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24 November 2020

Mr Hopkinson-Pearson
Secretary
QNurses' First Inc

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Our Ref: DAB:4202264

By Email: aenghas.hopkinsonpearson@npaaservices.org.au

Dear Mr Hopkinson-Pearson

Re: NPAQ Advertisements

We act for the Queensland Nurses and Midwives' Union of Employees.

We are instructed:

1. QNurses' First Inc. is conducting a campaign of advertisements on social media, including the advertisements published on all platforms provided by Facebook from 2 November 2020 ('**Advertisement**').
2. In the Advertisement you represent the following matters:
 - (a) asserted that you are '*Queensland's Fastest Growing Nurses Union*';
 - (b) asserted that you are '*Run By Nurses For Nurses*';
 - (c) asserted that people may join and '*Save Up to \$288 P.A*' in comparison to our client's membership fees; and
 - (d) asserted that you provide the following services that our client provides to members:
 - (i) Professional Indemnity Insurance;
 - (ii) Legal Protection;
 - (iii) Enterprise Bargaining; and
 - (iv) On Site Support; and
 - (e) states '*Less Politics, Lower Fees*' and does so in the context of a comparison between our client and your association
3. There are a number of matters pertaining to these representations which are of considerable concern to our client.
4. **First**, a union is an organisation registered in accordance with the relevant industrial relations legislation (e.g. the *Industrial Relations Act 2016* (Qld)) and comprising members who are employees. You are an incorporated association registered under the *Associations Incorporation Act 1981* (Qld) that engages service providers to service your members which:

- (a) includes persons other than employees; or
 - (b) at least your constitution permits persons who are not employees to be members.
5. **Second**, you assert that you are Queensland's fastest growing union. Putting to one side that you are not a union, we consider this to be claim that you are unable to substantiate.
6. **Third**, you assert to be 'run by nurses' in circumstances where the true facts are that:
 - (a) your membership includes people who are not Nurses, or at least your constitution permits people who are not Nurses to remain as members;
 - (b) your constitution permits your State Management Committee (Executive) to delegate, assign or contract any aspect of the 'administration affairs' to a Service Provider;
 - (c) your constitution permits you to appoint a Secretary, who is presently not a Nurse, and the functions of the position include managing the business of the association;
 - (d) your constitution permits you to appoint a Policy Committee Chairperson and such an appointment is not limited to members and who may not be a Nurse;
 - (e) your constitution permits you to appoint a State Financial Officer and such an appointment is not limited to members and who may not be a Nurse; and
 - (f) the appointed Secretary, Policy Committee Chairperson, State Financial Officer become delegates to the association's general meetings and, consequently, have voting rights, including the right to vote for elected positions and on business of the association.
7. **Fourth**, you have, in comparing your services to our client's, asserted that people may save up to \$288.00 per annum in comparison to our client's membership fees. In respect of that comparison:
 - (a) your annual cost of \$442 is not inclusive of the \$10 per month payment required to be made to you for the provision of continuing professional development, a requirement of Nurses and Midwives registration with the relevant health agency;
 - (b) your comparison with our client's membership fee is based on an all-inclusive fee for a Registered Nurse, including the provision of continuing professional development;
 - (c) the amounts asserted are not an accurate reflection of the comparison between your fees and our client's fees.
8. **Fifth**, you have asserted that you provide, for a smaller fee, those services listed in the Advertisement provided by our client. We confirm that a significant number of nurses in Queensland are state system employees under the *Industrial Relations Act 2016* (Qld) and you are unable to participate in the bargaining process on behalf of these employees. You have however asserted that you can provide those services to members.
9. Section 18 of the *Australian Consumer Law*¹ provides:
 - 18 Misleading or deceptive conduct**
 - (1) *A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.*
 - (2) *Nothing in Part 3-1 (which is about unfair practices) limits by implication subsection (1).*
 - Note: *For rules relating to representations as to the country of origin of goods, see Part 5-3.*

¹ *Competition and Consumer Act 2010* (Cth) Sch 2.

10. There is no doubt that a membership-orientated association, such as your association, acts in 'trade or commerce' when conveying representations about the product or services that they provide to the general public. The representation you make are designed to attract financial members.
11. The circumstances in which you purport to make these claims are actionable under the Australian Consumer Law, as each contravenes section 18. Conduct is misleading or deceptive if it leads a person into error or if it induces or is capable of inducing error or leads to an erroneous assumption or misconception. Conduct is misleading or deceptive if it causes, or is likely to cause, a person to misinterpret, or be deluded as to, the relevant facts. Conduct is likely to mislead or deceive if there is a real but not remote possibility of it doing so. For the reasons we have identified above, the false representations conveyed by the Advertisement are misleading or deceptive or likely to mislead or deceive.
12. In addition to the matters raised above, the Advertisement states 'Less Politics, Lower Fees' and does so in the context of a comparison between our client and your association. In previous correspondence, our client has addressed similar conduct of your association and noted that the proposition, that our clients membership fees are used to support political parties, is false and that it is particularly damaging to our client that your association continues to assert it supports political parties. Further, prior similar assertions are the subject of proceedings in the District Court, as imputations carried by this assertion are that our client as a union:
 - (a) does not act in the interests of its member in that it prioritises political issues over professional concerns for its members; and
 - (b) misuses its members' funds in that it uses them to support political parties.
13. The circumstances in which you purport to make this claim are not only actionable under the Australian Consumer Law, as each is misleading or deceptive or likely to mislead or deceive, the propositions contained within this claim are defamatory.

Demand

14. We request that by close of business **Tuesday, 24 November** you cease to cause the Advertisement to be published and to undertake, in writing, that you will refrain from advertising in a manner substantially similar to it.
15. We invite you to consider the other advertisements in your advertising campaign, that you are currently causing to be published on social media, as a number of advertisements make the same or substantially similar assertions.

Yours faithfully



Dale Blackmore
Hall Payne Lawyers