

**IN THE FEDERAL COURT OF AUSTRALIA (FCA)  
NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA  
GENERAL DIVISION** **No: NSD499/2011**

**NOTICE OF FILING AND HEARING**

This application was filed electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 20/04/2011.

**DETAILS OF FILING**

**Document Lodged:** Application under Part IVA of the Federal Court of Australia Act 1976:  
Federal Court Rules form 129

**File Number:** NSD499/2011

**File Title:** Sean Foley (in his own right as representative of the Group Members)  
v Gunns Limited ACN 009 478 148

**District Registry:** NEW SOUTH WALES REGISTRY - FEDERAL COURT OF  
AUSTRALIA

**Reason for Listing:** First Directions

**Time and date for hearing:** 06/05/2011, 9:30 AM

**Place:** Court No. 1, Level 21, Level 17 Law Courts Building Queen's Square,  
Sydney



*Warwick Soden*

**Dated:** 20/04/2011

**Registrar**

**NOTES**

1. This Notice forms part of the application and contains information that might otherwise appear elsewhere in the application. The Notice must be included in the application served on each party to the proceeding.
2. The 'reason for listing' is descriptive and does not limit the issues that might be dealt with, or orders that might be made, at the hearing.



Form 120  
Order 73 rule 3

IN THE FEDERAL COURT OF AUSTRALIA  
NEW SOUTH WALES DISTRICT REGISTRY

**NSD**

**SEAN FOLEY**

in his own right and as representative of the Group Members

Applicant

**GUNNS LIMITED ACN 009 478 148**

Respondent

**APPLICATION**

1. This application is brought by the Applicant as representative party pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth).
2. The group members to whom this proceeding relates are persons who:
  - (a) during the period from 31 August 2009 to 19 February 2010 inclusive (**Relevant Period**) acquired an interest in shares in the Respondent (**Gunns**);
  - (b) at the close of business on 19 February 2010 held an interest in shares in Gunns obtained during the Relevant Period;
  - (c) have entered into a litigation funding agreement with IMF (Australia) Limited in relation to this proceeding on or before 20 April 2011; and
  - (d) suffered loss and damage by reason of or resulting from one or more of the Contraventions, as defined in paragraph 42 of the Statement of Claim;(the **Group Members**).

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**Filed for the Applicant by:**  
**Maurice Blackburn Pty Ltd, Lawyers**  
ABN: 21 105 657 949  
Level 20, 201 Elizabeth Street, Sydney NSW 2000  
PO Box A266, Sydney South NSW 1235

**DX 13002 Sydney**  
**Market Street**  
Tel: (02) 9261 1488  
Fax: (02) 9261 3318  
Ref: BJS:3016753  
Doc Ref: 522620\_1.DOC



3. On the grounds set out in the Statement of Claim, the Applicant claims for himself and the Group Members:
- (a) A declaration that Gunns contravened section 674 of the *Corporations Act 2001* (Cth) (**the Act**) by not telling the ASX immediately it was or ought to have been aware, within the meaning of the Australian Stock Exchange Limited Listing Rules (**ASX Listing Rules**), (**Aware**) of any of the Material Information as defined in paragraph 25 of the Statement of Claim;
  - (b) An order pursuant to section 1317HA of the Act that Gunns pay to the Applicant and Group Members compensation for the damage caused by its contraventions of section 674 of the Act.
  - (c) Further or alternatively, a declaration that Gunns contravened:
    - (i) section 1041H of the Act;
    - (ii) section 1041E of the Act;
    - (iii) section 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and/or
    - (iv) section 52 of the *Trade Practices Act 1974* (Cth) (**TPA**);by engaging in the conduct pleaded in paragraphs 32—36 of the Statement of Claim.
  - (d) Damages pursuant to:
    - (i) section 1041I of the Act;
    - (ii) section 12GF of the ASIC Act; and/or
    - (iii) section 82 of the TPA.
  - (e) Such further or other relief as the Court sees fit.
  - (f) Interest.
  - (g) Costs.



4. The questions of law or fact common to the claims of the Applicant and the Group Members or between the Group Members are:

- (a) at what time(s) Gunns became Aware of the Material Information as defined in paragraph 25 of the Statement of Claim;
- (b) whether Gunns contravened section 674 of the Act in relation to any and if so which of the matters referred to in paragraphs 24 to 31 of the Statement of Claim;
- (c) whether any and if so which of the representations alleged in paragraph 32, 34 and 36 of the Statement of Claim:
  - (i) was made by Gunns;
  - (ii) was made in relation to a financial product or a financial service within the meaning of section 1041H(1) of the Act; or
  - (iii) was made in trade or commerce, within the meaning of section 52 of the TPA, or in trade or commerce in relation to financial services within the meaning of section 12DA(1) of the ASIC Act;
- (d) whether, insofar as any of the representations alleged in paragraph 32, 34 and 36 of the Statement of Claim was a representation as to future matters within the meaning of:
  - (i) section 769C(1) of the Act;
  - (ii) section 12BB of the ASIC Act; or
  - (iii) section 51A of the TPA;

Gunns had no reasonable basis for making such a representation at the time it was made;

- (e) whether any and if so which of the representations alleged in paragraph 32, 34 and 36 of the Statement of Claim was made in contravention of section 1041H(1) of the Act, section 12DA(1) of the ASIC Act or section 52 of the TPA;



- (f) whether the Applicant and Group Members acquired their Gunns shares or their interests in Gunns shares in a financial market:
- (i) regulated by, inter alia, the ASX Listing Rules and section 674(2) of the Act; and
  - (ii) where the price or value of Gunns shares was informed or affected, or would reasonably be expected to have been informed or affected, by information required to be disclosed in accordance with the ASX Listing Rules and section 674(2) of the Act;
- (g) whether during the Relevant Period, by reason of the Contraventions, the market price of Gunns shares was materially greater than it otherwise would have been had the Contraventions not occurred;
- (h) whether during the Relevant Period, by reason of the Contraventions, the market price of Gunns shares was materially greater than their true value, and if so to what extent;
- (i) if Gunns' conduct is found to have had the effect that prices for its shares were higher than those prices otherwise would have been, whether statutory compensation is recoverable, and if so the determination of its correct measure; and
- (j) whether any, and if so what, relief other than monetary relief should be granted in favour of the Applicant and Group Members.

DATE: 20 April 2011

*Ben Slade*

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Legal Practitioner for the Applicant  
Ben Slade  
Maurice Blackburn Pty Ltd,  
Lawyers



To the Respondent  
Gunns Limited ACN 009 478 148  
78 Lindsay Street  
LAUNCESTON TAS 7250

A directions hearing in this application will be heard by the Court at the time and place specified below.

If there is no attendance before the Court by you or a lawyer representing you, the application may be dealt with and judgment may be given or an order made in your absence. Before any attendance at that time, you must file an appearance in the Registry.

Time:

Place: Federal Court of Australia  
Law Courts Building  
Queens Square  
SYDNEY NSW 2000

Date:

.....  
Registrar

The Applicant's address for service is  
Maurice Blackburn Pty Ltd  
Lawyers  
Level 20, 201 Elizabeth Street  
SYDNEY NSW 2000

The Applicant's address is  
42 Shepherd Street,  
Chippendale NSW 2008