



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID1639/2018

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Plaintiff

PORT PHILLIP PUBLISHING PTY LTD (ACN 117 765 009) and another named in the schedule

Defendant

ORDER

JUDGE: JUSTICE O'CALLAGHAN

DATE OF ORDER: 29 August 2019

WHERE MADE: Melbourne

On the facts stated in the Statement of Agreed Facts dated 27 August 2019, the Court makes the following declarations:

1. A declaration pursuant to s 21 of the *Federal Court of Australia Act 1976* (Cth) (**Federal Court Act**) that the first defendant (**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*” (**Promo Letter**) and causing it to be published on PPP’s websites www.moneymorning.com.au and www.marketsandmoney.com.au (**Websites**) and emailed to approximately 200,000 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,

has engaged in conduct that was:

- (c) 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 2001* (Cth) (**Corporations Act**); and



(d) 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 *Australian Securities and Investment Commission Act 2001* (Cth) (**ASIC Act**),

in circumstances where:

(e) the Promo Letter and the Guide promoted an investment strategy targeted towards retiree investors and investors approaching retirement amongst others which involved investing in a portfolio of specific listed investment companies and exchange traded funds which was said to mimic the performance of the Australian Government's Future Fund (**Investment Strategy**);

(f) the Promo Letter made representations which were misleading or deceptive or likely to mislead or deceive as follows:

(i) that the Promo Letter represented the recommendations and opinions of its retirement-income expert, Editor A (name intentionally withheld), when in fact the Promo Letter did not in all respects represent the opinions of Editor A having been in parts substantially copied by one of PPP's copywriters from a promotion published by a related entity of PPP in the United States entitled "*Americans Now Legally Piggybacking Canadian Social Security ... And Collecting Extra Monthly Checks from \$400 to \$4,700*" and Editor A was not a retirement-income expert in that he had no qualifications or experience as a retirement-income expert;

(ii) that Editor A had conducted more than 900 hours of research in relation to the Investment Strategy when in fact Editor A had conducted 900 hours of research in relation to the individual assets recommended in the Investment Strategy but not in relation to the Investment Strategy itself;

(iii) that Editor A had connected with over 5,400 investors who had generated income by adopting the Investment Strategy when in fact Editor A had in June 2017 sent feedback requests to over 5,400 of PPP's 'Total Income' subscribers but had not connected with 5,400 people who had generated income by adopting the Investment Strategy, and there was no evidence that any of the alleged 5,400 investors referred to in the Promo Letter had generated income



by adopting the Investment Strategy as it had never previously been promoted to PPP's subscribers;

(iv) that by adopting the Investment Strategy, investors could receive regular, monthly income without disclosing that the Investment Strategy involved investment in the securities of exchange traded funds and listed entities which only paid dividends on a quarterly or half-yearly basis;

(v) that by adopting the Investment Strategy, investors could receive regular monthly income of between \$540 to \$6,667, without disclosing that in order to generate such returns investors had to invest approximately \$154,286 and \$1.9 million respectively;

(vi) that by adopting the Investment Strategy an investor could mimic the performance of the Future Fund and thereby generate the same or substantially similar annual returns to those achieved by the Future Fund and expose an investor to assets having the same or substantially similar levels of risk as that adopted by the Future Fund in September 2017, when in fact:

i. an investor could not mimic the performance of the Future Fund by adopting the Investment Strategy because (1) the Future Fund has access to some strategies and markets that are unavailable to an individual investor; (2) the Future Fund is highly diversified globally whereas the Investment Strategy is more highly concentrated in Australian equities; (3) the Future Fund has access to global managers; and (4) the Investment Strategy was more heavily weighted in favour of growth assets than defensive assets, as compared to the Future Fund in September 2017; and

ii. as a consequence of the matters in (i) above, adopting the Investment Strategy was likely to have generated lower returns than the returns promoted in the Promo Letter and exposed an investor to a greater level of risk than that adopted by the Future Fund in September 2017.

(g) the Guide made representations which were misleading or deceptive or likely to mislead or deceive in that by adopting the Investment Strategy an investor could mimic the performance of the Future Fund and thereby generate the same or substantially similar annual returns to that achieved by the Future Fund and



expose an investor to assets having the same or substantially similar levels of risk as that adopted by the Future Fund in September 2017, when in fact:

- (i) an investor could not mimic the performance of the Future Fund by adopting the Investment Strategy because (1) the Future Fund has access to some strategies and markets that are unavailable to an individual investor; (2) the Future Fund is highly diversified globally whereas the Investment Strategy is more highly concentrated in Australian equities; (3) the Future Fund has access to global managers; and (4) the Investment Strategy was more heavily weighted in favour of growth assets than defensive assets, as compared to the Future Fund in September 2017; and
- (ii) as a consequence of the matters in (i) above, adopting the Investment Strategy was likely to have generated lower returns than the returns promoted in the Promo Letter and exposed an investor to a greater level of risk than that adopted by the Future Fund in September 2017.

2. A declaration pursuant to s 21 of the Federal Court Act that PPP, by:

- (a) naming Investor A (name intentionally withheld) (as “Jolly”) in the Promo Letter and representing that he had received returns of around \$6,667 per month by adopting the Investment Strategy when in fact he:
 - (i) had never adopted the Investment Strategy;
 - (ii) had been investing for more than 30 years and had a portfolio worth more than \$1 million;
 - (iii) held a portfolio which only included one of the seven securities promoted by the Investment Strategy; and
 - (iv) had generated his returns through his own portfolio as described above, and not by adopting the Investment Strategy;
- (b) naming Investor B (name intentionally withheld) (as “Leon M”) in the Promo Letter and representing that he had received returns of around \$540 per month by adopting the Investment Strategy when in fact he:
 - (i) had never adopted the Investment Strategy;



- (ii) held a portfolio which included 18 securities, only six of which were securities promoted by the Investment Strategy; and
 - (iii) had generated his returns through his own portfolio as described above, and not by adopting the Investment Strategy;
- (c) naming Investor C (name intentionally withheld) (as “MH”) in the Promo Letter and representing that he had received returns of around \$1,437.50 per month by adopting the Investment Strategy when in fact he:
- (i) had never adopted the Investment Strategy;
 - (ii) held a portfolio which included ten securities, only one of which were securities promoted by the Investment Strategy;
 - (iii) held a portfolio of which only 20% was invested in securities, the remainder being held as cash; and
 - (iv) had generated his returns through his own portfolio as described above, and not 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 ss 12DB(1)(c) and (d) of the ASIC Act.

3. A declaration pursuant to s 21 of the Federal Court Act that PPP, by engaging in the conduct referred to in paragraphs 1 and 2 above 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 the second defendant (**Mr Sayce**), by:
- (a) commissioning, reviewing, amending and approving for publication the Promo Letter and causing it to be published on the Websites and emailed to



approximately 200,000 subscribers between September 2017 and January 2018;
and

- (b) commissioning the Guide and causing it to be sent to 833 paid subscribers of PPP, in circumstances where:
- (c) the Promo Letter made the representations referred to in paragraph 1(f)(i) to (vi) above which were misleading or deceptive or likely to mislead or deceive; and
- (d) the Guide made the representations referred to in paragraph 1(g)(i) to (ii) above which were misleading or deceptive or likely to mislead or deceive,

Mr Sayce has engaged in conduct that was:

- (e) 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 Mr Sayce, by:
- (a) naming Investor A (as “Jolly”) in the Promo Letter 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 Promo Letter and representing that he had received returns of around \$540 per month by adopting the Investment Strategy; and
 - (c) naming Investor C (as “MH”) in the Promo Letter 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 ss 12DB(1)(c) and (d) of the ASIC Act.


THE COURT ORDERS THAT:

1. There be leave to the plaintiff to file its amended originating process dated 27 August 2019.



2. Pursuant to s 12GBA(1)(a) of the ASIC Act that PPP pay a pecuniary penalty of \$600,000 in respect of its contraventions of ss 12DB(1)(c) and (d) of the ASIC Act.
3. Pursuant to s 12GBA(1)(a) of the ASIC Act that Mr Sayce pay a pecuniary penalty of \$50,000 (with \$20,000 payable by 30 September 2019 and two further payments of \$15,000 each, payable by 30 September 2020 and 30 September 2021, respectively) in respect of his contraventions of ss 12DB(1)(c) and (d) of the ASIC Act.
4. Pursuant to s 12GLA(2)(b) of the ASIC Act, that PPP, at its own expense, will establish a Compliance, Education and Training Program (**Compliance Program**) in accordance with the terms and form contained in Annexure A to these Orders.
5. Pursuant to s 12GLD(1) of the ASIC Act, that Mr Sayce be disqualified from managing corporations for a period of 12 months from the date of this order.
6. Pursuant to ss 12GLA(2)(c) and (d) of the ASIC Act, that PPP make corrective disclosures and publish corrective advertising as follows:
 - (a) within 7 days of the date of these orders, PPP must place a notice (in the form of Annexure B to these Orders), 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 one month;
 - (b) within 14 days of the date of these orders, PPP must send a communication (in the form of Annexure C to these Orders), by email, to each person who became a subscriber of 'Total Income' after the date of the Promo Letter, notifying them of the declarations and orders made; and
 - (c) within 14 days of the date of these orders, PPP must send a communication (in the form of Annexure D to these Orders), by email, to each person who was a subscriber of the Websites as at the date of the Promo Letter.
7. The first defendant pays the plaintiff's costs of the Proceeding.

Date that entry is stamped: 30 August 2019


Registrar



ANNEXURE A

Requirements for Compliance, Education and Training Program

Port Phillip Publishing Pty Ltd (ACN 117 765 009) (**PPP**) will establish a Compliance, Education and Training Program (**Compliance Program**) that complies with each of the following requirements:

1. General

1.1. PPP will pay all of its own costs associated with implementing the Compliance Program, including but not limited to the appointment of the Consultant (defined **below** at paragraph 2.1).

2. Appointments – External Consultant

2.1. Within seven (7) days of the date of the Court Order, PPP will engage a suitably qualified, independent external compliance consultant (**Consultant**) whose:

2.1.1. terms of appointment are to be based on the matters set out at paragraphs 3 and 7 below; and

2.1.2. whose appointment and terms of appointment are to be approved by the plaintiff in writing, such approval not to be unreasonably withheld.

3. Initial review

3.1. PPP will instruct the Consultant to conduct an initial review and risk assessment in accordance with 3.2.1 to 3.2.4 **below (Initial Review)** and prepare the report referred to in 3.4, to be completed within two (2) months of the Court Order or such further time as the Consultant requires, with any extension of time to be approved by the plaintiff, such approval not to be unreasonably withheld.

3.2. The Initial Review must:

3.2.1. identify areas where PPP is at risk of breaching Part 2 of Division 2 of the *Australian Securities & Investments Commission Act 2001 (Cth)* (**ASIC Act**) having regard to, amongst other things, ASIC Regulatory Guide 234 – *Advertising financial products and services (including credit)*;

3.2.2. identify where there may be gaps in PPP's existing policies, procedures and systems for managing these risks;

3.2.3. undertake a review of PPP's bonus structures, including a review of the criteria for eligibility for bonuses, to identify whether the bonus structure and/ or eligibility criteria are at risk of encouraging PPP employees or contractors to engage in conduct that may contravene the ASIC Act; and



- 3.2.4. provide recommendations for action having regard to the assessment.
- 3.3. PPP will provide all reasonable assistance to the Consultant to enable the Consultant to complete the Initial Review.
- 3.4. The Consultant will prepare a written report setting out:
 - 3.4.1. a description of the methodology, parameters and limitations applicable to the review, including evidence gathered and examined;
 - 3.4.2. the findings of the review; and
 - 3.4.3. recommendations made as a consequence of the Initial Review.
- 3.5. PPP will provide a copy of the report prepared in accordance with paragraph 3.4 **above** to the plaintiff within three (3) days of receiving it from the Consultant.

4. Compliance Policy

- 4.1. Within three (3) months of the date of the Court Order, or 1 month from receipt of the Consultant's report in accordance with paragraph 3.4 above (whichever is the later), PPP will issue a revised compliance policy (**Compliance Policy**) that:
 - 4.1.1. is written in plain language;
 - 4.1.2. contains a statement of commitment to compliance with Part 2 of Division 2 of the ASIC Act;
 - 4.1.3. contains a strategic outline of how commitment to ASIC Act compliance will be realised within PPP;
 - 4.1.4. incorporates all recommendations made by the Consultant in the Initial Review;
 - 4.1.5. contains a requirement for all staff to report any Compliance Program related issues and ASIC Act compliance concerns to a member of PPP's compliance team;
 - 4.1.6. ensures that remuneration for employees, agents and representatives of PPP is not determined by reference to revenue derived by PPP through failures to comply with or practices which do not comply with the Compliance Policy;
 - 4.1.7. contains a clear statement that PPP will take action internally including through clawback or withholding bonuses, against any persons who are knowingly or recklessly concerned in a contravention of the ASIC Act and will not indemnify them in the case of investigation and prosecution by ASIC.



5. Education & Training

- 5.1. PPP will ensure that the Compliance Program provides for regular (at least once a year) and practical training for all directors, officers, employees and representatives of PPP.
- 5.2. PPP must ensure that the training is designed and conducted by a suitably qualified compliance professional or legal practitioner with expertise in the ASIC Act (**Compliance Trainer**).
- 5.3. PPP must provide to the Compliance Trainer, for the purposes of conducting the training, copies of:
 - 5.3.1. the Court Order;
 - 5.3.2. the Compliance Policy;
 - 5.3.3. the complaints handling system; and
 - 5.3.4. all reports prepared by the Consultant as at the date the training is scheduled.
- 5.4. PPP will ensure that the Compliance Program includes a requirement that awareness of the Compliance Policy, complaints handling system and ASIC Act compliance issues form part of the induction of all new directors, officers, employees and representatives of PPP.

6. Supply of the Compliance Program Documents to the Applicants

- 6.1. Within three (3) months of the date of the Court Order or six weeks from receipt of the Consultant's report in accordance with paragraph 3.4 above (whichever is the later), PPP will provide the plaintiff with copies of each document constituting the Compliance Program.

7. Compliance Reviews

- 7.1. PPP will instruct the Consultant to conduct a further review of the Compliance Program (**Compliance Review**) to be carried out in accordance with paragraphs 7.2.1 to 7.2.5 **below** and prepare the Compliance Review Report (defined in paragraph 7.4 **below**) by 30 April 2020.
- 7.2. The Compliance Review must:
 - 7.2.1. review the extent to which the Compliance Program includes all of the requirements detailed in paragraphs 4.1 to 5.4 **above**;



- 7.2.2. review the extent to which the Compliance Program adequately addresses the matters identified and recommendations made in the Initial Review or any subsequent review;
 - 7.2.3. review the effectiveness of the ASIC Act training;
 - 7.2.4. review the effectiveness of the complaints handling system; and
 - 7.2.5. make recommendations for rectifying any deficiencies in 7.2.1 to 7.2.4 **above** that the Consultant considers are reasonably necessary to ensure that PPP maintains and continues to implement the Compliance Program in accordance with the Court Order.
- 7.3. PPP will provide all reasonable assistance to the Consultant to enable the Consultant to complete the Compliance Review.
- 7.4. The Consultant will prepare a written report (**Compliance Review Report**) setting out:
- 7.4.1. a description of the methodology, parameters and limitations applicable to the review, including evidence gathered and examined;
 - 7.4.2. the findings of the review; and
 - 7.4.3. recommendations and actions made to ensure the continuing effectiveness of the Compliance Program.
- 7.5. PPP will provide a copy of the Compliance Review Report to the plaintiff within three (3) days of receiving it from the Consultant.

8. Recommendations

- 8.1. PPP shall implement promptly and with due diligence any recommendations made by the Consultant or required by the plaintiff that are reasonably necessary to ensure that PPP maintains and continues to implement the Compliance Program in accordance with the Court Order.
- 8.2. If requested by the plaintiff, PPP shall, at its own expense, provide the plaintiff with copies of documents and information in respect of matters that are the subject of the Compliance Program.
- 8.3. PPP will, in the event that the Compliance Review Report identifies any recommendations or actions that have not been implemented provide ASIC with a written plan (**Remedial Action Plan**) setting out the:
 - 8.3.1. action PPP proposes to take to ensure that those recommendations and actions are implemented; and
 - 8.3.2. specific timeframe(s) within which such action will be taken.



- 8.4. PPP will provide the Remedial Action Plan to the plaintiff within seven (7) days of the Compliance Review Report being provided to the plaintiff.
- 8.5. PPP will implement any Remedial Action Plan within the timeframe specified in paragraph 8.3.2 **above**, except that if the plaintiff requires any reasonable modifications to any Remedial Action Plan then PPP will implement the Remedial Action Plan as so modified.



ANNEXURE B

NOTICE ON HOMEPAGE OF WEBSITES

[In the usual form of the First Defendant's notice to customers. 25% of homepage. For a period of 1 month from date of order.]

MISLEADING STATEMENTS ABOUT THE AUSTRALIAN GOVERNMENT'S FUTURE FUND

- On 29 August 2019, the Federal Court of Australia declared that statements made in an article entitled "*Everyday Australians Now Legally 'Piggybacking' 'the Future Fund' ... and collecting extra monthly income injections of \$540 right up to \$6,667*" (**Promo Letter**) which:
 - was published on our websites and in emails sent to subscribers to our Websites (defined below); and
 - promoted a document entitled "*Your Quick Start Guide to Piggybacking the Future Fund*" (**Guide**),

were false, misleading and deceptive.

- A copy of the Court's judgment and orders is available here **<insert>**.
- If you have any questions or concerns about your subscription with us, please contact **<insert complaints manager's name>**.

What was the advertisement?

Between September 2017 to January 2018, we published the Promo Letter on our websites:

- <http://www.marketsandmoney.com.au>; and
- <http://www.moneymorning.com.au> (**Websites**); and

emailed it to approximately 200,000 of our subscribers to our Websites.

The Promo Letter and the Guide promoted an investment strategy targeted towards retiree investors and investors approaching retirement, amongst others which involved investing in a portfolio of specific listed investment companies and exchange traded funds which was claimed to mimic the performance of the Future Fund (**Investment Strategy**).

The Guide could only be accessed if a subscriber paid a subscription fee.

Why was it false, misleading and deceptive?



In a court proceeding brought by ASIC, the Federal Court of Australia found that the Promo Letter published on our Websites and emailed to subscribers to our Websites was false, misleading and deceptive because it:

- purported to provide the views of PPP's retirement income expert, Editor A;
- suggested that the Investment Strategy could generate regular, monthly, income of between \$540 and \$6,667 per month;
- suggested that by adopting the Investment Strategy, investors could mimic the performance of the Future Fund and thereby generate the same or similar annual returns; and
- relied on client testimonials of "Jolly", "Leon M" and "MH" and represented that each of them had adopted the Investment Strategy and had each received monthly returns of \$6,667, \$540 and \$1,437.50 respectively.

In fact, the Promo Letter:

- did not in all respects represent the views of Editor A, who was not the author of the Promo Letter and who was not a retirement income expert;
- did not disclose that the Investment Strategy involved investing in securities which only paid dividends on a quarterly or half yearly basis;
- did not disclose that some returns mentioned could only be achieved by investing approximately \$154,286 and \$1.9m respectively;
- did not disclose that the Future Fund has access to some strategies and markets that are unavailable to an individual investor; and
- did not disclose that "Jolly", "Leon M" and "MH" each had never adopted the full Investment Strategy.

The Federal Court also found that the Guide made representations which were misleading and deceptive in that by adopting the Investment Strategy an investor could mimic the performance of the Future Fund and thereby generate the same or substantially similar annual returns to that of the Future Fund and expose an investor to assets having the same or similar levels of risk as that of the Future Fund.

In fact, the Investment Strategy were likely to have generated lower returns than the returns promoted in the Promo Letter and Guide and was likely to have exposed an investor to a greater level of risk than that adopted by the Future Fund in September 2017.

The Federal Court also found that Kristan Sayce, who was our publisher at the time, engaged in conduct that was false, misleading and deceptive by:

- commissioning, reviewing, amending and approving for publication the Promo Letter and causing it to be published on our Websites and emailed to our subscribers;
- commissioning the Guide and causing it to be sent to 833 paid subscribers; and
- relying on client testimonials of "Jolly", "Leon M" and "MH" and representing that each of them had adopted the Investment Strategy and had each received monthly returns of \$6,667, \$540 and \$1,437.50 respectively.

Does this affect me?



You may have relied on these statements in deciding to subscribe to Total Income with us. If you have any queries or complaints regarding an application to become a subscriber to Total Income or any aspect of PPP's service to you in relation to your Total Income subscription, please contact <insert complaints manager's name> on [insert address] or [insert telephone number].



ANNEXURE C

EMAIL TO EACH CLIENT WHO SUBSCRIBED TO THE GUIDE

[In the usual form of email or on letterhead of first defendant]

MISLEADING STATEMENTS ABOUT THE AUSTRALIAN GOVERNMENT'S FUTURE FUND

We are writing to you about your application to Port Phillip Publishing (ACN 117 765 009) (PPP) to become a subscriber to Total Income.

- On 29 August 2019, the Federal Court of Australia declared that statements we made in an article entitled “*Everyday Australians Now Legally ‘Piggybacking’ ‘the Future Fund’ ... and collecting extra monthly income injections of \$540 right up to \$6,667*” (**Promo Letter**) which:
 - was published on our websites and in emails sent to subscribers to our Websites (defined below); and
 - promoted a document entitled “*Your Quick Start Guide to Piggybacking the Future Fund*” (**Guide**),

were false, misleading and deceptive.

- A copy of the Court’s judgment and orders is available here <insert>.
- If you have any questions or concerns about your subscription with us, please contact <insert complaints manager’s name>.

What was the advertisement?

Between September 2017 to January 2018, we published the Promo Letter on our websites:

- <http://www.marketsandmoney.com.au>; and
- <http://www.moneymorning.com.au> (**Websites**); and

emailed it to approximately 200,000 of our subscribers to our Websites.

The Promo Letter and the Guide promoted an investment strategy targeted towards retiree investors and investors approaching retirement, amongst others, which involved investing in a portfolio of specific listed investment companies and exchange traded funds which was claimed to mimic the performance of the Future Fund (**Investment Strategy**).

The Guide could only be accessed if a subscriber paid a subscription fee.

Why was it false, misleading and deceptive?



In a court proceeding brought by ASIC, the Federal Court of Australia found that the Promo Letter published on our Websites and emailed to subscribers to our Websites was false, misleading and deceptive because it:

- purported to provide the views of PPP's retirement income expert, Editor A;
- suggested that the Investment Strategy could generate regular, monthly, income of between \$540 and \$6,667 per month;
- suggested that by adopting the Investment Strategy, investors could mimic the performance of the Future Fund and thereby generate the same or similar annual returns; and
- relied on client testimonials of "Jolly", "Leon M" and "MH" and represented that each of them had adopted the Investment Strategy and had each received monthly returns of \$6,667, \$540 and \$1,437.50 respectively.

In fact, the Promo Letter:

- did not in all respects represent the views of Editor A, who was not the author of the Promo Letter and who was not a retirement income expert;
- did not disclose that the Investment Strategy involved investing in securities which only paid dividends on a quarterly or half yearly basis;
- did not disclose that some returns mentioned could only be achieved by investing approximately \$154,286 and \$1.9m respectively;
- did not disclose that the Future Fund has access to some strategies and markets that are unavailable to an individual investor; and
- did not disclose that "Jolly", "Leon M" and "MH" each had never adopted the full Investment Strategy.

The Federal Court also found that the Guide made representations which were misleading and deceptive in that by adopting the Investment Strategy an investor could mimic the performance of the Future Fund and thereby generate the same or substantially similar annual returns to that of the Future Fund and expose an investor to assets having the same or similar levels of risk as that of the Future Fund.

In fact, the Investment Strategy was likely to have generated lower returns than the returns promoted in the Promo Letter and Guide and was likely to have exposed an investor to a greater level of risk than that adopted by the Future Fund in September 2017.

The Federal Court also found that Kristan Sayce, who was our publisher at the time, engaged in conduct that was false, misleading and deceptive by:

- commissioning, reviewing, amending and approving for publication the Promo Letter and causing it to be published on our Websites and emailed to our subscribers;
- commissioning the Guide and causing it to be sent to 833 paid subscribers; and
- relying on client testimonials of "Jolly", "Leon M" and "MH" and representing that each of them had adopted the Investment Strategy and had each received monthly returns of \$6,667, \$540 and \$1,437.50 respectively.

Does this affect me?



You may have relied on these statements in deciding to subscribe to Total Income with us. If you have any queries or complaints regarding an application to become a subscriber to Total Income or any aspect of PPP's service to you in relation to your Total Income subscription, please contact <insert complaints manager's name> on [insert address] or [insert telephone number].



ANNEXURE D

EMAIL TO EACH CLIENT WHO SUBSCRIBED TO THE WEBSITES

[In the usual form of email or on letterhead of first defendant]

MISLEADING STATEMENTS ABOUT THE AUSTRALIAN GOVERNMENT'S FUTURE FUND

We are writing to you about your subscription to Port Phillip Publishing's (ACN 117 765 009) (PPP) websites Money Morning and Markets and Money.

- On 29 August 2019, the Federal Court of Australia declared that statements we made in an article entitled "*Everyday Australians Now Legally 'Piggybacking' 'the Future Fund' ... and collecting extra monthly income injections of \$540 right up to \$6,667*" (**Promo Letter**) which:
 - was published on our websites and in emails sent to subscribers to our Websites (defined below); and
 - promoted a document entitled "*Your Quick Start Guide to Piggybacking the Future Fund*" (**Guide**),

were false, misleading and deceptive.

- A copy of the Court's judgment and orders is available here [<insert>](#).
- If you have any questions or concerns about your subscription with us, please contact [<insert complaints manager's name>](#).

What was the advertisement?

Between September 2017 to January 2018, we published the Promo Letter on our websites:

- <http://www.marketsandmoney.com.au>; and
- <http://www.moneymorning.com.au> (**Websites**); and

emailed it to approximately 200,000 of our subscribers to our Websites.

The Promo Letter and the Guide promoted an investment strategy targeted towards retiree investors and investors approaching retirement, amongst others, which involved investing in a portfolio of specific listed investment companies and exchange traded funds which was claimed to mimic the performance of the Future Fund (**Investment Strategy**).

The Guide could only be accessed if a subscriber paid a subscription fee.

Why was it false, misleading and deceptive?



In a court proceeding brought by ASIC, the Federal Court of Australia found that the Promo Letter published on our Websites and emailed to subscribers to our Websites was false, misleading and deceptive because it:

- purported to provide the views of PPP's retirement income expert, Editor A;
- suggested that the Investment Strategy could generate regular, monthly, income of between \$540 and \$6,667 per month;
- suggested that by adopting the Investment Strategy, investors could mimic the performance of the Future Fund and thereby generate the same or similar annual returns; and
- relied on client testimonials of "Jolly", "Leon M" and "MH" and represented that each of them had adopted the Investment Strategy and had each received monthly returns of \$6,667, \$540 and \$1,437.50 respectively.

In fact, the Promo Letter:

- did not in all respects represent the views of Editor A, who was not the author of the Promo Letter and who was not a retirement income expert;
- did not disclose that the Investment Strategy involved investing in securities which only paid dividends on a quarterly or half yearly basis;
- did not disclose that some returns mentioned could only be achieved by investing approximately \$154,286 and \$1.9m respectively;
- did not disclose that the Future Fund has access to some strategies and markets that are unavailable to an individual investor; and
- did not disclose that "Jolly", "Leon M" and "MH" each had never adopted the full Investment Strategy.

The Federal Court also found that the Guide made representations which were misleading and deceptive in that by adopting the Investment Strategy an investor could mimic the performance of the Future Fund and thereby generate the same or substantially similar annual returns to that of the Future Fund and expose an investor to assets having the same or similar levels of risk as that of the Future Fund.

In fact, the Investment Strategy was likely to have generated lower returns than the returns promoted in the Promo Letter and Guide and was likely to have exposed an investor to a greater level of risk than that adopted by the Future Fund in September 2017.

The Federal Court also found that Kristan Sayce, who was our publisher at the time, engaged in conduct that was false, misleading and deceptive by:

- commissioning, reviewing, amending and approving for publication the Promo Letter and causing it to be published on our Websites and emailed to our subscribers;
- commissioning the Guide and causing it to be sent to 833 paid subscribers; and
- relying on client testimonials of "Jolly", "Leon M" and "MH" and representing that each of them had adopted the Investment Strategy and had each received monthly returns of \$6,667, \$540 and \$1,437.50 respectively.

Does this affect me?



You may have relied on these statements. If you have any queries or complaints regarding any aspect of PPP's service in relation to Total Income, please contact **<insert complaints manager's name>** on **[insert address]** or **[insert telephone number]**.



Schedule

No: VID1639/2018

Federal Court of Australia
District Registry: Victoria
Division: General

Second Defendant KRISTAN LEWIS SAYCE