

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 21/09/2017 3:06:08 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Concise Statement
File Number: VID848/2016
File Title: Australian Securities and Investments Commission v One Tech Media Limited & Ors
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 6/10/2017 3:24:47 PM AEDT

Registrar

A handwritten signature in blue ink, reading 'Warwick Soden'.

Important Information

As required by the Court's Rules, 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 and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.

CONCISE STATEMENT
FILED PURSUANT TO ORDERS MADE 31 AUGUST 2017



No. **VID 848 of 2016**

Federal Court of Australia

District Registry: Victoria

Division: General

NPA: Commercial and Corporations, Regulator and Consumer Protection

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

ONE TECH MEDIA LIMITED and others according to the Schedule

Defendants

A. Important facts giving rise to the claim

1. From 5 January until about 5 July 2016, the First Defendant (**One Tech**) was the registrant and operator of the website www.titantrade.com. From about 25 July until at least late October 2016, the Second Defendant (**Ultra Solutions**) was the registrant and operator of the Website. The website <https://tradettn.com> appears to be identical to www.titantrade.com and is stated to be owned and operated by One Tech. A reference to the “Website” in this document is a reference to either or both of these websites.
2. Between 5 January and 5 July 2016 One Tech and between 25 July and late October 2016, Ultra Solutions offered binary options trading on the Website to customers in Australia. Binary options essentially allow a customer to bet on the movement in the prices of certain assets in a defined period. The customer gets a return on the investment if the asset price moves in that period as predicted by the customer (either up or down) otherwise the customer loses the investment.
3. Binary options are a form of derivative under s 764A(c) of the *Corporations Act* 2001 (the **Act**) and are therefore financial products within s 761D. By offering binary options to customers in Australia One Tech and Ultra Solutions conducted a financial services business. Neither held an Australian Financial Services Licence (**AFSL**) as required by s 911A of the Act or provided customers of the Website with a Product Disclosure Statement (**PDS**) as required by s 1012B(3).

Filed on behalf of the Plaintiff

Prepared by Tim Honey

Address for service

Australian Securities and Investments Commission

Tel: 9280 4439 Fax: 9280 3434 Email: tim.honey@asic.gov.au

Australian Securities and Investments Commission
Level 7, 120 Collins Street, Melbourne 3000

4. Between 5 January and 5 July 2016 One Tech and between 25 July and late October 2016 Ultra Solutions, including by the conduct of brokers allocated to the customers, engaged in misleading or deceptive conduct by making false or misleading statements and representations to customers of the Website to the effect that:
 - (a) binary options trading will generate large profits and returns;
 - (b) larger deposits would generate greater returns;
 - (c) certain trades are “insured” or “guaranteed” so that the customer cannot lose those trades;
 - (d) the broker appointed to the customer is licensed and has expertise in trading in binary options;
 - (e) the broker appointed to the customer will act in the customer’s best interests to maximise their returns; and
 - (f) profits and returns generated by trading in binary options can be withdrawn by the customer on request.

5. Between 5 January and 5 July 2016 One Tech and between 25 July and late October 2016 Ultra Solutions, including by the conduct of brokers, engaged in unconscionable conduct by:
 - (a) offering binary options trading without properly disclosing the risks involved;
 - (b) inducing customers to trade in binary options with initial “wins” and “bonuses” (which were not paid to them but only “credited” to a non-existent account);
 - (c) directing customers to place larger deposits (ranging from \$50,000 to \$250,000) with the promise that these would generate greater returns or give them access to exclusive “memberships”;
 - (d) encouraging retired and unemployed customers to access superannuation, credit cards or second mortgages in order to trade in binary options;
 - (e) directing customers to place trades which immediately, or ultimately, made losses;
 - (f) placing trades on behalf of customers, using customer funds, without the authority, and contrary to the instructions, of customers;
 - (g) refusing requests by customers to withdraw funds or cancel trades;

- (h) insisting on terms and conditions in relation to withdrawal which were impossible for the customer to achieve; and
 - (i) when all initial deposits were depleted, instructing customers to draw on alternative sources of funds like credit cards with a promise that their losses could be “recovered”.
6. The pattern of behaviour of the Website operators discloses fraud and dishonesty in inducing investors with promises of good returns, encouraging them with wins in early trades, refusing them access to their early gains, persuading them to risk more and more of their funds and then landing them with losses which wiped out their investments. The brokers, far from being impartial expert advisors to the customers, were part of the deception practised on them.
7. Since at least 18 June 2015, the Third to Sixth and Eighth to Eleventh Defendants¹ together with Transcomm Global Ltd, a company incorporated in Gibraltar and Allianz Metro Limited, a company incorporated in the Seychelles, carried on a business of providing paying agency services to persons who provided goods and services via the internet.
8. Since at least 5 January 2016 this business provided paying agency services to One Tech and Ultra Solutions by collecting, remitting and facilitating payments made by customers of the Websites to One Tech and Ultra Solutions, including by the following conduct:
- (a) On 13 January 2016, the Eleventh Defendant (**Ida**) on behalf of Allianz Metro Limited entered into a Paying Agency Agreement with One Tech.
 - (b) Under the Paying Agency Agreement, in consideration of a commission fee, Allianz Metro Limited (and its agents) were required to (and did) open a bank account in Australia, receive and hold on trust deposits made by customers of the Website for binary options trading, check customer identification details received from One Tech against customer deposit details and then transfer the customer funds (less commission) to an account held by One Tech in the Czech Republic.
 - (c) Ida and the Fourth Defendant (**Eustace Senese**) had regular contact with representatives of One Tech, including in relation to the payment details necessary for the paying agency services.
 - (d) Ida provided his services to the paying agency business on behalf of the Tenth Defendant (**IMC**).
 - (e) Allianz Metro Limited appointed the Third Defendant (**Allianz Metro Australia**) as its agent in Australia in relation to the Paying Agency Agreement.

¹ ASIC intends to discontinue the proceeding against the Seventh and Twelfth to Sixteenth Defendants.

- (f) On 5 and 6 January 2016, Eustace Senese had incorporated Allianz Metro Australia and opened bank accounts with Westpac Banking Corporation in order to perform the payment service obligations under the Paying Agency Agreement.
- (g) Eustace Senese operated the regular payment services provided by Allianz Metro Australia including by remitting funds deposited by customers of the Websites to One Tech and Ultra Solutions as directed by them, or otherwise in accordance with instructions received from Ida.
- (h) Eustace Senese provided his services to the paying agency business on behalf of the Fifth Defendant (**Sansen**).
- (i) The Ninth Defendant (**Cameron Senese**) provided IT services to the paying agency business, including by setting up and monitoring the main email address through which the details of customers of the Website were provided by One Tech to the paying agency business.
- (j) Cameron Senese provided his services to the paying agency business on behalf of the Eighth Defendant (**Bianco**).
- (k) In consideration of the work described above, each of the Third to Sixth and Eighth to Eleventh Defendants received substantial payments which were drawn from the bank accounts of both Allianz Metro Australia and Transcomm Australia.

9. Although there were certain spheres of responsibility of the various natural and legal persons in the conduct of the paying agency business these were not strictly adhered to. In the conduct of the paying agency business the natural persons (Eustace Senese and Cameron Senese and Ida) appear to have paid little attention to which entity was legally responsible for particular acts. It is therefore most satisfactory to regard the natural persons and the legal entities they controlled as conducting the business by an unincorporated joint venture. The joint venturers were the Third to Sixth and Eighth to Eleventh Defendants.

B. Summary of the relief sought from the Court

10. ASIC seeks the relief set out in its Interlocutory Application dated 21 September 2017. Against all Defendants, it seeks declarations of contravention of various provisions of the Act and the *Australian Securities and Investments Commission Act 2001* (the **ASIC Act**), orders restraining each of them from conducting a financial services business for such period as the Court considers appropriate, pecuniary penalties for contraventions of the ASIC Act and disqualification orders against Eustace Senese, Cameron Senese and Ida for such period as the Court considers appropriate.

C. Primary legal grounds for the relief sought

11. By engaging in the conduct described above, One Tech and Ultra Solutions contravened s 911A of the Act (carrying on an unlicensed financial services business), s 1012B(3) of the Act (failing to issue a PDS), s 1041E of the Act (false or misleading statements), s 1041G of the Act (dishonest conduct), s 1041H of the Act and s 12DA of the ASIC Act (misleading or deceptive conduct) and s 12CA or s 12CB of the ASIC Act (unconscionable conduct).
12. By engaging in the conduct described above, each of the joint venturers (the Third to Sixth and Eighth to Eleventh Defendants) arranged for One Tech and Ultra Solutions to deal in a financial product (within the meaning of s 766C(2) of the Act) and thereby themselves contravened s 911A of the Act (carrying on an unlicensed financial services business) and s 1012B(3) of the Act (failing to issue a PDS).
13. Further, by providing the services under the Paying Agency Agreement in the manner described above, Allianz Metro Australia provided a custodial or depository services within the meaning of s 766E of the Act. It thereby conducted a financial services business without a licence contrary to s 911A of the Act and contravened s 1012B(3) by failing to give customers of the Website a PDS.
14. Each of Eustace Senese, Cameron Senese and Ida is a person who twice or more contravened the Act while a company director or was a director of a company which twice or more contravened the Act and is therefore liable to disqualification under s 206E of the Act.

D. Harm Suffered

15. As a result of the contraventions of the Act and the ASIC Act, customers of the Website lost significant amounts (frequently in the order of \$100,000 per customer) in many cases leaving them with no superannuation or other savings.

Dated: 21 September 2017

This concise statement was prepared by Michael R Pearce and Nina Moncrief.

Certificate of lawyer

I, Tim Honey, certify to the Court that, in relation to the concise statement filed on behalf of the Plaintiff, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 21 September 2017



.....
Signed by Tim Honey
for and on behalf of the Plaintiff

Schedule

No. VID 848 of 2016

Federal Court of Australia
District Registry: Victoria
Division: General

Plaintiff	Australian Securities and Investments Commission
First Defendant	One Tech Media Limited
Second Defendant	Ultra Solutions MG (UK) Limited
Third Defendant	Allianz Metro Pty Ltd (ACN 610 042 843)
Fourth Defendant	Eustace Senese
Fifth Defendant	Sansen Pty Ltd (ACN 111 816 178)
Sixth Defendant	Transcomm Global Pty Ltd (ACN 169 503 762)
Seventh Defendant	Sandra Senese
Eighth Defendant	Bianco Pty Ltd (ACN 604 778 305)
Ninth Defendant	Cameron David Senese
Tenth Defendant	IMC Holdings Pty Ltd (ACN 138 415 291)
Eleventh Defendant	Yoav Ida
Twelfth Defendant	Westpac Banking Corporation (ABN 33 007 457 141)
Thirteenth Defendant	National Australia Banking Limited (ABN 12 004 044 937)
Fourteenth Defendant	Bendigo and Adelaide Bank Ltd (ABN 11 068 049 178)
Fifteenth Defendant	Commonwealth Bank of Australia (ABN 48 123 123 124)
Sixteenth Defendant	Citigroup Pty Limited ABN 88 004 325 080