

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 9/06/2022 2:39:40 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: NSD439/2022
File Title: SECRETARY OF THE DEPARTMENT OF HEALTH v PREFIXX PTY LTD (ACN 639 094 698) & 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: 10/06/2022 11:10:30 AM 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 OF THE DEPARTMENT OF HEALTH

Applicant

PREFIXX PTY LTD (ACN 639 094 698) 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, 184 Phillip Street, Sydney NSW 2000

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)	Andrew Korbel
Law firm (if applicable)	Corrs Chambers Westgarth
Tel (02) 9210 6537	Fax (02) 9210 6611
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Address for service (include state and postcode)	Level 9, 8 Chifley, 8-12 Chifley Square, Sydney NSW 2000



Details of claim

On the grounds stated in the concise statement, the Applicant claims:

1. Declarations under s 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**) that, from and on each day between 1 October 2021 to 24 December 2021, 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://www.hqdtechaus.com>, <https://hqdtechaustralia.com> and <https://igetaustralia.com.au> and on the social media account at URL https://www.instagram.com/hqd_tech_aus/ (the **Websites**), 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:

- 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. 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 within the meaning of r 7(i) of the *Therapeutic Goods Regulations 1990* (Cth) (**TG Regulations**); and

- 1.1.2. those references 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;

- 1.2. the Second Respondent, by causing the First Respondent to advertise each of the NVP on the Websites, in the circumstances outlined in paragraphs 1.1.1 to 1.1.2 above, contravened s 42DLB(1) of the TG Act;
- 1.3. in the alternative to the declaration sought in 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 the declaration sought in paragraph 1.1 above and was therefore involved in those contraventions for the purposes of s 42YC of the TG Act;



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

- 1.4. the First Respondent, by advertising or causing the advertising of NVP on the Websites in circumstances where s 42DLB(7) of the TG Act applied because:
 - 1.4.1. the advertisements contained references to substances, or goods containing substances, which are and were during the period the subject of this declaration, included in Schedule 4 to the Poisons Standard but not in Appendix H of the Poisons Standard; and
 - 1.4.2. those references 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;
- 1.5. the Second Respondent, by causing the First Respondent to advertise each of the NVP on the Websites, in the circumstances outlined in paragraph 1.4 above, contravened s 42DLB(1) of the TG Act; and
- 1.6. in the alternative to the declaration sought in paragraph 1.5 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 the declaration sought in paragraph 1.4 above and was therefore involved in those contraventions for the purposes of s 42YC of the TG Act.

2. Orders pursuant to s 42Y of the TG Act that each of the Respondents pay to the Commonwealth of Australia such pecuniary penalty as the Court determines appropriate in respect of the contraventions of s 42DLB(1) of the TG Act referred to in the declarations sought in paragraph 1 above.
3. An order that the Respondents pay the Applicant's costs of and incidental to these proceedings.
4. Such further order or orders as the Court sees fit.

Applicant's address

The Applicant's address for service is:

Place: Level 9, 8 Chifley, 8-12 Chifley Square, Sydney NSW 2000 |

Email: andrew.korbel@corrs.com.au

The Applicant's address is Sirius Building, 23 Furzer Street, Phillip ACT 2606.

**Service on the Respondent**

It is intended to serve this application on all Respondents.

Date: 9 June 2022

A handwritten signature in black ink, appearing to read "Andrew Korbel".

Signed by Andrew Korbel
Lawyer for the Applicant

**Schedule**

No. of 2022

Federal Court of Australia

District Registry: New South Wales

Division: General

Respondents

Second Respondent: Brad Anthonisz

Date: 9 June 2022