

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating Application - Form 15 - Rule 8.01(1)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 31/08/2023 8:24:59 AM AEST
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File Number: VID685/2023
File Title: AUSTRALIAN COMPETITION AND CONSUMER COMMISSION v
QANTAS AIRWAYS LIMITED
Registry: VICTORIA 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.

Form 15
Rules 8.01(1); 8.04(1)



Originating application

No. _____ of 2023

Federal Court of Australia
District Registry: Victoria
Division: General

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Applicant

QANTAS AIRWAYS LIMITED (ACN 009 661 901)

Respondent

To the Respondent

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing: [Registry will insert time and date]

Place: Federal Court of Australia
Owen Dixon Commonwealth Law Courts Building
305 William Street
Melbourne VIC 3000

The Court ordered that the time for serving this application be abridged to [Registry will insert date, if applicable].

Date:

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

Filed on behalf of	Australian Competition and Consumer Commission (the Applicant)
Prepared by	Helen Joyce
Law firm (if applicable)	Baker McKenzie
Tel (03) 9617 4272	Fax (03) 9617 4200
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Details of claim

This is an application for:

- (a) Declarations under section 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**);
- (b) Pecuniary penalties under section 224 of the Australian Consumer Law (**ACL**) which appears in Schedule 2 to the *Competition and Consumer Act 2010* (Cth);
- (c) Injunctions under s 232 of the ACL;
- (d) Compliance and publication orders under section 246 of the ACL;
- (e) An order regarding findings of fact under s 137H of the CCA; and
- (f) Costs under section 43(1) of the FCA Act,

in respect of alleged contraventions of sections 18, 29(1)(b), 29(1)(g), 34 and 36(3) of the ACL.

On the grounds stated in the accompanying Concise Statement, the Applicant claims:

DECLARATIONS

1. A declaration that between 21 May 2021 and 7 July 2022, by making the Scheduled Flight Representation and the Reasonable Endeavours Representation in the circumstances set out in the Concise Statement, Qantas:
 - (a) engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, in contravention of s 18 of the ACL;
 - (b) made false or misleading representations as to the quality, performance characteristics, uses or benefits of the flights, in contravention of s 29(1)(b) and 29(1)(g) of the ACL; and
 - (c) engaged in conduct that was liable to mislead the public as to the characteristics or suitability for their purposes of particular flights, in contravention of s 34 of the ACL.
2. A declaration that between 21 May 2021 and 7 July 2022, by making the Flight Unchanged Representation and the Manage Booking Representation in the circumstances set out in the Concise Statement, Qantas:
 - (a) engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, in contravention of s 18 of the ACL;
 - (b) made false or misleading representations as to the quality, performance characteristics, uses or benefits of the flights, in contravention of s 29(1)(b) and s 29(1)(g) of the ACL.



3. A declaration that by accepting payment for cancelled flights, when at the time of accepting payment there were reasonable grounds for believing that Qantas would not be able to supply the flights within the period specified by it, and when Qantas was, or ought reasonably have been, aware of those grounds, Qantas engaged in conduct in contravention of s 36(3) of the ACL.

PECUNIARY PENALTIES

4. An order pursuant to section 224(1) of the ACL that Qantas pay to the Commonwealth of Australia such pecuniary penalties as the Court determines appropriate in respect of the contraventions of sections 29(1)(b), 29(1)(g), 34 and 36(3) referred to in paragraphs 1(b), 1(c), 2(b) and 3 above.

INJUNCTION

5. An order under s 232 of the ACL permanently restraining Qantas from selling tickets on any flights which it has cancelled.
6. An order under s 232 of the ACL requiring Qantas to update the Manage Booking page of all passengers holding tickets on a cancelled flight with notification of the cancellation within 48 hours of the cancellation of the flight.

COMPLIANCE PROGRAM

7. An order pursuant to section 246(2)(b) of the ACL that Qantas at its own expense:
 - (a) to the extent it does not already maintain an ACL compliance program, establish and implement, within 60 days of the order, an ACL compliance program in a form and in terms to be determined following the publication of reasons, to be undertaken by all directors, officers, employees, representatives and agents of Qantas, whose roles could result in them being concerned with conduct that may contravene sections 18 and 29, 34 or 36(3) of the ACL and maintain the program for three years from the date on which it is established;
 - (b) to the extent it already maintains an ACL compliance program:
 - (i) within 60 days of the date of the order, review that program and make any amendments necessary to meet any requirements identified in the order following the publication of reasons; and
 - (ii) maintain and continue to implement the ACL compliance program for 3 years from the date on which the amendments in sub-paragraph (i) are made.



PUBLICATION ORDERS

8. An order that pursuant to section 246(2)(d) of the ACL that Qantas at its own expense publish, or cause to be published, within 10 days of the date of the order, a corrective notice in a form approved by the Court in the form of a 'pop up' window which:
- (a) automatically displays and is immediately viewable on a computer screen, mobile phone or portable device upon a user's access to the URL <http://www.qantas.com.au>;
 - (b) displays as a minimum of 50% of the viewable screen size on the website; and
 - (c) does not allow a user to navigate the remaining content of the website until the user closes the 'pop up' window.

ORDER UNDER 137H

9. An order that a copy of the Reasons for Judgment, with the seal of the Court thereon, be retained in the Court for the purposes of s 137H of the CCA.

OTHER ORDERS

10. An order that Qantas pays the ACCC's costs of and incidental to the proceeding.
11. Such further or other relief as the Court deems fit.

Applicant's address

The Applicant's address for service is:

Place: Baker McKenzie

Level 19, CBW

181 William Street

Melbourne VIC 3000

Email: helen.joyce@bakermckenzie.com / amy.wellington@bakermckenzie.com

The Applicant's address is Level 17, Casselden Place, 2 Exhibition Street Melbourne VIC 3000

Service on the Respondent

It is intended to serve this application on all Respondents.



Date: 31 August 2023

A handwritten signature in black ink, appearing to be "HJ", written over a horizontal dotted line.

Signed by Helen Joyce
Lawyer for the Applicant