

- Tel: +27 (11) 328-1700, Fax: +27 (11) 880-2261
- 11 Biermann Avenue, Rosebank, Johannesburg, 2196
- Private Bag X41, Saxonwold, 2132, South Africa
- Docex 54 Johannesburg, Website: www.fluxmans.com
- Fluxmans Inc. Registration No: 2000/024775/21
- BEE Status: Level 5

Our Ref : SS/csr/S403_S249

Writer's Direct Line: 011 328 1779

Your Ref :

Email: sshoot@fluxmans.com

Date : 23 November 2011

BY EMAIL chakm@iafrica.com

MR K CHARLESTON

Dear Mr Charleston

DAMAGES CLAIMED FOR MALICIOUS COMPLAINTS AND PUBLICATION OF INJURIOUS FALSEHOODS OF AND CONCERNING SOLAL TECHNOLOGIES (PTY) LTD AND ITS PRODUCTS

1. As you are aware we act for Solal Technologies (Pty) Ltd ("Solal").
2. During or about mid-2010 you lodged a complaint with the Advertising Standards Authority ("ASA") in respect of an advertisement by Solal which claimed that :

"Vitamin D is extremely safe. There are virtually no side effects from people taking Vitamin D supplements even at seemingly high doses, such as 2000 iu per day (five times the current South African RDA)

3. You alleged that our client's claim aforesaid is false and potentially dangerous to at risk individuals who you said should use a vaccine. You also said that Vitamin D in high doses is poisonous.
4. Vitamin D even in a dose five times the current South African RDA is safe not poisonous. and it is your complaint which is false. You have already been furnished by the ASA with a confidential compilation of our client's documentary evidence which substantiates the

Directors: P Vollet (Chief Executive Officer), JK Antunes, MS Bloom, GB Brett, T Brett, C Carides, L dos Passos, BE Duma, I Epstein, S Fisher, J Fung, D Furman, LA King, JO Kingsbury, A Kruger, J Levitz, BF Marques, D Mer, J Michel, EG Migdal, AM Nikani, JH Phalane, GO Pretorius, F Rodrigues, J Shafir, CB Shapiro, AK Shamock, SA Shoot, S Slom, AC Soldatos, CJ Strime, EB Tonini
Chief Operating Officer: VD Rubin C.A. (S.A.), M.B.A.
Senior Associates: B Blumenthal, S Perlman
Associates: H Busakwe, R Krost, N Limberis, R Lisinski, C Moswana, A Peral
Consultants: GB Rubenstein, H Mer, AB Rubenstein, MW Jelley
Office Manager: H Smit

aforesaid claim as true. Yet you continue to resist our client's attempts to clear its name in regard to your false complaint.

5. Our client has at great expense been forced to defend itself in regard to your complaint and to submit new substantiation to the ASA who ruled on 26 August 2010 that our clients were to withdraw the aforesaid claim and not use it again. Moreover, our client was precluded from marketing its Vitamin D product by making the aforesaid true claims over the winter period. Many South African citizens were accordingly deprived of truthful information that would have benefitted them and our client's sales of its Vitamin D product suffered as a result thereof. Despite receiving our client's confidential compilation of documentary evidence in the form of new substantiation you have not withdrawn your complaint and our client has had to incur yet further legal costs in an effort to reverse the censure imposed upon it by the ASA in making a true advertising claim which is beneficial to the health of the population of South Africa.
6. As you have no medical training, you could not have reasonably believed that our client's advertising claim was false (which it is not). You could also not reasonably have believed that Vitamin D in doses up to 2000 iu i.e five times the South African RDA are poisonous. The irresistible inference is that you intentionally and without probable cause initiated the complaint with the intention to maliciously defame and injure our client's reputation, goodwill and business on the basis of your "false" information.
7. Your conduct constituted the publication of defamatory statements and injurious falsehoods of and concerning our client and its Vitamin D product. Our client has sustained substantial damages as a result of your unlawful conduct aforesaid.
8. You also lodged a complaint against Solal in respect of its Omega product. You formulated this complaint on the basis of Appendix f to the ASA Code, not on the basis that Solal's advertising claims were untrue, misleading or unsubstantiated (which they are not).
9. As you are aware fraud is the unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial to another.

10. As you are also aware the ASA has for some time and currently, published and continues to publish the following statements on its website and other media as forming part of the ASA Code :

10.1.1 in regard to the Appendices in general :

"the individual codes contained in the Appendices are administered on behalf of the owner identified at the top of the first page of each appendix"

("the first statement") ;

10.1.2 in regard to Appendix a :

"marketing of health products

S A Code of Practice for the Marketing of Health Products

Department of Health : Medicines Control Council (MCC)"

("the second statement")

"Section 18(c) of the Medicines Act 101 of 1965 ("the Act") empowers the Minister ... to make regulations relating to the marketing of health products including the enforceable code of practice"

("the third statement")

"... this Code is issued in terms of Section 18(c) of the Medicines and Related Substances Act No. 101 of 1965, as amended"

("the fourth statement")

10.1.3 in regard to Appendix f – diseases

References to diseases and advertising :

"Department of Health : Medicines Control Council" ("the fifth statement")

"Advertisements should not make or offer products, treatment or advice for any of the following illnesses or conditions unless recommendations accord with the full product registration by the Medicines Control Council ..." ("the sixth statement")

"The diseases to which no reference or unlimited reference may be made are :

"Alopecia (Baldness)

....

....

"Whooping cough, except for the alleviation of symptoms" ("the seventh statement")

"2. Advertisements should not make any recommendations, products, treatments or advice for any of the following illnesses or conditions unless –

2.1 the recommendations accord with full product registration by the Medicines Control Council ... "
("the eighth statement")

11. In another one of your complaints (16710) against Solal you formulated the complaint on the basis of Appendices a and f to the ASA Code and are undoubtedly familiar with the aforementioned false statements – read individually and in some cases together.

12. In fact, during the appeals you have been furnished with relevant documentation submitted to the ASA by Solal. This included a letter from the Department of Health's Deputy Information Officer and other correspondence from which it is clear that :

12.1 the ASA's claim to have the power to administer Appendix f on behalf of the Medicines Control Council is false ;

- 12.2 the ASA has not produced any evidence that Appendix a or f were duly adopted by the ASA or that the ASA had the legal power in terms of its Articles to adopted Appendices a and f.
13. Notwithstanding this knowledge on your part you have continued to oppose our client's attempts to clear its name and remove the censure of its true advertising claim based on your Appendix f complaint.
14. Our client has and will continue to suffer substantial damages inter alia in the form of legal costs incurred in defending itself against your complaint based on Appendix f. Indeed, our client has appealed the initial decision and now submitted a final appeal in regard thereto. In addition to the substantial legal costs incurred, our client has been forced to pay the ASA an amount of about R150 000.00 as alleged appeal costs, none of which would have been necessary had it not been for your complaint and opposition.
15. You are also complicit in the ASA's dishonest and fraudulent conduct in continuing to purport to administer Appendices a and f on behalf of the Medicines Control Council when you know this is untrue.
16. Our client will in due course take further steps against you (and the ASA) in regard to such unlawful conduct.
17. For present purposes, our client has instructed us to demand from you, as we hereby do, that you pay to it an amount of R360 000.00, as damages sustained to date, as a result of your unlawful conduct. This sum includes the legal costs and alleged appeal costs our client has had to incur in order to defend itself and clear its name in respect of your false complaint.
18. Failure to pay the said amount within 7 (seven) days will regrettably result in our client taking further legal steps against you. In this regard, if you require legal process to be served at your home as opposed to your work address, please furnish us with your home address.

Yours faithfully

pp [Signature]

SAUL SHOOT
FLUXMANS INC