

BANKI HADDOCK FIORA

LAWYERS

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16 December 2014

Mr James Christian
23 Victoria Avenue
ALBERT PARK VIC 3206

BY EMAIL

WITHOUT PREJUDICE EXCEPT AS TO COSTS

Dear Mr Christian

SOCIÉTÉ DES PRODUITS NESTLÉ AND ORS V CHRISTIAN – FEDERAL CIRCUIT COURT OF AUSTRALIA PROCEEDINGS SYG 3214 OF 2013 (FCC PROCEEDINGS)

SOCIÉTÉ DES PRODUITS NESTLÉ AND ORS ATS CHRISTIAN – FEDERAL COURT OF AUSTRALIA PROCEEDINGS NSD 940 OF 2014 (FEDERAL COURT PROCEEDINGS)

We refer to the above proceedings.

Notwithstanding your stated belief otherwise, the sole purpose of these proceedings is and always has been the enforcement and protection of the rights in the MUSASHI registered trade marks, after communications with you and your father were unsuccessful in resolving the matter without recourse to litigation.

This was true when Nestlé instructed us, and it remains the situation now that Post Holdings Inc. is instructing us.

Notwithstanding your conviction to the contrary, none of your opponents in this litigation has, or has had, any interest in your business.

This case was not brought because you were carrying on a vitamins and dietary supplements business; it is not being maintained because you intend to continue that business. This case is about you carrying on such a business by reference to the A-SASHI marks, which the Federal Circuit Court has found infringe the MUSASHI registered trade marks.

Our clients will continue to take all appropriate steps to protect and enforce their trade mark rights, including in their United States Trademark Registration No. 4005609 for MUSASHI.

However, they have no wish to be engaged in litigation with you. Accordingly, they have instructed us to make the following offer of settlement, on a without admissions basis:

In consideration of your written undertaking to the Applicants in the FCC Proceedings (Respondents/Cross-Appellants in the Federal Court Proceedings) (**Nestlé and Post**), the Federal Circuit Court of Australia and the Federal Court of Australia:

- (a) not to file any:
 - (i) further application in the FCC Proceedings;
 - (ii) cross-claim pursuant to your application in a case filed in the FCC Proceedings on 12 August 2014 (**Cross-Claim**); or
 - (iii) proceeding in any Court concerning the subject matter of the proposed Cross-Claim;
- (b) to discontinue the Federal Court Proceedings;
- (c) not to disparage Nestlé and Post or any of their related entities; and
- (d) to release Nestlé and Post from any and all claims and demands relating to the subject matter of the Federal Court Proceedings and the FCC Proceedings,

Nestlé and Post will:

- (a) refrain from pursuing any and all costs orders made in their favour in the FCC Proceedings and the Federal Court Proceedings;
- (b) discontinue their cross-appeal in the Federal Court Proceedings; and
- (c) not disparage you.

Our clients have had prepared a bill of costs incurred up to 9 December 2014 in the FCC Proceedings which totals over \$50,000.

This offer of settlement remains open for acceptance for 7 days from the date of this letter.

We urge you to give careful consideration to this offer, and to obtain legal advice as to the possible consequences of not accepting it. The offer is made on the principles of *Calderbank v Calderbank* and, in that context, will be relied upon on the question of costs.

Yours sincerely



Julie Robb
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