

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 27/02/2023 4:43:13 PM AEDT
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File Number: VID117/2023
File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v
MERCER SUPERANNUATION (AUSTRALIA) LIMITED ACN 004 717 533
Registry: VICTORIA 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.



ORIGINATING PROCESS

Federal Court of Australia
District Registry: Victoria
Division: Corporations

VID: of 2023

IN THE MATTER OF MERCER SUPERANNUATION (AUSTRALIA) LIMITED

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

MERCER SUPERANNUATION (AUSTRALIA) LIMITED (ACN 004 717 533)

Defendant

A DETAILS OF APPLICATION

This application is made pursuant to s 12DB(1)(a), s 12DF(1), s 12GBA(1), s 12GBB(1), s 12GD(1) and s 12GLB(1) of the *Australian Securities and Investments Commissions Act 2001* (Cth) (**ASIC Act**) and s 21 of the *Federal Court of Australia Act 1976* (Cth) (**Federal Court Act**).

The Plaintiff (**ASIC**) seeks declarations, pecuniary penalties, adverse publicity orders and an injunction against the Defendant (**Mercer**) in respect of false or misleading representations and/or conduct liable to mislead the public in relation to representations made by Mercer regarding its sustainable superannuation investment options during the period 12 November 2021 to at least 27 February 2023.

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

(a) Declarations

1. A declaration pursuant to s 12GBA(1) of the ASIC Act and/or s 21 of the Federal Court Act that, from at least 23 January 2022 to at least 18 November 2022, Mercer contravened s 12DB(1)(a) of the ASIC Act by making false or misleading representations on its website that funds invested in Mercer's "Sustainable Plus" investment options (**SPIOs**) were not invested in companies involved in, or deriving profit from, the production or sale of alcohol, gambling or the extraction or sale of carbon intensive fossil fuels.

Filed on behalf of (name & role of party)	The Plaintiff, the Australian Securities and Investments Commission		
Prepared by (name of person/lawyer)	Stephen Johnson, Litigation Counsel		
Law firm (if applicable)			
Tel	(02) 9911 2000	Fax	1300 729 000
Email	stephen.johnson@asic.gov.au		
Address for service	Level 5, 100 Market Street, Sydney NSW 2000		
(include state and postcode)			



2. A declaration pursuant to s 12GBA(1) of the ASIC Act and/or s 21 of the Federal Court Act that, from at least 23 January 2022 to at least 18 November 2022, Mercer contravened s 12DF(1) of the ASIC Act by making false or misleading representations on its website that funds invested in Mercer's SPIOs were involved in, or deriving profit from, the production or sale of alcohol, gambling or the extraction or sale of carbon intensive fossil fuels.
3. A declaration pursuant to s 12GBA(1) of the ASIC Act and/or s 21 of the Federal Court Act that, at various times during the period from 12 November 2021 to at least 27 February 2023, Mercer contravened s 12DB(1)(a) of the ASIC Act by making misleading representations on its website that funds invested in Mercer's SPIOs would not, in future, be invested in companies involved in, or deriving profit from, the production or sale of alcohol, gambling or the extraction or sale of carbon intensive fossil fuels.
4. A declaration pursuant to s 12GBA(1) of the ASIC Act and/or s 21 of the Federal Court Act that, at various times during the period from 12 November 2021 to at least 27 February 2023, Mercer contravened s 12DF(1) of the ASIC Act by making misleading representations on its website that funds invested in Mercer's SPIOs would not, in future, be invested in companies involved in, or deriving profit from, the production or sale of alcohol, gambling or the extraction or sale of carbon intensive fossil fuels.

(b) Pecuniary Penalties

5. Orders pursuant to s 12GBB(1) of the ASIC Act that Mercer pay pecuniary penalties in respect of its contraventions of s 12DB(1)(a) and/or s 12DF(1) of the ASIC Act.

(c) Adverse Publicity Orders

6. Adverse publicity orders pursuant to s 12GLB(1) of the ASIC Act, requiring Mercer to:
 - (a) disclose the contraventions alleged in this proceeding, and the circumstances giving rise to those contraventions; and
 - (b) publish by form, means and channels to be determined by the Court, at its own expense, those disclosures.

(d) Injunction

7. An injunction pursuant to s 12GD(1) of the ASIC Act, restraining Mercer from continuing to engage in false or misleading conduct.

(e) Other Orders

8. Costs.
9. Such further or other orders as the Court deems fit.

Date: 27 February 2023



A handwritten signature in blue ink, appearing to be 'S. Johnson', positioned below the seal.

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Stephen Johnson, Litigation Counsel

Australian Securities and Investments Commission

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

B NOTICE TO DEFENDANTS

TO: Mercer Superannuation (Australia) Limited

Collins Square, Level 15, 727 Collins Street, Docklands VIC 3008

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.

<p><i>Note:</i> 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.</p>
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D FILING

Date of filing: 27 February 2023

Registrar

This originating process is filed by Stephen Johnson, Litigation Counsel, ASIC, for the Plaintiff.



E SERVICE

The Plaintiff's address for service is:

Australian Securities and Investments Commission

Attention: Stephen Johnson

Level 7, 120 Collins Street, Melbourne VIC 3000

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