

Foundation Studies Business Environments

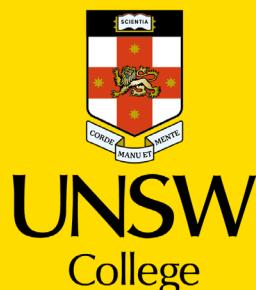
Part 2: The Legal Environment of Business

Unit 8

Consumer Protection Law

Lecturer:

✉ @unswcollege.edu.au



Overview

- *Competition and Consumer Act 2010* (Cth)
 - Australian Consumer Law (ACL)
- Misleading or deceptive conduct
- Consumer guarantees

Legislation and Cases in this unit

Legislation

Competition and Consumer Act 2010 (Cth)

- Australian Consumer Law (ACL)
 - Sections 18, 54, 55, 56 and 57

The Australian Consumer Law (ACL)

Competition and Consumer Act 2010 (Cth) (CCA)

- Designed to promote fair trading and competition in the marketplace.
- Aims to protect consumers, encourage competition, and regulate various commercial practices.
- Key aspects of the CCA include:
 - **Competition Law:** Prohibits anti-competitive practices such as cartels, abuse of market power, and anti-competitive mergers and acquisitions.
 - **Consumer Protection:** Provides consumer protections against unfair trading practices, including misleading and deceptive conduct, false advertising, and unfair contract terms.
 - **Australian Consumer Law** (found in Schedule 2 of CCA)
 - » Commonwealth regime governing the supply of goods and services by a person to a consumer
 - » Purpose of the ACL: To enhance the welfare of consumers

**Section
18**

Misleading or Deceptive Conduct



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Misleading or Deceptive Conduct

Section 18(1) of the Australian Consumer Law

A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

Aims to protect consumers and businesses from false or misleading statements that could affect their decisions or actions.

Pre-conditions to Liability

In order to succeed in a case based on s 18, the plaintiff must prove all of the following elements:

- ‘a person’
- ‘trade or commerce’
- ‘engaging in conduct’
- ‘misleading or deceptive’ or ‘likely to mislead or deceive’

Pre-conditions to Liability

'Person'

Section 18 targets conduct by all persons

- Individual
- Corporation (legal person: upon incorporation, a company becomes a separate legal entity to that of its owners)

Pre-conditions to Liability

'Trade or commerce'

Transaction must have a trading or commercial character

- goods or services supplied in a private or personal capacity will not breach s 18
 - Examples of conduct which is not in 'trade or commerce':
 - a private sale of property by an individual unless in a business context
 - a statement of government policy made by a minister

Pre-conditions to Liability

'Engaging in conduct'

- Includes doing (act) or refusing to do an act (omission)
- A person engages in conduct if they make the statement, perform an act, make a claim or refuses to do so.
- Essentially, the phrase covers virtually every act and it may even cover inaction. In some circumstances, **remaining silent** can constitute 'engaging in conduct'. For example, providing wrong (act) or providing no information, or hiding some vital information (omission)

Pre-conditions to Liability

'Mislead or deceive'

To lead a person into error or to create a false impression

- Silence: In some circumstances, failure to disclose information can be misleading. This is particularly the case if a business provides some information to a consumer but does not mention important details the consumer should know that are relevant to their decision.
- Fine print and qualifications: It can be misleading when the fine print contradicts the main message of the advertisement.
- Wildly exaggerated claims (puffery): 'Puffery' refers to wildly exaggerated and vague claims about a product or service that no one could treat seriously. For example, a restaurant claims they have the 'best steaks on earth'. These types of statements are generally not considered misleading.

Pre-conditions to Liability

'Or is likely to mislead or deceive'

It is not necessary to prove that the conduct actually did mislead or deceive anyone, so long as there is a real and not a remote chance of it.

ACCC v Apple Pty Ltd [2012]

FCA 646

- **Conduct:** Apple in its advertising implied that the “iPad with WiFi + 4G” could connect directly to the Telstra LTE mobile data network in Australia.
- **Fact:** The “iPad with WiFi + 4G” could not connect to any networks which have been promoted in Australia as 4G networks, in particular Telstra’s LTE network.
- **Misleading or deceptive:** Australian consumers thought that the product 'iPad with WiFi + 4G' can, with a SIM card, connect to a 4G mobile data network in Australia, when this is not the case.
- Note: Intention to mislead or deceive is not relevant

Source

ACCC v Reckitt Benckiser (Australia) Pty Ltd

[2016] FCAFC 181

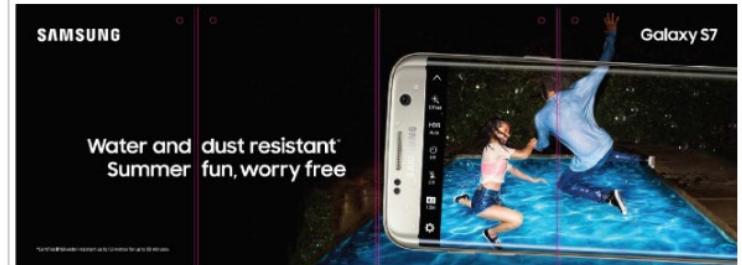
- **Conduct:** Reckitt Benckiser represented that its Nurofen Specific Pain products were each formulated to treat a specific type of pain.
- **Fact:** ‘Specific pain’ range products all contained the same active ingredient and did the same thing.
- **Misleading or deceive:** Consumers thought they needed to buy multiple products to achieve adequate pain relief.



[Source](#)

ACCC v Samsung Electronics Australia Pty Ltd [2022] FCA 875

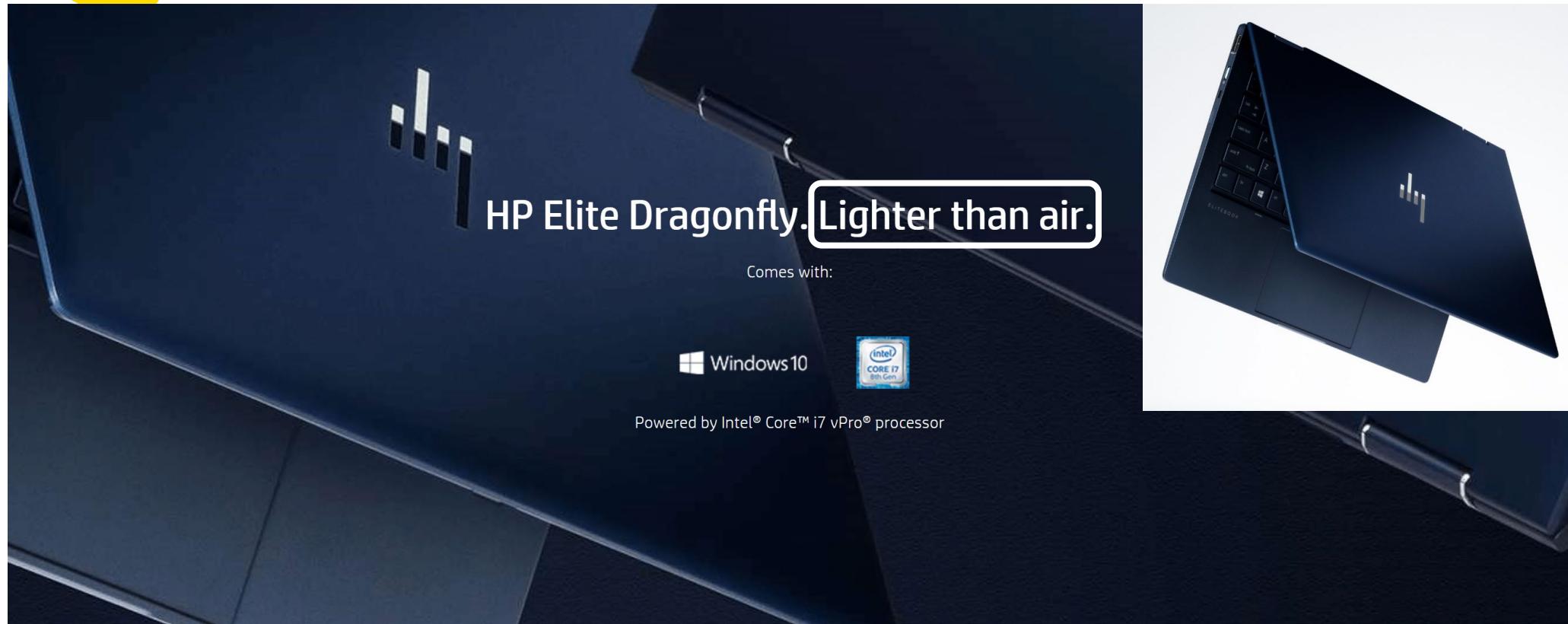
- **Conduct:** Samsung made claims in nine advertisements over 2.5 years that certain Galaxy phones were water resistant to 1.5 metres for 30 minutes and showed the phones being exposed to ocean and pool water .
- **Fact:** The phones were not suitable for use in all types of water and such use would damage them.
- **Misleading or deceptive:** Cause consumers to believe that the Galaxy phones would be suitable for use in, or exposure to, all types of water, including, for example, oceans and swimming pools; and the useful life of the phones would not be adversely affected if the phones were used in, or exposed to, all types of water, including, for example, oceans and swimming pools.



Source



Is this misleading or deceptive?



[Source](#)

Is this misleading or deceptive?



[Source](#)

Consumer Guarantees

Sections

54-57



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Consumer Guarantees under the ACL

- Transactions with consumers for the sale of goods and services in **business to consumer contracts** are regulated by **non-excludable consumer guarantees** in the Australian Consumer Law (ACL).
- The ACL is consumer protection law which applies to a transaction involving a 'consumer' as buyer.
- The ACL does not apply to business to business contracts – these are regulated by the state and territory Sale of Goods Acts.

Consumer Guarantees for the sale of goods under the ACL

Section	Guarantee	Consumer guarantee by
54	the goods are of acceptable quality	both supplier and manufacturer
55	the goods are fit for their disclosed purpose	supplier
56	the goods match their description	both supplier and manufacturer
57	the goods match the sample or demonstration model	supplier

Acceptable quality: Section 54

Goods supplied to a consumer are of acceptable quality.

What is acceptable quality?

- Fit for the purpose for which goods of that kind are commonly bought, acceptable in appearance and finish, free from defects, and are safe and durable
 - Having regard to:
 - Nature of the goods
 - Price of the goods
 - Any statements on packaging/label
 - Any other relevant circumstances

Acceptable quality: Section 54

The guarantee does not apply where:

- Defect is brought to attention of consumer
- Abnormal use
- Consumer examined goods before purchase – revealed defects

Fitness for any disclosed purpose: Section 55

Goods supplied to a consumer must be reasonably fit for purpose that consumer made known (expressly or by implication) to the supplier, and any purpose for which the supplier represents that they are reasonably fit.

The guarantee does not apply where:

- consumer does not rely/unreasonable to rely on the skill or judgment of seller

Correspondence with description: Section 56

Goods supplied to a consumer must correspond with their description.

- Concerned with description rather than quality.
- Description may include the colour, size or kind of the goods.
- A supply of goods by description includes:
 - sales where the consumer has not seen the goods and relies on a description in
 - sales where the consumer relies on a description of goods which do not yet exist
 - sales where the consumer has actually seen the goods (the goods have been described in the label on the goods, or the description is set out in the contract)

Supply by sample: Section 57

If goods are sold by reference to a sample or a demonstration model,

- Goods supplied must match (correspond with) that sample or that demonstration model in quality, state or condition.
- Consumer will be given a reasonable opportunity to compare the goods with the sample.
- Goods will be free from any defect that is not apparent from reasonable examination of the sample or demonstration model.

The guarantee does not apply to supply of goods at a conventional auction.

'No refund' signs

- The consumer guarantees cannot be excluded with 'no refund' signs, etc.
- Attempts to exclude the consumer guarantees are void under the ACL.

End of Lecture

Next week:

The Sustainability Environment of Business:

Ecology and Climate Change – The Relationship Between Human Activities and The Natural World



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