

Court declares: 'Gibson's conduct reprehensible'

The full text of the Federal Court Orders are available here:

<http://www.austlii.edu.au/au/cases/cth/FCA/2008/1375.html>

THE COURT ORDERS THAT:

Paragraph 1: (a) MedEntry owns copyright in the 800 questions and answers organised into 10 practice exams. (b) [Dallas Gibson] infringed copyright. (d) [Gibson] is to be restrained from infringing copyright.

Paragraph 5: Gibson "unmeritoriously sought to diminish the financial consequences of infringement by the device of a false counterclaim" and he "took deliberate steps to conceal the flagrancy of the conduct by being less than frank about the circumstances... and hiding or destroying evidence".

Paragraph 21: The infringement was flagrant in the sense that it was a "deliberate and calculated" infringement of MedEntry's copyright.

Paragraph 22: The ease with which materials of the present kind can be electronically copied, downloaded and uploaded to suit the infringing copyist's needs indicates that some deterrence is called for in order to dissuade other would-be copyists in this industry from similar misconduct.

Paragraph 23: Gibson advanced an entirely unmeritorious and fabricated cross-claim for copyright infringement.

Paragraph 26: Gibson deliberately sought to disguise the nature of his conduct.

Paragraph 27: Gibson's conduct was **reprehensible**. There is also a need for deterrence.

Paragraph 33: Gibson deliberately set out to mislead the Court. Gibson "was simply making up much of his evidence as he went along."

Paragraph 34: Gibson's claims lacked any merit at all. MedEntry incurred costs that it would not have incurred had Gibson conducted his case honestly and reasonably.

Paragraph 35: It is plain enough that Gibson's defence was not simply misconceived; it was in substance fabricated.

Paragraph 36: Gibson's made claims in wilful disregard of known facts. On any view, they involved "the making of allegations that ought never to have been made or the undue prolongation of a case by groundless contentions". Gibson's conduct was fundamentally unreasonable. It was bogus from the outset.

Paragraph 41: Gibson is once again bankrupt.

Paragraph 42: Gibson's current status is as an undischarged bankrupt.

Due to the 'flagrant' nature of the copyright infringement and due to Gibson's 'reprehensible' conduct the Court was willing to award additional damages (which are not normally awarded). Further, costs were awarded on an 'indemnity basis'. This kind of costs order is very rare and was awarded by the Court due to the flagrancy of his illegal conduct.