

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
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File Number: QUD380/2022
File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v BPS
FINANCIAL PTY LTD (ACN 604 899 381)
Registry: QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: To Be Advised
Time and date for hearing: To Be Advised
Place: To Be Advised



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 2 **Originating process**

(rules 2.2 and 15A.3)

No. _____ of 2022

Federal Court of Australia
District Registry: Queensland
Division: General

IN THE MATTER OF BPS FINANCIAL PTY LTD (ACN 604 899 381)

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

BPS FINANCIAL PTY LTD (ACN 604 899 381)

Defendant

A. DETAILS OF APPLICATION

This is an application for:

- a) declaratory relief pursuant to section 1317E(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**), section 12GBA(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and section 21 of the *Federal Court of Australia Act 1976* (Cth) (**Federal Court Act**);
- b) orders for pecuniary penalties pursuant to section 1317G(1) of the *Corporations Act* and section 12GBB(3) of the *ASIC Act*;
- c) injunctive relief pursuant to sections 1101B(1) or 1324(1) of the *Corporations Act* and section 12GD(1) of the *ASIC Act*; and

Filed on behalf of (name & role of party)	Australian Securities and Investments Commission, Plaintiff
Prepared by (name of person/lawyer)	Savas Miriklis
Tel (03) 9280 3442	Fax 1300 729 000
Email Savas.Miriklis@asic.gov.au	
Address for service	Australian Securities and Investments Commission
(include state and postcode)	Level 20, 240 Queen Street, Brisbane QLD 4000



d) orders for disclosure and advertisement pursuant to sections 12GLB or 12GLA of the ASIC Act and sections 1101B(1) or 1324(1) of the Corporations Act, relating to the carrying on of a financial services business by the Defendant (**BPS**) in contravention of section 911A of the Corporations Act and the promotion by BPS of the supply or use of a non-cash payment facility (**Qoin Facility**) in contravention of sections 12DB(1) and 12DA(1) of the ASIC Act.

On the facts stated in the supporting affidavit of Savas Miriklis dated 24 October 2022, the Plaintiff claims:

Unlicensed conduct

1. A declaration of contravention pursuant to section 1317E(1) of the Corporations Act that BPS contravened section 911A(5B) of the Corporations Act by carrying on, since January 2020, a financial services business without holding an Australian financial services licence.
2. An order pursuant to section 1317G(1) of the Corporations Act that BPS pay to the Commonwealth a pecuniary penalty in relation to its contravention of section 911A(5B) of the Corporations Act.
3. An order pursuant to section 1101B(1) of the Corporations Act, or alternatively section 1324(1) of the Corporations Act, restraining BPS for a period specified in the order from carrying on any financial services business in contravention of section 911A of the Corporations Act.

False, misleading or deceptive representations

4. Declarations of contravention pursuant to section 12GBA(1) of the ASIC Act that BPS:
 - (a) contravened section 12DB(1) of the ASIC Act by making false or misleading representations that a person who purchases crypto-assets associated with the Qoin Facility (**Qoin Tokens**) can be confident that, if and when they wished to do so, they will be able to exchange those Qoin Tokens for fiat currency or for other crypto-assets through independent exchanges;



- (b) contravened section 12DB(1) of the ASIC Act by making false or misleading representations that Qoin Tokens can be used to purchase goods and services from an increasing number of merchants;
 - (c) contravened section 12DB(1) of the ASIC Act by making false or misleading representations that the Qoin Facility, and further or alternatively the associated digital wallet facility in the form of a mobile device application (**Qoin Wallet**), is a product which is regulated, registered, and further or alternatively approved, in Australia; and
 - (d) contravened section 12DB(1) of the ASIC Act by making false or misleading representations that the Qoin Facility, and further or alternatively BPS, are fully compliant with Australian financial service laws.
5. Declarations pursuant to section 21 of the Federal Court Act that, by making the representations described in paragraph 4 above, BPS engaged in conduct in relation to financial services that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 12DA(1) of the ASIC Act.
6. Orders pursuant to section 12GBB(3) of the ASIC Act that BPS pay to the Commonwealth a pecuniary penalty in respect of each of its contraventions of section 12DB(1) of the ASIC Act.
7. Injunctions pursuant to section 12GD(1) of the ASIC Act restraining BPS from further making the representations referred to in paragraphs 4 and 5 above.

Publicity orders

8. An adverse publicity order pursuant to section 12GLB of the ASIC Act, or alternatively orders for disclosure and advertisement pursuant to section 12GLA of the ASIC Act.
9. Orders for disclosure and advertisement pursuant to section 1101B(1), or alternatively section 1324(1), of the Corporations Act.



Other orders

10. An order that BPS pay ASIC's costs of and incidental to the proceeding.
11. Such further or other orders as the Court considers appropriate.

Date: 24 October 2022

A handwritten signature in blue ink, appearing to read "Savas Miriklis".

.....
Savas Miriklis
Legal Practitioner for the
Australian Securities and Investments Commission

This application will be heard by the Federal Court of Australia at [address of Court]
at *am/*pm on



B. NOTICE TO DEFENDANT

TO: BPS FINANCIAL PTY LTD (ACN 604 899 381)
Level 4, 130 Bundall Road
Bundall QLD 4217

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

Note Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.



C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY

Not applicable

D. FILING

Date of filing:

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Registrar

This originating process is filed by Savas Miriklis, legal practitioner for the Plaintiff.

E. SERVICE

The Plaintiff's address for service is:

Place: Australian Securities and Investments Commission
Level 20
240 Queen Street
Brisbane QLD 4000

Email: Savas.Miriklis@asic.gov.au

It is intended to serve a copy of this originating process on the Defendant at Level 4, 130 Bundall Road, Bundall QLD 4217.