



7 August 2023

Kilimanjaro succeeds with an injunction against MYOB

AUCKLAND, 7 August 2023 - Enprise Group (NZX: ENS) advises that with respect to the margin dispute with MYOB, Kilimanjaro Consulting Pty Limited (KCAU) has been granted an interlocutory injunction.

Kilimanjaro Consulting support the largest MYOB Exo install base of any partner in Australia or New Zealand.

KCAU at a hearing on 4 August 2023 has been granted an interlocutory injunction application. His Honour, Australian Federal Court Justice Jackman, made the following orders (where MYOB is referred to as the respondent, and KCAU is referred to as the applicant):

1. Until further order, the respondent is restrained from taking any action for breach of contract under the Business Partner Agreement, by reason only of the applicant paying the respondent the Annual Licence Fee margin as documented in the 2018 Business Partner Agreement.
2. Until further order the respondent is restrained from withholding licence codes for the use of the MYOB Exo by any End User which is a customer of the applicant, by reason only of the applicant retaining the Annual Licence Fee margin as documented in the 2018 Business Partner Agreement.
3. Costs of the application are to be costs in the cause.

The practical effect of these orders is that KCAU can retain and utilise the MYOB Exo margin as documented in the 2018 Business Partner Agreement until such time as these proceedings are finally resolved, which in turn means that KCAU has no need to change its current business model or take any steps to try and absorb or counter MYOB's reduction in the MYOB Exo margin as detailed in the announcement dated 1 August 2022, which had quantified the purported reduction in margin at approximately \$935,000 per annum.

The above orders apply only in Australia and not New Zealand. However, KCAU has sought undertakings from MYOB that will have the same practical effect in relation to the New Zealand entity, Kilimanjaro Consulting Limited, as the orders

made in favour of KCAU. If these undertakings are not given, Kilimanjaro Consulting Limited will apply to join the proceedings and seek the same orders as those made by the Court in favour of KCAU.

The case highlights that there are serious questions to answer about whether the Business Partner Agreement (BPA) falls under the ambit of the Franchising Code, and whether MYOB has unconstrained power to alter the terms of the agreement. The case also will focus on MYOB's statutory duties of good faith and unconscionability. The judge accepted that KCAU's case is serious and arguable. The full trial on the points in dispute is expected to be held in April 2024.

The injunction provides Kilimanjaro with an extended window in which to transition from an Exo-centric business, and to continue to develop other revenue streams to contribute meaningfully to the profitability of the business.

The court action emphasises that Kilimanjaro has done its level best to keep a client focussed business model in place, including providing its customers the choice to move to the cloud as and when they choose.

Elliot Cooper
Chief Executive Officer
Enprise Group Limited
0275615501

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