

# FREEHILL, HOLLINGDALE & PAGE

FORMERLY MOULLES

## BARRISTERS & SOLICITORS

B.H.P. HOUSE, 140 WILLIAM STREET  
MELBOURNE AUSTRALIA 3000

INDUSTRIAL PRACTICE  
44/45 FL. NAURU HOUSE  
80 COLLINS STREET  
MELBOURNE AUSTRALIA 3000

(03) 605 1616

TELEX: AA 33004  
FAX: (03) 605 1689  
DX: 240 MELBOURNE

OUR REF: SSM:SMS:JC

YOUR REF:

BRIAN DAVID KEWLEY  
KEITH ALFRED ROBERT SKINNER  
KENNETH CLIVE BROOKES  
JEFFREY STEPHEN KIDDLE  
DENIS JAMES DAVIES  
DAVID LEONARD BAILEY  
MARTIN MOULLE HUDSON  
COLIN GEORGE POLITES  
MARCUS KIRKLAND FAIRBAIRN  
JOHN ALFRED EMERSON  
JAMES MACKLIN PFEIFFER  
RUSSELL DAVID ALLEN  
PETER ALGERNON FRANC HAY  
PAUL MONTGOMERY  
BRYAN DAVID WEIR  
JOHN BALFOUR BLANCH  
RICHARD GEOFFREY EAGER  
PETER FARLEY MITCHELL  
PETER MARK BUTLER  
SIMON ANTHONY YENCKEN  
PETER WILLIAM STAWELL  
STEPHEN MARCUS STERN  
JOHN LINDSAY COOPER  
DAVID WILLIAMS  
GRAEME JAMES SMITH  
JOHN LINDSAY ARTHUR  
PAUL ASHLEY COOPER

CONSULTANT  
LEWIS MONTAGUE PENN-TONKIN

SYDNEY  
MLC CENTRE  
MARTIN PLACE  
SYDNEY N.S.W. 2000  
TELEPHONE: (02) 234 7234  
TELEX: AA21885  
FAX: (02) 232 1374

CANBERRA  
LONDON COURT  
13 LONDON CIRCUIT  
CANBERRA CITY A.C.T. 2601  
TELEPHONE: (062) 49 7711  
TELEX: AA62293  
FAX: (062) 48 9582

PERTH  
AUSTRALIA PLACE  
15-17 WILLIAM STREET  
PERTH W.A. 6000  
TELEPHONE: (09) 327 5777  
TELEX: AA92117  
FAX: (09) 322 5954

SINGAPORE  
CHARTERED BANK BUILDING  
6 BATTERY ROAD  
SINGAPORE 0104  
TELEPHONE: (65) 225 1288  
TELEX: (RS) 42674  
FAX: (65) 225 3314

17th November, 1986.

Mr. Ben Hardiman,  
Treasurer  
Motorcycle Riders Association,  
Shop 1, 440 Elizabeth Street,  
MELBOURNE, VIC., 3000.

Dear Mr. Hardiman,

RE: M.R.A. Promotions Pty. Ltd.  
MRA Motorcycle Insurance - Business Name Registration

We have been instructed to advise on the competing interests of the Motorcycle Riders Association ("the MRA") and Mr. Damien Codognotto to the names "MRA Promotions" and "MRA Motorcycle Insurance". We are instructed that Codognotto has "fallen out" with the MRA and asserts his personal right to use the above names in relation to his own company and business.

The business name MRA Promotions was applied for on 9th February 1981 by Codognotto and Mr. Lewis Wayne Bordon. The nature of the business was given as "promoting of motorcycle industry", and business was to be conducted at 290 Maribyrnong Road, Moonee Ponds 3039 from 1st February 1981 on. MRA Promotions was subsequently registered as a business name pursuant to that application. On 6th October 1982 a Notice of Cessation of business under the business name was lodged by Bordon and the next day the name was transferred to a shelf company which then became known as M.R.A. Promotions Pty. Ltd. That company was previously known as Fifty-sixth Asteroid Pty. Ltd.

The present shareholders and directors of M.R.A. Promotions Pty. Ltd. are recorded as Codognotto and Gregory John Coysh. Coysh is also the company secretary. The registered office of the company is given as 440 Elizabeth Street, Melbourne 3000. The last return for that

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company was filed on 30th August 1985 for the year ending 30th June 1985 and shows a net liability of \$345.00 for the company. Also shown on the balance sheet for the company are loans from Codognotto and Coysh to the company of \$12,162.00 and \$2,394.00 respectively.

On 15th December 1982 M.R.A. Promotions Pty. Ltd. applied for registration of the business name "MRA Motorcycle Insurance", the registered address of which was to be 184 Brunswick Street, Fitzroy 3065. The business name was registered but expired on 15th December 1985. On 14th March 1986 a new application for registration of the business name MRA Motorcycle Insurance was lodged by M.R.A. Promotions Pty. Ltd. The registered address of business was given as 22 Tooronga Road, East Malvern 3145 and the application stated that business was or was proposed to be conducted under the business name at 22 Tooronga Road, and at Shop 1, 440 Elizabeth, Melbourne 3000. The nature of the business was given as Motorcycle Insurance and date of commencement of business given as 15th December 1982. The registered address of the corporate proprietor of the business names was incorrectly given as 22 Tooronga Road, East Malvern (we note that the correct registered address of M.R.A. Promotions Pty. Ltd. is 440 Elizabeth Street, Melbourne). The forms were signed by Codognotto as director of the corporate proprietor.

We also note that applications for the registration of various trade marks incorporating the "MRA" logo in pump lettering or the words "Motorcycle Riders Association" have been made but none has proceeded to registration. The oldest of such trade mark registration applications is one taken out by the Motorcycle Riders Association (before it was incorporated) for a trade mark involving the letters "M.R.A.", the words, "Motorcycle Riders Association" and its address and the large words "SWAP MEET". That registration was applied for on 6th July 1979.

We enclose copies of applications for registration of trade marks revealed by our searches. You will note that four of the applications are taken out by the Motorcycle Riders Association Ltd. (Inc. in Qld.) for the letters "M.R.A." in various classes. Two of those (Qld.) applications have lapsed but, apparently, applications in respect of "advertising and business services" and "educational and entertainment services" are proceeding. The MRA may wish to consider whether it should object to these applications proceeding to registration on the ground that the MRA (Qld.) is not the proprietor of the word "M.R.A.".

The two remaining pending applications were made on behalf of the MRA (ie Vic.). One is for the words "MRA, Motorcycle Riders' Association, let those who ride decide" and was filed by Bryan J. Gurry & Co. Solicitors. The other is for the map of Australia logo and the words "MRA, Australia". Should either or both of these latter applications proceed to registration it is possible the Trade Marks Office would require a disclaimer of entitlement to the exclusive use of the letters "MRA". If that were the case, the registration of the trade marks would be of no assistance in the present matter.

If it is the fact that Bryan J. Gurry & Co. act for Codognotto and M.R.A. Promotions Pty. Ltd., the MRA should consider whether it is in

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its interest to allow that firm to continue to act for it in relation to the trade mark application.

Also included in our instructions are selected copies of letters and minutes of meetings of the committee of the MRA and a manilla folder containing notes of Victorian proposals re MRA Australia.

From our instructions and the documents handed to us, we conclude that the setting up and operating of the company M.R.A. Promotions Pty. Ltd. by Codognotto and the use by that company of the business name MRA Motorcycle insurance were essentially with the knowledge and acquiescence of the committee, from time to time, of the MRA. It seems that M.R.A. Promotions Pty. Ltd. was set up by Codognotto and Bordon to be operated in conjunction with the MRA to supplement the funds of the MRA, to by-pass some of the legal and constitutional restrictions on the MRA operations and to provide employment and profit for Codognotto and Bordon. It was stated by Codognotto in one of the documents that

"M.R.A. Promotions is one of the only feasible means for the MRA to supplement its funds and by-pass the legal restrictions. M.R.A. Promotions has requested the use of the MRA logo and colours from the committee so as to conduct its business in a manner best suited to the MRA ideals. The submission of the logo to MRA committee is a means of controlling M.R.A. Promotions so as not to contradict with the MRA constitution. The committee has the power to withdraw the logo offer, which could mean the collapse of M.R.A. Promotions. ...The MRA's and M.R.A. Promotions interests are the same..."

It is our opinion that the MRA sanctioned the setting up and operation of M.R.A. Promotions Pty. Ltd. by Codognotto and Bordon because of the benefits to the MRA that it was claimed would be received. The MRA allowed its name and logo to be associated with the company and its business because of those anticipated benefits. In the circumstances that have now eventuated, that is, now that Codognotto is no longer closely associated with the committee, membership and operation of the MRA, and now that he has indicated that the MRA will not enjoy the intended close working relationship with M.R.A. Promotions Pty. Ltd. (and consequently will not derive the intended benefits) the MRA may withdraw the right for Codognotto, Bordon and their company to use the MRA name and/or logo. Accordingly, the MRA could require that the company M.R.A. Promotions Pty. Ltd. change its name to another not involving the letters "MRA" and could require that that company cease use of the name MRA Motorcycle Insurance and require the Commissioner for Corporate Affairs to cancel the business name registration.

The members of the committee of non-profit associations are elected and/or appointed to manage the affairs of the association. By reason of their position, they have collective control over the property of the association and charge of its destiny. A committee member of an association is in the same position in relation to that association as a director is towards his company. He is required to act honestly and with reasonable diligence in the discharge of his duties of his

office. He is forbidden from making improper use of his position or of information gained by reason of his position to directly or indirectly gain an advantage for himself or for another person or to cause detriment to his association. Breaches of these duties expose the person to compensate the association for damages suffered, to account to the association for profits made by reason of the breach and to discontinue the breach. These duties may continue after the committee member relinquishes his position with the association. It is clear from our instructions that Codognotto and Bordon were permitted to continue to operate the company under the name M.R.A. Promotions Pty. Ltd. and to continue to use the business name MRA Motorcycle Insurance (if, in fact, use of that business name was known to the MRA or its committee) for so long as the good relationship between Codognotto and Bordon and the MRA continued.

In the minutes of the committee meeting of the MRA Victoria for Tuesday, 28th June 1983 is the following entry:

"M.R.A. PROMOTIONS:

Tony: The MRA Victoria hereby empowers the company, M.R.A. Promotions to use its name and logo for the next five years, with an option after that five years to continue using its name and logo for a further five years.

A contract is to be drawn up by Lewis.

HONORARY LIFE PATRON OF MRA

Luke moved that Damien Codognotto be raised to Honorary Life Patron of the MRA

Seconded: Glenn Barlow

Carried: Unanimously "

There is no indication that the minute entry in relation to M.R.A. Promotions records a motion that was either put to or carried by the committee. It seems to indicate merely that Tony Scicluna merely put that as a proposition or motion and does not record any vote. Further, the minutes state that "a contract is to be drawn up by Lewis (Bordon)". We are instructed that no such contract, or anything similar thereto, was subsequently drawn up. Accordingly, we advise that such a minute entry cannot and does not bind either the committee or the MRA membership. Thus it cannot act to prevent the MRA from withdrawing the right of the company M.R.A. Promotions Pty. Ltd. to use the MRA name and logo. It may be necessary for the MRA to give reasonable notice to M.R.A. Promotions Pty. Ltd. of the withdrawal of that right. However, on our instructions, that notice has already been given. Codognotto has refused to relinquish use of the letters "MRA" in his company and business name. On that basis the right of use may be withdrawn immediately.

We are further instructed that Codognotto still appears publicly, both in print (Revs) and on television (Channel 7 News) giving the appearance that he speaks on behalf of the MRA although his connection



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with the MRA is now terminated. Apparently this comes about from the fact that Codognotto actually speaks on behalf of his company or the MRA Motorcycle Insurance business of his company but media representatives assume that he is (still) representing the MRA. We are instructed that Codognotta has stated that he takes steps to prevent this from happening but that, nevertheless, it continues to occur.

We are therefore of the opinion that this provides further ground for the MRA requiring that the company and business names be changed. It is a clear breach of the Federal Trade Practices Act 1974 for a company, in the course of trade or commerce to engage in conduct that is misleading or deceptive or is likely to mislead or deceive. Further breaches of the Trade Practices Act are committed by a company, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services to falsely represent that goods or services have sponsorship or approval they do not have or that the company has a sponsorship, approval or affiliation it does not have. Such conduct also constitutes breaches of the Victorian Fair Trading Act 1985.

We are of the view that the retention of the letters MRA in the company and business names used by Codognotto and/or his company clearly breaches the abovementioned Acts and that a Court would require that the names be changed.

We have approached the Victorian Corporate Affairs Commission in relation to the business and company names. An official of the Commission has indicated that it would be unwilling to cancel the business name registration or require that the company name be changed without being directed to do so by Court order.

Accordingly, the approach we recommend be taken in relation to this matter is as follows. Firstly a letter of demand should be sent to M.R.A. Promotions Pty. Ltd. and its directors requiring that that company change its name and take steps to cancel the business name registration. Should that letter of demand fail and the MRA wish to continue with the matter, proceedings should be instituted in the appropriate Court seeking declarations that the MRA is entitled to have and use its names and requiring the name changes to be brought about. We believe that such proceedings would have a very good chance of success.

In relation to the costs of such proceedings we advise that we have been in contact with the Legal Aid Office who indicate that an application for legal aid may be made but that it would be unlikely to succeed. The reason for the likely failure of the application is the ready availability of a "slush fund" or call on members of the MRA to make a small contribution towards the costs of the action. With approximately 6,000 members in Victoria, a call of a few dollars would create a substantial fighting fund, even if not all members were willing to contribute. As a rough estimate, it is likely that Court action would cost about \$10,000.00 to \$20,000.00, and would depend on the Court selected, the vigour with which the action was defended and

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the experience (i.e. price) of the barrister chosen to represent the MRA.

We would, of course, be happy to discuss any further aspects in relation to this matter that the MRA may raise and suggest that should you have any enquiries you contact Mr. Simon Murray at this office.

Yours faithfully,  
FREEHILL, HOLLINGDALE & PAGE.

Per: *S. Stan*