



9 June 2005

Melbourne | Sydney

By courier and email

**Our reference
VOH.MDEA.**

Executive Director
Environment Victoria Inc
20 Urquhart Street
Northcote VIC 3070

Dear Sir

Environmental Report Card on Computers 2005

We act for Toshiba (Australia) Pty Limited ("Toshiba").

Our client is seriously concerned by the defamatory and misleading statements made by or on behalf of Environment Victoria in relation to the environmental performance of Toshiba and its computer products.

Environment Victoria has published on the home page of its website the following prominent statement under the headline "Computer Graveyard Leaving Toxic Legacy":

"Consumers should boycott Toshiba and Apple Computers and instead buy more environmentally-friendly products such as HP and Dell, a major report card on Australia's PC Companies has found."

Further, Environment Victoria's findings as published in its Environmental Report Card on Computers 2005 titled "Computer Waste in Australia and the Case for Producer Responsibility dated June 2005" (the "Report") have been reported in a number of popular newspapers in the following manner:

1. "Toshiba and Apple are ranked last in an environment report card on personal computers" :Herald Sun, 8 June 2005. This article quotes Environment Victoria's spokeswoman, Jenny Henty as saying: "consumers should boycott brands that were not environmentally friendly";
2. "Consumers should boycott Toshiba and Apple computers because of their poor environmental performance, according to a report released today [by Environment Victoria]": The Age, page 2, 8 June 2005; and

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3. Similar statements have also been reported in a number of other publications, including the Computer Daily, the Australian Financial Review, Daily Telegraph, Australian Reseller News and AAP Newsletter.

Environment Victoria's basis for the proposed consumer boycott is based upon an incomplete and seriously flawed review of six major computer companies, the details of which have been published in the Report.

We note that the information used as part of Environment Victoria's review is purported to have been based upon "publicly available information on each company website, written and oral responses to our enquiries and...". In the case of Toshiba, the above statement is seriously misleading as we are instructed that Environment Victoria's consultation with Toshiba was, to the best of our client's knowledge, confined to Environment Victoria issuing one letter to Mr Mark Whittard dated 27 May 2005 which sought to enquire about Toshiba's environmental policies and practices. As this letter was not received by Toshiba until 3 June 2005 (less than two business days before Environment Victoria's release of its Report), it is apparent that no serious attempt was made by Environment Victoria to obtain information relevant to Toshiba's environmental policies and procedures. Not surprisingly, our client was not in a position to provide any meaningful response to this letter before Environment Victoria elected to publish its Report and announce to the public that a boycott of Toshiba's computer products should occur.

It is surprising that Environment Victoria's investigation did not appear to even extend to viewing and downloading material from the global website of the actual manufacturer of the relevant computer products (namely Toshiba's parent company's website located at www.Toshiba.co.jp), as this contains a substantial amount of material supporting Toshiba's environmental policies and procedures.

Quite apart from our client's complete dissatisfaction with the lack of consultation over the contents of the Report and Environment Victoria's proposed claims, our client is seriously concerned that you have failed to highlight to the public that Environment Victoria's findings were not, contrary to the claim it has made, sourced partly from "written and oral responses to [your] enquiries".

If Environment Victoria wishes to make strident calls for a boycott of our client's products, it is incumbent upon your organisation to reach conclusions which are fully researched and are based upon all relevant information available from our client. The inadequacy of Environment Victoria's investigation of the subject matter of its Report is highlighted by the notation on page 23 of the Report which states "where there was no publicly available information on a criteria, and the relevant company person could not be contacted, the company scored an average mark for that criteria; but scored poorly on accountability and consumer information criteria".

Unfortunately, Environment Victoria has irresponsibly incited consumers to boycott our client's products without any sound reason for doing so. By way of example only, we wish to draw to your attention the following deficiencies in Environment Victoria's investigations and findings:

1. Environment Victoria's call for a boycott of Toshiba products purports to be based on the allegedly poor environmental performance of Toshiba and its computer products. In particular, Environment Victoria's website claims that its inaugural report card ranked the country's largest computer brands on environmental standards such as design of toxic

free products. However, only one of the six major criteria used by Environment Victoria related to product design and it appears to have failed to adequately address the comparative toxicity of the relevant computer products.

2. Environment Victoria's website claims that its inaugural report card also ranked the country's largest computer brands on whether the company had a take-back scheme for obsolete products, with three of the six criteria dealing with take-back schemes. However, Environment Victoria's assessment of those take-back schemes did not include "a detailed investigation of what happens to computers that are taken back". Accordingly, there is a real possibility that Environment Victoria has mislead consumers into believing that those computer companies with take-back schemes are not dumping the computers they recover at waste sites.

Environment Victoria's published Report Card or its accompanying website release contain the following defamatory and seriously misleading imputations against our client:

- Toshiba and its computer products have the "lowest" environmental performance, compared with its competitors, Dell, HP, IBM, Acer and Apple ("the listed competitors");
- Toshiba's computer products are environmentally the worst computer products of the listed competitors;
- Toshiba and its computer products are, by implication, the greatest contributor to the "escalating, deadly problem that old computers pose";
- Toshiba and its computer products are, by implication, most responsible (compared with the other listed competitors) for "leaving a toxic legacy for human and environmental health";
- Toshiba is a major contributor towards "industry laziness" in taking initiatives to reduce landfill problems;
- Toshiba is acting in a "shameful" manner; and
- Toshiba and its computer products are "leaving a legacy of cancer, birth defects and a range of illnesses".

In order to demonstrate the defamatory and misleading nature of the above imputations, we set out below a brief summary of Toshiba's environmental credentials. Had our client been given a reasonable opportunity to do so, it would have been able to furnish a substantial amount of relevant information, including the following:

- Toshiba offers a number of options for the reuse and recycling of notebooks as outlined in more detail below, both within and outside the confines of a take back scheme.
- Toshiba local environmental activities include

- Toshiba (via Toshiba finance and channel partners – Toshiba sells exclusively through its channel) offers a trade-in program to its corporate, consumer and education customers. For example when a corporate customer refresh their notebook fleet (on average, every three years), the older units are bought back and then re-marketed by the Toshiba finance partner, for example into second hand notebook channel partners, auctions online, notebook rentals etc.
- Toshiba recycles most components in those notebooks (including metals and glass) that are returned to its repair centres (for example, buy-back/swap products or pre-loved machines). The majority of components are striped in the repair centres and unwanted components disposed of through external waste companies. Toshiba works with professional scraping and recycling companies to ensure they are disposed of in accordance with best environmental practice and government guidelines. Unfortunately we do not have figures on hand as to the quantity that is recycled as this is ultimately handled by the outsourced company.
- Toshiba Australia also recycles batteries. We recently began this through MRI which, through an organisation called TREDI (which is licensed by the Federal Dept of Environment and Heritage) exports this type of metal product to France for metal extraction. MRI statistics reveal that 96% recycle rate – of the 7174kg of mixed product sent by Toshiba to MRI about 6863kg of it was diverted from landfill and reused (Source: MRI Toshiba Operational Report March 2005).
- Toshiba is ISO 9000 (quality) accredited.
- Toshiba also partners with Landcare Australia to assist in managing and repairing the environment, and as such complies with Landcare's policies. Further information can be found at <http://www.landcareaustralia.com.au/> This is in accordance with Federal Department of Environment guidelines.

Toshiba promotes environmental protection activities, in a technically and financially appropriate way, and in accordance with the Basic Commitment of Toshiba Group and this Basic Policy for Environmental Protection. Toshiba ISD follows Toshiba Global's guidelines and commitment to environmental sustainability, as set out in the 'Toshiba Environmental Report 2003' and 'Toshiba Green Procurement Guidelines', a copy of which is available from the website for the Toshiba corporate reports <http://www.toshiba.co.jp/env/en/index.htm>.

These formal environment management policies centre on five activities:

1. Effective utilisation of resources;
2. Prevention of global warming;
3. Strengthening of control of chemical substances;
4. Development of environmentally conscious products; and
5. Recycling of end-of-use products.

This focus is supported by 'green procurement' of products, parts, and components, materials and raw materials that have minimal environmental impacts; and environmental accounting, environmental audits and comprehensive environmental education.

Some of the results Toshiba has achieved through this strategy include:

- **Recycling:** Toshiba processed nearly 300 tonnes of notebook and desktop PCs and monitors (29,140 units) in fiscal year 2002, nearly 1.5 times the volume processed in the previous year.
- **Packaging:** Toshiba reduced total volume of packaging by 30 percent over the five years to fiscal year 2002.
- **Energy Saving:** Toshiba has worked to improve the level of performance whilst reducing the power consumption required. In Japan alone, this energy saving benefits multiplied by the number of Toshiba notebooks produced and provided, offer the energy saving equivalent of 18,000 households.

Our client's reputation as an environmentally responsible manufacturer of computer products has been, and is continuing to be, damaged as a result of Environment Victoria's publication on its website and elsewhere of the following items:

- (a) Report;
 - (b) the one page summary of the Report; and
 - (c) the website bulletins, both the headline bulletin on its home page and the more detailed bulletin linked to its homepage item.
- (together the "Publications")

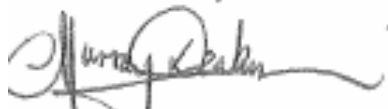
In order to mitigate further loss and damage being suffered by Toshiba, we are instructed to seek a written undertaking from you that Environment Victoria by itself, its officers and employees will:

1. immediately withdraw from its website and cease all further publication, dissemination, distribution, copying or other reproduction of the Publications;
2. publish a suitably worded retraction on its website and promptly disseminate that retraction to every recipient of the Report or the Report Card (or similar material) contacted by Environment Victoria (by reference to Environment Victoria's own distribution list), including those media outlets who have since published articles in respect of the Report; and
3. ensure that Environment Victoria's Zero Waste Campaign Director, Jenny Henty, and all other officers, employees or spokespersons of Environment Victoria will immediately cease:
 - (a) advocating a boycott of Toshiba products; and

- (b) making any defamatory or misleading statements (in any written, verbal or other material form) in relation to Toshiba or its computer products.

Unless we receive the requested undertaking (or an undertaking otherwise satisfactory to our client) by the close of business tomorrow, 10 June 2005, we are instructed to commence legal proceedings seeking an injunction, damages and other relief without further notice.

Yours faithfully



Murray Deakin
Partner

Copy to: Environment Victoria Inc, Level 3, 60 Leicester Street, CARLTON VIC 3053

Mr Murray Deakin
Middletons
Lawyers
Level 3
Shelley Street
SYDNEY NSW 2000

10 June 2005

CONFIDENTIAL

**BY FACSIMILE: 02 9513 2399
AND BY E-MAIL**

Dear Sir

**TOSHIBA (AUSTRALIA) PTY LIMITED AND ENVIRONMENTAL REPORT CARD ON
COMPUTERS 2005**

We refer to your letter of 9 June 2005.

We are currently considering the matters and demands raised in your letter. We are also seeking legal advice in respect of those matters and demands.

We are not in a position to respond within the timeframe set out in your letter. We expect to be in a position to respond by the end of next week.

However, until we have had an opportunity to take legal advice and respond to the matters and demands raised in your letter, and without any admission or acceptance of the allegations raised in your letter, Environment Victoria and its officers, employees and other spokespersons:

- will remove from the Environment Victoria website the Environmental Report titled "Computer Waste in Victoria and the Case for Producer Responsibility", the Environmental Report Card on Computers 2005, the associated media release and other associated materials and web pages (the "**Materials**");
- will agree not to disseminate or publish the Materials further; and
- will agree not to publicly comment on the Materials, insofar as they relate to Toshiba, further;

By removing and agreeing not to disseminate the Materials, Environment Victoria seeks to maintain the status quo until it has had the opportunity to take legal advice and to respond more fully to your letter.

We confirm that the Materials were removed from the Environment Victoria website earlier today.

In respect of your claim of lack of consultation, Environment Victoria did in fact endeavour to seek information from your client in relation to the subject matter of the Report. In addition to the letter dated 27 May 2005, a consultant engaged by Environment Victoria spoke to Mr John Ryan (who he understood to be the company secretary) and e-mailed a detailed questionnaire after their conversation on 30 May 2005. There was no response to the e-mail.

In view of this, you may wish to seek further instructions and reassess your claims about the lack of consultation.

As a final matter, Environment Victoria is happy to meet with representatives of Toshiba at any time. Environment Victoria has a history of working collaboratively with industry associations and individual companies on environmental matters.

If you have any queries in respect of the above, please do not hesitate to telephone the writer on 9341 8119

Yours faithfully

Marcus Godinho
Executive Director



14 June 2005

Melbourne | Sydney

By facsimile and email

**Our reference
VOH.MDEA.**

Marcus Godinho
Executive Director
Environment Victoria Inc
20 Urquhart Street
Northcote VIC 3070

Dear Sir

Toshiba (Australia) Pty Limited - Environmental Report Card on Computers 2005

We refer to your letter of 10 June 2005 and acknowledge Environment Victoria's action in withdrawing the Report, Report Card and associated media releases from its website. However, we note that the actions taken by Environment Victoria are only of a temporary nature, "until [you] have had an opportunity to take legal advice and respond to the matters and demands raised in [our] letter".

Our client is seriously concerned that Environment Victoria has not yet provided the requested written undertaking and has, in particular, failed to publish a suitably worded retraction of the defamatory and misleading claims it has made.

While Environment Victoria's actions in withdrawing the offending material from its website has limited further damage being sustained, you have failed to date to take any remedial action to address the serious damage Environment Victoria has inflicted on Toshiba's reputation and the environmental credentials of its computer products. In order to redress this damage, our client demands that Environment Victoria give the undertaking requested in our letter of 9 June 2005 by 4:00pm today and publish, within the next 24 hours, a suitably worded retraction in the manner required by paragraph 2 of the requested undertaking.

We enclose the form of the retraction our client seeks to redress the situation.

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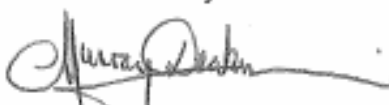
Contact
Veronica Oh
telephone: 02 9513 2357
veronica.oh@middletons.com.au

Unless the undertaking is given by the time requested and a retraction is published within the next 24 hours, we are instructed to commence legal proceedings against Environment Victoria without further notice.

We have prepared a brief to senior Counsel to commence legal proceedings to seek permanent injunctions, damages and other appropriate relief. In the event that legal proceedings are commenced, our client will demand that Environment Victoria pay its legal costs, as well as compensation for its loss of goodwill and reputation.

We await your urgent response.

Yours faithfully



Murray Deakin
Partner



Our ref: DTL:RBS:0256404

16 June 2005

WITHOUT PREJUDICE

Mr Murray Deakin & Ms Veronica Oh
Middletons Lawyers
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Dear Mr Deakin and Ms Oh

Toshiba (Australia) Pty Limited - Environmental Report Card on Computers 2005

Further to my telephone conversation with Ms Oh yesterday, I confirm that I act for Environment Victoria ('my client'). I have reviewed the 'Environment Report Card on Computers 2005' ('Report') and the various correspondence that has passed between you and my client since publication of the Report.

My client seeks an amicable resolution of this matter.

As you are aware, the Report, Report Card and associated media releases were withdrawn from my client's website immediately upon receipt of your first correspondence. My client also provided you with an undertaking that it would remove all offending material from its website, agree not to disseminate or publish the materials further, and agree not to publicly comment on the materials insofar as they relate to your client. I understand that your client was concerned as to the 'temporary' nature of the undertaking. I can now confirm that the undertaking provided in my client's letter of 10 June 2005 is not of a temporary nature. It is permanent and ongoing, save that the 'Materials' referred to in the undertaking must relate only to the Materials in their current form, and not to revised versions.

My client appreciates that your client was unable to complete the survey in the limited timeframe afforded to it, and that this may have affected your client's 'rating'. My client also appreciates that gaps in company and product information made it difficult to rank the companies' environmental performance with a sufficient degree of accuracy. Accordingly, my client intends to revise the Report. The revised Report will provide only a summary of the range of environmental practices in the computer industry, and it will not mention any company by name.

Please notify us if this communication has been sent to you by mistake. If it has been, any client legal privilege is not waived or lost and you are not entitled to use it in any way.

I note for completeness that while the environmental information provided to my client pursuant to your letter of 9 June 2005 was informative, it did not address the specific criteria referred to by my client in the questionnaire it sent to your client. For future reference, my client invites your client to complete the survey. Please let me know if your client requires a fresh copy.

I understand that your client also seeks publication of a retraction on my client's website. My client has reviewed the proposed wording of the retraction and is prepared to publish a slightly amended version. I enclose a copy for your consideration.

My client is prepared to publish the enclosed retraction on its website and forward it to the media as soon as you confirm that the wording of the retraction is sufficient.

I look forward to hearing from you.

Yours sincerely

Renee Sion
Solicitor
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Email renee.sion@phillipsfox.com

David Leggatt
Partner

Enc

Our ref: DTL:RBS:0256404

17 June 2005

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WITHOUT PREJUDICE

Mr Murray Deakin & Ms Veronica Oh
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By email murray.deakin@middletons.com.au
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Dear Mr Deakin and Ms Oh

**Toshiba (Australia) Pty Limited - Environmental Report Card on Computers
2005**

I refer to your facsimile of 16 June 2005.

I confirm that my client has published the retraction on its website and disseminated a copy of the retraction to every recipient of the Report, Report Card or associated media releases. A copy of the retraction is enclosed for your reference.

Further to my discussions with Veronica yesterday afternoon, I also confirm that the table in part 6 of the Report has been removed from the revised version, and the one page summary of the Report will not refer to any company by name.

Yours sincerely



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David Leggatt
Partner