

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 4/03/2020 4:21:08 PM AEDT 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:	NSD254/2020
File Title:	SECRETARY, DEPARTMENT OF HEALTH v EVOLUTION SUPPLEMENTS AUSTRALIA PTY LTD & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	First Case Management Hearing
Time and date for hearing:	03/04/2020, 9:30 AM
Place:	Court Room Not Assigned, Level 17, Law Courts Building 184 Phillip Street Queens Square, Sydney



*Sia Lagos*

Dated: 10/03/2020 4:09:00 PM AEDT

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 2020

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

### Secretary, Department of Health

Applicant

### Evolution Supplements Australia Pty Ltd and another

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  
Law Courts Building  
184 Phillip Street  
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)	Joanna Davidson of counsel
Law firm (if applicable)	Norton Rose Fulbright Australia (Attn: Michael Sullivan and 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 and Brendon Green) Level 5, 60 Martin Place, Sydney, NSW, Australia



## Details of claim

On the grounds stated in the Statement of Claim dated 4 March 2020, the Applicant claims:

## Declarations

1. Declarations, pursuant to s 21 of the *Federal Court of Australia Act 1976* (Cth), in the following terms:
  - (a) From 6 March 2019 to 2 March 2020 inclusive, the First Respondent contravened s 42DLB(1) of the *Therapeutic Goods Act 1989* (Cth) (**TG Act**) by advertising therapeutic goods on its website located at Uniform Resource Locator (**URL**) [www.evolutionsupplements.com.au](http://www.evolutionsupplements.com.au) (**Website**) in circumstances where s 42DLB(9) of the TG Act applied to the advertisements, on the basis that the therapeutic goods referred to by the advertisements:
    - (i) are not, and were not during the period the subject of this declaration, entered in the Australian Register of Therapeutic Goods (**Register**); and
    - (ii) are, and were during the period the subject of this declaration, prescribed by r 7(i) of the *Therapeutic Goods Regulations 1990* (Cth) (**TG Regulations**).
  - (b) From 6 March 2019 to 2 March 2020 inclusive, the First Respondent contravened s 42DLB(1) of the TG Act by advertising therapeutic goods on the Website, such advertisements containing 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 current Poisons Standard with the result that s 42DLB(7) of the TG Act applied.
  - (c) From 6 March 2019 to 2 March 2020 inclusive, the Second Respondent contravened s 54B(3) of the TG Act by failing to take all reasonable steps to prevent the First Respondent from contravening s 42DLB(1) of the TG Act in the manner described in paragraphs (a) and (b), in circumstances where the Second Respondent knew that the contraventions would occur and was in a position to influence the conduct of the First Respondent in relation to the contraventions.
  - (d) Between 31 January 2019 and at least 2 March 2020 inclusive, the Second Respondent contravened s 42DX of the TG Act by failing to cause the First Respondent to cease advertising all therapeutic goods not entered on the Register via the Website; and failing to cause the First Respondent to cease the advertising of, and the publication of references to, all substances entered on Schedule 4 to the Poisons Standard on the Website.



### **Injunctions**

2. An order pursuant to s 42YN(1) of the TG Act restraining the First Respondent, for a period of five 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:
  - (a) therapeutic goods which are not entered in the Register, and are prescribed by r 7(i) of the TG Regulations; or
  - (b) substances, or goods containing substances, included in Schedule 4 of 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. An order pursuant to s 42YN(1) of the TG Act restraining the Second Respondent, for a period of five 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:
  - (a) therapeutic goods which are not entered in the Register, and are prescribed by r 7(i) of the TG Regulations; or
  - (b) substances, or goods containing substances, included in Schedule 4 of 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. An order pursuant to s 42Y of the TG Act that the First Respondent 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 paragraphs 1(a) and 1(b) above.
5. An order pursuant to s 42Y of the TG Act that the Second Respondent pay to the Commonwealth of Australia such pecuniary penalty as the Court determines appropriate in respect of the contraventions of s 54B(3) of the TG Act referred to in paragraphs 1(c) and 1(d) above.

### **Other orders**

6. An order that the First Respondent and Second Respondent pay the Applicant's costs of and incidental to these proceedings.
7. Such further order or orders as the Court deems 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 & brendon.green@nortonrosefulbright.com

The Applicant's address is 136 Narrabundah Lane, Symonston ACT 2609.

**Service on the Respondent**

It is intended to serve this application on all Respondents.

Date: 4 March 2020

A handwritten signature in blue ink, appearing to be "P. Sullivan", is written over a horizontal line.

Signed by Michael Sullivan  
Lawyer for the Applicant  
By his employed solicitor Brendon Green

**Schedule to Originating Application**

No. of 20

Federal Court of Australia

District Registry: New South Wales

Division: General

**Respondents**

First Respondent: Evolution Supplements Australia Pty Ltd  
ACN 620 247 878

Second Respondent: Cumhur Keskin

Date: 4 March 2020