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Details of Filing

Document Lodged:	Concise Statement
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
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File Number:	NSD942/2022
File Title:	AUSTRALIAN COMPETITION AND CONSUMER COMMISSION v DELL AUSTRALIA PTY LTD ACN 003 855 561
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. NSD of 2022

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

Dell Australia Pty Ltd ACN 003 855 561

Respondent

1. In this proceeding, the Australian Competition and Consumer Commission (**ACCC**) alleges that, during the “**Relevant Period**” between August 2019 and December 2021, Dell Australia Pty Ltd (**Dell**) made representations on its website that were false, misleading and/or deceptive about the prices of monitors that were offered for sale in association with the sale of a computer.
2. The conduct involved the misleading use of “strikethrough” prices to represent purported discounts on the price for monitors when offered as an add-on to the purchase of a computer. The strikethrough prices did not in fact correspond to the prices at which the relevant monitors were previously or usually sold. This had the effect of overstating the supposed discount being offered to the consumer. In addition, in many cases the price offered for the monitor as an add-on to the purchase of a computer was in fact higher than the price for the same monitor when sold on a standalone basis.
3. The ACCC alleges that, by its conduct, Dell contravened ss 18 and 29(1)(i) of the *Australian Consumer Law (ACL)*, being Schedule 2 to the *Competition and Consumer Act 2010 (Cth) (CCA)*.

IMPORTANT FACTS GIVING RISE TO THE CLAIM

4. The following facts and claims concern conduct during the Relevant Period.

Filed on behalf of (name & role of party)	Australian Competition and Consumer Commission (Applicant)		
Prepared by (name of person/lawyer)	James Love, lawyer for the Applicant		
Law firm (if applicable)	Johnson Winter & Slattery		
Tel	+613 8611 1339	Fax	+613 8611 1300
Email	james.love@jws.com.au		
Address for service (include state and postcode)	c/- Johnson Winter & Slattery, level 34, 55 Collins St, Melbourne, VIC 3000		

5. Dell promoted and supplied a range of computer products including desktops, laptops and notebooks (**Computers**) and monitors (**Monitors**) on the internet at www.dell.com.au, www.dell.com/en-au and deals.dell.com/en-au (together, the **Dell Website**).
6. Dell was responsible for the content published on the Dell Website, including the display of any prices, discounts and statements.
7. When a consumer selected a Computer for purchase on the Dell Website, before completing the transaction the consumer was offered the option of purchasing additional products from Dell (**Add-on**). Monitors were offered as a potential Add-on.
8. Monitors were also offered for sale on the Dell Website and could be purchased without a Computer or any other item (**Standalone Basis**).
9. The Monitors available for purchase as an Add-on were displayed to the consumer in one or more of the following formats:
 - a. on the same webpage as the Computer that had been selected for purchase underneath details about the Computer (an example of which is at **Annexure A**);
 - b. as a pop up screen (an example of which is at **Annexure B**);
 - c. in the “candy aisle” presented to the consumer when the consumer clicked to proceed with purchasing the Computer (an example of which is at **Annexure C**).
10. If the price of a Monitor available for purchase as an Add-on was subject to a discount, the following was presented to consumers:
 - a. a price for purchase of the Monitor (**Purchase Price**); and
 - b. a higher price that was displayed in strikethrough form (**Strikethrough Price**).
11. One or more of the following statements about the price of the Monitor was also displayed to the consumer in the circumstances described in paragraph 10 above:
 - a. the words “*Total Savings*” and a dollar amount equal to the difference between the Strikethrough Price and the Purchase Price;
 - b. the words “*Includes x% off*”, with the percentage amount calculated on the basis of the difference between the Strikethrough Price and the Purchase Price;
 - c. the words “*Discounted Price*” and a dollar amount equal to the Purchase Price;
 - d. the words “‘**Online price**’ is Dell’s current online price” (emphasis in original); and/or
 - e. the words “*Get the best price for popular accessories when purchased with this product*”.

12. Except for the period from 23 July 2021 to 5 August 2021 and other than for other brief periods in respect of certain Monitors only:
 - a. Dell did not supply to consumers, or offer Monitors for sale to consumers, whether as an Add-on or on a Standalone Basis, at the Strikethrough Price; and
 - b. the Strikethrough Price was higher than any of the prices at which the Monitor was in fact supplied to consumers by Dell, or offered for sale to consumers by Dell, whether as an Add-on or on a Standalone Basis.
13. In many cases, the Purchase Price displayed for a Monitor as an Add-on was higher than the Purchase Price of the same Monitor on a Standalone Basis.

RELIEF SOUGHT FROM THE COURT

14. The ACCC seeks declarations, pecuniary penalties, compliance orders, publication orders, consumer redress orders and costs as specified in the accompanying Originating Application.

PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT

15. By engaging in the conduct set out in paragraphs 7 to 11 above, Dell made the following express and implied representations, in trade or commerce, in connection with the supply or possible supply of goods and in connection with the promotion of the supply of goods, to consumers on the Dell Website (together, the **Representations**):
 - a. where a Strikethrough Price was displayed for a Monitor when offered as an Add-on:
 - i. that the amount of the discount that a consumer purchasing the Monitor would receive was equivalent to the difference between the Strikethrough Price and the Purchase Price (the **Savings Representation**);
 - ii. that the Strikethrough Price was the price at which the Monitor was offered for sale to consumers before the discount was applied (the **Prior Price Representation**);
 - iii. that the Strikethrough Price was the price at which the Monitor was usually offered for sale to consumers absent any discounts (the **Usual Price Representation**);
 - b. that the Purchase Price displayed for a Monitor offered as an Add-on was at least equal to the cheapest price the Monitor was available to consumers on the Dell Website (the **Bundling Representation**); and
 - c. on the “Special Events Platform” and in the online business store, that the Purchase Price displayed for a Monitor offered as an Add-on was the best price

for those goods offered by Dell or alternatively Dell's current online price (the **Best Price Representation**).

16. Each of the Representations was false, misleading or deceptive because of the matters set out in paragraphs 12 to 13 above.
17. By making the Representations, Dell contravened:
 - a. s 18 of the ACL by, in trade or commerce, engaging in conduct that was misleading or deceptive, or likely to mislead or deceive; and
 - b. s 29(1)(i) of the ACL, by, in trade or commerce, in connection with the supply or possible supply of goods or in connection with the promotion of the supply of goods, making false or misleading representations with respect to the price of goods.

ALLEGED HARM SUFFERED BY CONSUMERS

18. The Representations had the effect of substantially overstating the extent of any discount being offered to consumers for the purchase of a Monitor as an Add-on. In addition, in many cases the price at which the same Monitor was available on a Standalone Basis was lower. Dell's conduct likely induced consumers to purchase Monitors they would not have purchased or caused consumers to pay a higher price than they otherwise could have on the Dell Website.

Dated: 4 November 2022

This concise statement was prepared by James Love of Johnson Winter & Slattery and settled by Stephen Free SC and Melita Parker of counsel.

Annexure A

[Australia](#) > [Shop For Home](#) > [Desktops & All-in-Ones](#) > [Alienware Gaming Desktops](#) > [New Alienware Aurora Ryzen Edition R14](#) > [Alienware Aurora Ryzen™ Edition R14 Gaming Desktop](#)

AMD Ryzen™ Processors **AMD**
Compare



ALIENWARE AURORA RYZEN™ EDITION R14 GAMING DESKTOP

(0)

- AMD Ryzen™ 7 5800X (8-Core, 36MB Total Cache, Max Boost Clock of 4.7GHz)
- Windows 11 Home, EN
- AMD Radeon™ RX 6600 XT, 8 GB GDDR6
- 16GB, 2x8GB, DDR4, 3200MHz, XMP
- 512GB NVMe M.2 PCIe SSD (Boot) + 1TB 7200RPM SATA 6Gb/s (Storage)
- 750W Platinum PSU, Dark, Liquid-Cooled CPU & Clear Side Panel

Online Price ~~\$4,299.00~~

\$3,224.00

Price includes GST & delivery
Estimated Delivery Times

Add to Cart

TECH SPECS & CUSTOMISATION

PRODUCT DETAILS

RATINGS & REVIEWS

DRIVERS, MANUALS & SUPPORT

ALIENWARE AURORA RYZEN™ EDITION R14 GAMING DESKTOP < VIEW ALL CONFIGURATIONS

BUILD MY ALIENWARE

PROCESSOR [More Info](#)

AMD Ryzen™ 7 5800X (8-Core, 36MB Total Cache, Max Boost Clock of 4.7GHz)

OPERATING SYSTEM [Help Me Choose](#)

Windows 10 Pro makes protecting and accessing your personal PC and important files easy, whether you're at home or away. Safeguard sensitive material with encryption settings in BitLocker, and have the flexibility to share with specific recipients via USB. And never be without access to your PC through Remote Desktop – placing your files at your fingertips, anywhere and anytime. Operating System recovery media is not included with this purchase.

Windows 11 Home, EN

Included in price

Windows 11 Pro, EN

Alienware recommended

+ \$100.00

VIDEO CARD [More Info](#)

AMD Radeon™ RX 6600 XT, 8 GB GDDR6

MEMORY [More Info](#)

16GB, 2x8GB, DDR4, 3200MHz, XMP

HARD DRIVE [More Info](#)

512GB NVMe M.2 PCIe SSD (Boot) + 1TB 7200RPM SATA 6Gb/s (Storage)

MONITOR [Help Me Choose](#)

None

Included in price

[Remove](#)

**Dell Alienware 25 Monitor -
AW2521H**
[View Details](#)



Includes 60% Off

+ \$2,389.00 + **\$955.60**

Add

**Dell Alienware 25 Monitor -
AW2521HF**
[View Details](#)



Includes 60% Off

Usually Ships within 2 months

+ \$1,409.00 + **\$563.60**

Add

Online Price ~~\$4,299.00~~

Total Savings ~~\$1,075.00~~

DISCOUNTED PRICE \$3,224.00

Price includes GST & delivery

Interest Free* Financing options
available
Conditions apply. | [Learn More](#)

Ships between 30/11/2021 and
3/12/2021

[Estimated Delivery Times](#)

Add to Cart: \$3,224.00

Order Code hdawr1403au

Order Code hdawr1403au

Order Code hdawr1403au

Order Code hdawr1403au

Order Code hdawr1403au

Order Code hdawr1403au

Order Code hdawr1403au

Annexure B

Product Details

Tech Specs & Customisation

Features

Get the best price for popular accessories when purchased with this product

Subtotal: \$1,091.49
Interest Free* Financing up to 24 months available. Conditions apply. [Learn More](#)

[Cancel](#) [Proceed to cart](#)

Warranty

☒ 1Year In-Home Hardware Service **Included in Price**

☐ **Dell Recommended** **+ \$275.34**

3Years Premium Support and Onsite Service **+ \$175.34**

Limited time offer : Save up to \$100 on 3 Years Premium Support, ends 2 Dec 2021

Monitors

Dell monitors are #1 Worldwide for 6 consecutive years (2013 to 2019)**.

**Source: IDC Worldwide Quarterly PC Monitor Tracker, Q4 2019.

Monitor	Price
<input type="checkbox"/> None Included in Price	
<input checked="" type="checkbox"/> Dell 24 Monitor - S2421HN Included in Price ★★★★ 4.2 (161) 23.8" FHD monitor beautifully designed to sit easi... more	
<input type="checkbox"/> Dell 27 Gaming Monitor - S2721DGF + \$1,369.01 ★★★★ 4.2 (424) 27" QHD gaming monitor with blazing-fast IPS... more	+ \$1,369.01 + \$547.61
<input type="checkbox"/> Dell 27 Monitor - S2721H + \$649.00 ★★★★ 4.4 (220) 27" FHD monitor beautifully designed to sit easily... more	+ \$649.00 + \$309.50
<input type="checkbox"/> Dell 27 Gaming Monitor - S2721HGF + \$809.00 ★★★★ 4.3 (111)	+ \$809.00 + \$364.05

Performance you can rely on

Latest processors: Built with 10th or 11th generation Intel Core processors.

Unleash your power: Run multiple apps for faster performance.

Minimal design, maximum efficiency

Space-saving exterior: Our latest Inspiron is efficient to compliment your work from home.

Finish tasks faster: Watch all your applications


with up to NVIDIA® GTX 1650 SUPER™

Tech Spec

Optical Software


Optical Software

Product Details

☒



Dell 24 Monitor - S2421HN
★★★★★ 4.2 (161)
23.8" FHD monitor beautifully designed to sit easily into any space ready for your everyday lifestyle.

Included in Price

☐



Dell 27 Gaming Monitor - S2721DGF
★★★★★ 4.2 (424)
27" QHD gaming monitor with blazing-fast IPS...

~~+\$1,369.01~~
+\$547.61

☐


Dell 27 Monitor - S2721H
★★★★★ 4.4 (220)
27" FHD monitor beautifully designed to sit easily...

~~+\$619.00~~
+\$309.50


☐


Dell 27 Gaming Monitor - S2721HGF
★★★★★ 4.3 (111)
Venture deeper into the game...

~~+\$809.00~~
+\$364.05


Accessories

Find all the accessories you need to do more.

☐


Dell Mobile Wireless Mouse MS3320W - Black
★★★★★ 0.0 (0)
Connect your mouse seamlessly with dual mode...

~~+\$50.00~~
+\$32.50

☐


Dell Multi-Device Wireless Keyboard & Mouse Combo US English - KM7120W
★★★★★ 0.0 (0)
Keep your workspace clutter-free with the Dell...

~~+\$175.00~~
+\$113.75

Subtotal: \$1,091.49

Interest Free* Financing up to 24 months available. Conditions apply. [Learn More](#)

Cancel

Proceed to cart

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Annexure C

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Up to 40% off selected business laptops. Ends Thursday, December 2, 2021. T&Cs apply. [Shop Deals](#) | [Question?](#) | [Click to Chat](#) or [Call us Chat](#)
09:16:07
HRS MIN SEC

Subtotal: \$1,386.99¹
[Add to Cart](#)

Price includes GST & delivery
[Estimated Delivery Times](#)

Don't forget these compatible essentials for your Inspiron Compact Desktop

Essential Accessories

Viewing 1 - 2 of 2 [Previous](#) [Next](#)

Dell Mobile Wireless Mouse MS3320W - Black
★★★★★ 4.5 (195/7)
~~\$59.00~~ **\$32.50¹**

Dell	
Online Price	\$59.00
Discounted Price	\$32.50¹

Order Code: m3320w

[Add to Cart](#)

Dell Multi-Device Wireless Keyboard and Mouse - KM7120W - US International (QWERTY)
★★★★★ 4.4 (241)
~~\$175.00~~ **\$113.75¹**

Dell	
Online Price	\$175.00
Discounted Price	\$113.75¹

Order Code: km7120w

[Add to Cart](#)

Monitor

Viewing 1 - 4 of 4 [Previous](#) [Next](#)

Dell 24 Monitor - S2421HN
★★★★★ 4.2 (161)

Dell	
Online Price	\$450.00²
Discounted Price	\$229.50¹

Order Code: ms2421hnn

[Add to Cart](#)

Dell 27 Gaming Monitor: S2721DGF
★★★★★ 4.2 (426)

Dell	
Online Price	\$1,360.00²
Discounted Price	\$547.61¹

Order Code: ms2721dgfay

[Add to Cart](#)

Dell 27 Curved Gaming Monitor - S2721HGF
★★★★★ 4.3 (111)

Dell	
Online Price	\$639.00²
Discounted Price	\$364.05¹

Order Code: ms2721hgfay

[Add to Cart](#)

Important Details

'Online price' is Dell's current online price, available to customers purchasing a maximum of 10 units via Dell's website. The online price is not Dell's list price. No discounts apply to the online price other than stated on Dell's website. If you have contractual terms with Dell, please contact your Dell sales representative to learn more about Dell's list price. All sales subject to Dell's terms and conditions. You can find them by clicking on 'Terms and Conditions of Sale' located at the bottom of our website.

Speakers, Headsets and Cameras

External Storage/Networking

Keyboards and Mice

Subtotal: \$1,386.99¹
[Add to Cart](#)

Price includes GST & delivery
[Estimated Delivery Times](#)

[AU/EN](#)

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[My Account](#)

Support
[Support Home](#)

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Products	Careers	Original Equipment Manufacturers	Email Sign-Up
Solutions	Dell Technologies Capital	Partner Program	Glossary
Services	Investor Relations		Privacy Centre
Deals	Newsroom		Resource Library
	Perspectives		Trial Software Downloads
	Product Recycling		
	Social Impact		
Dell.com	Dell Technologies	Premier	
© 2021 Dell	Terms of Sale	Privacy Statement	Legal & Regulatory
			Anti-Slavery & Human Trafficking
<p>*Device comes with Windows 10 and a free Windows 11 upgrade or may be preloaded with Windows 11. The Windows 11 upgrade will be delivered to qualifying devices in late 2021 to 2022. Timing varies by device. Certain features require specific hardware (see aka.ms/windows11-spec).</p> <p>*DELL'S TERMS AND CONDITIONS: apply to all sales available on request or at "Terms and Conditions of Sale" located at the bottom of our homepage at www.dell.com.au</p> <p>GOODS BY DELIVERY ONLY: Dell Australia Pty Limited (ABN 46 903 855 561) is located at Unit 3, 14 Aquatic Drive Frenchs Forest NSW 2086. While the products advertised here are delivered direct to the customer, certain pre-configured and build to order products are available at selected retail stores. See in store for further details.</p> <p>Smart Selection TERMS: Smart Selection products have an estimated delivery time of 2-3 working days from order confirmation for shipment to Sydney, Melbourne, Brisbane, Canberra, Wollongong and Newcastle. For all other locations estimated delivery times will be longer. If your orders contains both a Dell system and accessories, these products may be delivered separately. In the event of your selected product being out of stock, we will supply you with product direct from our manufacturing facility and estimated delivery times will be longer.</p> <p>ONLINE PRICING: Prices advertised online include delivery fees. Goods are supplied by delivery only. Limit 10 units per customer.</p> <p>MISTAKES: While all efforts are made to check pricing and other errors, inadvertent errors do occur from time to time and Dell reserves the right to decline orders arising from such errors.</p> <p>Intel SME Study Disclaimer: Based on a 2018 survey of small business owners in five countries. Details here intel.com.au/sme/study</p> <p>"IDC Whitepaper "Optimizing Performance with Frequent Server Replacements for Enterprises" commissioned by Dell Technologies and Intel, March 2021. Results are based on interviews with 18 IT practitioners and decision makers at midsize and large enterprises and a web survey of 707 IT practitioners and decision makers at midsize and larger enterprises using Dell Technologies server solutions across 7 industries. See full whitepaper: https://www.delltechnologies.com/resources/en-us/asset/white-papers/products/servers/server-infrastructure-resiliency-enterprise-whitepaper.pdf</p> <p>TRADEMARKS: Celeron, Intel, the Intel logo, Intel Atom, Intel Core, Intel Inside, the Intel Inside logo, Intel vPro, Intel Evo, Intel Optane, Intel Xeon Phi, Iris, Itanium, MAX, Pentium, and Xeon are trademarks of Intel Corporation or its subsidiaries.</p> <p>© 2021 NVIDIA, the NVIDIA logo, GeForce, GeForce RTX, GeForce MAX-Q, GRID, SHIELD, Battery Boost, CUDA, FXAA, GameStream, G-Sync, NVLINK, ShadowPlay, SLI, TXAA, PhysX, GeForce Experience, GeForce NOW, Maxwell, Pascal and Turing are trademarks and/or registered trademarks of NVIDIA Corporation in the U.S. and other countries.</p> <p>COPYRIGHT: © 2021 Dell Inc. All rights reserved.</p>			

Certificate of lawyer

I, James Love, 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 document.

Dated: 4 November 2022

A handwritten signature in blue ink, appearing to read 'J Love', is positioned above a horizontal dotted line.

Signed by James Love

Lawyer for the Applicant