



Harvey Norman franchisee ordered to pay penalties of \$52,000 for false or misleading representations about consumer rights

14 January 2016

The Federal Court has ordered a Harvey Norman franchisee, Bunavit Pty Ltd (Bunavit), to pay a total of \$52,000 penalties for making false or misleading representations regarding consumer guarantee rights, in proceedings brought by the Australian Competition and Consumer Commission.

The Court held that sales representatives at the Harvey Norman Superstore Bundall in Queensland, operated by Bunavit, made ten false or misleading representations concerning the existence, exclusion or effect of a guarantee or right, when they made statements to two consumers which represented that Bunavit:

- had no obligation to provide a remedy and the consumer would need to pursue the manufacturer's warranty directly with the manufacturer;
- could not assist further unless the consumer paid for some or all of the cost of the repair.

The ACCC has now obtained penalty orders totalling \$286,000 against ten Harvey Norman franchisees in respect of false or misleading representations regarding consumer guarantees.

In imposing penalties of \$52,000 against Bunavit, Justice Dowsett took into account that there were more impugned statements than in the other comparable cases, the conduct continued over a longer period, more members were involved and Bunavit's turnover and profit were substantially higher than those of the other offending companies. However, unlike some of the other cases, none of Bunavit's senior staff were involved.

"Products sold in Australia come with a consumer guarantee under the Australian Consumer Law that they will be of acceptable quality. Faulty products must be repaired, replaced, or a refund must be provided by the retailer," ACCC Acting Chair Dr Michael Schaper said.

"This penalty is a timely reminder to all businesses, whether large or small, that they must not mislead consumers about consumer guarantee rights under the Australian Consumer Law," Dr Schaper said.

"Businesses are expected to take appropriate and effective steps to ensure that their staff understand the rights of consumers and the obligations of businesses under the consumer guarantees provided by the Australian Consumer Law," Dr Schaper said.

The Federal Court declined to make declarations as it considered the penalties were sufficient to address the conduct. It also declined to order injunctions, in part because Bunavit has ceased trading.

Background

Under the Australian Consumer Law:

- when consumers buy products, they come with a guarantee that they will be of acceptable quality. This means the products will be as free from defects, safe and durable as a reasonable consumer would regard as acceptable;
- the guarantee of acceptable quality is in addition to any manufacturer's warranty;
- the guarantee of acceptable quality is not limited to the period of the manufacturer's warranty. In many cases, it will apply for longer than the manufacturer's warranty;
- if the product is not of acceptable quality, consumers are entitled to remedies, such as a refund, replacement or repair, at no cost to the consumer.

These rights operate in addition to any express or voluntary warranties offered by businesses and cannot be excluded by a business' terms and conditions of sale.

For further information about consumer rights, visit <http://www.accc.gov.au/consumerrights>.

Proceedings were commenced by the ACCC against Gordon Superstore on 20 November 2012 and nine other Harvey Norman franchisees (including Bunavit) on 13 June 2013.

Subsequently, the ACCC and each of the ten Harvey Norman franchisees agreed on joint submissions and proposed orders to be put to the Court for consideration.

On 6 December 2013, the Federal Court made orders against [four Harvey Norman franchisees](#), requiring them pay penalties totalling \$116,000 for each making false or misleading representations to customers about their consumer guarantee rights.

On 13 December 2013, the Federal Court also made orders against [Camavit Pty Ltd](#) for similar conduct. Cama Pty Ltd, which is located in Campbelltown, New South Wales, was required to pay a penalty of \$32,000.

On 27 February 2014, the Federal Circuit Court made declarations, corrective notices, injunctions, implementation of compliance programs and ordered that [Oxteha Pty Ltd](#), located in Oxley pay a penalty of \$26,000.

On 7 March 2014, the Federal Court (WA) made declarations, penalties, injunctions and ordered that [Avitalb Pty Ltd](#), located in Albury pay a penalty of \$10,000. No compliance programs or correctives notices were sought as Avitalb Pty Ltd has ceased trading.

On 12 May 2014, the Federal Court (WA) made declarations, penalties, injunctions and ordered that [Mandurvit Pty Ltd](#), located in Mandurah pay a penalty of \$25,000. No compliance programs or correctives notices were sought as Mandurvit Pty Ltd has ceased trading.

On 13 May 2014, the Federal Court (NSW) made declarations, corrective notices, injunctions, implementation of compliance programs and ordered that [Gordon Superstore Pty Ltd](#) located in Gordon pay a penalty of \$25,000.

Release number:

MR 2/16

ACCC Infocentre:

Use this form to [make a general enquiry](#).

Media enquiries:

Media Team - 1300 138 917, media@accc.gov.au

Additional contacts:

ACCC Infocentre: 1300 302 502

AUDIENCE [Media](#)

TOPICS [Advertising](#) [Consumer rights](#)