

CLAYTON UTZ

Sydney Melbourne Brisbane Perth Canberra Darwin

Clayton Utz
Lawyers
Level 18
333 Collins Street
Melbourne VIC 3000
Australia

24 April 2007

DX 38451
333 Collins VIC

Dr John Scheirs
SecuriCap Pty Ltd
547 Highett Road
Highett VIC 3190

T +61 3 9286 6000
F +61 3 9629 8488
www.claytonutz.com

Our reference: 637/14068/80058259

Privileged and confidential

Dear Dr Scheirs

Securi-Cap Pty Ltd ("Securi-Cap"): Thorny Devil Signage

You have asked us to provide advice on the proposed signage for the Thorny Devil Barrier. Our advice is set out below.

1. Summary of our advice

A warning sign with a pictogram is an effective means to alert the public to the existence of the Thorny Devil Barrier and further minimise Securi-Cap's potential liability in the event that a person is injured whilst attempting to cross the Barrier.

As such, in our view the sign provided to us on 16 April 2007 (copy enclosed) is the right approach. As set out in section 3 below, we recommend that Securi-Cap make certain revisions to this sign to clarify the purpose and message. We also make certain display recommendations.

2. Background

We are instructed that Securi-Cap is the designer and manufacturer of the Thorny Devil Barrier. The Thorny Devil Barrier is a "low-harm" spiked plastic strip product that is affixed by customers to a fence to deter human and animal intruders. The product falls in the category of a "security aid which deters by physical means".

3. The law

Securi-Cap should be aware of its potential liability under the law of negligence for any injury suffered by intruders as a result of their attempt to climb a fence and cross a Thorny Devil Barrier.

As a manufacturer of the Thorny Devil Barrier, Securi-Cap has a duty to take reasonable care to avoid the risk of personal injury to those members of the public who, albeit illegally or recklessly, attempt to cross the Barrier. The public includes would-be trespassers to properties with Thorny Devil Barriers. However, the design of the Thorny Devil Barrier is such that some harm may come to intruders; this is part of the physical element of its deterrence. As such, by its very nature, a Thorny Devil Barrier fence is not one that is intended to be climbed by a person acting reasonably.

24 April 2007

Dr John Scheirs, Securi-Cap Pty Ltd

A Court which is asked to have regard to the actions of an intruder may readily conclude that, given the purpose of the product, the duty of reasonable care does not oblige the manufacturer to remove the quality of physical deterrence or to warn of the risk. However, in our view, it is conceivable that an intruder may offer an explanation for their actions which, absent some form of visual warning, could expose Securi-Cap to potential liability for injury suffered in the process. In short, a visual warning is, in our view, a prudent means of ensuring that the public avoid the risk of injury AND stay off the fence in any event. This duty may well be the occupier's ultimate legal responsibility - hence such a measure is also intended to minimise the risk of a cross claim by that occupier.

To minimise the risk of liability, Securi-Cap should take steps to discharge its duty of care. In general, the measures that are required to discharge this duty depend on the individual circumstances of the case, including the nature of the risk and how easily it can be alleviated. Securi-Cap has already taken one such step by designing the product to be "low-harm". However, as noted above, the most practicable additional measure which Securi-Cap (and occupiers of the premises) could take without defeating the intended purpose of the product is to warn against the hazards of climbing the fence. An effective method of warning the public is the use of warning signs.

Securi-Cap should take reasonable steps to design a warning sign so that it can be affixed to the fence and read and understood by the public. As Securi-Cap does not necessarily know or have control over the neighbourhoods in which Thorny Devil Barriers are installed, it should design these signs so that they can be understood by a wide cross-section of the Australia's population. This includes children and adults with poor literacy or vision.

4. **Our recommendations**

As set out below, there are two aspects to our recommendations: content of the sign and display considerations.

(a) **Content**

Securi-Cap's proposed sign includes a pictogram with a visual image of a stick figure reaching up to touch the fence. We endorse the idea of using of a pictogram to warn the public of the potential harm of climbing the fence. Pictograms can be understood by a wide section of the public, including children and non-English speakers who may not otherwise be able to comprehend a purely written sign.

However, we recommend you consider revising the pictogram to better indicate the consequences of climbing the fence. For example, the image could include a hand touching the spikes with clear indicia of pain, e.g., in addition to the current exclamation marks.

We are aware that there are Australian Standards for safety signage, see for example *AS 2342-1992 "Development, testing and implementation of information and safety symbols and symbolic signs"*. We are not qualified to assess whether the proposed signage complies with this. We recommend you speak with a graphic designer in this regard.

In addition, we recommend making the following revisions to the sign:

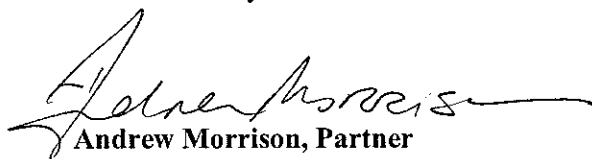
24 April 2007

Dr John Scheirs, Securi-Cap Pty Ltd

- (i) Add the word "WARNING!" to the top of the sign. This is an additional measure to unequivocally alert the public to potential harm. We note that "WARNING!" is preferable wording to "CAUTION!" as better indicates the real intention of the message.
 - (ii) Add the image of the thorny devil with the wording "Thorny Devil Security Fence Spikes" (as supplied to us on 16 April 2007). This image reinforces the message of the sign. In giving this advice, please note that we have not considered any intellectual property issues which may arise (e.g. whether this symbol or wording infringes any person's intellectual property rights).
- (b) **Display considerations**
- The sign should be large enough to attract the attention of both adults and children. It should also be designed so as to maximise its visibility in low-light. For example, Securi-Cap may consider using iridescent paint.
- Customers should be clearly informed that the sign forms part of the Thorny Devil Barrier product. Also, they should be given clear instructions as to the sign's use. For example:
- (iii) Customers should install the sign in a position on the fence which is clearly visible to the public, e.g. not behind foliage.
 - (iv) Securi-Cap may also consider advising customers to install one sign per x metres (a reasonably practicable distance). This would ensure that the sign's message would be conveyed over the length of long fence lines.
 - (v) Securi-Cap should also advise its customers to replace missing signs. It should be in a position to supply such replacements on demand.

Please do not hesitate to contact us if you would like to discuss any aspect of this advice.

Yours faithfully



Andrew Morrison, Partner

+61 3 9286 6537

amorrison@claytonutz.com

Contact: Jodi Ainsworth, Solicitor

+61 3 9286 6941

jainsworth@claytonutz.com