

Trade Practices Act

Who is responsible for the repair of goods purchased by consumers?

There is often much confusion surrounding the issue of repairs and parts. Once a consumer has purchased goods from a manufacturer, are they then responsible for any damage that is incurred post-purchase? Alternatively, should the manufacturer be held accountable for fixing the faulty goods they have sold?

The Trade Practices Act specifies that the manufacturer must provide repair facilities for goods purchased by consumers. If such services are not freely available to consumers who have purchased faulty goods, the manufacturer will be legally responsible for repairing or replacing the products. Proving in court whether or not the manufacturer has failed to ensure that spare parts or repair facilities are available can be influenced by several considerations. Such considerations will be explored in the following case study, regarding repairs and parts.

Case Study: Panasonic Australia Pty Ltd v Burnstynner (1993) ATPR 41-224

In this case, the court attempted to determine whether or not it was unreasonable to be unable to repair a remote control that had been manufactured nine years earlier. In order to be successful, the court decided that the consumer would need to verify that:

- the spare part is necessary to achieve a repair or repairs to consumer goods;
- that this part is not realistically available;
- that the manufacturer acted unfairly in failing to ensure such availability; and
- that as a result, the consumer suffered loss.

The objective of this case was to test whether it is fair for the consumer to be placed in a position in which repairs or spare parts were not accessible by the manufacturer. The court decided that the failure was not unreasonable in these circumstances.

According to the Trade Practices Act, a manufacturer will not be accountable in circumstances where:

- reasonable action is taken by the manufacturer to make sure that notice would be given to the consumer at or before the time of the sale that repair facilities will not be available or that they will not be accessible after a certain period of time;
- the goods have been sold at auction.

Non-compliance with Express Warranties

A buyer attains the right of action when it comes to loss or damage suffered when goods fail to comply with an express warranty. The express warranty specifies elements such as:

- the quality, performance or characteristics of the goods;

- the provisions of services that are or may at any time be required in respect of the goods;
- the supply of parts that are or may at any time be required for the goods;
- the availability in the future of identical goods or of goods constituting or forming part of a set of which the subject goods form part.

If the buyer purchases something, and then the consumer alleges something is wrong according to an assertion, or guarantee that was made by the manufacturer, then the consumer will be given benefit of the doubt unless the manufacturer can prove that such an assertion was never made. Therefore, if the manufacturer wants to prevent such an outcome, they will have to take quite stringent measures during the selling process, e.g. contracts, to ensure they can prove in court which terms were and were not originally set.

The agreement is also extended to the promotion, advertisement, labeling or guarantees, as well as to contractual warranties. Therefore, manufacturers must be extremely careful and often seek legal advice when marketing and selling their products.