

Petreski, Sonya

From: Serrano, Caroline
Sent: Thursday, 12 November 2009 6:12 PM
To: EC/LC Papers
Subject: RE: EC agenda [SEC=UNCLASSIFIED]

Categories: SEC=UNCLASSIFIED

Sorry, could you please add my name as staff.

From: Serrano, Caroline
Sent: Thursday, 12 November 2009 4:59 PM
To: EC/LC Papers
Subject: RE: EC agenda [SEC=UNCLASSIFIED]

Hi please find below minute for Mercy Ministries:

Matter: Mercy Ministries
TRACKIT 34468
Staff: Melinda McDonald

Outcome: The EC agreed to resolve the matter as proposed by staff by way of the section 87B Undertaking offered by some of the former directors of Mercy Ministries.

Regards,
Caroline

From: EC/LC Papers
Sent: Friday, 6 November 2009 8:36 AM
To: Serrano, Caroline
Subject: RE: EC agenda [SEC=UNCLASSIFIED]

Hi Caroline

Your paper number is EC0910/131. Meeting number 18.

Kind Regards,

Chantelle Odd
02 6243 1020

From: Serrano, Caroline
Sent: Thursday, 5 November 2009 4:20 PM
To: EC/LC Papers
Subject: EC agenda [SEC=UNCLASSIFIED]

Good afternoon, could you please add the following to next week's EC agenda:

Title: Mercy Ministries Incorporated / Mercy Ministries Limited

Alleged: Misleading conduct in the provision of counselling services by a charitable organisation

Purpose: To provide the EC with an update on the negotiations between staff and Mercy Ministries and to recommend the acceptance of a section 87B undertaking (attached) as an appropriate resolution of the matter.

Officers: Caroline Serrano, Melinda McDonald and Elizabeth Jennings

Thanks and kind regards

Caroline Serrano

Australian Competition & Consumer Commission

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ENFORCEMENT COMMITTEE SUBMISSION

Meeting date 12.11.09

Meeting number 2009/18

Paper number EC0910/131

Matter name / TRACKIT 34468 / Complaints against Mercy Ministries, [REDACTED]

Matter description Alleged misleading and deceptive conduct in the provision of counselling services through a residential program, by a faith-based charitable organisation.

Matter status Negotiation of appropriate resolution of the matter.

Project team McDonald, Melinda; Serrano, Caroline; Jennings, Elizabeth

Office Brisbane

Legal team Name of firm: AGS Names: [REDACTED]

Commencement date 18 March 2008

Last EC consideration Last considered by the EC on 29 October 2009 via an oral update.

Purpose of paper Whether to accept the proposed s.87B Undertaking as appropriate means of resolution of the matter.

Legal costs to date \$49,998.00

Funding sought Yes. Note: schedule required. No.

Recommendation The Committee agrees to resolve the matter as proposed by staff by way of the s.87B Undertaking offered by former directors of Mercy Ministries

Approved by RD/GM Yes

Legal advice Not applicable. This paper includes confidential and privileged material. (advice shaded)

Approximate time for return to the EC 1 month or less other [insert proposed time]
 3 months not scheduled to be returned
 6 months

1. Alleged conduct

- 1.1 It is alleged that in making certain various representations, Mercy Ministries Incorporated (MMI) and Mercy Ministries Limited (MML) (together Mercy Ministries) engaged in misleading and deceptive conduct in breach of section 52, 53(aa) and 53(e) of the TPA.

1.2



2. Potential contravention/s

- | | | |
|-----|-----------|---------------------------------|
| 2.1 | s. 52 | Misleading or deceptive conduct |
| 2.2 | s. 53(aa) | Misrepresentation as to price |
| 2.3 | s. 53(e) | Misrepresentation as to quality |

3. Relevant background and context for investigation**Brief background**

- 3.1 The matter relates to a not for profit charitable organisation, Mercy Ministries, which offered a Christian-based residential program to young women between the ages of 16 and 28 and suffering from a range of illnesses which include eating disorders, depression, self-harming, and abuse.
- 3.2 It is alleged that Mercy Ministries represented that its program was provided free or at no cost to participants in circumstances where the participants were required to sign over their Centrelink benefits to Mercy Ministries for the duration of their stay. It is also alleged that Mercy Ministries represented that it had highly qualified staff available to provide counselling and clinical care services, when that was not supported by its staffing profile. At best, such services were only supplied by external practitioners upon request by residents.

Investigation History

- 3.3 The investigation came about as a result of a number of complaints received from former residents of Mercy Ministries by the ACCC, following an article published in the Sydney Morning Herald in 17 March 2008 which made various allegations against Mercy Ministries, many of which did not involve trade practices issues.
- 3.4 Given the complainant's conditions, vulnerability and the potential difficulties in pursuing a case using the complainants as witnesses, staff have built a misleading conduct case confined to the representations contained in documents. This strategy removes the need for former residents to give evidence on the traumatic experiences they had whilst at Mercy Ministries' residential facilities.
- 3.5 The matter was first brought to the attention of the EC in October 2008.

3.6



3.7

3.8



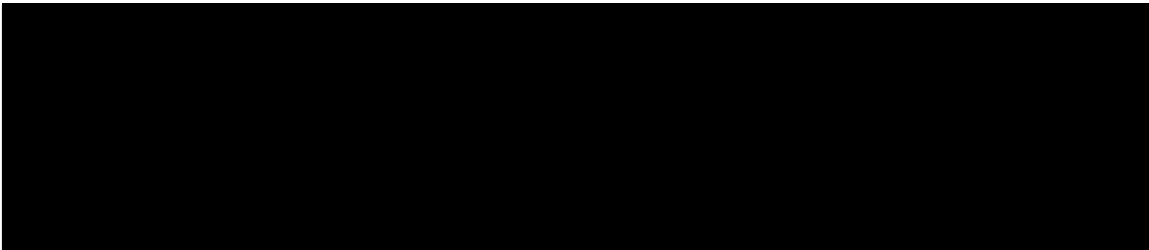
3.9

3.10 On 25 June 2009, [redacted] the matter was brought before the EC. At that meeting, staff were directed to seek to resolve the matter by way of a s.87B undertaking containing some form of compensation or ex gratia payments for Mercy Ministries former residents but to take the matter to the Full Commission recommending court proceedings in the event Mercy Ministries is not willing to provide compensation.

Settlement negotiations

3.11 Staff met with officers of MMI to determine whether there existed an opportunity to resolve the matter via a s.87B undertaking which incorporates ex gratia payments to its former residents.

3.12



3.13 The EC was provided with an oral update on 20 August regarding MMI's offer, and further direction was sought. Staff were directed to continue negotiations of a s.87B Undertaking to resolve the matter [redacted]

3.14



3.15

3.16

3.17

3.18

3.19

3.20

Recent Developments

3.21 On or about 27 October 2009, MMI's website publicly announced its impending closure. At the same time, one of its major sponsors, the Hillsong Church has published a media release on its website explaining that it *'has cut ties with Mercy Ministries around the world following an ACCC investigation into Mercy Ministries Inc'*. (Note that the media release has since changed and that the mention of ACCC has been deleted).

3.22 On 28 October 2009, articles relating to the closure of MMI were published by ABC news and the Sydney Morning Herald.

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3.25

3.26

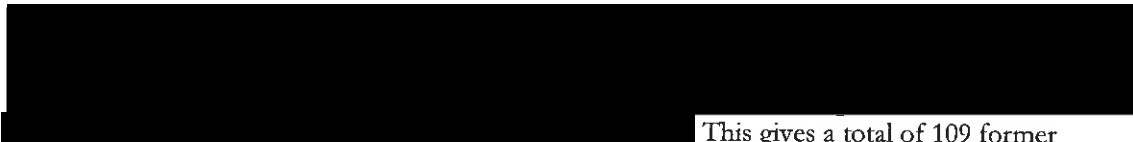
3.27



4. Potential Remedies

Consumer Redress

4.1



This gives a total of 109 former residents to be offered a payment. So, of the total **\$118,154**, it is proposed that each of the **109** former residents be offered a payment of **\$1050** by the former directors of Mercy Ministries [$\$118,154$ divided by 109 equals $\$1083.99$.] You will note that $\$1050$ is a rounded number.

4.2

Given the payment is being offered by numerous individuals, and that the corporate entities are not involved, staff consider that the simplest process for the implementation of the redress is as outlined in the Undertaking. You will see that what is proposed is that within 14 days the former directors are to forward to a trust account nominated by the ACCC (AGS trust account) the full amount of $\$118,154$. From there, staff of the ACCC will implement the mail-out of letters which will make the offer of payment (enclosing a simple claim form, and stamped self addressed envelope to return to the Brisbane office). The letter will also enclose the open letter of apology referred to below.

Admissions

4.3

The Undertaking includes that each of former directors admit their conduct permitted Mercy Ministries to engage in conduct that was misleading and deceptive and likely to contravene section 52, 53(aa) and 53(e).

Letter of Apology

4.4

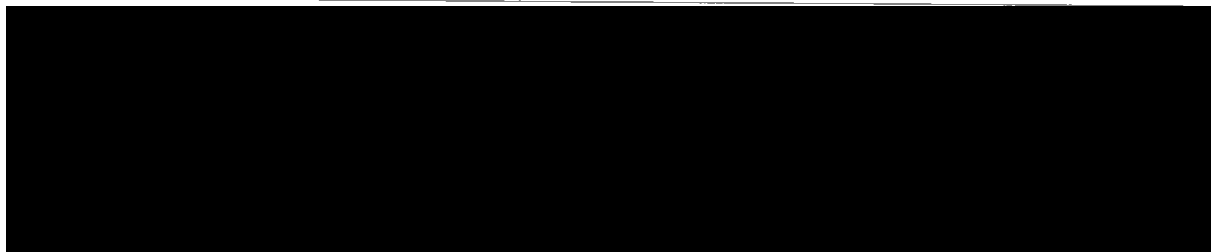
The former directors offer to provide an open letter of apology to the former residents in the form of Annexure B to the Undertaking – see attached.

Trade Practice compliance training

4.5

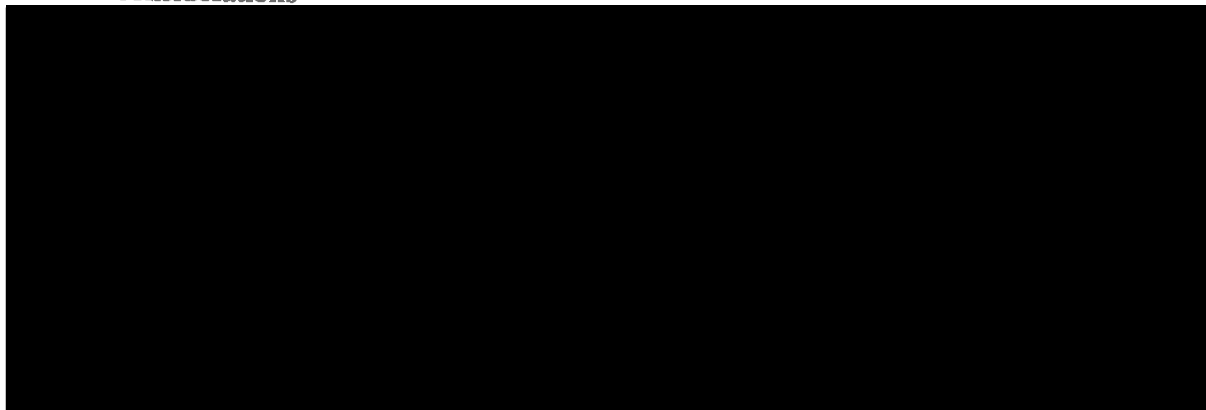
The former directors offer to attend trade practices compliance training for the duration of the Undertaking.

5.



6. Estimated completion date

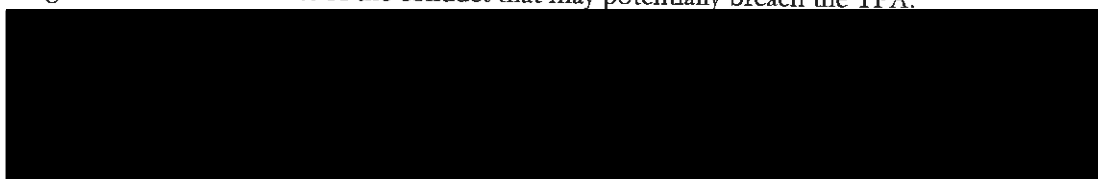
- 6.1 Should the proposed s.87B Undertaking be acceptable, it is envisaged that the matter will be completed in terms of its investigation, by end of December 2009. The implementation of the payments to residents will involve work for a further period of 4-6 months, so should be finalised by mid 2010.

7. Other considerations

8. Risks and other relevant factors

- 8.1 Should the Commission determine to proceed by way of litigation, the following difficulty may arise:
- 8.1.1 There are procedural challenges in bringing proceedings against entities that have been wound up and leave of court will have to be sought.
- 8.1.2 As a result of the winding up of both Mercy Ministries Incorporated and Mercy Ministries Limited, there exist only limited prospects of obtaining relief against the corporations.
- 8.2 The proposed section 87B undertaking offers meaningful relief to former residents, specifically in terms of redress and apology. More importantly, the provision of payments to former residents, in the proposed section 87B undertaking is a remedy not able to be obtained from Court. Further, the outcome will also be a good vehicle to educate the public and charitable organisations of the effect of the conduct that may potentially breach the TPA.

8.3



9. Recommendation

- 9.1 The Committee agrees to resolve the matter as proposed by staff by way of the s.87B Undertaking offered by former directors of Mercy Ministries.

10. Attachments

- 10.1 Draft section 87B Undertaking

11 pages

Attachment 1

