

## 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: 3/06/2024 3:05:12 PM AEST  
Date Accepted for Filing: 3/06/2024 4:34:20 PM AEST  
File Number: QUD288/2024  
File Title: SECRETARY OF DEPARTMENT OF HEALTH AND AGED CARE v KEY PROMOTIONAL PRODUCTS PTY LTD (ACN 614 074 770) & ANOR QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA  
Registry:  
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

No. QUD of 2024

Federal Court of Australia  
District Registry: Queensland  
Division: General

### SECRETARY OF DEPARTMENT OF HEALTH AND AGED CARE

Applicant

**KEY PROMOTIONAL PRODUCTS PTY LTD (ACN 614 074 770)** 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:** Harry Gibbs Commonwealth Law Courts Building, 119 North Quay, Brisbane City QLD

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 of Department of Health and Aged Care, Applicant

Prepared by (name of person/lawyer) Martin Taylor of Counsel

Law firm (if applicable) Holding Redlich

Tel 03 9321 9785 Fax

Email Howard.rapke@holdingredlich.com

**Address for service** Holding Redlich, Level 23, 500 Bourke Street, Melbourne VIC 3000  
(include state and postcode)



## Details of claim

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

On the grounds stated in the Applicant's concise statement filed herewith, the Applicant claims:

1. Declarations pursuant to s 21 of the FCA Act that the first respondent has contravened:
  - 1.1. section 41MIB(1)(a)(i) of the TG Act by importing medical devices into Australia, to which none of the provisions of s 41MIB(1)(b)(i) to (iv) of the TG Act applied;
  - 1.2. section 41MIB(1)(a)(iii) of the TG Act by supplying medical devices in Australia, to which none of the provisions of s 41MIB(1)(b)(i) to (iv) of the TG Act applied; and
  - 1.3. section 41MLA of the TG Act by making false or misleading representations that medical devices were of a kind included in the *Australian Register of Therapeutic Goods* maintained under s 9A of the TG Act.
2. Declarations pursuant to s 21 of the FCA Act that the second respondent has aided, abetted, counselled or procured the first respondent's contraventions of each of sections 41MIB(1)(a)(i), 41MIB(1)(a)(iii) and 41MLA of the TG Act and consequently:
  - 2.1. the second respondent has contravened section 42YC(1) of the TG Act in relation to each of sections 41MIB(1)(a)(i), 41MIB(1)(a)(iii) and 41MLA of the TG Act; and
  - 2.2. the TG Act applies to the second respondent as if he has contravened each of sections 41MIB(1)(a)(i), 41MIB(1)(a)(iii) and 41MLA of the TG Act.
3. Orders pursuant to section 42Y of the TG Act that the first respondent must pay pecuniary penalties for the contraventions of the TG Act stated in paragraph 1 above.
4. Orders pursuant to sections 42Y and 42YC of the TG Act that the second respondent must pay pecuniary penalties for the contraventions of the TG Act stated in paragraph 1 above.
5. Costs pursuant to section 43 of the FCA Act.

## Applicant's address

The Applicant's address for service is:

Place: Holding Redlich, Level 23, 500 Bourke Street, Melbourne VIC 3000

Email: [howard.rapke@holdingredlich.com](mailto:howard.rapke@holdingredlich.com)

The Applicant's address is:

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

Email: [TGALitigation@health.gov.au](mailto:TGALitigation@health.gov.au)



**Service on the Respondents**

It is intended to serve this application on all Respondents.

Date: 3 June 2024

A handwritten signature in blue ink, appearing to read "Howard Rapke", written over a horizontal dotted line.

Signed by Howard Roger Rapke  
Lawyer for the Applicant



## Schedule of Parties

**Applicant:** Secretary of the Department of Health and Aged Care

**First Respondent:** Key Promotional Products Pty Ltd (ACN 614 074 770)

**Second Respondent:** Craig Shane Harding