

Concise Statement

No. VID of 2024

Federal Court of Australia

District Registry: Victoria

Division: General

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

Australian Competition and Consumer Commission

Applicant

Webjet Marketing Pty Limited (ACN 063 430 848)

Respondent

A. IMPORTANT FACTS GIVING RISE TO THE CLAIM

Introduction

1 The Respondent (**Webjet**) is an online travel agency that allows consumers to compare and book flights, hotels, car rental and travel insurance on its website at www.webjet.com.au (**Webjet website**) and mobile application (**Webjet app**). The Applicant (**ACCC**) alleges Webjet engaged in false, misleading or deceptive conduct in breach of the Australian Consumer Law (**ACL**) by promoting flights at prices that were not available, and by confirming to some consumers that they had acquired ticket(s) at the price paid before subsequently requesting additional payments to complete the booking.

Price Representations

- 2 Webjet promoted flights as being available for prices at or from “\$XX” (the **Promoted Price**):
- a. on the Webjet app from 1 November 2018 to 13 November 2023;

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- b. on the Webjet website from 1 November 2018 to 13 November 2023;
- c. in promotional emails from 1 November 2018 to 10 November 2023; and
- d. in advertisements published by Webjet on social media, specifically Facebook and Instagram, from 31 July 2019 to 30 October 2023,

some examples of which are set out in **Annexure A**.

- 3 In each instance, the Promoted Price did not include additional compulsory fees charged by Webjet on each booking, which were referred to by Webjet as a “Servicing Fee” and a “Booking Price Guarantee” fee (**Webjet Fees**). The Webjet Fees were charged by Webjet regardless of any choices made by the consumer during the booking process.
- 4 The amount of the Webjet Fees depended on whether the booking included domestic, New Zealand/Pacific or international flights and was the higher of the following:
 - a. Domestic - \$34.90, consisting of \$21.95 (Servicing Fee) plus \$12.95 (Booking Price Guarantee fee);
 - b. NZ/Pacific - \$39.90, consisting of \$24.95 (Servicing Fee) plus \$14.95 (Booking Price Guarantee fee);
 - c. International - \$54.90, consisting of \$32.95 (Servicing Fee) plus \$21.95 (Booking Price Guarantee fee).
- 5 By displaying the Promoted Price in the manner set out in [2]-[3], Webjet in each instance represented that it was possible for consumers to purchase a promoted flight by paying the Promoted Price (**Price Representations**).
- 6 The Price Representations were false, misleading, deceptive or likely to mislead or deceive because all bookings had Webjet Fees added to the Promoted Price and it was therefore not possible for any consumer to purchase a promoted flight from Webjet for the Promoted Price.
- 7 Although some Promoted Prices were accompanied by an asterisk, information about Webjet Fees was not displayed on the Webjet app, Webjet website or emails in a sufficiently clear, prominent or proximate manner to neutralise the false, misleading or deceptive effect of the Price Representations. Further, the social media advertisements did not contain any information about the Webjet Fees.

Confirmed Booking Representations

- 8 The process to book a flight on the Webjet website or Webjet app was as follows:
- a. The consumer searched or browsed for flights departing from a particular location and flying to a particular destination, on a particular date.
 - b. Once the consumer selected an identified airfare for the flight, the Webjet website or Webjet app generated a page entitled “My Cart”. The consumer was able to add further flights to “My Cart”, as well as complete selections regarding baggage, seats, hotel, car hire, and/or travel insurance.
 - c. Once all selections were made, the consumer clicked on a “Book Now” button. Clicking the “Book Now” button caused the Webjet website or Webjet app to display a “Traveller, Contact and Payment Information” page, which included an “Amount to be charged” and a button marked “Pay Now”.
 - d. After the consumer completed the “Traveller, Contact and Payment Information” page and clicked the “Pay Now” button, Webjet took payment through the consumer’s nominated payment method.
 - e. After payment was completed, the Webjet website or Webjet app displayed either:
 - i. a confirmation page that provided details of the consumer’s booking, and Webjet also sent these consumers a confirmation email; or
 - ii. a “Customer Service Advice” which stated that the itinerary could not be confirmed.
- 9 On each occasion after taking payment from a consumer that Webjet either displayed the confirmation page or sent the confirmation email to the consumer in respect of a booking (as referred to in [8e.i]), Webjet represented to the consumer that the consumer had acquired ticket(s) at the price paid (**Confirmed Booking Representation**).
- 10 In respect of 382 bookings, the Confirmed Booking Representations were false, misleading, deceptive or likely to mislead or deceive, because the consumer had not, in fact, acquired ticket(s) at the price paid. On each occasion, Webjet subsequently sought additional payment from the consumer to complete the booking.
- 11 The additional payment sought by Webjet from these consumers was on average approximately \$770, and up to as much as \$21,764.

B. RELIEF SOUGHT FROM THE COURT

12 The Applicant claims the relief set out in the accompanying Originating Application.

C. PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT

13 Webjet's conduct was in trade or commerce in Australia.

14 By reason of the matters described at [2] to [7] above, by making each of the Price Representations when, in fact, all bookings had Webjet Fees added to the Promoted Price, and it was therefore not possible to purchase a flight from Webjet for the Promoted Price, Webjet:

a. engaged in conduct which was misleading or deceptive or likely to mislead or deceive in contravention of s 18(1) of the ACL; and

b. made false or misleading representations with respect to the price of services in contravention of s 29(1)(i) of the ACL.

15 By reason of the matters described at [9] to [11] above, by making the Confirmed Booking Representations in respect of 382 bookings when, in fact, the consumer had not acquired ticket(s) for the price paid, Webjet:

a. engaged in conduct which was misleading or deceptive or likely to mislead or deceive in contravention of s 18(1) of the ACL; and

b. made false or misleading representations with respect to the price of the booking in contravention of s 29(1)(i) of the ACL.

D. HARM SUFFERED BY CONSUMERS AND BENEFIT TO WEBJET

16 Webjet's Price Representations were likely to entice consumers to purchase flights on the basis of Promoted Prices. The Promoted Prices were lower than what the consumer would actually be required to pay and therefore deprived consumers of the opportunity to make an informed purchasing decision.

17 Webjet obtained commercial benefits from the Price Representations by attracting consumers to its site on the basis of flight prices that were not attainable and then receiving additional payments through the compulsory inclusion of Webjet Fees. Webjet is also likely to have gained an advantage over its competitors to the extent that the conduct made Webjet's airfares appear more attractive than they actually were.

18 Some consumers, instilled with confidence by the Confirmed Booking Representations that their ticket(s) had been secured, continued making other travel arrangements and commitments, the costs of which may not have been

recoverable if the consumer did not pay the additional amount subsequently requested by Webjet. Because of this, when Webjet sought further payment, at least some consumers were likely placed in a position where they had to choose between paying the additional amount required by Webjet or cancelling those other arrangements and commitments, which may have resulted in additional losses.

- 19 As Webjet took payment before making each Confirmed Booking Representation immediately upon the consumer clicking the “Pay Now” button but without securing the ticket(s) at the price paid, consumers were deprived of funds which they might have used for other purposes.
- 20 Consumers were also denied the opportunity to secure alternative flights that may have been cheaper or otherwise more suitable for them.
- 21 Further, Webjet is likely to have gained an advantage over its competitors by denying them the custom of consumers in the circumstances referred to in [19] and [20].

E. OTHER

- 22 The Applicant does not consider the issues in this concise statement are suitable for a report by a referee under s 54A of the *Federal Court of Australia Act 1976*.

Date: 28 November 2024

This concise statement was prepared by Elizabeth Bennett SC and Shanta Martin of Counsel.

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 pleading.

Date: 28 November 2024

A handwritten signature in black ink, appearing to read 'James Love', written in a cursive style.

Signed by James Love

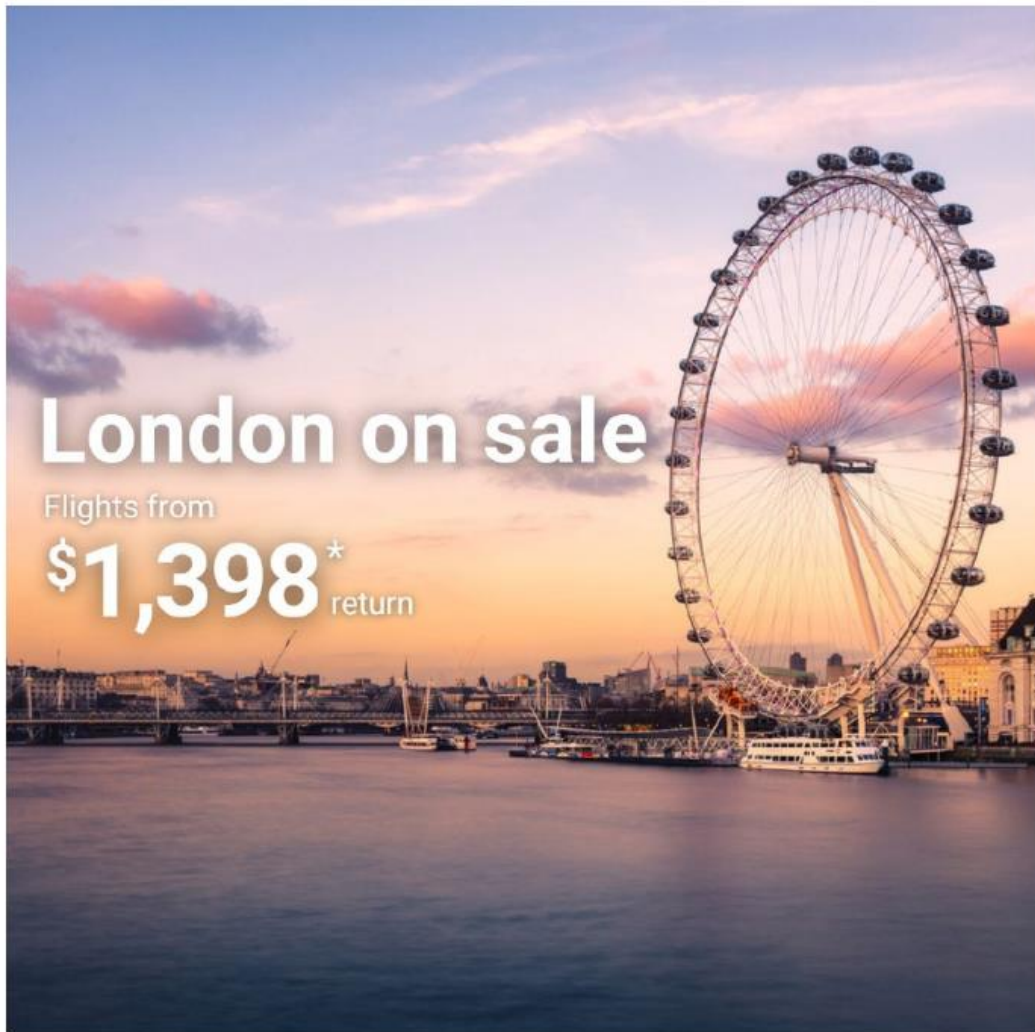
Lawyer for the Applicant

Annexure A - Examples of Promoted Prices

On the Webjet website

The screenshot displays the Webjet website homepage with several key sections:

- Navigation Bar:** Includes links for FLIGHTS, HOTELS, PACKAGES, CAR HIRE, INSURANCE, MOTORHOMES, THINGS TO DO, Redeem Credit, Domestic Deals, International Deals, and Gift Cards.
- Search Interface:** A search bar with tabs for Return, One Way, and Multi-City. It includes fields for City or Airport, Select Travel Dates, and passenger information (1 Adult, Economy). A green 'Search Flights' button is prominent.
- SPEND & SAVE:** A promotional banner for holiday packages with three offers:
 - Spend \$1,500, Save \$100* (Use Code: SUMMER100)
 - Spend \$2,000, Save \$150* (Use Code: SUMMER150)
 - Spend \$3,000, Save \$200* (Use Code: SUMMER200)
- Australia's #1 Online Travel Agent:** A banner with icons and text: 'Mix & Match Airlines for the Best Value', 'Proudly Australian Owned for 24 years', 'Award-Winning Customer Support', and 'Compare 8 Domestic, 140+ Global Airlines'.
- Cheap Flight Deal Finder:** A sidebar menu for flights departing from Melbourne, listing destinations and prices:
 - Domestic cities: from \$53* ONE WAY
 - New Zealand: from \$341* ONE WAY
 - Asia: from \$796* RETURN
 - North America: from \$1,619* RETURN
 - Europe: from \$2,946* RETURN
- What's On:** A grid of promotional tiles:
 - Fly With Virgin Australia: MORE TO EXPLORE SALE (from \$599 RETURN)
 - Plan Your Multi-City Trip: MULTI-CITY ITINERARIES (Find the cheapest, fastest or best)
 - Explore North America: WINTER WONDERLAND DEALS (from \$1,946 RETURN)
 - Flights To Asia On Sale!
 - Get Your Travel Insurance: INSURE YOUR TRAVEL (Family time matters)
 - Eco-Friendly Bali Hotels: BALI Sustainable Stays
- Vertical Banners:**
 - australia: MORE TO EXPLORE SALE (Bali, Fiji, Samoa & more)
 - PICK YOUR PERFECT STAY (Compare & book over 730,000 hotels worldwide)
- Footer:**
 - Domestic Flights within Australia
 - Flights to New Zealand
 - International Flights
 - More Than Cheap Flights at Webjet
 - Back to Top button
 - Products: Flights, Hotels, Holiday Packages, Car Hire, Motorhomes, Travel Insurance, Things to Do
 - More Info: About Webjet, Careers, The Webjet App, Advertise on Webjet, Terms and Conditions, Privacy/Security, Investors, Travel Blog
 - International Sites: New Zealand
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