

Undertakings to the Commerce Commission under s 46A of the Fair Trading Act 1986

TM Publisher AG



8/1/13

Undertakings to the Commerce Commission under s 46A of the Fair Trading Act 1986

1 Persons giving undertakings

- 1.1 These undertakings are given to the Commerce Commission (**Commission**) for the purposes of s 46A of the Fair Trading Act 1986 (**FTA**) by TM Publisher AG (the **undertaking party**).

2 Background

- 2.1 TM Publisher AG is a company based in Dorfstrasse, Barr, Switzerland. It claims to provide an online database service in which registered trademarks can be recorded with the local registration details.
- 2.2 In early 2016 TM Publisher AG sent a two sided document to owners of registered trademarks in New Zealand (the **document**). A copy of that document is **Attachment A** to this undertaking.
- 2.3 In the Commission's view the document represents that the recipient owed TM Publisher AG an amount for a service (being the purported publication of trademark details on an on-line database) which was not a service that the recipient had committed to buying (the **purported service**).
- 2.4 As of 30 March 2016, 123 recipients of that document have made payments to ANZ bank account number 01-1839-0340216-00.
- 2.5 The Commission considers that in sending the document TM Publisher AG has breached the FTA by:
- (a) engaging in conduct that is liable to misleading the public about the nature and characteristic of services in contravention of s11; and/ or
 - (b) making a false or misleading representation that services are of a particular kind in breach of s13(b); and/ or
 - (c) making a false or misleading representation that the recipient has agreed to acquire services in contravention of s13(c); and/ or
 - (d) not clearly informing the recipient that they are under no obligation to make any payment for the services in contravention of s21C(1)(b).
- 2.6 TM Publisher AG denies the Commission's allegation that it has breached the FTA.

3 Purpose of the undertakings

- 3.1 These undertakings (the **undertakings**) are given by the undertaking party in order to satisfy the Commission that there is no need to seek urgent injunctive relief pending the resolution of the Commission's investigation.

4 Undertakings

- 4.1 The undertaking party undertake to the Commission that they will:
- 4.1.1 not, whether by themselves, their servants or agents send a document in the form of Attachment A or other document of a similar form, nature or effect to consumers in New Zealand for any unsolicited or un-agreed service, including for the purported services; and
 - 4.1.2 not, whether by themselves, their servants or agents dispose or deal with (in any way) any New Zealand asset including ANZ bank account number 01 1839 340216 00 except as at 4.1.4 below or with the written consent of the Commission or order of the Court; and
 - 4.1.3 not accept any payment from any recipient of the document in New Zealand from the date of these undertakings except with the consent of the Commission or order of the Court; and
 - 4.1.4 execute the authorisation at **Attachment B** irrevocably authorising ANZ to reverse to the relevant payer any payment made to account number 01 1839 340216 00 after 6 April 2016.

5 Effect of the undertakings

- 5.1 The undertakings are:
- (a) Court enforceable undertakings in terms of s 46A of the FTA; and
 - (b) made without admission of liability of the undertaking party as to the conduct described in section 2, above.

6 Commencement of undertakings

- 6.1 The undertakings come into effect when:
- (a) the undertakings are executed by TM Publisher AG; and
 - (b) the Commission confirms its acceptance of the undertakings.

7 Duration of the undertakings

- 7.1 These undertaking(s) will continue to have effect until the earlier of:
- (a) the date upon which a court (or subsequent appeal court in the event of appeal) determines the conduct described in paragraph 2 above is not in breach of the relevant obligations in the FTA; or
 - (b) the date upon which the Commission agrees to discharge the undertaking party from the undertakings.

8 Compliance with the undertakings

- 8.1 If the undertaking party become aware of a breach of these undertakings, whether advertent or inadvertent, they will notify the Commission with seven days of becoming aware, giving full particulars of the breach.
- 8.2 If requested to do so by the Commission, the undertaking party will engage at their own cost KPMG (or another reputable third party approved by the Commission) (**Reviewer**) to conduct a review of its compliance with the undertakings as directed by the Commission (**Compliance Audit**), and to report its findings to the Commission.
- 8.3 The undertaking party will comply with all reasonable requests of the Reviewer in conducting the Compliance Audit.
- 8.4 For the avoidance of doubt, nothing in paragraphs 8.1 to 8.3 above prevents the Commission from directly seeking any information from the undertaking party at any time during the course of the criminal and/or civil proceedings for the purpose of checking compliance with the undertakings.

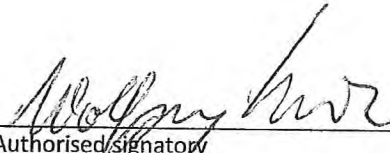
9 Miscellaneous

- 9.1 No amendment to the undertakings will be effective unless it is in writing, executed by the undertaking party and signed as accepted by the Commission.
- 9.2 These undertakings are properly executed if each undertaking party signs the same copy, or separate identical copies of the execution page. Where separate copies are signed by the undertaking party or the Commission, the signed copy can be the original document, or a faxed or emailed copy.
- 9.3 The undertaking party acknowledges that:
- (a) The Commission may make the undertakings publicly available including by publishing them on the Commission's enforcement response register on its website.
 - (b) The Commission may, from time to time, make public reference to the undertakings including in news media statements and in the Commission's publications.
 - (c) Nothing in the undertakings is intended to restrict the right of the Commission, or the right of any other person, to take action under the FTA or under any other statute or law.




Execution

Signed by and on behalf of
TM Publisher AG



Authorised signatory
WOLFGANG KURZ

Name


In the presence of:
Witness Name:
Witness Address:
Witness Occupation:

Date: APRIL 25/2016


EGON STEINER
PRO VIENNA

Acceptance

Accepted by the Commerce Commission by



Authorised signatory
Susan Janice Begg

Name

In the presence of:
Witness Name:
Witness Address:
Witness Occupation:

Date:



Attachment A



INTERNATIONAL ONLINE DATABASE OF REGISTERED TRADE MARKS
TM PUBLISHER - AGREEMENT

TRADE MARKS

FOR PUBLICATION OF YOUR TRADE MARK:

PERIOD up to 2018 DATE 29.02.2016

TRADE MARK OWNER/ADDRESS:



YOUR TRADE MARK



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THE SPECIFICATIONS SHOWN ABOVE ARE A REPRODUCTION OF YOUR TRADE MARK REGISTERED WITH IPONZ.
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TM PUBLISHER
Level 31, Plimmer Towers
2-6 Gilmer Terrace, Wellington 6011
www.trademarkpublisher.info
Infoline: +800-723 48 899
office@trademarkpublisher.info

IDRTM reference no [REDACTED]

<<< Trade Mark Owner's Name

<<< Address

IPONZ registration number [REDACTED]
Date of registration [REDACTED]
Classes of Goods and Services 36

PLEASE SEE REVERSE SIDE FOR FURTHER INFORMATION ABOUT THIS OFFER. THE OWNER OF THE TRADE MARK CONFIRMS THAT HE HAS READ AND ACCEPTED THE TERMS AND CONDITIONS OF THIS CONTRACT. THIS ONLINE PUBLICATION IN THE IDRTM REGISTER DOES NOT REPLACE THE REGISTRATION WITH IPONZ NOR DOES IT EXTEND THE EXPIRY DATE OF YOUR REGISTERED TRADE MARK.

ACCEPTED PAYMENT METHODS

DIRECT CREDIT:
you can transfer the payment amount to the account stated below by direct credit.

Bank: ANZ Account no: 01-1839-0340216-00
Name: TM Publisher
Subject/reference no: [REDACTED] Payment amount: \$1,638.00

PAYMENT BY CHEQUE: Make cheque payable to TM Publisher.
Return the payment slip and your cheque in the remittance envelope.

PAYMENT FOR

Trade Mark Publication	
Period	up to 2018
IDRTM reference no	[REDACTED]
Amount	\$1,638.00
GST	0.00
See reverse side	
TOTAL	\$1,638.00

DETACH THIS SLIP FOR PAYMENT BY CHEQUE

SEND TO:

TM PUBLISHER
LEVEL 31, PLIMMER TOWERS
2-6 GILMER TERRACE
WELLINGTON 6011

Please write your reference number on your cheque

IDRTM reference no: > [REDACTED] Period covered: up to 2018
Date: 29.02.2016
Subject: Publication of your Trade Mark AMOUNT \$1,638.00

Check your details. Make corrections if necessary > [REDACTED]

The owner of the trade mark confirms that he has read and accepted the terms and conditions of this offer.

W. [Signature]
sgp

GENERAL TERMS AND CONDITIONS

INFORMATION ABOUT TM PUBLISHER AG - DATABASE SERVICE: THE TMP WEBSITE WWW.TRADEMARKPUBLISHER.INFO DISPLAYS THE TRADE MARK, THE NAME OF THE TRADE MARK OWNER, THE NAME OF THE ASSOCIATED BRAND AND PRODUCT/SERVICE ON THE INTERNET. IT IS ONLY AVAILABLE TO PAID REGISTERED TRADE NAMES AND DESIGNS WITH THEIR INTELLECTUAL PROPERTY OFFICE OF NEW ZEALAND ("IPONZ") REGISTRATION NUMBERS AND CLASSES. PUBLICATION ON THE TMP INFO REGISTER PROVIDES WORLDWIDE PUBLICATION ON THE INTERNET. THIS PUBLICATION IS AN ELECTIVE SERVICE AND DOES NOT SUBSTITUTE FOR REGISTRATION, NOR DOES IT PROLONG THE VALIDITY OF YOUR TRADE MARK REGISTRATION WITH IPONZ (OR ANY OTHER INTERNATIONAL REGISTRATION).

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MODIFICATIONS: REASONABLE CHANGES TO THE INFORMATION RELATING TO A TRADE MARK PUBLISHED ON THE TMP WEBSITE WILL BE MADE FREE OF CHARGE UPON RECEIPT OF A WRITTEN REQUEST. IF YOUR TRADE MARK IS PARTIALLY OR ENTIRELY ASSIGNED TO ANOTHER OWNER, YOU MUST IMMEDIATELY INFORM TMP OF THIS CHANGE IN WRITING.

TERMINATION: YOU MAY TERMINATE THIS AGREEMENT WITH TMP AT ANY TIME BY WRITTEN NOTICE. YOU WILL NOT BE ENTITLED TO A REFUND OF FEES FOR THE BALANCE OF THE PUBLICATION PERIOD.

ADDITIONAL SERVICE: YOUR WEB-ADDRESS, EMAIL, FAX AND TELEPHONE NUMBER CAN BE ADDED TO YOUR DATA ENTRY WITHOUT ANY EXTRA COSTS. IF YOU ARE INTERESTED, PLEASE SEND US A WRITTEN REQUEST.

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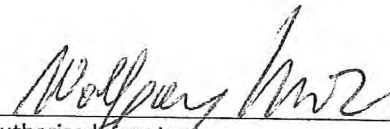
PUBLISHER: TM PUBLISHER AG/CORP, CH-6380 BAAR, DORFSTRASSE 38, INFOLINE +800-723 48 899/ WWW.TRADEMARKPUBLISHER.INFO.

Handwritten signature in black ink, appearing to read 'A. K. M.', and blue initials 'egm' written below it.

Attachment B

TM Publishers AG irrevocably authorises ANZ to reverse to the relevant payer all payments received to account number 01 1839 340216 00 after 6 April 2016.

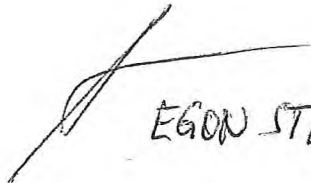
Signed by and on behalf of
TM Publisher AG



Authorised signatory
WOLFGANG KURZ

Name

In the presence of:
Witness Name:
Witness Address:
Witness Occupation:


EGON STEINER

