

NOTICE OF FILING

Details of Filing

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Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



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.

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Form NCF1

Concise Statement

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

INTRODUCTION

1. The Applicant (the **ACCC**) alleges that the Respondent (**Qantas**) engaged in false, misleading or deceptive conduct in breach of the Australian Consumer Law (**ACL**) between 21 May 2021 and 7 July 2022 (**Relevant Period**) by offering for sale, and accepting payment for, flights which it had already cancelled, and falsely representing to consumers who held tickets for cancelled flights that their flights had not been cancelled.

IMPORTANT FACTS GIVING RISE TO THE CLAIM

2. Qantas supplies domestic and international flights to consumers. It offers flights for sale through direct channels, such as its website and app, and indirect channels, such as travel agents and third-party online booking websites.
3. These flights are offered for sale and sold by Qantas to the public by reference to a particular flight number, with a scheduled date and time. The price of different flights on the same route can vary according to the scheduled date and time of a particular flight.
4. After a consumer books a flight with Qantas, the consumer can view details of the flight, including the scheduled date and time, on the "Manage Booking" page of the Qantas website or Qantas app.

Filed on behalf of	Australian Competition and Consumer Commission (the Applicant)
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5. During the Relevant Period, Qantas cancelled certain flights that were scheduled to depart within the period 1 May 2022 to 31 July 2022 (**Cancelled Flights**). These cancellations were made for a variety of reasons, including reasons within Qantas' control, such as network optimisation, route withdrawals or retention of take off and landing slots at certain airports.
6. Despite the cancellation of the Cancelled Flights, during the Relevant Period Qantas continued to:
 - (a) offer for sale tickets for over 8,000 Cancelled Flights for 2 or more days after cancellation. On average, such flights were offered for sale for approximately 16 days after cancellation;
 - (b) display the details of over 10,000 Cancelled Flights for 2 or more days on the "Manage Booking" page of consumers who had purchased tickets on those flights, with no indication that the flight had been cancelled. On average, it took approximately 18 days for consumers who had purchased tickets on those flights to be notified of the cancellation of their flight.

Scheduled Flight Representation

7. By offering for sale the Cancelled Flights alleged in paragraph 6(a) after cancelling them, Qantas, in trade or commerce, represented to consumers that a flight with the stated flight number and scheduled date and time had not been cancelled (**Scheduled Flight Representation**). The Scheduled Flight Representation was false and misleading, because, despite Qantas continuing to offer the flight for sale, there was no flight with the stated flight number and scheduled date and time that had not been cancelled, because Qantas had cancelled it.

Reasonable Endeavours Representation

8. By offering for sale the Cancelled Flights alleged in paragraph 6(a) after cancelling them, Qantas, in trade or commerce, represented to consumers that it would use reasonable endeavours to operate the flight at the scheduled date and time (**Reasonable Endeavours Representation**). The Reasonable Endeavours Representation was false and misleading because Qantas did not have reasonable grounds for making the representation, because Qantas had already cancelled the particular flight.

Flight Unchanged Representation

9. By displaying flight information on the “Manage Booking” page to consumers who had purchased tickets for the Cancelled Flights alleged in paragraph 6(b), after it had cancelled those flights, Qantas, in trade or commerce, represented that a flight with the stated flight number and scheduled date and time had not been cancelled (**Flight Unchanged Representation**). The Flight Unchanged Representation was false and misleading, because, despite Qantas continuing to display the flight information on the “Manage Booking” page, there was no flight with the stated flight number and scheduled time and date that had not been cancelled, because Qantas had cancelled it.

Manage Booking Representation

10. By displaying flight information on the “Manage Booking” page to consumers who had purchased tickets for the Cancelled Flights alleged in paragraph 6(b), after it had cancelled those flights, Qantas, in trade or commerce, represented that it would use reasonable endeavours to operate the flight displayed on the “Manage Booking” page at the scheduled date and time (**Manage Booking Representation**). The Manage Booking Representation was false and misleading because Qantas did not have reasonable grounds for making the representation, because at the time it was made, Qantas had already cancelled the particular flight.

Wrongly accepting payment

11. Further, Qantas sold, and accepted payment from consumers for, tickets on some of the Cancelled Flights, when at the time of accepting payment, it had already cancelled the flight.
12. For each flight referred to in paragraph 11, the period specified for the supply of the service at the time of acceptance of payment was the scheduled date and time of the flight published on the Qantas website in the booking flow.
13. At the time of accepting payment for each Cancelled Flight referred to in paragraph 11:
 - (a) there were reasonable grounds for believing that Qantas would not be able to supply the flight at the scheduled date and time, because Qantas had already cancelled the particular flight; and
 - (b) Qantas was aware, or ought reasonably to have been aware, that it had already cancelled the flight for which it was accepting payment.

PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT

14. By making the Scheduled Flight Representations and the Reasonable Endeavours Representations in the circumstances pleaded above, 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.
15. By making the Flight Unchanged Representations and the Manage Booking Representations in the circumstances pleaded above, Qantas:
 - (a) engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, in contravention of s 18 of the ACL; and
 - (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.
16. The Reasonable Endeavours Representations and the Manage Booking Representations were made in respect of future matters, and the ACCC relies on s 4 of the ACL in respect of these representations.
17. By accepting payment for flights in the circumstances alleged in paragraph 11, 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.

RELIEF SOUGHT FROM THE COURT

18. The ACCC seeks the relief set out in the accompanying Originating Application.

ALLEGED HARM

19. As a result of Qantas' conduct, consumers may have made decisions to purchase flights based on false or misleading information. As a result of such decisions, some Qantas customers may have suffered loss in that they have made travel or other arrangements based upon expected flight schedules. Consumers who relied on the flight details on the Manage Booking page had less time to make alternative travel arrangements, and some may have incurred greater cost in making alternate arrangements once they became aware of the cancellation of their flight. Some consumers may also have paid a higher fare to fly at a particular chosen time, and may not have done so, or may have sought to travel at a different time or date or with an alternative airline, if they had been aware that the flight they were paying for was already cancelled.

Date: 31 August 2023




Signed by Helen Joyce
Lawyer for the Applicant

This concise statement was prepared by Christopher Caleo KC and Tamioka Spencer Bruce of Counsel.

Certificate of lawyer

I, Helen Joyce, certify to the Court that, in relation to the Concise Statement filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

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