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### Details of Filing

Document Lodged: Concise Statement  
File Number: VID554/2019  
File Title: AUSTRALIAN COMPETITION AND CONSUMER COMMISSION v  
SONY INTERACTIVE ENTERTAINMENT NETWORK EUROPE  
LIMITED & ANOR  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading 'Warwick Soden'.

Dated: 24/05/2019 1:28:12 PM AEST

Registrar

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## Concise Statement

No. of 2019

Federal Court of Australia  
District Registry: Victoria  
Commercial and Corporations NPA  
Regulator and Consumer Protection sub-area

### AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Applicant

### SONY INTERACTIVE ENTERTAINMENT NETWORK EUROPE LIMITED and another named in the schedule

Respondents

#### IMPORTANT FACTS GIVING RISE TO THE CLAIM

- 1 This proceeding concerns false, misleading or deceptive representations made by the First Respondent (**Sony Europe**) and the Second Respondent (**SIEE**) since about September 2017 to Australian consumers about their consumer guarantee and other rights to seek a refund or remedy under the Australian Consumer Law (**ACL**) in respect of games purchased via the Sony PlayStation Network (**PSN**).
- 2 **The PSN.** The PSN is an online entertainment service where users can play games and various forms of multimedia on their PlayStation console. Users can purchase and download games via the online PlayStation Store to play on their console. Those games can be played online via the PSN or in offline mode. The PlayStation Store is on the PSN and can be accessed online through the PlayStation console itself or by computer.
- 3 Users must create an account to access the PSN and the PlayStation Store. To create an account, users must agree to the Terms of Service and User Agreement (**Terms of Service**). Games available for purchase on the PlayStation Store were mostly published by third parties and sold to users by Sony Europe or published by Sony group companies and sold by Sony Europe.
- 4 To make a purchase in the PlayStation Store, funds are debited from the user's "PSN wallet". The PSN wallet can be pre-loaded with funds via credit card, debit card, PayPal or

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a voucher code. If the PSN wallet has insufficient funds to complete a purchase, then funds may be (a) withdrawn from the user's nominated credit card, debit card or PayPal account (b) added from that nominated payment method into the PSN wallet and then (c) debited from the PSN wallet in completing the purchase. The PSN wallet is not a bank account (Terms of Service, clause 6(x)). PSN wallet funds have no value outside the PSN, can only be used to buy products sold by Sony Europe, are not redeemable for cash, are not a user's personal property and cannot be transferred to other PlayStation users (Terms of Service, clause 6(xi)).

- 5 **Parties.** Sony Europe is a company incorporated in the United Kingdom (company number 06020283). It operates the PSN and PlayStation Store, and provides Australian account-holders with access to the PSN. Sony Europe is responsible for information provided to Australian users about their PSN account.
- 6 SIEE is based in the United Kingdom (company number 0377793) and is the parent company of Sony Europe. It is the exclusive distributor of PlayStation consoles and associated peripherals in the territory operated by Sony Europe, which includes Australia. SIEE is responsible for the content available at the PlayStation website: [www.playstation.com/en-au/](http://www.playstation.com/en-au/). At all relevant times, the Terms of Service were available to be viewed and downloaded by Australian users from the PlayStation website.

#### Terms of Service Representations

- 7 Use of the PSN, including the purchase of games from the PlayStation Store, is governed by the Terms of Service. This proceeding concerns the version of the Terms of Service applicable from October 2017 and which continues to apply.
- 8 The Terms of Service state that “[a]ll purchases are non-refundable except as stated in these terms of service, the then current PlayStation®Store Cancellation Policy at [www.playstation.com/store-cancellation-policy](http://www.playstation.com/store-cancellation-policy) or as required by law” (Terms of Service, clause 7).
- 9 The Terms of Service state that:
  - (a) Sony Europe is not responsible or liable for, and does not give warranty or representation in relation to, the quality, functionality, completeness, accuracy or performance of products (Terms of Service, clause 19), which represents that users have no statutory guarantee as to the quality, functionality, completeness, accuracy or performance of purchased games (**No Guarantee Representation**);
  - (b) failure to deliver any paid-for product will be remedied by Sony Europe (at its option) either providing the product or refunding the amount to the user's in-game PSN wallet (Terms of Service, clause 19), which represents that, if Sony Europe accepts money for the supply of a game and then does not deliver it, Sony Europe

can elect to return the purchase price to the PSN wallet (**Refund to Wallet Upon Non-Delivery Representation**);

(c) if Sony Europe delivers a faulty product, it will (at its option) offer to fix or replace the product and that, if it chooses to fix it, but cannot do so within a reasonable time, or without causing significant inconvenience, it will provide a full or partial refund (Terms of Service, clause 19), which represents that users do not have the right to a refund for goods with major failures (**No Refund For Major Failure Representation**); and

(d) once funds are added to the PSN wallet, whether by the user or by way of a refund made by Sony Europe, a user cannot obtain a refund of funds in the wallet or redeem funds in the wallet for cash (Terms of Service, clause 6), which represents that users can never obtain a refund of funds added to the PSN wallet (**Wallet Representation**),

(collectively, the **Terms of Service Representations**).

- 10 The No Guarantee Representation was and is misleading or deceptive, or likely to mislead or deceive, or was and is false or misleading, as to the statutory guarantees under ss 54 to 56 of the ACL.
- 11 The Refund to Wallet Upon Non-Delivery Representation was and is misleading or deceptive, or likely to mislead or deceive, or was and is false or misleading, as to Sony Europe's obligation (and users' correlative right) to supply the purchased game under s 36(4) of the ACL (unless the circumstances in s 36(5) applied).
- 12 The No Refund for Major Failure Representation was and is misleading or deceptive, or likely to mislead or deceive, or was and is false or misleading, as to Sony Europe's obligation to provide (and users' correlative right to receive) a refund if the purchased game had a major failure under ss 54, 55, 56, 259(3) and 263 of the ACL.
- 13 The Wallet Representation was and is misleading or deceptive, or likely to mislead or deceive, or was and is false or misleading, as to Sony Europe's obligation to provide (and users' correlative right to receive) a refund in the form of "money" if the purchased game had a major failure (or a non-major failure which was not rectified in a reasonable period of time) under ss 54, 55, 56, 259(2)-(3) and 263 of the ACL.

### Communications when adding funds to the PSN wallet

- 14 The Wallet Representation identified at paragraph 9(d) above, which was and is misleading or deceptive, or likely to mislead or deceive, or was and is false or misleading for the reason identified in paragraph 13 above, was also made in each of the following circumstances.
- (a) When a user tries to purchase a game and he or she has insufficient funds already in the PSN wallet, a screen will display that states to the effect "*Funds will be added to your wallet from your [credit card details], and then used to fund any product purchase made in this transaction. Funds added to the wallet are non-refundable*".
  - (b) After the game is purchased in the circumstances pleaded in paragraph 14(a) above, an email is sent to the user that says "*At the time of making your purchase of wallet funds, you asked us to provide you with immediate access to the funds and confirmed your understanding that this means you will not have a "cooling off period" and cannot cancel your purchase of wallet funds or get a refund*".

#### **(Wallet Representation When Adding Funds).**

### Dealings with Australian users

- 15 Australian users who encountered difficulties with downloading or playing a game purchased from the PlayStation Store could fill out an online form on the PlayStation website to seek assistance or a refund, and/or they could call the PlayStation Support Centre operated by Sony Europe. Interactions between the PlayStation Support Centre and users took place over the phone and/or by email.
- 16 When dealing with the Australian users who contacted the PlayStation Support Centre about games which those users had purchased via the PlayStation Store and which the users considered to be faulty or of unacceptable quality, or not fit for purpose, or did not match the description, Sony Europe represented that, even if a game had a major failure or some other failure to comply with a guarantee that could not be, or had not been, remedied:
- (a) Sony Europe was not required to refund the user unless the user obtained variously, from the publisher (or developer) of the game, a written acceptance that the game was faulty, confirmation the publisher (or developer) could not or would not fix the problem or a written authorisation from the publisher for the refund to be made (**Referral to Publisher Representation**);
  - (b) Sony Europe was not required to refund the user more than 14 days after purchase or if the game had been downloaded (**No Obligation to Refund Representation**);
  - (c) Sony Europe was not required to refund the user in a currency or form that was useable outside the PSN, but could make any refund by crediting the user's PSN wallet (**Refund to Wallet Representation**),

(collectively, the **PlayStation Support Centre Representations**).

- 17 One or more of the PlayStation Support Centre Representations was made to each of the users identified in the Annexure to this concise statement, as set out in that Annexure.
- 18 The Referral to Publisher Representation was misleading or deceptive, or likely to mislead or deceive, or was false or misleading, as to users' potential remedy against Sony Europe as a supplier of the game under s 259 of the ACL. It conveyed that a user had no right to a refund against Sony Europe without an acceptance, confirmation or authorisation from the publisher, whereas ss 259 and 263 confer rights on consumers to obtain redress directly from suppliers of goods.
- 19 The No Obligation to Refund Representation was misleading or deceptive, or likely to mislead or deceive, or was false or misleading, as to users' potential remedy against Sony Europe as a supplier of the game under s 259 of the ACL. It conveyed that a user had no right to a refund against Sony Europe after 14 days from purchase or after downloading the game, whereas there is no such limit on consumers' rights to obtain redress from suppliers of goods under ss 259 and 263.
- 20 The Refund to Wallet Representation was misleading or deceptive, or likely to mislead or deceive, or was false or misleading, as to users' rights to a refund under s 259 of the ACL. It conveyed that a user had no right to a refund in the form of money, contrary to s 263(4)(a)(i) of the ACL.

#### **RELIEF SOUGHT FROM THE COURT**

- 21 The ACCC seeks the relief sought in the accompanying Originating Application.

#### **PRIMARY GROUNDS FOR THE RELIEF SOUGHT**

- 22 By requiring users to comply with the Terms of Service and by making them available on the PlayStation website, Sony Europe and SIEE:
  - (a) each respectively made the Terms of Service Representations;
  - (b) in trade or commerce engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, in contravention of s 18 of the ACL; and/or
  - (c) in trade or commerce made false or misleading representations in connection with the supply, possible supply and/or promotion of games regarding the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy in contravention of s 29(1)(m) of the ACL.
- 23 By making the Wallet Representation When Adding Funds, Sony Europe and SIEE:
  - (a) in trade or commerce engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, in contravention of s 18 of the ACL; and/or

(b) in trade or commerce made false or misleading representations in connection with the supply, possible supply and/or promotion of games regarding the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy in contravention of s 29(1)(m) of the ACL.

24 By making any or all of the PlayStation Support Centre Representations, Sony Europe:

(a) in trade or commerce engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, in contravention of s 18 of the ACL; and

(b) in trade or commerce made false or misleading representations in connection with the supply, possible supply and/or promotion of games regarding the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy in contravention of s 29(1)(m) of the ACL.

### **THE ALLEGED HARM SUFFERED BY CONSUMERS**

25 The Representations alleged hindered Australian users in exercising their rights under the ACL. By referring users to the publishers of games, Sony Europe also put practical impediments in the way of Australian users seeking to obtain refunds from Sony Europe for games with alleged major, or minor (but unremedied), failures. By limiting refunds to crediting Australian users' PSN wallets, Australian users were also denied the opportunity to exercise their right to a refund in the form of money and to spend refunded money on other goods or on obtaining similar goods from other suppliers.

Date: 23 May 2019



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Signed by Daniel Marquet

Lawyer for the Applicant

This Concise Statement was prepared by C G Button QC and C J Tran of counsel.

## ANNEXURE

User	Features of false, misleading or deceptive conduct
User JA	<p>User JA purchased and downloaded the game Aven Colony from the PlayStation Store.</p> <p>On 31 July 2017, User JA requested a refund via an online contact form on the PlayStation website.</p> <p>On 30 September 2017, "Leonard" from PlayStation Support called User JA about User JA having trouble logging into his account. Leonard said the account was temporarily banned because User JA had reversed the payment for Aven Colony with the bank. Leonard said that User JA needed to pay the money back to have the account unbanned.</p> <p>Sony Europe, through Leonard, made the <u>Referral to Publisher Representation</u> by saying the following.</p> <p>(a) User JA was told <i>"if you can contact the developers and they actually give us authorisation for a refund, and we – we'd happily just refund that game back for you"</i> and that <i>"if you contact them and just forward us any correspondence from them just admitting fault with the game, then, yeah, I mean, if they say, you know, the – you know, the game is unplayable or, you know, that they're – this has been affecting a certain number of users, if you can get any kind of correspondence from them saying that, we'll happy just refund that back to you"</i>.</p> <p>On 12 October 2017, User JA called PlayStation Support and spoke with "Chris". User JA informed Chris that User JA had attempted to contact the developer but the developer had not responded.</p> <p>On 12 October 2017, User JA called PlayStation Support and spoke with "Ibrahim".</p> <p>Sony Europe, through Ibrahim, made the <u>Referral to Publisher Representation</u> by saying the following.</p> <p>(a) User JA was told <i>"in regards to a refund for this game, we can't actually issue that refund. Not – not that we don't want to. We can't. Only the game developer can give us permission to refund it once the game has been downloaded"</i>.</p> <p>On 25 October 2017, User JA called PlayStation Support and spoke with "Ryan".</p> <p>Sony Europe, through Ryan, made the <u>No Obligation to Refund Representation</u> by saying the following.</p> <p>(a) User JA was told <i>"because the game is now thoroughly working and you're unable to provide a screenshot of the game otherwise, I'm afraid the only option for yourself is if you just want to pursue a refund further would be to contact Team 17 who are the publishers of the game"</i>.</p>

User	Features of false, misleading or deceptive conduct
	<p>(b) User JA was told <i>“you are entitled to your compromise. But unfortunately you have to go to the publisher of the game, not the developer. The publisher which is Team 17”</i>.</p> <p>(c) User JA was told <i>“In terms of the actual sort of stability of the game, that is something that’s unfortunately entirely in the hands of the developer. As a platform which PlayStation is, we only process transactions on their behalf essentially. So once you’ve bought a game, the money goes straight through to them. Any refunds that we can process is basically just credit from us. And so we can later recuperate from that – from the developer anyway. That’s why our – our – that’s why our refund policy is strictly if you have not downloaded the game and it’s within 14 days”</i>.</p> <p>(d) User JA was told: <i>“because it’s not a PlayStation specific problem ... there, there’s not much further that we can do at our end. But as I said, get that dialogue open with Team 17 and just explain your dissatisfaction with their game”</i>.</p>
<p><b>User HP</b></p>	<p>User HP purchased and downloaded the Hitman game via the PlayStation Store.</p> <p>On 5 October 2017, User HP requested a refund via an online contact form on the PlayStation website because <i>“the game doesn’t work keep telling me to download it”</i>.</p> <p>On 6 October 2017, User HP called PlayStation Support and spoke with “Cameron”.</p> <p>Sony Europe, through Cameron, made the <u>No Obligation to Refund Representation</u> to User HP by saying the following.</p> <p>(a) User HP was told <i>“unfortunately, due to our refunds policy, we’re not actually able to offer refunds on things that have already been downloaded”</i>. When User HP queried <i>“Even if they don’t work?”</i>, Cameron made the statement in (b) below.</p> <p>(b) User HP was told <i>“There’s actually no way for us to refund it. Because of the way the game works, it’s not actually a game. It’s a licence for a game, and we buy that from the publisher, and that’s like a single-use code, so when you start to download the game, we can’t actually take the code back and use that again”</i>.</p> <p>(c) When User HP queried whether this was the position <i>“even though it’s [the game’s] not working”</i>, Cameron said <i>“Yes”</i>.</p> <p>(d) User HP was told <i>“if there is an issue with the game itself, you would be eligible for a refund, but that wouldn’t be from us. It would be from the publisher because it was a problem with their game”</i>.</p>
<p><b>User JS</b></p>	<p>User JS purchased and downloaded the Call of Duty: WWII game via the PlayStation Store.</p> <p>On 2 November 2017, User JS requested a refund by “refund request” form from the PlayStation website because User JS</p>

User	Features of false, misleading or deceptive conduct
	<p>said the game was “<i>faulty</i>” and “<i>in its current state it is not functioning properly</i>”.</p> <p>On 3 November 2017, User JS called PlayStation Support and spoke with “Ryan”. Ryan confirmed that User JS was “<i>asking for a refund</i>”.</p> <p>Sony Europe, through Ryan, made the <u>No Obligation to Refund Representation</u> to User JS by saying the following.</p> <p>(a) User JS was told that “<i>generally, if you’ve downloaded the game, it’s actually out with our refund policy. So if you wanted a refund, you would have to go via your Activision</i>”. User JS was also told that “<i>at this point, if you would like a refund, you may have to go through Activision ... just confirm with them. If it was fully faulty as well, that would also be Activision</i>”.</p> <p>(b) User JS was told that “<i>our refund policy with digital games is that, if you report within 14 days, which, granted, you have, and that the game has not been downloaded – that’s purely because there’s no way for us to physically remove games from your console</i>”.</p> <p>(c) User JS was told that “<i>because you’ve downloaded and played the game, that’s out with our returns policy. That’s across all digital games, it’s not a Call of Duty specific thing, [JS]. It’s just all our outright returns policy with digital games, okay</i>”.</p> <p>(d) User JS was told that “<i>if you are adamant on having a game refunded, Activision is open to communications going in, so if you approach them, they – maybe see what they can do, okay</i>”.</p>
<p><b>User BM</b></p>	<p>User BM purchased and downloaded the Raid: World War II game via the PlayStation Store.</p> <p>On 18 November 2017, User BM requested a refund via an online contact form on the PlayStation website.</p> <p>On 20 November 2017, User BM’s parent, LM, called PlayStation Support and spoke with “Michael”. Michael confirmed that LM was seeking a refund because of a problem with the game. User BM explained that “<i>It’s just a buggy mess. A lot of things just don’t work</i>” and “<i>You can’t start certain levels and stuff like that</i>”. User BM confirmed that “<i>I’ve contacted the dev[eloper]. I’ve got a support ticket that they’re just ignoring. I had a look on their Twitter page, and they’re basically ignoring all of their console players</i>”.</p> <p>Sony Europe, through Michael, made the <u>No Obligation to Refund Representation</u> and the <u>Referral to Publisher Representation</u> to User BM, by saying the following.</p> <p>(a) User BM was told that “<i>once the game is downloaded, there’s no refund available and that “we would have to get correspondence from the developer that states it can’t be fixed</i>”.</p>

<p><b>User</b></p>	<p><b>Features of false, misleading or deceptive conduct</b></p> <p>(b) In the context where User BM described the game as “a buggy mess”, told Michael that “a lot things just don’t work”, told Michael that certain levels in the game could not be started, described the game as “fully broken”, and said User BM had already contacted the developer but was being ignored, Michael said “I can’t give you a refund, end of, really, because the game’s been downloaded. And in the terms of service, it advises you once the game is downloaded there’s no refund available”.</p> <p>Michael went on to tell User BM that he (Michael) could “escalate a refund request” only if the game was “unfixable” and User BM obtained correspondence from the developer stating that “it’s non-fixable” and provided it to Sony.</p>
<p><b>User CK</b></p>	<p>User CK purchased and downloaded the game LEGO Ninjago Movie via the PlayStation Store.</p> <p>On 4 October 2017, User CK received an email from “PlayStation” saying, in part, “[a]t the time of making your purchase of wallet funds, you asked us to provide you with immediate access to the funds and confirmed your understanding that this means you will not have a “cooling off period” and cannot cancel your purchase of wallet funds or get a refund”. By this email, the <u>Wallet Representation When Adding Funds</u> was made.</p> <p>On 9 October 2017, User CK called PlayStation Support and spoke with “Scott”. User CK reported that the game was corrupted and that it would not move to the next level.</p> <p>Further correspondence, by phone and by email, followed between User CK and Playstation Support. User CK confirmed that they had followed the trouble-shooting instructions, but that had not fixed the fault.</p> <p>Sony Europe, through Leonard, made the <u>Referral to Publisher Representation</u> by saying the following.</p> <p>(a) On 10 October 2017, “Leonard” from PlayStation Support emailed User CK saying: “As per our cancellation policy, you can request a refund within 14 days of your initial purchase, provided you have not downloaded, used, or streamed the content, unless the content itself is found to be faulty. This content is now available to use on your console and cannot be removed, as digital content cannot be returned to us. ... If the publisher cannot resolve the issue, please forward us any correspondence and we will revisit your request and escalate to our head office”.</p> <p>On 10 October 2017, User CK responded by email: “It is the responsibility of the retailer to contact the manufacturer and resolve an issue with products which are not fit for purpose. It is the obligation of the retailer to issue a refund if a repair was unsuccessful. I have purchased the product from PlayStation and asking for a refund of your faulty product after receiving unsuccessful repairs. Under Victorian consumer law this product qualifies for an automatic refund”.</p>

User	Features of false, misleading or deceptive conduct
	<p data-bbox="608 163 1434 230">Sony Europe made the <u>Refund to Wallet Representation</u> by saying the following (see (a) to (c) below).</p> <p data-bbox="608 264 1434 331">On or about 24 October 2017, the purchase was refunded to User CK's PSN wallet.</p> <p data-bbox="608 365 1434 499">On 28 October 2017, User CK sent an email to PlayStation Support saying: <i>"The funds have not appeared in my bank account. Would you confirm that the refund was sent back onto my Visa card and not in the form of store credit"</i>.</p> <p data-bbox="608 533 1434 734">On 30 October 2017, User CK sent an email to PlayStation Support saying: <i>"Unfortunately the funds have been sent to my PlayStation wallet account instead of my bank account. This is store credit and not a refund. Please refund the funds properly onto my visa card as this is where the purchase was originally sent from"</i>.</p> <p data-bbox="608 768 1434 835">On 30 October 2017, User CK called PlayStation Support and spoke with "Rebecca".</p> <p data-bbox="608 869 1434 1104">(a) User CK was told that <i>"we have refunded it back to your wallet on your account, so you can use it on the PlayStation Store but we won't be refunding it back to your payment method"</i> and that <i>"within your ACL, it doesn't cover this. This is our terms of service. We stand by our terms of service. You had a refund back to the wallet on the account and that's a decision that has been made by head office"</i>.</p> <p data-bbox="608 1137 1434 1272">(b) On 30 October 2017, "Rebecca" from PlayStation Support emailed User CK saying <i>"As previously discussed, regrettably we are unable to offer a refund for purchase back to the payment method following out [sic] Terms of Service"</i>.</p> <p data-bbox="608 1305 1434 1473">(c) On 30 October 2017, "Augustas" from PlayStation Support emailed User CK saying <i>"As your refund request was already escalated to the highest point and was refused it means that it is the final decision of the head office to only issue a refund back to your PSN wallet"</i>.</p> <p data-bbox="608 1507 1434 1608">On 2 November 2017, User CK emailed PlayStation Support referring Sony Europe to the ACC's guidelines on repair, replace and refund.</p> <p data-bbox="608 1641 1434 1742">On 5 November 2017, "David" from PlayStation Support emailed User CK saying that Sony Europe had now refunded the purchase to User CK's payment method.</p>
<b>User BS</b>	<p data-bbox="608 1783 1434 1850">User BS purchased and downloaded the Madden NFL 18 G.O.A.T Holiday Edition game via the PlayStation Store.</p> <p data-bbox="608 1883 1434 1984">On 10 January 2018, User BS contacted Sony Europe about a problem with the game via an online contact form on the PlayStation website.</p>

User	Features of false, misleading or deceptive conduct
	<p>On 3 February 2018, User BS called PlayStation Support and spoke with "Ian" about "<i>an ongoing problem with a game on my PS4 Pro, Madden NFL 18 G.O.A.T Edition</i>". User BS said "<i>the game crashes about a minute into any – playing any mode. I've tried – I've tried all of the troubleshooting that I've been told to do from EA and PlayStation</i>".</p> <p>Sony Europe, through Ian, made the <u>Referral to Publisher Representation</u> to User BS, by saying the following.</p> <p>(a) User BS was told "<i>Okay. Now, what we need from you now is confirmation from the publisher of the game that you've completed all of their troubleshooting, and that the game is broken for you</i>".</p> <p>(b) User BS was told "<i>Again, you're going to have to get, like, some type of confirmation from the publisher that – we can confirm that you've completed all of our troubleshooting</i>".</p> <p>(c) User BS was told "<i>Once you do that – once you get your confirmation, obviously we would need to see that, yeah, so you send that to us and then we'll take it from there</i>".</p> <p>(d) User BS was told "<i>Okay. Brilliant. So once you've got confirmation from the publisher that the game's broken, we'll take it forward from there</i>".</p> <p>Later on 3 February 2018, User BS called PlayStation Support and spoke with "Chris". User BS said "<i>So I just called them [the publisher] ... They said that it was a PlayStation code, not a – like, an application error code, or console code or something</i>".</p> <p>Sony Europe, through Chris, made the <u>Referral to Publisher Representation</u> to User BS, by saying the following.</p> <p>(a) User BS was told "<i>So I know this is a bit of a pain there, Brent, but I would advise – contact EA again ... See if they can offer any troubleshooting. If they won't offer troubleshooting or can't offer troubleshooting, if you can get them to give you proof that that is the case – so just get them to send you an email with any troubleshooting saying that that's all that they can do for you, or send you an email saying it is purely a PlayStation issue, you know, so that we can then, you know, escalate that at our end ... It's just that – so that we can escalate it at our end, we do need, you know, confirmation there just from the publisher saying, essentially, that they're not going to help you. ... reply to [the email Sony Europe previously sent] ... with, you know, the proof there that Electronic Arts aren't going to help you and we can then certainly try and take up from there.</i>"</p>
User 1	<p>User 1 purchased and downloaded the Firewall Zero Hour game via the PlayStation Store.</p> <p>On 1 September 2018, User 1 called PlayStation Support and spoke with "Alan". User 1 reported that the game "<i>keeps dropping out of the server and there's been problems with it</i>". User 1 asked for a refund in the form of PSN credit.</p>

User	Features of false, misleading or deceptive conduct
	<p>Sony Europe, through Alan, made the <u>Referral to Publisher Representation</u> to User 1, by saying the following.</p> <p>(a) User 1 was told that PlayStation’s policy is to “<i>only offer refunds for games that have not been downloaded or played or used or the content’s not been redeemed</i>”. Because User 1 had downloaded and played the game, “<i>the only kind of avenue you have for this one is for if the game itself is faulty</i>”.</p> <p>(b) User 1 was then told that, “<i>to prove that [fault], we have to have correspondence from the publisher through yourself to say that they are unable to resolve the issues you’re experiencing in your game</i>”.</p> <p>(c) Alan said that “<i>If you get the correspondence to say that they’re unable to resolve the issues you’re experiencing in the game, we will be able to refund that for you</i>”. Alan further said that “[g]oing onto Youtube isn’t proof of that [fault]” and “<i>that’s not going to give us any evidence to say that the game isn’t working for yourself</i>”. Alan said that “<i>without that [email from the publisher], I’m afraid we wouldn’t be able to do anything with that. That’s the refund policy that we have</i>”.</p>
<p><b>User 2</b></p>	<p>User 2 purchased and downloaded a game via the PlayStation Store.</p> <p>On 13 January 2018, User 2 called PlayStation Support and spoke with “Darren”. User 2 reported that the game was “<i>unplayable and I would rather just refund it and get rid of it</i>”, it “<i>literally doesn’t work. Like, it black-screens me out. It kicks me out over and over again</i>”.</p> <p>Sony Europe, through Darren, made the <u>Referral to Publisher Representation</u> to User 2, by saying the following.</p> <p>(a) User 2 was told that “<i>You will have to ask them to put it in writing because we won’t be able to refund it without their authorisation because there’s no way on the system ... Because the game is obviously made by Bungie, you need to contact Bungie and just say, “I’m still having this issue and I would like a refund.” Okay? “Please can you confirm if this is possible. Can you send an email just to confirm this so I can get in contact with PlayStation and ask for my money back?” Okay?</i>”</p> <p>(b) User 2 was told that “<i>the issue that we have, unfortunately, is we can’t do anything without the authorisation from Bungie because it won’t allow us to refund it any other way. I’m not trying to be awkward. If I could do it, I would do it, but we can’t physically do it. The system doesn’t allow us until Bungie gets in contact with us and gives us an authorisation number</i>”.</p> <p>(c) User 2 was told that “<i>I really wish I could help you but without the authorisation, the system just won’t allow me to do the refund. I would certainly do it if I can but I need the reference from Bungie, I’m afraid</i>”.</p>

User	Features of false, misleading or deceptive conduct
	<p>(d) User 2 was told that <i>"I know this sounds crazy but we don't have any contact with Bungie. They normally do it via the customer, so the customer would receive an email, the customer would then forward the email on to us and we would then be able to do the refund"</i>.</p> <p>(e) User 2 was told: <i>"Basically, what you need to try and get from them is you need to say, "Are you willing for PlayStation, on your behalf, to refund us? If you are, send me an email, so we can get this done."</i></p> <p>(f) Darren made the above statements to User 2 in circumstances where User 2 informed him of the difficulties she was having in contacting the developer (Bungie). For example, after the statement in paragraph (a), the following exchange occurred:</p> <p>User 2: <i>"... So the issue there is Bungie doesn't have an email, Bungie doesn't have a phone number and Bungie, after they initially respond to you, they just – they've got moderators but they don't have an email. They don't have an official number. Like, they made it so ... you can't contact and that's why I'm just kind of like –"</i></p> <p>Darren: <i>"Do they have a chat? Do they have a chat? Do Bungie have a chat?"</i></p> <p>User 2: <i>"No. They don't. They don't have any of it. .... They have a forum. ... And moderators who don't actually particularly, like, say, work for Bungie will, a lot of the time, respond to you. Sometimes you will have an admin but the admin can't officially say, "Hey, yes, we can totally refund this," because they're just an admin for the Bungie website. They're not actually a representative for Bungie. Like, you cannot contact them without, say, going into their office, which I'm nowhere near. So this is my issue. You know, it's like – it's over a \$100 game"</i>.</p>

## Schedule

No. of 2019

Federal Court of Australia  
District Registry: Victoria  
Commercial and Corporations NPA  
Regulator and Consumer Protection sub-area

### Respondents

Second Respondent: **SONY INTERACTIVE ENTERTAINMENT EUROPE  
LIMITED**

Date: 23 May 2019