



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID1360/2016

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Applicant

MERITON PROPERTY SERVICES PTY LTD (ACN 115 511 281)

Respondent

ORDER

JUDGE: JUSTICE MOSHINSKY

DATE OF ORDER: 31 July 2018

WHERE MADE: Melbourne

THE COURT DECLARES THAT:

1. During the period November 2014 to October 2015, the respondent (**Meriton**), in trade or commerce, engaged in conduct that was likely to mislead or deceive in contravention of s 18 of the Australian Consumer Law, being Sch 2 to the *Competition and Consumer Act 2010* (Cth) (the **Australian Consumer Law**), by:

- (a) inserting the letters “MSA”:
 - (i) at the front of the email address for guests who had complained (or were otherwise considered likely to have had a negative experience at a Meriton property) before sending it to TripAdvisor, so that the email address provided to TripAdvisor was invalid and the guest did not receive an invitation prompting the guest to provide a review through the Review Express system; or
 - (ii) in the relevant field in its property management system for guests who had complained (or were otherwise considered likely to have had a negative experience at a Meriton property), so that the guest’s email address was not provided to TripAdvisor and the guest did not receive an invitation prompting the guest to provide a review through the Review Express system; and



- (b) withholding email addresses from TripAdvisor for any guests who had stayed at certain Meriton properties for a particular period when the property had been affected by a major service disruption.

This conduct by Meriton reduced the number of negative reviews of Meriton's properties that were posted on the pages of the TripAdvisor website dedicated to those properties with the effect of improving the relative number of favourable reviews compared with unfavourable reviews of Meriton's properties on the TripAdvisor website. This conduct created a more positive or favourable impression of the quality and amenity of Meriton's serviced apartments, and had the effect of reducing, in the minds of consumers, awareness of the prevalence of service disruptions at Meriton's properties. Further, in some cases, the conduct affected the ranking of Meriton's properties on the TripAdvisor website.

- 2. During the period November 2014 to October 2015, Meriton, in trade or commerce, engaged in conduct that was liable to mislead the public as to the characteristics or suitability for their purpose of the accommodation services at Meriton's properties in contravention of s 34 of the Australian Consumer Law by:

- (a) inserting the letters "MSA":
 - (i) at the front of the email address for guests who had complained (or were otherwise considered likely to have had a negative experience at a Meriton property) before sending it to TripAdvisor, so that the email address provided to TripAdvisor was invalid and the guest did not receive an invitation prompting the guest to provide a review through the Review Express system; or
 - (ii) in the relevant field in its property management system for guests who had complained (or were otherwise considered likely to have had a negative experience at a Meriton property), so that the guest's email address was not provided to TripAdvisor and the guest did not receive an invitation prompting the guest to provide a review through the Review Express system; and



- (b) withholding email addresses from TripAdvisor for any guests who had stayed at certain Meriton properties for a particular period when the property had been affected by a major service disruption.

This conduct by Meriton reduced the number of negative reviews of Meriton's properties that were posted on the pages of the TripAdvisor website dedicated to those properties with the effect of improving the relative number of favourable reviews compared with unfavourable reviews of Meriton's properties on the TripAdvisor website. This conduct created a more positive or favourable impression of the quality and amenity of Meriton's serviced apartments, and had the effect of reducing, in the minds of consumers, awareness of the prevalence of service disruptions at Meriton's properties.

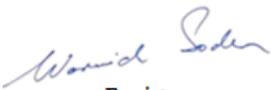
THE COURT ORDERS THAT:

3. Meriton pay the Commonwealth of Australia within 30 days the sum of \$3,000,000 by way of pecuniary penalty under s 224(1) of the Australian Consumer Law in respect of the contraventions that are the subject of the second declaration.
4. Meriton whether by itself, its servants, agents, affiliates or howsoever otherwise, for a period of three years from the date of this order, in trade or commerce, be restrained from filtering, selecting or limiting the guest email addresses it supplies to TripAdvisor in relation to its use of TripAdvisor's Review Express service, unless a guest consents to Meriton withholding, or requests Meriton to withhold, his or her email address from TripAdvisor, or such conduct accords with TripAdvisor's own published rules or guidelines for the submission of email addresses.
5. Meriton:
 - (a) establish the Compliance and Education/Training Program set out in Annexure 1, which is specifically designed to:
 - (i) ensure an understanding and awareness of all officers and employees of Meriton in its serviced apartment operations of the responsibilities and obligations in relation to the conduct declared by the Court in this proceeding to be in contravention of ss 18 and 34 of the Australian Consumer Law and any similar or related conduct; and



- (ii) review and revise the internal operations of its serviced apartment business that led to it engaging in the conduct declared by the Court in this proceeding to be in contravention of ss 18 and 34 of the Australian Consumer Law;
 - (b) maintain and administer, at its own expense, the Compliance and Education/ Training Program set out in Annexure 1 for a period of three years; and
 - (c) provide, at its own expense, a copy of any documents to be provided to the applicant pursuant to Annexure 1.
6. In relation to costs:
- (a) within 14 days, each party file and serve a written submission (of no more than two pages) together with any material upon which it relies;
 - (b) within a further seven days, each party file and serve any reply written submission (of no more than two pages) together with any material in reply.

Date that entry is stamped: 31 July 2018


Registrar



ANNEXURE 1

Compliance and Education/Training Program

The Respondent (**Meriton**) will establish a Competition and Consumer Law Compliance Program (**Compliance Program**) that complies with each of the following requirements:

Appointments

1. Within 30 days of the date of the Order of the Court, Meriton will appoint a director or a senior manager with suitable qualifications or experience in corporate compliance as a Compliance Officer with responsibility for ensuring the Compliance Program is effectively designed, implemented and maintained (the **Compliance Officer**).
2. Within three months of the date of the Order of the Court, Meriton will appoint a suitably qualified, internal or external, compliance professional with expertise in competition and consumer law (the **Compliance Advisor**).
3. Meriton will instruct the Compliance Advisor to conduct a consumer law risk assessment within three months of being appointed as the Compliance Advisor (**Risk Assessment**).
4. Meriton will use its best endeavours to ensure that the Risk Assessment covers the following matters, to be recorded in a written report (**Risk Assessment Report**):
 - (a) identifies the areas where Meriton is at risk of breaching s 18 or 34 of the Australian Consumer Law (**ACL**), comprising Sch 2 to the *Competition and Consumer Act 2010* (Cth) (**CCA**);
 - (b) assesses the likelihood of these risks occurring;
 - (c) identifies where there may be gaps in Meriton's existing procedures for managing these risks; and
 - (d) provides recommendations for any action to be taken by Meriton having regard to the above assessment.

Compliance Policy

5. Meriton will, within 30 days of the date of the Order of the Court, issue a policy statement outlining Meriton's commitment to compliance with the CCA (the **Compliance Policy**)
6. Meriton will ensure that the Compliance Policy:
 - (a) contains a statement of commitment to compliance with the CCA;
 - (b) contains an outline of how commitment to CCA compliance will be realised within Meriton;
 - (c) contains a requirement for all staff to report any Compliance Program related issues and CCA compliance concerns to the Compliance Officer;



- (d) contains a guarantee that whistleblowers with competition and consumer law compliance concerns will not be prosecuted or disadvantaged in any way and that their reports will be kept confidential and secure; and
- (e) contains a clear statement that Meriton will take action internally against any persons who are knowingly or recklessly concerned in a contravention of the CCA and will not indemnify them in the event of any court proceedings in respect of that contravention.

Complaints Handling System

- 7. Meriton will ensure that the Compliance Program includes a competition and consumer law complaints handling system (the **Complaints Handling System**).
- 8. Meriton will use its best endeavours to ensure this system is consistent with AS/ISO 10002:2006 *Customer satisfaction – Guidelines for complaints handling in organizations*, tailored as required to Meriton's circumstances.
- 9. Meriton will ensure that staff and customers are made aware of the Complaints Handling System.

Whistleblower Protection

- 10. Meriton will ensure that the Compliance Program includes whistleblower protection mechanisms to protect those coming forward with competition and consumer law complaints.
- 11. Meriton will use its best endeavours to ensure that these mechanisms are consistent with AS 8004:2003 *Whistleblower protection programs for entities*, tailored as required to Meriton's circumstances.

Staff Training

- 12. Meriton will ensure that the Compliance Program provides for regular (at least once a year) training for all directors, officers, employees, representatives and agents of Meriton, whose duties could result in them being concerned with conduct that may contravene s 18 or 34 of the ACL.
- 13. Meriton must ensure that the training is conducted by a suitably qualified compliance professional or legal practitioner with expertise in competition and consumer law.
- 14. Meriton will ensure that the Compliance Program includes a requirement that awareness of competition and consumer compliance issues forms part of the induction of all new directors, officers, employees, representatives and agents, whose duties could result in them being concerned with conduct that may contravene s 18 or 34 of the ACL.



Reports to Board/Senior Management

15. Meriton will ensure that the Compliance Officer reports to the Board and/or senior management every six months on the continuing effectiveness of the Compliance Program.

Compliance Review

16. Meriton will, at its own expense, cause an annual review of the Compliance Program (the **Review**) to be carried out in accordance with each of the following requirements:
 - (a) **Scope of Review** – the Review should be broad and rigorous enough to provide Meriton and the Applicant (the **ACCC**) with:
 - (i) a verification that Meriton has in place a Compliance Program that complies with each of the requirements detailed in paragraphs 1-15 above; and
 - (ii) the Compliance Reports detailed at paragraph 17 below.
 - (b) **Independent Reviewer** – Meriton will ensure that each Review is carried out by a suitably qualified, independent compliance professional with expertise in competition and consumer law (the **Reviewer**). The Reviewer will qualify as independent on the basis that he or she:
 - (i) did not design or implement the Compliance Program;
 - (ii) is not a present or past staff member or director of Meriton;
 - (iii) has not acted and does not act for, and does not consult and has not consulted to, Meriton in any competition and consumer law related matters, other than performing Reviews under the Order of the Court; and
 - (iv) has no significant shareholding or other interests in Meriton.
 - (c) **Evidence** – Meriton will use its best endeavours to ensure that each Review is conducted on the basis that the Reviewer has access to all relevant sources of information in Meriton’s possession or control, including without limitation:
 - (i) the ability to make enquiries of any officers, employees, representatives and agents of Meriton;
 - (ii) documents relating to the Risk Assessment, including the Risk Assessment Report;
 - (iii) documents relating to Meriton’s Compliance Program, including documents relevant to Meriton’s Compliance Policy, Complaints Handling System, staff training and induction program; and
 - (iv) any reports made by the Compliance Officer to the Board or senior management regarding Meriton’s Compliance Program.



- (d) Meriton will ensure that a Review is completed within one year of the date of the Order of the Court, and that a subsequent Review is completed within each year for three years.

Compliance Reports

- 17. Meriton will use its best endeavours to ensure that within 30 days of the completion of a Review, the Reviewer includes the following findings of the Review in a report provided to Meriton (the **Compliance Report**):
 - (a) whether the Compliance Program of Meriton includes all the elements detailed in paragraphs 1-15 above, and if not, what elements need to be included or further developed;
 - (b) whether the Compliance Program adequately covers the parties and areas identified in the Risk Assessment, and if not, what needs to be further addressed;
 - (c) whether the staff training and induction is effective and if not, what aspects need to be further developed;
 - (d) whether Meriton's Complaints Handling System is effective and if not, what aspects need to be further developed;
 - (e) whether Meriton is able to provide confidentiality and security to competition and consumer law whistleblowers, and whether staff are aware of the whistleblower protection mechanisms;
 - (f) whether there are any material deficiencies in Meriton's Compliance Program, or whether there are or have been any instances of material non-compliance with the Compliance Program (**Material Failure**), and if so, recommendations for rectifying the Material Failure/s.

Meriton response to Compliance Reports

- 18. Meriton will ensure that the Compliance Officer, within 14 days of receiving the Compliance Report:
 - (a) provides the Compliance Report to the Board or relevant governing body;
 - (b) where a Material Failure has been identified by the Reviewer in the Compliance Report, provides a report to the Board or relevant governing body identifying how Meriton can implement any recommendations made by the Reviewer in the Compliance Report to rectify the Material Failure.
- 19. Meriton will implement promptly and with due diligence any recommendations made by the Reviewer in the Compliance Report to address a Material Failure.



Reporting Material Failures to the ACCC

20. Where a Material Failure has been identified by the Reviewer in the Compliance Report, Meriton will:
 - (a) provide a copy of that Compliance Report to the ACCC within 14 days of the Board or relevant governing body receiving the Compliance Report; and
 - (b) inform the ACCC of any steps that have been taken to implement the recommendations made by the Reviewer in the Compliance Report; or
 - (c) otherwise outline the steps Meriton proposes to take to implement the recommendations and then inform the ACCC once those steps have been implemented.

Provision of Compliance Program documents to the ACCC

21. Meriton will maintain a record of and store all documents relating to and constituting the Compliance Program for a period of not less than 5 years.
22. If requested by the ACCC during the period of 5 years following the date of the Order of the Court, Meriton will, at its own expense, cause to be produced and provided to the ACCC copies of all documents constituting the Compliance Program, including:
 - (a) the Compliance Policy;
 - (b) the Risk Assessment Report;
 - (c) an outline of the Complaints Handling System;
 - (d) staff training materials and induction materials;
 - (e) all Compliance Reports that have been completed at the time of the request;
 - (f) copies of the reports to the Board and/or senior management referred to in paragraphs 15 and paragraph 18.

ACCC Recommendations

23. Meriton will implement promptly and with due diligence any recommendations that the ACCC may make that are reasonably necessary to ensure that Meriton maintains and continues to implement the Compliance Program in accordance with the requirements of the Order of the Court.