

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Concise Statement  
File Number: NSD1292/2021  
File Title: AUSTRALIAN COMPETITION AND CONSUMER COMMISSION v  
BOOKTOPIA PTY LTD  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF  
AUSTRALIA



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 10/12/2021 1:52:28 PM AEDT

Registrar

### Important Information

As required by the Court's Rules, 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 and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.

**Concise Statement**

No.

of 2021

Federal Court of Australia

District Registry: New South Wales

Division: General

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

**Australian Competition and Consumer Commission**

Applicant

**Booktopia Pty Ltd**

Respondent

**A. IMPORTANT FACTS GIVING RISE TO THE CLAIM**

- 1 This proceeding concerns false, misleading or deceptive representations made by the Respondent (**Booktopia**) from no later than 10 January 2020 to 2 November 2021 (**Relevant Period**), to Australian consumers, as to consumer guarantee rights to seek a refund or remedy under the Australian Consumer Law (**ACL**) in respect of books and other goods purchased from Booktopia.
- 2 Booktopia is an online bookstore which operates a website at the URL: <http://www.booktopia.com.au> (**Booktopia Website**). Booktopia supplies books, magazines, calendars, maps, stationery, games and puzzles and digital content such as eBooks and audio books (**Booktopia Products**) directly to consumers in Australia, predominantly through the Booktopia Website.
- 3 In the course of conducting that business, staff at Booktopia's Customer Service Centres respond to customer enquiries and complaints in a range of ways, including by telephone, email, webform, live chat messaging and Chatbot helper on the Booktopia Website. Booktopia also monitors Facebook, Instagram, Twitter and product review websites for customer messages and makes direct contact with customers who engage with Booktopia via these channels to respond to customer enquiries and complaints. Customer enquiries and complaints made by telephone contacts are handled by staff in Booktopia's Customer

|   |   |     |         |
|---|---|-----|---------|
| Filed on behalf of (name & role of party) | Australian Competition and Consumer Commission, Applicant     |     |         |
| Prepared by (name of person/lawyer)       | Jeremy Giles SC, Daniel Tynan, Andrew Riordan, Caitlin Brown  |     |         |
| Law firm (if applicable)                  | <b>Norton Rose Fulbright Australia</b>                        |     |         |
| Tel                                       | +61 3 8686 6000   | Fax |         |
| Email                                     | andrew.riordan@nortonrosefulbright.com                        | Ref | 4044496 |
| <b>Address for service</b>                | Level 38, Olderfleet, 477 Collins Street, Melbourne, VIC 3000 |     |         |

Service Centre in Australia. All other customer service enquiries and complaints are dealt with by Booktopia's Customer Service Centres in the Philippines or in Australia.

### **Booktopia's Terms of Business**

- 4 The purchase of Booktopia Products by, and supply of Booktopia Products to, Australian consumers via the Booktopia Website is governed by Booktopia's Terms of Business and the ACL. During the Relevant Period, Booktopia published its Terms of Business on the Booktopia Website at <https://www.booktopia.com.au/termsOfBusiness.ep>. This proceeding concerns the version of the Terms of Business published on the Booktopia Website from 10 January 2020 to 2 November 2021 and accessed by many consumers during that period.
- 5 Before completing a purchase of a Booktopia Product on the Booktopia Website, consumers are shown a link to the Terms of Business and a statement containing the words "By submitting this order, you confirm that ... you accept Booktopia's Terms of Business", but consumers are not required to view the Terms of Business or select any acknowledgement button.
- 6 The Terms of Business included the following statements under the heading "Returns Policy":
  - (a) "This policy includes rights you are entitled to under Australian Consumer Law" (the **ACL statement**).
  - (b) "If you have received an item that is incorrect, damaged or faulty we require notification within 2 business days from the time the delivery was made" (the **Two Business Days Term**).
  - (c) "Returns and refunds are not possible for the following product types:
    - Magazine Subscriptions
    - Gift Certificates
    - eBooks
    - Other Digital Content
    - Bulk Orders where special pricing and/or product sourcing has been provided with Firm Sale terms
    - Print on Demand titles where a Firm Sale has been advised"(the **No Return and Refund Term**).
- 7 The ACCC's claims in respect of the No Return and Refund Term only relate to: eBooks; other digital content; "Bulk Orders where special pricing and/or product sourcing has been provided with Firm Sale terms"; and "Print on Demand titles where a Firm Sale has been advised" (the **No Return and Refund Products**). The Terms of Business describe a "Firm Sale" purchase as "non-returnable".

## **Booktopia's Contravening Conduct**

### **Two Business Days Representation**

- 8 By publishing the Two Business Days Term together with the ACL statement, or alternatively, by publishing the Two Business Days Term alone, Booktopia represented that any consumer must notify Booktopia, within two business days of delivery of a Booktopia Product to the consumer, of damage to, or fault or error in the product in order for the consumer to have a right to a remedy in relation to the product which is damaged, faulty or incorrect (**Two Business Days Representation**).
- 9 In fact, a consumer's right to a remedy under the ACL continued or may have continued although the consumer did not notify Booktopia within two business days of delivery of the damage, fault or error, and Booktopia could not impose the Two Business Days Term on a consumer, by virtue of the following:
- (a) Sections 54 and 55 of the ACL provide for consumer guarantees.
  - (b) Sections 259 and 263 of the ACL provide consumers with rights to a remedy for goods that do not comply with the consumer guarantees.
  - (c) Having regard to sections 64 and 276 of the ACL, Booktopia could not exclude, restrict or modify the availability of the consumer guarantees or a consumer's entitlement to exercise the rights to a remedy for goods that do not comply with the consumer guarantees.
  - (d) Two business days of delivery of a Booktopia Product is not, or may not be, a reasonable period, within the meaning of that term in sections 262 and 259 of the ACL.
- 10 As a result, the Two Business Days Representation was false, misleading or deceptive by reason of the facts pleaded in paragraph 9 above, which had the consequence that a consumer's right to a remedy for a Booktopia Product that contained damage, a fault or an error was not limited to circumstances in which Booktopia had been notified by the consumer of the damage, fault or error within two business days of delivery.

### **No Refund Representation**

- 11 By publishing the No Return and Refund Term together with the ACL statement, or alternatively, by publishing the No Return and Refund Term alone, Booktopia represented that consumers were not entitled to obtain a refund in respect of the No Return and Refund Products in any circumstance (**No Refund Representation**).

- 12 In fact, a consumer had or may have had a right to a refund under the ACL, and Booktopia could not impose the No Return and Refund Term by virtue of the following:
- (a) Sections 54 and 55 of the ACL provide for consumer guarantees.
  - (b) Sections 259(2) and 259(3) of the ACL provide consumers with the right to obtain a refund pursuant to section 263(4) of the ACL as against Booktopia as supplier in certain circumstances.
  - (c) Having regard to sections 64 and 276 of the ACL, Booktopia could not exclude, restrict or modify the availability of the consumer guarantees or a consumer's entitlement to exercise the rights to a remedy for goods that do not comply with the consumer guarantees.
- 13 As a result, the No Refund Representation was false, misleading or deceptive by reason of the facts pleaded in paragraph 12 above which had the consequence that consumers were or may be able to obtain a refund in respect of the No Return and Refund Products.

#### **No Obligation to Remedy Representation**

- 14 During the period 23 April 2020 to 5 January 2021, through staff at its Customer Service Centres, Booktopia interacted with each of the 19 consumers identified in the **Annexure** to this Concise Statement in relation to Booktopia Products purchased by those consumers (**Identified Consumers**).
- 15 During Booktopia's dealings with the Identified Consumers, Booktopia represented to each of those consumers that, Booktopia was not obliged to provide a remedy because the customer had failed to contact Booktopia within two business days of delivery, even if a Booktopia Product was not of acceptable quality within the meaning of section 54 of the ACL or not fit for purpose within the meaning of section 55 of the ACL (**No Obligation to Remedy Representations**).
- 16 Booktopia's obligation to provide a remedy to the consumer under the ACL in the circumstances identified in the Annexure (if the Booktopia Product was not of acceptable quality or not fit for purpose) continued or may have continued even if the consumer did not request the remedy within two business days of delivery, by virtue of the matters set out at 9(a) to (d) above.
- 17 As a result, the No Obligation to Remedy Representations made to each of the consumers was false, misleading or deceptive by reason of the facts pleaded in paragraph 16 above.

**C. RELIEF SOUGHT FROM THE COURT**

18 The ACCC seeks the relief set out in the accompanying Originating Application, which includes declarations, pecuniary penalties, a publication order, compliance orders and costs.

**D. PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT**

19 Booktopia made the representations referred to at paragraphs 8 and 11 when it published and continued to publish the Terms of Business on the Booktopia Website and each time a consumer accessed or read the Terms of Business.

20 Booktopia made the representations referred to at paragraph 15 above in each instance indicated in the Annexure.

21 On each occasion of making each of the Two Business Days Representations, No Refund Representations and No Obligation to Remedy Representations, Booktopia;

- (a) engaged in conduct that was misleading or deceptive or likely to mislead or deceive, in contravention of section 18(1);
- (b) made a false or misleading representation concerning the existence or effect of consumers' rights, in contravention of section 29(1)(m) of the ACL.

**E. ALLEGED HARM SUFFERED**

22 The representations hindered Australian consumers in exercising their rights under the ACL. It is likely that, had the contravening conduct not occurred, Australian consumers, who were entitled to relief under the ACL would have exercised their rights to that relief.

23 It is not possible to quantify how many Australian consumers were dissuaded from exercising their rights under the ACL and therefore not possible to quantify the loss or damage suffered by consumers as a result of Booktopia's contravening conduct.

Date: 10 December 2021



.....  
Signed by Andrew Riordan  
Norton Rose Fulbright Australia  
Lawyers for the Applicant

This Concise Statement was prepared by Andrew Riordan and Caitlin Brown of Norton Rose Fulbright and settled by Jeremy Giles SC and Daniel Tynan of Counsel.

**Certificate of lawyer**

I Andrew Riordan 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: 10 December 2021



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Signed by Andrew Riordan

Lawyer for the Applicant

## ANNEXURE

| No. | Customer                                 | Features of false, misleading or deceptive conduct  |
|-----|--|---|
| 1   | Customer NL<br>Order number:<br>9762685  | <p>On 23 September 2019, Customer NL purchased a book titled <i>Atlas of Human Anatomy</i> from Booktopia.</p> <p>The book was delivered to Customer NL on a date presently unknown.</p> <p>In April and May 2020, more than two business days after the book was delivered, Customer NL had an email exchange with a representative from Booktopia set out below.</p> <p>(a) On 23 April 2020, Customer NL said: <i>“Whilst using this book I discovered there is a section missing. It goes from Plate 202 Topography of Lungs: Anterior View to 235 Mediastinum: Left Lateral View. I contacted Elsevier and they told me I need to contact you. They informed that their returns process is that they need an Elsevier invoice to associate the claim with. ‘Kindly raise this with Booktopia so they can replace it with a new copy that they have and then raise a claim with us.”</i></p> <p>(b) On 27 April 2020, the Booktopia representative requested photos of the pages and Customer NL provided them.</p> <p>(c) On 30 April 2020, the Booktopia representative offered a replacement or a partial store credit and the customer requested a replacement.</p> <p>(d) On 4 May 2020, the Booktopia representative said: <i>“Please disregard the previous email. While going through the order, I was able to check the order has been delivered last 2019. Order 9762685 placed 23/09/2019. I am sorry we are only able to provide replacements or credit if the we have been notified with the damage 2 days after delivery. I am sorry for any confusion. I am unable to move forward with your request.”</i><br/><b>(NL Statement 1)</b></p> <p>(e) On 4 May 2020, Customer NL forwarded to Booktopia an exchange between Customer NL and Elsevier and said that Elsevier would replace the book but <i>“need an invoice from you as the seller for the replacement”</i></p> <p>(f) On 5 May 2020, the Booktopia representative said: <i>“The reason that Elsevier has sent you to us for approval as they also have a 60 day policy to replace an item. Please note that Booktopia is a retailer and we order the books from our supplier. We also need to abide with their Business terms. As for this issue, as much as I wanted to provide you with the replacement I will be unable to do so because this order was delivered on the last quarter of 2019. And we have Business terms too. My apologies for any confusion or inconvenience this may caused you.”</i> <b>(NL Statement 2)</b></p> <p>On each occasion that the Booktopia representative made NL Statement 1 and NL Statement 2, Booktopia made the <b>No Obligation to Remedy Representation</b> to Customer NL.</p> |
| 2   | Customer JB<br>Order number:<br>10669884 | <p>On 29 February 2020, Customer JB purchased several books, including the <i>Law of Agency</i>, from Booktopia.</p> <p>The book was delivered to Customer JB on a date presently unknown.</p> <p>In May 2020, more than two business days after the book was delivered, Customer JB had an email exchange with a representative from Booktopia set out below.</p> <p>(a) On 6 May 2020, Customer JB said: <i>“Hi ... I recently purchased Law of Agency. After a week or so of using it, it developed a significant crack down the seam where the pages bind together. I have just started using it again and noticed that the pages are falling out where the crack</i></p>   |

| No. | Customer                                 | Features of false, misleading or deceptive conduct  |
|-----|--|---|
|     |  | <p><i>developed. I'd be grateful if you could please confirm what you can do to help with this."</i></p> <p>On 7 May 2020 the email exchange continued in the following terms.</p> <p>(b) The Booktopia representative: <i>"Thank you for contacting us and we are sorry to know the issue. However, I'm afraid we can no longer accept your claim. As per our terms of business, If you have received an item that is incorrect, damaged or faulty we only require notification within 2 business days from the time the delivery was made. Hoping for your kind understanding."</i> (<b>JB Statement 1</b>)</p> <p>(c) Customer JB: <i>"To clarify, the book was not damaged when I received it. Rather, my complaint is that it is falling apart after a short period and limited use."</i></p> <p>(d) The Booktopia representative: <i>"I understand that, but it will fall under faulty item which is also indicated on our terms of business."</i> (<b>JB Statement 2</b>)</p> <p>On each occasion that the Booktopia representative made JB Statement 1 and JB Statement 2, Booktopia made the <b>No Obligation to Remedy Representation</b> to Customer JB.</p>   |
| 3   | Customer MB<br>Order number:<br>11025643 | <p>On 22 April 2020, Customer MB purchased a book titled <i>Aurora Burning</i> from Booktopia.</p> <p>On or about 6 May 2020, the book was delivered to Customer MB.</p> <p>In May 2020, more than two business days after the book was delivered, Customer MB had an email exchange with a representative from Booktopia set out below.</p> <p>(a) On 22 May 2020, Customer MB said: <i>"I received my signed copy of Aurora Burning earlier I. The month and when I was putting the book away I noticed some damage on the spine."</i></p> <p>(b) On 25 May 2020, the Booktopia representative said: <i>"As per checking the book has been delivered 06/05. In this regard, I am unable to push through with your claim as per Booktopia terms we require our customers to notify us with damage issues etc at least 2 days after the delivery. My apologies for any inconvenience caused."</i> (<b>MB Statement 1</b>)</p> <p>By making MB Statement 1 Booktopia, through the Booktopia representative, made the <b>No Obligation to Remedy Representation</b> to Customer MB.</p>   |
| 4   | Customer RG<br>Order number:<br>11109995 | <p>On 4 May 2020, Customer RG purchased a book titled <i>Rehabilitation Techniques for Sports Medicine and Athletic Training</i> from Booktopia.</p> <p>On or about 7 May 2020, the book was delivered to Customer RG.</p> <p>In May 2020, more than two business days after the book was delivered, Customer RG had an email exchange with a representative from Booktopia set out below.</p> <p>(a) On 22 May 2020, Customer RG said: <i>"I recently received my last book order and it came damaged. I am able to forward through images if necessary. Not happy with the quality of the book"</i></p> <p>(b) On 25 May 2020, the Booktopia representative said: <i>"Thanks for your email. As per Booktopia terms, to allow for any return, only if you have received an item that is incorrect, damaged or faulty (Booktopia's fault) we require notification within 2 business days from the time the delivery was made. Booktopia will require evidence of the issue and may require you to return the item for assessment. In this regard, I am unable to process your request as the book from Order 11109995 has been delivered 07/05 and exceeded the Return time frame. My apologies for any inconvenience caused."</i> (<b>RG Statement 1</b>)</p> |

| No. | Customer                                 | Features of false, misleading or deceptive conduct  |
|-----|--|---|
|     |  | By making RG Statement 1 Booktopia, through the Booktopia representative, made the <b>No Obligation to Remedy Representation</b> to Customer RG.  |
| 5   | Customer LM<br>Order number:<br>11177376 | <p>On 12 May 2020, Customer LM purchased a jigsaw puzzle from Booktopia.</p> <p>The jigsaw puzzle was delivered to Customer LM on a date presently unknown.</p> <p>In May 2020, more than two business days after the jigsaw puzzle was delivered, Customer LM had an email exchange with a representative from Booktopia set out below.</p> <p>(a) On 25 May 2020, Customer LM said “<i>Hi, I recently put together The Craft Cupboard jigsaw, an item from this order and found there were three pieces missing - all connecting pieces from the same part of the border. Can this jigsaw be replaced with the same or similar? Thanks</i>”</p> <p>(b) On 27 May 2020, the Booktopia representative said: “<i>As per Booktopia Terms of Business which you have also agreed online when submitting an order, if you have received an item that is incorrect, damaged or faulty we require notification within 2 business days from the time the delivery was made. Booktopia will require evidence of the issue and may require you to return the item for assessment. In this regard I am unable to move forward with your request as it exceeded the time frame.</i>” (<b>LM Statement 1</b>)</p> <p>(c) On 27 May 2020, the Customer LM said: “<i>I understand the terms of business but had hoped the nature of the item in question - a 1000 piece jigsaw - would prompt some different considerations. Even if I had commenced putting the jigsaw together the moment it arrived it would not have been possible for me to complete it within 48 hours and therefore detect there were pieces missing.</i>”</p> <p>(d) In the same email on 27 May 2020, Customer LM said: “<i>I would appreciate if you could reconsider your terms in this particular situation.</i>”</p> <p>(e) On 28 May 2020, the Booktopia representative said: “<i>Since this has exceeded the time frame, I will have to send this case to our team for approval and will get back to you as soon as I have an update.</i>” (<b>LM Statement 2</b>)</p> <p>(f) Later the same day the Booktopia representative said: “<i>I have sent this issue to our team since replacement is not possible because the item is no longer available from our website, they have agreed to provide at least a compensation of \$25 in the form of a store credit that you can use for the next purchase. I am sorry if this is only I can do for this case. Had we have been informed at least earlier the situation can be different.</i>” (<b>LM Statement 3</b>)</p> <p>By making LM Statement 1, Booktopia, through the Booktopia representative, made the <b>No Obligation to Remedy Representation</b> to Customer LM.</p> <p>By making LM Statement 2 together with LM Statement 3, Booktopia, through the Booktopia representative, made the <b>No Obligation to Remedy Representation</b> to Customer LM.</p> |
| 6   | Customer AC<br>Order number:<br>11180942 | <p>On 13 May 2020, Customer AC ordered a <i>Don McCullin</i> book from Booktopia.</p> <p>On or about 23 May 2020, the book was delivered to Customer AC.</p> <p>In June 2020, more than two business days after the book was delivered, Customer AC had an email exchange with a representative from Booktopia set out below.</p> <p>(a) On 11 June 2020, Customer AC said: “<i>The Don McCullin book which I received has some damage. It was only just removed from the</i></p>   |

| No. | Customer                                 | Features of false, misleading or deceptive conduct   |
|-----|--|--|
|     |  | <p><i>seethrough plastic this week as it was a gift. Am I able to send you some photos to show you?"</i></p> <p>(b) On 15 June 2020, the Booktopia representative said: <i>"I am sorry to know that the book was damaged. However, per checking the book reached out to you 23/05 and it was also under your name. As per Booktopia terms, we have only 2 days after receipt that we can accept returns due to damages. I hope for your understanding."</i> (<b>AC Statement 1</b>)</p> <p>(c) On 24 June 2020, Customer AC said <i>"It is a little disappointing that you are not willing to compensate us at all. Having only 2 days from receipt to accept returns is a very short period. Both myself and my husband have placed several orders with you in the past and are not inclined to do so again considering this."</i></p> <p>(d) On 25 June 2020, the Booktopia representative said: <i>"Had it only been within the time frame we could offer you a replacement for the book. However our hands are tied as this is beyond our terms which has also been agreed when placing the order. However I have gained agreement with my team to at least provide you of a \$15 store credit which you can use for your next purchase, this is as one time courtesy from Booktopia. My apologies for any inconvenience caused."</i> (<b>AC Statement 2</b>)</p> <p>On each occasion that the Booktopia representative made AC Statement 1 and AC Statement 2, Booktopia made the <b>No Obligation to Remedy Representation</b> to Customer AC.</p>   |
| 7   | Customer JV<br>Order number:<br>11243342 | <p>On 21 May 2020, Customer JV purchased a book titled <i>Louis Vuitton Catwalk</i> from Booktopia.</p> <p>The book was delivered to Customer JV on a date presently unknown.</p> <p>On 19 June 2020, more than two business days after the book was delivered, Customer JV sent an online chat message to Booktopia stating that the book was damaged and requested a replacement.</p> <p>In June and July 2020, Customer JV had an email exchange with a representative from Booktopia set out below.</p> <p>(a) On 20 June 2020, the Booktopia representative said: <i>"Thanks for contacting us and we are sorry to know the issue. However, I'm afraid we can no longer assist you on this. As stated in our terms of business, if you have received an item that is incorrect, damaged or faulty we require notification within 2 business days from the time the delivery was made. Booktopia will require evidence of the issue and may require you to return the item for assessment."</i> (<b>JV Statement 1</b>)</p> <p>(b) On 24 June 2020, Customer JV said: <i>"Unfortunately I was not familiar with this as I purchased the coffee table book for a housewarming gift. With the COVID restrictions the house warming never went ahead and I finally drove over to take the gift. I had not opened the gift as it is wrapped in a plastic film, without the plastic film it would look second hand. It was only after receiving a note from the receiver of the gift that I made contact with you... Now that I am aware I will be sure not to purchase gifts for friends as they will need to be opened within 2 days to ensure no damage. We have never had an issue before and it was wrapped so well that I sincerely did not in my wildest of dreams expect it to be so badly damaged."</i></p> <p>(c) On 3 July 2020, the Booktopia representative said: <i>"Thank you for contacting us and I'm sorry for the delay in getting back to you. However, please understand that we strictly follow procedure when it comes to this kind of issue. By completing the order, you accept what is indicated in our terms of business."</i> (<b>JV Statement 2</b>)</p> <p>(d) On 5 July 2020, Customer JV said: <i>"I can completely understand however this still leaves me with a book that looks second hand or water</i></p> |

| No. | Customer                                 | Features of false, misleading or deceptive conduct   |
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|     |  | <p><i>damaged at best. We have bought other books and never had an issue so I wouldn't have thought to remove the plastic cover on the book to check its condition given it was in plastic wrap. We have also bought these books for ourselves and had no issue. I am really disappointed, do you have a customer relations manager email address I can write to please."</i></p> <p>(e) On 6 July, Customer JV and the Booktopia representative had the following correspondence by email:</p> <p>Booktopia representative: <i>"Can you send some photos showing the issue? If you're not really satisfied we might require you to send it back to us provided it is received back in resale condition."</i></p> <p>Customer JV sent images to the Booktopia representative of the book <i>"Luis Vuitton Catwalk"</i>.</p> <p>Booktopia representative: <i>"Thank you for the photos, I can see that the item is very minimal. But if you're really satisfied with the item, as a One Time Courtesy, you are welcome to return the item for a <b>store credit</b> provided it is received back in resale condition. You can use the credit to purchase something else.</i></p> <p><i>Please include your order number so the return can be identified as yours. Once the product is received back, we will issue the store credit and you will receive an email once it's been completed. If you have any other questions please let us know."</i></p> <p>On each occasion that the Booktopia representative made JV Statement 1 and JV Statement 2, Booktopia made the <b>No Obligation to Remedy Representation</b> to Customer JV.</p> |
| 8   | Customer IF<br>Order number:<br>10450253 | <p>On 22 January 2020, Customer IF purchased a book titled <i>Noisy Playtime Peekaboo</i> from Booktopia.</p> <p>The book was delivered to Customer IF on a date presently unknown.</p> <p>In June 2020, more than two business days after the book was delivered, Customer IF had email exchanges with two representatives from Booktopia set out below.</p> <p>(a) On 21 June 2020, Customer IF said: <i>"Hi my parents and I bought the noisy playtime peekaboo book and it only works occasionally and then does not work at all ..."</i></p> <p>(b) On 22 June 2020, the first Booktopia representative said: <i>"Thanks for contacting us and we are sorry to know the issue. However, we can no longer accept your claim. As stated in our terms of business, if you have received an item that is incorrect, damaged or faulty we require notification within 2 business days from the time the delivery was made."</i><br/><b>(IF Statement 1)</b></p> <p>(c) On 23 June 2020, Customer IF again emailed her complaint to Booktopia.</p> <p>(d) On 24 June 2020, the second Booktopia representative said: <i>"... we can no longer accept your claim. As stated in our terms of business, if you have received an item that is incorrect, damaged or faulty we require notification within 2 business days from the time the delivery was made."</i><br/><b>(IF Statement 2)</b></p> <p>On each occasion that the Booktopia representatives made IF Statement 1 and IF Statement 2, Booktopia made the <b>No Obligation to Remedy Representation</b> to Customer IF.</p>   |

| No. | Customer                                 | Features of false, misleading or deceptive conduct  |
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| 9   | Customer BD<br>Order number:<br>10852007 | <p>On 30 March 2020, Customer BD ordered a jigsaw puzzle from Booktopia.</p> <p>In or about May 2020, the jigsaw puzzle was delivered to Customer BD.</p> <p>In July 2020, more than two business days after the jigsaw puzzle was delivered, Customer BD had an email exchange with a representative from Booktopia set out below.</p> <p>(a) On 1 July 2020, Customer BD said: <i>“I purchased and finished the above jigsaw and when it was completed I found that there is one (1) piece missing and that I also had three (3) pieces left over. I have pictures of the completed puzzle and also of the pieces. If you could please email me I can then send you the photos of the missing piece and the leftover pieces of the puzzle. I am disappointed that this could happen as I have always enjoyed doing puzzles my whole life and never have had this experience. The puzzle is beautiful and I was wanting to frame it and this is not possible until I get the missing piece. Something must have gone wrong at the manufacturing end for this to happen. Could someone from your team please contact me to help me solve this problem.”</i></p> <p>(b) On 3 July 2020, the Booktopia representative said: <i>“As per checking the item has been delivered since May 2020. In this case, as much as I wanted to compensate or replace the item it has since lapsed the return time frame. As per terms if there are any issues with the item delivered you need to notify us the soonest possible at least 2 days after delivery. My apologies for any inconvenience caused. (BD Statement 1)</i></p> <p>(c) On 8 July 2020, the customer and another representative communicated via telephone call.</p> <p><b>Representative:</b> <i>“Yeah sorry, it’s outside of our timeframe to notify us that this item was damaged unfortunately.” (BD Statement 2)</i></p> <p><b>Customer BD:</b> <i>“Well if you look at my email, if someone looks at my email I received a 1,500 piece jigsaw, so I can’t put it together in two days to know that there is something wrong with it, so there has to be some other way to go about this.”</i></p> <p><b>Representative:</b> <i>“You would have had to have notified us about this sooner, unfortunately.”</i></p> <p><b>Customer BD:</b> <i>“Ok is there someone else I can talk to?”</i></p> <p><b>Representative:</b> <i>“Yep.”</i></p> <p><b>Customer BD:</b> <i>“Who can you put me through to?”</i></p> <p><b>Representative:</b> <i>“I would have to ask someone to call you back. The puzzle is not even available any longer.”</i></p> <p><b>Customer BD:</b> <i>“That’s – yeah – well that’s not my issue, my issue is that it was supplied to me with one piece missing and three pieces leftover, so can you see my point? I can’t put together a 1,500 piece jigsaw puzzle in two days.”</i></p> <p><b>Representative:</b> <i>“Yep no worries I can give you –“</i></p> <p><b>Customer BD:</b> <i>“Whereas if I’d – if I’d received a book or something I understand all that –“</i></p> <p><b>Representative:</b> <i>“Yep.”</i></p> <p><b>Customer BD:</b> <i>“—Because you look at the book and you go: ‘it’s ok’. But a puzzle, you can’t do in two days.”</i></p> |

| No. | Customer                                       | Features of false, misleading or deceptive conduct   |
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|     |  | <p><b>Representative:</b> <i>"Yep I can give you a refund if you'd like but we can't replace it because this item isn't available."</i></p> <p><b>Customer BD:</b> <i>"Um, well ok I'll take the refund, because um, I don't know what else to do with the puzzle now."</i></p> <p>On each occasion that the Booktopia representatives made BD Statement 1 and BD Statement 2, Booktopia made the <b>No Obligation to Remedy Representation</b> to Customer BD.</p>  |
| 10  | Customer MW<br>Order number:<br>11473711       | <p>On 22 June 2020, Customer MW purchased a coffee table book titled <i>Resident Dog</i> from Booktopia.</p> <p>On or about 25 June 2020, the book was delivered to Customer MW.</p> <p>In July 2020, more than two business days after the book was delivered, Customer MW had an email exchange with a representative from Booktopia set out below.</p> <p>(a) On 2 July 2020, Customer MW said: <i>"Hello, I received 'Resident Dog' as part of this order and the book is not in good condition. The book itself has dirty marks all over the back cover and spine and there is also some damage. This is advertised on your site as a coffee table book yet has arrived covered in black marks. This is not something that has happened in transit. Can you please advise what can be done as this was a \$53 book that has not been handled well before shipping. I can send you photos if you require them."</i></p> <p>(b) On 4 July 2020, the Booktopia representative said: <i>"Thanks for contacting us and we are sorry to know the issue. I can see here that Resident Dog was delivered to you on the 25th of June. Please note that as per our terms of business, If you have received an item that is incorrect, damaged or faulty we require notification within 2 business days from the time the delivery was made. Booktopia will require evidence of the issue and may require you to return the item for assessment. I'm afraid we can no longer accept your claim for this item."</i><br/><b>(MW Statement 1)</b></p> <p>(c) On 3 July 2020, the customer sent an email stating that a second book from the same order, <i>Darcey Bussell Evolved</i>, which the customer had received that day, was also damaged. The customer was offered a replacement and accepted it. When the customer asked how to arrange the return of that book, on 13 July 2020, the Booktopia representative said: <i>"You are responsible for the return and for the payment of shipping."</i></p> <p>(d) On 10 July 2020, the Booktopia representative said: <i>"I'm afraid that Resident Dog was delivered on the 25th of June. As stated on my other email, we require notification if there is any issue on the order only within 2 business days from the time the delivery was made."</i><br/><b>(MW Statement 2)</b></p> <p>On each occasion that the Booktopia representative made MW Statement 1 and MW Statement 2, Booktopia made the <b>No Obligation to Remedy Representation</b> to Customer MW.</p> |
| 11  | Customer:<br>MVDM<br>Order number:<br>11395174 | <p>On 11 June 2020, Customer MVDM purchased an audio CD titled <i>The Hospital by the River</i> from Booktopia.</p> <p>The audio CD was delivered to Customer MVDM on a date presently unknown.</p> <p>In July 2020, more than two business days after the book was delivered, Customer MVDM had an email exchange with a representative from Booktopia set out below.</p>   |

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|     |  | <p>(a) On 5 July 2020, Customer MVDM sent an email to Booktopia and said: <i>"I'm having issues with the audio CD that I ordered, where when played on an AUDIO player, the audio jumps around and does not flow consistently. I was wondering if it is possible to refund/return the audio CD and what the terms are around that?"</i></p> <p>(b) On 7 July 2020, the Booktopia representative said: <i>"as stated in our terms of business, If you have received an item that is incorrect, damaged or faulty we require notification within 2 business days from the time the delivery was made."</i> (<b>MVDM Statement 1</b>)</p> <p>(c) On 7 July 2020, Customer MVDM: <i>"I understand that you have these statements for particular reasons but I'd like for you to consider my situation. I gifted this item to my mother and therefore I didn't have the opportunity to test it within 2 days of receiving it as I would destroyed the whole point of giving a gift. We aren't seeking a refund but rather a properly working Audio CD set in exchange."</i></p> <p>(d) On 10 July 2020, the Booktopia representative said: <i>"I completely understand that, however as much as I would like to assist you on this, we strictly follow our procedures when it comes to this concern."</i> (<b>MVMD Statement 2</b>)</p> <p>On each occasion that the Booktopia representative made MVMD Statement 1 and MVMD Statement 2, Booktopia made the <b>No Obligation to Remedy Representation</b> to Customer MVMD.</p>   |
| 12  | Customer RM<br>Order number:<br>8924507  | <p>On 30 March 2020, Customer RM purchased a <i>Wizard of Oz</i> jigsaw puzzle from Booktopia.</p> <p>The jigsaw puzzle was delivered to Customer RM on a date presently unknown.</p> <p>In July 2020, more than two business days after the jigsaw puzzle was delivered, Customer RM had an email exchange with a representative from Booktopia set out below.</p> <p>(a) On 10 July 2020, Customer RM sent an email to Booktopia and said: <i>"The jigsaw I purchase from you I have finally completed in this lockdown time and now have discovered that it is missing 3 pieces. Very disappointing that his has happened. I was told by my son that you can contact the suppliers of these jigsaws and that I may be able to get these missing pieces. Just for your in no I did not lose the pieces as the jigsaw had never been opened until I decided to do it. The missing 3 pieces are all in the same little area and one is an edge piece. I would appreciate a reply to my query. I have a photo of the puzzle as I did want to frame it but that probably won't be able to happen now unless I can obtain the pieces."</i></p> <p>(b) On 13 July 2020, the Booktopia representative said: <i>"I am sorry to know that there are missing pieces of this puzzle. However as per Booktopia terms we are only able to process any compensation or replacement if our customer has been able to at least notify us 2 days after delivery. In this case we tend to give consideration of at least 2 weeks. As much as I would like to help you with your claim, my hands are tied for this. My apologies for any inconvenience caused."</i> (<b>RM Statement 1</b>)</p> <p>By making RM Statement 1, Booktopia, through the Booktopia representative, made the <b>No Obligation to Remedy Representation</b> to Customer RM.</p> |
| 13  | Customer BC<br>Order number:<br>11486168 | <p>On 23 June 2020, Customer BC purchased a book titled <i>Let It Go</i> from Booktopia.</p> <p>On or about 26 June 2020, the book was delivered to Customer BC.</p>  |

| No. | Customer | Features of false, misleading or deceptive conduct   |
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|     |          | <p>In July 2020, more than two business days after the book was delivered, Customer BC had an email exchange with a representative from Booktopia set out below.</p> <p>(a) On 16 July 2020, Customer BC said: <i>“This is to advise that the book is incorrectly numbered and missing pages....correct up page 126..next page is 79 - 94 then commences 144 and I think correct through to end.. this leaves pages 127 - 143 missing... Please advise if you are able to replace with a complete book...or allow credit on same... or if you want it returned to you...I look forward to your reply.”</i></p> <p>(b) On 20 July 2020, Customer BC and the Booktopia representative had the following email exchange.</p> <p>The Booktopia representative: <i>“Thanks for contacting us. I'm really sorry to hear the book arrived to you in a faulty condition. Please email back a few photos of the book starting from the first page to the next page and we'll sort something out for you.”</i></p> <p>Customer BC responded by attaching images of the book and said: <i>“thanks for your email re faulty book....I have done my best to photograph the pages...and hope they will be ok ... If it's easier I can return the book for your decision....Looking forward to hearing from you.”</i></p> <p>(c) On 23 July 2020, Customer BC and the Booktopia representative had the following email exchange.</p> <p>Booktopia representative: <i>“Thanks for sending the photos. My apologies for any inconvenience caused. But I am unable to accept the return of the book for a refund—or compensation for the book as it has arrived to you 26/06. And as per Booktopia terms, our customers can only be able to claim for compensation, replacement or return at least 2 days after delivery. I am sorry I am unable to help you at this point.” (BC Statement 1)</i></p> <p>Customer BC said: <i>“Thank you for your return email re the faulty book I purchased from Booktopia – ‘Let It Go’ by Peter Walsh.. and while I accept the reason, I also need to express my disappointment in the Booktopia terms—the book was packed well, in perfect condition when it arrived, and the mistake only noticed on reaching page 126 and respectfully suggest that it was impossible to read 126 pages within the two days, also adding it is now a useless book with the 18 missing pages... interested to know if this is a one off mistake to me or a printing run of many... However I appreciate your effort... –very disappointed in Booktopia”.</i></p> <p>Booktopia representative: <i>“Rest assured that I have sent your feedback to the team. To be honest with you, I don't know if it's the clarity of the camera that you've used -- but I did not see the creases. I was ready to send the photos to my team perhaps they can give you a consideration and provide some sort of a compensation like a partial discount as I am 100% sure they won't agree for a replacement or the full refund.. Can you send me like a zoom in photos that will shows the creases? If it's a printing defect--we can't exchange it anymore- but we can try to get some sort of compensation. Please let me know your thoughts.” (BC Statement 2)</i></p> <p>(d) On 24 July 2020, Customer BC and the Booktopia representative had the following email exchange.</p> <p>Customer BC: <i>“thanks for further email last night...forwarding on best pics I am able to take for your interest only...admitting I am fighting a losing battle ..so choose to leave it there..disappointed in Booktopia's response and will remember this next time I need to purchase a book”.</i></p> <p>Customer BC then sent a further email on 24 July 2020, attaching further photos of the book <i>Let It Go</i>.</p> |

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|     |  | <p>The Booktopia representative: <i>"I have reached out to my team and thank God they have agreed for a partial store credit in the amount of \$10. That's the best I can do. I hope for your understanding."</i> (BC Statement 3)</p> <p>(e) On 25 July 2020, Customer BC said: <i>"many thanks for following this for me..a store credit is accepted...again thank you."</i></p> <p>(f) On 27 July 2020, the Booktopia representative said: <i>"A \$10 store credit will be issued to your Booktopia account which can be used on a future purchase with us. You will receive an e-mail once the credit has been completed and store credits are valid for 12 months after the date of issue."</i></p> <p>By making BC Statement 1 together with BC Statement 2, Booktopia, through the Booktopia representative, made the <b>No Obligation to Remedy Representation</b> to Customer BC.</p> <p>By making BC Statement 3, Booktopia, through the Booktopia representative, made the <b>No Obligation to Remedy Representation</b> to Customer BC.</p>  |
| 14  | Customer RC<br>Order number:<br>10766987 | <p>On 16 March 2020, Customer RC purchased a book titled <i>Prada</i> book from Booktopia.</p> <p>The book was delivered to Customer RC on a date presently unknown.</p> <p>In July 2020, more than two business days after the book was delivered, Customer RC sent an email to Booktopia and then had an online chat exchange with a representative from Booktopia set out below.</p> <p>(a) On 20 July 2020, Customer RC emailed Booktopia and said: <i>"I have been away and gotten back and noticed that one of the books (Prada) has some marks under the plastic. It is still unopened. I was hoping to swap this or if there is a different solution perhaps you can let me know?"</i></p> <p>(b) On 21 July 2020, the customer had an online chat exchange with a Booktopia representative:</p> <p>Customer RC: <i>"I ordered some books a few months ago and was away so [didn't] open package until recently and noticed one of the books is marked" and "It is still wrapped but i was hoping to swap or return?"</i></p> <p>The Booktopia representative: <i>"I see here that the order has long been delivered. As stated in our terms of business, If you have received an item that is incorrect, damaged or faulty we require notification within 2 business days from the time the delivery was made."</i> (RC Statement 1)</p> <p>Customer RC: <i>"Yes i did see that but i had been away. If the item is still wrapped is there any chance to fix? I have bought a lot from booktopia and I was hoping you may be able to make an exception."</i></p> <p>The Booktopia representative: <i>"I'm afraid we can no longer accept the claim. By completing the order, you agreed to our terms of business."</i> (RC Statement 2)</p> <p>By making RC Statement 1 together with RC Statement 2, Booktopia, through the Booktopia representative, made the <b>No Obligation to Remedy Representation</b> to Customer RC.</p> |
| 15  | Customer ZP<br>Order number:<br>11149813 | <p>On 9 May 2020, Customer ZP purchased a book titled <i>Leading Change</i> from Booktopia.</p> <p>The book was delivered to Customer ZP on a date presently unknown.</p> <p>In July 2020, more than two business days after the book was delivered, Customer ZP had an email exchange with a representative from Booktopia set out below.</p>   |

| No. | Customer                                 | Features of false, misleading or deceptive conduct  |
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|     |  | <p>(a) On 23 July 2020, Customer ZP said: <i>“Hi, I just started reading one of the books in my order. I removed the paper cover of the book and noticed there was damage on the hardcover of the book spine but no damage on the paper cover? I can provide photos but am disappointed that the book is damaged given I have only just opened it and it appeared to be concealed. I hope it can be replaced.”</i></p> <p>(b) On 27 July 2020, the Booktopia representative said: <i>“Thank you for contacting us and we are sorry to know the issue. However, as stated in our terms of business, If you have received an item that is incorrect, damaged or faulty we require notification within 2 business days from the time the delivery was made. Booktopia will require evidence of the issue and may require you to return the item for assessment.” (ZP Statement 1)</i></p> <p>(c) On 27 July 2020, Customer ZP again requested a replacement and attached photos of the damaged book to the email.</p> <p>(d) On 28 July 2020, the Booktopia representative said: <i>“I completely understand the situation but, by completing the order, you agreed on our terms if business thus, we can no longer assist you on this as this is beyond the require notification time.” (ZP Statement 2)</i></p> <p>On each occasion that the Booktopia representative made ZP Statement 1 and ZP Statement 2, Booktopia made the <b>No Obligation to Remedy Representation</b> to Customer ZP.</p> |
| 16  | Customer HB<br>Order number:<br>12242604 | <p>On 9 October 2020, the Customer HB purchased a book titled <i>The Path of Daggers</i> from Booktopia.</p> <p>The book was delivered to Customer HB on a date presently unknown.</p> <p>On 15 November 2020, more than two business days after the book was delivered, Customer HB contacted Booktopia on live chat and said: <i>“Can I exchange a damaged book that is a gift for Christmas”</i>. No response was recorded via live chat.</p> <p>On 16 November 2020, Customer HB had an email exchange with a representative from Booktopia set out below.</p> <p>(a) The Booktopia representative: <i>“Thanks for contacting us. To avoid any confusion, did you received a damaged item from us? If yes, please provide the exact title and a few photos of the issue of the item so we could check please.”</i></p> <p>(b) Customer HB: <i>“Yes I did. Book 8 the path of daggers (A wheel of time).”</i></p> <p>(d) The Booktopia representative: <i>“Unfortunately, we can no longer accept this claim. As stated in our terms of business, If you have received an item that is incorrect, damaged or faulty we require notification within 2 business days from the time the delivery was made. Booktopia will require evidence of the issue and may require you to return the item for assessment.” (HB Statement 1)</i></p> <p>By making HB Statement 1, Booktopia, through the Booktopia representative, made the <b>No Obligation to Remedy Representation</b> to Customer HB.</p> |
| 17  | Customer CH<br>Order number:<br>12597537 | <p>On 9 November 2020, Customer CH purchased a book titled <i>She just wants to forget</i> from Booktopia.</p> <p>On or about 21 November 2020, the book was delivered to Customer CH.</p> <p>(a) On 27 November 2020, more than two business days after the book was delivered, Customer CH contacted Booktopia via live chat, requested to return the book and said: <i>“My book is damaged.”</i></p>   |

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|     |  | <p>(b) On 28 November 2020, a Booktopia representative requested the customer provide photos of the book. Customer CH sent photos of the book.</p> <p>On 4 December 2020, a representative from Booktopia emailed Customer CH and said: <i>"Thanks for the photos. However, upon checking, the book was delivered on the 21st of Nov. As per our terms of business, If you have received an item that is incorrect, damaged or faulty we require notification within 2 business days from the time the delivery was made. Booktopia will require evidence of the issue and may require you to return the item for assessment. I'm afraid we can no longer accept this claim."</i> (<b>CH Statement 1</b>)</p> <p>By making CH Statement 1, Booktopia, through the Booktopia representative, made the <b>No Obligation to Remedy Representation</b> to Customer CH.</p>  |
| 18  | Customer GD<br>Order number:<br>10375543 | <p>On 8 January 2020, Customer GD purchased a book titled <i>Knowledge Encyclopaedia Space</i> from Booktopia.</p> <p>On or about January 2020, the book was delivered to Customer GD.</p> <p>On 24 December 2020, more than two business days after the book was delivered, Customer GD had an email exchange with a representative from Booktopia, during which the <b>No Obligation to Remedy Representation</b> was made by the Booktopia representative in the context of the exchange in the text highlighted below.</p> <p>(a) Customer GD: <i>"My son pointed out (this week) that the Knowledge Encyclopedia Space book from this order has the cover attached upside down. I never thought to check this when we received the order and he didn't mention it until now. Any chance we could organise a replacement? I have photos."</i></p> <p>(b) The Booktopia representative: <i>"It appears that the book has been received January this year. Our Return Policy is that you can only notify us with issue, 2 days after delivery."</i> (<b>GD Statement 1</b>)</p> <p>(c) Customer GD: <i>"A faulty product warranty should 12 months. It's not a change of mind. It's clearly a manufacturing fault. Would you mind checking?"</i></p> <p>(d) The Booktopia representative: <i>I understand where you are coming from. Our Booktopia terms is aligned to ACCLC exceptions: (<b>GD Statement 2</b>)</i><br/><i>Consumer guarantees do not apply if you:</i><br/><i>got what you asked for but simply changed your mind, found it cheaper somewhere else, decided you did not like the purchase or had no use for it</i><br/><i>misused a product in any way that caused the problem</i><br/><i>knew of or were made aware of the faults before you bought the product</i><br/><i>asked for a service to be done in a certain way against the advice of the business or were unclear about what you wanted."</i></p> <p>(e) Customer GD: <i>"None of those apply in this case."</i> The customer also attached to this email a photograph of the book.</p> <p>(f) The Booktopia representative: <i>"The book has been used for 012 months. As we can no longer process a replacement for this, my team agreed to issue a store credit in the amount of \$5 as one time courtesy. You may also read our Booktopia terms regarding returns, due to damage and faulty items <a href="https://www.booktopia.com.au/termsOfBusiness.ep">https://www.booktopia.com.au/termsOfBusiness.ep</a> (<a href="https://www.booktopia.com.au/termsOfBusiness.ep">https://www.booktopia.com.au/termsOfBusiness.ep</a>)"</i> (<b>GD Statement 3</b>)</p> |

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|     |  | By making a combination of GD Statement 1, GD Statement 2 and GD Statement 3, Booktopia, through the Booktopia representative, made the <b>No Obligation to Remedy Representation</b> to Customer GD.  |
| 19  | Customer LK<br>Order number:<br>12928229 | <p>On 13 December 2020, Customer LK purchased a book entitled <i>All the shimmering skies</i> from Booktopia.</p> <p>On or about 17 December 2020, the book was delivered to Customer LK.</p> <p>In January 2021, more than two business days after the book was delivered, Customer LK had an email exchange with a representative from Booktopia set out below.</p> <p>(a) On 3 January 2021, Customer LK emailed Booktopia and said: <i>“Hi, I received ?All out shimmering skies? by Trent Dalton (paperback) and the book has missing pages from p. 135-183, and a repeated section from pp. 183-230. Not sure if other stock has been faulty also. Wondering if I could have a replacement, or send back this faulty edition.”</i></p> <p>(b) On 5 January 2021, the Booktopia representative said: <i>“Per checking the parcel has been received 17/12. As per Booktopia terms, we have a two day time frame to allow customers to reach us in case there is an issue with the items. In saying all of this, I am afraid we are unable to continue with your request.” (LK Representation 1)</i></p> <p>By making LK Statement 1, Booktopia, through the Booktopia representative, made the <b>No Obligation to Remedy Representation</b> to Customer LK.</p> |