



# MODULE 3

## CONSUMER LAW

**Exam (Part B) Booklet:**  
**Introduction to Business Law (2105AFE)**  
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## Template: Misleading or deceptive conduct

Section **18** of the Australian Consumer Law (ACL) has been breached because {Party A: \_\_\_\_\_} has failed to {insert details of conduct - what they did/failed to do \_\_\_\_\_} in relation to trade or commerce. This would amount to misleading or deceptive conduct as it would perpetuate the mistaken belief that {what did they think would happen? \_\_\_\_\_}

CASE in breach of <b>s18</b> :	<b><i>Henjo Investments Pty Ltd v Collins Marrickville Ltd</i></b>
CASE <u>NOT</u> in breach of <b>s18</b> :	<b><i>McWilliams Wines Pty Ltd v McDonald's System of Australia Pty Ltd</i></b>

A reasonable person would be misled or deceived by such conduct as it suggests that {insert details of deceptive act \_\_\_\_\_}.

CASE: ***Eveready Australia Pty Ltd v Gillette Australia Pty Ltd***

***ACCC v Apple Pty Ltd***

CASE (if silence): ***Taco Company of Aust Inc v Taco Bell Pty Ltd***

Therefore {Party \_\_\_\_\_} has breached **s18** of ACL.

Remedies available to consumers (**s3**) include damages under **s236** being {\$\_\_\_\_\_\_}. The ACCC may seek remedies of an injunction **s232** to prevent further advertising of the {product\_\_\_\_\_} or remedial orders to remove all offending brochures, or corrective advertising **s246** or civil penalty **s224**.

*\* Check all available remedies under the Remedies Flow Chart to see if any more are relevant based on the facts in the question.*

## Template: False or misleading representations

Section **29(1)** of the Australian Consumer Law (ACL) has been breached because {Party A: \_\_\_\_\_} has made a false representation in trade or commerce by {Describe what they have done wrong \_\_\_\_\_}. (*TPC v Fiona's Clothes Horse Pty Ltd*).

Specifically there has been a breach of:

{Select from the following options – there may be more than one:.....}

**s29(1)(a) ACL** that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use

**s29(1)(b) ACL** that services are of a particular standard, quality, value or grade

**s29(1)(c) ACL** that goods are new

**s29(1)(d) ACL** that a particular person has agreed to acquire goods or services

**s29(1)(e) ACL** make a false or misleading representation that purports to be a testimonial by any person relating to goods or services; or

**s29(1)(f) ACL** make a false or misleading representation concerning:

- (i) a testimonial by any person; or
- (ii) a representation that purports to be such a testimonial; relating to goods or services; or

**s29(1)(g) ACL** that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits

**s29(1)(h) ACL** that the person making the representation has a sponsorship, approval or affiliation

**s29(1)(i) ACL** with respect to the price of goods or services

**s29(1)(j) ACL** concerning the availability of facilities for the repair of goods or of spare parts for goods

**s29(1)(k) ACL** concerning the place of origin of goods

**s29(1)(l) ACL** concerning the need for any goods or services

**s29(1)(m) ACL** concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy

**s29(1)(n) ACL** make a false or misleading representation concerning a requirement to pay for a contractual right that:

- (i) is wholly or partly equivalent to any condition, warranty, guarantee, right or remedy (including a guarantee under Division 1 of Part 3-2); and
- (ii) a person has under a law of the Commonwealth, a State or a Territory (other than an unwritten law).

Likewise, there is a breach of **s18 ACL** as the failure to *{insert details of what they failed to do \_\_\_\_\_}* would amount to misleading or deceptive conduct as it would perpetuate the mistaken belief that *{describe what did they think would happen? \_\_\_\_\_}*

CASE in breach of **s18**:

***Henjo Investments Pty Ltd v Collins Marrickville Ltd***

CASE NOT in breach of **s18**:

***McWilliams Wines Pty Ltd v McDonald's System of Australia Pty Ltd***

Therefore *{Party \_\_\_\_\_}* has breached *{insert sections s18, s29(1) etc \_\_\_\_\_}*

Remedies available to consumers (**s3**) include damages under **s236** being *{ \$ \_\_\_\_\_ }*. The ACCC may seek remedies of an injunction **s232** to prevent further advertising of the *{product \_\_\_\_\_}* ; or remedial orders to remove all offending brochures, or corrective advertising **s246** or civil penalty **s224** or fine **s151** for breach of **s29**.

*\* Check all available remedies under the Remedies Flow Chart to see if any more are relevant based on the facts in the question.*