

NOTICE OF FILING AND HEARING

Filing and Hearing Details

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File Number: NSD843/2022
File Title: AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v
LATITUDE FINANCE AUSTRALIA ACN 008 583 588 & ANOR
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



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 2 **Amended Originating process**

(rules 2.2 and 15A.3)

No. **NSD843** of 2022

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

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

**LATITUDE FINANCE AUSTRALIA (ACN 008 583 588) and Another
(named in the attached schedule)**

Defendants

[Amended pursuant to the order of the Honourable Justice Yates dated 30 June 2023.](#)

This is an application for:

- (a) declaratory relief pursuant to s 21 of the *Federal Court of Australia Act 1976* (Cth) (the **FC Act**) and s 12GBA(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) (the **ASIC Act**);
- (b) injunctive relief pursuant to s 23 of the FC Act and s 12GD(1) of the ASIC Act;
- (c) orders for pecuniary penalties pursuant to s 12GBB of the ASIC Act;
- (d) punitive orders requiring adverse publicity pursuant to s 12GLB(1) of the ASIC Act, or in the alternative non-punitive orders requiring adverse publicity pursuant to s 12GLA(1) and (2)(d) of the ASIC Act;
- (e) costs under s 43 of the FC Act; and
- (f) such other orders as the Court thinks fit,

Filed on behalf of (name & role of party)

Australian Securities and Investments Commission, Plaintiff

Prepared by (name of person/lawyer)

Cynthia Di Blasio

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Address for service

(include state and postcode)

Australian Securities and Investments Commission
Level 5, 100 Market Street Sydney New South Wales 2000



in respect of the Defendants' promotion of interest free payment methods for purchasing goods from Franchisees, in contravention of ss 12DA(1), 12DB(1)(a), 12DB(1)(g), 12DB(1)(i) and/or 12DF(1) of the ASIC Act.

The Court's jurisdiction to hear the present case and to grant the relief sought is found in s 19 of the FC Act, s 12GJ(1) of the ASIC Act and s 39B(1A)(c) of the *Judiciary Act 1903* (Cth).

A. DETAILS OF APPLICATION

Terms used in this Amended Originating Process, which are defined in the accompanying Amended Concise Statement, have the same meaning here as they are given there.

On the grounds stated in the accompanying Amended Concise Statement, the Plaintiff claims:

Declarations

1. A declaration pursuant to s 21 of the FC Act and s 12GBA(1) of the ASIC Act that, from 1 January 2020 to 11 August 2021, the Defendants, together or in a manner in which each was involved, advertised in newspapers and on radio and television, that a payment method was available for purchasing Harvey Norman Goods that comprised 60 equal monthly repayments on no deposit and interest free terms, when in fact an essential precondition for acquiring goods pursuant to the advertised payment method was that the consumer have or apply for and be approved for ~~obtain~~ an eligible credit card issued by the First Defendant and then purchase the goods using that credit card or the account linked to it, and thereby on each occasion:
 - (a) in trade and commerce, and in relation to financial services (namely, a credit facility or dealing in a credit facility), engaged in conduct which:
 - (i) was misleading or deceptive or likely to mislead or deceive, in contravention of s 12DA(1); and/or
 - (ii) was liable to mislead the public as to the nature and/or the characteristics of financial services, in contravention of s 12DF(1) of the ASIC Act; and/or
 - (b) in trade and commerce, in connection with the supply or possible supply of financial services (namely, a credit facility or dealing in a credit facility), or in connection with the promotion by any means of the supply or use of financial services (namely, a credit facility or dealing in a credit facility), made a false or misleading representation:
 - (i) that services were of a particular standard, quality, value or grade, in contravention of s 12DB(1)(a) of the ASIC Act; and/or



- (ii) concerning the existence, exclusion or effect of any condition, ~~warranty,~~ guarantee, right or remedy, in contravention of s 12DB(1)(i) of the ASIC Act.
2. A declaration pursuant to s 21 of the FC Act and s 12GBA(1) of the ASIC Act, that from 1 January 2020 to 11 August 2021, the Defendants, together or in a manner in which each was involved, advertised in newspapers and on the radio and television, that a payment method was available for purchasing Harvey Norman Goods that comprised 60 equal monthly repayments on no deposit and interest free terms, when in fact a consumer would also be required to pay a monthly account service fee each month for the 60 months and (during the period 1 January 2020 to 15 March 2021) an establishment fee, and thereby on each occasion:
- (a) in trade and commerce, and in relation to financial services (namely, a credit facility or dealing in a credit facility), engaged in conduct which was misleading or deceptive or likely to mislead or deceive, in contravention of s 12DA(1); and/or
 - (b) in trade and commerce, in connection with the supply or possible supply of financial services (namely, a credit facility or dealing in a credit facility), or in connection with the promotion by any means of the supply or use of financial services (namely, a credit facility or dealing in a credit facility), made a false or misleading representation:
 - (i) that services were of a particular standard, quality, value or grade, in contravention of s 12DB(1)(a) of the ASIC Act; and/or
 - (ii) with respect to the price of services, in contravention of s 12DB(1)(g) of the ASIC Act; and/or
 - (iii) concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy, in contravention of s 12DB(1)(i) of the ASIC Act.

Injunction

3. An injunction pursuant to s 23 of the FC Act and/or s 12GD(1) of the ASIC Act restraining the Defendants and their agents separately or together from advertising that a payment method is available for purchasing Harvey Norman Goods that comprises periodic repayments over a specified term on no deposit and interest free terms, without expressly and prominently disclosing that:
- (a) the consumers must have or apply for and be approved for ~~obtain~~ an eligible credit card issued by the First Defendant and then purchase the goods using that credit card or the account linked to it where ~~use of~~ having that credit card is an essential



precondition to the arrangement; and

- (b) the consumers will be charged and incur, in addition to the retail price of the Harvey Norman Goods, monthly account service fees for the agreed term (of a stipulated amount) and an establishment fee (of a stipulated amount, if applicable).

Pecuniary penalty orders

- 4. An order pursuant to s 12GBB of the ASIC Act that, within 30 days of the date of these orders, the First Defendant pay such pecuniary penalties to the Commonwealth of Australia as the Court considers to be appropriate in respect of the First Defendant's conduct declared to be in contravention of ss 12DB(1)(a), 12DB(1)(g), 12DB(1)(i) and/or 12DF(1) of the ASIC Act.
- 5. An order pursuant to s 12GBB of the ASIC Act that, within 30 days of the date of these orders, the Second Defendant pay such pecuniary penalties to the Commonwealth of Australia as the Court considers to be appropriate in respect of the Second Defendant's conduct declared to be in contravention of ss 12DB(1)(a), 12DB(1)(g), 12DB(1)(i) and/or 12DF(1) of the ASIC Act.

Punitive order

- 6. An order pursuant to s 12GLB(1)(a) of the ASIC Act that, commencing within 30 days of the date of these orders, the Defendants take all reasonable steps to cause to be jointly published, at their own expense, three times per week for two consecutive weeks, a notice stating that they have been ordered to pay pecuniary penalties because they:
 - (a) made false and/or misleading representations in contravention of ss s12DB(1)(a), 12DB(1)(g) and/or 12DB(1)(i) of the ASIC Act; and/or
 - (b) engaged in conduct liable to mislead the public in contravention of s 12DF(1) of the ASIC Act,

in a manner and form to be approved by the Court.

Non-punitive order

- 7. In the alternative to paragraph 6 above, an order pursuant to ss 12GLA(1) and (2)(d) of the ASIC Act that, commencing within 30 days of the date of these orders, the Defendants take all reasonable steps to cause to be jointly published, at their expense, three times per week for two consecutive weeks, an advertisement on such terms and in a manner and form approved by the Court.



Other

8. An order that the Defendants pay the Plaintiff's costs of and incidental to the proceeding.
9. Such further and other orders as the Court considers appropriate.

Date: ~~4 October 2022~~ 3 July 2023

A handwritten signature in black ink, appearing to read "Cynthia Di Blasio".

Cynthia Di Blasio
Plaintiff's legal practitioner

This Amended Originating Process was prepared by Naomi Sharp SC Emrys Nekvapil and Alison Hammond of Counsel and Cynthia Di Blasio, Lawyer.

This application will be heard by the Federal Court of Australia, Level 17, Law Courts Building,
184 Phillip Street, Queens Square, Sydney at am/pm

on



B. NOTICE TO DEFENDANTS

TO:

First Defendant – **LATITUDE FINANCE AUSTRALIA (ACN 008 583 588)**
800 Collins Street
DOCKLANDS VIC 3008

Second Defendant – **HARVEY NORMAN HOLDINGS LIMITED (ACN 003 237 545)**
A1 Richmond Rd
HOMEBUSH WEST NSW 2140

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

Note Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.



C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY

N/A

D. FILING

Date of filing:

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Registrar

This originating process is filed by Cynthia Di Blasio for the Plaintiff.

E. SERVICE

The Plaintiff's address for service is:

Place: Australian Securities and Investments Commission
Level 5, 100 Market Street
SYDNEY NSW 2000

Email: cynthia.diblasio@asic.gov.au

It is intended to serve a copy of this originating process on each Defendant.



SCHEDULE OF PARTIES

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

LATITUDE FINANCE AUSTRALIA (ACN 008 583 588)

First Defendant

HARVEY NORMAN HOLDINGS LIMITED (ACN 003 237 545)

Second Defendant