



Mediation Case Study

Cower Management Consultancy and 3WPageniks

General Instructions

A year ago, Cower Management Consultancy (“Cowers”), a large and growing pan-European management consultancy based in Ireland, awarded a contract to 3WPageniks (“3WP” to their friends), a young aggressive Scottish web design company based in Dundee. The brief was to design and publish for them a fully interactive web site in which subscribers could gain access to comprehensive business advice and guidance. The agreed contract price was €150,000.

The relationship at the outset was excellent (3WP was a highly praised company in the early days of web-marketing) and everyone was optimistic that trails would be blazed and awards won. The specification for the web site was in outline, expressing only operational requirements but not full technical detail, as the site was to be leading edge, state-of-the-art technology. Everyone accepted (implicitly) that a significant amount of detailed working -up would be required. The specification also provided that the site was to be ready within four months because an event was planned by Cowers to launch the site. Advance marketing by Cowers heavily promoted the site and invited potential subscribers to sign up for updates and discounted subscriptions. Press coverage was favourable and tipped Cowers as a market leader.

As the contract proceeded, Cowers became increasingly concerned about the pace of the development and lack of progress on the underlying platform which was to provide high quality interactivity. They expressed concern to 3WP that they were not putting sufficient resources into the development. 3WP responded by saying that the absence of adequate technical specification made it difficult, especially in the absence of anyone qualified from Cowers to work with them on the detailed requirements. Cowers delayed making agreed interim payments to account. Part payment of €100,000 was eventually made one month after it was due.

Shortly before the launch date it was agreed by the parties that the site was only partially complete with a number of elements inaccessible. However, it was agreed that enough could be done to make it look presentable. Cowers relied on 3WP’s assurances that the subscribers would not notice many difficulties and that the rest of the site could be made operational within three weeks. Cowers decided to proceed with their planned launch to international clients and contacts in order not to lose face in the market. They had learned that a major competitor was shortly to launch a similar site. Being first to market was important. Press speculation was already growing about whether Cowers could deliver.

It became apparent within a month of the launch that only a small part of the site was truly operational. The rest was far short of completion. The press began to highlight the inadequacy of the site. Subscribers found that the site took a long time to access and began to express frustration. Usage declined markedly. The share price fell. There was speculation that Cowers may fail as a result.

Cowers purported to terminate the contract. They have raised a court action in which they are seeking to recover the €100,000 paid by them plus compensation of €225,000 for losses arising from breach of

contract, being loss of business arising from delay in the complete web-site going live and the costs of having the fully functioning site completed.

3WP is defending the action and have lodged a very limited defence which gives no indication of their position. The action is in its early stages in court and the parties have been advised by their lawyers that it may be worth trying to resolve the matter by mediation. A mediation has been arranged at a city centre venue with a mediator from Core Mediation.

Cowers are represented at the mediation by **Lesley Sure (LS)** of the law firm of Sure and Dear. Their managing director from Leeds, **Hannah/Hans Dunn (HD)**, is attending the mediation.

3WP are represented by **Terri /Terry Irvine (TI)** of the firm of ITLawexperts. Their Finance Director, **Jay/Jane Smith (JS)**, is also expected to attend.