

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
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File Number: NSD971/2023
File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v PAYPAL AUSTRALIA PTY LIMITED ACN 111 195 389
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: To Be Advised
Time and date for hearing: To Be Advised
Place: To Be Advised



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Originating process

(rules 2.2 and 15A.3)



No. of 2023

Federal Court of Australia
District Registry: New South Wales
Division: General

IN THE MATTER OF PAYPAL AUSTRALIA PTY LIMITED (ACN 111 195 389)

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

PAYPAL AUSTRALIA PTY LIMITED (ACN 111 195 389)

Defendant

A. DETAILS OF APPLICATION

This application is made under ss 12GD, 12GNB and 12GND of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and ss 21 and 23 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**).

In this Originating Process:

- A reference to the **Fee Error Term** is a reference to the term set out at [6] of the Concise Statement accompanying this Originating Process.
- A reference to the **Individual Contracts** is a reference to each contract identified as such in Annexure "A".
- A reference to the **Small Business Contracts** is a reference to each contract in force:
 - a) between the defendant and any Non-Party Consumer (as defined in s 12BA of the ASIC Act);
 - b) in respect of a business account held with the defendant by that Non-Party Consumer;
 - c) which meets the definition of a "small business contract" in s 12BF(4) of the ASIC Act; and
 - d) consisting of:

Filed on behalf of (name & role of party) Australian Securities and Investments Commission, Plaintiff
Prepared by (name of person/lawyer) Elizabeth Honey
Tel 0466 133 294 Fax
Email Elizabeth.Honey@asic.gov.au; Tina.Beltrame@asic.gov.au
Address for service Level 5, 100 Market Street
(include state and postcode) Sydney NSW 2000



- i) the PayPal User Agreement (**User Agreement**) published by the defendant on its website (including policies and applicable agreements incorporated into that User Agreement by reference);
- ii) a Product Disclosure Statement published by the defendant on its website; and
- iii) an online registration form completed by that Non-Party Consumer.

On the grounds stated in the Concise Statement filed in these proceedings and served with this Originating Process, the plaintiff claims:

Unfair Terms in Individual Contracts

1. A declaration under s 12GND of the ASIC Act that the Fee Error Term in each of the Individual Contracts is an unfair term within the meaning of s 12BG(1) of the ASIC Act.
2. A declaration under s 21 of the FCA Act, or alternatively ss 12GNB and 12GNC of the ASIC Act, that the Fee Error Term in each of the Individual Contracts is void ab initio by operation of s 12BF(1) of the ASIC Act.
3. An order under s 12GD of the ASIC Act restraining the defendant, whether by itself, its servants, agents or otherwise, from applying or relying on or enforcing the Fee Error Term in each of the Individual Contracts.
4. A declaration under s 21 of the FCA Act that the Individual Contracts otherwise continue to bind the parties to it.

Declared and Unfair Terms in Small Business Contracts

5. An order under s 12GNB of the ASIC Act declaring that the Fee Error Term in each of the Small Business Contracts is void ab initio.
6. Alternatively, a declaration under s 12GND of the ASIC Act, or alternatively s 21 of the FCA Act, that the Fee Error Term in each of the Small Business Contracts is unfair within the meaning of s 12BG(1) of the ASIC Act and is void ab initio by operation of s 12BF(1) of the ASIC Act.
7. An order under s 12GD of the ASIC Act, or alternatively s 23 of the FCA Act, restraining the defendant, whether by itself, its servants, agents or otherwise, from applying or relying on or enforcing the Fee Error Term in each of the Small Business Contracts.

Other orders

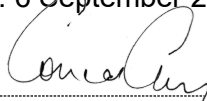
8. An order under s 12GNB of the ASIC Act, or alternatively s 23 of the FCA Act, that the defendant, at its own expense, is, within 14 days of the date of this order, to publish in a prominent place on the home page of the defendant's website (being



<https://www.paypal.com/au>) a corrective notice in such terms as are ordered by the Court.

9. An order under s 12GNB of the ASIC Act, or alternatively s 23 of the FCA Act, that the defendant, at its own expense, is, within 14 days of the date of this order, to provide a corrective notice in such terms as are ordered by the Court to each Non-Party Consumer.
10. Such further or other orders as the Court considers appropriate.
11. Costs.

Date: 6 September 2023


Signature of Conrad Gray
Plaintiff's legal practitioner

This application will be heard by the Federal Court of Australia at
on .

B. NOTICE TO DEFENDANT

TO: PayPal Australia Pty Limited, Level 24, 1 York Street, Sydney NSW 2000

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

Note Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY

N/A

**D. FILING**

Date of filing:

Signed by an officer acting with the authority
of the District Registrar

This originating process is filed by Conrad Gray for the plaintiff.

E. SERVICE

The plaintiff's address for service is Level 5, 100 Market Street, Sydney NSW 2000.

It is intended to serve a copy of this originating process on each defendant.

ANNEXURE A: INDIVIDUAL CONTRACTS

| Small Business Account | Date Small Business Account Opened | Contract Documents containing the Fee Error Term | Version / Date | Document ID |
|------------------------|------------------------------------|--|---|--------------------|
| Business 1 | 1 November 2021 | PayPal User Agreement ¹ | Version 21-5 Last updated: 21 September 2021 | PPA.0017.0001.1852 |
| | | Combined Financial Services Guide and Product Disclosure Statement | Version 21-3 Last updated: 21 September 2021 | PPA.0017.0001.2100 |
| Business 2 | 1 November 2021 | PayPal User Agreement | Version 21-5 Last updated: 21 September 2021 | PPA.0017.0001.1852 |
| | | Combined Financial Services Guide and Product Disclosure Statement | Version 21-3 Last updated: 21 September 2021 | PPA.0017.0001.2100 |
| Business 3 | 1 February 2022 | PayPal User Agreement | Version 21-6 Last updated: 10 December 2021 | PPA.0017.0001.1909 |
| | | Combined Financial Services Guide and Product Disclosure Statement | Version 21-6 Last updated: 10 December 2021 | PPA.0017.0001.2133 |
| Business 4 | 1 February 2022 | PayPal User Agreement | Version 21-6 Last updated: 10 December 2021 | PPA.0017.0001.1909 |
| | | Combined Financial Services Guide and Product Disclosure Statement | Version 21-6 Last updated: 10 December 2021 | PPA.0017.0001.2133 |
| Business 5 | 1 February 2022 | PayPal User Agreement | Version 21-6 Last updated: 10 December 2021 | PPA.0017.0001.1909 |
| | | Combined Financial Services Guide and Product Disclosure Statement | Version 21-6 Last updated: 10 December 2021 | PPA.0017.0001.2133 |

¹ The PayPal User Agreements incorporate by reference policies and other applicable agreements that are not listed in this Annexure.

| Small Business Account | Date Small Business Account Opened | Contract Documents containing the Fee Error Term | Version / Date | Document ID |
|-------------------------------|---|--|---|--------------------|
| Business 6 | 1 May 2022 | PayPal User Agreement | Version 22-1 Last updated: 21 March 2022 | PPA.0017.0001.1957 |
| | | Combined Financial Services Guide and Product Disclosure Statement | Version 22-1 Last updated: 21 March 2022 | PPA.0017.0001.2167 |
| Business 7 | 1 September 2022 | PayPal User Agreement | Version 22-1 Last updated: 21 March 2022 | PPA.0017.0001.1957 |
| | | Combined Financial Services Guide and Product Disclosure Statement | Version 22-1 Last updated: 21 March 2022 | PPA.0017.0001.2167 |
| Business 8 | 1 January 2023 | PayPal User Agreement | Version 22-4 Last updated: 7 November 2022 | PPA.0017.0001.2052 |
| | | Combined Financial Services Guide and Product Disclosure Statement | Version 22-2 Last updated: 19 September 2022 | PPA.0017.0001.2200 |
| Business 9 | 1 January 2023 | PayPal User Agreement | Version 22-4 Last updated: 7 November 2022 | PPA.0017.0001.2052 |
| | | Combined Financial Services Guide and Product Disclosure Statement | Version 22-2 Last updated: 19 September 2022 | PPA.0017.0001.2200 |
| Business 10 | 1 January 2023 | PayPal User Agreement | Version 22-4 Last updated: 7 November 2022 | PPA.0017.0001.2052 |
| | | Combined Financial Services Guide and Product Disclosure Statement | Version 22-2 Last updated: 19 September 2022 | PPA.0017.0001.2200 |