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# White Labelling

## – What is it? – What is the Courts concern?

by John Doyle, Senior Solicitor, Law Claims

On the 3 July 2013 Ward JA of the Court of Appeal New South Wales expressed concern on the practice of “While Labelling” in legal practices and that if it is widespread in the profession warranted the attention by the Law Society.<sup>1</sup>

### What is “White Labelling”?

White Label refers to a product or service that is purchased by a reseller who rebrands the product or service to give the impression that the new owner created it. White Label products are often produced via mass production.<sup>2</sup>

Legal white-label products include a wide range of legal documents and forms which are purchased by practitioners and used as precedents.

In the case of *Knezevic*<sup>3</sup> a legal practice had drafted documents, including letters, which was then branded to the non-legal organisation and sent out to the borrower.

### Officer of the Court

Legal practitioners are officers of the Court and as such are subject to its special jurisdiction.<sup>4</sup> The lawyer’s status as an officer of the court has important implications, including the following:

- the lawyer’s duty to the court is ‘paramount’ or ‘overriding’, such that to the extent that the duty to the court conflicts with any duty to the client, the former must prevail over the latter;
- the lawyer must not mislead the court, whether as to the law or as to the facts of the case in question;
- the lawyer must assist the court in relation to any matter of legal principle where assistance is requested or required;
- the lawyer must not use the court process as a means of achieving an objective that is inconsistent with the role of that process, for this otherwise amounts to an abuse of process;
- the lawyer must use his or her best endeavours to avoid unnecessary expense and waste of the court’s time;
- the lawyer must act with due courtesy to the court and to other lawyers;

1 *Knezevic v Perpetual Trustee Victoria Ltd & Anor* [2013] NSWCA 199

2 Techopedia – Definition – What does White Label mean ([www.techopedia.com/definition](http://www.techopedia.com/definition))

3 *Ibid*

4 Halsbury’s Laws of Australia para [250-5000] Implications of status as officer of the court

- the lawyer must be diligent in observing any undertakings he or she has given to the court;
- the lawyer must not act in a matter where his or her own personal interests conflict with his or her duty as an officer of the court;
- the lawyer must promptly and candidly respond to inquiries regarding his or her professional conduct from the court or other competent authority; and
- a lawyer may be the subject of professional disciplinary sanction for behaviour that falls outside of his or her practice where that behaviour has the capacity to undermine the confidence the court (and others) may have in that lawyer.

### The Court’s Concern

Ward JA after stating that legal practitioners are officers of the Court, states that<sup>5</sup>:

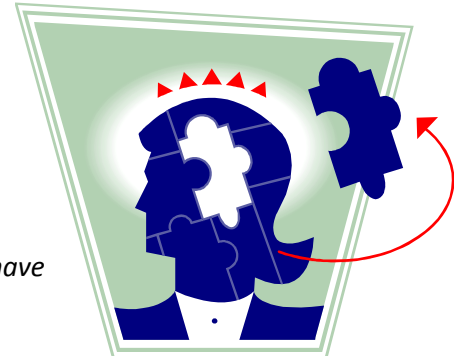
***“My concern arises from the potential for such a practice to mislead the public, or those dealing with legal practitioners who engage in white-labelling, as to the relationship between the legal practitioner and the entity whose logo is situated prominently at the top of the letterhead and, indeed, as to the entity from whom the relevant correspondence has emanated.”***

In Knezevic the Court had to consider, inter alia, whether there had been any misleading or deceptive conduct of the solicitor for the lender which resulted in making of a loan to the appellant.

The subject correspondence was prepared legal correspondence which is branded as coming from the organisation, however, it also included the name/branding of the white label company with the result, according to White JA, that there was confusion as to what organisation was sending the letter and making the assertions contained in it.

Ward JA made a finding that:<sup>6</sup>

***“the practice of “white-labelling” in this case had not been suggested to have had a misleading effect on any of the parties to the transaction.”***



### Risk to Law Firm

While the use of precedent or white label documents is common in the legal sector, the identification problems raised by Ward JA in Knezevic make it prudent to remind the profession to the following:

1. The need to ensure that when using precedent documents or white label products, practitioners ensure that the product is clearly branded as being the practitioner’s own work, and emanates from the practitioner, so there is no confusion about from who the finished document is from; and
2. The practitioner in using a white-labelled document will assume the responsibility for that document which bears their name.

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<sup>5</sup> Ibid at paragraph 87

<sup>6</sup> Ibid at paragraph 92