

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 25/05/2020 8:52:51 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:	QUD157/2020
File Title:	SECRETARY OF THE DEPARTMENT OF HEALTH v SOUTHERN CROSS DIRECTORIES PTY LTD (ACN 099 765 796) & ANOR
Registry:	QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	Interlocutory Hearing
Time and date for hearing:	03/06/2020, 10:15 AM
Place:	Court No. 1, Level 7, Harry Gibbs Commonwealth Law Courts Building Level 6, 119 North Quay, Brisbane; By Web Conference, Harry Gibbs Commonwealth Law Courts Building Level 6, 119 North Quay, Brisbane



Sia Lagos

Dated: 29/05/2020 4:05:55 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.



Form 15
Rules 8.01(1), 8.04(1)

ORIGINATING APPLICATION

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

NO QUD OF 2020

SECRETARY OF THE DEPARTMENT OF HEALTH

Applicant

**SOUTHERN CROSS DIRECTORIES PTY LTD (ACN 099
765 796)**

First Respondent

CHARLES KAROLY BAKO BARTON

Second Respondent

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

The Court ordered that the time for serving this application be abridged to [insert]

Date:

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

Filed on behalf of the Applicant, Secretary of Department of
Health

File ref: 20203582

Prepared by: Chris Steger
AGS lawyer within the meaning of s 551 of the *Judiciary Act*
1903

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DETAILS OF CLAIM

On the grounds stated in the Affidavit of Christopher Michael Steger affirmed 25 May 2020 the Applicant claims:

1. Declarations under s 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**) that, from 14 August 2019 to 21 May 2020:

Advertising goods not included in the Australian Register of Therapeutic Goods

- 1.1. the First Respondent contravened ss 42DLB of the *Therapeutic Goods Act 1989* (Cth) (**TG Act**) by advertising each therapeutic good listed in Annexure A to this Originating Application (**Products**) on its website at www.mmsaustralia.com.au (**Website**), in circumstances where those Products were not included in the Australian Register of Therapeutic Goods (**Register**) and the Products were prescribed by the regulations for the purpose of sub-s 42DLB(9) of the TG Act;
 - 1.2. the Second Respondent contravened 42DLB of the TG Act by causing the First Respondent to advertise each of the Products on the Website in circumstances where the Products were not included in the Register and the Products were prescribed by the regulations for the purpose of sub-s 42DLB(9) of the TG Act;
 - 1.3. further, or in the alternative to the declaration sought in the preceding subparagraph, the Second Respondent aided, abetted, counselled or procured the First Respondent's contraventions of s 42DLB of the TG Act referred to in declaration 1.1 above and was therefore involved in those contraventions for the purposes of s 42YC of the TG Act.
2. Declarations under s 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**) that, from 14 August 2019 to at least 14 May 2020:

Restricted representations

- 2.1. the First Respondent contravened s 42DLB of the TG Act by advertising therapeutic goods described as MMS on the Website or by causing MMS to be advertised in a manner that contained representations that referred to diseases, conditions, ailments or defects referred to in s 28 of the *Therapeutic Goods Advertising Code (No. 2) 2018* (**TG Code**) including covid-19 and diabetes which representations were restricted representations for the purposes of s42DD of the TG Act in circumstances where the First Respondent did not have the benefit of an approval under s 42DF nor a permission under s 42DK of the TG Act.
- 2.2. the Second Respondent contravened s 42DLB of the TG Act by causing the First Respondent to advertise MMS on the Website in a manner that contained representations that referred to diseases, conditions, ailments or defects referred to in s 28 of the TG Code including covid-19 and diabetes which representations were restricted representations for the purposes of s42DD of the TG Act in relation to which no approval under s 42DF nor permission under s 42DK of the TG Act was in force.



- 2.3. further, or in the alternative to the declaration sought in the preceding subparagraph, the Second Respondent aided, abetted, counselled or procured the First Respondent's contraventions of s 42DLB of the TG Act referred to in declaration 2.1 above and was therefore involved in those contraventions for the purposes of s 42YC of the TG Act.

Prohibited representations

- 2.4. the First Respondent contravened s 42DLB of the TG Act by advertising MMS on the Website or by causing MMS to be advertised in a manner that contained representations that referred to cancer (a neoplastic disease), herpes (a sexually transmitted disease) and HIV/AIDs, diseases specified under s 30 of the TG Code, which representations were prohibited representations for the purposes of s 42DJ of the TG Act in relation to which no permission under s 42DK was in force.
 - 2.5. the Second Respondent contravened s 42DLB of the TG Act by causing the First Respondent to advertise MMS on the Website in a manner that contained representations that referred to cancer (a neoplastic disease), herpes (a sexually transmitted disease) and HIV/AIDs, diseases specified under s 30 of the TG Code, which representations were prohibited representations for the purposes of s 42DJ of the TG Act in relation to which no permission under s 42DK was in force.
 - 2.6. further, or in the alternative to the declaration sought in the preceding subparagraph, the Second Respondent aided, abetted, counselled or procured the First Respondent's contraventions of s 42DLB of the TG Act referred to in declaration 2.4 above and was therefore involved in those contraventions for the purposes of s 42YC of the TG Act.
3. An order pursuant to s 42YN of the TG Act restraining each of the Respondents (whether by themselves, their servants or agents or otherwise) from:
 - 3.1. advertising, causing the advertising of, supplying or offering to supply any therapeutic goods (as defined by s 3 of the TG Act) (**Therapeutic Goods**) or any of the Products unless the relevant Therapeutic Good or Product is first entered in the Register;
 - 3.2. advertising or causing the advertising of any Therapeutic Goods or any of the Products in a manner that contains restricted representations within the meaning of s 42DD of the TG Act without an approval under s 42DF or a permission under s 42DK in force in relation to the restricted representations; and
 - 3.3. advertising or causing the advertising of any Therapeutic Goods or any of the Products in a manner that contains prohibited representations within the meaning of s 42DJ(1) of the TG Act without permission under s 42DK of the TG Act in force in relation to the prohibited representations.
 4. 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 paragraphs 1 and 2 above.

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

CLAIM FOR INTERLOCUTORY RELIEF

The Applicant also claims interlocutory relief:

7. An order pursuant to rule 1.39 of the *Federal Court Rules 2011 (Cth)* (**Rules**), that the time for service of this application and supporting affidavit be abridged;
8. An order pursuant to rule 10.24 of the Rules that service of this application and supporting affidavit may be effected on the Respondents by email to "office@mmsaustralia.com.au"
9. An order under s 42YO of the TG Act that Respondents be restrained, until further order, whether by themselves or their servants or agents or otherwise howsoever from promoting, advertising or offering for supply or supplying:
 - 9.1. any products containing Sodium Chlorite (whether or not diluted) or dimethyl sulfoxide
 - 9.2. any of the Products or
 - 9.3. any Therapeutic Goodsunless
 - 9.4. the Product(s) or the Therapeutic Goods (as the case may be) are entered in the Register; and
 - 9.5. the Respondent(s) have given the Secretary of the Department of Health at least 14 days written notice of their intention to promote, advertise, offer or supply such Product(s) or Therapeutic Goods.
10. An order under s 42YO of the TG Act, that, within 24 hours of the date of the order and until further order, the Respondents must remove all statements referring to the Products from the website at www.mmsaustralia.com.au.
11. An order under s42YO of the TG Act:
 - 11.1. That the First Respondent, at its own expense, shall, within 7 days of this order, cause a notice substantially in the form of Annexure B to this Originating Application to be published and to remain continuously in place, until further order, on the home page of the website at www.mmsaustralia.com.au; and



11.2. That the First Respondent shall take all reasonable steps to ensure that such notice shall:

- 11.2.1. be a size that consists of at least 50% of the screen area;
- 11.2.2. be clearly viewable immediately on screen after the web page is accessed;
- 11.2.3. not be blocked by a pop up blocker;
- 11.2.4. remain on screen until closed by the person accessing that website; and
- 11.2.5. not require the person accessing that website to register on the website or require a further selection of hyperlinks or scrolling on the screen to be seen.

11.3. That the First Respondent shall, within 72 hours of this order, ensure that access to the Website is not subject to the provision of a user name, password, telephone number or any other similar sign-in requirement, with the intention that the Website shall be readily accessible by, and able to be monitored by the Applicant and officers of the Therapeutic Goods Administration.

12. Orders under rule 14.11 of the Rules that:

12.1. the First Respondent produce a sample of each of the Products to the Court within seven days of the date of this order;

12.2. leave be granted to the Applicant to uplift the samples and to conduct such tests on them as it considers necessary to determine their chemical composition.

APPLICANT'S ADDRESS

The Applicant's address for service is:

Australian Government Solicitor,
Level 11, 145 Ann St, Brisbane QLD 4000

Email: Chris.Steger@ags.gov.au

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

Tel: 07 3360 5600

Fax: 07 3360 5799

DX 119

The Applicant's address is:

PO Box 100
Woden ACT 2606



SERVICE ON THE RESPONDENTS

It is intended to serve this application on all Respondents.

Date: 25 May 2020

A handwritten signature in blue ink, appearing to read "Chris Steger".

Chris Steger
AGS lawyer
for and on behalf of the Australian Government Solicitor
Lawyer for the Applicant



Annexure A

Miracle Mineral Solution/MMS

1. 12 X MMS1 Convenience Packs - 140ml/bottle
2. 6 X HCL-MMS1 Convenience Packs - 140ml/bottle
3. Bulk Citric Acid - 1kg
4. HCL 4% Activator 140ml
5. HCL-MMS1 (WPS1, CD) Convenience pack Water Purification Drops-140ml
6. HCL-MMS1 Convenience Pack-140ml
7. HCL-MMS1 Travel Pack
8. MMS Field Kit for Rapid CDS Generation
9. MMS1 (WPS1, CD) Single Bottle Water Purification Drops-140ml
10. MMS1 Tablets - size 2 (3 drops)
11. MMS1-HCL + DMSO Complete Travel Kit
12. MMS2 100 x DDR Capsules - 690mg net
13. MMS2 200 x DDR Capsules - 690mg net
14. MMS2 50 x DDR Capsules - 690mg net
15. Sodium Chlorite Flakes - .5kg
16. Top Grade CDS - 100 ml
17. Top Grade CDS - 52 ml

Dimethyl Sulfoxide (DMSO)

18. DMSO (70%) Aloe Vera & Seaweed Gel - 140ml
19. DMSO Full Strength - 100% - 100 ml in Glass Bottle
20. DMSO Full Strength - 100% - 140ml
21. DMSO Ready to Go - 70% - 100ml in Glass Bottle
22. DMSO Ready to Go - 70% - 140ml
23. DMSO Ready to Go 70% - 50 ml Travel Glass Bottle

Other products

24. ANDROPAK – Sexual Rejuvenation



Annexure B

COURT RESTRAINS TEMPORARILY MMS AUSTRALIA FROM MAKING CLAIMS

The Secretary of the Department of Health has instituted proceedings in the Federal Court of Australia against Southern Cross Directories Pty Ltd trading as MMS Australia and Charles Karoly Bako Barton, alleging breaches of the Therapeutic Goods Act 1989 (Cth).

On [insert date] the Federal Court of Australia issued interim injunctions restraining Southern Cross Directories Pty Ltd trading as MMS Australia and Charles Karoly Bako Barton from promoting, advertising or offering for supply or supplying certain therapeutic goods, including products described as 'Miracle Mineral Solution' (MMS) and dimethyl sulfoxide or DMSO. Those injunctions can be found at [insert website] and remain in effect until such time as the Court makes further orders.

The Secretary of the Department of Health advises that MMS and DMSO are not registered in the Australian Register of Therapeutic Goods and cannot lawfully be sold as therapeutic goods in Australia.

The Secretary urges anyone who is suffering from any medical condition, or who wishes to take steps to prevent any such condition, to seek advice from a suitably qualified medical practitioner.