

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio
Budget Estimates 2014
3 June to 5 June 2014

Department/ Agency: Royal Australian Mint

Question: BET 3125-3133

Topic: Conditions of Government Contracts and Agreements

Reference: Written – 12 June 2014

Senator: Ludwig

Question:

3125. Do any contracts managed by the Department/Agency contain any limitations or restrictions on advocacy or criticising Government policy? If so, please name each contact. When was it formed or created?
3126. What are the specific clauses and/or sections which state this, or in effect, create a limitation or restriction?
3127. Do any agreements managed by the Department/Agency contain any limitations on restrictions on advocacy or criticisms of Government policy? If so, please name each agreement. When was it formed or created?
3128. What are the specific clauses and/or sections which state this, or in effect, create a limitation or restriction?
3129. For each of the contracts and agreements, are there any particular reason, such as genuine commercial in confidence information, for this restriction?
3130. Have any changes to financial or resource support to services which advocate on behalf of groups or individuals in Australian society been made? If so, which groups? What was the change?
3131. How much has the Department/Agency spent on Advertising since Additional Estimates in February, 2014? Including through the use of agencies.
3132. Please detail each advertising campaign including it's cost, where the advertising appeared, production costs, who approved, ministerial or ministerial staff involvement in commissioning
3133. Please detail each advertising campaign including it's cost, where the advertising appeared, production costs, who approved, ministerial or ministerial staff involvement in commissioning

Answer:

3125. The Mint does not keep a central register of contracts and does not log specific clauses that contain any limitations or restrictions on advocacy or criticising Government policy.

3126. Examples are provided below;

A proposed agreement with Newsouth Publishing contains clauses limiting the Commonwealth's ability to litigate. This agreement is still being negotiated. A sample is provided below. Although I advise against signing these clauses the business area may undertake risk assessments, calculate the risks and seek relevant permissions from the Minister or other relevant party to facilitate commercial decisions. I do not keep a record of the final negotiated agreements after I

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio
Budget Estimates 2014
3 June to 5 June 2014

provide advice. I do not keep a register of clauses that provide warranties, limitations of liability, indemnity or restrictions on advocacy. Further, business areas seek legal advice from external legal service providers and/or negotiate agreements without using legal advisors. All agreements, negotiations, associated risk assessments and permissions are managed by the business areas independently. There is a central register for risk assessments managed by Sam Murthi. Legal services that are procured may be recorded through the Finance Branch.

- (a) IEL and LIM shall have the right in their reasonable discretion (to be exercised by reference to paragraph 2.3(c)) to determine whether any legal action should be taken to protect the ICC Mark and the Marks and Participating Nations' Marks against infringement by unauthorised users and the Licensee shall not threaten to commence any actions against IEL, LIM or any third party in relation to such infringement.
- (c) Each party acknowledges and confirms their mutual interest in protecting the trade in Licensed Products against infringing advertising, promotion and sales of competing products or products in the nature of Licensed Products referred to in paragraph 2.3(a) especially (without limitation) if: (i) such infringing acts occur within 3 months prior to the commencement of or during an ICC Event; (ii) an infringing product features more than 50% of the Participating Nations of the relevant ICC Event; and/or (iii) an infringing product features Players from more than 50% of the Participating Nations of the relevant ICC Event.
- (a) IEL shall not be obliged to bring or defend any proceedings whether for infringement or otherwise in relation to the infringement of the rights granted under this Agreement. However, if within 10 working days of notification under paragraph 2.3(a) IEL has not commenced proceedings the Licensee may take any action deemed necessary by the Licensee to protect or enforce its rights hereunder provided that:
 - (i) failure to take action would, in the Licensee's reasonable opinion, have an adverse effect on either the Licensee's business in any territory (whether or not Licensed Products have been placed on the market there) or prejudice the Licensee's interests under this Agreement;
 - (ii) the Licensee shall first notify IEL in writing of its intention to take such action and the reasons why it considers failure to take action would result in the adverse effects noted in paragraph 2.3(d)(i);
 - (iii) within 10 (ten) working days of the notification under paragraph 2.3(d)(iii) IEL shall either:
 - (A) approve the proposed action; or
 - (B) provide the Licensee with written notice of disapproval accompanied by written reasons for such disapproval;
 - (iv) the Licensee shall not commence any proposed action unless it is notified by IEL under paragraph 2.3(d)(iii) that IEL approves the proposed action;
 - (v) the Licensee is not permitted to take any action (legal or otherwise) in the name of IEL;

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio
Budget Estimates 2014
3 June to 5 June 2014

- (vi) such action having commenced IEL or IDI can thereafter require the Licensee to transfer control of such action to IDI, subject to IEL then being liable for all costs the Licensee may suffer as a result of such transfer of control;
 - (vii) notwithstanding termination of any other parts of this Agreement, and subject to the other provisions of this paragraph 2.3(d), the Licensee shall be entitled to continue any actions started before such termination to its conclusion.
- (b) If there exist circumstances that the Licensee has reason to believe necessitate an application for urgent injunctive relief being taken and where delay in commencement of the action may have an adverse effect on either the Licensee's business in any territory (whether or not Licensed Products have been placed on the market there) or prejudice the Licensee's interests under this Agreement, the Licensee may, subject to the following, make an application for urgent injunctive relief on its own account and, in such circumstances, the Licensee shall pay for any and all costs (including any reasonable legal costs of IEL and/or LIM) relating to such action. Prior to making such an application, the Licensee shall notify IEL of its belief that the above circumstances exist and IEL shall respond within 2 working days of the notification, electing either to make the application itself (in which case IEL and not the Licensee shall make the application at the IEL's cost), or to approve the Licensee making the application at the Licensee's cost or to refuse giving such approval. The Licensee shall not be entitled to make an application pursuant to this paragraph without the prior approval of IEL, such approval not to be unreasonably withheld and any notice of disapproval shall be accompanied by written reasons.
- (c) If one party takes any action against a third party as envisaged by this paragraph 2.3 or takes over such action commenced by the other party, that party shall, subject to any provisions in this Agreement to the contrary:
- (i) indemnify the other party against any damages or awards or other liability arising out of any action so authorised;
 - (ii) pay for any and all costs relating to such action;
 - (iii) be entitled to retain for its own benefit all damages or awards or the benefit of any Court rulings arising from such action; and
 - (iv) keep the other party regularly informed of the progress of any action.
- (d) Each Party shall at the request of the other give all reasonable co-operation (including without limitation by the provision of documentation and by making relevant people available to act as witnesses) in any action, claim or proceedings brought or threatened in respect of the rights granted under this Agreement.
- (e) IEL shall do everything reasonably possible and practicable to provide, in a timely fashion, all necessary assistance in any action taken or proposed to be taken under the provisions of this paragraph 2.3.

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio
Budget Estimates 2014
3 June to 5 June 2014

1.2 Third party infringement claim

- (a) If a third party should make or file any claim for trade mark infringement, passing off or unfair competition on account of the Licensee's proper use of the ICC Mark or the Marks or Participating Nations' Marks in good faith and in accordance with the terms of this Agreement, the Licensee shall promptly notify LIM of such claim, and thereafter IEL and LIM shall undertake diligent efforts to have such claim withdrawn, settled, defended or compromised. The Licensee shall, at its own expense, cooperate with and assist IEL and LIM's efforts under this clause 2.4 of this Schedule 1, including, at IEL or LIM's request, providing IEL and LIM with evidence of the Licensee's use of the ICC Mark or the Marks or Participating Nations' Marks in advertising, labels, packaging and otherwise.
- (b) IEL and LIM shall, at their sole expense and in accordance with their own reasonable business judgment, take whatever steps they deem necessary or appropriate finally to dispose of such claim (including, at IEL and LIM's election, defending any legal action to final judgment). If IEL and LIM dispose of such claim by payment, IEL and LIM shall be solely responsible for such payment. If such claim is disposed of by an agreed suspension in the sales of the Licensed Products or limitation on the items of merchandise on which the ICC Mark or the Marks or Participating Nations' Marks may be used (or if any court shall direct such suspension or limitation), on notice from IEL and LIM, the Licensee shall suspend or limit its sales of the Licensed Products. IEL and LIM shall not agree to any such suspension without first consulting with the Licensee and attempting to secure an adequate sell-off period for inventory on hand and in process.
- (c) If the Licensee is required to suspend or limit its sales of the Licensed Products under clause 2.4(b) of this Schedule 1, then IEL, LIM and the Licensee shall discuss and agree in good faith an appropriate reduction in the Minimum Guaranteed Royalty which would otherwise have been payable during the period after such suspension or limitation arose, such agreed reduction to be based on the Licensee's sales of the Licensed Products. However, IEL and LIM shall not otherwise be responsible for any damages suffered by the Licensee as a result of such suspension or limitation, and such suspension or limitation shall not terminate or constitute a default by IEL and LIM of this Agreement.

1.3 Licensee indemnity

Without limitation to clause 17, the Licensee agrees to indemnify IEL and LIM and their agents, servants and employees from and against any and all expenses, damages, claims, suits, actions, judgments and costs whatsoever, including reasonable legal fees, arising out of, or in any way connected with any alleged infringement by the Licensee of the patent, design, trade mark, copyright or other intellectual property rights of any third party, whether or not the use of such giving rise to any infringement action was approved by IEL and LIM. For the avoidance of doubt, this provision shall not apply to claims related to the use of the ICC Mark or the Marks or Participating Nations' Marks in accordance with this Agreement.

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio
Budget Estimates 2014
3 June to 5 June 2014

The Cricket Australia Agreement contained restricting clauses as listed below.

Co-operation between the parties

13.10 The Licensee:

- (a) agrees to notify Cricket Australia immediately if it engages in, or detects or identifies, any improper or wrongful use of the Licensed Property or any infringement or threatened infringement of the Licensed Property, or if the Licensee is threatened with any claims, suits, actions, damages or demands as a result of the Licensed Property being affixed to or used in connection with the Products;
- (b) must, subject to Commonwealth law or policy, cooperate fully with Cricket Australia in relation to any legal proceedings or other enforcement action commenced by Cricket Australia against any third party in relation to the Licensed Property or the Products except where such action relates to the Intellectual Property Rights of the Licensee in relation to the Products; and
- (c) must not threaten to commence or commence any legal proceedings against any third party in relation to the Licensed Property or the Products or arising out of the rights and licence granted pursuant to this Agreement or allege any infringement of such rights without obtaining the prior written consent of Cricket Australia except to the extent that such legal proceedings relate to the Intellectual Property Rights of the Licensee in relation to the Products.

15.2 The Licensee agrees not to bring any claim or proceeding against Cricket Australia for any loss, damage, injury the Licensee may suffer in distributing the Products. Except for liability that cannot be excluded, Cricket Australia excludes all liability to the Licensee in tort (including negligence), contract or bailment for acts or omissions of Cricket Australia or its employees arising in relation to the Products or this Agreement.

15.3 Notwithstanding anything in this Agreement to the contrary, Cricket Australia will not be liable in any circumstances for any indirect or consequential loss (which expression shall include, but not be limited to, loss of anticipated profits, loss of anticipated savings and other economic loss), whether foreseeable or unforeseeable. If Cricket Australia has any liability under this Agreement, it shall only be to pay damages up to a maximum of the sums actually received by Cricket Australia from the Licensee under the provisions of this Agreement.

A proposed agreement with Newsouth Publishing contains the following clause regarding legal proceedings:

1. **COPYRIGHT INFRINGEMENT**

If during the life of this Agreement the Publisher believes that the copyright or some proprietary right to the Work is being infringed or injured by the act of another, the Publisher shall give

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio
Budget Estimates 2014
3 June to 5 June 2014

written notice to the Proprietor. If, after conference, the Publisher and the Proprietor determine to take legal proceedings jointly in relation to an alleged infringement or injury, then the costs and recovery arising out of any prosecution shall be shared equally. If no agreement is reached for joint action, either party may proceed as they see fit, bearing all costs incidental thereto and enjoying all of the benefits arising therefrom. If one party shall decline to proceed, that party shall upon being indemnified against all costs connected with any proceeding, execute all instruments necessary or convenient to permit the other party to proceed at their own cost and for their own benefit, either in their own name or in their joint names as the law may require.

3127. Nil response.

3128. Nil response.

3129. Not applicable to the Royal Australian Mint.

3130. Nil response.

3131. Not applicable to the Royal Australian Mint.

3132. Not applicable to the Royal Australian Mint.

3133. Not applicable to the Royal Australian Mint.