



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

**District Court**

**[2023] NZDT 123**

**APPLICANT**      **CF**

**RESPONDENT**    **XQ Ltd**

**The Tribunal orders:**

XQ Ltd is to pay the sum of \$1,239.65 to CF on or before Friday 31 March 2023.

**Reasons:**

1. On 14 September 2022, CF purchased a [computer] via [online platform] and paid \$1,220.00 by bank transfer to an account in the name of XQ Ltd. He was promised that a shipping number would be released in two to three business days, but this did not happen. Six days later, XQ Ltd said that there was an attack on the supply, and asked him for more money to help. CF contacted his bank to try to get his money back, but was told that he could not reverse the transfer.
2. CF now claims \$1,250.00 from XQ Ltd, comprising a refund together with a contribution towards his \$45.00 filing fee.
3. XQ Ltd did not attend the hearing or present any defence to the claim. The absence of a party does not prevent the hearing going ahead.
4. The issues to be determined are:
  - a) Did XQ Ltd mislead CF regarding its ability or intention to supply the product?
  - b) What sum, if any, must XQ Ltd pay to CF?

**Did XQ Ltd mislead CF regarding its ability or intention to supply the product?**

5. Section 9 of the Fair Trading Act 1986 (FTA) provides, “No person shall, in trade, engage in conduct that is misleading or deceptive or likely to mislead or deceive.” It is not necessary that there be any intention to mislead or deceive, so long as the conduct has that effect.
6. I find it more likely than not that XQ Ltd had no intention of supplying the [Computer], and that this was a simple scam. Also, XQ Ltd misled CF into believing that the product was in its possession, since it said that pick-up was available from its physical store in [City], whereas later communications suggest that XQ Ltd was engaged in “drop shipping” if indeed it had any intention of supplying the product at all. I therefore find that XQ Ltd misled CF regarding its ability and intention to supply the product.

**What sum, if any, must XQ Ltd pay to CF?**

7. If a breach of FTA s 9 causes a person to suffer loss, the Tribunal may grant a remedy under s 43. CF is therefore entitled to a refund of his money. However, he cannot recover the Tribunal filing fee since s 43 of the Disputes Tribunal Act 1988 provides that, with very limited exceptions

that do not apply here, costs shall not be awarded against a party to any proceedings before a Tribunal.

8. Under s 20(1) of the Disputes Tribunal Act 1988, the Tribunal may, if it thinks fit, award interest calculated in accordance with Schedule 2 of the Interest on Money Claims Act 2016 for the whole or any part of the period from when the cause of action arose to the date of the order. Since I have found on the balance of probabilities that XQ Ltd obtained the money by deception, I have awarded interest from 14 September 2022 to the date of this order, which comes to \$19.65. The total sum payable is therefore \$1,239.65.

**Referee: E Paton-Simpson**

**Date: 10 March 2023**



## Information for Parties

### Rehearings

You can apply for a rehearing if you believe that something prevented the proper decision from being made: for example, the relevant information was not available at the time.

If you wish to apply for a rehearing, you can apply online, download a form from the Disputes Tribunal website or obtain an application form from any Tribunal office. The application must be lodged within 20 working days of the decision having been made. If you are applying outside of the 20 working day timeframe, you must also fill out an Application for Rehearing Out of Time.

PLEASE NOTE: A rehearing will not be granted just because you disagree with the decision.

### Grounds for Appeal

There are very limited grounds for appealing a decision of the Tribunal. Specifically, the Referee conducted the proceedings (or a Tribunal investigator carried out an enquiry) in a way that was unfair and prejudiced the result of the proceedings. This means you consider there was a breach of natural justice, as a result of procedural unfairness that affected the result of the proceedings.

PLEASE NOTE: Parties need to be aware they cannot appeal a Referee's finding of fact. Where a Referee has made a decision on the issues raised as part of the Disputes Tribunal hearing there is no jurisdiction for the District Court to reach a finding different to that of the Referee.

A Notice of Appeal may be obtained from the Ministry of Justice, Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 20 working days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside 20 working days if you have been granted an extension of time by a District Court Judge. To apply for an extension of time you must file an Interlocutory Application on Notice and a supporting affidavit, then serve it on the other parties. There is a fee for this application. District Court proceedings are more complex than Disputes Tribunal proceedings, and you may wish to seek legal advice.

The District Court may, on determination of the appeal, award such costs to either party as it sees fit.

### Enforcement of Tribunal Decisions

If the Order or Agreed Settlement is not complied with, you can apply to the Collections Unit of the District Court to have the order enforced.

Application forms and information about the different civil enforcement options are available on the Ministry of Justice's civil debt page: <http://www.justice.govt.nz/fines/about-civil-debt/collect-civil-debt>

For Civil Enforcement enquiries, please phone 0800 233 222.

### Help and Further Information

Further information and contact details are available on our website: <http://disputestribunal.govt.nz>.