



ASIC

Australian Securities & Investments Commission



S02578162

INFRINGEMENT NOTICE

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

Day of issue: 4 May 2018

Unique identification code: S02578162

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 24 August 2017, Fox Symes and Associates Pty Ltd (ACN 091 225 357) (**Fox Symes**) contravened section 12DB(1)(g) 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 price of services.

Particulars

3. On 24 August 2017, Fox Symes made the representation "*Free Debt Assistance*" (**Representation**) in a banner advertisement published on the website www.silvergames.com in relation to the services provided by Fox Symes.
4. The Representation conveyed the message that a consumer could obtain help from Fox Symes to manage or reduce debt for no charge, without limitation.
5. ASIC has reasonable grounds to believe the Representation was misleading because:
 - a) The 'Free Assistance' provided by Fox Symes is more appropriately categorised as a free 'assessment' or 'consultation', whereby Fox Symes assess a consumer's financial position and circumstances to determine whether the consumer is a suitable client for their services;
 - b) The bulk of the services provided by Fox Symes after the assessment are not free and the consumer is required to pay to obtain this assistance. The Representation did not clearly disclose this position; and
 - c) The words accompanying the Representation, being "*Take control and resolve debts without bankruptcy. Enquire now*" did not indicate any limit to the assistance which would be provided for free. The Representation was not accompanied by an asterisk or reference to 'terms and conditions' to alert a consumer to any limitations to the offer;

- d) The advertisement 'clicked through' to the Fox Symes website, where a consumer would be required to make further inquiries to understand that a limit applied on the 'free' offer. By the point these inquiries were made by a consumer, the consumer had been enticed into the Fox Symes 'marketing web.'

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



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