatic consumer guarantees as if they had purchased the item in store.

Further, international operators dealing in Australia must now ensure that they have increased awareness of Australia's unique regulation when it comes to the sale of consumer products. This includes controls on product safety and automatic guarantees as to a product's quality and fitness for purpose. The consequences of noncompliance for overseas operators are becoming increasingly onerous, as Parliament pushes for larger penalties for breach of the ACL.

CONTACT



Prudence J. Smith
Sydney

SUBSCRIBE

SUBSCRIBE TO RSS



Jones Day is a global law firm with more than 2,500 lawyers on five continents. We are One Firm WorldwideSM.

Disclaimer: Jones Day's publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for

general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our "Contact Us" form, which can be found on our website at www.jonesday.com. The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.

© 2018 Jones Day. All rights reserved. 51 Louisiana Avenue, N.W., Washington D.C. 20001-2113