

Ruslan Kogan

and

Terry Smart

Wager Deed

TABLE OF CONTENTS

Page no.

1	Definitions and interpretation.....	1
1 1	Definitions	1
1 2	Words and expressions	2
2	Wager	2
2 1	Wager of the Wager Sum	2
2 2	Appointment of Expert	2
2 3	Role of Expert	3
2 4	Timeframe	3
2 5	Costs	3
2 6	Obligations absolute and unconditional	3
3	Default interest	3
3 1	Defaulting party to pay interest	3
3 2	Calculation of interest	3
3 3	Interest following judgment	4
3 4	Other remedies unaffected	4
4	General	4
4 1	Paramountcy of Deed	4
4 2	Costs	4
4 3	No merger	4
4 4	Amendment	4
4 5	Entire agreement	4
4 6	Assignment	4
4 7	Severability	4
4 8	Waiver	4
4 9	Rights, remedies additional	4
4 10	Further assurances	5
4 11	Legal advice	5
4 12	Counterparts	5
4 13	Governing law and jurisdiction	5

THIS DEED is made on

2011

PARTIES

RUSLAN KOGAN

c/- Kogan Technologies Pty Ltd
108 Bridport Street
Albert Park VIC 3206
("Kogan")

and

TERRY SMART

c/- JB Hi-Fi Limited
Level 4, Office Tower 2
Chadstone Place, Chadstone Shopping Centre
1341 Dandenong Road
Chadstone VIC 3148
("Smart")

BACKGROUND

- A Kogan is the chief executive officer of the Kogan Company.
- B Smart is the chief executive officer of the JB Company.
- C Kogan has stated that he has been advised, and believes, that thirty percent of the sales revenue of the JB Company relates to sales of Apple Hardware and related products. Kogan has further stated that he believes that the Apple Company is likely to discontinue supply of its Apple Hardware to the JB Company prior to the Wager Date.
- D Smart has stated that thirty percent of the sales revenue of the JB Company does not relate to sales of Apple Hardware and related products. Smart has further stated that he is not aware of any plans of the Apple Company to discontinue supply of Apple Hardware to the JB Company.
- E Kogan and Smart have agreed to the Wager on the terms set out in this Deed.

AGREED TERMS

1 Definitions and interpretation

1.1 Definitions

In this Deed, unless the context requires otherwise:

"**Apple Company**" means Apple Inc of 1 Infinite Loop, MS 301-41R, Cupertino, CA 95014 USA, and any of its Subsidiaries.

"**Apple Hardware**" means any personal computers, mobile communication and media devices, or portable digital music players, which are designed and manufactured by the Apple Company and are sold on a stand-alone basis.

"**Corporations Act**" means the *Corporations Act 2001* (Cth).

“**Expert**” means the person appointed under clause 2.2 of this Deed.

“**JB Company**” means JB Hi-Fi Limited ABN 80 093 220 136, and any of its Subsidiaries.

“**Kogan Company**” means Kogan Technologies Pty Ltd ACN 125 684 184, and any of its Subsidiaries.

“**Party**” means a Party to this Deed and “**Parties**” means both of the Parties to this Deed.

“**Subsidiary**” has the meaning given to that term by section 9 of the Corporations Act.

“**Wager**” means the wager described in clause 2.1.

“**Wager Date**” means 14 March 2014.

“**Wager Sum**” means \$1,000,000.

1.2 Words and expressions

In this Deed, unless the context requires otherwise:

- (a) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (b) a reference to a Party, clause, paragraph, schedule or annexure is a reference to a Party, clause, paragraph, schedule or annexure to or of this Deed;
- (c) headings are for convenience and do not affect interpretation;
- (d) the Background paragraphs of this Deed are adopted as, and form part of, the Deed;
- (e) a reference to any document or agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to “\$”, “A\$” or “dollar” is a reference to Australian currency;
- (g) a reference to a Party includes that Party’s executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (h) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Deed or any part of it; and
- (i) the words “including”, “for example”, “such as” or other similar expressions (in any form) are not words of limitation.

2 Wager

2.1 Wager of the Wager Sum

- (a) Kogan agrees and undertakes that if, on the Wager Date, the JB Company continues to offer Apple Hardware for general sale to the Australian public under direct authority from, and with the agreement of, the Apple Company, Kogan will pay to Smart the Wager Sum on demand or as directed by Smart, within 14 days of the Expert’s determination under clause 2.3.
- (b) Smart agrees and undertakes that if, on the Wager Date, the JB Company does not offer Apple Hardware for general sale to the Australian public under direct authority from, and with the agreement of, the Apple Company, Smart will pay to Kogan the Wager Sum on demand or as directed by Kogan, within 14 days of the Expert’s determination under clause 2.3.

2.2 Appointment of Expert

On the date that is 14 days prior to the Wager Date, the Parties must appoint an Expert:

- (a) agreed on by the Parties; or
- (b) if agreement is not reached prior to the date that is seven days before the Wager Date, appointed by the then president of the Victorian Chapter of the Institute of Chartered Accountants or his or her duly appointed deputy.

2.3 Role of Expert

The Expert shall be responsible for determining whether, on the Wager Date, the JB Company continues to offer Apple Hardware for general sale to the Australian public under direct authority from, and with the agreement of, the Apple Company. The Expert will act as an expert and not as an arbitrator. The decision of the Expert will be final and binding on the Parties in the absence of manifest error.

2.4 Timeframe

Each Party will use all reasonable endeavours to ensure that the Expert is able to make a decision as soon as is practical, including, but not limited to, providing the Expert with all information relevant to the Wager.

2.5 Costs

The Parties must bear equally the Expert's costs.

2.6 Obligations absolute and unconditional

The obligations of each of the Parties under this clause 2 are absolute, unconditional and irrevocable. The liability of any of Kogan and Smart under this clause 2 extends to and will not be affected by any circumstance, act, omission or thing which, but for this clause 2, might otherwise affect it at law or in equity including, but not limited to:

- (a) the variation, replacement, renewal, supplement, extinguishment, unenforceability, failure, loss, release, discharge, abandonment or transfer, either in whole or in part, of this document or any other document or agreement relating to the Wager;
- (b) the delay or failure by any Party to exercise any of the rights, powers or remedies conferred on it by law or by this or any other document;
- (c) any dealings, in whole or in part, with any security now or in the future held by any Party, including, but not limited to, the enforcement, discharge or release of any such security;
- (d) the insolvency of any Party, or any other person;
- (e) the obligations of any Party or any other person under this document or any other document or agreement being or becoming, in whole or in part, illegal, void, voidable or unenforceable; or
- (f) the occurrence of any other circumstance, act, omission or thing,

regardless of whether the Parties (or either of them) are aware of or consent to any of these matters.

3 Default interest

3.1 Defaulting party to pay interest

If a Party fails to pay any amount payable under this Deed on the due date for payment, that party must pay interest on the amount unpaid at the rate of 12% per annum. This interest must be paid on demand.

3.2 Calculation of interest

The interest payable under clause 3.1:

- (a) accrues daily from and including the due date for payment up to but excluding the actual date of payment; and

(b) may be capitalised by the person to whom it is payable.

3.3 Interest following judgment

If a liability of a Party becomes merged in a judgment or order, the party (as an additional and independent obligation) must pay interest on the amount of that liability from, any including, the date of judgment until it is paid in full at the higher of:

- (a) the rate payable under the judgment or order; and
- (b) the rate payable under clause 3.1.

3.4 Other remedies unaffected

A Party's right to require payment of interest under this clause 3 does not affect any other rights and remedies it may have in relation to any failure to pay an amount due under this document.

4 General

4.1 Paramountcy of Deed

If this Deed conflicts with any other document, agreement or arrangement, this Deed prevails to the extent of the inconsistency.

4.2 Costs

Each party must bear its own legal, accounting and other costs for the preparation and execution of this Deed.

4.3 No merger

The provisions of this Deed will not merge on completion of any transaction contemplated in this Deed and, to the extent any provision has not been fulfilled, will remain in force.

4.4 Amendment

This Deed may not be amended or varied unless the amendment or variation is in writing signed by all Parties.

4.5 Entire agreement

This Deed constitutes the entire agreement between the Parties.

4.6 Assignment

No Party may assign, transfer or otherwise deal with this Deed or any right or obligation under this Deed without the prior written consent of the other Party, which must not be unreasonably withheld.

4.7 Severability

Part or all of any provision of this Deed that is illegal or unenforceable will be severed from this document and will not affect the continued operation of the remaining provisions of this document.

4.8 Waiver

Waiver of any power or right under this Deed:

- (a) must be in writing signed by the Party entitled to the benefit of that power or right; and
- (b) is effective only to the extent set out in that written waiver.

4.9 Rights, remedies additional

Any rights and remedies that a person may have under this Deed are in addition to and do not replace or limit any other rights or remedies that the person may have.

4.10 Further assurances

Each Party must do or cause to be done all things necessary or reasonably desirable to give full effect to this Deed and the transactions contemplated by it (including, but not limited to, the execution of documents).

4.11 Legal advice

The Parties agree that they:

- (a) have had a full and proper opportunity to consider the terms of this Deed;
- (b) have had a full and proper opportunity to obtain independent legal advice in respect of the terms of this Deed; and
- (c) have freely entered into this Deed.

4.12 Counterparts

This Deed may be executed in any number of counterparts and all counterparts taken together will constitute one document.

4.13 Governing law and jurisdiction

This Deed is governed by and construed in accordance with the laws in force in the State of Victoria and each Party submits to the exclusive jurisdiction of the courts of that State.

EXECUTED as a **DEED**

SIGNED SEALED and **DELIVERED** by)
RUSLAN KOGAN in the presence of)
)

Signature of witness

Ruslan Kogan

Name of witness (print)

SIGNED SEALED and **DELIVERED** by)
TERRY SMART in the presence of)
)

Signature of witness

Terry Smart

Name of witness (print)