



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD1118/2015

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Applicant

LIFESTYLE PHOTOGRAPHERS PTY LTD ACN 102 810 640

First Respondent

EASY PAYMENTS PTY LTD ACN 102 810 640

Second Respondent

ORDER

JUDGE: JUSTICE MARKOVIC

DATE OF ORDER: 20 December 2016

WHERE MADE: Sydney

THE COURT DECLARES BY CONSENT THAT:

1. During the period from 2012 to 2014, the First Respondent, trading as Expression Sessions, by the conduct of sales consultants engaged by it, in trade or commerce, engaged in conduct in connection with the supply or possible supply to customers at its mobile photo studios (**Mobile Studios**) of photographic prints and other products derived from or incorporating photographic images (collectively **Photographic Products**) and packages that consisted of one or more products constituting the Photographic Products (**Packages**), that was, in all the circumstances, unconscionable within the meaning of s 21 of the *Australian Consumer Law* by:
 - (a) offering inducements (**Inducements**) to the customer to entice them to agree to have their child or children or grandchild or grandchildren (which will be referred to as **child or children**) participate in a photo shoot, but not disclosing to the customer that the predominant purpose of the photo shoot was to sell Photographic Products to them;



- (b) applying pressure on the customer by making repeated approaches to the customer to have them agree to have their child or children participate in a photo shoot;
- (c) not making or having available to the customer at its Mobile Studios:
 - (i) a price list;
 - (ii) prices of any Photographic Products in its promotional material; or
 - (iii) prices of any Photographic Products on any of its displays;
- (d) failing to advise the customer of the prices of its Photographic Products:
 - (i) when offering the Inducements; and/or
 - (ii) immediately prior to, during or immediately after the photo shoot offered to and accepted by the customer;
- (e) on the day of the photo shoot either:
 - (i) arranging a date for the customer to return to the Mobile Studio at the same or a different location for a viewing of the photographic prints or images taken of the customer's child or children (**Viewing**) and then engaging in the conduct at paras 1(f) to 1(p) below; or
 - (ii) having the customer sign a written document to confirm their intention to purchase particular Photographic Products and/or Packages (**Contract**), prior to the Viewing;
- (f) at the Viewing, displaying to the customer between approximately 20 and 30 photographic prints or images of the customer's child or children, which was designed to:
 - (i) create in the customer an emotional attachment to the photographic prints or images; and/or
 - (ii) create a sense of obligation in the customer to purchase the photographic prints and other Photographic Products; and/or
 - (iii) make the customer susceptible to undue pressure to buy the photographic prints and other Photographic Products;
- (g) applying pressure on the customer at the photo shoot or Viewing to enter into a Contract to buy Photographic Products by:



- (i) repeatedly using highly complimentary language to describe the photographic prints or images of the customer's child or children; and/or
 - (ii) informing the customer that the photographic prints would be destroyed if the customer did not buy them; and/or
 - (iii) rushing or pressuring the customer into making a quick decision about whether to buy the Photographic Products;
- (h) only offering to sell the photographic prints shown to the customer as part of a Package comprising, at least, the whole set of those photographic prints;
- (i) failing to disclose to the customer:
- (i) that the minimum price of each photographic print was \$75; and/or
 - (ii) the manner in which the Packages were priced; and/or
 - (iii) the cheapest options in the range of Photographic Products and/or Packages that Expression Sessions offered for sale;
- (j) with respect to the Contract:
- (i) failing to give the customer adequate time to read and understand the Contract; and/or
 - (ii) failing to explain the Contract to the customer, including the terms which applied to that particular customer transaction;
- (k) failing to explain to the customer what Photographic Products or Packages they would be agreeing to purchase by signing the Contract;
- (l) using unfair tactics and/or withholding information from the customer about the price of the Photographic Products or Packages that were to be supplied to the customer:
- (i) by writing the price on the Contract in a way that was either indecipherable or difficult to read; and/or
 - (ii) by stating to the customer a different price to that which was recorded in the Contract; and/or



- (iii) by informing the customer only of the instalment amount payable by the customer and not disclosing the total price and the duration of the Contract; and/or
 - (iv) by explaining the price in a way that was difficult to understand;
 - (m) failing to disclose the full Contract price until after the Contract had been completed by the sales consultant;
 - (n) accepting a guarantee from a third party related to the customer, but failing to advise the guarantor:
 - (i) the total amount guaranteed; and
 - (ii) the terms and conditions of the guarantee,
- (paras 1(a) to 1(n) are collectively, the **Sales Method**);
- (o) in selling the Photographic Products, not providing the customer with a cooling off period, which was not reasonably necessary for the protection of Expression Sessions' legitimate interests;
 - (p) in selling its Photographic Products, requiring the customer to comply with the following terms that were not reasonably necessary to protect Expression Sessions' legitimate interests:
 - (i) supplying the customer with photographic prints already produced by Expression Sessions on the day they signed a Contract with Expression Sessions in circumstances where the customer failed to pass a third party credit check but where another person who passed a third party credit check provided a guarantee and the customer paid a \$50 deposit;
 - (ii) if the customer was supplied with the photographic prints already produced by Expression Sessions on the day they signed the Contract:
 - (A) the customer was not supplied with the other Photographic Products specified in the Contract until six weeks after the Contract price was fully paid; and
 - (B) the customer could not cancel the Contract at any time;
 - (iii) if the customer was not supplied with the photographic prints selected by them on the day they signed the Contract;



- (A) the photographic prints and any other Photographic Products specified in the Contract were not supplied until six weeks after the Contract price was fully paid; and
- (B) a customer could cancel the Contract as a lay-by agreement only in writing to Expression Sessions' Head Office and upon payment of a \$314 fee,

(paras 1(o) and 1(p) above are collectively, the **Sales Terms**),

and thereby:

- (q) knowingly exploited its superior bargaining position relative to certain customers who were vulnerable to it, including customers who were Aboriginal or Torres Strait Islander, did not have English as their first language and had low levels of literacy and/or numeracy, in order to induce those customers to enter into contracts to purchase children's photography products and packages;
 - (r) used unfair tactics and undue pressure in seeking to sell the Photographic Products to its customers;
 - (s) did not provide clear and accurate information to its customers about the contractual terms, including the total price and package options, on which the photographic products were supplied;
 - (t) in selling the Photographic Products, required customers to comply with terms that were not reasonably necessary to protect Expression Sessions' legitimate interests; and
 - (u) by reason of the matter at para 1(s) above, making it difficult for its customers, including customers who were Aboriginal or Torres Strait Islander, did not have English as their first language and had low levels of literacy and/or numeracy, to understand the contractual terms on which the photographic products were supplied.
2. During the period from 2012 to 2014, the First Respondent, trading as Expression Sessions, by reason of the conduct identified in para 1 above, together with the conduct of Hussein Chaaban, Accounting Manager (Aus), engaged by the First Respondent, in trade or commerce, engaged in conduct in connection with the supply



or possible supply of children's Photographic Products and Packages to customers at its Mobile Studios that was, in all the circumstances, unconscionable within the meaning of s 21 of the *Australian Consumer Law* by:

- (a) advising, or authorising the giving of advice to, a customer or the customer's agent to the effect that the customer could not cancel a Contract because the customer:
 - (i) had already received some of the Photographic Products they had purchased; or
 - (ii) had signed the Contract;
- (b) demanding payment of debts allegedly owing under the Contract entered into by that customer by:
 - (i) sending or causing to be sent to customers letters from Expression Sessions or letters from a debt-collection agency acting on behalf of Expression Sessions; and
 - (ii) making, or authorising to be made, telephone calls and/or text messages from Expression Sessions,
in circumstances where:
 - (iii) such amounts were not lawfully payable by the customer under the Contract; and/or
 - (iv) the customer had been subjected to some or all of the Sale Methods (as particularised at paras 1(a) to 1(n) above).

3. Other than Ratified Contracts as defined in order 16, the whole or any part of a contract made between the First Respondent, trading as Expression Sessions, and customers who purchased Photographic Products from the First Respondent, trading as Expression Sessions, at Mobile Studios during the period from 2012 to 2014 inclusive, is void ab initio.

THE COURT ORDERS BY CONSENT THAT:

4. The First Respondent, whether by itself, its servants, agents or otherwise howsoever, is restrained for a period of three years, when engaging with a person for the purpose



of entering into any negotiation, discussion or dealing directed towards the offer of a photo shoot of the person's child or children, from continuing to negotiate, discuss or deal with the person, unless it has first disclosed to the person that the predominant purpose of the photo shoot is to sell Photographic Products or Packages to the person.

5. The First Respondent, whether by itself, its servants, agents or otherwise howsoever, is restrained for a period of three years, when engaging with a person for the purpose of entering into any negotiation, discussion or dealing directed towards the making of an agreement that includes a term that permits or has the effect of permitting Expression Sessions to direct debit payments from the person's bank account (**Payment Plan**) to supply Photographic Products or Packages to the person, from:

- (a) continuing to negotiate or deal with the person; or
 - (b) presenting agreement documents for signature by the person;
- unless:
- (c) it has:
 - (i) clearly explained to the person:
 - (A) the full effect and operation of the Payment Plan;
 - (B) the number and type of Photographic Products that are being purchased;
 - (C) the manner in which the total price of the Photographic Products or Package is calculated; and
 - (D) the total price of the Photographic Products or Package, the amount of each direct debit payment from the consumer's bank account, and the number and frequency of those payments;
 - (ii) after taking reasonable steps, formed the view that the person has the capacity to understand the terms of the agreement;
 - (iii) obtained the person's consent to enter into the agreement and Payment Plan; and
 - (d) the agreement documents given to the person prior to entering into the agreement:



- (i) clearly and conspicuously explain to the person the full effect and operation of the Payment Plan;
 - (ii) clearly and conspicuously set out the total price of the Photographic Products or Package and the amount, number and frequency of each direct debit payment from the person's bank account; and
 - (iii) clearly and specifically require the person's written consent to enter into the Payment Plan prior to any moneys being deducted from the person's nominated bank account.
6. Within 60 days of the date of this order, the First Respondent pay to the Commonwealth of Australia a pecuniary penalty in the sum of \$1,100,000 in respect of its contravention of s 21 of the Australian Consumer Law.
7. Within 60 days of the date of this order, the First Respondent publish, or cause to be published, on the website located at the URL <http://www.expressionsessions.com.au> or such other website as the First Respondent controls (**Website**) the notice set out in **Annexure A** to these orders (**Notice**), such that:
 - (a) the Notice shall be viewable by clicking a 'click-through' icon located on the homepage of the Website (**Webpage**);
 - (b) the 'click-through' icon referred to in the previous sub-paragraph is located at the top of the Webpage and is not obscured, blocked or interfered with by any operation of the Website;
 - (c) the 'click-through' icon shall have the following specifications – CLICK HERE”:
 - (i) have the words “FALSE, MISLEADING AND UNCONSCIONABLE CONDUCT BY EXPRESSION SESSIONS – NOTICE ORDERED BY FEDERAL COURT OF AUSTRALIA” in uppercase 18 point, bold, black sans serif font on a white background, centred and in a bordered box;
 - (ii) have the words “Click here for more information” in 14 point, black sans serif font on a white background, centred below the words “FALSE, MISLEADING AND UNCONSCIONABLE CONDUCT



BY EXPRESSION SESSIONS – NOTICE ORDERED BY FEDERAL COURT OF AUSTRALIA” and in the same bordered box;

- (iii) the bordered box and its contents, including the white space, is to operate in the form of a one-click hyper-link to the said notice; and
 - (iv) the border will be black;
 - (d) the Notice shall occupy the entire webpage that is accessed via the ‘click-through’ icon referred to above;
 - (e) the Notice shall have the following specifications:
 - (i) the heading of the Notice is to be in font that is no less than 12 point bold black sans serif font on white background;
 - (ii) the body of text of the Notice is to be in font that is no less than 12 point size black sans serif font on white background; and
 - (iii) the border and text of the Notice will be black;
 - (f) the Notice will be displayed on a stand-alone webpage that is coded in standard 'HTML' format;
 - (g) the Notice will not be displayed as a 'pop-up' or 'pop-under' window;
 - (h) the Website nor any of the webpages that are accessed via the ‘click-through’ icon referred to above shall have in place any mechanism which would preclude search engines from:
 - (i) indexing the page; or
 - (ii) scanning the page for links to follow; and
 - (i) the Notice shall remain on the Website for a period of 90 continuous days from the date it is first accessible on the Website.
8. Pursuant to s 239 of the *Australian Consumer Law*, the First Respondent will undertake the following process for redress of loss or damage suffered by, and prevention of further loss or damage to, customers who purchased Photographic Products from the First Respondent, trading as Expression Sessions, at Mobile Studios during the period from 2012 to 2014 inclusive:
- (a) within 60 days of these orders, the First Respondent will send a letter in the terms set out in **Annexure B** to these orders to all customers who purchased



- Photographic Products from the First Respondent, trading as Expression Sessions, at Mobile Studios during the period from 2012 to 2014 inclusive;
- (b) within 120 days of these orders, the First Respondent will refund all moneys paid to it by customers who purchased Photographic Products from the First Respondent, trading as Expression Sessions, at Mobile Studios during the period from 2012 to 2014 inclusive other than those customers named in the affidavit referred to in order 18 below by electronic funds transfer to the bank account from which each customer made their last payment or an alternative bank account nominated by the customer.
9. No later than 140 days from the date of these orders, the proper officer of the First Respondent file and serve on the Applicant an affidavit (or affidavits):
- (a) regarding compliance with the obligations under order 8 above as at the date the affidavit (or affidavits) is sworn or affirmed, including an itemised statement of amounts refunded to each customer; and
- (b) annexing a copy of the notices caused to be published in accordance with these orders.
10. A copy of the reasons for judgment, with the seal of the Court affixed thereon, be retained on the Court file for the purposes of s 137H(3) of the *Competition and Consumer Act 2010* (Cth).
11. The First Respondent pay the Applicant's costs of the proceedings.
12. The Second Respondent, whether by itself, its servants, agents or otherwise howsoever, is restrained from enforcing contracts or taking any steps to enforce contracts under which each of Witnesses A and C to J, as defined in the Amended Statement of Claim, purchased Photographic Products from the First Respondent, trading as Expression Sessions, at Mobile Studios during the period from 2012 to 2014 inclusive.
13. Within 60 days of these orders, the proper officer of the Second Respondent will file and serve on the Applicant and First Respondent an affidavit verifying a list of:
- (a) all customers who:



- (i) purchased Photographic Products from the First Respondent, trading as Expression Sessions, at Mobile Studios during the period from 2012 to 2014 inclusive; and
- (ii) have not completed their Contracts as at the date of these Orders (**Customers**),

containing at least the following information in relation to each customer:

- (iii) name;
- (iv) Contract date;
- (v) total Contract amount;
- (vi) total amount paid (if any) to the Second Respondent under each Contract.

14. Within 60 days of these orders, the Second Respondent will send a letter (email being acceptable) (**Customer Letter**) in the terms set out in **Annexure C** to the Customers who have been contacted by the Second Respondent (including by email) or from whom the Second Respondent has received any payment (**Current Customers**).
15. Within 14 days of sending the Customer Letter, the proper officer of the Second Respondent will file and serve on the Applicant an affidavit in relation to its compliance with its obligations in order 14.
16. The Second Respondent, whether by itself, its servants, agents or otherwise howsoever, is restrained from enforcing or taking any steps to enforce any Contract with a Current Customer unless the Second Respondent has received a response to the Customer Letter from that Current Customer indicating their consent to continue the Contract by the date stipulated in the Customer Letter (**Return Date**) (**Ratified Contracts**).
17. Other than in relation to the Ratified Contracts, the Second Respondent will refund all moneys paid to it by Current Customers by electronic funds transfer within 21 days of the Return Date.
18. Within 14 days of the Return Date, the proper officer of the Second Respondent will file and serve on the Applicant and First Respondent an affidavit verifying a list of those customers who responded to the Customer Letter.



19. Within 90 days of the Return Date, the proper officer of the Second Respondent will file and serve on the Applicant an affidavit verifying an itemised statement of amounts refunded to each customer in accordance with order 17.
20. As against the Second Respondent, there be no order as to costs.

Date that entry is stamped: 20 December 2016

Wamid Soden
Registrar

Annexure A



Following action by the Australian Competition and Consumer Commission (**ACCC**), the Federal Court of Australia has found that between 2012 and 2014 due to the sales method we used at shopping centres across Australia we have contravened the *Australian Consumer Law* by:

- engaging in misleading or deceptive conduct;
- making false or misleading representations; and
- engaging in unconscionable conduct.

Misleading or deceptive conduct

In particular, when approaching potential customers with the offer of a 'free photo shoot', 'free photos' or the opportunity to enter a photo in a 'free baby photo competition', we falsely represented that customers would:

- be able to receive one or more photographic prints of their child or children at no cost to themselves; and
- be able to receive one or more photographic prints of their child or children without entering into a contract with Expression Sessions.

Having offered customers the above inducements, we also failed to clearly explain to customers the price of the photographic products. When informing customers of the amount of instalments payable on photographic products purchased by them, we also failed to specify in a prominent way and as a single figure the total price payable by the customer for those photographic products.

Unconscionable conduct

In addition, many of our customers were from disadvantaged and vulnerable backgrounds, including Indigenous consumers or were financially distressed. We have also been found to have engaged in conduct that was, in all the circumstances, unconscionable. This conduct included:

- knowingly exploiting our superior bargaining position;
- using unfair tactics and undue pressure; and
- failing to provide clear and accurate information about our contractual terms, including the total price and package options, prior to a customer entering into a contract for photographic products.

Court orders

The Court has ordered Expression Sessions to:

- pay a penalty of \$1,100,000 and the ACCC's costs of the proceedings;
- refrain from engaging in similar conduct for a period of 3 years;
- publish this corrective notice; and
- provide refunds to consumers affected by our conduct.

For more information about the Australian Consumer Law, please visit www.accc.gov.au or call the ACCC Infocentre on 1300 302 502



Annexure B

Dear [Customer]

Expression Sessions – Entitlement to refund

Our records say that you bought photos from Expression Sessions between 2012 and 2014.

The Federal Court of Australia has found that Expression Sessions broke the law in the way it sold the photos at that time.

If you have received all of your photos: the Court has ordered Expression Sessions to refund the amounts you paid to us.

If you have not received all of your photos and do not wish to continue to pay: the Court has ordered Expression Sessions to refund the amounts you have paid so far.

Your refund will be paid into the same bank account used to make your last payment to us. If you would like to have your refund paid into a different account, please send your bank details (BSB and account number) to us by no later than **[Date of letter +21 days]** at:

The Proper Officer
Lifestyle Photographers Pty Ltd
Unit 62, 5 Gladstone Road
Castle Hill NSW 2154

If you wish to continue to pay and to receive the photos that you ordered: please contact Easy Payments to make further arrangements in relation to your order. Their contact details are:

The Proper Officer
Easy Payments
Unit 62, 5 Gladstone Road
Castle Hill NSW 2154

If you have any questions about this, please contact **[name]** at **[number]**.

Yours sincerely

Expression Sessions
(Lifestyle Photographers Pty Ltd)



Annexure C

Dear **[Customer]**

Expression Sessions

Our records say that you bought photos from Lifestyle Photographers Pty Ltd trading as Expression Sessions (**Expression Sessions**) between 2012 and 2014.

The Federal Court of Australia has found that Expression Sessions broke the law in the way it sold the photos at that time.

Our company - Easy Payments - bought the print production business from Expression Sessions on 29 December 2015. If you made payments after that date, the money was sent to Easy Payments.

The Court has ordered that if you do not wish to continue with your order, Easy Payments will refund the amounts you paid to Easy Payments.

If you want a refund and do not want to proceed with your order, you do not have to do anything. Easy Payments will pay back the money you paid to Easy Payments to your bank account on our file by **[Date of letter +81 days]**.

If you want the refund to go to a different bank account, please write and tell us the BSB and account number where you would like the refund paid by **[Date of letter + 60 days]**, failing which the refund will be paid into your bank account held on our file.

If you do want the photos and other products (if any) and you agree to pay Easy Payments what is owing under your Expression Sessions contract then please respond to this letter by no later than **[Date of letter +60 days]** confirming that you agree to pay the rest of the amount owing in accordance with the existing payment arrangements. Following payment of the full amount owing, Easy Payments will send you your ordered products within 6 weeks.

For payments made before 29 December 2015, you may contact Lifestyle Photographers Pty Ltd to determine whether any refund is available. The contact details for Lifestyle Photographers Pty Ltd are:

The Proper Officer
Lifestyle Photographers Pty Ltd
Unit 62 5 Gladstone Road
Castle Hill NSW 2154

If you have any questions about this, please contact **[name]** at **[number]**.

Yours sincerely

Easy Payments Pty Ltd