



ASIC

Australian Securities & Investments Commission



S02578161

## INFRINGEMENT NOTICE

### Section 12GXA of the *Australian Securities and Investments Commission Act 2001*

Day of issue: 4 May 2018

Unique identification code: S02578161

TO: Fox Symes and Associates Pty Ltd  
ACN 091 225 357  
Level 3, 70 Phillip Street  
SYDNEY NSW 2000

1. ASIC issues this infringement notice under section 12GXA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).
2. ASIC has reasonable grounds to believe that on 3 August 2017, Fox Symes and Associates Pty Ltd (ACN 091 225 357) (**Fox Symes**) contravened section 12DB(1)(e) of the ASIC Act by, in trade or commerce, in connection with the possible supply of financial services, making false or misleading representations with respect to the services having particular performance characteristics.

#### Particulars

3. On 3 August 2017, Fox Symes made the representation "*Reduce Debt in Minutes*" (**Representation**) in a banner advertisement published on the website [www.allrecipes.com.au](http://www.allrecipes.com.au) in relation to the services provided by Fox Symes.
4. The Representation created the impression to a consumer that Fox Symes was able to almost immediately cause a reduction in their debts.
5. ASIC has reasonable grounds to believe the Representation was misleading because:
  - a) The services provided by Fox Symes which aim to reduce debt require engagement with third parties to approve any proposed course of action. None of these processes, or the reduction of any debt, can occur within 'minutes' or in a similar short period of time;
  - b) Any services which would involve the provision of credit, such as debt consolidation, require the credit provider to satisfy the requirements of the *National Consumer Credit Protection Act 2009* (Cth) (**NCCP**). The NCCP obliges credit providers to assess the suitability of individual credit contracts, make reasonable inquiries of consumers and verify their financial situation. A credit provider could not satisfy these requirements "*in Minutes*" or in a similar short period of time; and
  - c) The Representation has sufficient specificity to preclude any suggestion the phrase "*in Minutes*" is advertising puff.

### **Penalty under this notice**

6. The penalty payable under this notice in relation to the alleged contravention is \$12,600.

This penalty is payable to ASIC on behalf of the Commonwealth.

This penalty can be paid using one of the methods detailed in the enclosed invoice.

### **Consequences of complying with this notice**

7. If you pay the penalty stated in this notice within the time for payment mentioned below then (unless this notice is subsequently withdrawn and any penalty paid refunded):
- (a) no proceedings (whether criminal or civil) will be brought against you by the Commonwealth or ASIC for the alleged contravention of the infringement notice provision or an offence constituted by the same conduct; and
  - (b) you will not be regarded as having contravened the infringement notice provision or having been convicted of an offence constituted by the same conduct.

### **Consequences of failing to comply with this notice**

8. If you do not pay the penalty specified in this notice within the time for payment mentioned below, and the notice is not withdrawn, the Commonwealth or ASIC may bring proceedings under Subdivision G of Division 2 of Part 2 the consumer protection provisions of the ASIC Act (whether criminal or civil) against you for the alleged contravention of the infringement notice provision or offence constituted by the same conduct.
9. The maximum pecuniary penalty that a court may order you to pay for the alleged contravention is 2.1 million.

### **Time for payment**

10. The time for payment is:
- (a) within 28 days after the day on which the notice is issued to you; or
  - (b) if ASIC extends, by notice in writing the compliance period for this notice, within that further period allowed.

### **Applying for more time to pay the penalty under this notice**

11. ASIC may extend the compliance period for this infringement notice if ASIC is satisfied that it is appropriate to do so. The extension must not be for longer than 28 days.

12. If you wish to apply for an extension of time to pay the penalty specified in this notice, you should do so in writing within 28 days after the day the notice is issued to you (see paragraph 15).

#### **Applying to have this notice withdrawn**

13. Within 28 days after the day on which this notice is issued, you may apply to ASIC in writing to have this notice withdrawn.
14. Evidence or information that you or your representative gives to ASIC in the course of applying for this notice to be withdrawn is not admissible in evidence against you or your representative in any proceedings (other than proceedings for an offence based on the evidence or information being false or misleading).

#### **Withdrawal of this notice**

15. ASIC may, by written notice given to you, withdraw this infringement notice if ASIC is satisfied that it is appropriate to do so, whether or not you have applied to have this notice withdrawn.
16. A withdrawal notice must be given to you within the time for payment of this infringement notice to be effective.
17. If the withdrawal notice is given after you have paid the penalty specified in this infringement notice, ASIC will refund to you the amount paid under the infringement notice.

#### **Requirements for applications**

18. An application to have this notice withdrawn, or for more time to pay the penalty under this notice:
- (a) must be in writing; and
  - (b) must include the unique identification code set out at the top of this notice; and
  - (c) must include your reasons for making the application; and
  - (d) may be made by forwarding your application to ASIC at the address in paragraph 16.
19. You may contact ASIC in relation to this notice by contacting:

**Tim Brooks**  
**Australian Securities and Investments Commission**  
**GPO Box 9827**  
**SYDNEY NSW 2000**

**or by email:** [tim.brooks@asic.gov.au](mailto:tim.brooks@asic.gov.au)

  
Peter Kell  
as a delegate of the Australian Securities and Investments Commission