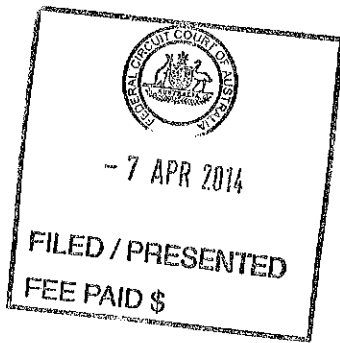


FEDERAL CIRCUIT COURT OF AUSTRALIA

REGISTRY: NEW SOUTH WALES

File number:	SYG [REDACTED] / 2014
COURT USE ONLY	
Court	
Location	
Court date	
Court time	



Vincent Scott Tylor
Applicant

[REDACTED] **Mercier**
Respondent

STATEMENT OF CLAIM

1. Copyright subsists in the Work under the *Copyright Act 1968* (Cth) by virtue of the *Copyright International Protection Regulations 1969* (Cth).

Particulars

- (a) The Applicant is a citizen of the United States of America.
- (b) The Applicant created the Work in 2006 and first published it in the United States 23 November 2006.
- (c) *Poli Hali Perfect Colours* is registered with the United States Copyright Office with registration number VA0001761524.

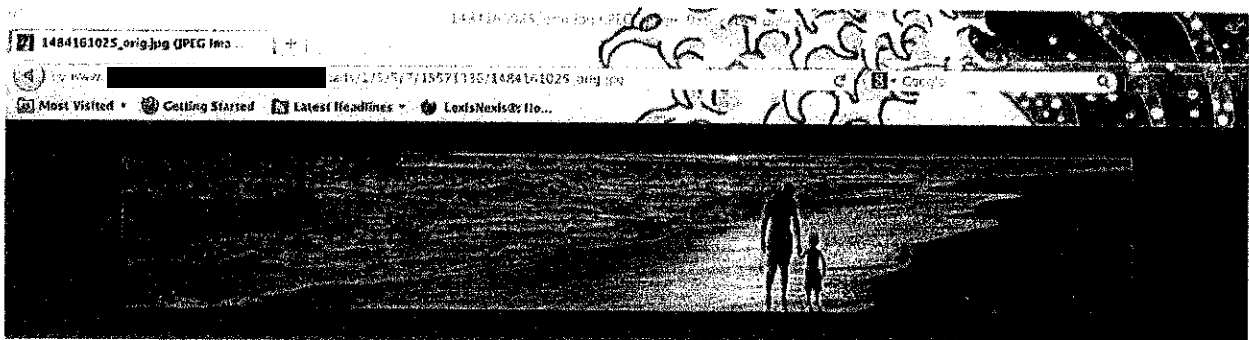
Filed on behalf of the Applicant

Prepared by:	William Peter Knight	Lawyer's code: 3323
Name of law firm:	Banki Haddock Fiora	
Address for service in Australia:	Level 10, 179 Elizabeth Street, Sydney	
State and Postcode:	New South Wales 2000	
Email:	knight@bhf.com.au	
Tel: 02 9266 3400	Fax: 02 9266 3455	Attention: William Peter Knight

2. The Applicant is the owner of the copyright in the Work.
3. The Respondent is, and was at all material times:
 - (a) [REDACTED] in Australia; and
 - (b) using in the course of his business the website at [http://www.\[REDACTED\].com.au](http://www.[REDACTED].com.au), for the purposes of his business in the promotion of [REDACTED]
4. The Respondent has infringed the Applicant's copyright by, without the licence of the Applicant:
 - (a) reproducing the Work in a material form; and
 - (b) further, or alternatively, authorising the reproduction of the Work in a material form; and
 - (c) further, or alternatively, communicating the Work to the public; and
 - (d) further, or alternatively, authorising the communication of the Work to the public; and
 - (e) further, or alternatively, by way of trade exhibiting an article in public that is a reproduction in a material form of the Work the making of which the Respondent knows, or ought reasonably to know, constituted an infringement of the copyright in the Work.

Particulars of infringement

- (i) The Work was reproduced and stored by or for the Respondent on a server image library [REDACTED] with the internet address [http://www.\[REDACTED\].com.au/uploads/1/5/5/7/15571336/1484161025_orig.jpg](http://www.[REDACTED].com.au/uploads/1/5/5/7/15571336/1484161025_orig.jpg) where it remains as at the date hereof as follows:



- (ii) The Work was displayed as a banner on numerous pages of the Respondent's website as follows:

[http://www.\[REDACTED\].com.au/](http://www.[REDACTED].com.au/)

http://www [REDACTED].html

http://www [REDACTED].html

http://www [REDACTED].html

http://www. [REDACTED].html

http://www. [REDACTED].html

http://www [REDACTED].html

http://www [REDACTED].html

http://www [REDACTED]

[REDACTED]

[REDACTED]

http://www [REDACTED]

[REDACTED]

[REDACTED]

http://www [REDACTED]

[REDACTED]

[REDACTED].html

with the following appearance:

The screenshot shows a professional website for 'MURCIER'. At the top, there is a navigation menu with links for Home, Services, Start, About, Contact, Blog, FAQs, and Resources. Below the menu is a large banner image showing a person walking on a beach. The 'ABOUT' section features a profile picture of a man in a suit and tie. The text in the 'ABOUT' section describes the individual's legal qualifications, including a Bachelor of Laws (Hons) and a Bachelor of Science (majoring in Accounting & Finance) from the University of Queensland, and a Master of Laws (Corporate & Commercial Law) from the University of Queensland. It also mentions professional memberships with the Queensland Law Society and the Australian Mediation Association. The 'QUALIFICATIONS & CERTIFICATIONS' section is partially visible, showing a list of items with redacted details. On the right side of the 'ABOUT' section, there are two buttons labeled 'Email' and 'Star'.

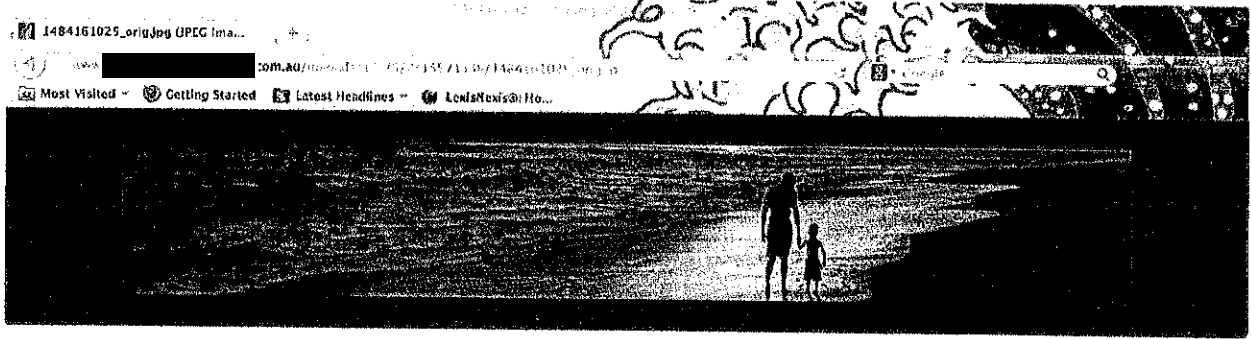
5. The Respondent did the acts referred to in paragraph 4:
- (a) flagrantly;
 - (b) knowing that he was not licensed by the Applicant to do those acts;
 - (c) knowing that to do those acts without the licence of the owner of the copyright in the Work constituted an infringement of the copyright in the Work;
 - (d) without making any, or any reasonable, inquiry as to the authorship of, or ownership of the copyright in, the Work;
 - (e) in reckless disregard of copyright;
 - (f) in order to avoid paying a licence fee for the use of image in his business; and
 - (g) intending that a commercial or other benefit would accrue to it.

Particulars under section 115(4)

- (i) The Respondent made no attempt to ascertain the identity of the copyright owner of the Work;
 - (ii) The Respondent has made a copy in an electronic form of the Work and stored it in the image library/ies used by the website referred to in paragraph 3 of this Statement of Claim for the purpose of communication to the public.
 - (iii) The reproduction and communication of the Work was for the purpose of promoting the business of the Respondent.
 - (iv) The Respondent has failed and refused to offer any compensation to the Applicant in the form of a standard licence fee and compensation for the breach of the Applicant's moral right of attribution.
6. In addition, after the act constituting the infringement, whilst the Respondent removed the links in his website to the Work so that the Work was not displayed on the website, he did not remove it from his server image library where it remains as at the date hereof available for re-use.

Particulars under section 115(4)

The Work remains on the Respondent's server image library with the internet address <http://www[REDACTED]com.au/uploads/1/5/5/7/15571336/1484161025_orig.jpg> as at the date hereof as follows:



7. In addition, after the Respondent was informed that he had allegedly infringed the Applicant's copyright, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Particulars under section 115(4)

Letter from [REDACTED] to Banki Haddock Fiora dated 1 April, 2014.

8. The Respondent by its acts complained of in paragraph 4 in respect of the Work has committed attributable acts within the meaning of sections 189 and 194 of the *Copyright Act 1968* and did so without identifying the Applicant as the author of the Work.
9. As a consequence of the Respondent's acts referred to in paragraphs 4 and 8 of this Statement of Claim, the Respondent has infringed the Applicant's moral right to attribution in respect of the Work in breach of section 195AO of the *Copyright Act*.
10. As a result of the Respondent's acts the Applicant has suffered loss and damage and will, unless such acts are restrained, continue to suffer loss and damage.
11. By reason of the matters alleged in paragraphs 5, 6 and 7 of this Statement of Claim, the Respondent's acts were such as to make an award of damages under section 115(4) of the Act appropriate.

Signature of Applicant's lawyer

[REDACTED]

Signed by William Peter Knight

Lawyer for the Applicant

Date: 7 April 2014