

IN THE DISTRICT COURT )  
OF WESTERN AUSTRALIA )  
HELD AT PERTH )

No. 1317 of 2002

BETWEEN:

**THE WHICH COMPANY PTY LTD**

**ACN 091 728 620**

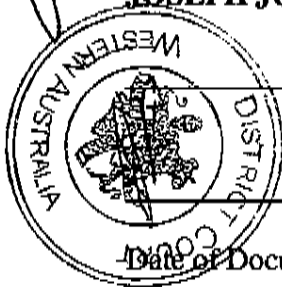
**trading as T3 DIRECT**

Plaintiff

- and -

**JOSEPH JOHN MCNICOL**

Defendant



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**WRIT OF SUMMONS**

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Date of Document : 24 MAY 2002

Date of Filing : 24 MAY 2002

Filed on behalf of : The Plaintiff

Prepared by:

TAN & TAN

Barristers & Solicitors

5th Floor

326 Hay Street

PERTH WA 6000

Tel: 9221 2888

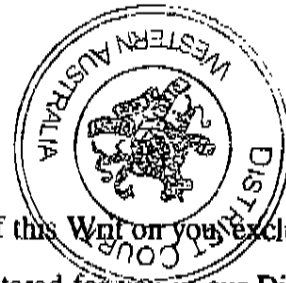
Fax: 9325 3710

Ref: RT:T3 DIRECT/02

ELIZABETH THE SECOND, by the Grace of God, Queen of Australia and her other  
Realms and Territories, Head of the Commonwealth.

ELIZABETH THE SECOND, by the Grace of God, Queen of Australia and her other  
Realms and Territories, Head of the Commonwealth.

To : JOSEPH JOHN MCNICOL  
of : 17 BOLDERWOOD DRIVE,  
SOUTHLAKE WA 6164



WE COMMAND you that within 10 days after the service of this Writ on you, exclusive of the day of such service, you cause an appearance to be entered for you in our District Court in an action at the suit of the above-named Plaintiff; and take notice that in default of your so doing the Plaintiff may proceed therein and judgment may be given in your absence.

Witness: HIS HONOUR JUDGE KEVIN JAMES HAMMOND, Chief Judge of the District Court of Western Australia the 24 day of MAY 2002.

NOTE : A Defendant may appear to this Writ by Entering an Appearance either personally or by a Solicitor at the Registry of the District Court at 30 St George's Terrace, PERTH.

If the Defendant Enters an Appearance, then unless a Summons for Judgment is served on him in the meantime, he must also file a Defence at the Registry of the District Court at Perth and serve such Defence on the Solicitor for the Plaintiff, within fourteen (14) days after the last day of the time limited for Entering an Appearance, otherwise Judgment may be entered against him without notice.

This Writ may not be served later than twelve (12) calendar months beginning with the above date unless renewed by Order of the Court.

IN THE DISTRICT COURT )  
OF WESTERN AUSTRALIA )  
HELD AT PERTH )

No. 1317 of 2002

BETWEEN:

**THE WHICH COMPANY PTY LTD**

**ACN 091 728 620**

**trading as T3 DIRECT**



Plaintiff

- and -

**JOSEPH JOHN MCNICOL**

Defendant

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**STATEMENT OF CLAIM**

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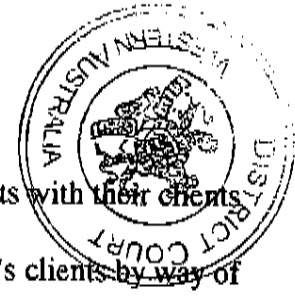
Date of Document : 24 MAY 2002  
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Filed on behalf of : The Plaintiff

Prepared by:  
TAN & TAN  
Barristers & Solicitors  
5th Floor  
326 Hay Street  
PERTH WA 6000

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1. The Plaintiff is a proprietary limited company that is registered in the State of Western Australia dealing in the business of email and direct marketing.

1. The Plaintiff is a proprietary limited company that is registered in the State of Western Australia dealing in the business of email and direct marketing.
  
2. The Defendant is the registered owner of an internet domain named www.vtgts.com and has the right to use an email address entitled joev@vtgts.com.
  
3. The Plaintiff's income stream is derived from service contracts with their clients for the sending of email information on behalf of the Plaintiff's clients by way of direct marketing. The Defendant well knew at all times that the Plaintiff uses the following internet protocol numbers purchased from Internet Service Providers for the purpose of performing the Plaintiff's business.



**Internet Protocol Numbers**

- |     |                 |   |                 |
|-----|-----------------|---|-----------------|
| (a) | t3direct.com.au | A | 202.139.241.136 |
| (b) | t3direct.com.au | A | 203.55.16.244   |
| (c) | t3direct.com.au | A | 192.168.1.10    |
| (d) | t3direct.com.au | A | 202.154.73.131  |
| (e) | t3direct.com.au | A | 203.55.16.10    |
| (f) | t3direct.com.au | A | 203.55.16.14    |
| (g) | t3direct.com.au | A | 203.55.16.15    |
| (h) | t3direct.com.au | A | 203.55.16.123   |

(i)	t3direct.com.au	A	203.55.16.120
(j)	t3direct.com.au	A	203.55.16.121
(k)	t3direct.com.au	A	192.168.2.10
(l)	t3direct.com.au	A	203.55.16.101
(m)	t3direct.com.au	MX	50 titan.t3direct.com.au
(n)	t3direct.com.au	MX	75 iapetus.t3direct.com.au
(o)	t3direct.com.au	NS	titan.t3direct.com.au
(p)	t3direct.com.au	NS	iapetus.t3direct.com.au



4. On or about the 20<sup>th</sup> May 2002 the Defendant caused to be sent to an organisation named SPAM PREVENTION EARLY WARNING SYSTEM ("SPEWS") an unfounded complaint that the Plaintiff had been sending Unsolicited Bulk Email. The look up record of the unfounded complaint lodged by the Defendant is No. S 1488 as viewed on the webpage of <http://spews.org/ask.cgi?x+S1488>.
5. SPEWS is a non profit organisation that maintains a list of internet addresses for the purpose of blocking and or filtering email to addresses located on the internet. SPEWS has a list of subscribing internet service providers who adopt the policies of SPEWS for their personal regulation of internet correspondences.

6. The Defendant sent the said unfounded complaint to SPEWS and has therefore respectively procured, induced, incited, persuaded, encouraged, organised, facilitated and or advised SPEWS to post the Plaintiff's range of Internet Protocol numbers listed in paragraph 3 hereto for the purpose of having the said numbers blocked with regards to the receipt and sending of email messages for subscribing internet service providers of SPEWS.
7. The Defendant knew or ought to have known that the posting of the Plaintiff's range of Internet Protocol numbers listed in paragraph 3 hereto by SPEWS would unlawfully interfere with the trade or business of the Plaintiff and or the service contracts of the Plaintiff with their clients.
8. The posting of the Plaintiff's Internet Protocol numbers listed in paragraph 3 hereto by SPEWS has prevented and/or disrupted and/or rendered commercially imprudent the provision of the Plaintiff's contracts of services between the Plaintiff and their clients whereby the Plaintiff has therefore suffered loss and damage.
9. By reason of the above actions by the Defendant the Plaintiff has prevented the Plaintiff from properly conducting its normal business:



### Particulars

- 9.1. the Plaintiff has been prevented from sending email correspondence to their clients.
- 9.2. The Plaintiff has been prevented from sending email messages on behalf of their clients to the clients' subscriber list of email readers.
- 9.3. The Plaintiff has been prevented from sending direct marketing information to the customers of their clients.
- 9.4. The Plaintiff earns an average of \$1,000 per day from sending email marketing messages on behalf of their clients.
- 9.5. From the 22<sup>nd</sup> May 2002, the Plaintiff was prevented from using the aforesaid Internet Protocol numbers and therefore prevented from properly conducting the Plaintiff's business.
10. The action of the Defendant has caused the Plaintiff loss and damage. The best particulars the Plaintiff is now able to give are as follows:

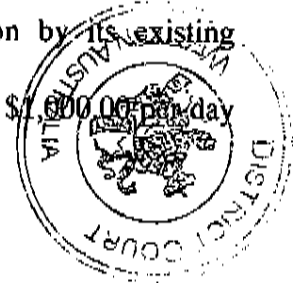
**Particulars of Loss and Damage.**

- 10.1. The Plaintiff has to replace the blocked or compromised Internet Protocol numbers range at a cost of \$14,000.00.
- 10.2. The Plaintiff has to employ technicians to set up an alternative mail delivery system at a time and labour cost of 25 working hours at \$190.00 per hour totalling \$4,750.00.



10.3. The Plaintiff has to purchase a new server computer at a cost of \$5,000.00.

10.4. The Plaintiff has to undergo a waiting period of 20 working days for the allocation of a new appropriate internet connection by its existing service provider which will incur a loss of income of \$1,000.00 per day totalling \$20,000.00.



**AND THE PLAINTIFF CLAIMS:**

- a. The sum of \$43,750.00 and interest pursuant to section 32 of the *Supreme Court Act 1935 – 1979* from 3 July 2001.
- b. Interest on the Judgment sum at such rates as this Honourable Court shall think fit pursuant to Section 32 of the *Supreme Court Act 1935 – 1979*;
- c. and Costs.

A handwritten signature in black ink, consisting of stylized cursive letters, positioned above a horizontal line.

Solicitors for the Plaintiff

Place of Trial : Perth

If within the time allowed for Entering an Appearance, the Defendant pays to the Plaintiff or to his Solicitor or into Court the amount claimed, together with the sum of \$<sup>1203.20</sup> being the costs incurred by the Plaintiff up to and including the service of this Writ, further proceedings will be stayed, provided that the Defendant may notwithstanding the payment of such costs have the same taxed by the Taxing Officer of the Court and if more than one sixth be disallowed the Plaintiff shall pay the costs of taxation.

This Writ was issued by Messrs Tan & Tan, Barristers and Solicitors of Perth whose address for service is "Mint House", Suite 6, 5th Floor, 326 Hay Street, Perth, Solicitors for the Plaintiff whose address is care of Tan & Tan at the abovementioned address.

This Writ was served by me at

on \_\_\_\_\_ (the Defendant or one of the Defendants) on the \_\_\_\_\_ day of  
2000.

Indorsed the \_\_\_\_\_ day of \_\_\_\_\_ 2002.

(Signed).....

(Address).....

This Writ was served by me at

on \_\_\_\_\_ (the Defendant or one of the Defendants) on the \_\_\_\_\_ day of  
2002.

Indorsed the \_\_\_\_\_ day of \_\_\_\_\_ 2002.

(Signed).....

(Address).....