

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: 16/04/2024 3:41:05 PM AEST
Date Accepted for Filing: 17/04/2024 4:43:37 PM AEST
File Number: VID302/2024
File Title: SECRETARY OF DEPARTMENT OF HEALTH AND AGED CARE v
MONTU GROUP PTY LTD & ORS
Registry: VICTORIA 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.



Originating application

No. VID of 2024

Federal Court of Australia
District Registry: Victoria
Division: General

SECRETARY OF DEPARTMENT OF HEALTH AND AGED CARE
Applicant

MONTU GROUP PTY LTD and others 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, Owen Dixon Commonwealth Law Courts, 305 William Street, Melbourne VIC 3000

Date: 16 April 2024

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

Filed on behalf of (name & role of party)

Secretary of Department of Health, Applicant

Prepared by (name of person/lawyer)

Kateena O'Gorman SC and Lara O'Rorke of counsel

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[Version 2 form approved 09/05/2013]



Details of claim

This application is made under ss 19, 21 and 43 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**) and ss 42Y(1), 42YN(1) and 42YO(1) of the *Therapeutic Goods Act 1989* (Cth) (**Act**).

Unless specified otherwise, terms used below are as defined in the Act.

On the facts stated in the Applicant's concise statement dated 16 April 2024 the Applicant claims:

Declarations

Advertising in contravention of s 42DLB(1) of the Act

Montu

1. A declaration under s 21 of the FCA Act that the First Respondent (**Montu**) contravened s 42DLB(1) of the Act by advertising or causing the advertising of medical cannabis on the:
 - (a) website located at Universal Resource Locator (**URL**) <https://www.alternaleaf.com.au/> (**Alternaleaf Website**);
 - (b) Facebook page located at the URL <https://www.facebook.com/Alternaleaf> (**Alternaleaf Facebook Account**);
 - (c) Twitter/X page located at the URL <https://twitter.com/alternaleaf> (**Alternaleaf Twitter/X Account**);
 - (d) Instagram page located at the URL <https://www.instagram.com/alternaleaf/> (**Alternaleaf Instagram Account**); and
 - (e) website located at the URL <https://www.medicalcannabisawarenessweek.com.au> (**MCAW Website**),

at various points in time from at least 17 January 2022 to at least 5 April 2024, in circumstances where:

- (A) ss 42AA, 42AB or 42AC of the Act did not apply to the advertisements; and
- (B) each advertisement had one or more of the following apply to it:
 - i. the advertisement contained a representation regarding the treatment of mental illness, being a prohibited representation, such that s 42DLB(2) of the Act applies to the advertisement;
 - ii. the advertisement contained a representation referring to:
 - Alzheimer's disease;



- attention deficit disorder, or “ADD”;
- attention deficit hyperactive disorder, or “ADHD”;
- asthma;
- autism, or autism spectrum disorder;
- autoimmune disease;
- rheumatoid arthritis;
- cancer pain, or cancer-related pain, or cancer symptoms (including chemotherapy induced nausea and vomiting);
- chronic pain;
- convulsions;
- Crohn’s disease;
- dementia;
- endometriosis;
- epilepsy;
- fibromyalgia;
- fractured spine;
- gastrointestinal disorders;
- trigeminal neuralgia;
- ligament damage;
- migraines;
- multiple sclerosis;
- neuropathy, or neuropathic pain;
- Parkinson’s disease;
- polycystic ovary syndrome (PCOS);
- scoliosis; or
- skeletal and muscular damage;



each being a form of a disease, condition, ailment or defect identified in the *Therapeutic Goods Advertising Code* in force under s 42BAA of the Act (**Code**) as a serious form of a disease, condition, ailment or defect, and therefore contained a restricted representation, such that s 42DLB(4) applies to the advertisement;

- iii. the advertisement contained a statement that suggested or implied that medical cannabis has been recommended or approved by or on behalf of the Therapeutic Goods Administration, being a government authority, such that s 42DLB(6) of the Act applies to the advertisement;
- iv. the advertisement referred to a medical cannabis product that can be lawfully prescribed by a doctor to a patient in Australia, and thus supplied in Australia for use in humans in accordance with the Act, being a product included in either:
 - Schedule 8 to the Poisons Standard in force at the time of the advertisement (**Poisons Standard**); or
 - Schedule 4 to the Poisons Standard, but not included in Appendix H of the Poisons Standard, such that s 42DLB(7) of the Act applies to the advertisement; and

(C) the representations and statements were not prescribed by legislation or the subject of a permission, approval, authorisation or requirement by the Applicant, a government or a government authority.

Mr Strauch

2. Further or in the alternative to the relief sought against Montu in paragraph 1 above, a declaration under s 21 of the FCA Act that the Third Respondent (**Mr Strauch**) contravened s 42DLB(1) of the Act by causing the advertising of medical cannabis on the same dates referred to in paragraph 1 above and in the same circumstances referred to in paragraphs 1(A)-(C) above.

Alternaleaf

3. Further or in the alternative to the relief sought against Montu in paragraph 1 above and the relief sought against Mr Strauch in paragraph 2 above, a declaration under s 21 of the FCA Act that the Second Respondent (**Alternaleaf**) contravened s 42DLB(1) of Act by advertising or causing the advertising of medical cannabis on the:
 - (a) Alternaleaf Website;



- (b) Alternaleaf Facebook Account;
- (c) Alternaleaf Twitter/X Account; and
- (d) Alternaleaf Instagram Account,

at various points in time from at least 17 January 2022 to at least 5 April 2024, in the same circumstances referred to in paragraphs 1(A)-(C) above.

4. A declaration under s 21 of the FCA Act that Alternaleaf contravened s 42DLB(1) of the Act by advertising or causing the advertising of medical cannabis by way of a light projection that was displayed at the Pitt Street and Campbell Street intersection in Haymarket, Sydney on 21 February 2024 and referred to “medical cannabis”, such that s 42DLB(7) applies to the advertisement for the reasons referred to in paragraph 1(B)(iv) above, in circumstances where:
 - (a) ss 42AA, 42AB or 42AC of the Act did not apply to the advertisement; and
 - (b) the reference to “medical cannabis” was not authorised or required by a government or government authority.

Advertising in contravention of s 42DMA(1) of the Act

Montu

5. A declaration under s 21 of the FCA Act that Montu contravened s 42DMA(1) of Act by advertising or causing the advertising of medical cannabis on the:
 - (a) Alternaleaf Website;
 - (b) Alternaleaf Facebook Account;
 - (c) Alternaleaf Twitter/X Account;
 - (d) Alternaleaf Instagram Account; and
 - (e) MCAW Website,

at various points in time from at least 16 January 2023 to at least 3 April 2024, in circumstances where:

- (A) ss 42AA, 42AB or 42AC of the Act did not apply to the advertisements; and
- (B) each advertisement had one or more of the following apply to it:
 - i. the advertisement contained a testimonial or an endorsement about medical cannabis given by a current or former health practitioner or health professional, such that the advertisement did not comply with s 24(4)(c) or s 24(6)(e) of the Code;



- ii. the advertisement contained a statement that medical cannabis is ~~safe~~ or without harm or side-effects, such that the advertisement did not comply with s 9(1)(a) of the Code;
- iii. the advertisement contained a statement that medical cannabis is infallible, unailing, magical or miraculous, such that the advertisement did not comply with s 9(1)(c) of the Code;
- iv. the advertisement contained a statement that compares medical cannabis with other therapeutic goods or therapeutic services, and such comparison suggests that the comparator goods or services are harmful or ineffectual, such that the advertisement did not comply with s 9(3)(f);
- v. the advertisement referred to scientific or clinical research and did not identify the researcher or did not sufficiently identify the research by proper citation to enable consumers to access that research, such that the advertisement did not comply with s 11(3)(a) and (c) of the Code.

Mr Strauch

6. A declaration under s 21 of the FCA Act that Mr Strauch contravened s 42DMA(1) of Act by advertising or causing the advertising of medical cannabis on the same dates and in the same circumstances referred to in paragraph 5 above.

Alternaleaf

7. A declaration under s 21 of the FCA Act that Alternaleaf contravened s 42DMA(1) of Act by advertising or causing the advertising of medical cannabis on the:
 - (a) Alternaleaf Website;
 - (b) Alternaleaf Facebook Account;
 - (c) Alternaleaf Twitter/X Account;
 - (d) Alternaleaf Instagram Account; and
 on the same dates referred to in paragraph 5 above and in the same circumstances referred to in paragraphs 5(A)-(B) above.

Involvement in contraventions of civil penalty provisions in breach of s 42YC(1) of the Act

Montu

8. In the alternative to the relief sought against Montu in paragraphs 1(a)-(d) and 5(a)-(d) above, a declaration under s 21 of the FCA Act that Montu contravened s 42YC(1) of the



Act by aiding, abetting, counselling or procuring Alternaleaf's contraventions referred to in paragraphs 3, 4 and 7 above.

Mr Strauch

9. In the alternative to the relief sought against Mr Strauch in paragraphs 2 and 6 above, a declaration under s 21 of the FCA Act that Mr Strauch contravened s 42YC(1) of the Act by aiding, abetting, counselling or procuring:
- (a) Alternaleaf's contraventions referred to in paragraphs 3, 4 and 7 above; and
 - (b) Montu's contraventions referred to in paragraphs 1 and 5 above.

Personal liability for contraventions of civil penalty provisions in breach of s 54B(3) of the Act

10. Further or in the alternative to the relief sought against Mr Strauch in paragraph 9 above, a declaration under s 21 of the FCA Act that Mr Strauch contravened s 54B(3) of the Act as an executive officer of Montu and Alternaleaf who knew that Montu's and Alternaleaf's ss 42DLB(1) and 42DMA(1) contraventions referred to in paragraphs 1, 3-5 and 7 above (**Civil Penalty Contraventions**) would occur, was in a position to influence the conduct of Montu and Alternaleaf in relation to the Civil Penalty Contraventions and failed to take all reasonable steps to prevent the Civil Penalty Contraventions.

Final injunctions

11. Pursuant to s 42YN(1) of the Act, for a period of ten years from the date of this order, each Respondent be restrained, whether by itself, its servants or agents, from advertising or causing the advertising of medical cannabis (including by using the phrases "plant based medicine", "plant medicine" or "holistic medicine") if such advertisements, expressly or by implication:
- (a) refer to any cannabis product that can be lawfully prescribed by a doctor to a patient in Australia and thus are cannabis products that are therapeutic goods supplied in accordance with the Act;
 - (b) contain a representation about the treatment of any one or more of the following:
 - i. anxiety;
 - ii. depression;
 - iii. post-traumatic stress disorder (**PTSD**); or
 - iv. any other representation referred to in Part 1 of Schedule 2 to the *Therapeutic Goods Regulations 1990* (Cth),
being a **prohibited representation**;



- (c) contain a representation that refers to:
- i. Alzheimer's disease;
 - ii. attention deficit disorder, or "ADD";
 - iii. attention deficit hyperactive disorder, or "ADHD";
 - iv. asthma;
 - v. autism, or autism spectrum disorder;
 - vi. autoimmune disease;
 - vii. rheumatoid arthritis;
 - viii. cancer pain, or cancer-related pain, or cancer symptoms;
 - ix. chronic pain;
 - x. convulsions;
 - xi. Crohn's disease;
 - xii. dementia;
 - xiii. endometriosis;
 - xiv. epilepsy;
 - xv. fibromyalgia;
 - xvi. fractured spine;
 - xvii. gastrointestinal disorders;
 - xviii. trigeminal neuralgia;
 - xix. ligament damage;
 - xx. migraines;
 - xxi. multiple sclerosis;
 - xxii. nausea and vomiting due to chemotherapy;
 - xxiii. neuropathy, or neuropathic pain;
 - xxiv. Parkinson's disease;
 - xxv. Polycystic ovary syndrome;
 - xxvi. scoliosis;
 - xxvii. skeletal and muscular damage; or



- xxviii. any form of a disease, condition, ailment or defect identified in a part of the Code as a serious form of a disease, condition, ailment or defect, being a **restricted representation**;
- (d) contain a statement that represents medical cannabis to be safe or without harm or side-effects;
 - (e) contain a statement that represents medical cannabis to be infallible, unfailing, magical or miraculous;
 - (f) refer to scientific or clinical research and do not identify the researcher or do not sufficiently identify the research by proper citation to enable consumers to access that research;
 - (g) contain a testimonial or an endorsement about medical cannabis, given by a current or former: (i) health practitioner within the meaning of s 3(1) of the Act; or (ii) health professional within the meaning of s 4 of the Code;
 - (h) contain a statement that compares medical cannabis with other therapeutic goods or therapeutic services, where such comparison suggests that the comparator goods or services are harmful or ineffectual; or
 - (i) contain a statement that suggests or implies that medical cannabis has been recommended or approved by or on behalf of the Therapeutic Goods Administration or any government or government authority,

unless:

- (A) the statement is permitted, approved, authorised or required or prescribed by legislation, the Applicant, a government or government authority; or
- (B) ss 42AA, 42AB or 42AC of the Act applies to the advertisement.

Pecuniary penalties

12. Pursuant to s 42Y(2) of the Act, an order that a pecuniary penalty be paid by Montu in such amount as the Court considers appropriate in respect of the contraventions the subject of the declarations in paragraphs 1, 5 and 8 above.
13. Pursuant to s 42Y(2) of the Act, an order that a pecuniary penalty be paid by Alternaleaf in such amount as the Court considers appropriate in respect of the contraventions the subject of the declarations in paragraphs 3, 4 and 7 above.



14. Pursuant to s 42Y(2) of the Act, an order that a pecuniary penalty be paid by Mr ~~Strauch~~ in such amount as the Court considers appropriate in respect of the contraventions the subject of the declarations in paragraphs 2, 6 and 9 and 10 above.

Other

15. Pursuant to s 43(1) of the FCA Act, an order that the Respondents, jointly and severally, pay the Applicant's costs of and incidental to these proceedings.
16. Such other order as the Court thinks fit.

Claim for interim relief

The Applicant also claims interim relief.

1. Pursuant to s 42YO(1)(a)-(b) of the Act, until further order, an order that Alternaleaf and Montu:
- (a) disable or take offline the web page located at the URL <https://alternaleaf.com.au/blog>, and all of its subpages (**Cannaverse Web Pages**);
 - (b) disable, and be restrained from creating, any hyperlink or link between any of the following:
 - i. the Alternaleaf Website;
 - ii. the Alternaleaf Facebook Account;
 - iii. the Alternaleaf Twitter/X Account;
 - iv. the Alternaleaf Instagram Account; and
 - v. any other webpage or social media account that refers to "Alternaleaf" or "alternaleaf", or contains a hyperlink or link to any one or more of the Alternaleaf Website, Alternaleaf Facebook Account, Alternaleaf Twitter/X Account or Alternaleaf Instagram Account,

and any article or video currently or previously published on the Cannaverse Web Pages (**Articles & Videos**) (or any part of such Articles & Videos), including where the Articles & Videos (or any part of the Articles & Videos) is currently published on or available by link from any webpage or social media account other than the Cannaverse Web Pages.
2. Alternatively to the relief sought in paragraph 1 above, pursuant to s 42YO(1)(a)-(b) of the Act, until further order, Alternaleaf:



- a. remove the following videos from the Cannaverse Web Pages:
 - i. the video titled “Don’s Story | Medical Cannabis Patient Stories | CANNAVERSE”;
 - ii. the video titled “Matt’s Story | Medical Cannabis Patient Stories | CANNAVERSE”;
 - iii. the video titled “Rachel’s Story | Medical Cannabis Patient Stories | CANNAVERSE”; and
 - b. be restrained, whether by itself its servants or agents, from publishing the videos referred to in sub-paragraph (a) above, or any video which refers, directly or indirectly, to: (i) the treatment of any mental illness; or (ii) a form of a disease, condition, ailment or defect identified in a part of the Code as a serious form of a disease, condition, ailment or defect.
3. An order that the Respondents, jointly and severally, pay the Applicant’s costs of and incidental to these proceedings.
 4. Such other order as the Court considers fit.

Applicant’s address

The Applicant’s address for service is:

Place: Holding Redlich, Level 8, 555 Bourke Street, Melbourne VIC 3000

Email: howard.rapke@holdingredlich.com

The Applicant’s address is:


Place: Therapeutic Goods Administration, PO Box 100, Woden ACT 2606

Email: TGA litigation@health.gov.au

Service on the Respondent

It is intended to serve this application on the Respondents.

Date: 16 April 2024



Signed by Howard Rapke
Lawyer for the Applicant



Schedule of Parties

Applicant: Secretary of the Department of Health and Aged Care

First Respondent: Montu Group Pty Ltd (ACN 634 198 360)

Second Respondent: Alternaleaf Pty Ltd (ACN 649 693 005)

Third Respondent: Christopher Lee Strauch