

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 20/12/2018 10:47:32 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:	VID1639/2018
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v PORT PHILLIP PUBLISHING PTY LTD & ANOR
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	First Case Management Hearing
Time and date for hearing:	22/02/2019, 9:30 AM
Place:	Court Room Not Assigned, Owen Dixon Commonwealth Law Courts Building Level 7, 305 William Street, Melbourne



A handwritten signature in blue ink that reads 'Warwick Soden'.

Dated: 21/12/2018 3:00:47 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.



ORIGINATING PROCESS

Federal Court of Australia
District Registry: Victoria
Division: General
NPA: Commercial and Corporations,
Regulator and Consumer Protection

IN THE MATTER OF PORT PHILLIP PUBLISHING PTY LTD (ACN 117 765 009)

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Plaintiff

PORT PHILLIP PUBLISHING PTY LTD (ACN 117 765 009)
First Defendant

KRISTAN LEWIS SAYCE
Second Defendant

A. DETAILS OF APPLICATION

This application is made under ss 206C, 1041H, 1101B(1)(a), 1317E and 1317G of the *Corporations Act 2001* (Cth) (**Corporations Act**); ss 12DA(1), 12DB(1)(c) and (d), 12GBA, 12GLA, 12GLB and 12GLD of the *Australian Securities and Investment Commission Act 2001* (Cth) (**ASIC Act**) and s 21 of the *Federal Court of Australia Act 1976* (Cth) (**Federal Court Act**).

The Plaintiff (**ASIC**) seeks against the First Defendant (**PPP**) and the Second Defendant (**Sayce**) declaratory relief, civil pecuniary penalties and ancillary orders in respect of misleading and deceptive conduct engaged in by each of them in relation to a document entitled “*Everyday Australians Now Legally ‘Piggybacking’ ‘the Future Fund’ ... and collecting extra monthly income injections of \$540 right up to \$6,667*” which was published on PPP’s websites and emailed to approximately 120,000 subscribers between September 2017 and January 2018 (**Relevant Period**), and in relation to a document entitled “*Your Quick Start Guide to ‘Piggybacking’ the Future Fund*” which was sent to 833 of PPP’s subscribers during the Relevant Period. ASIC also seeks against Sayce injunctions and an order that he be disqualified from managing corporations.

Filed on behalf of	Plaintiff, Australian Securities and Investments Commission
Prepared by	Georgina Thomas
Tel +61 3 9280 3200	Email: georgina.thomas@asic.gov.au
Address for service	Australian Securities and Investments Commission Level 7, 120 Collins Street, Melbourne, Victoria 3000



On the facts stated in the Concise Statement, ASIC seeks:

1. A declaration pursuant to s 21 of the Federal Court Act that PPP, by:
 - (a) preparing a document entitled "*Everyday Australians Now Legally 'Piggybacking' 'the Future Fund' ... and collecting extra monthly income injections of \$540 right up to \$6,667*" (**Article**) and causing it to be published on PPP's websites and emailed to approximately 120,000 subscribers between September 2017 and January 2018; and
 - (b) preparing a document entitled "*Your Quick Start Guide to 'Piggybacking' the Future Fund*" (**Guide**) and causing it to be sent to 833 subscribers of PPP,

in circumstances where:

- (c) the Article made the representations set out in Schedule 1 which were misleading or deceptive or likely to mislead or deceive; and
- (d) the Guide made the representations set out in Schedule 2 which were misleading or deceptive or likely to mislead or deceive,

PPP has engaged in conduct that was:

- (e) in this jurisdiction, in relation to a financial product or a financial service, and was misleading or deceptive or likely to mislead or deceive, in contravention of s 1041H of the Corporations Act; and
 - (f) in trade or commerce, in relation to a financial service, and was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act.
2. A declaration pursuant to s 21 of the Federal Court Act that PPP, by:
 - (a) naming Investor A¹ (as "Jolly") in the Article and representing that he had received returns of around \$6,667 per month by adopting the Investment Strategy promoted by the Article and the Guide;
 - (b) naming Investor B² (as "Leon M") in the Article and representing that that he had received returns of around \$540 per month by adopting the Investment Strategy in the Article and the Guide; and

¹ Name has been intentionally withheld.

² Name has been intentionally withheld.



- (c) naming Investor C³ (as “MH”) in the Article and representing that he had received returns of around \$1,437.50 per month by adopting the Investment Strategy promoted by the Article and the Guide,

has, in trade or commerce, in connection with the promotion of the supply or use of financial services, made false or misleading representations that purported to be testimonials, or that concerned testimonials, in contravention of ss 12DB(1)(c) and (d) of the ASIC Act.

3. A declaration pursuant to s 21 of the Federal Court Act that PPP has failed to:
- (a) do all things necessary to ensure that it provided financial services honestly, efficiently and fairly in contravention of s 912A(1)(a) of the Corporations Act; and
 - (b) comply with the financial services laws, in contravention of s 912A(1)(c) of the Corporations Act.
4. A declaration pursuant to s 21 of the Federal Court Act that Sayce, by:
- (a) commissioning, reviewing, amending and approving for publication the Article and causing it to be published on PPP’s websites and emailed to approximately 120,000 subscribers between September 2017 and January 2018; and
 - (b) commissioning, reviewing and approving for publication the Guide and causing it to be sent to 833 paid subscribers of PPP,

in circumstances where:

- (c) the Article made the representations set out in Schedule 1 which were misleading or deceptive or likely to mislead or deceive; and
- (d) the Guide made the representations set out in Schedule 2 which were misleading or deceptive or likely to mislead or deceive,

Sayce has engaged in conduct that was:

- (e) in this jurisdiction, in relation to a financial product or a financial service, and was misleading or deceptive or likely to mislead or deceive, in contravention of s 1041H of the Corporations Act; and

³ Name has been intentionally withheld.



- (f) in trade or commerce, in relation to a financial service, and was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act.
5. A declaration pursuant to s 21 of the Federal Court Act that Sayce, by:
- (a) naming Investor A (as “Jolly”) in the Article and representing that he had received returns of around \$6,667 per month by adopting the Investment Strategy;
 - (b) naming Investor B (as “Leon M”) in the Article and representing that that he had received returns of around \$540 per month by adopting the Investment Strategy; and
 - (c) naming Investor C (as “MH”) in the Article and representing that he had received returns of around \$1,437.50 per month by adopting the Investment Strategy,
- has, in trade or commerce, in connection with the promotion of the supply or use of financial services, made false or misleading representations that purported to be testimonials, or that concerned testimonials, in contravention of s 12DB(1)(c) and (d) of the ASIC Act.
6. Alternatively to paragraphs 4 and 5 above, a declaration pursuant to s 21 of the Federal Court Act that Sayce was directly or indirectly knowingly concerned in, or aided, abetted, counselled or procured, the contraventions by PPP of s 1041H of the Corporations Act and ss 12DA(1) and 12DB(1)(c) and (d) of the ASIC Act, as referred to in paragraphs 1 and 2 above.
7. A declaration pursuant to s 1317E of the Corporations Act that between September 2017 and January 2018 Sayce contravened s 180(1) of the Corporations Act by exposing PPP to the risk of declarations of contravention and civil pecuniary penalties.
8. Orders pursuant to s 12GBA(1)(a) of the ASIC Act that PPP and Sayce each pay a pecuniary penalty in respect of their contraventions of s 12DB(1)(c) and (d) of the ASIC Act in such amount as the Court considers appropriate.
9. Orders pursuant to s 12GBA(1)(c) and (e) of the ASIC Act that Sayce pay a pecuniary penalty in respect of his involvement in the contraventions by PPP of s 12DB(1)(c) and (d) of the ASIC Act in such amount as the Court considers appropriate.
10. Orders pursuant to s 1317G of the Corporations Act that Sayce pay a pecuniary penalty in respect of his contravention of s 180(1) of the Act in such amount as the Court considers appropriate.



11. Orders pursuant to s 12GD(1) of the ASIC Act and/or s 1101B and/or s 1324 of the Corporations Act restraining PPP and Sayce from carrying on a financial services business, or carrying on a business related to, concerning or directed to financial products or financial services within the meaning of s 761A of the Corporations Act, or otherwise providing financial product advice howsoever, for a period to be determined by the Court.
12. Orders pursuant to s 12GLD(1) of the ASIC Act and/or s 206C(1) of the Corporations Act disqualifying Sayce from managing corporations for a period to be determined by the Court.
13. Orders pursuant to ss 12GLA(2)(c) and (d) and 12GLB(1) of the ASIC Act, requiring PPP to make corrective disclosures and to publish corrective advertising as follows:
 - (d) within 14 days of the date of these orders, PPP must send a communication in terms and a form to be approved by the Court, by email, to each person who became a subscriber of 'Total Income' after the date of the Article, notifying them of the declarations and orders made;
 - (e) within 14 days of the date of these orders, PPP must send a communication in terms and a form to be approved by the Court, by email, to all subscribers of each of the Websites, notifying them of the declarations and orders made; and
 - (f) within 7 days of the date of these orders, PPP must place a notice in terms and a form to be approved by the Court, in a prominent part of the homepage of the Websites, notifying readers of the declarations and orders made, and must keep such notice on the Websites for a period of six months.
14. Costs.
15. Such further or other relief as the Court deems appropriate.

Date: 20 December 2018

A handwritten signature in blue ink, appearing to read 'G. Thomas'.

.....
Georgina Thomas
Plaintiff's Legal Practitioner



This application will be heard by the Federal Court of Australia, Owen Dixon Commonwealth Law Courts Building, 305 William Street, Melbourne, VIC, 3000

_____ am/pm on ____/ ____/ ____.

B. NOTICE TO DEFENDANTS

TO:

Port Phillip Publishing Pty Ltd
ACN 117 765 009
96 – 98 Bridport Street
Albert Park VIC 3206

Kristan Lewis Sayce
7 Water Way
Frankston South VIC 3199

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.

D. FILING

Date of filing:

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Registrar

This originating process is filed by Georgina Thomas for the plaintiff.

E. SERVICE

The plaintiff's address for service is Australian Securities and Investments Commission, Level 7, 120 Collins Street, Melbourne, VIC, 3000

It is intended to serve a copy of this originating process on the defendants.



SCHEDULE 1

(Representations made in the Article)

1. The recommendations and opinions in the Article were those of its retirement income expert, Matthew Hibbard.
2. Mr Hibbard had conducted more than 900 hours of research in relation to the Investment Strategy.
3. Mr Hibbard had connected with over 5,400 investors who had generated income by adopting the Investment Strategy.
4. By adopting the Investment Strategy, investors would receive regular, monthly income.
5. By adopting the Investment Strategy promoted in the Article and the Guide, investors would receive regular monthly income of between \$540 to \$6,667, without disclosing that such returns could only be achieved by investing approximately \$154,286 and \$1.9 million respectively.
6. By adopting the Investment Strategy, investors would generate the same or substantially similar annual returns to that achieved by the Future Fund.
7. The Investment Strategy exposed an investor to assets having the same or substantially similar level of risk as that adopted by the Future Fund in September 2017.
8. By adopting the Investment Strategy an investor could mimic the performance of the Future Fund.



SCHEDULE 2

(Representations made in the Guide)

1. By adopting the Investment Strategy investors would generate the same or substantially similar annual returns to that achieved by the Future Fund.
2. The Investment Strategy exposed an investor to assets having the same or substantially similar level of risk as that adopted by the Future Fund in September 2017.
3. By adopting the Investment Strategy an investor could mimic the performance of the Future Fund.