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IN THE FEDERAL COURT OF AUSTRALIA

NEW SOUTH WALES DISTRICT REGISTRY

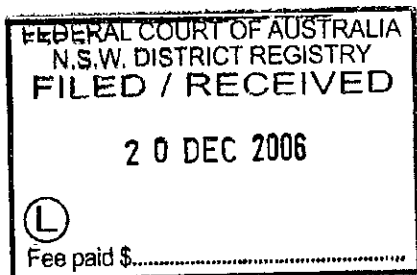
No.

of 2006

DAVID JONES LIMITED
(ACN 000 074 573)
Applicant

THE AUSTRALIA INSTITUTE LIMITED
(ACN 061 969 284)
First Respondent

CLIVE HAMILTON
Second Respondent



STATEMENT OF CLAIM
(Order 4, rule 6)

- 1 The Applicant (**David Jones**) is, and was at all material times:
 - (a) a company duly incorporated in Australia and able to sue; and
 - (b) engaged in the business of operating a national retail chain of department stores in Australia.
- 2 The First Respondent (**TAI**) is, and was at all material times a company duly incorporated in Australia and able to be sued.
- 3 The Second Respondent (**Dr Hamilton**) is and was at all material times the Executive Director of TAI and involved in the day to day activities of TAI and in particular its promotional and media activities.
- 4 TAI carries on a business in the course of which, or for the purposes of which, it:
 - (a) conducts research and analysis for reward;
 - (b) offers and promotes its research and analysis services as available to be commissioned by government and non government bodies and persons;
 - (c) sells and promotes the sale of books;

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- (d) sells and promotes the sale of copies of research and discussion papers prepared by it;
- (e) offers membership services in return for subscription payments;
- (f) seeks donations and contributions for its research activities;
- (g) advertises and promotes research papers, discussion papers and analyses prepared by it for purposes which include promoting and soliciting the supply for reward of its commissioned research and analysis services, the sale and supply of books, the sale and supply of its research and discussion papers, the supply of membership services and the provision of donations;
- (h) maintains a website at www.tai.org (the **Website**) for the above purposes.

5 On 9 October 2006 TAI issued a media release entitled “Corporate paedophilia - Sexualising children by advertising and marketing” (**the Media Release**) announcing the launch of a discussion paper entitled “Corporate Paedophilia - Sexualisation of children in Australia” which TAI caused to be prepared (**the Discussion Paper**).

6 Dr Hamilton authorised the terms and issue of the Media Release.

7 The Media Release contained the following statements:

The sexualisation of Australian children in the interests of corporate profit is increasing and exposes children to a wide range of risks from a very young age.

The report, entitled 'Corporate Paedophilia' by Dr Emma Rush and Andrea La Nauze, examines advertising and marketing directed at young children and their parents.

Launching the report today, Institute Director Dr Clive Hamilton said the report is the first comprehensive record of the extent to which Australian children were being targeted from a very young age to dress and appear “sexy”.

"The essential point is that are increasingly being portrayed in clothing and posed in ways designed to draw attention to adult sexual features that they do not yet possess," he said, "Children are being eroticised in the interests of the corporate bottom line.

"It is particularly disturbing that this exploitation of young children appears to be becoming accepted as mainstream.

"Major retail chains such as David Jones and Myer have jumped on the bandwagon. When family department stores show no conscience on these issues, or are inured to the effects of their behaviour, the situation is very unhealthy."

Dr Rush said that the report is the only attempt to date to describe in detail the wide range of risks attached to advertisers' presentation of prepubescent children as sexual objects.

The sexualisation of children endangers children's healthy development in a range of ways and also conveys a message to others that children are ready for sex." Dr Rush said. "We know that paedophiles subscribe not only to child pornography but also to child modelling websites. Advertisers need to take more care in how they present child models and how they encourage children to dress and behave.

"Research further suggests that children who are prematurely concerned with sexy behaviour and appearance miss out on their middle childhood.

"Children's long-term cognitive, social and emotional development is affected by skipping this important developmental stage. They may be underprepared for emotionally mature relationships; they can become dangerously susceptible to eating disorders because of the unhealthy focus on their bodies; and they may be encouraged into having consensual sex from a very early age, with damaging medical and emotional results."

The summary of the report and examples of sexualised children in advertising material are available under "What's New" on the Australia Institute's website www.tai.org.au"

- 8 Copies of the Discussion Paper were available for purchase through the Website.
- 9 The Media Release was prepared and issued by TAI and Dr Hamilton for purposes which included the purpose of promoting the acquisition of the Discussion Paper from TAI through the Website, publicising the Discussion Paper and promoting the quality, availability and supply of TAI's goods for sale, services for commission and membership services and promoting support for TAI and its goods and services by donation.
- 10 In the Media Release, the Respondents made the following representations (the **Representations**):
- (a) David Jones eroticises children in order to obtain profits;
 - (b) David Jones is responsible for advertising which portrays children in an exploitative way;
 - (c) David Jones acts without conscience in sexually exploiting children for profit;
 - (d) David Jones knowingly causes the publication of material which can be used by paedophiles for their sexual gratification;
 - (e) the Discussion Paper contains conclusions to the effect of each of (a) to (d) above;
 - (f) the Discussion Paper contains academic research and analysis which support each of the conclusions referred to in each of (a) to (d) above.
- 11 The issue of the Media Release constituted conduct in trade and commerce.

- 12 Further, the making of each of the Representations constituted conduct in trade and commerce.
- 13 In fact:
- (a) David Jones does not eroticise children in order to obtain profits;
 - (b) David Jones is not responsible for advertising which portrays children in an exploitative way;
 - (c) David Jones does not act without conscience in connection with advertising involving children and does not engage in the conduct of sexually exploiting children for profit;
 - (d) David Jones does not knowingly cause the publication of material which can be used by paedophiles for their sexual gratification;
 - (e) the Discussion Paper does not contain conclusions to the effect of any of subparagraphs (a) to (d) of paragraph 10 above;
 - (f) the Discussion Paper does not contain academic research and analysis which support any of conclusions referred to in subparagraphs (a) to (d) of paragraph 10 above.
- 14 Subsequently to the issue of the Media Release, TAI and Dr Hamilton issued a further media release (**the Further Media Release**) in which they refused to withdraw any association between David Jones and the Discussion Paper or the Media Release.
- 15 By the issue of the Further Media Release, TAI and Dr Hamilton repeated the conduct constituted by the issue of the Media Release and further, repeated the conduct constituted by the making of the Representations.
- 16 David Jones has requested that the Respondents:
- (a) refrain from continuing to make the Representations;

- (b) remove all references to David Jones, including the David Jones advertisements, from the electronic appendix to the Discussion Paper;
- (c) issue a corrective press release in the form appearing at Schedule A to this Statement of Claim (the **Corrective Media Release**):

Particulars

- (i) Letter from Gilbert + Tobin to Dr Hamilton dated 17 October 2006;
 - (ii) letter from Kennedys to Gilbert + Tobin dated 1 November 2006;
 - (iii) letter from Johnson Winter & Slattery to Kennedys dated 5 December 2006;
 - (iv) letter from Kennedys to Johnson Winter & Slattery dated 8 December 2006.
- 17 Each of the Respondents has refused to comply with the requests referred to in paragraph 16 above.
- 18 By reason of the matters set out in paragraphs 4 to 17 above, the making of the Representations by the Respondents constituted conduct which was:
- (a) misleading or deceptive; and/or
 - (b) likely to mislead and/or deceive,
- in contravention of section 52 of the *Trade Practices Act 1974* (Cth) (**TP Act**).
- 19 Further and in the alternative, by reason of the matters set out in paragraphs 4 to 9, 11 and 13 to 17 above, or otherwise, the issue of the Media Release and the Further Media Release constituted conduct which was:
- (a) misleading or deceptive; and/or
 - (b) likely to mislead and/or deceive,
- in contravention of section 52 of the *Trade Practices Act 1974* (Cth) (**TP Act**).

- 20 Alternatively to paragraphs 18 and 19, the conduct referred to in each of those paragraphs constituted conduct by TAI in contravention of section 52 of the TP Act and Dr Hamilton aided, abetted, counselled or procured or was knowingly concerned in or a party to the contravention, and is thereby a person involved in the contravention within the meaning of section 75B of the TP Act.
- 21 By reason of the matters referred to in paragraphs 14 to 17 above, the conduct of each of TAI and Dr Hamilton referred to in paragraphs 18 to 20 above is continuing conduct.
- 22 Unless restrained, the Respondents will engage in further contraventions of the TP Act.
- 23 David Jones has suffered loss or damage by the conduct of the Respondents.
- 24 By reason of the conduct of the Respondents, the Corrective Media Release ought to be issued by the Respondents in the same manner that they issued the Media Release and also be published on the Website, published in the next edition of TAI's newsletter and published in the next email update by TAI.

AND David Jones claims the relief specified in the Application.

Dated: December 2006



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MARK O'BRIEN
Solicitor for the Applicant

This statement of claim has been settled by Tony Bannon SC and John Hennessy of Counsel.

CERTIFICATE OF LEGAL PRACTITIONER

(Order 11, rule 1B)

I, Mark O'Brien, certify to the Court that, in relation to the pleading dated [] December 2006 filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non-admission in the pleading.

Date: December 2006



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Mark O'Brien
Solicitor for the Applicant