

NOTICE OF FILING

Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 9/12/2022 3:00:17 PM AEST
Date Accepted for Filing: 9/12/2022 3:00:22 PM AEST
File Number: QUD380/2022
File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v BPS
FINANCIAL PTY LTD (ACN 604 899 381)
Registry: QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

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 date of the filing of the document is determined pursuant to the Court's Rules.



Form 17
Rule 8.05(1)(a)

Statement of Claim
(filed in accordance with Orders made by the Honourable Justice Downes
on 5 December 2022)

No. QUD 380 of 2022

Federal Court of Australia

District Registry: Queensland

Division: General

IN THE MATTER OF BPS FINANCIAL PTY LTD (ACN 604 899 381)

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

BPS FINANCIAL PTY LTD (ACN 604 899 381)

Defendant

Filed on behalf of (name & role of party)	Australian Securities and Investments Commission, Plaintiff
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A. PARTIES

1. The Plaintiff, the Australian Securities and Investments Commission (**ASIC**), is a body corporate established by section 8 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and is entitled to commence and maintain these proceedings in its corporate name.
2. The Defendant, BPS Financial Pty Ltd (**BPS**) (ACN 604 899 381), is and was at all material times:
 - (a) a company that was validly incorporated on 23 March 2015 under the laws of Australia;
 - (b) a wholly owned subsidiary of Blockchain Investment Group Pty Ltd (**BIG**) (ACN 629 598 027);
 - (c) the operator of the website <https://qoin.world> (**Qoin Website**);
 - (d) not a holder of an Australian financial services licence (**AFSL**).
3. At all relevant times, Antonie Hendrik Jacobus Wiese (**Mr Wiese**) and Rajesh Kumar Pathak (**Mr Pathak**) have been the directors of BPS.
4. At all relevant times, Mr Wiese and Mr Pathak, among others, have been responsible for the management of BPS.

B. THE QOIN FACILITY

5. On or around January 2020, BPS established and implemented a facility (**Qoin Facility**) in relation to a crypto-asset named Qoin (**Qoin Token**).
6. The Qoin Facility is comprised of the following elements:
 - (a) Qoin Tokens;
 - (b) a distributed digital ledger implemented by blockchain technology (**Qoin Ledger**);
 - (c) a wallet facility (**Qoin Wallet**);
 - (d) a means of acquiring Qoin Tokens, including from BPS or an entity associated with BPS; and

- (e) a means whereby business operators who hold Qoin Wallets can register as participating merchants (**Qoin Merchants**) in the Qoin Facility.

Particulars

The Qoin Facility was described by BPS in a document titled 'Qoin: Official White Paper' (**Qoin White Paper**) first published by BPS on the Qoin Website on or around 30 January 2020.

7. The Qoin Token is:
 - (a) a digital token; and
 - (b) constituted by entries in a distributed digital ledger, being the Qoin Ledger.
8. The Qoin Ledger records transactions in which a person acquires or disposes of Qoin Tokens.
9. Since 30 January 2020, BPS has published the following statements in the Qoin White Paper and on the Qoin Website (as the case may be):
 - (a) *"Each merchant agrees to accept Qoin as a currency of payment for goods & services"*, which was published:
 - (i) on page 11 of the Qoin White Paper from on or around 30 January 2020 to at least 24 October 2022;
 - (ii) on the Qoin Website at <https://qoin.world/the-qoin-currency-reserve/> from around 3 June 2020 to around 23 November 2020; and
 - (iii) on the Qoin Website at <https://qoin.world/introducing-qoin/the-qoin-currency-reserve/> from around 15 January 2021 to at least 24 October 2022;
 - (b) *"The objective of the Qoin Blockchain is to act as a reliable distributed ledger platform for payments and rewards services, including a new global currency, which can meet the daily transactional needs of millions of buyers and sellers"*, which was published:

- (i) on page 9 of the Qoin White Paper from on or around 30 January 2020 to at least 24 October 2022;
 - (ii) on the Qoin Website at <https://qoin.world/the-qoin-blockchain-consensus-model/> from around 6 June 2020 to around 23 November 2020; and
 - (iii) on the Qoin Website at <https://qoin.world/introducing-qoin/the-qoin-blockchain-consensus-model/> from around 15 January 2021 to at least 24 October 2022;
- (c) *“Participating merchants in the ecosystem accept Qoin from customers as payment for their goods and services”*, which was published:
- (i) on page 4 of the Qoin White Paper from on or around 30 January 2020 to at least 24 October 2022; and
 - (ii) on the Qoin Website at <https://qoin.world/foreword/> from around 7 December 2021 to at least 24 October 2022;
- (d) *“Your Qoin can be used to purchase everyday goods and services with thousands of participating merchants around Australia and that number is growing”*, which was published:
- (i) on the Qoin Website at <https://qoin.world/consumer/> from around 26 May 2020 to around 14 August 2020; and
 - (ii) on the Qoin Website at <https://qoin.world/consumer/> from around 20 September 2020 to at least 24 October 2022 in the same form as set out in paragraph 9(d) above except that the words *“around Australia”* were deleted;
- (e) *“How Qoin can assist your business: Qoin offers you an additional sales channel for your business through a new customer base and gives you the ability to move idle or excess stock and fill downtime”*, which was published on the Qoin Website at <https://qoin.world/merchants/> from around 25 May 2020 to around 6 May 2021; and
- (f) *“How Qoin can assist your business: Qoin offers you an additional sales channel for your business through access to a new method of payment.*

This may increase your customer base and give you the ability to move idle or excess stock and fill downtime”, which was published on the Qoin Website at <https://qoin.world/merchants/> from around 13 May 2021 to at least 24 October 2022.

10. By the statements described in paragraph 9 above, BPS promoted Qoin Tokens as a means of making payment for goods and services offered by Qoin Merchants for the purposes of the Qoin Facility.
11. The Qoin Wallet is a digital wallet in the form of a software application for mobile devices named ‘Qoin Wallet’ made available by BPS.
12. A person can utilise the Qoin Wallet to:
 - (a) join the Qoin Facility as a user;
 - (b) obtain a unique seed phrase and wallet address, following completion of required details, acceptance of certain conditions and fulfilment of identification requirements (collectively, the **registration process**);
 - (c) initiate and cause to be recorded on the Qoin Ledger a transaction in which they have acquired or disposed of Qoin Tokens as a means of payment for goods and services; and
 - (d) access information relating to Qoin Tokens they have acquired or disposed of.
13. The Qoin Wallet allows the user to transact only in Qoin Tokens.
14. A person cannot transact in Qoin Tokens without a Qoin Wallet.
15. Since 30 January 2020, BPS published the following statements in the Qoin White Paper and on the Qoin Website (as the case may be):
 - (a) *“Users should only acquire Qoin ... from a peer utilizing an officially approved wallet”*, which was published:
 - (i) on page 15 of the Qoin White Paper from on or around 30 January 2020 to at least 24 October 2022;
 - (ii) on the Qoin Website at <https://qoin.world/regulatory-environment-risks/> from around 4 June 2020 to around 23 November 2020; and

- (iii) on the Qoin Website at <https://qoin.world/introducing-qoin/regulatory-environment-risks/> from around 19 January 2021 to at least 24 October 2022;
- (b) “*Only when you want to transact on the Qoin Blockchain can [the Qoin Wallet] send a request to the enclave, for which the enclave sends back its payload*”, which was published:
 - (i) on page 21 of the Qoin White Paper from on or around 30 January 2020 to at least 24 October 2022; and
 - (ii) on the Qoin Website at <https://qoin.world/introducing-qoin/technical-information/> from around 18 January 2022 to at least 24 October 2022;
- (c) “*Your Qoin wallet is your personal access to the Qoin community*”, which was published on the Qoin Website at <https://qoin.world/consumer/> from around 26 May 2020 to at least 24 October 2022, except that from around 26 May 2020 to around 23 November 2020 it also provided “*The Qoin Wallet ... has the ability to transact when and wherever you are...*” and it used the words “*personal gateway*” instead of “*personal access*”;
- (d) “*The Qoin Wallet is safe, easy to use and will open an exciting new world for you to explore ... Simple to send and receive transactions*”, which was published on the Qoin Website at <https://qoin.world/wallet/> from around 26 May 2020 to at least 24 October 2022 in substantially the same form;
- (e) “*Once integrated, you can accept payments through future P.O.S terminals or mobile devices via the Qoin Wallet. With instant payments, automatic receipt creation and a record of all transactions, Qoin is an easy and pain free addition to your business*”, which was published on the Qoin Website at <https://qoin.world/merchants/> from around 25 May 2020 to at least 24 October 2022, except that from around 25 May 2020 to around 14 August 2020 it used the words “*Q Wallet*” instead of “*Qoin Wallet*”.

16. By the statements described in paragraph 15 above, BPS promoted the Qoin Wallet as the only means of using Qoin Tokens to make payment for goods and services offered by Qoin Merchants for the purposes of the Qoin Facility.
17. Qoin Tokens can be acquired from BPS in exchange for payment of Australian currency.
18. Since 11 December 2020, Qoin Tokens can be acquired by way of the exchange facility known as the '**BTX Exchange**'.
19. The BTX Exchange:
 - (a) is operated by Block Trade Exchange Pty Ltd (**BTX**) (ACN 604 087 407);
 - (b) was established on or around 11 December 2020;
 - (c) subject to the matters set out in sub-paragraph 35(f) below, permits a person to exchange Qoin Tokens for Australian currency and reciprocally;
 - (d) is accessible via the Qoin Wallet; and
 - (e) operates by way of BTX purchasing and selling Qoin Tokens on its own behalf.
20. As at 24 October 2022, there were approximately 37,900 Qoin Merchants registered with BPS.
21. Each of the Qoin Merchants has entered into an agreement or arrangement with BPS to accept Qoin Tokens as payment, or part payment, for goods or services offered by Qoin Merchants for the purposes of the Qoin Facility.

Particulars

The agreement is contained in the Qoin Terms of Use published by BPS.

22. BPS operates a digital directory called '**Q Shop**', whereby both:
 - (a) Qoin Merchants; and
 - (b) consumers who hold Qoin Wallets,advertise goods and services that can be purchased using Qoin Tokens.
23. The Qoin Wallet includes a gateway to the Q Shop.

24. By reason of the matters pleaded in paragraphs 5 to 23 above, the Qoin Facility:
- (a) is a facility through which, or through the acquisition of which, a person makes non-cash payments; and
 - (b) is therefore:
 - (i) a 'financial product' for the purposes of Chapter 7 of the *Corporations Act 2001* (Cth) (**Corporations Act**) and Part 2 of the ASIC Act; and

Particulars

Sections 763A(1)(c) and 763D of the Corporations Act; sections 12BAA(1)(c) and 12BAA(6) of the ASIC Act.

- (ii) a 'financial service' for the purposes of Part 2 of the ASIC Act.

Particulars

Section 12BAB(1AA) of the ASIC Act.

C. UNLICENSED CONDUCT

25. Since December 2019, BPS has issued and maintained in use Combined Financial Services Guides and Product Disclosure Statements (**Qoin Offer Documents**).

Particulars

The Qoin Offer Documents issued between 10 December 2019 and 24 October 2022 were dated:

- (i) 10 December 2019;
- (ii) 12 May 2020;
- (iii) 18 March 2021;
- (iv) 31 August 2021;
- (v) 22 November 2021; and
- (vi) 24 November 2021.

26. At all times since January 2020, BPS has carried on a business in Australia in the ordinary course of which BPS has issued the Qoin Facility pursuant to offers made by the Qoin Offer Documents.

Particulars

The Qoin Facility was issued:

- (i) by making the Qoin Wallet available for use, including via links on the Qoin Website to the Apple App Store and the Google Play Store, and accepting (at BPS's discretion) and managing user registrations initiated through the Qoin Wallet;
 - (ii) by requiring all Qoin Wallet users to agree on registration, and from time to time thereafter, to be bound by the Qoin Offer Documents and the Terms of Use stipulated by BPS; and
 - (iii) on terms and conditions stipulated by BPS from time to time on the Qoin Website at <https://qoin.world/terms-of-use/>.
27. From January 2020 until 30 September 2022, BPS has issued the Qoin Facility more than 93,000 times.
28. Further or alternatively to the matters pleaded in paragraph 26 above, since January 2020, BPS has carried on a business in Australia in the ordinary course of which BPS has published the following statements on the Qoin Website, in the Qoin White Paper and in the Qoin Offer Documents (as the case may be):
- (a) *“Consumer: Earn more, spend more, save more with Qoin”*, which was published on the Qoin Website at <https://qoin.world/> from around 19 May 2020 to at least 24 October 2022;
 - (b) *“Qoin offers participating merchants, the opportunity to increase their customer base by accepting Qoin as payment therefore reducing their spare capacity and building more profitability. All this in a zero cost to merchant model”*, which was published on the Qoin Website at <https://qoin.world/> from around 19 May 2020 to around 6 May 2021;
 - (c) *“Qoin offers participating merchants the opportunity to accept Qoin as payment therefore increasing their customer base and reducing their*

spare capacity and building more profitability. All this in a zero cost to join model", which was published on the Qoin Website at <https://qoin.world/> from around 13 May 2021 to at least 24 October 2022;

- (d) *"The Qoin Wallet is safe, easy to use and will open an exciting new world for you to explore ... Simple to send and receive transactions"*, which was published on the Qoin Website at <https://qoin.world/wallet/> from around 26 May 2020 to at least 24 October 2022 in substantially the same form;
- (e) *"As Qoin is your everyday digital currency, having direct access to your Qoin directory, where you can find all merchants near you and around the country was one of the most important features"*, which was published on the Qoin Website at <https://qoin.world/wallet/> from around 26 May 2020 to around 23 November 2020;
- (f) *"As Qoin is a utility coin, there to be used on everyday products and services, having direct access to the Q Shop and your merchant directory was one of the most important features"*, which was published on the Qoin Website at <https://qoin.world/wallet/> from around 19 January 2021 to at least 24 October 2022;
- (g) *"How Qoin can assist your business: Qoin offers you an additional sales channel for your business through a new customer base and gives you the ability to move idle or excess stock and fill downtime"*, which was published on the Qoin Website at <https://qoin.world/merchants/> from around 25 May 2020 to around 6 May 2021;
- (h) *"How Qoin can assist your business: Qoin offers you an additional sales channel for your business through access to a new method of payment. This may increase your customer base and give you the ability to move idle or excess stock and fill downtime"*, which was published on the Qoin Website at <https://qoin.world/merchants/> from around 13 May 2021 to at least 24 October 2022;
- (i) *"Your business is all about connecting with consumers. Qoin opens new doors for buyers and sellers alike to move spare capacity with a digital*

currency that has the potential to grow, lifting the revenue potential for everyone in the community. Usher your business into the future. Get started with Qoin today", which was published on the Qoin Website at <https://qoin.world/about/> from around 4 August 2021 to at least 24 October 2022;

- (j) *"The Qoin model stands apart from other digital currencies in that the purchasing power of Qoin becomes more powerful as the merchant ecosystem grows. The more businesses that join the Qoin community, the more everyone benefits, providing a vital boost to local economies. Qoin is represented by the goods and services of participating businesses within the ecosystem"*, which was published on the Qoin Website at <https://qoin.world/about/> from around 4 August 2021 to at least 24 October 2022;
- (k) *"With the number of validated merchants in Qoin growing regularly, the result is an ecosystem where digital currency works more favourably for business owners and creates a digital currency tailor-made to sustain cashflow and make the most of their downtime. Qoin enables them to do both while offering a payment method to their customers that is fast, secure, and virtually contactless"*, which was published on the Qoin Website at <https://qoin.world/about/> from around 4 August 2021 to at least 24 October 2022;
- (l) *"[The Qoin Blockchain] has been designed for millions of users to hold and transfer Qoins and hence the blockchain and wallets will be hosted in one of the world's most secure environments"*, which was published:
 - (i) on page 7 of the Qoin White Paper from on or around 30 January 2020 to at least 24 October 2022; and
 - (ii) on the Qoin Website at <https://qoin.world/introducing-qoin/> from around 8 June 2020 to at least 24 October 2022;
- (m) *"Qoins will be accepted with confidence backed by real goods and services in the participating merchant ecosystem, creating trust in its*

intrinsic value", which was published on page 7 of the Qoin White Paper from on or around 30 January 2020 to around 22 February 2022;

- (n) "*Qoins will be accepted with confidence backed by the participating merchant's supply of real goods and services in the ecosystem, creating trust in its intrinsic value*", which was published:
 - (i) on page 7 of the Qoin White Paper from on or around 23 February 2022 to at least 24 October 2022; and
 - (ii) on the Qoin Website at <https://qoin.world/introducing-qoin/> from around 8 December 2021 to at least 24 October 2022;
- (o) "*Our services allow you to securely and conveniently make payments to Merchants*", which was published in the Qoin Offer Documents from on or around 10 December 2019 to about 17 March 2021;
- (p) "*Our services allow you to securely and conveniently make payments to Merchants and other members of the Qoin membership community*", which was published in the Qoin Offer Documents from on or around 18 March 2021 to at least 24 October 2022;
- (q) "*The main benefits of using our Payment System are: Flexibility and convenience ... Security ... Efficiency ... Record keeping ... No fees ...*", which was published in the Qoin Offer Documents from on or around 10 December 2019 to at least 24 October 2022.

29. The statements on the Qoin Website, in the Qoin White Paper and in the Qoin Offer Documents set out in paragraph 28 above are recommendations or statements of opinion that:

- (a) were and are intended; or
- (b) alternatively, could reasonably be regarded as being intended, to influence a person or persons in making a decision in relation to the Qoin Facility.

30. By reason of the matters pleaded in paragraphs 25 to 29 above, BPS has, since January 2020, carried on a financial services business by:

- (a) dealing in a 'financial product' within the meaning of that term as defined in Chapter 7 of the Corporations Act; and/or
 - (b) providing 'financial product advice' within the meaning of that term as defined in Chapter 7 of the Corporations Act.
31. In contravention of section 911A(5B) of the Corporations Act, BPS does not have, and has not at any time since January 2020 had, an AFSL covering the provision of the financial services referred to in paragraphs 25 to 30 above.

D. MARKETING THE QOIN FACILITY

D.1 Representations as to possibility of trading Qoin Tokens

32. At all relevant times, BTX:
- (a) has been a wholly owned subsidiary of BIG;
 - (b) has had Mr Wiese and Mr Pathak as its directors;
 - (c) has had Mr Wiese and Mr Pathak, only, responsible for its management;
 - (d) operations have been predominantly financed by BPS.
33. In the course of carrying on its business:
- (a) BPS published the following statements on page 11 of the Qoin White Paper from around 30 January 2020 to around 22 February 2022:

“The Qoin Reserve will administer the expansion of the ecosystem through a global sales initiative, onboarding, and incentivisation of new merchants. This means that anyone who has purchased Qoins has a high degree of assurance they can utilise or spend their digital currency in the participating merchant ecosystem, or trade their Qoins for fiat or cryptos with others through independent Exchanges.”
 - (b) BPS published the following statements on page 11 of the Qoin White Paper from around 23 February 2022 to at least 24 October 2022:

“The Qoin Reserve will administer the expansion of the ecosystem through a global sales initiative, onboarding, and

incentivisation of new merchants. This means that anyone who has purchased Qoins has a high degree of assurance they can utilise or spend their digital currency in the participating merchant ecosystem, or in the future trade their Qoins for fiat or cryptos with others through independent Exchanges.”

- (c) BPS published the following statement on the Qoin Website at:
- (i) <https://qoin.world/the-qoin-currency-reserve/> from around 3 June 2020 to around 23 November 2020; and
 - (ii) <https://qoin.world/introducing-qoin/the-qoin-currency-reserve/> from around 15 January 2021 to around 18 September 2021:

“The Qoin Reserve will administer the expansion of the ecosystem through a global sales initiative, onboarding, and incentivisation of new merchants. This means that anyone who has purchased Qoins has a high degree of assurance they can utilise or spend their digital currency in the participating merchant ecosystem, or trade their Qoins for fiat or cryptos with others through independent Exchanges.”
- (d) BPS published the following statement on the Qoin Website at <https://qoin.world/introducing-qoin/the-qoin-currency-reserve/> from around 8 December 2021 to around 1 March 2022:
- “The Qoin Reserve will administer the expansion of the ecosystem through a global sales initiative, onboarding, and incentivisation of new merchants. This means that anyone who has purchased Qoins has a high degree of assurance they can utilise or spend their digital currency in the participating merchant ecosystem, or in the future trade their Qoins for fiat or cryptos with others through independent Exchanges.”*
- (e) BPS published the following statement on the Qoin Website at <https://qoin.world/introducing-qoin/the-qoin-currency-reserve/> from around 4 April 2022 to at least 24 October 2022:

“The Qoin Reserve will administer the expansion of the ecosystem through a global sales initiative, onboarding, and incentivisation of new merchants. This means that anyone who has purchased Qoins has a degree of assurance they can utilise or spend their digital currency in the participating merchant ecosystem, or in the future trade their Qoins for fiat or cryptos with others through independent Exchanges.”

34. By the statements described in paragraph 33 above, BPS has at all times since around 30 January 2020 to at least 24 October 2022 represented in the Qoin White Paper and on the Qoin Website that a person who purchases Qoin Tokens can be confident that, if and when they wished to do so, they will be able to exchange those Qoin Tokens for fiat currency or for other crypto-assets through independent exchanges.
35. In truth and in fact:
- (a) at all times since January 2020, it has not been possible to exchange Qoin Tokens for other crypto-assets on any exchange;
 - (b) from January 2020 until around 11 December 2020, it was not possible to exchange Qoin Tokens for fiat currency on any exchange;
 - (c) on or around 11 December 2020, BTX commenced operating the BTX Exchange, through which, subject to the matters described in subparagraph 35(f) below, Qoin Tokens can be exchanged for Australian currency;
 - (d) at all times from around 11 December 2020 to around 21 November 2021, it was not possible to exchange Qoin Tokens for fiat currency on any exchange other than the BTX Exchange;
 - (e) on or around 21 November 2021, a digital currency exchange independent of BPS named Cryptochange commenced operating, through which Qoin Tokens can be exchanged for Australian currency;
 - (f) at all times since around 15 December 2020, there have been limits on the number of Qoin Tokens that could be exchanged for Australian currency on the BTX Exchange;

Particulars

- (i) From around 15 December 2020 to around 12 January 2021, there was a daily limit of \$1,000 for each seller of Qoin Tokens.
 - (ii) From around 13 January 2021 to around 22 January 2021, there was a daily limit of \$500 for each seller of Qoin Tokens.
 - (iii) From around 25 January 2021 to around 8 March 2021, there was a daily limit of \$250 for each seller of Qoin Tokens.
 - (iv) From around 9 March 2021 to around 29 March 2021, there was a daily limit of \$100 for each seller of Qoin Tokens.
 - (v) Since around 30 March 2021, each seller of Qoin Tokens has been limited to selling one block of \$100 or \$125 daily, subject to the number of blocks made available to sell by BTX based on buyer demand.
- (g) the BTX Exchange is not, and was not at any time, an independent exchange.

Particulars

- (i) BTX and BPS are, and have at all relevant times, been wholly owned subsidiaries of BIG.
- (ii) The same persons are, and have at all relevant times, been the directors of BIG, BPS and BTX.
- (iii) At all relevant times, the same persons that have been solely responsible for the management of BTX (being those individuals identified in sub-paragraph 32(c) above) have also been responsible for the management of BPS (as identified in paragraph 4 above).
- (iv) The operations of BTX are, and have at all relevant times, been predominantly financed by BPS.

36. Further or in the alternative:
- (a) the representation alleged in paragraph 34 above was or included a forecast or prediction that, if and when they wished to do so, a person who purchases Qoin Tokens will be able to exchange those Qoin Tokens for fiat currency or for other crypto-assets through independent exchanges within a reasonable period of time after purchase;
 - (b) BPS does not, and did not, have reasonable grounds for making that representation at the times it was made; and
 - (c) by reason of section 12BB(1) of the ASIC Act, the representation is taken to be misleading.
37. The statements pleaded in paragraph 33 above:
- (a) were made in trade or commerce; and
 - (b) further, and in the premises pleaded in paragraphs 5 to 24 above:
 - (i) were made in connection with the supply or possible supply, or the promotion of the supply or use, of 'financial services' within the meaning of that term as defined in Part 2 of the ASIC Act; and
 - (ii) constituted conduct in relation to 'financial services' within the meaning of that term as defined in Part 2 of the ASIC Act.
38. By reason of the matters pleaded in paragraphs 32 to 37 above:
- (a) in contravention of section 12DB(1)(e) of the ASIC Act, BPS made a false or misleading representation with respect to the performance characteristics, uses or benefits of the Qoin Facility; and
 - (b) further or alternatively, in contravention of section 12DA(1) of the ASIC Act, BPS engaged in conduct in relation to the Qoin Facility that is misleading or deceptive, or likely to mislead or deceive.

D.2 Representations as to growth in Qoin Merchant numbers

39. In the course of carrying on its business:
- (a) BPS published the following statement on page 6 of the Qoin White Paper from on or around 30 January 2020 to at least 24 October 2022:

“[Qoin] is backed by real goods & services in a growing merchant ecosystem designed to give it intrinsic value.”

- (b) BPS published the following statement on the Qoin Website at <https://qoin.world/consumer/> from around 26 May 2020 to at least 24 October 2022 except that, from around 20 September 2020, the words “*around Australia*” were deleted:

“Your Qoin can be used to purchase everyday goods and services with thousands of participating merchants around Australia and that number is growing”

- (c) BPS published the following statements on the Qoin Website at <https://qoin.world/trader/> from around 28 May 2020 to at least 24 October 2022, except that from around 28 May 2020 to around 23 November 2020 the words “*hundreds of merchants*” were used instead of “*thousands of merchants*”:

“The basis of the potential Qoin value increase is the growing number of Qoin merchants. With zero costs to merchants and a growing customer base, thousands of merchants are joining the Qoin community every month”

- (d) BPS published the following statements on the Qoin Website at <https://qoin.world/about/> from around 4 August 2021 to at least 24 October 2022:

“The more businesses that join the Qoin community, the more everyone benefits, providing a vital boost to local economies. Qoin is represented by the goods and services of participating businesses within the ecosystem. With the number of validated merchants in Qoin growing regularly, the result is an ecosystem where digital currency works more favourably for business owners and creates a digital currency tailor-made to sustain cashflow and make the most of their downtime.”

40. By the statements described in paragraph 39 above, BPS has at all times since around 30 January 2020 to at least 24 October 2022 represented in the Qoin

White Paper and on the Qoin Website that Qoin Tokens can be used to purchase goods and services from an increasing number of Qoin Merchants.

41. In truth and in fact:

(a) the monthly change in the number of Qoin Merchants registered with BPS in the five calendar months prior to October 2021 was:

May 2021	1,032
June 2021	729
July 2021	427
August 2021	170
September 2021	-49

(b) the highest number of Qoin Merchants registered with BPS at any one time was 38,895 on 8 October 2021; and

(c) from 8 October 2021 to 24 October 2022, the number of Qoin Merchants registered with BPS declined from 38,895 to 37,918.

42. The statements pleaded in paragraph 39 above:

(a) were made in trade or commerce; and

(b) further, and in the premises pleaded in paragraphs 5 to 24 above:

(i) were made in connection with the supply or possible supply, or the promotion of the supply or use, of 'financial services' within the meaning of that term as defined in Part 2 of the ASIC Act; and

(ii) constituted conduct in relation to 'financial services' within the meaning of that term as defined in Part 2 of the ASIC Act.

43. By reason of the matters pleaded in paragraphs 39 to 42 above, on and from 8 October 2021 to at least 24 October 2022:

(a) in contravention of section 12DB(1)(e) of the ASIC Act, BPS made a false or misleading representation with respect to the uses or benefits of the Qoin Facility; and

- (b) further or alternatively, in contravention of section 12DA(1) of the ASIC Act, BPS engaged in conduct in relation to the Qoin Facility that is misleading or deceptive, or likely to mislead or deceive.

D.3 Representations as to regulation, registration and approval

44. In the course of carrying on its business:

- (a) BPS published the following statement on page 15 of the Qoin White Paper from on or around 30 January 2020 to at least 24 October 2022:

“The Australian Qoin Wallet is a regulated non cash payments product approved as Authorised Representative number 1279598 [of] Australian Financial Services Licence (AFSL) number [494176 or 408735]”

- (b) BPS published the following statement on the Qoin Website at:

- (i) <https://qoin.world/regulatory-environment-risks/> from around 4 June 2020 to around 23 November 2020; and
- (ii) <https://qoin.world/introducing-qoin/regulatory-environment-risks/> from around 19 January 2021 to at least 24 October 2022:

“The Australian Qoin Wallet is a regulated non cash payments product approved as Authorised Representative number 1279598 of Australian Financial Services Licence (AFSL) number [494176 or 408735]”

- (c) BPS published the following statement on the Qoin Website at <https://qoin.world/> from around 11 January 2021 to around 1 March 2022:

“The Qoin Wallet is an Australian regulated product, registered under BPS Financial Limited ABN 99 604 899 381 as authorised representative No.1279598 of PNI Financial Services Pty Ltd ABN 74 151 551 076 AFSL 408735.”

- (d) BPS published the following statement on the Qoin Website at <https://qoin.world/> on or around 10 March 2022:

“The Qoin Payment System in the wallet is an Australian regulated product, registered under BPS Financial Limited ABN 99 604 899 381 as authorised representative No.1279598 of PNI Financial Services Pty Ltd ABN 74 151 551 076 AFSL 408735”

- (e) BPS published the following statement on the Qoin Website at <https://qoin.world/> from around 17 March 2022 to at least 24 October 2022:

“The Qoin Payment System in the wallet is an Australian regulated product, registered under BPS Financial Limited ABN 99 604 899 381 as authorised representative No.1279598 of Billzy Pty Ltd ABN 26 602 796 298 AFSL 494176.”

45. By the statements described in paragraph 44 above, BPS has at all times since around 30 January 2020 to at least 24 October 2022 represented that the Qoin Facility and/or the Qoin Wallet:
- (a) is a product that is regulated in Australia;
 - (b) is a product that is registered in Australia; and/or
 - (c) is a product that is approved in Australia.
46. In truth and in fact, neither the Qoin Facility nor the Qoin Wallet are, and were not at any time:
- (a) products regulated in Australia;
 - (b) products registered in Australia; or
 - (c) products approved in Australia.
47. The statements pleaded in paragraph 44 above:
- (a) were made in trade or commerce; and
 - (b) further, and in the premises pleaded in paragraphs 5 to 24 above:
 - (i) were made in connection with the supply or possible supply, or the promotion of the supply or use, of ‘financial services’ within the meaning of that term as defined in Part 2 of the ASIC Act; and

- (ii) constituted conduct in relation to ‘financial services’ within the meaning of that term as defined in Part 2 of the ASIC Act.

48. By reason of the matters pleaded in paragraphs 44 to 47 above:

- (a) in contravention of section 12DB(1)(a) of the ASIC Act, BPS made a false or misleading representation with respect to the particular standard, quality, value or grade of the Qoin Facility; and
- (b) further or alternatively, in contravention of section 12DB(1)(e) of the ASIC Act, BPS made a false or misleading representation with respect to the approval or benefits of the Qoin Facility; and
- (c) further or alternatively, in contravention of section 12DA(1) of the ASIC Act, BPS engaged in conduct in relation to the Qoin Facility that is misleading or deceptive, or likely to mislead or deceive.

D.4 Representations as to compliance

49. In the course of carrying on its business:

- (a) BPS published the following statements on the Qoin Website at <https://qoin.world/legal/> from around 13 August 2021 to at least 24 October 2022

“Qoin is fully compliant with Australian financial services laws

...

Pursuant to expert legal advice Qoin is fully compliant with Australian financial services laws and is not a fraudulent business or scheme.

...

Be assured Qoin is fully compliant with Australian financial service laws ...”

- (b) BPS published the following statements on the Qoin Website at <https://qoin.world/frequently-asked-questions/> from around 12 August 2021 to at least 24 October 2022:

“Qoin is fully compliant with Australian financial services laws

...

Pursuant to expert legal advice Qoin is fully compliant with Australian financial services laws and is not a fraudulent business or scheme.”

50. By the statements described in paragraph 49 above, BPS has at all times since at least around 12 August 2021 to at least 24 October 2022 represented that:
- (a) the Qoin Facility; and/or
 - (b) BPS,
- are fully compliant with Australian financial service laws.
51. In truth and in fact:
- (a) BPS has, at all times since at least around 12 August 2021 to at least 24 October 2022, been issuing the Qoin Facility and providing financial product advice in relation to the Qoin Facility in contravention of section 911A of the Corporations Act;

Particulars

ASIC refers to the matters pleaded in paragraphs 25 to 31 above.

- (b) BPS has, at all times since at least around 12 August 2021 to at least 24 October 2022, made representations in connection with the Qoin Facility that are misleading or deceptive, likely to mislead or deceive, or are false or misleading in contravention of section 12DB and further or alternatively section 12DA of the ASIC Act.

Particulars

ASIC refers to the matters pleaded in paragraphs 32 to 48 above.

52. The statements pleaded in paragraph 49 above:
- (a) were made in trade or commerce; and
 - (b) further, and in the premises pleaded in paragraphs 5 to 24 above:

- (i) were made in connection with the supply or possible supply, or the promotion of the supply or use, of 'financial services' within the meaning of that term as defined in Part 2 of the ASIC Act; and
- (ii) constituted conduct in relation to 'financial services' within the meaning of that term as defined in Part 2 of the ASIC Act.

53. By reason of the matters pleaded in paragraphs 49 to 52 above:

- (a) in contravention of section 12DB(1)(a) of the ASIC Act, BPS made a false or misleading representation with respect to the particular standard, quality, value or grade of the Qoin Facility; and
- (b) further or alternatively, in contravention of section 12DA(1) of the ASIC Act, BPS engaged in conduct in relation to the Qoin Facility that is misleading or deceptive, or likely to mislead or deceive.

E. RELIEF SOUGHT

54. ASIC seeks the relief identified in the Originating Process.

Date: 9 December 2022



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Signed by Savas Miriklis

Lawyer for the Plaintiff

This Statement of Claim was prepared by Robert Strong, Claire Schneider and Salwa Marsh of counsel.

Certificate of lawyer

I, Savas Miriklis, certify to the Court that, in relation to the Statement of Claim filed on behalf of the Plaintiff, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 9 December 2022



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Signed by Savas Miriklis
Lawyer for the Plaintiff