

Herron, William

From: Gregson, Scott
Sent: Monday, 8 September 2014 7:21 PM
To: Sims, Rod; Bezzi, Marcus
Cc: Cosgrave, Michael; Ayres, Lisa Anne; Woolbank, Emily
Subject: RE: Letter from Village Roadshow Limited [SEC=UNCLASSIFIED]
Attachments: Letter to Village Roadshow September 2014.docx

Security Classification:
UNCLASSIFIED

Evening Rod

Further to our email exchanges below on the matters raised by Village Roadshow, I am settling the attached draft to Mr Burke to facilitate sending tomorrow. The letter confirms my preliminary assessment that the conduct is unlikely to be in trade or commerce. I am currently the signatory but happy to adjust if you would prefer to respond.

Regards

Scott Gregson

Executive General Manager, Consumer Enforcement
Australian Competition & Consumer Commission
Level 3, 23 Marcus Clarke St, Canberra, ACT, 2601 | GPO Box 3131, Canberra, ACT, 2601
T: 02 62431350 | M: 0438 288 246

From: Sims, Rod
Sent: Monday, 1 September 2014 11:31 AM
To: Bezzi, Marcus; Gregson, Scott
Cc: Cosgrave, Michael; Ayres, Lisa Anne; Woolbank, Emily
Subject: RE: Letter from Village Roadshow Limited [SEC=UNCLASSIFIED]

Thanks all, and great to get something back to him next week.

Regards
Rod

Rod Sims

Chairman

Australian Competition & Consumer Commission
23 Marcus Clarke Street Canberra 2601 <http://www.accc.gov.au>
T: +61 2 6243 1131

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From: Bezzi, Marcus
Sent: Monday, 1 September 2014 9:30 AM
To: Gregson, Scott; Sims, Rod
Cc: Cosgrave, Michael; Ayres, Lisa Anne; Woolbank, Emily
Subject: RE: Letter from Village Roadshow Limited [SEC=UNCLASSIFIED]

Scott,

I agree this really does seem to be political comment. I notice that Village Roadshow have been putting newspaper ads into the paper campaigning for stronger laws to protect their Intellectual Property and deter the members of the community who access audio visual content using the internet. This letter seems to be part of that campaign. I understand they haven't taken their own proceedings under the ACL against iiNet. I recall they were part of a group that took breach of IP rights proceedings against iiNet. My recollection is that those proceedings failed.

Marcus

Marcus Bezzi

Executive General Manager | Competition Enforcement
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From: Gregson, Scott
Sent: Monday, 1 September 2014 8:58 AM
To: Sims, Rod
Cc: Bezzi, Marcus; Cosgrave, Michael; Ayres, Lisa Anne; Woolbank, Emily
Subject: RE: Letter from Village Roadshow Limited [SEC=UNCLASSIFIED]

Thanks Rod

I have had a quick look at the letter and the relevant website representations. They relate to iiNet's view on proposed government policy response to IP piracy. Consideration will need to deal with the threshold issue of 'trade or commerce' with much of the material going to public debate. As Mr Burke himself says in his letter ... "iiNet has established a regime of encouraging people to email our political leaders on a premise...".

We will look at this further and get a response out in the next week.

Regards

Scott Gregson

Executive General Manager, Consumer Enforcement
Australian Competition & Consumer Commission
Level 3, 23 Marcus Clarke St, Canberra, ACT, 2601 | GPO Box 3131, Canberra, ACT, 2601
T: 02 62431350 | M: 0438 288 246

From: Sims, Rod
Sent: Monday, 1 September 2014 8:00 AM
To: Gregson, Scott
Cc: Bezzi, Marcus; Cosgrave, Michael; Ayres, Lisa Anne
Subject: FW: Letter from Village Roadshow Limited [SEC=UNCLASSIFIED]

Scott, we will need to respond to this at some stage.

Thanks

Rod

-----Original Message-----

From: Graham Burke [Graham_Burke@vrl.com.au]

Sent: Monday, September 01, 2014 07:42 AM AUS Eastern Standard Time

To: Sims, Rod

Subject: Letter from Village Roadshow Limited

Please see the attached letter.

Warmest Regards

Graham Burke

Co-Executive Chairman, Co-Chief Executive Officer

Village Roadshow Limited

500 Chapel Street, South Yarra Vic 3141

PO Box 2275, Prahran Vic 3181

Tel: +61 3 9829 0667

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For General Enquiries please contact the appropriate division as listed on our website <http://www.villageroadshow.com.au/>



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Consumer
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Graham W Burke
Co-Chairman and Co-Chief Executive Officer
Village Roadshow Limited
PO Box 2275
Prahran VIC 3181

Dear Mr Burke

Re: Allegation of misleading and deceptive conduct against iiNet Limited

Thank you for your correspondence dated 29 August 2014 to the Chairman of the Australian Competition and Consumer Commission in which you raise concerns regarding possible misleading and deceptive conduct by iiNet Limited. Mr Sims has passed your letter onto me for my consideration.

You refer to a number of representations made by iiNet in their blog titled 'Fighting for our Customers'. This publication appears to set out iiNet's position in relation to the proposed government response to internet piracy. It canvases the approach taken in other countries, the effectiveness of these approaches and encourages consumers to contact MPs on the issue. I understand that you are concerned that these statements may have the potential to mislead consumers regarding issues around internet piracy and illegal downloads.

A legal threshold question in considering whether conduct might be considered misleading under the Australian Consumer Law is whether the activities of concern are 'in trade or commerce.'

In making this assessment, the ACCC has regard to principles set out by the Courts. These include whether the conduct appears to promote or provide a contribution to public debate on issues of general concern to the community (for examples laws or government policy). On the other hand, whether there is a trading relationship with the audience and whether the conduct forms part of a commercial transaction.

While these factors are not exhaustive and each matter must be considered in its context, after reviewing the information outlined in your letter, it is my view that it is unlikely that the conduct you refer to is in trade or commerce. Rather, the representations appear to have been made in the context of public discourse, with many of the representations going towards the wider public debate on an issue of policy.

I would be pleased to receive further information or hear from you on the issue of trade or commerce noting that I have only had regard to limited information in considering the matter to date. Noting that the ACCC is not in a position to pursue all matters raised with it, you may also wish to obtain your own advice on the matters noting that the law provides private rights of action.

If you have any questions or concerns about this letter, please do not hesitate to contact me on (02) 6243 1350 or Emily Woolbank on (02) 6243 1246.

Yours sincerely

Scott Gregson
Executive General Manager
Consumer Enforcement