

Macrae, Tess

Subject: FW: In Support of ACCC proposal to revoke immunity for eBay's PayPal only policy [SEC=UNCLASSIFIED]
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From: [mailto:
Sent: Tuesday, 17 June 2008 12:20 PM
To: Adjudication
Subject: In Support of ACCC proposal to revoke immunity for eBay's PayPal only policy

The following is a corrected copy of my earlier, unsigned, submission

In the U.S. and, AU, eBay describes themselves as a "Venue" and further states that "they are not involved in the actual transaction between the buyers and sellers....does not offer any form of insurance or other buyer or seller protection" they go on to state in various language that they "do not transfer title" and that "some forms of payment permitted on the site, such as PayPal or credit card may offer limited buyer or seller protection or chargeback services and you should familiarize yourself with these before proceeding with a transaction..." They further state that they are "...not involved with or party to any transactions that take place between members...."

By forcing PayPal and/or Credit Card either as the sole form of payment or even mandatory as an optional form of payment, eBay has in essence taken themselves out of the "venue" category described above by dictating the sellers terms of sale.

If as in the U.S., AU utilizes the terms FOB Origin freight prepaid and added, (or the equivalent) it means that Title to the goods (Ownership) passes to the buyer when the goods are placed in the hands of the carrier who acts as a bailee of the goods while in transit. Should loss or damage occur while in transit, the carrier, with certain exceptions, is responsible to the beneficial owner (customer on FOB Origin) for their negligence. Any claim to be filed and paid is for the customer's account. Insurance purchased under these terms is for the buyer's, not the seller's, protection.

Now if PayPal and/or credit card is mandated, and a chargeback is lodged against the seller for any loss or damage in transit under FOB Origin terms, it would constitute a reversal of the Terms of Sale (TOS) between the buyer and seller. In other words, by mandating PayPal and/or Credit Card, eBay has ceased being a "venue."

PayPal has stated that they consider Loss in Transit as "item not received" (INR) and an in transit damaged shipment as "shipment not as described" (SNAD) although they don't specifically state so in their UA. I can not find any legal basis for including loss and damage in transit under those definitions in consumer protection laws regarding credit card payments. I doubt the framers of those laws had reversal of over 100 plus years of adjudicated loss and damage claims in mind or reversal of well established contract FOB terms. When repeatedly asked for the "precise legal citation" they rely on for including loss and damage in transit in their interpretation of their UA, they completely ignored the question and thereby refused to answer it. PayPal stated that if you don't agree with these policies, "you may wish to consider to close your account and explore other payment processors whose policies are better suited to your wants and needs." That would be impossible under the proposal to make PayPal mandatory and impossible for new sellers or existing sellers who because of their low selling activity may easily get caught up in the DSR (Detailed Seller Rating) trap which is discriminatory to small sellers.

In conclusion, eBay/PayPal "can not have their cake and eat it too" as they apparently wish. The "Buck" has to stop somewhere and it should start with the ACCC. As a virtual monopoly, eBay and its Wholly Owned Subsidiary must be held accountable to the public by agencies such as the ACCC. As a Wholly Owned Subsidiary, PayPal should be operated at "arms length" from their parent eBay in order to enjoy the advantages of such an ownership arrangement which provides certain tax and liability protections. In the case of eBay and PayPal, it is obvious that they are operating in many respects as a "hand in glove" operation, disregarding the corporate veil they established when setting up the parent subsidiary

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relationship.

The following Blog in Public Domain further describes the feelings of tens of thousand eBay users:

<http://www.bloggernews.net/116216>

Sincerely,
Richard T. Bonelli
<address excluded>
U.S.A.

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Gas prices getting you down? Search AOL Autos for fuel-efficient used cars.