

## NOTICE OF FILING AND HEARING

### Filing and Hearing Details

Document Lodged: Originating Application - Form 15 - Rule 8.01(1)  
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)  
Date of Lodgment: 1/12/2023 11:30:56 AM AEST  
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File Number: QUD533/2023  
File Title: SECRETARY OF THE DEPARTMENT OF HEALTH AND AGED CARE v  
CDA CLINICS QLD PTY LTD T/A CDA EXPRESS & ANOR  
Registry: QUEENSLAND 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 15  
Rules 8.01(1), 8.04(1)

**ORIGINATING APPLICATION**

**FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: QUEENSLAND  
DIVISION: GENERAL**

**NO QUD OF 2023**

**SECRETARY OF THE DEPARTMENT OF HEALTH AND  
AGED CARE**

Applicant

**CDA CLINICS QLD PTY LTD T/A CDA EXPRESS (ACN  
636 677 471)**

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  
Harry Gibbs Commonwealth Law Courts  
119 North Quay  
Brisbane QLD 4000

Date:

.....  
Signed by an officer acting with  
the authority of the District Registrar

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Filed on behalf of the Applicant, Secretary of Department of  
Health and Aged Care

File ref: 22002942

Prepared by: Jody Marshall  
AGS lawyer within the meaning of s 551 of the *Judiciary Act*  
1903

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Jody.Marshall@ags.gov.au  
Facsimile: 02 6169 3054



## DETAILS OF CLAIM

This application is made under sections 19, 21 and 43 of the *Federal Court of Australia Act 1976* (Cth) (**Federal Court Act**), and section 42Y of the *Therapeutic Goods Act 1989* (Cth) (**Therapeutic Goods Act**).

The Court's jurisdiction to hear the application and grant the relief is found in section 42Y of the *Therapeutic Goods Act*, and sections 19, 21 and 43 of the *Federal Court Act*.

Unless stated otherwise, the terms used in this Originating Application have the same meaning as in the accompanying Concise Statement.

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

### Declarations

#### *Prohibited representations*

1. Declarations under s 21 of the *Federal Court Act* that:

- (a) in relation to each of the advertisements identified in Column B of Items 1 to 14, 16, 17 and 21 of Annexure A to this Originating Application; and
- (b) for each such advertisement, on each day during the period identified in Column C of Annexure A to this Originating Application,

the First Respondent contravened s 42DLB(1) of the *Therapeutic Goods Act* in circumstances where s 42DLB(2) applied by advertising or causing to be advertised:

- (c) the Products identified in Items 1 to 14 of Annexure A to this Originating Application on the website at [www.cdaexpress.com.au](http://www.cdaexpress.com.au) (**Website**); and
- (d) CBD in the blog posts on the Website (**Blog Posts**) identified in Items 16, 17 and 21 of Annexure A to this Originating Application,

in advertisements containing representations regarding the treatment, cure or prevention of:

- (e) cancer (a neoplastic disease);
- (f) gonorrhoea (a sexually transmitted disease);
- (g) depression (a mental illness);
- (h) anxiety (a mental illness);
- (i) post-traumatic stress disorder (a mental illness); and/or
- (j) autism (a mental illness),



being diseases specified under reg 6B(1)(b) of the *Therapeutic Goods Regulations 1990* (Cth) (**TG Regulations**) and s 30 of the *Therapeutic Goods Advertising Code (No 2) 2018* (Cth) (**Advertising Code**), in circumstances where:

- (k) those representations were each prohibited representations within the meaning and for the purposes of s 42DJ(1) of the Therapeutic Goods Act; and
  - (l) no permission under s 42DK(3) of the Therapeutic Goods Act was in force in relation to those representations.
2. Declarations under s 21 of the Federal Court Act that the Second Respondent aided, abetted, counselled or procured the First Respondent's contraventions of s 42DLB(1) of the Therapeutic Goods Act referred to in paragraph 1 above and was therefore involved in those contraventions within the meaning and for the purposes of s 42YC of the Therapeutic Goods Act.

*Restricted representations*

3. Further to paragraph 1 of this application, and in the alternative to that paragraph insofar as it applies to representations regarding the treatment, cure or prevention of autism, declarations under s 21 of the Federal Court Act that:
- (a) in relation to each of the advertisements identified in Column B of Items 1 to 14, 16, 17 and 19 of Annexure A to this Originating Application; and
  - (b) for each such advertisement, on each day during the period identified in Column C of Annexure A to this Originating Application,

the First Respondent contravened s 42DLB(1) of the Therapeutic Goods Act in circumstances where s 42DLB(4) applied by advertising or causing to be advertised:

- (c) the Products identified in Items 1 to 14 of Annexure A to this Originating Application on its Website; and
- (d) CBD in the Blog Posts identified in Items 16, 17 and 19 of Annexure A to this Originating Application,

in advertisements containing representations that referred to:

- (e) fibromyalgia;
- (f) epilepsy;
- (g) autoimmune conditions;
- (h) chronic pain;
- (i) seizures;
- (j) meningitis; and/or



(k) autism, and

which were each a serious form of disease, condition or ailment within the meaning of s 28 of the Advertising Code, in circumstances where:

(l) these representations were each restricted representations within the meaning and for the purposes of s 42DD of the Therapeutic Goods Act; and

(m) there was no approval under s 42DF(1) or permission under s 42DK(1) of the Therapeutic Goods Act in force in relation to those representations.

4. Declarations under s 21 of the Federal Court Act that the Second Respondent aided, abetted, counselled or procured the First Respondent's contraventions of s 42DLB(1) of the Therapeutic Goods Act referred to in paragraph 3 above and was therefore involved in those contraventions within the meaning and for the purposes of s 42YC of the Therapeutic Goods Act.

*Advertising substances or goods containing substances in Schedules 3, 4 or 8 to the Poisons Standard*

5. Declarations under s 21 of the Federal Court Act that:

(a) in relation to each of the advertisements identified in Column B of Items 1 to 22 of Annexure A to this Originating Application; and

(b) for each such advertisement, on each day during the period identified in Column C of Annexure A to this Originating Application,

the First Respondent contravened s 42DLB(1) of the Therapeutic Goods Act in circumstances where s 42DLB(7) applied by advertising or causing to be advertised:

(c) the Products identified in Items 1 to 15 of Annexure A on its Website to this Originating Application;

(d) CBD in the Blog Posts identified in Items 16 to 21 of Annexure A to this Originating Application; and

(e) CBD in posts on the Facebook page identified in Item 22 of Annexure A to this Originating Application (**Facebook Posts Conduct**),

in circumstances where:

(f) those advertisements referred to CBD substances, or goods containing CBD substances, that:

(i) were included in Schedules 3, 4 or 8 to the *Poisons Standard February 2021* and *Poisons Standard June 2021* (as applicable and, together, the **Poisons Standard**); but

(ii) were not included Appendix H of the Poisons Standard; and



- (g) the references described in paragraph 5(f) above were not authorised or required by a government or government authority.

- 6. Declarations under s 21 of the Federal Court Act that the Second Respondent aided, abetted, counselled or procured the First Respondent's contraventions of s 42DLB(1) of the Therapeutic Goods Act referred to in paragraph 5 above, other than the Facebook Posts Conduct, and was therefore involved in those contraventions within the meaning and for the purposes of s 42YC of the Therapeutic Goods Act.

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

- 7. Declarations under s 21 of the Federal Court Act that:
  - (a) in relation to each of the advertisements identified in Column B of Items 1 to 15 of Annexure A to this Originating Application; and
  - (b) for each such advertisement, on each day during the period identified in Column C of Annexure A to this Originating Application,

the First Respondent contravened s 42DLB(1) of the Therapeutic Goods Act in circumstances where s 42DLB(9) applied by advertising or causing to be advertised the Products at Items 1 to 15 listed in Annexure A on its Website in circumstances where:

- (c) those Products were not included in the Australian Register of Therapeutic Goods; and
  - (d) those Products:
    - (i) were the subject of an approval of authority under s 19 of the Therapeutic Goods Act and therefore were therapeutic goods prescribed by reg 7(a) of the TG Regulations; or
    - (ii) alternatively, were neither the subject of an exemption, approval or authority under the Therapeutic Goods Act nor an exemption, approval or authority under the TG Regulations, and therefore were therapeutic goods prescribed by reg 7(i) of the TG Regulations; and
  - (e) the references to those Products contained in the advertisements described in paragraph 7(a) above were not authorised or required by a government or government authority.
- 8. Declarations under s 21 of the Federal Court Act that the Second Respondent aided, abetted, counselled or procured the First Respondent's contraventions of s 42DLB(1) of the Therapeutic Goods Act referred to in paragraph 7 above and was therefore involved in those contraventions within the meaning and for the purposes of s 42YC of the Therapeutic Goods Act.



### **Pecuniary penalties (s 42Y of the Therapeutic Goods Act)**

9. Orders pursuant to s 42Y of the Therapeutic Goods Act that, within 30 days of the date of the order, each of the Respondents pay to the Commonwealth of Australia such pecuniary penalties as the Court determines appropriate in respect of the contraventions of s 42DLB(1) of the Therapeutic Goods Act referred to in paragraphs 1 to 8 above.

### **Other orders**

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

### **APPLICANT'S ADDRESS**

The Applicant's address for service is:

Australian Government Solicitor,  
Level 33, 300 George St, Brisbane, QLD 4000

Email: Jody.Marshall@ags.gov.au

The Australian Government Solicitor's telephone and facsimile numbers are:

Tel: 07 3360 5600

Fax: 02 6169 3054

The Applicant's address is:

Therapeutic Goods Administration

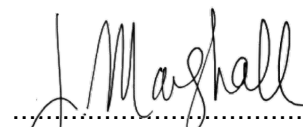
27 Scherger Drive

Canberra Airport ACT 2609

### **SERVICE ON THE RESPONDENTS**

It is intended to serve this application on all Respondents.

Date: 1 December 2023

  
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Jody Maree Marshall  
AGS lawyer  
for and on behalf of the Australian Government Solicitor  
Lawyer for the Applicant



## Schedule of Parties

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: QUEENSLAND  
Division: General

No QUD of 2023

### Respondents

Second Respondent

Benjamin David Ngahuia Jansen



## Annexure A

#	A	B	C
1.	Tilray Purified CBD 100 – 25 ml	<a href="http://www.cdaexpress.com.au/product/tilray-purified-cbd-100-25ml/">www.cdaexpress.com.au/product/tilray-purified-cbd-100-25ml/</a>	27 April 2021 to 30 July 2021
2.	Tilray Purified CBD 25 – 40ml	<a href="http://www.cdaexpress.com.au/product/tilray-purified-cbd-25-40ml/">www.cdaexpress.com.au/product/tilray-purified-cbd-25-40ml/</a>	27 April 2021 to 30 July 2021
3.	MGC Pharma MP100 – 30 ml	<a href="http://www.cdaexpress.com.au/product/mgc-pharma-mp100-30ml/">www.cdaexpress.com.au/product/mgc-pharma-mp100-30ml/</a>	27 April 2021 to 30 July 2021
4.	Medicabilis 100CBD Isolate – 50ml	<a href="http://www.cdaexpress.com.au/product/medicabilis-100-cbd-isolate-50ml/">www.cdaexpress.com.au/product/medicabilis-100-cbd-isolate-50ml/</a>	27 April 2021 to 30 July 2021
5.	Medicabilis 100CBD Isolate – 25 ml	<a href="http://www.cdaexpress.com.au/product/medicabilis-100-cbd-isolate-25ml/">www.cdaexpress.com.au/product/medicabilis-100-cbd-isolate-25ml/</a>	27 April 2021 to 30 July 2021
6.	LittleGreenPharma (LGP) CBD50 Oil or LGP CLASSIC CBD 50 – 50ml	<a href="http://www.cdaexpress.com.au/product/lgp-cbd-50-50ml/">www.cdaexpress.com.au/product/lgp-cbd-50-50ml/</a>	27 April 2021 to 30 July 2021
7.	Isospec RX 3000 (Peppermint) – 30ml	<a href="http://www.cdaexpress.com.au/product/isospec-rx-3000-peppermint/">www.cdaexpress.com.au/product/isospec-rx-3000-peppermint/</a>	27 April 2021 to 30 July 2021
8.	Isospec RX 3000 (Natural) – 30ml	<a href="http://www.cdaexpress.com.au/product/isospec-rx-3000-natural/">www.cdaexpress.com.au/product/isospec-rx-3000-natural/</a>	27 April 2021 to 30 July 2021
9.	CDA CBD 240-Oil – 10ml	<a href="http://www.cdaexpress.com.au/product/cda-cbd-240-oil-10ml/">www.cdaexpress.com.au/product/cda-cbd-240-oil-10ml/</a>	27 April 2021 to 30 July 2021
10.	CDA CBD 33-Capsules – 30 capsules	<a href="http://www.cdaexpress.com.au/product/cda-cbd-33-capsules-30-caps/">www.cdaexpress.com.au/product/cda-cbd-33-capsules-30-caps/</a>	27 April 2021 to 30 July 2021
11.	CDA CBD 30-Oil – 10ml	<a href="http://www.cdaexpress.com.au/product/cda-cbd-30-oil-10ml/">www.cdaexpress.com.au/product/cda-cbd-30-oil-10ml/</a>	27 April 2021 to 30 July 2021
12.	Isospec RX 1000 (Peppermint) – 30ml	<a href="http://www.cdaexpress.com.au/product/isospec-rx-1000-peppermint/">www.cdaexpress.com.au/product/isospec-rx-1000-peppermint/</a>	27 April 2021 to 30 July 2021
13.	Isospec RX 1000 (Natural) – 30ml	<a href="http://www.cdaexpress.com.au/product/isospec-rx-1000-natural/">www.cdaexpress.com.au/product/isospec-rx-1000-natural/</a>	27 April 2021 to 30 July 2021
14.	Tilray Purified CBD 100 – 40ml	<a href="http://www.cdaexpress.com.au/product/tilray-purified-cbd-100-40ml/">www.cdaexpress.com.au/product/tilray-purified-cbd-100-40ml/</a>	27 April 2021 to 31 May 2021
15.	CDA CBD 990-Crystal – 1g	<a href="http://www.cdaexpress.com.au/cda-cbd-990-crystal-1g/">www.cdaexpress.com.au/cda-cbd-990-crystal-1g/</a>	Exact period unknown
16.	Blog Post titled 'The Top 5 Plants Used in Medicine'	<a href="https://www.cdaexpress.com.au/the-top-5-plants-used-in-medicine/">https://www.cdaexpress.com.au/the-top-5-plants-used-in-medicine/</a>	27 April 2021 to 6 July 2021
17.	Blog Post titled 'Is CBD Legal in Australia?'	<a href="https://www.cdaexpress.com.au/is-cbd-legal-in-australia/">https://www.cdaexpress.com.au/is-cbd-legal-in-australia/</a>	27 April 2021 to 6 July 2021
18.	Blog Post titled 'Natural Tips to Help You Sleep'	<a href="https://www.cdaexpress.com.au/natural-tips-to-help-you-sleep/">https://www.cdaexpress.com.au/natural-tips-to-help-you-sleep/</a>	14 June 2021 to 6 July 2021
19.	Blog Post titled 'How to Reduce Inflammation Using Natural Alternatives'	<a href="https://www.cdaexpress.com.au/how-to-reduce-inflammation-using-natural-alternatives/">https://www.cdaexpress.com.au/how-to-reduce-inflammation-using-natural-alternatives/</a>	27 April 2021 to 6 July 2021
20.	Blog Post titled 'Morning	<a href="https://www.cdaexpress.com.au/morning-routine-">https://www.cdaexpress.com.au/morning-routine-</a>	27 April 2021 to



#	A	B	C
	Routine to Enhance Your Wellness'	<a href="#">to-enhance-your-wellness/</a>	6 July 2021
21.	Blog Post titled 'Rebalancing Your Endocannabinoid System'	<a href="https://www.cdaexpress.com.au/rebalancing-your-endocannabinoid-system/">https://www.cdaexpress.com.au/rebalancing-your-endocannabinoid-system/</a>	27 April 2021 to 6 July 2021
22.	CDA Express Facebook Page	<a href="http://www.facebook.com/cdaexpressau/">www.facebook.com/cdaexpressau/</a>	20 April to at least 18 June 2021