



AUSTRALIAN ADVOCACY INSTITUTE

ACCC
V

Porter's Plumbing
Services Pty Ltd

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ACCC v Porter's Plumbing Service Pty Ltd

INSTRUCTIONS

Porter's Plumbing Service Pty. Ltd. is a plumbing service company.

It advertises its services in the "Yellow Pages" of the telephone directory under "Plumbers - Suburban".

A complaint has been made to the ACCC by a resident of Clayton, who claims that the advertisement is misleading and deceptive.

Today is **Friday**, and the ACCC has made an application to the Federal Court for an injunction to stop the advertisement from being printed in the "Yellow Pages".

The next edition of the "Yellow Pages" is due to go to print on **Monday** morning.

The following affidavits have been filed:

1. Affidavit of Andrew Anton, Solicitor for ACCC;
2. Affidavit of Carmen Costa, complainant; and
3. Affidavit of Peter Porter, director of Porter's Plumbing Services Pty. Ltd.

If briefed to appear for the APPLICANT, you are to seek the injunction alleging that the advertisement breaches section 52 of the Trade Practice's Act 1974.

If briefed to appear for the RESPONDENT, you are to oppose the application and maintain that the advertisement does not breach section 52.

**IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY**

20XX No. V1

BETWEEN:

**AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION**

Applicant

-and-

PORTER'S PLUMBING SERVICE PTY. LTD.

A.C.N. 000 000 007

Respondent

AFFIDAVIT

On this day, **Andrew Anton** of 360 Elizabeth Street, Melbourne in the State of Victoria, solicitor, **says on oath:**

1. I am a solicitor employed in the office of the Australian Competition and Consumer Commission, the Applicant in these proceedings, and I have the care and conduct of its matter on their behalf.
2. The matters deposed to are within my own knowledge except where indicated otherwise.
3. A week ago, I received a telephone call from Carmen Costa, of 1 Merry Street, Clayton. She said that she was not happy about an advertisement for Porter's Plumbing Service that had appeared in the Yellow Pages.
4. After receiving Ms. Costa's telephone call, I caused a search of the files at the ACCC to be undertaken. The search revealed the following information:
 - (a) Porter's Plumbing Service Pty. Ltd. A.C.N. 000 000 007 ("Porter's Plumbers") is a plumbing service company that was incorporated 2 years ago. The registered office and principal place of business of the company is 1 Russell Street, Melbourne.
 - (b) Porter's Plumbers employ 3 office staff at the Russell Street office to answer telephone calls from prospective customers. When a customer rings one of the telephone numbers in the advertisement, the call is automatically re-directed to the office in Russell Street. The company contracts 15 plumbers around Melbourne to do the work as customers ring through with a plumbing problem.
 - (c) Each plumber has his or her own van and mobile telephone. When a telephone call is received from a customer, the office staff allocate the job to one of the plumbers nearest to the job if the job is urgent. The office staff keep track of which plumber is at which job, by keeping a diary system on computer.

5. A further search of the ACCC file revealed the following information:
 - (a) Shortly after the advertisement was first placed in the Yellow Pages about a year ago a complaint from a resident of Richmond was received. The complaint was about an excessive administration fee.
 - (b) As a result of the complaint, the ACCC wrote to Porter's Plumbers and requested that they withdraw the advertisement on the basis that it was misleading and deceptive.
6. I am informed by my colleague and believe that a director of Porter's Plumbers, Mr. Porter, telephoned the ACCC the day after the letter was sent and said that he would seek his own legal advice about the advertisement.
7. I am informed and believe that there was no further contact between the ACCC and Porter's Plumbers until now.
8. On the day I spoke to Ms. Costa, I telephoned the publishers of Yellow Pages at head office and spoke to the Managing Director, Mr. Little. He told me that Porter's Plumbers advertises in the directory in the form of the advertisement annexed to Ms. Costa's affidavit. This advertisement was first placed about a year ago and has remained ever since. It is paid upfront for the next year.
9. Mr. Little said that the Yellow Pages travel directory is distributed throughout Victoria. Porter's Plumbers advertisement appears under the names of twelve other suburbs in the metropolitan area each with a different telephone number appropriate to the area.
10. Further, I am informed and believe that the next edition of the Yellow Pages is due to go to print on Monday morning.

Sworn by **Andrew Anton**)
 At Melbourne)
 In the State of Victoria this)
 X day of X)

Before Me:

**IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY**

199X No. V1

BETWEEN:

AUSTRALIAN COMPETITION AND COMSUMER COMMISSION -

Applicant

-and-

PORTER'S PLUMBING SERVICE PTY.LTD. (A.C.N. 000 000 007) -

Respondent

AFFIDAVIT

On this day, **Carmen Costa** of 1 Merry Street, Clayton in the State of Victoria, Accountant, **says on oath:**

1. The matters deposed to are within my own knowledge except where otherwise stated.
2. I am the President of the "Promote Clayton Association" and I only engage local trades people to undertake work at my home. I encourage other residents of Clayton to do the same to support our local trades.
3. Ten days ago, my hot water pipe burst, and I had to turn off the main water and call a plumber. I looked up the Yellow Pages under Plumber's Suburban for a service called Porter's Plumbing Service in my area. Attached and marked "CC1" is a copy of the advertisement
4. I telephoned the service and told them that I needed a plumber urgently as I have four children and a sick husband. The person on the telephone asked for my address and said a plumber would be there shortly. I thought it would be half an hour or so, and that's why I called the local plumber.
5. When the plumber arrived, two hours later she apologised that the traffic was bad across the city. I said to her that I felt sorry for her being stuck in traffic for so long.

She said she was used to traffic because she lived in Essendon on the other side of town.
6. I told her that I rang a plumber who lived in Clayton to do my job urgently. She said that I was just being naïve because it didn't matter where plumbers lived. I rang the same phone number again and told the person on the phone that I had expected to get a local Clayton plumber. The person on the phone told me that no-one from Clayton was available. The person on the phone said that they just won an award for being the best service in Melbourne and she had no reason to complain.
7. The Plumber finally completed the job without having to get a new part. It was well done and she helped me mop the floor. Two days later, I received an invoice. Attached and marked "CC2" is a copy of the invoice.
8. After I received the invoice, I rang the Australian Competition and Consumer Commission and made a complaint to Mr. Andrew Anton.

Sworn by **Carmen Costa**)

At Melbourne) X day of X

) Before Me:

COPY OF YELLOW PAGES ADVERTISEMENT

“CC1”

“CLAYTON”

PORTER’S PLUMBING SERVICE

Got a problem with your plumbing?

Want it fixed ASAP?

Phone one of Porter’s expert plumbers

for all your plumbing needs

Phone 9551 0001

Admin Fee applicable *

COPY OF INVOICE – PORTER’S PLUMBING SERVICE

“CC2”

PORTER’S PLUMBING SERVICE

INVOICE

Date: X
Time: X
Address: 1 Merry Street, Clayton
Name: Ms. Carmen Costa

Description:

Fixing broken hot water pipe	
3 hrs @ \$80 per hour	\$240.00
Admin Fee*:	<u>\$ 20.00</u>
Total:	\$260.00

*A fee of \$0.50 per kilometer outside the CBD will be charged

**IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY**

199X No. V1

BETWEEN:

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION - Applicant

-and-

PORTER'S PLUMBING SERVICE PTY. LTD. (A.C.N. 000 000 007) - Respondent

AFFIDAVIT

On this day, **Peter Porter** of 1 Russell, Melbourne, Victoria, Director, **says on oath:**

1. I am a director of Porter's Plumbing Service Pty. Ltd. and am authorised to make this affidavit on its behalf.
2. The matters deposed to are within my own knowledge except where indicated otherwise.
3. Two years ago I started the business "Porter's Plumbing Service". Initially I employed only 5 plumbers.
4. About one year ago, I started advertising in the Yellow Pages. The response to the advertisement was so good that I had to employ another 10 plumbers. I set up the office at 1 Russell Street, Melbourne and employed three office staff.
5. When a call comes into the office, the office staff try and allocate a plumber who lives closest to the area or is on a job closest to the area.
6. Soon after the first advertisement went into the Yellow Pages, I received a letter from the ACCC telling me that the advertisement was misleading and deceptive. I made an appointment to see a solicitor. He told me that it was OK especially as we had just been awarded the "Most Efficient Plumbers of the Year Certificate." I did not hear anything further from the ACCC, so I believed the advertisement was fine.
7. Ever since the advertisement was placed, business has doubled. The company has just started to operate at a profit. We have never had a complaint about delay especially with urgent calls.
8. I have already paid for the next years' worth of advertising. If I had to discontinue the advertisement, I would lose the amount I have already paid, and I would have to pay for a new advertisement to be drafted. Further, I would miss the print run for the Yellow Pages and miss a whole years' worth of advertising.
9. I investigated Mrs. Costa's concerns and explained to her how we operated. She accepted what I said and was quite happy. She told me the plumber was great and she had no complaints about the job. I told her to call us again if she needed help and she said she would.

Sworn by **Peter Porter**)

At Melbourne) X day of X

) Before Me: