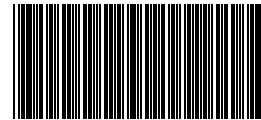




Filed: 5 April 2019 5:39 PM



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Amended Summons

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Commercial
Registry	Supreme Court Sydney
Case number	2017/00347082

TITLE OF PROCEEDINGS

First Plaintiff	Nakali Pty Limited ACN 062473830
First Defendant	SURFSTITCH GROUP LIMITED ACN 602288004

FILING DETAILS

Filed for	Nakali Pty Limited, Plaintiff 1
Legal representative	Joseph Scarcella
Legal representative reference	
Telephone	02 8247 9639
Your reference	C1058

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Amended Summons (Amended Summons 5 April 2019.pdf)

[attach.]

Form 4A (version 4)
UCPR 6.2

AMENDED SUMMONS**COURT DETAILS**

Court	Supreme Court
Division	Equity
List	Commercial (Representative Proceeding)
Registry	Sydney
Case number	<u>2017/347082</u>

TITLE OF PROCEEDINGS

Plaintiff	Nakali Pty Limited ACN 062 473 830
First Defendant	SurfStitch Group Limited (Subject to deed of company arrangement) ACN 602 288 004
<u>Second Defendant</u>	<u>Chubb Insurance Australia Limited ACN 001 642 020</u>

FILING DETAILS

Filed for	Nakali Pty Limited, Plaintiff
Legal representative	Johnson Winter & Slattery
Legal representative reference	C1058
Contact name and telephone	Joseph Scarcella (02) 8247 9639
Contact email	Joseph.scarcella@jws.com.au

HEARING DETAILS

These proceedings are listed for an initial case conference at 9.00am on the Wednesday after the expiration of 42 days following the filing of this Summons.

This summons is listed at

TYPE OF CLAIM

Commercially misleading conduct and Other (Commercial List)

RELIEF CLAIMED

On the grounds stated in the accompanying Amended Commercial List Statement, the Plaintiff claims on its own behalf and on behalf of Group Members (as defined below):

1. The First Defendant is obliged to provide compensation pursuant to section 1317HA of the Corporations Act.
2. Further or in the alternative, the First Defendant is obliged to pay damages pursuant to section 1041I of the Corporations Act.
3. Further or in the alternative, the First Defendant is obliged to pay damages pursuant to section 12GF of the ASIC Act.
4. By reason of the matters pleaded in paragraphs above, the Plaintiff and each Group Member are entitled to an order that Chubb pay them an amount commensurate to the amounts ordered to be paid pursuant to an order under s 1317HA or s 1041I of the Corporations Act against the First Defendant to the limit of any policy of insurance between the First Defendant and Chubb.
5. Pursuant to statute and common law, the Plaintiff and the Group Members are entitled to be paid interest and costs.

QUESTIONS COMMON TO THE PLAINTIFF AND GROUP MEMBERS

NB: capitalised terms have the same meaning as in the Plaintiff's Amended Commercial List Statement filed herewith.

The questions of law or fact common to the Group Members are as follows:

1. Whether SRF contravened ss 1041H(1) of the *Corporations Act* 2001 (Cth) and s12DA(1) of the *ASIC Act* 2001 (Cth) by reason of the EBITDA ASX Releases (as defined in paragraph 27 of the Plaintiffs' Contentions below).
2. Whether SRF contravened ss 674(2), 1041H(1) of the *Corporations Act* and s 12DA(1) of the *ASIC Act* 2001 (Cth) by not disclosing the Material EBITDA Information (as defined in

paragraph 69 of the Plaintiff's Contentions) during the First Relevant Period (as defined in paragraph 69 of the Plaintiff's Contentions).

3. Whether SRF contravened ss 1041H(1) of the *Corporations Act 2001* (Cth) and s 12DA(1) of the *ASIC Act 2001* (Cth) by reason of the 1H FY16 Financial Report (as defined in paragraph 54 of the Plaintiff's Contentions).
4. Whether SRF contravened ss 674(2), 1041H(1) of the *Corporations Act 2001* (Cth) and s 12DA(1) of the *ASIC Act 2001* (Cth) by not disclosing the Material Revenue Information (as defined in paragraph 83 of the Plaintiff's Contentions) during the Second Relevant Period (as defined in paragraph 83 of the Plaintiff's Contentions).
5. Whether SRF contravened ss 1041H(1) of the *Corporations Act 2001* (Cth) and s 12DA(1) of the *ASIC Act 2001* (Cth) by reason of the ASX announcements made on 25 February 2016 (as pleaded in paragraphs 56 and 57 of the Plaintiff's Contentions).
6. Whether SRF contravened ss 1041H(1) of the *Corporations Act 2001* (Cth) and s 12DA(1) of the *ASIC Act 2001* (Cth) by reason of the Revised EBITDA ASX Release (as defined in paragraph 60 of the Plaintiff's Contentions).
7. Whether SRF contravened ss 674(2), 1041H(1) of the *Corporations Act 2001* (Cth) and s 12DA(1) of the *ASIC Act 2001* (Cth) by not disclosing the Material Revised EBITDA Information (as defined in paragraph 102 of the Plaintiff's Contentions) during the Third Relevant Period (as defined in paragraph 102 of the Plaintiff's Contentions).
8. Whether the Second Defendant is obliged to pay an amount equal to the total amount that the First Defendant would be ordered to pay the Plaintiff and Group Members, whether by virtue of section 4 of the *Civil Liability (Third Party Claims Against Insurers) Act 2017* (NSW) or otherwise.

REPRESENTATIVE ACTION

The Plaintiff originally commenced these proceedings as a representative proceeding pursuant to Part 13A of the *Civil Proceedings Act* 2011 (QLD) on their behalf and on behalf of other persons (**Group Members**).

The Group Members are persons who:

1. acquired an interest in ordinary shares in the First Defendant (SRF) by purchasing SRF's ordinary shares on the financial market operated by the Australian Securities Exchange (ASX) at some time during the periods:
 - (a) commencing on 27 August 2015 and concluding on 24 February 2016 and were still holding some or all of those shares in SRF on 25 February 2016, 3 May 2016 or 9 June 2016;
 - (b) commencing on 25 February 2016 and concluding on 2 May 2016 and were still holding some or all of those shares in SRF on 3 May 2016 or 9 June 2016; and/or
 - (c) commencing on 3 May 2016 and concluding on 8 June 2016 and were still holding some or all of those shares in SRF on 9 June 2016; and
2. suffered loss or damage by or resulting from the contraventions of SRF and/or the second defendant by reason of the matters pleaded in the Amended Commercial List Statement.

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the [Legal Profession Uniform Law Application Act 2014](#) that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the plaintiff[s] that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

Solicitor on record

Date of signature

5 April 2019

NOTICE TO DEFENDANTS

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the relief claimed in the summons and for the plaintiff's costs of bringing these proceedings.

Before you can appear before the court you must file at the court an appearance in the approved form.

HOW TO RESPOND

Please read this summons very carefully. If you have any trouble understanding it or require assistance on how to respond to the summons you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the summons from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

Court forms are available on the UCPR website at www.ucprforms.justice.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address	Law Courts Building, 184 Phillip Street, Sydney
Postal address	Supreme Court of New South Wales, GPO Box 3, Sydney NSW 2001, Australia
Telephone	1300 679 272

FURTHER DETAILS ABOUT PLAINTIFF[S]

Plaintiff

Name Nakali Pty Limited ACN 062 473 830
 Address c/ Johnson Winter & Slattery
 L25, 20 Bond St
 Sydney NSW 2000
 Australia

Legal representative for Plaintiff

Name Joseph Scarcella
 Practising certificate number P0029532
 Firm Johnson Winter & Slattery
 Address L25, 20 Bond Street
 Sydney NSW 2000
 Telephone 02 8274 9555
 Fax 02 8274 9500
 Email Joseph.scarcella@jws.com.au
 Electronic service address Joseph.scarcella@jws.com.au

DETAILS ABOUT DEFENDANT[S]

First Defendant

Name SurfStitch Group Limited (Subject to deed of company arrangement) ACN 602 288 004
 Address c/ King & Wood Mallesons
 Level 61, 1 Farrer Place
 Sydney NSW 2000

Second Defendant

Name [Chubb Insurance Australia Limited ACN 001 642 0202](#)
Address [c/ Yeldham Price O'Brien Lusk Lawyers](#)
[Level 4, 1 Chifley Square](#)
[Sydney NSW 2000](#)