

## “THIS IS FOR THE LAWYERS™ - PART II” – FEDERAL COURT ORDERS SONY EUROPE TO PAY \$3.5 MILLION PENALTY OVER CONSUMER LAW BREACHES

By Matt Hansen, Senior Associate

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You may recall that, in 2019, the Australian Competition and Consumer Commission (ACCC) went to the Federal Court alleging that Sony Interactive Entertainment Network Europe Limited (Sony Europe) made false or misleading representations to Australian consumers on its website and in dealings with Australian customers on its PlayStation online store. By way of update, last week the Federal Court finally handed down its ruling, finding that Sony Europe had indeed breached the consumer guarantees protections in the Australian Consumer Law (ACL) and has ordered Sony Europe pay \$3.5 million in penalties.

### What happened?

Sony Europe are responsible for the PlayStation Network Terms of Service that Australian consumers agree to when creating and using a PlayStation account online, and also operate the PlayStation Support Centre, which serves Australian consumers who experience issues with their PlayStation games. PlayStation's network is a global system centralised and managed through Sony Europe.

The ACCC alleged that between October 2017 and May 2019, Sony Europe told Australian consumers seeking a refund for faulty games that it did not have to provide refunds for games that had been downloaded, or if 14 days had passed since purchase. The ACCC also alleged that Sony Europe told consumers it did not have to provide refunds unless the game developer told the consumer the game was irreparably faulty or otherwise authorised a refund and told consumers that in the event it did provide refunds, it could do so using virtual PlayStation currency instead of money. In other words, Sony Europe allegedly made their obligations to comply with Australian law highly conditional.

See our previous article [here](#) for more information on the case background and the law in this area.

### What did the Federal Court decide?

The Federal Court has upheld the ACCC's view that if a business sells products into Australia then its business interactions with Australian consumers are subject to the *Competition and Consumer Act 2010 (Cth)*, and the ACL, even if that business does not have any physical presence in Australia.

The Court found that Sony Europe had made misleading representations to at least four consumers who believed they had purchased faulty PlayStation games. This occurred when Sony's customer service representatives told them over the phone Sony Europe was not required to refund the game once it had been downloaded, or if 14 days had passed since it was purchased. These statements were in direct contravention of the consumer guarantees provisions in the ACL.

The Court also declared Sony Europe breached the ACL by telling one of the four consumers it did not have to provide a refund unless the game developer authorised it, and by telling a fifth consumer that Sony Europe could provide a refund using virtual PlayStation currency instead of money.

### What does this mean for you?

If you are an online retailer, you must be aware that the ACL applies to all businesses that engage in trade and commerce with Australian consumers, including the supply of digital products such as

games, and Australian consumers who buy digital products online will have the same rights as they would at a physical store.

There is no scope to contract out of these obligations, even if the product is delivered digitally. So, these consumer guarantees cannot be excluded in any way. Therefore, any trading terms and conditions need to take this into account so that, despite any other liability limiting language inherent in any contract for goods or services, any non-excludable statutory guarantees are unaffected, and rights preserved for Australian customers. That said, there are some exceptions, a major one being that the consumer guarantees do not apply to goods or services costing more than \$40,000 that are normally used for business purposes.

The views of the ACCC, supported by this decision, are that:

1. Consumer guarantee rights do not expire after a digital product has been downloaded and do not disappear after 14 days or any other arbitrary date claimed by a game store or developer. Instead, the amount of time that these rights shall apply will depend on the nature of the product or service in question.
2. Refunds under the consumer guarantees must be given in cash or money transfer if the consumer originally paid in one of those ways, unless the consumer chooses to receive store credit or some other form of payment.
3. Consumers who buy digital products online have exactly the same rights as they would if they made the purchase at a physical store.
4. No matter where in the world a company has its headquarters, if that company is selling to Australian consumers, the ACL applies.

If you would like further information on the above and how it impacts on your business or your client's business, or you need advice regarding the consumer guarantees on retailers or suppliers, please contact one of our experts below.

**Matt Hansen**  
(02) 8935 8803  
matt.hansen@anisimoff.com.au

**Clint Fillipou**  
(03) 9907 4302  
clint.fillipou@anisimoff.com.au



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