

NOTICE OF FILING

Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 4/05/2023 2:35:37 PM AEST
Date Accepted for Filing: 4/05/2023 2:42:18 PM AEST
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



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 17
Rule 8.05(1)(a)

Amended Statement of claim

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 named in the schedule

First Respondent

A. THE PARTIES

1. The Applicant, Roxanne Tickle, is a natural person who can sue and be sued in her own name.
2. The First Respondent, Giggle for Girls Pty Ltd (ABN 79 632 152 017):
 - a. is an Australian proprietary company, limited by shares that is wholly owned by and operated through a holding company called Wadd Holdings Pty Ltd (ABN 66 632 151 154);
 - b. is a trading corporation; and
 - c. is subject to the *Sex Discrimination Act 1984* (Cth) (**SDA**) including by reason of section 9(11), (12), (13) and (21).
3. The Second Respondent, Sally Grover:
 - a. is a natural person capable of suing and being sued;
 - b. is the sole director and Chief Executive Officer of the First Respondent;
 - c. at all material times, was the controlling mind of the First Respondent;
 - d. as an officer of the First Respondent, is a person to whom the SDA applies for the purpose of section 9(11) and (13) of the SDA;

Filed on behalf of (name & role of party) The Applicant

Prepared by (name of person/lawyer) G A Costello KC and Tinashe Makamure

Law firm (if applicable) Barry Nilsson Lawyers

Tel 03 9909 6365 Fax _____

Email Tinashe.Makamure@bnlaw.com.au / Corrina.Dowling@bnlaw.com.au

Address for service Level 6, 600 Bourke Street, Melbourne, VIC 3000

- e. uses the social media platform, Twitter where she is identified by the username “Sall Grover”;
 - f. uses a “Twitter handle” “@salltweets”, and
 - g. describes herself as the “*Founder & CEO of Giggle, a female social network*”.
4. The First Respondent owns and operates the Giggle App.
 5. The Giggle App:
 - a. is a digital application that can be downloaded for use on various electronic devices including mobile phones and tablets called ‘Giggle’; and
 - b. is a service, in so far as it relates to entertainment and/or reaction, and/or an available facility for the purposes of section 22 of the SDA.

B. THE APPLICANT’S GENDER

6. The Applicant is a woman.
7. Since on or around 2017 the Applicant has:
 - a. presented her physical appearance to be female; and
 - b. ~~gone by~~used the female name of ‘Roxanne Tickle’.
8. The Applicant underwent gender affirming surgery in October 2019 by which her gender as a woman was affirmed.
9. The Applicant’s birth certificate issued by the Queensland Registry of Births, Deaths and Marriages in or around January 2020 states that the Applicant is female.
10. In the circumstances that the Applicant was assigned male gender at birth and transitioned to female gender as set out above:
 - a. the Applicant’s gender-identity is female; ~~and~~
 - b. ~~the Applicant’s intersex status means she has physical, hormonal and/or genetic features that are a combination of female and male.~~
11. The Applicant is a person protected from being unlawfully discriminated against because of her:
 - a. ~~perceived gender identity as a transgender person; and~~
 - b. ~~intersex status—~~

within the meaning of section 4 of the SDA.

C. THE GIGGLE APP

12. The Giggle App is described on both the Google Play Store and the App Store (**Stores**) as follows:

“Made for Women by Women. Connect on Giggle about the latest Issues, politics, gossip, news and more. Promote your business and or yourself, find accomodation [sic] and roommates, connect privately to discuss your most intimate thoughts – all with mutual consent – and without unwanted interruptions and misogynistic abuse.”

13. To use and access the Giggle App, users are required to download it, then provide information, including a self-taken photograph of their face (a ‘selfie’) and upload it to the platform (**Application Process**).
14. Once uploaded, the ‘selfie’ is assessed by third-party artificial intelligence (**AI**) software, that determines whether the aspiring user is a woman (**Assessment Process**).
15. The AI software used in the Assessment Process is configured at the direction of the First and Second Defendants.
16. If the AI accepts the ‘selfie’ as that of a woman, the user is provided full ordinary access to the platform through an individualised logon facilitated by a personal username and confidential password (**Ordinary Access**).
17. Decisions made by the AI software to either accept or reject a person onto the Giggle App can be manually overridden by a person with the appropriate controls of the platform (**Override Powers**).
18. At all material times, the Second Respondent controlled the Override Powers on behalf of the First Defendant.
19. The Giggle App has a range of accessibilities that vary from those not requiring payment to those that require payment, with the highest level of access being called “Premium”.

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

20. In or around February 2021, the Applicant downloaded the Giggle App to her mobile device and completed the Application Process.
21. The AI undertook the Assessment Process and found correctly that the Applicant is a woman and so granted her Ordinary Access to the platform.
22. Between February 2021 and September 2021, the Applicant enjoyed Ordinary Access to the Giggle App which included allowing her to post content, read content posted by other users and leave comments on posts.
23. In or around September 2021, the Second Respondent used the Override Powers to restrict the Applicant’s access to the Giggle App (**Restricted Access**).

24. The First Respondent provided Restricted Access because the Second Respondent treated the Applicant as if she was not a woman.
25. In or around late September 2021, the Applicant logged onto the Giggle App but found that she no longer had Ordinary Access in that she could no longer post content, read, or comment on content posted by other users because of the Restricted Access.
26. At or around the same time, the Applicant attempted to purchase the Premium features available from the Giggle App but received a “User Blocked” message because of the Restricted Access.
27. In or around late September 2021, the Applicant attempted to contact the First Respondent through a contact form on the Giggle App to raise the issue (**First Attempted Contact**). The Applicant did not receive a response to her First Attempted Contact.
28. In October 2021, the Applicant sent more than six emails to the First Respondent regarding the Restricted Access (**Further Attempted Contact**).

Particulars

- i. The Applicant attempted to contact the First Respondent through the contact form on the Giggle App.
 - ii. The Applicant further attempted to contact the First Respondent through a general email address that was available on the First Respondent’s website.
 - iii. The Applicant also tried to contact the First Respondent by telephone but was unsuccessful.
29. The First and Second Respondent did not provide any substantive response to the Applicant.
- E. TERMINATION OF COMPLAINT BY AUSTRALIAN HUMAN RIGHTS COMMISSION**
30. By notice of termination dated 5 April 2022 given under section 46PH(1B)(b) of the *Australian Human Rights Commission Act 1986* (Cth) (**AHRC Act**), the Australian Human Rights Commission terminated the Applicant’s complaint alleging unlawful discrimination by the First and Second Respondent.
 31. The Applicant is an “affected person” under section 46PO(1) of the AHRC Act, and by reason of the termination of her complaint as alleged in paragraph 31, is entitled to make an application to the Federal Court of Australia alleging unlawful discrimination.
 32. The Court has powers to make orders under 46PO(4) of the AHRC Act if the Court concerned is satisfied that there has been unlawful discrimination by any respondent.

F. UNLAWFUL DISCRIMINATION

33. At all material times, by providing access to and use of the Giggle App and providing services in connection with the use of the Giggle App, the First and Second Respondents were providing services and making a facility available within the meaning of section 22 of the SDA.

Section 5B of the SDA

34. The First Respondent on instruction of or at the will of the Second Respondent imposed a condition that to be allowed Ordinary Access to the Giggle App, a user must be either:
- a. be a cisgendered female; or
 - b. be determined as having cisgendered physical characteristics by the Second Respondent on review of a photograph provided during the Application Process.

(Imposed Condition)

35. In breach of section 22 of the SDA, the First and/or Second Respondent discriminated against the Applicant **on the basis of her gender identity**, within the meaning of section 5B(1) of the SDA, by:
- a. using the Imposed Condition;
 - b. excluding her from using and accessing the Giggle App which was otherwise available to cisgender women; and
 - c. not responding to the Applicant's requests for access.
36. In the premises, the Applicant was treated less favourably than cisgender women.
37. The First and/or Second Respondent treated the Applicant less favourably than cisgender women because the Applicant is a transgender woman.
38. In breach of section 22 of the SDA, the First and/or Second Respondent discriminated against the Applicant on the basis of her gender identity, within the meaning of section 5B(2) of the SDA, by the Imposed Condition, which has disadvantaged and is likely to continue to disadvantage transgender women because:
- a. they will not be able to gain Ordinary Access to the Giggle App; and
 - b. they are vulnerable to disparaging conclusions and exclusion based on their appearance.
39. Unlike transgender women, cisgender women:
- a. would not have had their access to the Giggle App restricted or physical characteristics questioned by the First and/or Second Respondent; and

- b. the First and/or Second Respondent would have engaged with cisgender women and responded to their queries regarding access to the Giggle App.

~~Section 5C of the SDA~~

~~40. In breach of section 22 of the SDA, the First and/or Second Respondent discriminated against the Applicant on the basis of her intersex status, within the meaning of section 5C(1) of the SDA, by treating the Applicant less favourably than women who are not of intersex status by:~~

- ~~a. using the Imposed Condition;~~
- ~~b. excluding her from using and accessing the Giggle App which was otherwise available to women without intersex status; and~~
- ~~c. not responding to the Applicant's requests for access.~~

~~41. The First and/or Second Respondent treated the Applicant less favourably than women without intersex status because of the Applicant's intersex status.~~

~~42. In breach of section 22 of the SDA, the First and/or Second Respondent discriminated against the Applicant on the basis of her intersex status, within the meaning of section 5C(2) of the SDA, by the Imposed Condition, which has disadvantaged and is likely to continue to disadvantage intersex women because:~~

- ~~a. they will not be able to gain Ordinary Access to the Giggle App; and~~
- ~~b. they are vulnerable to disparaging conclusions and exclusion based on their appearance.~~

~~43. Women without intersex status:~~

- ~~a. would not have had their access to the Giggle App restricted or physical characteristics questioned by the First and Second Respondents; and~~
- ~~b. the First and/or Second Respondent would have engaged with women without intersex status and responded to their queries regarding access to the Giggle App.~~

Section 105 of the SDA

44.40. Further and alternatively, the Second Respondent, as the controlling mind of the First Respondent: instructed, induced, aided or permitted the acts of the First Respondent in breach of section 22 of the SDA.

45.41. Pursuant to section 105 of the SDA, the Second Respondent is liable for the actions of the First Respondent in breaching section 22 of the SDA.

G. LOSS AND DAMAGE

46.42. The Applicant has suffered significant distress, hurt and humiliation by reason of the unlawful discriminatory conduct, within the meaning of sections 5C and 5B, of the First and Second Respondent in breach of section 22 of the SDA.

47.43. The Applicant's damages have been aggravated by the Second Respondent's public vilification of her, the First and Second Respondent's refusal to apologise, and the First and Second Respondent's refusal to engage in the Australian Human Rights Commission conciliation process provided for under the AHRC Act.

Particulars

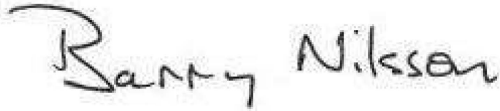
Particulars will be provided by way of affidavit evidence.

H. REMEDIES AND DECLARATIONS

48.44. The Applicant asks the Court for the following relief under section 21 of the *Federal Court of Australia Act* and section 46PO(4) of the AHRC Act:

- a. declarations that the First Respondent contravened section 22 of the SDA;
- b. declarations that the Second Respondent contravened section 22 of SDA;
- c. general damages;
- d. aggravated damages;
- e. a published written apology from the First and Second Respondent;
- f. an order that the First Respondent to must allow the Applicant the same access and use of the Giggle App and the same service delivery in relation to Giggle App, as is provided to other female users upon the First Respondent's usual terms of trade.

Date: ~~24 March 2023~~ 14 April 2023



Signed by Barry Nilsson Lawyers
Lawyer for the Applicant

This pleading was prepared by Georgina Costello KC, Briana Goding, Elodie Nadon and Tinashe Makamure, lawyer.

Certificate of lawyer

I Tinashe Makamure certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~24 March 2023~~ 14 April 2023



Signed by Tinashe Makamure
Lawyer for the Applicant

Schedule

No. NSD1148 of 2022

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

Respondents

Second Respondent: **SALLY GROVER**

Date: ~~24 March 2023~~ 14 April 2023