

21 March 2014

Chairperson
Friendly Street Poets Inc
PO Box 3697
Norwood SA 5067

Dear Sir/Madam

Re: New Poets 18 Collection

We act for Indigo Eli in relation to the above matter ("our client").

Background

We are instructed as follows:

1. Our client was the winner of a poetry competition called New Poets 18 Collection being conducted by Friendly Street Poets Inc ('FSP').
2. The main prize of the competition was the publication of a work titled New Poets 18 Collection ('NP18') which would include a collection of our client's poetic works ('the poetic works').
3. Our client provided the poetic works to FSP for publication in NP18.
4. FSP advised that no formal licence agreement to the poetic works had been drafted and they wish to proceed to publish NP18 in good faith on the basis that a licence agreement would be completed between FSP and our client.
5. No licence agreement has been executed between FSP and our client.
6. Notwithstanding numerous efforts by our client to negotiate an arrangement with FSP to licence the poetic works no licence has been negotiated.
7. A dispute now exists between FSP and our client in relation to the publication and distribution of the poetic works.

8. Our client has expended considerable time, effort and resources in promoting NP18 and establishing a reputation as a writer of poetry.
9. Our client has become aware that FSP continue to promote and sell NP18 notwithstanding that no formal licence agreement has been negotiated.
10. Our client withdraws any permission FSP has, or may have had, to use their poetic works in NP18.

Fair Trading Act (“FTA”) and Australian Consumer Law (“ACL”)

Section 18, Schedule 2, Competition and Consumer Act 2010 relevantly provide as follows:

‘A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.’

The FTA incorporates the obligations of the ACL into South Australian law as it applies to persons not included within the scope of the ACL.

Our client believes that your continuing use of their poetic works in NP18 constitutes a breach of s14 FTA or Section 18 of ACL as it is misleading or deceptive. It may cause members of the public to be mistaken that NP18 has some formal endorsement or connection to our client when such is not the case since such permission or consent has now been withdrawn .

Passing Off

At common law, the tort of passing off is concerned with protecting a person’s business reputation and goodwill. In particular, passing off prevents persons from holding their products or services out as having a particular association or connection with those of another person when this is not true.

Our client believes that your use of their poetic works to promote and sell NP18 within the market constitutes passing off in that it may cause members of the public to mistaken believe that NP18 has some connection to our client when this is not the case. This passing off is likely to cause damage to the good reputation and goodwill which our client has established over many years.

Remedies

The remedies that are available to our client for breach of the FTA, TPA, and passing off include:

- (a) An injunction restraining you from continuing to publish and sell NP18;
- (b) Damages and/or an account of profits and damage to reputation; and
- (c) Costs.

Undertakings

Our client regards the above matters most seriously and is not prepared to tolerate a breach of them. In the circumstances, we have been instructed to demand from you the following undertakings, namely:

- (a) That you will, whether by yourself, your servant or agents, immediately cease publication and distribution of NP18;
- (b) That you will, whether by yourself, your servants or agents, immediately do all things necessary to permanently delete all references to, and representation of, our client or the poetic works from any promotional materials you have in place;
- (c) That this letter will be read in full and be made available to all members at the AGM of FSP to be held this calendar year.

Our client will not hesitate to do all things necessary to protect its rights in the event that the above undertakings are not made. Our client therefore requires that these undertakings be given within 14 days of the date of this letter. We have **enclosed** a letter of undertaking for you to sign and return to us.

Should we not receive the undertakings requested within this time, our client reserves its right to take such action as it may consider appropriate without further notice to you.

If you have any queries please do not hesitate to contact me.

Yours faithfully



Shaun Berg

UNDERTAKING

In the capacity as an authorised person of Friendly Street Poets Inc I make the following undertakings to Ms Indigo Eli, namely:

- (a) That you will, whether by yourself, your servant or agents, immediately cease publication and distribution of NP18;
- (b) That you will, whether by yourself, your servants or agents, immediately do all things necessary to permanently delete all references to, and representation of, our client or the poetic works from any promotional materials you have in place;
- (c) That the letter dated 21 March 2014 from Berg Lawyers will be read in full and be made available to all members at the AGM of FSP to be held this calendar year.

Dated this day of 2014.

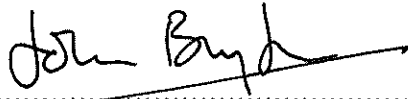
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Print Name:

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- (c) That the letter dated 21 March 2014 from Berg Lawyers will be read in full and be made available to all members at the AGM of FSP to be held this calendar year.

Dated this 19th day of May 2014.



Print Name: JOHN BRYDOW

NOTE:

The above undertakings are given:

- i. Further to the agreement that item (c) above shall be replaced with the circulation in full of the said letter from Berg Lawyers dated 21 March 2014 to members via email and via the Friendly Street FaceBook page within two weeks after the undertaking has been made, and
- ii. in total satisfaction of all claims on Friendly Street Poets Inc or its Officers by Ms Eli arising out of or in connection with this matter and with the agreement that Ms Eli will make no further claims in connection with or arising out of this matter.

