



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID339/2017

**AUSTRALIAN COMPETITION AND CONSUMER COMMISSION**

Applicant

**APPLE PTY LTD** and another named in the schedule

Respondent

**ORDER**

**JUDGE:** JUSTICE LEE

**DATE OF ORDER:** 18 June 2018

**WHERE MADE:** Melbourne

**THE COURT DECLARES THAT:**

1. The second respondent (**Apple Inc**) in trade or commerce:
  - (a) engaged in misleading or deceptive conduct, or conduct that was likely to mislead or deceive, in contravention of s 18 of the *Australian Consumer Law* (**ACL**); and
  - (b) in connection with the supply of iPhone and iPad devices (including all hardware and software used by those devices from time to time), made false or misleading representations concerning the existence, exclusion or effect of the consumer guarantees under Part 3-2 of the ACL, and the rights or remedies available under Part 5-4 of the ACL, in contravention of s 29(1)(m) of the ACL,by:
  - (c) from 21 December 2015 to 18 February 2016, impliedly representing on its website generally to consumers with iPhones and iPads affected by the Error 53 software fault; and
  - (d) the first respondent (**Apple Australia**), through statements made by its representatives in the course of responding to after-sales complaints or enquiries from February 2015 to February 2016, with the consent of an



employee of Apple Inc in circumstances which engaged s 139B(2)(b)(ii) of the *Competition and Consumer Act 2010* (Cth), impliedly representing by those statements to at least the 275 consumers set out in Annexures A and B of the second further amended concise statement whose iPhones were rendered inoperable by the Error 53 software fault who had contacted Apple Australia concerning the availability of a remedy relating to the Error 53 software fault, that, if a component of their device had previously been repaired, serviced or replaced by someone other than Apple Australia or an Apple-Authorised Service Provider, no Apple entity was required to, or would provide a remedy relating to the Error 53 software fault at no cost, when:

- (e) the mere fact that a component of their iPhones or iPads had been serviced, repaired or replaced by someone other than Apple Australia or an Apple-Authorised Service Provider, did not, and could not, of itself, result in:
  - (i) the consumer guarantees provided under Part 3-2 of the ACL ceasing to have any operation in respect of those devices or the software used to operate them; and
  - (ii) the right to any remedy under Part 5-4 of the ACL being extinguished.

**THE COURT ORDERS THAT:**

2. Within 30 days of the date of this Order, Apple Inc pay to the Commonwealth of Australia a pecuniary penalty of \$9 million in respect of its contraventions of s 29(1)(m) of the ACL.
3. Apple Inc pay the applicant an amount as agreed in respect of its costs of and incidental to the proceeding or, failing agreement, an amount to be determined by the Court on a lump sum basis.
4. Otherwise, the prayers for relief set out in the amended originating application be dismissed.

In the declaration set out above, the term ‘Error 53 software fault’ means the fault which occurred when certain iPhone or iPad users attempted to update the iOS software on their functioning device to iOS8 or iOS9 or restore the factory settings of their functioning device, by connecting it to Apple iTunes through a personal computer.



Date that entry is stamped: 18 June 2018

*Warrick Soden*  
Registrar



**Schedule**

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Second Respondent      APPLE INC.