

NOTICE OF FILING

Details of Filing

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Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
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File Number:	NSD1148/2022
File Title:	ROXANNE TICKLE v GIGGLE FOR GIRLS PTY LTD ACN 632 152 017 & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

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.

Defence

No. NSD1148 of 2022

Federal Court of Australia
District Registry: New South Wales
Division: Human Rights

ROXANNE TICKLE

Applicant

GIGGLE FOR GIRLS PTY LTD (ACN 632 152 017) and another

First Respondent

SALLY GROVER

Second Respondent

A. THE PARTIES

1. The Respondents do not know and cannot admit whether the Applicant is a natural person capable of being sued in the name "Roxanne Tickle".
2. In response to paragraph 2 of the Statement of Claim, the Respondents:
 - a. admit subparagraph 2(a);
 - b. deny subparagraph 2(b); and
 - c. deny subparagraph 2(c);
3. In response to paragraph 3 of the Statement of Claim, the Respondents:
 - a. admit subparagraph 3(a);

Filed on behalf of (name & role of party) The First and Second Respondents
Prepared by (name of person/lawyer) Alexander Rashidi
Law firm (if applicable) Alexander Rashidi Lawyers
Tel (07) 2139 0100 Fax _____
Email alex.r@rashidi.com.au
Address for service PO Box 12781, George St QLD 4003
(include state and postcode)

- b. admit subparagraph 3(b); and
 - c. admit subparagraph 3(c);
 - d. deny subparagraph 3(d);
 - e. admit subparagraph 3(e);
 - f. admit subparagraph 3(f); and
 - g. admit subparagraph 3(g);
4. The Respondents admit paragraph 4 of the Statement of Claim but say that the Giggle app is no longer operational and has not been since August 2022.
 5. The Respondents admit paragraph 5 but say that the platform was a special measure intended to achieve equality for the purposes of s 7D of the *Sex Discrimination Act 1984* (Cth) (**SDA**).

B. THE APPLICANT'S GENDER

6. The Respondents deny paragraph 6.
7. In response to paragraph 7, the Respondents:
 - a. deny subparagraph 7 (a); and
 - b. do not know and cannot admit subparagraph 9(b), and say further that they cannot plead to the paragraph by reason of the use of the vague and imprecise word "gone".
8. In response to paragraph 8, the Respondents do not know and cannot admit what surgery, if any, the Applicant underwent and otherwise deny the paragraph.
9. The Respondents do not know and cannot admit paragraph 9.
10. The Respondents deny paragraph 10.
11. The Respondents deny paragraph 11.

C. THE GIGGLE APP

12. The Respondents admit paragraph 12.

13. The Respondents admit paragraph 13.

14. The Respondents admit paragraph 14 save to say that the by the use of the word “woman” the Respondents understand the Applicant to be referring to an adult female human.

15. The Respondents denies paragraph 15.

16. The Respondents admit paragraph 16 save to say that the by the use of the word “woman” the Respondents understand the Applicant to be referring to an adult female human.

17. The Respondents admit paragraph 17.

18. The Respondents admit paragraph 18.

19. The Respondents denies paragraph 19.

D. APPLICANT’S ACCESS AND USE OF THE GIGGLE APP

20. The Respondents do not know and cannot admit paragraph 20.

21. The Respondents admit that the AI undertook the Assessment Process and the Applicant was granted Ordinary Access to the platform but otherwise deny the paragraph.

22. The Respondents say that the Applicant joined the App in February 2021, but did not make any connections or engage in any conversations on the App, say that the Applicant was removed from the App in September 2021, and otherwise do not know and cannot admit paragraph 22.

23. The Respondents deny paragraph 23 and say that the Applicant was removed from using the App because the Applicant is an adult human male.

24. The Respondents deny paragraph 24.

25. In response to paragraph 25, the Respondents say that the Applicant was removed from the platform because the Applicant is an adult male human and otherwise deny the paragraph.

26. The Respondents deny paragraph 26.

27. The Respondents do not know and cannot admit paragraph 27.

28. The Respondents do not know and cannot admit paragraph 28 but does not have a record of any emails as alleged.

29. In the premises of paragraph 26 – 28 herein, the Respondents deny paragraph 29.

E. TERMINATION OF THE COMPLAINT BY AUSTRALIAN HUMAN RIGHTS COMMISSION

30. The Respondents admit paragraph 30.

31. In response to paragraph 31 the Respondents:

- a. admit that the Applicant is a “affected person” as therein in pleaded, but
- b. deny the paragraph by reason of the fact that the Applicant commenced and discontinued proceedings further to the matters pleaded at paragraph 30 of the Statement of Claim in the Federal Circuit Court in proceeding no SYG808/ 2022 which precludes the making of a second application to this Court.

32. The Respondents deny paragraph 32.

F. UNLAWFUL DISCRIMINATION

33. The Respondents admit paragraph 33.

34. The Respondents deny paragraphs 34 - 45.

G. LOSS AND DAMAGE

35. The Respondents deny paragraphs 46 - 47.

H. REMEDIES AND DECLARATIONS

36. The Respondents deny paragraphs 48.

IN FURTHER ANSWER TO THE STATEMENT OF CLAIM:

37. Sections 5B and 5C of the SDA are amendments made to the SDA by the Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013 (Cth), and are constitutionally invalid.

Particulars

- a. The constitutional basis for the SDA is s 51(xxix) to implement Convention on the Elimination of Discrimination Against Women (**CEDAW**). To be constitutionally valid, the proposed legislation must implement an international obligation or secure a benefit under a treaty in a manner which is appropriate and adapted to implementing the treaty. Discrimination on the basis of gender identity or intersex status is not the subject of a specific treaty like CEDAW and nor could it plausibly be said that by enacting antidiscrimination provisions concerning gender identity or intersex status, the Parliament is in some way giving effect to a Convention or treaty. It is doubtful that the provision could be validly enacted pursuant to the external affairs power by reference to isolated Articles of the international instruments.
- b. Giggle is not a “trading and financial” corporation within the meaning of s 51 (xx) of the Constitution.
- c. Section 51(v) of the Constitution is not appropriately engaged as a head of legislative power.

Date: 6 April 2023



Signed by Alexander Rashidi
Lawyer for the Respondents

This pleading was prepared by B.K. Nolan of Counsel.

Certificate of lawyer

I Alexander Rashidi certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 6 April 2023



Signed by Alexander Rashidi
Lawyer for the Respondents