

Statement of Claim

No. of 2011

Federal Court of Australia

District Registry: New South Wales

Division: General

ALDI Stores (A Limited Partnership) (ABN 90 196 565 019)

Applicant

EFTPOS Payments Australia Limited (ACN 136 180 366)

Respondent

1. At all relevant times, the Applicant was a limited partnership registered under the *Partnership Act 1892* (NSW) and able to sue it its own name and style.
2. At all relevant times, the Respondent was:
 - (a) a company registered under the *Corporations Act 2001* (Cth) and able to be sued in its own corporate name and style; and
 - (b) a corporation with the meaning of section 4(1) of the *Competition and Consumer Act 2010* (Cth).
3. At all relevant times, the Respondent was owned by:
 - (a) Australia and New Zealand Banking Group Limited;
 - (b) Australian Settlements Limited;
 - (c) Bank of Queensland Limited;

Filed on behalf of ALDI Stores (A Limited Partnership), Applicant

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- (d) Bendigo and Adelaide Bank Limited;
 - (e) Cashcard Limited;
 - (f) Citigroup Pty Limited;
 - (g) Commonwealth Bank of Australia;
 - (h) Coles Group Limited (**Coles**);
 - (i) Cuscal Limited;
 - (j) Indue Limited;
 - (k) National Australia Bank Limited (**NAB**);
 - (l) Suncorp Metway Limited;
 - (m) Westpac Banking Corporation (**WBC**); and
 - (n) Woolworths Limited (**Woolworths**).
4. At all relevant times, the Applicant:
- (a) was an operator of supermarkets and a retailer of food and grocery items to consumers within Australia; and
 - (b) was a retailer who used, and continues to use, the EFTPOS debit payment system to receive payments from consumers.
5. At all relevant times, the Respondent managed the EFTPOS debit payment system including in respect of interchange fees payable in respect of the EFTPOS debit payment system.
6. At all relevant times, the Respondent intended to introduce changes in respect of the interchange fees payable in respect of the EFTPOS debit payment system with such changes to commence on 1 October 2011.

Particulars

Media Release issued by the Respondent on or about 8 March 2011 entitled "*EPAL announces new EFTPOS interchange fees*".

7. On or about 12 August 2011, the Respondent issued, published and distributed a media release (**the August Media Release**) in respect of the proposed changes referred to in paragraph 6 above.

Particulars

The August Media Release is annexed to the Originating Application.

8. The August Media Release included the following representations (**First Representations**) about the proposed changes referred to in paragraph 6 above:
 - (a) "eftpos say no charge to consumers in planned changes";
 - (b) "Australian consumers should not face new charges following planned changes to eftpos interchange fees"; and
 - (c) "the changes to come into effect later this year affected financial institutions on either side of eftpos transactions, and did not involve direct charges to either consumers or retailers."
9. On 12 August 2011, the Respondent by its authorised agent, Bruce Mansfield, Managing Director of the Respondent, made the following representations (**the Second Representations**) about the proposed changes referred to in paragraph 6 above, in an article authored by Bruce Mansfield and published in the Herald Sun newspaper (**the Herald Sun Article**):

"In March, eftpos announced changes to fees flowing between financial institutions on either side of eftpos transactions. These fees are not paid to eftpos, nor do they affect retailers or consumers directly."

10. On 8 September 2011, the Respondent issued, published and distributed a media release (**the September Media Release**) in respect of the proposed changes referred to in paragraph 6 above.

Particulars

The September Media Release is annexed to the Originating Application.

11. The September Media Release included the following representations (**Third Representations**) about the proposed changes referred to in paragraph 6 above:

- (a) "EFTPOS PAYMENTS AUSTRALIA LIMITED (EPAL) CLARIFICATION";
 - (b) "ePAL, the company that manages the eftpos debit payment system, wishes to clarify aspects of its planned changes to eftpos interchange fees as described in ePAL's media release dated 12 August 2011"; and
 - (c) "it remains to be seen whether acquirers will pass part or all of any fee changes on to retailers and what retailers may do in relation to their consumers as a result of any changes."
12. The First Representations, the Second Representations and the Third Representations were made in trade or commerce within the meaning of section 18 of the *Australian Consumer Law* as it appears as Schedule 2 to the *Competition and Consumer Act 2010* (Cth).
13. The First Representations, the Second Representations and the Third Representations were misleading and deceptive, or likely to mislead and deceive, within the meaning of section 18 of the *Australian Consumer Law* as:
- (a) the proposed changes to the EFTPOS interchange fees may see charges passed onto consumers as some acquiring banks have declared their intention to pass part or all of any of the proposed changes to the EFTPOS interchange fees on to retailers and retailers have not yet indicated whether these charges will be passed onto consumers; and
 - (b) the effect of the proposed changes is that all retailers (excluding Coles and Woolworths who, as members of the Respondent, are able to take advantage of transitional arrangements and benefit from the continuation of exiting bilateral arrangements) may incur direct charges depending on the terms of their arrangements with acquiring banks, some of whom have declared their intention to pass certain charges on to retailers, and consumers may incur charges if these charges are then passed on by the retailers.

Particulars

WBC have notified their merchants using the EFTPOS debit payment system that the Debit (EFTPOS) Card Fee will increase by \$0.10 per transaction (GST inclusive) from 1 October 2011).

NAB have notified merchants using the EFTPOS debit payment system that:

- (i) the EFTPOS debit purchase transaction fee for merchants will increase by \$0.025 per transaction (GST inclusive) from 1 October 2011; and
 - (ii) the EFTPOS cash-out transaction fee for merchants will increase by \$0.025 per transaction (GST inclusive) from 1 October 2011
- (c) the Third Representations purport to clarify the First Representations whereas they do not clarify the First Representations.


14. The Applicant says further that:

- (a) the Representations and the Secondary Representation were in respect of future matters within the meaning of section 4 of the *Australian Consumer Law*; and
- (b) by reason of the matters pleaded in paragraph 13 above, the Respondent did not have reasonable grounds for making the Representations and the Secondary Representation.

15. By reason of the matters pleaded above, the Respondent has acted in contravention of section 18 of the *Australian Consumer Law*.

16. The Applicant seeks to permanently restrain the Respondent from further issuing, publishing or distributing the August Media Release, the September Media Release or the Herald Sun Article or making the First Representations, the Second Representations or the Third Representations and have the Respondent issue a corrective advertisement in accordance with the orders sought in the Originating Application.

Dated: 8 September 2011




 Signed by Andrew John Christopher
 Lawyer for the Applicant

This pleading was prepared by Andrew John Christopher, lawyer.

Certificate of lawyer

I Andrew John Christopher certify to the Court that, in relation to the statement of claim 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.

Dated: 8 September 2011



Signed by Andrew John Christopher
Lawyer for the Applicant