

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 1/11/2021 11:17:14 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 Application - Form 15 - Rule 8.01(1)
File Number:	NSD1137/2021
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v FERRATUM AUSTRALIA PTY LIMITED ACN 151 137 049
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 1/11/2021 1:47:20 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 application

No. _____ of 20____

Federal Court of Australia
District Registry: New South Wales
Division: General

Australian Securities & Investments Commission

Applicant

Ferratum Australia Pty Limited A.C.N. 151 137 049

Respondent

To the Respondent

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: 184 Phillip Street, Sydney

The Court ordered that the time for serving this application be abridged to.

Date:

.....
Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of (name & role of party) Australian Securities and Investments Commission, Applicant

Prepared by (name of person/lawyer) Georgina Thomas, Lawyer, ASIC

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Address for service Level 5, 100 Market Street, Sydney NSW 2000

(include state and postcode) Attn: Georgina Thomas



Details of application

1. This application is made by the Applicant (**ASIC**) under sections 166 and 167 of the *National Consumer Credit Protection Act 2009* (Cth) (**Act**) and section 21 of the *Federal Court of Australia Act 1976* (Cth) to obtain the declarations and the payment of pecuniary penalties identified in paragraph 3 below arising from contraventions by the Respondent (**Ferratum**) of:
 - (a) sections 23A(1)(b), 24(1A)(a), 24(1A)(b), 31A(1) and 82(2) of the *National Credit Code* (**Code**), being Schedule 1 to the Act; and
 - (b) sections 47(1)(a), (d) and (f) of the Act.
2. Ferratum is the holder of an Australian Credit Licence entitling it to engage in “credit activities” within the meaning of section 6 of the Act, including acting as a credit provider. At all relevant times Ferratum provided loans to consumers under small amount credit contracts (**SACCs**).
3. On the facts stated in the concise statement, ASIC seeks the following orders.

Declarations

- (a) A declaration that between 13 March 2019 to 14 July 2020 (**First Relevant Period**), Ferratum contravened section 24(1A)(b) of the Code on at least 40 occasions by requiring consumers who paid out their SACCs before the end of the loan term (**Early Payout**) to pay an amount which exceeded the amount permitted under section 82(2) of the Code.
- (b) A declaration that by reason of the conduct identified in declaration (a) above, Ferratum also contravened sections 47(1)(a) and/or (d) of the Act.
- (c) A declaration that during the First Relevant Period, Ferratum contravened section 47(1)(a) of the Act by failing to engage in the credit activities efficiently, honestly and fairly by reason of its failure to have in place any system to ensure, record or monitor the proper calculation of the Early Payout amounts.
- (d) A declaration that during the First Relevant Period, Ferratum contravened section 47(1)(f) of the Act by failing to maintain the competence to engage in the credit activities by reason of its failure to have in place any system to ensure, record or monitor the proper calculation of the Early Payout amounts.
- (e) A declaration that between 13 March 2019 and 30 September 2019 (**Second Relevant Period**), Ferratum contravened section 24(1A)(a) of the Code on



10,860 occasions by entering into SACCs on terms which imposed a monetary liability prohibited by section 23A(1) of the Code, being the fees set out at “A” of the Schedule, which were not permitted under section 31A(1) of the Code.

- (f) A declaration that by reason of the conduct identified in declaration (e) above, Ferratum also contravened sections 47(1)(a) and/or (d) of the Act.
- (g) A declaration that during the Second Relevant Period, Ferratum contravened section 24(1A)(b) of the Code on 596 occasions by requiring payment of the fees set out at “B” of the Schedule which were not permitted under section 31A(1) of the Code.
- (h) A declaration that by reason of the conduct identified in declaration (g) above, Ferratum also contravened sections 47(1)(a) and/or (d) of the Act.
- (i) A declaration that between 1 October 2019 to 11 August 2021 (**Third Relevant Period**), Ferratum contravened section 24(1A)(a) of the Code on 33,815 occasions by entering into SACCs on terms imposing a monetary liability prohibited by section 23A(1) of the Code, being a fee styled as a “DDR Alteration Fee”, which was not permitted under section 31A(1) of the Code.
- (j) A declaration that by reason of the conduct identified in declaration (i) above, Ferratum also contravened sections 47(1)(a) and/or (d) of the Act.
- (k) A declaration that during the Third Relevant Period Ferratum contravened section 24(1A)(b) of the Code on 204 occasions by requiring the payment of the “DDR Alteration Fee” which was not permitted under section 31A(1) of the Code.
- (l) A declaration that by reason of the conduct identified in declaration (k) above, Ferratum also contravened sections 47(1)(a) and/or (d) of the Act.

Payment of pecuniary penalties

- (m) An order that Ferratum pay pecuniary penalties in respect of its contraventions of sections 47(1)(a) and/or (f) of the Act, and sections 24(1A)(a) and 24(1A)(b) of the Code.

Other orders sought

- (n) Costs.
- (o) Such further or other order as the Court deems fit.

**Applicant's address**

The Applicant's address for service is: Level 5, 100 Market Street, Sydney NSW 2000

Email: georgina.thomas@asic.gov.au

Service on the Respondent

It is intended to serve this application on the Respondent.

1 November 2021

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

Signed by Georgina Thomas

Lawyer for the applicant



SCHEDULE TO ORIGINATING APPLICATION

A – Fees included in SACCs (Second Relevant Period)

- (a) “DDR Alteration Fee” which stated it was payable “on a change being made to the DDR arrangement with you, at your request, at any time under the agreement” (with DDR being a reference to a direct debit request from a consumer’s bank account);
- (b) “Direct Deposit Fee” which stated it was payable “on making manual payment of account balance directly into Ferratum owned bank accounts”;
- (c) “Returned Mail Fee” which stated it was payable when “postal mail is undeliverable to the address provided on your application”;
- (d) “Additional Contract request service levy” which stated it was payable “upon request by you to be provided with your loan contract where this has already been provided to you by us within the last 12 months”;
- (e) “Visa or MasterCard payment fee” which stated it was payable “on request by you to make payment of your account by a card service provider, either Visa or MasterCard”;
and
- (f) “Returned Payment Fee” which stated it was payable when “funded loans being returned and repaid to client due to provision of incorrect bank information”.

B – Fees charged in Second Relevant Period

- (a) the DDR Alteration Fee on 105 occasions;
- (b) the Returned Mail Fee on 461 occasions; and
- (c) the Visa or MasterCard payment fee on 30 occasions.