

Article

Dispute Resolution & Insolvency

Harvey Norman and Latitude Finance Facing Penalties and Punitive Orders over “60-Month Interest-Free” Advertising Campaign

By Helene Chryssidis

Harvey Norman Holdings Ltd (**Harvey Norman**) and Latitude Finance Australia (Latitude) have been embroiled in a significant legal battle over false and misleading advertisements, culminating in a Federal Court ruling that they contravened the *Australian Securities and Investments Commission Act 2001* (ASIC Act) by, amongst other things, engaging in misleading and deceptive conduct and making false or deceptive representations in relation to the publication of certain advertisements.

The case, led by the Australian Securities and Investments Commission (**ASIC**), revolved around the companies' extensive newspaper, radio and television advertising campaigns for a 60-month interest-free payment option.

Case Overview

Between January 2020 and August 2021, Harvey Norman and Latitude ran a widespread national advertising campaign that promoted a 60-month interest-free payment method, encouraging consumers to purchase goods under the terms advertised as "no deposit" and "no interest." ASIC argued that these promotions masked significant conditions that were not clearly disclosed to consumers, leading to consumer misunderstanding.

The advertisements, on their face, were directed to how the purchase price for goods could be paid, not to how money can be borrowed. ASIC's concern was that many consumers entered into financial arrangements that they did not fully understand, often paying significantly more than they had anticipated for everyday products. ASIC emphasised that consumers require full transparency regarding financial products, especially when the obligations under a credit card are more complex than advertised.

Contrary to what was stated in the advertisement, consumers could not simply purchase eligible goods from a Harvey Norman store at the advertised price on no deposit terms, provided they paid the price by 60 equal monthly payments. Rather, consumers had to enter into a fundamentally different financial arrangement than the one promoted. Namely, a continuing credit contract with Latitude that was linked to a credit card (the Latitude GO Mastercard), which required them to pay an establishment fee and ongoing monthly account service fees in respect of that linked account.

Latitude advanced, amongst other things, that ordinary and reasonable consumers are aware that a provider of finance sets terms and conditions that accompany an offer of finance and that they will expect to pay some kind of fee or charge. Latitude submitted that all personal credit comes with a cost of some kind, and it should be inferred that the ordinary and reasonable consumers know and expect that there will be costs to borrow money, and the cost would be borne by the consumer.

Ultimately, the Court considered that the non-disclosure of the financial arrangement was not trivial. A continuing credit contract with a linked credit card that was subject to the payment of an establishment fee and ongoing monthly account service fees was not advertised. What was advertised was a simple arrangement whereby the purchase price of the goods could be paid over 60 months by equal monthly payments without paying interest and a deposit.

Justice Yates considered that whilst the advertising campaign can be intellectualised as a method of borrowing money, he did not accept that all ordinary and reasonable consumers would think that, by paying the nominated purchase price for the goods by instalments, they were “borrowing” money for that purpose. Justice Yates considered that there is no

reason to think that ordinary and reasonable consumers would have seen the promotion as a traditional form of consumer credit when the advertisements, in effect, told them otherwise. Their attention was being directed only to the prominent terms in which the promotion was expressed, not to other, undisclosed terms, and certainly not to the fundamentally different financial arrangement that was, in truth, being offered.

After a lengthy analysis of the representations and the evidence, the Court ultimately held that various (but not all) newspaper, radio and television representations made by Latitude and Harvey Norman contravened the ASIC Act as:

1. the conduct was misleading or deceptive, or likely to mislead or deceive;
2. the conduct was liable to mislead the public as to the nature or characteristics of the financial services offered;
3. the representations were false or misleading;
4. the conduct was liable to mislead the public as to the nature or characteristics of the financial services offered;
5. through omissions:
 - (a) a false or misleading representation that the financial services offered were of a particular standard, quality, value or grade, and
 - (b) a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.

Ultimately, Justice Yates supported ASIC's position, stating that the advertisements led consumers into fundamentally different financial arrangements than what was advertised. The promotion of a "no deposit, no interest" plan omitted crucial information about the requirement for a credit card and the associated fees, making the advertising misleading.

Key Takeaways for Organisations

This case sends a clear message to all businesses in the financial services and retail sectors that misleading advertisements, especially those related to consumer credit products, will not be tolerated. It also reinforces the need for companies to provide full and accurate disclosure when promoting financial arrangements.

This case serves as a crucial reminder for companies to maintain transparency in their advertising practices, particularly in relation to financial services. Organisations must ensure that promotional materials do not omit significant details that could mislead consumers into entering unfavourable or fundamentally different financial arrangements.

It is expected that ASIC will seek pecuniary penalties and punitive orders requiring adverse publicity against Harvey Norman and Latitude to ensure consumers are informed about the true nature of the financial products. We expect the Court's orders on the relief sought by ASIC to be made in the coming weeks.

Please reach out if you have any questions about your organisation's compliance and regulatory framework, or if you are facing any adverse action. DW Fox Tucker Lawyers are experienced in acting for and providing advice to retail and financial service providers.



[MORE INFO](#)

Helene Chryssidis

Director

p: +61 8 8124 1847

helene.chryssidis@dwft.au

DW Fox Tucker Lawyers

L14, 100 King William Street, Adelaide, SA 5000

p: +61 8 8124 1811 e: info@dwft.au dwfoxtucker.com.au

COMMERCIAL | CORPORATE | DISPUTES | FAMILY | INSOLVENCY | TAX | HOSPITALITY | IP | PROPERTY | ENERGY | RESOURCES
EMPLOYMENT | WORKERS COMPENSATION | SELF INSURANCE | RISK MANAGEMENT | INSURANCE | WILLS | ESTATE PLANNING

Disclaimer: The information contained in this communication does not constitute advice and should not be relied upon as such. Professional advice should be sought prior to any action being taken in reliance on any of the information.

