



Federal Court of Australia

District Registry: New South Wales Registry

Division: General

No: NSD843/2022

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION and others named in the schedule
Plaintiff

LATITUDE FINANCE AUSTRALIA ACN 008 583 588 and another named in the schedule
Defendant

ORDER

JUDGE: Justice Yates

DATE OF ORDER: 5 November 2024

WHERE MADE: Sydney

DEFINITIONS

In these orders, the following terms mean:

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth)

FCA Act means the *Federal Court of Australia Act 1976* (Cth)

PURSUANT TO S 21 OF THE FCA ACT AND S 12GBA(1) OF THE ASIC ACT, THE COURT DECLARES THAT:

1. From 1 January 2020 to 11 August 2021, the Defendants together advertised in newspapers and on the radio and television that a payment method was available for purchasing eligible goods from Harvey Norman stores that comprised 60 equal monthly payments on no deposit and interest free terms (**advertised payment method**), when in fact an essential precondition for acquiring goods pursuant to the advertised payment method was that the consumer enter into a continuing credit contract that was linked to a credit card, and thereby on each occasion that an advertisement the subject of the proceedings was published or broadcast to a consumer, the Defendants:



- (a) in trade and commerce, and in relation to financial services (namely, a credit facility or dealing in a credit facility), engaged in conduct which:
 - (i) was misleading or deceptive, or likely to mislead or deceive, in contravention of s 12DA(1) of the ASIC Act; and
 - (ii) was liable to mislead the public as to the nature or characteristics of the financial services offered, in contravention of s 12DF(1) of the ASIC Act; and
 - (b) in trade and commerce, in connection with the supply or possible supply of financial services or in connection with the promotion by any means of the supply or use of financial services (namely, a credit facility or dealing in a credit facility), made a false or misleading representation:
 - (i) that services were of a particular standard, quality, value or grade, in contravention of s 12DB(1)(a) of the ASIC Act; and
 - (ii) concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy, in contravention of s 12DB(1)(i) of the ASIC Act.
2. From 1 January 2020 to 11 August 2021, the Defendants together advertised in newspapers and on the radio and television that a consumer taking up the advertised payment method would only be liable to pay the price of the goods by way of 60 equal monthly payments, when in fact a consumer would also be required to pay an establishment fee (during the period 1 January 2020 to 15 March 2021) and ongoing monthly account service fees, and thereby on each occasion that an advertisement the subject of the proceedings was published or broadcast to a consumer, the Defendants:
- (a) in trade and commerce, and in relation to financial services (namely a credit facility or dealing in a credit facility), engaged in conduct which was misleading or deceptive or likely to mislead or deceive, in contravention of s 12DA(1) of the ASIC Act; and
 - (b) in trade and commerce, in connection with the supply or possible supply of financial services or in connection with the promotion by any means of the supply or use of financial services (namely, a credit facility or dealing in a credit facility), made a false or misleading representation:



- (i) that services were of a particular standard, quality, value or grade, in contravention of s 12DB(1)(a) of the ASIC Act; and
- (ii) concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy, in contravention of s 12DB(1)(i) of the ASIC Act; and
- (iii) with respect to the price of services, in contravention of s 12DB(1)(g) of the ASIC Act.

LEAVE TO APPEAL

- 3. For the avoidance of doubt, the date for filing an application for leave to appeal is 14 days from the date of this order.

Date orders authenticated: 5 Novemeber 2024


Registrar

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.



Schedule

No: NSD843/2022

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Second Defendant

HARVEY NORMAN HOLDINGS LTD ACN 003 237 545