**MEMORANDUM IN REGARD TO THE HIGH COURT APPLICATION BY KEITH HO AND PLAYBET (PTY) LTD (“HO” AND “PLAYBET”) IN TERMS WHEREOF THEY SOUGHT (ON AN URGENT BASIS) CERTAIN DOCUMENTS, AN ORDER THAT THE INFORMATION ARISING FROM THE SEARCH AND SEIZURE WARRANT BE SEALED AND THAT PARTIES IN POSSESSION OF SUCH INFORMATION BE DISCLOSED (“THE URGENT RELIEF SOUGHT IN PART A”) AND THAT THE DECISION OF THE MAGISTRATE WHO ISSUED THE SEARCH AND SEIZURE WARRANTS (“THE WARRANTS”) BE REVIEWED AND SET ASIDE (“THE NON-URGENT RELIEF SOUGHT IN PART B”)**

**PURPOSE OF THIS MEMORANDUM**

1. The purpose of this memorandum is to summarise the relevant facts and events surrounding the Application and more particularly to indicate what transpired at the High Court on the 17th June 2014 and what legal steps are to take place in the foreseeable future.

**RELEVANT BACKGROUND FACTS WITH REFERENCE TO THE WARRANTS AND THE APPLICABILITY OF THE COUNTERFEIT GOODS ACT (“THE ACT”)**

1. The provisions of the Act only apply to instances where the counterfeiting of goods has or are taking place i.e. which envisages the manufacturing, producing or making of counterfeit goods, i.e. the Act then permits the SAPS, as inspectors under the Act, to raid premises for the purposes of locating counterfeit goods and thereafter seizing them and placing them in a SAPS depot.
2. The Act does not permit the photographing, videoing and/or the creation of documents arising from the execution of the Warrants i.e. the inspecting of decoders and smartcards and the writing down of the numbers of the decoders and smartcards (which happened in these cases and no doubt for the purposes of handing this information to Multichoice and to Tellytrack for them to determine as to whether the Tellytrack Channel has been broadcasted in the betting outlets via a particular source including the utilisation of a “home” DStv decoder and smartcard).
3. By virtue of what is indicated in 2 and 3 both Adv Vetten and attorney Cameron contend that the Act did not permit the State to obtain the Warrants and that the issuing of the Warrants and their execution can legally be set aside (hence the Application by Ho and Playbet – the hearing before a judge will now be delayed for the reason that we require the information and documents that were placed before the Magistrate who authorised the Warrants).

**THE DOCUMENTS THAT WERE FURNISHED TO THE MAGISTRATE WHO ISSUED THE WARRANTS**

1. The Magistrate who issued the Warrants did so after being furnished with complaint statements by Tellytrack and investigation statements by the SAPS (“the Documents”).
2. In a number of legal cases before a number of courts, throughout SA including the Constitutional Court and the Supreme Court of Appeal, it has been held that the Documents must be produced and made available to the parties affected thereby i.e. Ho and Playbet.
3. The reason why the Documents must be made available is obvious i.e. in order that those parties can determine why the Warrants were issued and thereafter to decide as to whether the issuing of the Warrants were lawful or not.
4. On the 2nd June 2014 Cameron demanded from the SAPS that they produce and make available to him copies of the Documents (the same demand was made upon the attorneys for Tellytrack)- both demands were ignored and never responded to **and hence the launch of the Application on the 6th June 2014.**
5. Without the Documents Ho and Playbet are prejudiced in approaching the High Court to set aside the Warrants i.e. both the High court Judge and Ho and Playbet need to refer to the Documents in order to draw attention to not only false / incorrect information and facts therein but also relevant facts that have not been disclosed therein i.e. that Ho and Playbet have valid and legitimate grounds to argue that they are entitled to receive the televised broadcasting of horse race events and more particularly from Turffontein and Fairview and that they do not recognise that the intellectual property rights contended for by Tellytrack in fact vest in them.
6. Even after the launch of the Application and even after filing an affidavit the SAPS failed to indicate why they are not making the Documents available to Ho and Playbet – **notwithstanding this fact the Judge in the urgent court found nothing sinister and/or untoward in this conduct of the SAPS.**

**PROCEEDINGS ON THE 17TH JUNE 2014**

1. Just before the hearing before Judge Bash Valli (“the Judge”) commenced the advocate for the State Attorney made available and affidavit deposed to by one of the inspectors at the search and seizure raids (as indicated hereinabove the affidavit was silent as regards why the SAPS had ignored the letter demanding the production of the Documents – **clearly the SAPS have something to hide and no doubt seek to delay the production of same whilst they continue with other matters arising from the Warrants including approaching the Director of Public Prosecutions so as to criminally prosecute Keith and Fulvio).**
2. Apart from the SAPS counsel the attorneys for Tellytrack were represented by Adv A Cockerill and a junior counsel, Friedman and the other attorneys for Tellytrack were represented by a junior counsel, Mrs Cirota.
3. All three of counsel indicated in 12 argued to the Judge that the Application (Part A) was not urgent and they contended that the conduct of Ho and Playbet was such that they should pay the highest costs award recognised by the Court including the costs of the senior counsel, (Cockerill) (if these had been awarded then the costs that would have to be paid by Ho and Playbet would have exceeding R300k).
4. After 2 hours of argument the Judge decided that the Application (Part A) was not urgent and that the documents could be obtained by Ho and Playbet at some future date and that it did not matter that the State was to continue with possible criminal prosecution proceedings under the Act – **the whole idea behind obtaining the documents and the other orders under Part A was to obtain another hearing before another judge (by say the middle of August) and thereby to stop possible criminal legal proceedings.**
5. By striking the Application from the roll **this in no way affects the Application itself and the relief sought in the Application i.e. all it means is that we are delayed in having a hearing before another judge (thankfully) and at which hearing Vetten and Cameron are confident will result in the setting aside of the Warrants and the declaring that information and documentation gathered / created thereinunder will be returned to Ho and Playbet.**
6. The costs that Ho and Playbet will be liable to pay (apart for their own costs which are covered by Goba) will be in the region of R40k i.e. Tellytrack and others have got to pay the difference to their own attorneys and which will be in the region of R300k **the only winners arising from this exercise are the lawyers and advocates –** (I am sure most people will exclaim “what’s new”?)

**THE FUTURE**

1. We will now respond to the answering affidavit of SAPS (Warren will have to sign a replying affidavit) and whereafter a document (heads of argument) will be drafted by us and whereafter we will apply for a hearing date in order to obtain the orders in Part A (we anticipate a hearing date towards the end August beginning September 2014) and whereafter a further hearing date will take place (Part B) i.e. to set aside the Warrants which date will be sometime in October / November 2014.

**DATED AT JOHANNESBURG ON THIS THE 20th DAY OF JUNE 2014**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

J J F CAMERON