

15 August 2022

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**TO THE REGISTRAR  
QCAT  
Level 11/259 Queen Street  
Brisbane City QLD 4000**

**BY EMAIL:** [EnquiriesQCAT@justice.qld.gov.au](mailto:EnquiriesQCAT@justice.qld.gov.au)

Dear Registrar,

**QCAT PROCEEDINGS  
Craven -v- FlowerHub Pty Ltd MCD 0481/22**

Please find enclosed at page 4, one page of Supplementary Evidence in this proceeding.

Please would you add this to the 20 pages of evidence I have provided in my QCAT Application.

**SUBMISSIONS TO THE TRIBUNAL**

I bring the Tribunal's attention to the highlighted portion of the Supplementary Evidence bearing the date of March 3 2022, where the Director of the Respondent states :

*"weve [sic] been working on this issue for the past 2 days trying to find in the code why it is not adding up ie balancing".*

In order to assist in bringing a quick resolution to this proceeding, I submit the following :

Along with the enclosed Supplementary Evidence and :

- the Evidence Page 9 of my QCAT Application mentioning a "*Computer Glitch*"; and
  - the admission of "*bugs in our software*" at the first paragraph of the Response;
- it is demonstrated that a software problem was the fundamental reason for the Respondent being unable to provide the 10 bunches of Sunflowers that I had purchased.

Leaving aside Respondent's failure to properly respond to my points of Claim, I focus on the Respondent's refusal to honour the HubHappy Guarantee. From what I can make out, the Respondent has essentially alleged three defences of any relevance. As I see it they are :

1. There was a Disclaimer that nullified the HubHappy Guarantee;
2. The HubHappy Guarantee was offered but declined by myself;
3. The Respondent exercised a discretion to refuse the HubHappy Guarantee.

**1. As to the Disclaimer.** At paragraphs 11 to 11.3 of my Affidavit filed on 1 June 2022 is where the circumstances of the Disclaimer are deposed. I believe that my evidence identifies the Disclaimer to be a "*Fine Print Disclaimer*" because it was obscure and not brought to my attention.

The Disclaimer in fact contradicts the HubHappy Guarantee, and is **not** "*Clearly Set Out*" on the Respondent's website as the Respondent's Director seeks to have QCAT believe.

The Respondent publishes the Guarantee in order to entice customers to buy products. When things go awry, the Respondent's Director decides to invoke this *Fine Print Disclaimer* (as he has done in this proceeding), in order to invalidate the Guarantee when it suits him.

**Having a Guarantee and Disclaimer that invalidates it in the same online offering is ridiculous.** Setting up an inconspicuous disclaimer in an attempt to shield against proceedings such as the current one, demonstrates behaviour that is preposterous and intentionally dishonest.

In further addition to that, I cite :

*Australian Competition and Consumer Commission v TPG Internet Pty Ltd* [2013] HCA 54 - where the High Court refused to allow companies to escape liability by relying on *Fine Print Disclaimers*, and instead focused on the general impressions created by the representations.

It is worth noting as to what the ACCC said in relation to the penalty imposed on TPG for this behaviour as a suitable deterrent :

*"This case is of great significance to the ACCC because it is important that penalties imposed for breaches of the Australian Consumer Law are set at a level that deters future breaches," ACCC Chairman Rod Sims said.*

*"In particular, the High Court recognised that penalties must be fixed with a view to ensuring that the penalty is not such as to be regarded by businesses as an acceptable cost of doing business."*

<https://www.accc.gov.au/media-release/high-court-reinstates-2m-penalty-against-tpg-0>

PLUS, there is any amount (12 pages +) of ACCC Infringement and Penalty examples being returned from an ACCC *Fine Print Disclaimers* search at :

[https://www.accc.gov.au/site-search/fine%20print%20disclaimers?sort\\_by=Relevance](https://www.accc.gov.au/site-search/fine%20print%20disclaimers?sort_by=Relevance)

**2. As to the said offer,** I believe that paragraphs 6 to 6.11 my Affidavit defeats this defence, in that it is obvious that the said offer was made too late, because it was offered subsequent to the contract between myself and my client being terminated. Although I tried to resurrect that contract as is shown in the evidence, my client declined to resurrect it, because she had secured her wedding flowers requirement elsewhere, as the evidence shows.

**3. As to the HubHappy Guarantee being discretionary,** on viewing the video evidence and associated text, I can find no mention of it being discretionary, in fact it is stated in the video to be “*Quite Broad huh*”.

The Respondent has not submitted any evidence of this so called discretion, and appears to rely on the dishonest Disclaimer as being the discretionary element, which the Respondent’s Director seems to believe can be invoked, whenever he feels like it.

Despite the Respondent’s defences being futile and choosing to provide an amount of irrelevant excuses instead of addressing my points of Claim, the Respondent continues with a malicious denial of my access to its online Flowerhub purchasing platform

I liken this to an analogy :

of slipping over on the floor at Woolworths and subsequently suing Woolworths for compensation. I believe that Woolworths would not deny the plaintiff entry to its store because of being sued.

The Respondent requests that QCAT restrict my freedom of speech as per paragraph 5 on page 4 of the Response. This request, along with the Respondent’s ridiculous excuse for refusing to provide the Guarantee as per page 18 of my Evidence Schedule, and the Respondent’s pursuit of futility, dishonesty and malice, causes me distress and considerable aggravation.

Pursuant to section 13(1) of the QCAT Act, I request that the Tribunal take the matters set out herein into consideration, in its deliberation of :

- A. the damages that I have requested in my main Application; and
- B. the injunction pursuant to my Form 40 Application; and
- C. aggravated or exemplary damages based upon;
  - i. the alleged tortious matters set out in the Claim; and
  - ii. for allegedly seeking to mislead the Tribunal as is set out herein; and
  - iii. for the alleged dishonesty as is set out herein.

As to the Respondent’s capacity to pay aggravated or exemplary damages, it’s sole Director spruiks himself to be a Self Made Millionaire; <https://nickichristensen.com/about> who charges \$495.00 per hour for Business Coaching services; <https://nickichristensen.com/pricing>.

Yours faithfully



Gordon Craven - Applicant

C.C. The Respondent - [service@flowerhub.com.au](mailto:service@flowerhub.com.au)



Please credit then.

I am ... · 3w

will do. sorry about the numbers. something very wrong is happening after the deluge of credits and changes sunday monday and we're closing the system off and totally starting the stock count from zero. its embarassing and an apology wont make it better, but thats where we are at as we sit right now. im sorry for the inconvenience.

ly dev... · 3w



March 3, 2022 at 3:04 PM

weve been working on this issue for the past 2 days trying to find in the code why it is not adding up ie balancing. just frustrating



ured... · 11w



Credit and refund done for the other 4 bunches. ta

Thank you, Can you email when more come in please, next week or whatever.

ow a... · 11w



We will socials update, please keep an eye 😊

You opened this conversation from flowerhub.com.au.

Mar 4, 2022, 8:42 AM

· 11w

The customer is NOT happy and seems to be implying legal action. If that happens Flowerhub will be joined! Please try and get the Sunflowers back from those you wrongly sold them to!

gain ... · 12w

Just so we're clear. We have no legal implications on what you do with your customer but we will happily provide you with a written document explaining the issues we've had.

anufact...  
ding... · 13w

Any relationship is 100% between you and your customer and you should know that. Your a solicitor.

eweller



I don't appreciate waking up first thing and getting a threat from you in my Facebook Messenger.

Square



Let's see. A flood. All markets closed. Power outages and you want to work a cute legal angle. Please Gordon. That's enough.

read... · 20w

We're in fucking flowers not real-estate or banking.

vers/Su...  
ie flo... · 23w

If you want to talk to me. Call me. +61438131333



Material loss? Over sunflowers. You are joking.

It appears you no nothing about contract law Nicki, I suggest that you try harder!

leo ... · 29w

I've been instructed not to communicate with you given your legal threat. Please direct all communications via email to nickic@flowerhub.com.au - Aileen

leo ... · 29w

You opened this conversation from flowerhub.com.au.

Mar 13, 2022, 3:30 AM

d cu... · 30w