



**AUSTRALIAN
LAW STUDENTS'
ASSOCIATION**

Mooting

Morton v Club Music

Jurisdiction: Cth

Submitted February 2015

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Contact: competitions@alsa.asn.au

BETWEEN:

LOUISE MORTON

Appellant

-and-

CLUB MUSIC PTY LTD

Respondent

1. Louise Morton ('Morton') is an 18 year old musician from Melbourne's inner northern suburbs and has been playing live, original music in local venues since the age of 16. After consistently taking singing lessons and learning a variety of musical instruments since her early childhood, at 16 years of age she decided to pursue music as a career and discontinued her secondary schooling at the conclusion of her Year 10 studies. She has focused on her music career full time since that time, with the support and encouragement of her parents.
2. In early January 2014, Morton released an independent EP recording 'Constitutional Monarchists' through the iTunes Store in Australia, consisting of 5 tracks and released under the stage name 'Deity'. Morton had not previously performed under that name and had never previously released recorded music. Nevertheless, a number of mainstream and alternative Australian radio stations added the title track to their high rotation playlists and the song became very popular, very quickly. The EP achieved a high rating in iTunes store reviews (4.5 stars out of 5) and the title track achieved a very high level of popularity (a full bar on the popularity index – the highest rating possible) by the end of January 2014. Though released electronically, the EP became recognisable by music consumers through its (electronic) 'cover art', which appeared in the iTunes store (and also displayed on the digital EP download) as a plain red, and otherwise unmarked, album cover. Neither the EP title, nor the Deity performance name, appeared on the electronic

album cover, though the release was clearly identified with Deity's iTunes store account (which at the time contained no other releases).

3. In February 2014, after Deity's (apparently) overnight success, Morton gave several interviews with various media outlets confirming that she was working towards the release of her first full length album. Having become very successful in a very short period of time and at a young age, Morton was cautious in her media interviews and did not disclose any information about the forthcoming release other than that it would be in the same, distinctive style as her EP – 'dark, edgy and a little bit quirky'.
4. Morton continued working on her album, also to be independently released, through February and March 2014. It required a significant investment of time and resources. Given the success of Constitutional Monarchists and the high demand for a full length album, the need to issue a new release sooner rather than later had taken even her by surprise.
5. Morton tentatively decided to release her full length album on Friday 4 April 2014 though did not formally announce this release date. Instead, in an attempt to capitalise on the intense interest in the upcoming release, Morton uploaded a thirty second promotional video onto a newly created YouTube channel (identified under her Deity stage name – as was the case with her iTunes Store account) on Friday 14 March 2014. This video consisted of a static image, displayed for thirty seconds, consisting of a block colour background and the word 'SOON'. The image used black lettering against a deep red background. The red used in this video was a deeper, richer red than that used in her Constitutional Monarchists album art, though the use of her stage name for her YouTube channel clearly indicated that the advertisement was associated with Morton's upcoming album release and this was the way it was understood by the press and music consumers. Excitement continued to build, and the intended release date of Morton's as yet untitled forthcoming release remained known only by Morton herself.
6. On Friday 28 March 2014, one week prior to the intended release of her full length album, a new iTunes store account in the Australian iTunes store was opened by Club Music Pty Ltd under the account name 'NameLess'. In that account, containing no

identifying information other than the 'NameLess' account name, one full length album was made available for purchase. That album was titled 'Against My Programming' and the electronic album art consisted of a plain, dark grey album cover with no other markings. It was immediately speculated by the industry and music consumers that this was Deity's new (and highly anticipated) release. Sales were exceptionally strong, with the album immediately jumping to number one on the iTunes Australia album charts where it remained for the coming week.

7. Early in the morning on that same day, Morton had packed her bags for a week away from Melbourne's inner north in order to concentrate on finalising her release. She carried with her only enough personal possessions for the week away and her laptop, on which she was finalising her release. She left her mobile phone at home, and left her pre-paid wireless internet key at home too. It was her intention to be isolated and uncontactable for the week, so that she would have no distractions in finalising her album for her intended Friday 4 April 2014 release date. When Club Music Pty Ltd's iTunes store account containing the Against My Programming album went live later that morning, she was unaware of its release and was unable to be reached for comment. Her unavailability further drove speculation that the album was her highly anticipated forthcoming release, which further drove the album's strong sales.
8. On Thursday 3 April 2014, Morton was satisfied with the state of her work and was ready to release her full length album the next day. She commenced her drive home. It was only upon turning on the radio in her car during the drive (for the first time in a week) that she became aware of the events that had transpired. She stopped at a service centre and immediately used a payphone to contact her uncle, a successful commercial lawyer, for urgent advice. She was very aware, after tirelessly working the local music scene for over two years, that reputations in her industry could be built in seconds and destroyed in seconds, and that having a third party's release trading off her reputation was not at all in the interests of furthering her career and building on the momentum that it was currently enjoying.
9. The following day, Friday 4 April 2014, Morton filed an action in the Federal Court of Australia at Melbourne, alleging misleading and deceptive conduct against Club Music

Pty Ltd. In the final determination of her action (to be resolved at a later date), Morton seeks a permanent injunction restraining the distribution of Against My Programming as well as damages from Club Music Pty Ltd. However, at this stage she also seeks an interim injunction against Club Music Pty Ltd's further distribution of the Against My Programming release, pending that final resolution of the dispute. On Friday 4 April 2014, Morton additionally uploaded her authentic release to the Deity iTunes store account as originally intended and embarked on a swift round of (eagerly awaited) media interviews in which she sought to 'correct the record'.

10. Morton's application for an interim injunction is set down for hearing on 9 April 2014 in the Federal Court of Australia at Melbourne. Morton's application relies upon a contravention of the general prohibition on misleading and deceptive conduct contained in s 18(1) of the *Australian Consumer Law*, being Schedule 2 to the *Competition and Consumer Act 2010* (Cth).
11. Counsel for the Applicant, Morton, are instructed to present the case for the interim injunction that their client seeks at this stage of the proceedings in the Federal Court of Australia at Melbourne on 9 April 2014.
12. Counsel for the Respondent, Club Music Pty Ltd, are instructed to defend that interim injunction application at that hearing.

