

**COMPETITION AND CONSUMER ACT 2010**

**Undertaking to the Australian Competition and Consumer Commission given for the purposes of section 87B**

**by**

**Multimedia International Services Pty Ltd  
ACN 108 177 555**

**Persons giving this undertaking**

1. This Undertaking is given to the Australian Competition and Consumer Commission (the ACCC) by Multimedia International Services Pty Ltd (ACN 108 177 555) (Multimedia) of c/- The MBA Partnership Pty Ltd, Pivotal Point, Level 3, 50 Marine Pde, Southport in the State of Queensland, for the purposes of section 87B of the Competition and Consumer Act 2010 (the Act).

**Background**

2. Multimedia is a company duly incorporated pursuant to the *Corporations Act 2001* (Cth) and is registered in Queensland.
3. Multimedia is a corporation within the meaning of s 4 of the Act, which was incorporated in March 2004. It uses the trade name 'The Community Network'. Since incorporation, and relevantly for this undertaking since 1 January 2011, Multimedia has carried on the business, in trade or commerce, of supplying small businesses in Australia with advertising services. This involves:
  - a. Multimedia seeking out businesses at particular locations in Australia where it can install advertising screens;
  - b. Multimedia entering into contracts with those businesses which enable Multimedia to install its advertising screens at their premises, at no cost to the businesses, which would show advertisements for advertising customers and the host businesses in a loop;
  - c. Multimedia seeking out small businesses in the areas surrounding the host business and gauging their interest in advertising with Multimedia on screens at that location;
  - d. if a small business is interested in advertising with Multimedia, Multimedia makes an appointment for a sales representative to visit the small business. At

the appointment, the small business is asked to decide whether to advertise with Multimedia and, if it decides to proceed, sign a contract with Multimedia at the appointment. Multimedia's standard contract provided for the advertiser to make periodic payments to Multimedia in return for their advertising being displayed;

- e. Multimedia taking a deposit payment from the advertiser and preparing its advertisement;
  - f. the advertiser either accepting or making changes to the advertisement; and
  - g. once the advertisement is approved, uploading it to the advertising screens at the host business.
4. Between 1 January 2011 and 31 March 2015 (the relevant period), Multimedia used a 2 page standard form contract for its advertising agreements which contained details on its front page including the advertising location, price and signature panel. The contract also contained terms and conditions on the reverse which were in small print (the fine print). Features of the contract included terms that:
- a. the contract was not subject to cancellation by the advertiser and was not subject to a cooling-off period;
  - b. the advertiser would have no recourse against Multimedia in the event of delays by Multimedia in providing the services;
  - c. Multimedia reserved the right to change the location of an advertiser's advertisement to a location selected by Multimedia, including where the site listed in the contract ceased to be available or became unsuitable; and
  - d. the contract would continue automatically after the initial 2 year period, unless and until the advertiser provided 12 months' notice, delivered in writing by registered post, that it did not wish the contract to roll-over (the roll-over clause).

#### **Conduct of concern**

5. The ACCC is concerned that Multimedia failed to adequately disclose to some of its customers the fine print that qualified the roll-over clause, and that this had the

potential to be misleading or deceptive to potential advertisers in contravention of section 18 of the ACL.

6. In particular, for the purposes of this Undertaking, the ACCC is concerned that the front page of the standard form contract stated that the contract term was for a minimum of **two years (bolded)**, had boxes for the insertion of payment amounts for 1<sup>st</sup> year, 2<sup>nd</sup> year, and not any subsequent year, and beneath the signature block had the following words in bold text:

**I fully understand that this is an automatically renewable advertising services agreement as per clause 9 of the terms & conditions & not the sale of goods. No monopoly rights granted. Any alteration to this agreement must be initialled by both parties.**

7. However, the fine print provided that the contract would automatically continue after two years, unless and until the advertiser provided 12 months' notice. This notice had to be given in writing, and delivered by registered post.
8. Multimedia's sales representatives, on some occasions, failed to bring the existence of the roll-over clause and the termination requirements to the attention of particular small businesses.
9. Multimedia acknowledges the ACCC's concerns.

#### **Contraventions**

10. The ACCC has instituted Federal Court proceedings against Multimedia, alleging breaches by Multimedia of sections 18, 21, 29 and 36 of the ACL including by its conduct in relation to three small businesses: Bethanie's Jumping Castles, Corben Chiropractic Pty Ltd and Color Studio Pty Ltd.
11. The ACCC and Multimedia have agreed to resolve those proceedings, and this undertaking is offered by Multimedia to the ACCC as part of the resolution of those proceedings.
12. In cooperating with the ACCC and reaching resolution as to the liability aspect of the Federal Court proceedings against it, Multimedia is making admissions in those proceedings as to contraventions of the ACL, as well as offering this undertaking to address the ACCC's concerns.

13. **Multimedia has also now provided refunds to each of Bethanie's Jumping Castles, Corben Chiropractic Pty Ltd, Color Studio Pty Ltd, Tidy Car WA and Veive La Beauty Pty Ltd of the payments made by those small businesses to Multimedia arising from the conduct the subject of the Federal Court proceedings.**

**Commencement of undertaking**

14. **This Undertaking comes into effect when:**
- a. **this Undertaking is executed by Multimedia; and**
  - b. **this Undertaking so executed is accepted by the ACCC.**
15. **Upon the commencement of this Undertaking Multimedia undertakes to assume the obligations set out in paragraphs 16 to 19 below.**

**Undertakings**

***Contracts and changing advertising locations***

16. **Multimedia undertakes that for a period of 5 years from the commencement of this Undertaking it will not, in trade or commerce, enter into any contract with a potential advertiser for the provision of advertising services by Multimedia which contains a term that it will renew by way of automatic rollover, unless:**
- a. **Multimedia draws the roll-over clause to the attention of the potential advertiser; and**
  - b. **for contracts entered into after 60 days from the commencement of this undertaking, Multimedia offers the potential advertiser, at the time of entering into the contract, an option (without additional penalty) not to have the contract renew by way of automatic rollover; and**
  - c. **the contract permits the advertiser to terminate the contract by giving written notice up to 2 months prior to the commencement of the initial renewal period; and**
  - d. **following renewal, the contract permits the advertiser to terminate the contract without penalty by giving written notice up to 2 months prior to the end of the renewal period.**

17. Multimedia undertakes that for a period of 5 years from the commencement of this undertaking it will not, in trade or commerce, enforce a roll-over provision of an advertising contract existing at the commencement of this Undertaking, in circumstances where the advertiser has provided 2-months written notice to Multimedia that it does not wish to continue with the contract at the end of the contractual period (whether that is the initial contract period or a roll-over period).
18. Multimedia undertakes that for a period of 5 years from the commencement of this undertaking it will not, in trade or commerce, where it has entered or enters into a contract with an advertiser which nominates a particular site at which it is proposed that the advertiser's advertisement be displayed (the nominated site), change the nominated site prior to the display of the advertiser's advertisement, unless Multimedia:
  - a. has first informed the advertiser in writing of the proposed change of site; and
  - b. has provided the advertiser in writing with the option of immediately terminating the contract at no further cost to the advertiser; and
  - c. keeps a written record of the advertiser's response to the matters in the preceding subparagraphs.

***Refunds in relation to particular small businesses***

19. Multimedia undertakes that it will not take any further steps, directly or indirectly, to pursue further payments from the small businesses listed below arising from the conduct that is the subject of the Federal Court proceedings:
  - a. Bethanie's Jumping Castles;
  - b. Tidy Car WA;
  - c. Corben Chiropractic Pty Ltd;
  - d. Veive La Beauty Pty Ltd; and
  - e. Color Studio Pty Ltd.

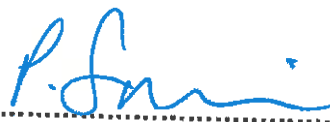
**Acknowledgements**

20. Multimedia acknowledges that:

- a. the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;
- b. the ACCC will, from time to time, make public reference to this Undertaking, including in media statements and in ACCC publications; and
- c. this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed by

Multimedia International Services Pty Ltd (ACN 108 177 555) pursuant to section 127(1) of the Corporations Act 2001.



Secretary / Director

PAUL SIMPSON

Print name



Director

DAVID RAVENSROFT

Print name

This 27 day of April 2016

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION PURSUANT TO SECTION 87B OF THE COMPETITION AND CONSUMER ACT 2010



Delia Ann Rickard  
Acting Chair

This 27 day of April 2016