

17 January 2020

Simmons & McCartney
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Our File: SKM:ABB:190520
Contact: Andrew Behman 02 9806 7490

Attention: Grant McCartney
BY EMAIL: grant@sm-lawyers.com.au

Dear Mr McCartney,

Re: Microlatch Pty Ltd (In Liquidation) ("Microlatch")
Your clients: Mr Christopher Burke, CJ Burke Nominees Pty Ltd, Microlatch Technologies Pty Ltd and Microlatch Limited

We refer to the above matter and your email dated 13 January 2020. As you are aware, we act for the Liquidator of Microlatch.

It has recently come to the attention of the Liquidator that on 31 December 2019 Mr Burke published an article (copy enclosed) on the website www.microlatch.com claiming that "Microlatch Limited has been tasked with a final requirement to gain a formal written legal expert opinion on the Licence Agreement that gives it an exclusive and absolute control / management of its entire patent portfolio, **including those from Microlatch P/L and Securicom (NSW) P/L.**" (emphasis added)

As we understand it, the "Licence Agreement" referred to in the article is a reference to the patent licence deed purportedly executed between Microlatch and Microlatch Limited ("**Microlatch HK**") and dated 23 August 2013 ("**Microlatch-Microlatch HK Patent Licence Deed**"). If this is not the document referred to by Mr Burke, please advise. To this end, we note that the Liquidator had made numerous requests that Mr Burke provide all books and records of Microlatch pursuant to section 530B of the *Corporations Act 2001* (Cth).

For at least the reasons which follow, the Microlatch-Microlatch HK Patent Licence Deed is not valid or binding on Microlatch and even if created on or about the date alleged, and properly executed (which the Liquidator does not accept) they do not have the effect of granting a licence to Microlatch HK in respect of the patents owned by Microlatch ("**the Microlatch Patents**"):

1. There is no evidence that the Microlatch-Microlatch HK Patent Licence Deed was ever entered into, including:
 - (a) There is no contemporaneous evidence of the execution of the Microlatch-Microlatch HK Patent Licence Deed on or around 23 August 2013;
 - (b) As you are aware the Liquidator has on numerous occasions requested books and records of Microlatch and none have been produced;

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Legislation. Legal
Practitioners including
employees and directors
employed by the
company are members
of this scheme

- (c) The Microlatch-Microlatch HK Patent Licence Deed does not bear any original signature;
- (d) Mr Burke provided to the Liquidator an unsigned copy of a patent licence deed between Securicom and Microlatch ("**Microlatch-Securicom Patent Licence Deed**") and asserted that this represented a legal arrangement between those entities regarding the same patents the subject of the Microlatch-Microlatch HK Patent Licence Deed. This is inconsistent with there ever having been any exclusive licence purportedly granted to Microlatch HK under the terms of the Microlatch-Microlatch HK Patent Licence Deed;
- (e) In any event Microlatch does not appear to ever have had authority to enter into either of the above deeds. Schedule 2 to the Shareholders' Agreement dated 21 July 2006 requires a special resolution by shareholders to enable Microlatch to enter into any "Contracts concerning patents, know how and trade marks". There is no evidence of any special resolution passed in respect of either deeds, and as mentioned above, this is despite the Liquidator calling for all records of both Microlatch and Securicom.
2. Further, and even if there was any deed ever entered into regarding the Microlatch-Microlatch HK Patent Licence Deed, Mr Burke (in his capacity as director of Microlatch and Microlatch HK) terminated any such Deed on 31 March 2017. In this regard, we refer to an email from Mr Burke to Mr Kevin Dart dated 31 March 2017 at 4:53pm (copy enclosed).
3. In addition, the Microlatch-Microlatch HK Patent Licence Deed does not grant to Microlatch HK a licence in respect of the Microlatch Patents. The "Intellectual Property Rights" as defined in the Microlatch-Microlatch HK Patent Licence Deed refers to the rights associated with patent applications set out in Schedule 1 to the deed. However, there is no Schedule 1 to the deed. As such, a licence has not been granted to Microlatch HK in respect of the Securicom Patents. Even if Schedule 1 were an inadvertent reference to Schedule A, again there are no patent applications identified in Schedule A.
4. We would also point out that clause 5 of the Microlatch-Microlatch HK Patent Licence Deed provides:

*This exclusive license for the Term of this Deed, to commercialise and exploit the IPR and to manufacture, have manufactured, use, market and sell the Products in all the world is at the Licensee's total commercial and financial commitment. However, in the event the Licensee completes any financial arrangement with a third party for license or sub-license of the Intellectual Property Asset contained within this License Agreement, a 5% Royalty payment from the GROSS sales value will be due and payable immediately upon receipt of funds from the third party to the Licensor. **Failure to pay this Royalty payment will deem this Agreement terminated until payment is made.** (emphasis added)*

As we understand it, Microlatch HK has purportedly granted sub-licences to third parties in respect the products at Schedule B to the Microlatch-Microlatch HK Patent Licence Deed. However, the Liquidator has not identified any royalties paid by Microlatch HK to Microlatch. As such, it appears that even if the Microlatch-Microlatch HK Patent Licence Deed had not been terminated on or about 31 March 2017, it would be deemed to have terminated pursuant to Clause 5.



In light of the above, we are instructed to demand that your clients immediately cease and desist any and all marketing, sales, manufacturing and otherwise use or exploitation of the Microlatch Patents and remove any and all references to Microlatch or the Microlatch-Microlatch HK Patent Licence Deed on the website www.microlatch.com.

The Liquidator reserves his position on behalf of Microlatch regarding the conduct of Mr Burke and your clients in this regard.

Yours faithfully



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