

ONLINE REVIEWS AND CONSUMER RIGHTS

OBLIGATIONS OF BUSINESSES FOLLOWING *SERVICE SEEKING*

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ACCC v SERVICE SEEKING [2020] FCA 1040

FACTS

- Service Seeking is an Uber-style online platform on which tradespeople can book jobs requested by consumers, such as end of lease cleaning or plumbing work
- The case concerned Service Seeking's 'Fast Feedback' system, which was operative from July 2016 to May 2019
- After the completion of a job booked using Service Seeking, the business could self-review their own job from pre-defined options such as 'on time' and 'to budget'
- A review and star rating were then automatically generated and emailed to the customer for the job
- The customer could either select 'I agree' or 'I'll write my own review'
- If the customer did not respond within 72 to 96 hours of receiving the email, the auto-generated review was published on the platform

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REPRESENTATIONS


[23] *The parties have agreed as a fact that the Fast Feedback reviews published on the website comprised representations made by Service Seeking on the website that purported to be testimonials by customers who have used the services of businesses on the website and relating to the services of those businesses ... this is said by the parties to have been because, in their terms and in the context in which they appeared, the reviews and star ratings 'purported to have been given by such Customers, but ... were created by the businesses themselves through the Fast Feedback feature'.*

- Justice Jackson found that this was “clearly” the case in relation to the first format, which was expressed in the first person
- “Less clear” regarding the second and third formats, but also made out, as they purported to be the business’ report of the customer’s views
- This was partly because, in the context of browsing potential businesses for ‘odd jobs’, customers were unlikely to read the reviews carefully

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1

[‘thumbs up’ symbol as illustrated below]




“[name of the business] did a [description of services] job for me in [location] and the job was completed on time, on budget, to a professional standard and with good communication.” [or any of those components.]

Created with the Fast Feedback guide

from [suburb, state] posted a job for [description of services, eg. [Local Plumbers](#)] on [date]

2

[Row of up to five star symbols as illustrated below]



‘Fast Feedback: [business name] completed this job and reported that [first name of customer] was satisfied because the job was completed on time, on budget, to a professional standard and with good communication.’ [or any of those components.]

[After this, a link appeared, in bold blue type stating:]


[Learn more about Fast Feedback here](#)

[Following the link was a statement to the effect that:]

[first name of customer] from [suburb, state] posted a job for [service requested by customer, eg. [Handymen](#)] on [date]

3

[Row of up to five star symbols as illustrated below]



‘Fast Feedback: [business name] reported the job was completed on time, on budget, to a professional standard and with good communication.’ [or any of those components.]

[After this, a link appears, in bold blue type stating:]

[Learn more about Fast Feedback here](#)

[Following the link is a statement to the effect that:]

[first name of customer] from [suburb, state] posted a job for [service requested by customer, eg. [Handymen](#)] on [date]

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PENALTIES

- Declarations
- Injunction prohibiting Service Seeking from publishing any review without express written consent
- Corrective advertising order
- \$600,000 pecuniary penalty, having regard to the number of contraventions (a course of conduct) and the seriousness and deliberateness of the conduct (emails not always opened; importance of reviews for consumers; profit in the 2018/19 FY; higher than “an acceptable cost of doing business” without being “crushingly large”)
- Costs order
- Compliance program

OTHER RELEVANT CASES

- **ACCC v Meriton:** Meriton ordered to pay \$3 million penalty for misleading or deceptive conduct regarding 'masking' email addresses to stop potentially negative reviews from being sent to Trip Advisor as a part of its 'Review Express' service
- **ACCC v Aveling Homes:** Aveling Homes ordered to pay \$380,000 penalty for operating and 'filtering' a review site for its services which purported to be independent
- **ACCC v Health Engine:** Health Engine, an online health booking platform, has admitted it engaged in misleading conduct regarding manipulation of patient reviews and not publishing negative reviews, and has jointly submitted with the ACCC that the court should impose a \$2.9 million penalty

TIPS FOR DEALING WITH REVIEWS

1. Do not discriminate between negative and positive reviews (*Meriton and Health Engine*)
2. Do not edit reviews (*Health Engine*)
3. Do not 'target' only customers who you suspect will leave positive reviews (*Meriton*)
4. A reviewer must actively consent to the content of their review (*Service Seeking*)
5. Disclose any commercial relationship with a review site or an individual reviewer (*Aveling*)
6. Do not filter reviews or claim an average rating based on excluding certain reviews (*Aveling*)
7. Be cautious of offering incentives for positive reviews
8. Take active steps to identify and remove fake reviews

The ACCC has released guidance on managing online reviews:

<https://www.accc.gov.au/publications/online-reviews-a-guide-for-business-review-platforms>