

**VINCENT SCOTT TYLOR**  
Applicant

[REDACTED] **MERCIER**  
Respondent

**DEFENCE**

This Defence in this proceeding is made in reliance on the following facts:

1. In respect to paragraph 1 of the Statement of Claim, the Respondent admits the allegations therein.
2. In respect of paragraph 2 of the Statement of Claim, the Respondent admits the allegation therein.
3. In respect of paragraph 3 of the Statement of Claim:
  - (a) Specifically in respect of paragraph 3(a), the Respondent admits the allegation therein;
  - (b) Specifically in respect of paragraph 3(b), the Respondent denies the allegation therein because the allegation is untrue:
    - (i) On or about 29 October 2013, the Respondent registered the domain name [REDACTED]
    - (ii) On or about 1 December 2013, construction of a website (hereinafter called “the Temporary Website”) began on that domain name, with the Image being used only as a temporary image for only 42 days on the Temporary Website, which was not submitted to Google and therefore not searchable on internet search engines;

---

**Filed on behalf of the Respondent**

Prepared by:  
Name of Law Firm:  
Address for service in Australia:  
State and Postcode:  
Email:  
Telephone:

[REDACTED]

- (iii) On or about 1 February 2014, further development of the Temporary Website occurred, during which the Temporary Website was submitted to Google and key terms and search words were added to the structure of the Temporary Website;
- (iv) The Respondent is and was at all material times using the following websites for the purposes of his business in the promotion of mediation services:
  - I. [REDACTED];
  - II. [REDACTED];
  - III. [REDACTED];
  - IV. [REDACTED];
- (v) The Respondent is and was at all material times receiving online consumer traffic by virtue of Google AdWords advertising to the following websites for the purposes of his business in the promotion of mediation services:
  - I. [REDACTED];
  - II. [REDACTED];
- (vi) The Temporary Website is not searchable on internet search engines because of duplicated content and other reasons from the Respondent's other websites;
- (vii) In the premises, the Respondent does not and did not at all material times use in the course of his business the Temporary Website for the purposes of his business in the promotion of mediation services.

4. In respect of paragraph 4 of the Statement of Claim:

- (a) Specifically paragraph 4(a), the Respondent admits the allegation therein;
- (b) Specifically paragraph 4(b), the Respondent admits the allegation therein;
- (c) Specifically paragraph 4(c), the Respondent denies the allegation therein because the allegation is untrue by reason of the matters pleaded in paragraph 3(b) herein;
- (d) Specifically paragraph 4(d), the Respondent denies the allegation therein because the allegation is untrue by reason of the matters pleaded in paragraph 3(b) herein;
- (e) Specifically paragraph 4(a), the Respondent denies the allegation therein because the allegation is untrue by reason of the matters pleaded in paragraph 3(b) herein.

5. In respect of paragraph 5 of the Statement of Claim:

- (a) Specifically paragraph 5(a), the Respondent denies the allegation therein because the allegation is untrue:

- (i) On 2 April 2014, the Respondent issued a written apology to the Applicant as soon as the Respondent was provided with a certificate of copyright for the Work;
  - (ii) On 1 April 2014, on 4 April 2014, on 8 April 2014, and on 15 April 2014, the Respondent made to the Applicant offers to pay a reasonable licence fee for the Respondent's use of the image;
  - (iii) The Image was downloaded from a website called Mr Wallpaper.com, which has a tagline of "Free High Quality Wallpapers" at <<http://www.mrwallpaper.com>>;
  - (iv) The website Mr Wallpaper.com states that the "author" of the Image is a person called "Alexandre G" and that the listed title of the Image is "Father Son Sunset";
  - (v) There is no reference to the Applicant on that webpage or embedded in the Image;
  - (vi) The webpage states that the Image has had "2289 downloads" and "2608 views";
  - (vii) The Respondent had no knowledge of the Applicant or of the Applicant's works, specifically the Work;
  - (viii) The Respondent honestly believed that the author of the Image was "Alexandre G" who had willingly placed the Image onto the website Mr Wallpaper.com in order for it to be made available for free download and therefore did not need to pay for a licence fee for the Image;
  - (ix) The Respondent attempted to contact "Alexandre G" via the website Mr Wallpaper.com but was unsuccessful because that website does not permit such contact;
  - (x) The Respondent had no reason to believe that "Alexandre G" was not the true author of the Image;
- (b) Specifically paragraph 5(b), the Respondent denies the allegation therein because the allegation is untrue by reason of the matters pleaded in paragraph 5(a) herein;
  - (c) Specifically paragraph 5(c), the Respondent denies the allegation therein because the allegation is untrue by reason of the matters pleaded in paragraph 5(a) herein;
  - (d) Specifically paragraph 5(d), the Respondent denies the allegation therein because the allegation is untrue by reason of the matters pleaded in paragraph 5(a) herein;

- (e) Specifically paragraph 5(e), the Respondent denies the allegation therein because the allegation is untrue by reason of the matters pleaded in paragraph 5(a) herein;
  - (f) Specifically paragraph 5(f), the Respondent denies the allegation therein because the allegation is untrue by reason of the matters pleaded in paragraph 5(a) herein;
  - (g) Specifically paragraph 5(g), the Respondent denies the allegation therein because the allegation is untrue:
    - (i) By reason of the matters pleaded in paragraph 5(a) herein;
    - (ii) On or about 1 December 2013, the Image was downloaded from the website Mr Wallpaper.com and then uploaded to the Temporary Website for the purposes of creating the basic layout of the Temporary Website;
    - (iii) On or about 10 January 2014, the Image was deleted from the Temporary Website as part of further development of the Temporary Website;
    - (iv) On 8 April 2014, the Respondent received the Applicant's Application, in which the Respondent was advised that the Image was stored on the server image library of the website Weebly.com at <<http://www.weebly.com>>, a website-creation website on which the Temporary Website exists;
    - (v) The Respondent was unaware that the Image was stored redundantly on the server image library of the website Weebly.com;
    - (vi) On 8 April 2014, the Respondent, being unable to access the image library server and therefore delete the Image from there, contacted the website Weebly.com to immediately delete the Image from the server image library;
    - (vii) On 9 April 2014, the Respondent was advised by the website Weebly.com that the Image on the server image library of the website Weebly.com was permanently deleted;
    - (viii) The Respondent had no intention of accruing a commercial or other benefit from the Image.
6. In respect of paragraph 6 of the Statement of Claim, the Respondent denies the allegation therein because the allegation is untrue by reason of the matters pleaded in paragraphs 5(g)(ii) to 5(g)(viii) herein.
7. In respect of paragraph 7 of the Statement of Claim:
- (a) The Respondent admits to advising the Applicant of behaviour known as "copyright trolling", which entails the following:
    - (i) An individual takes photographs;

- (ii) That individual submits those photos as images to websites (typically wallpaper websites or image libraries offering free downloads of images), or that individual does not seek the removal of such images from such websites when such images are easy to search using internet search engines and reverse image search;
  - (iii) From such websites, internet users innocently download those images, which are offered overtly and ostensibly for free and without the need for a licence;
  - (iv) Such internet users are induced to use such images, believing that, since such images are offered ostensibly for free and without the need for a licence, there is no need for a licence;
  - (v) Within a very short period of time after the internet user's initial upload of the image on a website, the individual "discovers" the internet user using the image;
  - (vi) The individual then seeks damages for the innocent copyright and moral rights infringement by issuing letters from lawyers demanding exorbitant "standard licence fees" for the use of such images;
- (b) The Respondent admits to advising the Applicant of the multitude of claims by the Applicant and the Applicant's father against innocent infringers of copyright and moral rights;
  - (c) The Respondent admits to establishing a connection between the behaviour of copyright trolling and the Applicant's actions;
  - (d) The Respondent admits to advising the Applicant of sections 192E, 192B, 192D and 192G of the Crimes Act 1900 (NSW);
  - (e) The Respondent admits to establishing a connection between the Applicant's conduct and those provisions of the *Crimes Act 1900 (NSW)*:
    - (i) Under section 192B of the *Crimes Act 1900 (NSW)*, "deception" is defined, and the Applicant's actions fall within this definition because the Applicant knew (and therefore the deception was "intentional") or ought to have known (and therefore the deception was "reckless") that the Image was available for download ostensibly for free on the website Mr Wallpaper.com, which is very easy to discover using internet search engines with search terms "sunset beach walk", as well as using reverse image search;
    - (ii) Under section 192D of the *Crimes Act 1900 (NSW)*:

I. "Obtain" a financial advantage is defined, and the Applicant's actions fall within this definition because the Applicant, through his lawyer's letters of demand for US\$4,500.00 in licence fees for the use of the Image, sought to obtain financial advantage by inducing the Respondent to make this payment;

II. "Cause" a financial disadvantage is defined, and the Applicant's actions fall within this definition because the Applicant, through his lawyer's letters of demand for US\$4,500.00 in licence fees for the use of the Image, caused financial disadvantage to the Respondent by inducing the Respondent to seek legal advice and representation from Counsel, as well as incur costs relating to experts in order to meet the letters of demand from the Applicant's lawyer;

(iii) Under section 192E of the *Crimes Act 1900 (NSW)*, the offence of fraud is defined, and the Applicant's actions fall within this definition by reason of the matters pleaded in paragraphs 7(e)(i) and 7(e)(ii) herein;

(iv) Under section 192G of the *Crimes Act 1900 (NSW)*, the offence of intention to defraud by false or misleading statement is defined, and the Applicant's actions fall within this definition by reason of the matters pleaded in paragraphs 7(e)(i) and 7(e)(ii) herein;

(f) [REDACTED]

(i) [REDACTED]

(ii) [REDACTED]

(iii) [REDACTED]

(iv) [REDACTED]

(v) [REDACTED]

- (vi) [REDACTED]
- (g) [REDACTED]
- (h) [REDACTED]
- (i) [REDACTED]
- (ii) [REDACTED]
- (iii) [REDACTED]
- (iv) [REDACTED]
- (v) [REDACTED]
- (vi) [REDACTED]

8. In respect of paragraph 8 of the Statement of Claim, the Respondent admits the allegations therein.

9. In respect of paragraph 9 of the Statement of Claim, the Respondent denies the allegations therein because it was reasonable in all the circumstances for the Respondent not to identify the Applicant as the author of the Image pursuant to section 195AR of the *Copyright Act 1968 (Cth)*:

- (a) The nature of the Image is that it is a generic landscape of a beach, which is a common image;
- (b) The Image is generic in its subject and lacks any particular identifying style or

- feature that would otherwise set it apart from other such images;
- (c) The Image was used by the Respondent as a temporary image for the sole purpose of constructing the layout of the Temporary Website, with the Image being deleted before the Temporary Website was completed and therefore without any commercial benefit;
  - (d) The manner of use of the Image was only as a banner on the Temporary Website before it was indexed and searchable on internet search engines;
  - (e) The context of use of the Image was only as a temporary image during the construction phase of the then-unsearchable Temporary Website about family mediation, as opposed to the use of the Image in the context of a searchable website about beach landscapes or photography;
  - (f) The identification of the Applicant as the author of the Image is rendered difficult and costly if not impossible:
    - (i) The Image is a generic photograph of a beach landscape, of which there are many thousands;
    - (ii) The Image does not possess any logo, signature, insignia or other mark to identify it as the work of the Applicant;
    - (iii) The Image does not possess any unique or particular photographic technique, style or feature that would render it identifiable as the work of the Applicant;
    - (iv) The Applicant is not a famous, renowned or award-winning photographer;
    - (v) In the premises, the Respondent has not infringed the Applicant's moral right to attribution.
10. In respect of paragraph 10 of the Statement of Claim, the Respondent denies the allegation therein because the allegation is untrue:
- (a) The Respondent has not caused any loss or damage to the Applicant by reason of the matters pleaded in paragraphs 3(b)(ii), 3(b)(iii), 3(b)(vi), 5(a)(ii), 5(g)(ii) to 5(g)(viii), and 9 herein;
  - (b) The Applicant has not suffered any loss or damage by reason of the matters pleaded in paragraphs 3(b)(ii), 3(b)(iii), 3(b)(vi), 5(a)(ii), 5(g)(ii) to 5(g)(viii), and 9 herein.
11. In respect of paragraph 11 of the Statement of Claim, the Respondent denies the allegation therein because damages under section 115(4) of the *Copyright Act 1968 (Cth)* is not appropriate by reason of the matters pleaded in paragraphs 3(b), 5, 6 and 7 herein.



**Signature of Respondent's lawyer**



---

Signed by



Date: 22 April 2014