

NOTICE OF FILING

Details of Filing

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File Title:	AUSTRALIAN COMPETITION AND CONSUMER COMMISSION v SECURE PARKING PTY LTD ACN 108 043 689
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads "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.

Concise Statement



No. of 2023

Federal Court of Australia

District Registry: NSW

Division: General

Commercial and Corporations National Practice Area (Regulator and Consumer Protection)

Australian Competition and Consumer Commission

Applicant

Secure Parking Pty Ltd ACN 108 043 689

Respondent

IMPORTANT FACTS GIVING RISE TO THE CLAIM

1. These proceedings concern false or misleading representations made by the respondent (**Secure Parking**), in connection with the Secure-a-Spot service (**Secure-a-Spot**) it offered to consumers in Australia, in the period from 1 July 2017 to 30 June 2022 (**Relevant Period**). Secure Parking represented to consumers that a booking with Secure-a-Spot would reserve a parking space at the particular time, date and car park nominated by the consumer, when this was not the case.
2. Secure Parking operates commercial car park facilities (**Car Parks**) in Sydney, Brisbane, Perth, Adelaide, Melbourne and Hobart. Secure-a-Spot was offered throughout the Relevant Period at 104 Car Parks in each of these cities.
3. During the Relevant Period, Secure Parking promoted Secure-a-Spot on its website at www.secureparking.com.au (**Website**), in direct marketing emails to subscribers, and in paid advertisements published on Google, social media and in print media.

Website

4. Throughout the period February 2018 to 20 May 2022, the booking process for Secure-a-Spot on the Website or via the Secure Parking mobile application software included, amongst other steps, the following:
 - a. clicking a "Book Now" button;

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- b. selecting a particular Car Park, date and time-range for the booking, which were later displayed on the “Review Booking” page in the purchase process; and
 - c. paying for parking by credit card or other means of online payment.
5. During the period February 2018 to 20 May 2022, Secure Parking made the following statements on the “Secure-a-Spot” page of the Website:
- a. “Book Now” (used in the context of Secure-a-Spot);
 - b. “BOOK PARKING IN ADVANCE AND SAVE”;
 - c. “Secure-a-Spot parking can be booked up to [X] days in advance and up to 15 minutes before you need it”;
 - d. From September 2019, “To book parking online with Secure-a-Spot, click book now below, complete ‘Where are you going’ what date and how long you want to park to get exact rates and available car parks.”
 - e. On or around 24 January 2022, “An advance booking with Secure-a-Spot means guaranteed parking in the CBD at a much cheaper rate” (**Guaranteed Parking Statement**).
6. The “Secure-a-Spot” page of the Website also contained numerous references to “Secure-a-Spot”.

Subscriber emails

7. During the Relevant Period, Secure Parking promoted its services in direct marketing messages sent via email to subscribers (**Subscriber emails**). The content of the Subscriber emails varied depending on the subscriber’s location, and included advertising for parking specials proximate to upcoming events in a particular city and “Book Now” links to the “Secure-a-Spot” page of the Website. The Subscriber Emails also contained statements regarding Secure-a-Spot including the following:
- a. “Early Bird Parking from \$9 when you book online at Secure-a-Spot. 55 Little Edward Street Car Park has the cheapest Early Bird in Spring Hill. Simply book online to guarantee your bay!”;
 - b. “Book parking now for guaranteed spot!”;
 - c. “Book online for a guaranteed spot”;
 - d. “Book your parking online for a guaranteed parking spot and enjoy the game!”.

Facebook posts

8. During the Relevant Period, Secure Parking promoted Secure-a-Spot on its Facebook page, including statements such as “Book online to guarantee a spot now here”; and “...don’t miss out on guaranteed parking”.

YouTube videos

9. During the Relevant Period, Secure Parking promoted Secure-a-Spot in videos posted to YouTube, including the videos set out below which are also specified in the Schedule.
10. During the Relevant Period, a video appeared on Secure Parking’s YouTube channel (which was posted in 2014) promoting the introduction of Secure-a-Spot online booking service. The video contained the following statements, which were either spoken or appeared in writing in the video:
 - a. "With Secure-a-Spot, Secure Parking’s simple-as-can-be online booking service, you can ensure you’ll have hassle-free parking whenever you need it, and at a discounted rate. That means you can forget any stress trying to find a parking spot”;
 - b. “Select a car park that offers Secure-a-Spot online booking”;
 - c. “Click on the “book now” button” (with the words “BOOK NOW” displayed in the video while those words were spoken);
 - d. “4 STEPS to guaranteed parking” followed by the displayed words “1. Select your car park and entry / exit details 2. Choose a parking product 3. Enter your Secure-a-Spot Promotion Code 4. Confirm your booking and pay;
 - e. “Choose your exact location, date and time of entry and exit”,
 - f. “PARKING GUARANTEED”;
 - g. “So forget the hassle, stress and expense of last-minute parking and book ahead with Secure-a-Spot. It’s as simple as can be”.
11. Three other videos appeared on Secure Parking’s YouTube channel during the Relevant Period which each contained the following oral statements:
 - a. “Should have used Secure-a-Spot online booking from Secure Parking for a guaranteed space...”;
 - b. “That’s better. Booked, paid, and he’s got his code”;
 - c. “Don’t be a block-lapper. Book with Secure-a-Spot...”.

Secure-a-Spot Representations

12. By using the name Secure-a-Spot, making the statements on the Website, in the Subscriber Emails, in the Facebook posts and in the YouTube videos during the Relevant Period, on each occasion Secure Parking represented to consumers that by using Secure-a-Spot, a consumer would have a parking space reserved for them for the date, time and location specified in the booking they had paid for (**Secure-a-Spot Representations**), when this was not the case.
13. In fact, when a consumer made a Secure-a-Spot booking, Secure Parking did not reserve a parking space for that consumer in the Car Park chosen by the consumer, or in any Car Park. During the Relevant Period, Car Parks could, and did, reach capacity before consumers with Secure-a-Spot bookings arrived at the Car Park at the appointed time of their bookings, with the result that no parking spaces were available for them.

PRIMARY LEGAL GROUNDS FOR RELIEF SOUGHT

14. The Secure-a-Spot Representations were false, misleading and deceptive because a booking by a consumer through Secure-a-Spot did not result in Secure Parking reserving a parking space for the time, date and location specified in the booking, as Secure Parking did not set aside bays for Secure-a-Spot bookings. By making the Secure-a-Spot Representations, Secure Parking, in trade or commerce:
 - a. engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, in contravention of s18 of the ACL;
 - b. in connection with the supply or possible supply of services or the promotion of the supply or use of those services, made false or misleading representations in contravention of s29(1)(g) of the ACL that Secure-a-Spot had a use or benefit which it did not have, being the use or benefit of reserving a parking space at the particular time, date and Car Park nominated by the consumer; and
 - c. engaged in conduct that was liable to mislead the public as to the nature, characteristics and/ or suitability for purpose of services in contravention of s34 of the ACL, being that a Secure-a-Spot booking would reserve a parking space at the particular time, date and Car Park nominated by the consumer.

RELIEF SOUGHT

15. The ACCC seeks the relief sought in the originating application, comprising declarations, injunctions, penalties, non-punitive orders and costs.

ALLEGED HARM SUFFERED

16. Where consumers were not able to access the Car Park they had booked, examples of harm included inconvenience from having to find alternative parking which may have

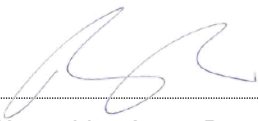
been some distance away from the Car Park, being late to work commitments, appointments and events, and missing events by reason of being unable to locate another car park in a timely way. This harm can be expected to have had a more significant impact on consumers with a disability which limited their mobility.

This concise statement was prepared by Corrs Chambers Westgarth and Victoria Brigden of counsel.

Certificate of lawyer

I, Anna Ross, certify to the Court that, in relation to the statement of claim 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: 5 July 2023



Signed by Anna Ross

Lawyer for the Applicant

SCHEDULE OF VIDEOS REFERRED TO IN CONCISE STATEMENT

1. The video referred to at paragraph 10 of the Concise Statement was located at the following URL: <https://www.youtube.com/watch?v=l19n5FhA1So>
2. The videos referred to at paragraph 11 of the Concise Statement were located at the following URLs:
https://www.youtube.com/watch?v=63UOHJmYD_M
<https://www.youtube.com/watch?v=29BSy9i7Ppg>
<https://www.youtube.com/watch?v=29BSy9i7Ppg>