

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 25/07/2022 2:46:37 PM AEST 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:	NSD559/2022
File Title:	SECRETARY, DEPARTMENT OF HEALTH v VAPOR KINGS PTY LTD (ACN 615 112 877) & 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



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

Dated: 25/07/2022 3:52:07 PM AEST

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 2022

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

### Secretary, Department of Health

Applicant

### Vapor Kings Pty Ltd (ACN 615 112 877) and another named in the schedule

Respondents

To the Respondents

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:** Federal Court of Australia, Level 17, Law Courts Building, 184 Phillip St, Queens Square, Sydney, NSW 2000

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)	Secretary, Department of Health (Applicant)
Prepared by (name of person/lawyer)	Michael Sullivan, Norton Rose Fulbright Australia
Law firm (if applicable)	Norton Rose Fulbright Australia (Attn: Michael Sullivan & Brendon Green)
Tel	02 9330 8483
Fax	
Email	michael.sullivan@nortonrosefulbright.com & brendon.green@nortonrosefulbright.com
<b>Address for service</b> (include state and postcode)	Norton Rose Fulbright Australia (Attn: Michael Sullivan & Brendon Green) Level 5, 60 Martin Place, Sydney, NSW, Australia



## Details of claim

On the grounds stated in the Concise Statement, the Applicant claims:

### Declarations

1. Declarations under s 21 of the *Federal Court of Australia Act 1976* (Cth) that, at various points in time from at least 24 November 2021 to 15 June 2022, or as otherwise specified:

#### *Advertising goods not included in the Australian Register of Therapeutic Goods*

- 1.1. the First Respondent, by advertising or causing the advertising of nicotine vaping products (**NVP**) on its websites located at Uniform Resource Locator (**URL**) <https://vaporkings.com.au/> (**AU Website**), in circumstances where s 42DLB(9) of the *Therapeutic Goods Act 1989* (Cth) (**TG Act**) applied because:
  - 1.1.1. the advertisements referred to NVP that are, and were during the period the subject of this declaration:
    - A. “therapeutic goods” within the meaning of s 3(1) of the TG Act;
    - B. not entered in the Australian Register of Therapeutic Goods maintained by the Applicant under s 9A of the TG Act (the **Register**); and
    - C. prescribed by r 7(i) of the *Therapeutic Goods Regulations 1990* (Cth) (**TG Regulations**), being therapeutic goods not the subject of an exemption, approval or authority under the TG Act nor an exemption, approval or authority under regulations under the TG Act; and
  - 1.1.2. those references are not and were not authorised or required by a government or government authority (including a foreign government or foreign government authority),in respect of each advertisement, contravened s 42DLB(1) of the TG Act;
- 1.2. the Second Respondent, by advertising and/or causing the First Respondent to advertise NVP on the AU Website and on the website located at URL <https://vaporkings.co.uk/> (**UK Website**), in the circumstances outlined in paragraph 1.1 above, contravened s 42DLB(1) of the TG Act;
- 1.3. in the alternative to paragraph 1.2 above, the Second Respondent aided, abetted, counselled or procured the First Respondent’s contraventions of s 42DLB(1) of the TG Act referred to in paragraph 1.1 above and was therefore involved in those contraventions for the purposes of s 42YC of the TG Act;





- 1.4. further, the Second Respondent, by failing to take all reasonable steps to prevent the First Respondent's contraventions of the TG Act described in paragraph 1.1 above, in circumstances where he knew that the contraventions would occur and was in a position to influence the conduct of the First Respondent in relation to such contraventions, contravened s 54B(3) of the TG Act;

*Advertising referring to substances included in Schedule 4 to the Poisons Standard*

- 1.5. the First Respondent, by advertising or causing the advertising of NVP on the AU Website in circumstances where s 42DLB(7) of the TG Act applied because:
- 1.5.1. the advertisements contained references to a substance, being nicotine, or goods containing the substance nicotine, which is and was during the period the subject of this declaration, included in Schedule 4 to the current Poisons Standard (as defined in the TG Act) but not in Appendix H of the current Poisons Standard; and
- 1.5.2. those references are not and were not authorised or required by a government or government authority (not including a foreign government or foreign government authority),
- in respect of each advertisement, contravened s 42DLB(1) of the TG Act;
- 1.6. the Second Respondent, by advertising and/or causing the First Respondent to advertise NVP on the AU Website and the UK Website, in the circumstances outlined in paragraph 1.5 above, contravened s 42DLB(1) of the TG Act;
- 1.7. in the alternative to paragraph 1.6 above, the Second Respondent aided, abetted, counselled or procured the First Respondent's contraventions of s 42DLB(1) of the TG Act referred to in paragraph 1.5 above and was therefore involved in those contraventions for the purposes of s 42YC of the TG Act; and
- 1.8. further, the Second Respondent, by failing to take all reasonable steps to prevent the First Respondent's contraventions of the TG Act described in paragraph 1.5 above, in circumstances where he knew that the contraventions would occur and was in a position to influence the conduct of the First Respondent in relation to such contraventions, contravened s 54B(3) of the TG Act.

**Injunctions**

2. Pursuant to s 42YN of the TG Act, the First Respondent be restrained, for a period of ten years from the date of this order, whether by itself, its servants or agents, from advertising or causing to be advertised therapeutic goods if such advertisements refer to:



- 2.1. therapeutic goods which are not entered in the Register, and are prescribed by r 7(i) of the TG Regulations; and/or
  - 2.2. substances, or goods containing substances, included in Schedule 4 to the current Poisons Standard as in force at the relevant time,  
unless s 42AA, s 42AB or s 42AC of the TG Act applies.
3. Pursuant to s 42YN of the TG Act, the Second Respondent be restrained, for a period of ten years from the date of this order, whether by himself, or by his servants or agents, from advertising or causing to be advertised therapeutic goods if such advertisements refer to:
- 3.1. therapeutic goods which are not entered in the Register, and are prescribed by r 7(i) of the TG Regulations; and/or
  - 3.2. substances, or goods containing substances, included in Schedule 4 to the current Poisons Standard as in force at the relevant time,  
unless s 42AA, s 42AB or s 42AC of the TG Act applies.

#### **Pecuniary penalties**

4. Orders pursuant to s 42Y of the TG Act that each of the Respondents pay to the Commonwealth of Australia such pecuniary penalties as the Court determines appropriate in respect of their respective contraventions of the TG Act referred to in paragraph 1 above.

#### **Other orders**

5. An order that the Respondents pay the Applicant's costs of and incidental to these proceedings.
6. Such further order or orders as the Court sees fit.

#### **Applicant's address**

The Applicant's address for service is:

Place: Norton Rose Fulbright Australia (attention: Michael Sullivan and Brendon Green),  
Level 5, 60 Martin Place, Sydney, Australia.

Email: [Michael.sullivan@nortonrosefulbright.com](mailto:Michael.sullivan@nortonrosefulbright.com) &  
[Brendon.green@nortonrosefulbright.com](mailto:Brendon.green@nortonrosefulbright.com)

The Applicant's address is 27 Scherger Drive, Fairbairn ACT 2609.



**Service on the Respondent**

It is intended to serve this application on all Respondents.

Date: 25 July 2022

A handwritten signature in blue ink, which appears to read "Michael Sullivan".

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Signed by Michael Sullivan  
Lawyer for the Applicant

**Schedule**

No.

of 2022

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

**Respondents**

First Respondent: Vapor Kings Pty Ltd (ACN 615 112 877)  
Second Respondent: Mr Amir Kandakji

Date: 25 July 2022