

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

ROBIN A/J

No BS9609 of 2006

CHUBB SECURITY HOLDINGS AUSTRALIA  
LIMITED (ACN 003 590 921)

Applicant

and

ROBERT BARRY SPREADBOROUGH

Respondent

BRISBANE

..DATE 09/11/2006

ORDER

CATCHWORDS: (Cth) Trade Practices Act s 6(3), s 52, s 80(2) -  
interim injunction in respect of publication by e-mail and on  
an internet website of allegedly false injurious information  
about the applicant's mode of carrying on its business.

HIS HONOUR: I make an order in terms of the initialled draft which is in the terms following:

"Upon the applicant, by its counsel, giving the usual undertaking as to damages, the order of the Court is that:

(1) the respondent, by himself, his servants and agents, and every one of them be restrained from publishing, further publishing, printing, copying, using or divulging any allegations to the effect:

- (a) that any of the security alarms monitored by the applicant are monitored otherwise than in Australia and
- (b) that any of the contracts between the applicant and any of its customers are unenforceable;

(hereinafter referred to as the "offending remarks")

(2) the respondent disclose in writing to the applicant (in each case specifying the name, contact details of the recipient and method of communication) on or before 5.00 p.m. on Tuesday, 14 November 2006 the identity of all persons to whom the respondent, whether by himself, his servants or agents or otherwise:

- (a) has transmitted an e-mail entitled "Off Shore Monitoring" on 20 October 2006 or on any subsequent date;
- (b) has transmitted the offending remarks referred to in paragraphs 1(a) and/or 1(b) hereof, by any means, mail, e-mail, telephone or otherwise.

(3) the further hearing of the originating application and the application be adjourned to a date to be fixed;

(4) the parties are at liberty to apply;

(5) costs reserved."

The order is made upon an application filed by leave in an originating application filed only today. The respondent has not been served. Following attempts to communicate with him over the last week or so, without attracting any response, considerable effort has been expended by the applicant's solicitors in trying to inform him of the application, some of which has proved misleading in that the applicant's intention to bring this matter on tomorrow has had to yield to the exigencies of the Applications List which led Mackenzie J to direct that it come on this afternoon or wait until next week.

Mr Makridakis has followed up leads which he has in an attempt to advise the respondent of the hearing time of 2.30 this afternoon. It is a matter of speculation whether the "Bill" he spoke to on the telephone is really the respondent. He has not appeared when called after 2.30.

The applicant is well known and/or associated entities are well known in what might broadly be called the security field. For reasons made explicit in the affidavit of Mr Kelsey, it is justifiably concerned by the publication in an e-mail sent to an unknown number of recipients in the name of the respondent. By some means the original message to "undisclosed recipient"

was forwarded in such a way that it came to the attention of  
the applicant -

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Can you tell me when did the applicant first hear of it?

MR BICKFORD: 24 October, your Honour.

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HIS HONOUR: To the applicant on the 24th of October 2006,  
having apparently been originally sent four days earlier. It  
is to the following effect:

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"Subject: Offshore monitoring.

I have just had co-information all chub alarms are being  
monitored in India. Please let everyone you know about  
this and tell them to switch to a Aust Company. Further  
this will make Chubb contacts unenforceable."

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The affidavit of Mr Kelsey deposes that the supposed  
information is completely false, no more is outsourced  
overseas than accounting and like functions. Not only that,  
the applicant is contractually obliged, and relevant  
Australian Standards may require this as well, to monitor  
alarms from within Australia. It operates two centres for  
that purpose, one at 41 Pentex Street, Salisbury, Queensland,  
another at 220 Racecourse Road, North Melbourne in Victoria.

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The conclusion that dissemination of this supposed information  
which the Court today must treat as false may do enormous  
damage to the applicant in loss of existing contracts or loss

of renewals of contracts seems one that is easily reached. 1

The applicant knows who Mr Spreadborough is. He is prominent in an organisation in the security industry. It is not contended today that he should be regarded as a commercial rival of the applicant. 10

His e-mail has been disseminated more widely. It now appears on a website called Pebra Forums. The e-mail is reproduced without any attribution to the respondent under the added heading, "a Romour" which may be a misprint for rumour or an olfactory pun. It is reproduced complete with deficiencies in spelling of the Chubb name and of the presumably intended "contracts" and the omission, one would think, of what seems to be a necessary repetition of the word "know". 20

That site then publishes a comment apparently emanating from one Middy who is identified as a silver member who joined in July 2006 and is credited with 255 posts. The addition is: 30

"This is from a dependable source, actually high up. I can confirm that their accounts are outsourced, or haven't you guys using smc noticed, - maybe still keep the bureau stuff here in vic but hey days are numbered LOL. 40

Hahahaha [et cetera]."

Middy's comment to an extent provides some balance but may be seen as an endorsement of the "romour" exacerbating its effect beyond that of the wider publication which appearance on the website establishes. 50

The potentially available causes of action which Mr Bickford points to are injurious falsehood and misleading and deceptive conduct under section 52 of the Trade Practices Act; section 80(2) permits the court to grant an interim injunction.

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He contends that obtaining relief based on the former may be more difficult while it is speculative whether there has been any damage. In support of relief of the kind presently sought he refers to Pyne [1997] 1 QdR 326.

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The task in seeking interlocutory injunctive relief based on section 80 of the Trade Practices Act is perhaps not quite so difficult as if all depended on injurious falsehood. It will be noticed immediately that the respondent is not a corporation; whether or not his conduct has been engaged in on behalf of the corporation rendering him an accessory has not been pursued.

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What is relied on is the extended operation of the Trade Practices Act under section 6(3) to non-corporations where conduct which would be caught by the Act if engaged in by a corporation is caught to the extent to which it "involves the use of postal, telegraphic or telephonic services or takes place in a radio or television broadcast."

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It is not entirely beyond argument, perhaps, whether use of e-mails and the internet qualifies but there are instances of an expansive interpretation of "telephonic services", such as

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Snyman v. Cooper [1989] 24 FCR 433, where they were held to include directories.

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Also there are cases involving the internet such as Australian Competition and Consumer Commission v. Hughes [2002] ATPR 41-863 - see particularly paragraph 77 at 44,792 and Australian Competition and Consumer Commission v. Chen [2003] 132 FCR 309, in particular at 314. In those matters there may have been additional bases for an extended operation of the Trade Practices Act in the form of an overseas aspect.

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I am content to proceed today on the basis that section 52 is available. There has been some mention in the discussion of a recent widely publicised decision of Greenwood J in Schwabe Pharma (Aust) Pty Ltd v. AusPharm.Net.Au Pty Ltd [2006] FCA 868, which may be another precedent available to Mr Bickford. There, the respondent was heard. Mr Spreadborough may avail himself of the liberty to apply section 80(3) if he wishes to have the order against him set aside as charged.

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There is material before the Court suggesting that the applicant's undertaking as to damages is worthwhile. It would seem unlikely that the respondent would suffer damages by reason of the order.

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