

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 7179/07

Plaintiff: 2CLIX AUSTRALIA PTY LTD ACN 118 044 198

AND

Defendant: SIMON WRIGHT

CLAIM

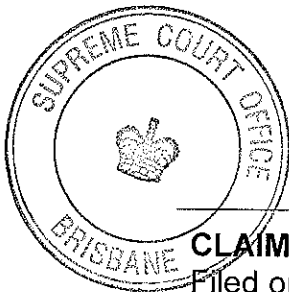
The Plaintiff claims:

1. Damages for Injurious Falsehood in the amount of \$150,000.00 per month.
2. A permanent mandatory injunction requiring the Defendant to remove from the website "http://forums.whirlpool.net.au" the thread "2Clix or Not 2Clix?".
3. A permanent mandatory injunction requiring the Defendant to remove from the website "http://forums.whirlpool.net.au" the thread "Anyone used 2Clix?".
4. Interest pursuant to section 47(1) of the *Supreme Court Act* 1995.
5. Costs.

The Plaintiff makes this claim in reliance on the facts alleged in the attached Statement of Claim.

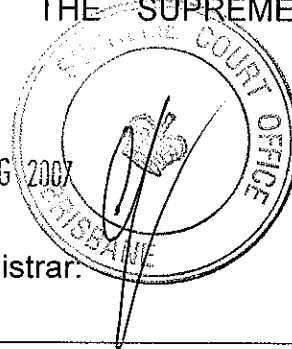
ISSUED WITH THE AUTHORITY OF THE SUPREME COURT OF QUEENSLAND

And filed in the Brisbane Registry on



17 AUG 2007

Registrar:



CLAIM
Filed on behalf of the Plaintiff
Form 2 – R. 22

TURNBULL & COMPANY
Solicitors
Suite 4, 211 Ron Penhaligon Way
ROBINA Q 4226
Telephone: (07) 5593 2227
Facsimile: (07) 5593 2226

To the Defendant: TAKE NOTICE that you are being sued by the Plaintiff in the Court. If you intend to dispute this claim or wish to raise any counterclaim against the Plaintiff, you must within 28 days of the service upon you of this claim file a Notice of Intention to Defend in this Registry. If you do not comply with this requirement judgment may be given against you for the relief claimed and costs without further notice to you. The Notice should be in Form 6 to the Uniform Civil Procedure Rules. You must serve a sealed copy of it at the Plaintiff's address for service shown in this claim as soon as possible.

Address of Registry: Commonwealth Law Complex, George Street,
Brisbane, Qld, 4000

If you assert that this Court does not have jurisdiction in this matter or assert any irregularity you must file a Conditional Notice of Intention to Defend in Form 7 under Rule 144, and apply for an order under Rule 16 within 14 days of filing that Notice.

If you object that these proceedings have not been commenced in the correct district of the Court, that objection must be included in your Notice of Intention to Defend.

PARTICULARS OF THE PLAINTIFF:

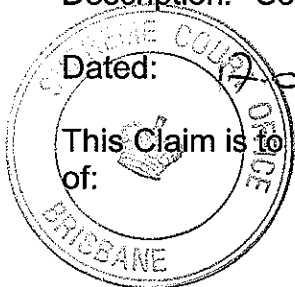
Name: 2CLIX AUSTRALIA PTY LTD
 Plaintiff's residential
 or business address: Suite 10/34 Glenferrie Drive, Robina, Qld,
 4226
 Plaintiff's solicitors name: Mr Stephen Baldwin
 and firm name: Turnbull & Company
 Solicitor's business address: Suite 4, 211 Ron Penhaligon Way, Robina,
 Qld, 4226
 Address for service: Turnbull & Company, Suite 4, 211 Ron
 Penhaligon Way, Robina, Qld, 4226
 Telephone: (07) 5593 2227
 Fax: (07) 5593 2226
 E-mail address: steve@turnbulllaw.com.au

Signed: 

Description: Solicitors for the Plaintiff

Dated: 28.07

This Claim is to be served on: SIMON WRIGHT
 of:



SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER:

Plaintiff: **2CLIX AUSTRALIA PTY LTD ACN 118 044 198**

AND

Defendant: **SIMON WRIGHT**

Filed in the Brisbane registry on this day of 2007.

STATEMENT OF CLAIM

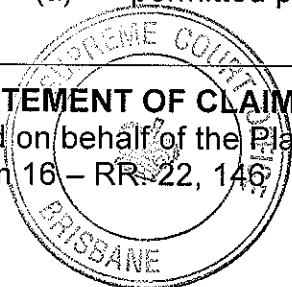
This claim in this proceeding is made in reliance on the following facts:

1. At all material times, the Plaintiff:
 - (a) was and is a company duly incorporated capable at law of suing;
 - (b) carried on the business of development, marketing and supply of business management and accounting software ("software product") both in Australia and overseas;
 - (c) conducted its principal business operations from commercial premises situated at suite 10/34 Glenferrie Drive, Robina, Gold Coast in the State of Queensland.

2. At all material times, the Defendant:
 - (a) was and is the owner of the website "<http://forums.whirlpool.net.au>" ("the website");
 - (b) was and is responsible for the day to day management, supervision, operation and control of the website.

3. At all material times, the Defendant:
 - (a) permitted persons to become registered users of the website;

STATEMENT OF CLAIM
Filed on behalf of the Plaintiff
Form 16 – RR-22, 146



TURNBULL & COMPANY
Solicitors
Suite 4, 211 Ron Penhaligon Way
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- (b) did not require proper verification of identity before permitting registration of such persons;
- (c) permitted registered users to record statements on the web site relating to a particular subject matter.

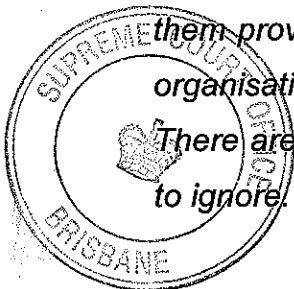
["registered users"]

4. At all material times, any recorded statement made by a registered user on the Defendant's website would be:
 - (a) grouped by particular topic in chronological order for ease of viewing and future reference;
 - (b) described as a "thread".

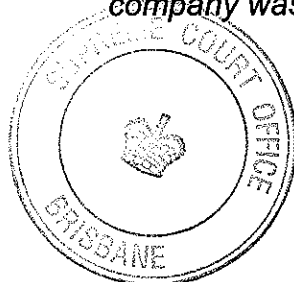
5. Between 1 September 2006 to 12 January 2007 registered users recorded statements on the Defendant's website relating to the Plaintiff and its software product that are both false and malicious ("the first thread").

Particulars

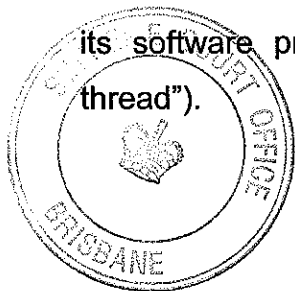
- (a) 1.9.06: posting by registered user #134115 "Sharakhan" ". . . if I can help this person from making a huge mistake then . . . I would advise you to avoid this program at all costs . . .";
- (b) 5.9.06: posting by registered user #134687 "Levi The Duke" "We installed 2Clix and ended up throwing it out two weeks after going live. This company has many problems and I would strongly recommend that any potential users look else where. Do as many checks as you can on their back ground and be ware (sic) . . .";
- (c) 25.9.06: posting by registered user #134115 "Sharakhan" "If you deal in Foreign Currency at all, I would avoid it. It was one of the big issues we faced . . . and don't get me started on the inventory and manufacturing system – what a joke";
- (d) 25.9.06: posting by registered user #137485 "gelati" ". . . Have them prove that it does everything they say it does. I know of two organisations that have purchased this product and thrown it out. There are too many negative comments about this product for you to ignore. I think you might be better off looking at other solutions";



- (e) 26.9.06: posting by registered user #134115 "Sharakhan" ". . . The software became such a problem that we threw it out recently . . . We stuck with it for over 2 years but in the end the many hundreds of lost hours of work and high stress levels was not worth it . . .";
- (f) 28.9.06: posting by registered user #137927 "MiaMia" ". . . 6,000 users to date? . . . You mean 6,000 you have taken money from . . .";
- (g) 28.9.06 posting by registered user #137927 "MiaMia" ". . . So much for the 6000 users! Explain this Simon? According to one of 2Clix programmers who started working for 2clix in march last year, and is seeking employment elsewhere, 2clix (has) over 200 users . . .";
- (h) 9.10.06: posting by registered user #137927 "MiaMia" ". . . Do not believe them if they tell you anything else, or give you an excuse why it is not functioning. Be very cautious...actually do not buy it. If something doesn't sound right or work right....then it probably dosen't (sic). If I was sceptical (sic) before and got stung....I'm even more skeptical (sic) now";
- (i) 20.10.06: posting by registered user #141364 "Nothappyjan2" "I was put onto this forum recently after discussion with peers, about how frustrated, dissatisfied and ultimately ripped off I feel after purchasing 2clix earlier this year . . . Our company has been trying to implement 2clix for sometime now and we are still in the implementation process and feel like we are getting nowhere fast . . .";
- (j) 25.10.06: posting by registered user #134687 "Levi The Duke" ". . . Do a financial check on them, we found that they have only been registered as a Pty Ltd since January 2006 and have traded under many names in their 10 year existence. All project managers are now sub contractors in stead of employees and they have down sized. The shares split is also interesting. It was our belief that the company was in financial trouble . . .";

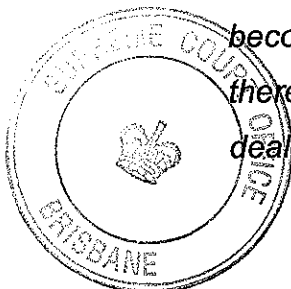


- (k) 20.11.06: posting by registered user #5069 "Anger Management" ". . . One of my ex-customers jumped onto this system a couple of years ago. It was a dog, ran like a dog, and used a deprecated port of MySQL to run on . . . my dealing with 2Clix support were shocking . . .";
- (l) 28.11.06: posting by registered user #146638 "Jim19" ". . . I think you are just another one of the many victims. In doing our due diligence on the product we have continued to hear so many stories of people who have paid upfront and then when the system didn't work they haven't been able to get their money back . . .";
- (m) 30.11.06: posting by registered user #147066 "legsnapper" "Please don't believe everything that you might be told or see in the sales spiel. They may show you a beta version which works both ways for the salesperson. He may then show you stuff that isn't available for release (he may not tell you) and if for some reason he gets any bugs during the presentation he might then say "it's just the beta version and I'm testing it out". What a shonk! Be very, very careful before you give any money to these people";
- (n) 18.12.06: posting by registered user #134687 "Levi The Duke" "After throwing 2Clix out I wanted blood, however after careful consideration I realised I was ill prepared for legal action and felt we would waste more time and money on this company. In the end we simply licked our wounds and moved on . . . I would imagine that 2clix will destroy itself within short".
6. At all material times the contents of the first thread were and remain accessible by persons using the Defendant's website.
7. Between 16 November 2006 to 24 July 2007 registered users recorded further statements on the Defendant's website relating to the Plaintiff and its software product that are both false and malicious ("the second thread").

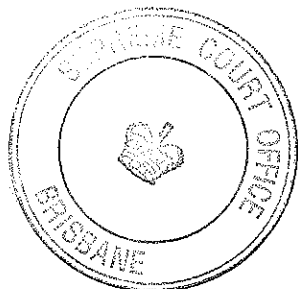


Particulars

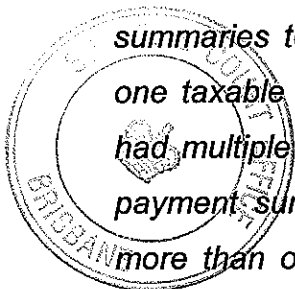
- (a) 22.11.06: posting by registered user #134115 "Sharakhan" *"I believe that this thread would be of interest to answer that! forum-replies-archie.cfm/479484.html"*;
- (b) 23.1.07: posting by registered user #154451 "anti2clix" *"Just found this site and wish we had seen it prior to investing in the program. We seem to be in the same state as most of the other users and after over a year of too ing and fro ing are still yet to go live. Why was the other thread closed down? . . ."*;
- (c) 8.3.07: posting by registered user #161508 "classaction" *"I am new to this forum, and have major issues with my 2Clix system. I didn't realise the other thread was closed down. I have major problems with the system, which 2Clix has known about since they installed the system. Some of which their own technical people/trainers didn't know about or realise. They haven't fixed anything of importance. As I am not going to throw more money away and pay the next licence fee, they are about to shut me down . . ."*;
- (d) 16.3.07: posting by registered user #134115 "Sharakhan" *"From personal experience, we were completely locked out of the software and our data, no single user perpetual license/read only license at all. Their stance may have changed on this since we threw the software out in favour of another package, however we still cannot access our old 2Clix data"*;
- (e) 21.3.07: posting by registered user #139420 "pumpkinmash" *"All other sites who have not renewed their maintenance contracts have been completely locked out of 2Clix. Not able to access their data in any way or even to print reports"*;
- (f) 30.3.07: posting by registered user #165027 "avenger2000" *". . . I've also talked to a number of other software vendors who tell me that they have heard similar problems from people who have become their customers (and some who haven't). Seems to me there are breaches of the Trade Practices Act in the way 2clix has dealt with customers . . ."*;



- (g) 5.4.07: posting by registered user #146721 "violentbastard" *"Nice try Simon, but I think fin1's question has been well and truly answered already. After reading this forum and the other one - wouldn't touch 2clix with a barge pole"*;
- (h) 5.4.07: posting by registered user #27471 "duke" *"A company I worked for a few years ago looked at implementing 2Clix. From our personal experience it seemed to have a lot of issues which is why we didn't end up implementing it . . ."*;
- (i) 26.4.07: posting by registered user #152153 "Mike in Brisbane" *". . . I work near 2clix and know several of their customers, not one of them is happy and in fact a few of them are currently reviewing their systems to replace them . . ."*;
- (j) 3.5.07: posting by registered user #147066 "legsnapper" *"2Clix or Not 2Clix? 'Not 2Clix', because the customer service falls well short of being helpful. Our experience has shown that they can't keep up with their existing clients. Please don't sign up with them . . . I'm not sure they can fix our problems anyway. It has been a very expensive mistake"*;
- (k) 3.5.07: posting by registered user #147066 "legsnapper" *"avenger2000 writes... Seems to me there are breaches of the Trade Practices Act in the way 2clix has dealt with customers. Any litigation would be expensive, and the most cost effective way for affected parties may be a class action against 2clix. Would anyone like to explore this? Sure would! . . ."*;
- (l) 21.5.07: posting by registered user #173421 "anti2clix2" *"I would not go within a cooee of 2Clix Software - it has been a huge mistake by our company and we made the decision to throw the software out before we went live. I would suggest to anyone considering 2Clix as a package to think, then think again, and before a decision is made try and find one happy site. Professionalism is not a word that is in their vocab . . ."*;

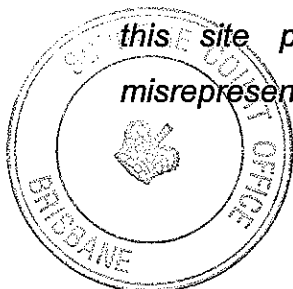


- (m) 22.5.07: posting by registered user #173719 "MiaMia2" ". . . I'm all for class action. If anyone has started anything or intending to...You can add me to your list. I know of others that would be very interested";
- (n) 23.5.07: posting by registered user #173421 "anti2clix2" "Isn't that funny – when we were actually paying money to 2Clix - there didn't seem to be any help available - time 2Clix started Walking their Talk rather than just talking it. And if they were so sincere - why wasn't our money refunded when they couldn't provide the goods they promised!";
- (o) 23.5.07: posting by registered user #173719 "MiaMia2" "Ditto...Two years after the 2clix software was sold to us, more than half the features being advertised on their brochure and promoted at all the exhibitions are still not active/available. We were mislead, as many others have fallen pray. We finally had one of their staff confess that the 2clix software was not suitable for our application and that it should never have been sold to us, it was not even installed...but did they refund our money – no";
- (p) 18.6.07: posting by registered user #64546 "Gumby" "I went to a company today to discuss some issues with them and while there they brought up with me their exasperations with their payroll/financials package, 2clix. I'd not heard of it previously. However, they were not sparing with their criticism . . . Like others have experienced, they had their license inadvertantly (sic) lapse and were completely locked out of the software. They renewed very quickly (which is perhaps 2clix's goal) but it left a bitter taste in their mouth and certainly added to the lack of positive feeling towards 2clix. Other things they complained about was that last year apparently 2clix couldn't produce electronic payment summaries to the ATO, and additionally it would only report just one taxable deduction on the payment summary. If an employee had multiple taxable deductions, only the first would show on the payment summary despite the payroll module happily permitting more than one to be entered. They also said the balance sheet



won't balance and that many other frustrations occur on a daily basis. The guy managing their systems told me the software often crashes and that updates and patches are churned out at alarming frequency which suggests to me very poor release management. The company said they'd been made to use beta versions as well, just to get certain bug fixes";

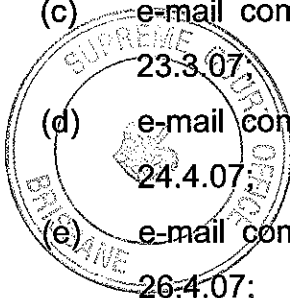
- (q) 6.7.07: posting by registered user #180671 "shahrukhan" "I am new to this forum. I am so glad to hear that I am not the only one living this nightmare. We installed 2clix about a year ago and have regretted since. It's always our fault... training, system, hardware, cables, beta version, not happening on our system, wait for update, etc, etc never ends . . .";
- (r) 7.7.07: posting by registered user #180868 "luka11" "Our company has also been a victim of 2clix misrepresentations (sic). The sales pitch to everything you ask is "yes our software can do that". After you have purchased the software, the excuse is "our software can do that, but not the way you want it". It seems that everthing (sic) can be fixed, you will just have to wait. We weren't prepared to wait and were quickly advised of there (sic) no refund policy. It seems 2clix is more interested in the quick bucks and not their reputation as many customers are clearly unhappy . . .";
- (s) 11.7.07: posting by registered user #173421" "anti2clix2" "Silvia Saint writes... We tried unsuccessfully for over six months to sort out issues - features we were initially promised with the software and which did not eventuate - 2Clix response was - well if you want this or that feature you can have it - but it will cost additional dollars (thousands). This product not only cost us tens of thousands of dollars - but wasted time from Managing Director level to office staff. I believe 2Clix as a company are entirely unethical! I hope this site prevents others from being sucked in by 2Clix misrepresentations of their product";



- (t) 18.7.07: posting by registered user #5069 "Anger Management" ". . . I spent much time of a period of 12 months working with 2Clix for a customer to try to get their system into a workable state. I can't begin to describe the number of discussions, patches etc tried, and at every stage they blamed everything except their application. These WP threads make me laugh, because their tech support always claimed that my customer was the only one who had problems, and the old "it works for all our other customers" line always came out. My customer even caved and bought one of their (associated D&M Computing) junky home-made servers to run the app, and it was still a dog";
- (u) 24.7.07: posting by registered user #183090 "BailOut" "Read the License Agreement, it is illegal. You cannot state that a refund wont be given. Ask Fair Trading for confirmation. Class action, be quick as there isn't much left to get".
8. At all material times the contents of the second thread were and remain accessible by persons using the Defendant's website.
9. Between 9 January 2007 to 29 June 2007, the Plaintiff communicated to the Defendant that the first and the second thread contain statements by registered users of the website that are false, malicious and causing financial harm to its trade and business.

Particulars

- (a) e-mail communication from the Plaintiff to the Defendant, dated 9.1.07;
- (b) e-mail communication from the Plaintiff to the Defendant, dated 17.1.07;
- (c) e-mail communication from the Plaintiff to the Defendant, dated 23.3.07;
- (d) e-mail communication from the Plaintiff to the Defendant, dated 24.4.07;
- (e) e-mail communication from the Plaintiff to the Defendant, dated 26.4.07;



- (f) e-mail communication from the Plaintiff to the Defendant, dated 14.5.07;
- (g) e-mail communication from the Plaintiff to the Defendant, dated 17.5.07;
- (h) e-mail communication from the Plaintiff to the Defendant, dated 1.6.07;
- (i) e-mail communication from the Plaintiff to the Defendant, dated 1.6.07;
- (j) e-mail communication from the Plaintiff to the Defendant, dated 1.6.07;
- (k) e-mail communication from the Plaintiff to the Defendant, dated 1.6.07;
- (l) e-mail communication from the Plaintiff to the Defendant, dated 5.6.07;
- (m) e-mail communication from the Plaintiff to the Defendant, dated 8.6.07;
- (n) letter from Turnbull & Company to the Defendant, dated 29.6.07.

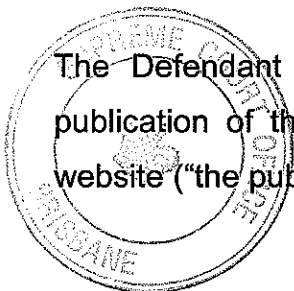
10. At all material times the Defendant has failed and refused to remove the first and the second thread from the website.

Particulars

- (a) email communication from the Defendant to the Plaintiff, dated 12.6.07;
- (b) (undated) letter from the Defendant to the Plaintiff's solicitors (responding to Turnbull & Company letter of 29.6.07).

11. The Plaintiff says that the statements recorded by registered users in the first and second thread as pleaded in paragraphs 5 and 7 of the Statement of Claim are false ("the statements").

12. The Defendant as a matter of law was and is responsible for the publication of the statements to users of the internet who access the website ("the publication").



13. In the premises the publication of the statements by the Defendant was and is malicious.

Particulars

- (a) the Plaintiff repeats and relies on what is pleaded at paragraphs 3, 5, 6, 7, 8, 9, 10 and 11.

14. Further, and in the premises, the statements have been intended to produce and have resulted in actual damage to both the plaintiff and its trade and business.

Particulars

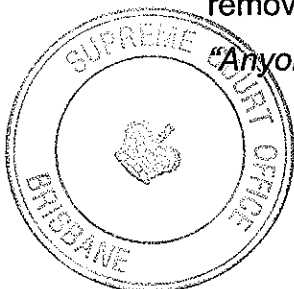
- (a) the Plaintiff repeats and relies on what is pleaded at paragraphs 3, 5, 6, 7, 8, 9, 10 and 11;
- (b) the Plaintiff has sustained a severe downturn in monthly sales on and from January 2007;
- (c) the Plaintiff quantifies its loss in income between January 2007 to July 2007 at approximately **\$150,000.00** per month.

15. Accordingly, the Plaintiff claims damages against the Defendant for the tort of injurious falsehood in the amount of \$150,000.00.

16. The Plaintiff further says that unless the first and the second thread are removed from the Defendant's website it will continue to suffer irreparable damage to its trade and business.

17. Accordingly, the Plaintiff also seeks:

- (a) a permanent mandatory injunction requiring the Defendant to remove from the website "http://forums.whirlpool.net.au" the thread "2Clix or Not 2Clix?";
- (b) a permanent mandatory injunction requiring the Defendant to remove from the website "http://forums.whirlpool.net.au" the thread "Anyone used 2Clix?".



Summary of relief

18. The Plaintiff claims the following relief:
- (a) damages for Injurious Falsehood in the amount of \$150,000.00;
 - (b) a permanent mandatory injunction requiring the Defendant to remove from the website "http://forums.whirlpool.net.au" the thread "2Clix or Not 2Clix?";
 - (c) a permanent mandatory injunction requiring the Defendant to remove from the website "http://forums.whirlpool.net.au" the thread "Anyone used 2Clix?";
 - (d) interest pursuant to section 47(1) of the *Supreme Court Act* 1995;
 - (e) costs.

Signed: _____

Description: Solicitors for the Plaintiff

This pleading was settled by Mr Woods of Counsel.

NOTICE AS TO DEFENCE

Your defence must be attached to your notice of intention to defend.

