



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD1277/2015

**AUSTRALIAN COMPETITION AND CONSUMER COMMISSION** and another named  
in the schedule  
First Applicant

**UNIQUE INTERNATIONAL COLLEGE PTY LTD ACN 120 557 851**  
Respondent

### **ORDER**

**JUDGE:** JUSTICE PERRAM

**DATE OF ORDER:** 8 November 2017

**WHERE MADE:** Sydney

#### **THE COURT DECLARES THAT:**

1. During the period from 1 July 2014 to 30 September 2015 (**relevant period**), Unique engaged in a system of conduct and a pattern of behaviour in connection with the supply or possible supply, or marketing of the supply, of online vocational education courses (**courses**) to consumers in New South Wales that was unconscionable within the meaning of s 21 of the Australian Consumer Law (**ACL**), by:
  - 1.1. targeting disadvantaged people by reference to indigeneity, remoteness and social disadvantage;
  - 1.2. offering gifts of laptops and iPads (or loan computers after 31 March 2015) to consumers to sign up;
  - 1.3. providing financial incentives to its sales representatives to encourage them to sign up consumers; and
  - 1.4. holding sign-up meetings.



***Natasha Paudel***

2. On or around 10 October 2014, at a group sign-up meeting in Walgett, New South Wales (**Walgett Sign-up Meeting**), Unique, in the course of an enrolment process that was completed within 15 minutes:
  - 2.1. did not properly inform Natasha Paudel, in writing and before she agreed to enrol in Unique's course:
    - 2.1.1. that she was entitled to terminate the enrolment agreement prior to the end of the termination period; and
    - 2.1.2. the way in which that termination right could be exercised, in contravention of s 76 of the ACL;
  - 2.2. did not give Natasha Paudel a copy of the enrolment agreement which she had signed, in contravention of s 78 of the ACL; and
  - 2.3. failed to include in the enrolment agreement:
    - 2.3.1. a notice that conspicuously and prominently informed Natasha Paudel of her right to terminate the enrolment agreement; and
    - 2.3.2. a notice which she could use to terminate the enrolment agreement, in contravention of s 79 of the ACL.

***Tre Simpson***

3. On or around 30 March 2015, at a Sign-up Meeting in Tolland, New South Wales (**Tolland Sign-up Meeting**), Unique:
  - 3.1. failed to inform Tre Simpson, or his guardian Margaret Simpson that Tre Simpson was enrolling in a course:

and thereby engaged in conduct that was misleading or deceptive or likely to mislead or deceive, in contravention of s 18 of the ACL;
  - 3.2. failed to inform Tre Simpson or Margaret Simpson of the cost of the course, and thereby engaged in conduct that was:



- 3.2.1. misleading or deceptive or likely to mislead or deceive, in contravention of s 18 of the ACL; and
    - 3.2.2. false or misleading with respect to the price of the course, in contravention of s 29(1)(i) of the ACL; and
  - 3.3. failed to inform Tre Simpson or Margaret Simpson that Tre Simpson would incur substantial debt unless he cancelled his enrolment in the course before the census date, and thereby engaged in conduct that was misleading or deceptive or likely to mislead or deceive, in contravention of s 18 of the ACL.
4. At the at the Tolland Sign-up Meeting, Unique:
  - 4.1. did not properly inform Tre Simpson, in writing and before he agreed to sign up to Unique's course:
    - 4.1.1. that he was entitled to terminate the enrolment agreement prior to the end of the termination period; and
    - 4.1.2. the way in which that termination right could be exercised, in contravention of s 76 of the ACL;
  - 4.2. did not give Tre Simpson a copy of the enrolment agreement which he had signed, in contravention of s 78 of the ACL, in circumstances where parts of his enrolment agreement were completed by Unique's employees; and
  - 4.3. failed to include in the enrolment agreement:
    - 4.3.1. a notice that conspicuously and prominently informed Tre Simpson of his right to terminate the enrolment agreement; and
    - 4.3.2. a notice which he could use to terminate the enrolment agreement, in contravention of s 79 of the ACL.
5. Unique's conduct towards Tre Simpson at the Tolland Sign-up Meeting:
  - 5.1. involved the exploitation of Tre Simpson, an Indigenous person who, at the time of the conduct:



- 5.1.1. was 19 years old;
  - 5.1.2. suffered from a number of health conditions that significantly limited his intellectual capacities;
  - 5.1.3. had no formal education beyond year 10;
  - 5.1.4. had never had a job;
  - 5.1.5. was cared for by his grandmother (Margaret Simpson) because he was unable to look after himself; and
  - 5.1.6. did not understand the nature of the agreement he was making;
  - 5.2. involved the contraventions of the ACL referred to in the declarations at paragraphs 3 and 4 above;
  - 5.3. was carried out in circumstances where the Unique employees present:
    - 5.3.1. did not explain to Tre Simpson or Margaret Simpson:
      - 5.3.1.1. any aspects of the course or the VET FEE-HELP system;
      - 5.3.1.2. the obligations arising from the enrolment forms;
      - 5.3.1.3. that Tre Simpson could cancel or terminate his enrolment in the course by the census date;
    - 5.3.2. were:
      - 5.3.2.1. entirely indifferent as to Tre Simpson's suitability for the course; and
      - 5.3.2.2. interested only in making sure he was enrolled, was unconscionable,
- in contravention of s 21 of the ACL.

***Kylie Simpson***

6. On or around 30 March 2015, at the Tolland Sign-up Meeting, Unique:



- 6.1. did not inform Kylie Simpson, in writing and before she agreed to enrol in Unique's course:
  - 6.1.1. that she was entitled to terminate the enrolment agreement prior to the end of the termination period; and
  - 6.1.2. the way in which that termination right could be exercised, in contravention of s 76 of the ACL;
- 6.2. did not give Kylie Simpson a copy of the enrolment agreement which she had signed, in contravention of s 78 of the ACL; and
- 6.3. failed to include in the enrolment agreement:
  - 6.3.1. a notice that conspicuously and prominently informed Kylie Simpson of her right to terminate the enrolment agreement; and
  - 6.3.2. a notice which she could use to terminate the enrolment agreement, in contravention of s 79 of the ACL.
7. Unique's conduct towards Kylie Simpson at the Tolland Sign-up Meeting:
  - 7.1. involved the exploitation of Kylie Simpson, an Indigenous person who:
    - 7.1.1. had limited education;
    - 7.1.2. had limited ability to read and write;
    - 7.1.3. had learning disabilities;
    - 7.1.4. had never had a job;
    - 7.1.5. did not have an internet connection at her home which would permit her to do an on-line course;
    - 7.1.6. whose intellectual impairments would have made her appear as patently unsuitable for the course for which she was enrolling;
  - 7.2. involved the contraventions of the ACL referred to in the declaration at paragraph 6 above;



7.3. was carried out in circumstances where it was entirely obvious to the Unique representatives present that Kylie Simpson was totally unable to understand what she was doing,

was unconscionable, in contravention of s 21 of the ACL.

***Jaycee Edwards***

8. In or about June 2015, in Bourke, New South Wales (**Bourke Sign-up Meeting**), Unique:

8.1. failed to inform Jaycee Edwards that she would have to pay for the course, and thereby engaged in conduct that was;

8.1.1. misleading and deceptive or likely to mislead or deceive, in contravention of s 18 of the ACL; and

8.1.2. false or misleading with respect to the price of the course, in contravention of 29(1)(i) of the ACL;

8.2. failed to inform Jaycee Edwards of the cost of the course, and thereby engaged in conduct that was:

8.2.1. misleading or deceptive or likely to mislead or deceive, in contravention of s 18 of the ACL;

8.2.2. false or misleading with respect to the price of the course, in contravention of s 29(1)(i) of the ACL; and

8.3. failed to inform Jaycee Edwards that she would incur a debt unless she cancelled her enrolment in the course before the census date and thereby engaged in conduct that was misleading or deceptive or likely to mislead or deceive, in contravention of s 18 of the ACL.

9. Unique's conduct towards Jaycee Edwards in or about June 2015:

9.1. involved the exploitation of Jaycee Edwards, an Indigenous person who:

9.1.1. was 18 years old;



- 9.1.2. struggled with reading and writing;
  - 9.1.3. was told by Unique's representatives that she would receive a 'free' laptop for signing up, when the laptop was not in fact free;
  - 9.1.4. was told by Unique's representatives that the course would be paid for by Unique;
  - 9.1.5. did not have a computer or internet connection at her home which would permit her to do an on-line course,
  - 9.2. involved the contraventions of the ACL referred to in the declaration at paragraph 8 above;
  - 9.3. was carried out in the context of an enrolment process during which Unique's representative(s):
    - 9.3.1. took Jaycee Edwards through enrolment forms quickly, told her to sign the form at various locations marked with an X, and gave her no explanation as to what she was signing up to; and
    - 9.3.2. failed to inform Jaycee Edwards that she could cancel or terminate her enrolment in the course by the census date,
- was unconscionable, in contravention of s 21 of the ACL.

***Fiona Smith***

- 10. In or around June 2015, at the Bourke Sign-up Meeting, Unique:
  - 10.1. failed to inform Fiona Smith that she would have to pay for the course, and thereby engaged in conduct that was:
    - 10.1.1. misleading or deceptive or likely to mislead or deceive, in contravention of s 18 of the ACL; and
    - 10.1.2. was false or misleading with respect to the price of the course, in contravention of s29(1)(i) of the ACL;



- 10.2. failed to inform Fiona Smith of the cost of the course, and thereby engaged in conduct that was:
  - 10.2.1. misleading or deceptive or likely to mislead or deceive, in contravention of s 18 of the ACL;
  - 10.2.2. false or misleading with respect to the price of the course, in contravention of s 29(1)(i) of the ACL; and
- 10.3. failed to inform Fiona Smith that she would incur a debt unless she cancelled her enrolment in the course before the census date and thereby engaged in conduct that was misleading or deceptive or likely to mislead or deceive, in contravention of s 18 of the ACL.
11. At the Bourke Sign-up Meeting, Unique:
  - 11.1. did not properly inform Fiona Smith, in writing and before she agreed to sign up to Unique's course:
    - 11.1.1. that she was entitled to terminate the enrolment agreement prior to the end of the termination period; and
    - 11.1.2. the way in which that termination right could be exercised, in contravention of s 76 of the ACL;
  - 11.2. did not give Fiona Smith a copy of the enrolment agreement which she had signed, in contravention of s 78 of the ACL;
  - 11.3. failed to include in the enrolment agreement:
    - 11.3.1 a notice that conspicuously and prominently informed Fiona Smith of her right to terminate the enrolment agreement; and
    - 11.3.2. a notice which she could use to terminate the enrolment agreement, in contravention of s 79 of the ACL.
12. Unique's conduct towards Fiona Smith at the Bourke Sign-up Meeting:
  - 12.1. involved the exploitation of Fiona Smith, an Indigenous person who:





- 12.1.1. did not have an internet connection at her home which would permit her to do an on-line course;
  - 12.1.2. had limited computer literacy and had not previously had a computer until Unique gave or lent one to her;
  - 12.2. involved the contraventions of the ACL referred to in the declarations at paragraphs 10 and 11 above;
  - 12.3. was carried out in the context of an enrolment process during which Unique's representative(s):
    - 12.3.1. told Fiona Smith that she would receive a 'free' laptop for signing up, when the laptop was not in fact free;
    - 12.3.2. told Fiona Smith that the course would be paid for by Unique;
    - 12.3.3. took Fiona Smith through enrolment forms quickly, told her to sign the form at various locations marked with an X, and gave her no explanation as to what she was signing up to; and
    - 12.3.4. failed to inform Fiona Smith that she could cancel or terminate her enrolment in the course by the census date,
- was unconscionable, in contravention of s 21 of the ACL.

***June Smith***

- 13. In or around June 2015, at the Bourke Sign-up Meeting, Unique:
  - 13.1. failed to inform June Smith that she would have to pay for the course, and thereby engaged in conduct that was:
    - 13.1.1. misleading or deceptive or likely to mislead or deceive, in contravention of s 18 of the ACL; and
    - 13.1.2. was false or misleading with respect to the price of the course, in contravention of s29(1)(i) of the ACL;



- 13.2. failed to inform June Smith of the cost of the course, and thereby engaged in conduct that was:
  - 13.2.1. misleading or deceptive or likely to mislead or deceive, in contravention of s 18 of the ACL;
  - 13.2.2. false or misleading with respect to the price of the course, in contravention of s 29(1)(i) of the ACL; and
- 13.3. failed to inform June Smith that she would incur a debt unless she cancelled her enrolment in the course before the census date and thereby engaged in conduct that was misleading or deceptive or likely to mislead or deceive, in contravention of s 18 of the ACL.
14. At the Bourke Sign-up Meeting, Unique:
  - 14.1. did not properly inform June Smith, in writing and before she agreed to sign up to Unique's course:
    - 14.1.1. that she was entitled to terminate the enrolment agreement prior to the end of the termination period; and
    - 14.1.2. the way in which that termination right could be exercised, in contravention of s 76 of the ACL;
  - 14.2. did not give June Smith a copy of the enrolment agreement which she had signed, in contravention of s 78 of the ACL;
  - 14.3. failed to include:
    - 14.3.1. a notice that conspicuously and prominently informed June Smith of her right to terminate the enrolment agreement; and
    - 14.3.2. a notice which she could use to terminate the enrolment agreement, in contravention of s 79 of the ACL.
15. Unique's conduct towards June Smith at the Bourke Sign-up Meeting:



- 15.1. involved the exploitation of June Smith, an Indigenous person who at the time of the meeting:
  - 15.1.1. was 66 years old;
  - 15.1.2. had left school at age 12 or 13;
  - 15.1.3. had acquired basic literacy skills only in 2013;
  - 15.1.4. did not have a computer or an internet connection at her home which would permit her to do an on-line course;
- 15.2. involved the contraventions of the ACL referred to in the declarations at paragraphs 13 and 14 above;
- 15.3. was carried out in the context of an enrolment process during which Unique's representative(s):
  - 15.3.1. told June Smith that she would receive a 'free' laptop for signing up, when the laptop was not in fact free; and
  - 15.3.2. told June Smith that the course would be paid for by Unique;
  - 15.3.3. presented June Smith with forms, told her where to sign and gave her no explanation as to what she was signing up to; and
  - 15.3.4. failed to inform June Smith that she could cancel or terminate her enrolment in the course by the census date,was unconscionable, in contravention of s 21 of the ACL.

**THE COURT ORDERS THAT:**

16. The matter be listed for a further case management hearing on Monday, 13 November 2017 at 9:30am.
17. Costs be reserved.



Date that entry is stamped: 8 November 2017

*Warwick Soden*  
Registrar



**Schedule**

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District Registry: New South Wales

Division: General

Second Applicant

COMMONWEALTH OF AUSTRALIA