

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 16/11/2018 10:04:31 AM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	VID1449/2018
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v HAROLD CHARLES MITCHELL & ANOR
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	First Case Management Hearing
Time and date for hearing:	30/11/2018, 9:30 AM
Place:	COURT 6K (Level 6), Owen Dixon Commonwealth Law Courts Building Level 7, 305 William Street, Melbourne



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

Dated: 16/11/2018 5:16:33 PM AEDT

Registrar

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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

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.



Form 2 Originating process
(rules 2.2 and 15A.3)

Federal Court of Australia

No. of 2018

District Registry: Victoria

Division: General

IN THE MATTER OF TENNIS AUSTRALIA LIMITED ACN: 006 281 125

Australian Securities and Investments Commission

Plaintiff

Harold Charles Mitchell

First Defendant

Stephen James Healy

Second Defendant

A. DETAILS OF APPLICATION

This is an application for:

1. declaratory relief pursuant to s 1317E of the *Corporations Act* 2001 (Cth) (**Corporations Act**);
2. orders for disqualification from managing corporations pursuant to s 206C and/or s 206E of the *Corporations Act*;
3. orders for pecuniary penalties pursuant to s 1317G of the *Corporations Act*;
4. costs; and
5. such further or other relief as the Court thinks fit.

Filed on behalf of	Plaintiff
Prepared by	Tim Honey
Tel	+61 3 9280 4439
Email	tim.honey@asic.gov.au
Address for service	Australian Securities and Investments Commission Level 7, 120 Collins Street, Melbourne, Victoria 3000



in respect of:

- (a) alleged breaches of s 180(1) of the Corporations Act by the first and second defendants, two directors of Tennis Australia Limited (TA), for failing to act with reasonable care and diligence as directors of TA in connection with TA's decision in May 2013 to grant the domestic rights to broadcast the Australian Open tennis championship on free to air television, pay television and digital media to Seven Network (Operations) Limited (**Seven Network**);
- (b) alleged breaches by the first defendant of s 182(1) of the Corporations Act by improperly using his position as a director of TA to gain an advantage for Seven Network in connection with TA's decision to grant the broadcast rights to Seven Network;
- (c) alleged breaches by the first defendant of s 183(1) of the Corporations Act by improperly using information obtained by him because he was a director of TA to gain an advantage for Seven Network in connection with TA's decision to grant the broadcast rights to Seven Network.

The Court's jurisdiction to hear the present case and to grant the relief sought is found in s 1337B(1) of the Corporations Act and s 39B(1A)(c) of the *Judiciary Act* 1903 (Cth).

On the facts stated in the accompanying concise statement, the plaintiff claims:

Declarations

1. Declarations that the first defendant contravened s 180(1) of the Corporations Act by:
 - (a) withholding material information from the TA board when it was considering whether or not to grant the domestic rights to broadcast the Australian Open tennis championship on free to air television, pay television and digital media after January 2014 (**the Rights**) to Seven Network, including the interest of persons other than Seven Network in the Rights;
 - (b) failing to ensure that the TA board was fully informed about the value of the Rights, the interest of persons other than Seven Network in acquiring the Rights and the best method of marketing the Rights;
 - (c) failing to advise the TA board that TA was likely to obtain better terms in granting the Rights if TA put the Rights out to competitive tender; and
 - (d) failing to ensure that the sub-committee appointed by the TA board in March 2013 to advise it about the grant of the Rights carried out its functions.



- 2 Declarations that the second defendant contravened s 180(1) of the Corporations Act:
 - (a) withholding material information from the TA board when it was considering whether or not to grant the Rights to Seven Network, including the interest of persons other than Seven Network in the Rights;
 - (b) failing to ensure that the TA board was fully informed about the value of the Rights, the interest of persons other than Seven Network in acquiring the Rights and the best method of marketing the Rights;
 - (c) failing to advise the TA board that TA was likely to obtain better terms in granting the Rights if TA put the Rights out to competitive tender; and
 - (d) failing to ensure that the sub-committee carried out its functions.
- 3 Declarations that the first defendant contravened s 182(1) of the Corporations Act in that he improperly used his position as director of TA to gain an advantage for Seven Network by:
 - (a) engaging in the conduct described in paragraph 1(a) to (d) above;
 - (b) passing on to Seven Network confidential information about the interest of its competitors in the Rights;
 - (c) passing on to Seven Network confidential information about the views and negotiating position of the TA management and board regarding the granting of the Rights;
 - (d) downplaying to the TA board the interest of persons other than Seven Network in the Rights and their capacity to perform an agreement for the Rights;
 - (e) failing to inform the TA board of Seven Network's concerns over the interest of Network Ten in acquiring the Rights; and
 - (f) encouraging the TA board to conclude an agreement with Seven Network instead of putting the Rights out to competitive tender.
- 4 Declarations that the first defendant contravened s 183(1) of the Corporations Act in that he improperly used information obtained by him because he was a director of TA to gain an advantage for Seven Network by:
 - (a) passing on to Seven Network confidential information about the interest of its competitors in the Rights; and



- (b) passing on to Seven Network confidential information about the views and negotiating position of the TA management and board regarding the granting of the Rights.

Disqualification orders

- 5 An order under s 206C and/or s 206E of the Corporations Act disqualifying the first defendant from managing corporations for such period as the Court considers appropriate.
- 6 An order under s 206C and/or s 206E of the Corporations Act disqualifying the second defendant from managing corporations for such period as the Court considers appropriate.

Pecuniary penalties

- 7 An order that the first defendant pay to the Commonwealth, within 28 days of the date of order, pecuniary penalties in such amount as the Court considers appropriate, pursuant to s 1317G of the Corporations Act, in respect of each of the contraventions of the Corporations Act identified in paragraphs 1, 3 and 4 above.
- 8 An order that the second defendant pay to the Commonwealth, within 28 days of the date of order, pecuniary penalties in such amount as the Court considers appropriate, pursuant to s 1317G of the Corporations Act, in respect of each of the contraventions of the Corporations Act identified in paragraph 2 above.
- 9 Costs.
- 10 Such further or other relief as the Court considers appropriate.

Date: 16 November 2018

A handwritten signature in blue ink, appearing to be "T. H.", is written over a dotted line.

*Legal Practitioner for the
Australian Securities and Investments Commission*

This application will be heard by the Federal Court at 305 William Street, Melbourne, Victoria 3000 at am/pm on

**B. NOTICE TO DEFENDANTS**

TO: First Defendant
Harold Charles Mitchell
'5 Park Tower'
Unit 11, 201 Spring Street
MELBOURNE VIC 3000

AND TO: Second Defendant
Stephen James Healy
6 Woonona Road
NORTHBRIDGE NSW 2063

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. FILING

Date of filing:

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Registrar

This originating process is filed by Tim Honey, Legal Practitioner for the plaintiff.

D. SERVICE

The plaintiff's address for service is:

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

It is intended to serve a copy of this originating process on each defendant and on any person listed below:

Tennis Australia Limited (ACN 006 281 125)