

Roy, Lauren

Subject: Response to ACCC Draft Notice re. Ebay Notification N93365
[SEC=UNCLASSIFIED]
Categories: SEC=UNCLASSIFIED
ACCC Classification: SEC=UNCLASSIFIED

From: jan vanderzwan [mailto:]
Sent: Tuesday, 24 June 2008 10:40 PM
To: Adjudication
Cc: <excluded>
Subject: Response to ACCC Draft Notice re. Ebay Notification N93365

~~EXCLUDED FROM PUBLIC REGISTER~~
~~EXCLUDED FROM PUBLIC REGISTER~~

Submission: In support of ACCC's Draft Notice in respect of a notification lodged by eBay International A.G.

Note: permission granted for this submission to be placed on the public register (including my name, but excluding my email address)

Dear Sir/Madam,

I would like to add this submission in strong support of the ACCC Draft Notice to revoke the immunity sought by eBay Australia in relation to their notification N93365, for both stage 1 (PayPal must be included as a payment option) and stage 2 (Paypal will be the only allowed payment method - together with 'Pay on Pickup').

I am a seller and a buyer on eBay.nl (Netherlands), and although I've never had any transactions through eBay.com.au (Australia), I personally find the potential implications of eBay's Notification N93365 (were it to pass) combined with eBay's obvious quest for global domination of the e-commerce and e-payment markets, important enough to file this submission to you, all the way from the Netherlands.

(I appologize in advance for any of my mistakes againts the english/australian grammar or spelling)

In preparation of the ACCC's final stance on this ussue, I would kindly ask the ACCC to consider the following six points, mainly relating to any ostensive 'benefit to the public' of eBay's Notification N93365:

(footnotes with URL references are presented at the bottom of this submission)

No. 1. - Regarding the proudly announced ***PayPal Buyer Protection - now increased to \$20,000*** of 17 June 2008 on the eBay site (see footnote 1 below), which could be perceived as a public benefit, one has to go to the PayPal site (footnote 2) to read what this protection actually means, and what severe conditions and restrictions appear to apply; see especially the following quotes from paragraphs 2, 3 and 7d:

"recovery of your payment, whether in whole or in part, is not guaranteed" ,

"You have no automatic entitlement to receive any payments" ,

"PayPal's Buyer Protection Policy does not indemnify you for the loss which you, as a buyer, may incur and it is not a contract of insurance." ,

"PayPal is not obliged to pay any amount at all" ,

"PayPal reserves the right to change or discontinue the PayPal Buyer Protection Policy in its sole discretion at any time and without notice."

If there is no guarantee or obligation on PayPal's part, and if PayPal can change or discontinue the policy at any time and without notice even, it seems to me this ***PayPal Buyer Protection - now increased to \$20,000*** can not be considered a real benefit to the public.

No. 2. - Regarding the equally proudly announced "PayPal Seller Protection" that "provides sellers with an unprecedented level of protection" on the eBay site (see footnote 3) which equally could be perceived as a public benefit, again one has to go to the PayPal site to read that also in this case (see footnote 4, paragraph 4.2.5 e):

"PayPal reserves the right, in its absolute discretion, to terminate or amend the terms and conditions of the Seller Protection Policy or the transaction eligibility requirements at any time."

Again we see that PayPal can change or terminate part of their protection policy at any time they want to.

No. 3. - Although eBay likes to promote PayPal as a safer or even (one of) the safest payment system(s), while stressing that it prevents users from fraud and stolen identity ("Dunk the scammers before they steal your identity" , "PayPal gives you even stronger protection from scammers", see footnote 5), there's still that worrying little message in paragraph 9 in the PayPal "Product Disclosure Statement" page (see footnote 6):

"Risks associated with using the PayPal Service

Unauthorized transactions: There is a risk your PayPal account may be compromised and subject to an account takeover, unauthorized transactions, or other type of fraudulent activity." \

No. 4. - In direct relation to point 3 mentioned above, further security risks that may affect both eBay and PayPal in the near future are outlined in the "EBAY INC Form: 10-K for the fiscal year ended December 31, 2007" filed by eBay at the United States Securities and Exchange Commission (online available, see footnote 7). These risks are described in the "Item 1A. Risk Factors" section and some of them were previously quoted and clearly highlighted in a thread on the eBay Australia community boards (see footnote 8).

A few examples of these risks - and comments on those risks - as described by eBay itself in the above mentioned Form 10-K document, are presented below:

"PayPal's highly automated and liquid payment service makes PayPal an attractive target for fraud"

"In addition, PayPal's service could be subject to employee fraud or other internal security breaches"

"Our insurance policies carry low coverage limits, which may not be adequate to reimburse us for losses caused by security breaches"

"our PayPal website has suffered intermittent unavailability for periods as long as five days"

"There are many risks associated with our international operations.
• difficulties in implementing and maintaining adequate internal controls"

"PayPal has incurred fines from its credit card processor relating to PayPal's failure to detect the use of its service by "high risk" merchants"

"PayPal has a limited operating history and limited management experience in managing these internal controls"

"Government regulators have received a significant number of consumer complaints about both eBay and PayPal"

No. 5. - Another point that deserves further consideration is the fact that even though eBay wants to make it obligatory to accept PayPal also for 'Pick-up' items (that are impractical to send by regular mail or courier services because they are too big, too fragile, too awkwardly shaped or just too expensive), eBay insists that there can be no seller-protection in this case.

When a buyer buys a pick-up item on eBay, pays for it through PayPal, comes to collect the item and takes it home, and then later files a (fraudulent) claim that he/she has not received the item, there will be no protection for the seller, PayPal will withdraw the funds from the sellers account and refund it to the fraudulent buyer. This non-protection for the seller is confirmed both on the PayPal site (see footnote 9) and e.g. on a "FAQs Advanced" page on the eBay site (see footnote 10).

Relevant quote from the PayPal site (9):

"4.2.4 Limitations on the Seller Protection Policy. Note: Sellers must provide one Proof of Shipment for each separate PayPal payment. The Seller Protection Policy will not apply to a transaction if any of the following apply:

e. You hand deliver the item"

Relevant quote from the eBay "FAQs Advanced" page (10):

"7. If I offer PayPal for local pick up am I covered by PayPal Seller Protection?

No. The Seller Protection policy requires proof of shipment which is not available for face to face transactions."

"8. Can I offer pay on pick up and not offer PayPal?

PayPal must be offered on all listings including those with pay on pick up."

This clearly presents a fatal flaw in eBay's whole "PayPal = safer" argument. It's a clear invitation to fraud, both in the case of stage 1 (PayPal must be included as a payment option) and stage 2 (Paypal will be the only allowed payment method - together with 'Pay on Pickup') of eBay's plans for Australia.

Even though the buyer is allowed to pay with cash or cheque for pick-up items, eBay forces the seller to accept payment through PayPal if/when the buyer wants to pay that way, and thus leaving the seller totally unprotected against fraud.

No. 6. - Additionally and finally I would like to make the point that if eBay/PayPal are so worried about consumer safety, consumer protection and consumer satisfaction in Australia, it would be best for all parties involved if PayPal Australia would agree, without any hesitation, to become a signatory to the Electronic Funds Transfer Code of Conduct. (EFT Code).

Judging from the many threads and comments of unhappy eBay-PayPal users on the various global eBay community boards, it appears eBay/Paypal could use all the help they can get in keeping their customers satisfied and safe.

With my points for consideration submitted above, I kindly request the ACCC to completely revoke eBay's notification N93365.

Thank you,

Kind regards,

Jan Vanderzwan,

Amsterdam, the Netherlands.

footnotes:

1) <http://www2.ebay.com/aw/au/200806.shtml#2008-06-17151026>

2) https://www.paypal.com/au/cgi-bin/webscr?cmd=p/gen/ua/policy_buyer_complaint-outside

3) <http://pages.ebay.com.au/useprotection/security.html>

4) <https://www.paypal.com/au/cgi-bin/webscr?cmd=p/gen/ua/ua-outside#spp-policy>

5) <http://pages.ebay.com.au/protectyourself/>

6) <https://www.paypal.com/au/cgi-bin/webscr?cmd=xpt/UserAgreement/ua/PolicyPDS-outside>

7) <http://msnmoney.brand.edgar-online.com/DisplayFilingInfo.aspx?TabIndex=2&FilingID=5765915>

8) <http://forums.ebay.com.au/thread.jspa?messageID=603207612�>

9) <https://www.paypal.com/au/cgi-bin/webscr?cmd=p/gen/ua/ua-outside#spp-policy>

10) <http://pages.ebay.com.au/useprotection/advanced-faq.html#a7>