

IN THE COUNTY COURT
OF VICTORIA AT
MELBOURNE

No: CI-____-_____

BETWEEN

MMP Greater Geelong Pty Ltd ACN 159 938 806

Plaintiff

Hayeswinkle Holding Pty Ltd ACN 160 671 483

First Defendant

Team 3216 Pty Ltd ACN 134 067 655

Second Defendant

WRIT

Date of document: 11 February 2013

Filed on behalf of: The Plaintiff

Prepared by: Thexton Lawyers
Level 2, 451 Little Bourke Street,
Melbourne, VIC 3000

Solicitor code: 41724

Tel: 9670 7330

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TO THE DEFENDANT

TAKE NOTICE that this proceeding has been brought against you by the plaintiff for the claim set out in this writ. IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, YOU MUST GIVE NOTICE of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by-

- (a) filing a "Notice of Appearance" in the Registrar's office in the County Court Registry, 250 William Street, Melbourne, or, where the writ has been filed in the office of a Registrar out of Melbourne, in the office of that Registrar; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

IF YOU FAIL to file an appearance within the proper time, the plaintiff may OBTAIN JUDGMENT AGAINST YOU on the claim without further notice.

*THE PROPER TIME TO FILE AN APPEARANCE is as follows-

- (a) where you are served with the writ in Victoria, within 10 days after service;
- (b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served in the writ in New Zealand or in Papua New Guinea, within 28 days after service;
- (d) where you are served with the writ in any other place, within 42 days after service.

IF the plaintiff claims a debt only and you pay that debt, namely, \$ _____ and \$ _____ for legal costs to the plaintiff or his solicitor within the proper time for appearance, this proceeding will come to an end. Notwithstanding the payment you may have the costs taxed by the Court.

FILED

Registrar

THIS WRIT is to be served within one year from the date it is filed or within such further period as the Court orders.

Plaintiff's indorsement of a **statement of claim** or of a statement sufficient to give with reasonable particularity notice of the nature of the claim and the cause thereof and of the relief or remedy sought.

**IN THE COUNTY COURT
OF VICTORIA AT
MELBOURNE**

No of

**BETWEEN
MMP Greater Geelong Pty Ltd A.C.N. 159 938 806**

Plaintiff

**and
Hayeswinkle Holding Pty Ltd A.C.N. 160 671 483**

First Defendant

**and
Team 3216 Pty Ltd A.C.N. 134 067 655**

Second Defendant

STATEMENT OF CLAIM

1. The Plaintiff is and was at all material times a corporation and is capable of suing in its own name.
2. The First Defendant is and was at all material times a corporation and is capable of being sued.
3. The Second Defendant is and was at all material times a corporation and is capable of being sued.
4. By a Subscription Agreement dated on or about 26 October 2012 ("the Subscription Agreement") the First Defendant subscribed to 50,000 CRPS shares in the issued capital of the Plaintiff and agreed to enter into or to cause its nominee to enter into an Advertising Agreement with the Plaintiff committing to an Agreed Advertising Spend of \$470,400 per annum.

PARTICULARS

The Subscription Agreement is in writing and a copy may be inspected at the offices of the Plaintiff's solicitors by prior appointment.

5. On or about 26 October 2012 the First Defendant caused its nominee, Team 3216 Pty Ltd A.C.N. 134 067 655, the Second Defendant, to enter into an Advertising Agreement ("the Advertising Agreement") with the Plaintiff committing to an Agreed Advertising Spend of \$470,400 per annum.

PARTICULARS

The Advertising Agreement is in writing and a copy may be inspected at the offices of the Plaintiff's solicitors by prior appointment.

6. On or about 26 October 2012 the First Defendant entered into a Shareholders Agreement with the Plaintiff ("The Shareholders Agreement").

PARTICULARS

The Shareholders Agreement is in writing and a copy may be inspected at the offices of the Plaintiff's solicitors by prior appointment.

7. It was a term of the Advertising Agreement, amongst others, that the First and Second Defendants:
 - (a) shall market and promote the Publications to the public at large in a manner agreed after consultation with the Company;
 - (b) shall facilitate the introduction of and actively market the Publication to people on the Agent's Database in accordance with this clause 4, including marketing and promoting the Publication to its Agent Database; and
 - (c) shall ensure that the Publication is introduced and promote[d] to the people in the Agent Database and shall market and promote the Publication to potential clients.

8. The First and Second Defendants are in breach of their obligations pursuant to the Advertising Agreement by, amongst other things:
 - (a) failing to comply with their obligations as set out in paragraphs 7(a), 7(b) and 7(c) above;

 - (b) stating that they do not intend to comply with their obligations;

 - (c) breaching Sections 48A of the *Estate Agents Act* 1980 (Vic) and Sections 176 and 179 of the *Crimes Act* 1958 by accepting rebates and secret commissions from the *Geelong Advertiser* in return for the promise to place vendor advertisements in the *Geelong Advertiser*. The *Geelong Advertiser* is owned by News Limited whose senior Victorian and national executives are aware of the payments of these rebates and commissions. The rebates and secret commissions have been paid in various forms, including but not limited to, yearly payments of up to \$50,000.00, hospitality, a diamond ring bought by the *Geelong Advertiser* for Mrs. Hayes, uncommercial discounting and the waiver or postponement of long overdue debt. Further particulars will be provided after discovery.

 - (d) entering into a written agreement with the *Geelong Advertiser* or a related corporation at the instigation of Mr Tom Panos, a senior property executive with News Limited. Further particulars will be provided after discovery

 - (e) between 15 November 2012 and 20 December 2012 the First and Second Defendants complied with their obligations as set out in paragraphs 7(a), 7(b) and 7(c) above and all properties being sold by the First Defendant, as agent for various vendors, was advertised exclusively in the Plaintiff's publications. In late December 2012 or early January 2013 the First and Second Defendants actively discouraged vendors from placing their advertising in the Plaintiff's publications, and encouraged vendors to place their advertisements in the *Geelong Advertiser* resulting in all properties being sold by the First Defendant, as agent for various vendors, being advertised exclusively in the *Geelong Advertiser*. The First Defendant's vendors have taken the decision to place their advertising in the *Geelong Advertiser* despite the superior nature and significantly greater distribution of the Plaintiff's publications.

9. Clause 3.4 of the Shareholders Agreement provides:

Each party agrees that:

3.4.1 in order to further the objectives of the Company, it is to co-operate with each other party in relation to this Agreement; and

3.4.3 it will at all times perform its obligations under this Agreement in the utmost good faith and reasonably (including any discretions reserved in this Agreement for its benefit and whether or not expressed to be exercised reasonably or not) and must not seek to circumvent or permit circumvention of the operation of this Agreement or impair the value of or permit the impairment of the value of any right granted under this Agreement by any legal or natural person which is directly or indirectly controlled or otherwise influenced by that party doing anything which that party has agreed not to do pursuant to or which is inconsistent with the terms of this Agreement, or failing to do anything which the party has agreed to do pursuant to the terms of this Agreement. This clause is not intended to exclude any term implied by law or in fact.

10. Clause 9.2 of the Shareholders Agreement provides:

In the event that the Agent Shareholder appoints a nominee to enter into an Advertising Agreement with the Company, the Agent Shareholder represents and warrants that it will use its best endeavours to attempt to ensure that the nominee complies with its obligations under the Advertising Agreement and that it shall notify the Company immediately of any fact, matter or thing relating to the nominee which might be directly or indirectly relevant to the business of the Company.

11. The First Defendant is in breach of its obligations pursuant to the Shareholders Agreement by, amongst other things:

(a) failing to comply with its obligations as set out in paragraphs 9 and 10 above:

(b) stating that it does not intend to comply with its obligations;

(c) breaching Sections 48A of the *Estate Agents Act 1980 (Vic)* and Sections 176 and 179 of the *Crimes Act 1958* by accepting rebates and secret commissions from the *Geelong Advertiser* in return for the promise to place vendor advertisements in the *Geelong Advertiser*. The *Geelong Advertiser* is owned by News Limited whose senior Victorian and national executives are aware of the payments of these rebates and commissions. The rebates and secret commissions have been paid in various forms, including but not limited to, yearly payments of up to \$50,000.00, hospitality, a diamond ring bought by the *Geelong Advertiser* for Mrs. Hayes, uncommercial discounting and the waiver or postponement of long overdue debt. Further particulars will be provided after discovery.

(d) entering into a written agreement with the *Geelong Advertiser* or a related corporation at the instigation of Mr Tom Panos, a senior property executive with News Limited. Further particulars will be provided after discovery.

(e) between 15 November 2012 and 20 December 2012 the First and Second Defendants complied with their obligations as set out in paragraphs 7(a), 7(b) and 7(c) above and all properties being sold by the First Defendant, as agent for various vendors, was advertised exclusively in the Plaintiff's publications. In late December 2012 or early January 2013 the First and Second Defendants actively discouraged vendors from placing their advertising in the Plaintiff's publications, and encouraged vendors to place their advertisements in the *Geelong Advertiser* resulting in all properties being sold by the First Defendant, as agent for various vendors, being advertised exclusively in the *Geelong Advertiser*. The First Defendant's vendors have taken the decision to place their advertising in the *Geelong Advertiser* despite the superior nature and significantly greater distribution of the Plaintiff's publications.

12. As a result of the breaches outlined in paragraphs 8 and 11 above, the Plaintiff has suffered and continues to suffer loss and damage.

PARTICULARS

Loss of revenue for the anticipated term of the Advertising Agreement of three years from 26 October 2012 to 25 October 2015 being \$470,400 per year totalling \$1,411,200 less revenue received to date in the sum of \$18,480 bringing the total loss claimed to \$1,392,720. The loss may be adjusted after completion of end of financial year financial statements. Further particulars will be provided prior to trial.

AND THE PLAINTIFF CLAIMS AGAINST THE FIRST AND SECOND DEFENDANTS

- A. DAMAGES IN THE SUM OF \$1,392,720.00**
- B. INTEREST**
- C. COSTS**
- D. SUCH FURTHER OR OTHER ORDER AS THIS HONOURABLE COURT DEEMS APPROPRIATE.**

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Solicitor for the plaintiff

1. Place of trial— Melbourne
2. Mode of trial—Judge Alone
3. This writ was filed by— Thexton Lawyers of Level 2, 451 Little Bourke Street, Melbourne VIC 3000 on behalf of MMP Greater Geelong Pty Ltd
4. The address of the plaintiff is—C/- Lawler Draper Dillon, Level 10, 440 Collins Street, Melbourne, VIC 3000
5. The address for service of the plaintiff is—Thexton Lawyers, Level 2, 451 Little Bourke Street, Melbourne, VIC 3000
6. The address of the first defendant is— 79 Barrabool Road, Highton, VIC 3216
7. The address of the second defendant is— C/- Momentum Financial Group, 2 Downes Lane, Geelong, VIC 3220