

WESTERN AUSTRALIA

**ENFORCEABLE UNDERTAKING UNDER
THE AUSTRALIAN CONSUMER LAW (WA)
BETWEEN**

CAPUTO & CLAY PTY LTD ACN 115 205 199

AND

COMMISSIONER FOR CONSUMER PROTECTION

RECITALS

WHEREAS:

Caputo & Clay Pty Ltd ACN 115 205 199 carries on business as a real estate agency under the business name 'Harcourts Integrity' ("**Agency**") providing real estate agent services to consumers in Western Australia.

- A. Between 1 and 31 March 2014 the Agency conducted a letter drop of advertising material which listed properties that had recently been listed or sold in the Perth suburb of Eden Hill.
- B. The Agency's advertising material distributed in Eden Hill was in a letter format and contained:
1. The Agency's logo and contact information;
 2. Images of properties together with their listed or sale price;
 3. An image of Agency director Prakornsak ('Prak') Sangthorn together with his mobile telephone number and email address; and

4. The statement "*We know Eden Hill prices and if you want yours sold, call me on 0402 149 626*"
- C. Between 1 and 31 July 2014 the Agency conducted a letter drop of advertising material which listed properties that had recently been listed or sold in the Perth suburb of Bassendean.
 - D. The Agency's advertising material distributed in Bassendean was in a letter format and contained:
 1. The Agency's logo and contact information;
 2. Images of properties together with their listed or sale price;
 3. An image of Agency director Prakornsak ('Prak') Sangthorn together with his mobile telephone number and email address; and
 4. The statement "*We know Bassendean prices and if you want yours sold, call me on 0402 149 626*"
 - E. In each case, the listed properties included properties that had not been listed with or sold by the Agency.
 - F. The Commissioner for Consumer Protection ('**COMMISSIONER**') is of the view that the Agency's advertising materials may, contrary to section 18 of the *Australian Consumer Law (WA)*, mislead consumers and cause the impression that the Agency is or was the real estate agent for the listed properties.
 - G. This Enforceable Undertaking is accepted under section 218 of the *Australian Consumer Law (WA)* by the Commissioner.
 - H. Upon the Commissioner being satisfied of a breach, this Enforceable undertaking is enforceable by a court upon the Commissioner's application.
 - I. This Enforceable Undertaking is not confidential and may be published by the Commissioner.

UNDERTAKING

Caputo & Clay Pty Ltd ("Caputo"), upon this Enforceable Undertaking being accepted by the **COMMISSIONER, UNDERTAKES**, pursuant to section 218 of the *Australian Consumer Law (WA)*, that:

1. Where any advertisement created, published and/or distributed by Caputo includes a representation that properties have been sold in a certain geographic area, then unless Caputo acted as agent in respect of the sale of each of those properties, Caputo will include, in a prominent position in the advertisement in an easily legible font and font size, the following:

"Please be aware that not all properties listed were sold by Harcourts Integrity."

Signed for and on behalf of:

A. Caputo & Clay Pty Ltd

In accordance with section 127 of the *Corporations Act 2001 (Cth)*



In his capacity as Director 1

Michael Clay

Signature of Director 1 (& Secretary)

Prakornsak Sangthong

Full name of Director 2

In his capacity as Director 2



Signature of Director 2 (if required)

B. **COMMISSIONER FOR CONSUMER PROTECTION**

Signed:



Date undertaking accepted: 25 May 2015