

## 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: 23/09/2024 7:23:45 AM AEST  
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File Number: VID973/2024  
File Title: AUSTRALIAN COMPETITION & CONSUMER COMMISSION v COLES  
SUPERMARKETS AUSTRALIA PTY LTD (ACN 004 189 708)  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA  
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

Federal Court of Australia

No. VID of 2024

District Registry: Victoria

Division: General

Commercial and Corporations National Practice Area (Regulator and Consumer Protection)

### Australian Competition and Consumer Commission

Applicant

### Coles Supermarkets Australia Pty Ltd (ACN 004 189 708)

Respondent

To the Respondent

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:** 305 William Street, Melbourne, Victoria, 3000

Date:

.....  
Signed by an officer acting with the  
authority of the District Registrar

Filed on behalf of (name & role of party) Australian Competition and Consumer Commission, Applicant

Prepared by (name of person/lawyer) James Love

Law firm (if applicable) Johnson Winter Slattery

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**Address for service** Johnson Winter Slattery

(include state and postcode) Level 34, 55 Collins Street, Melbourne Vic 3000



## Details of claim

This application is made under ss 131 and 138 of the *Competition and Consumer Act 2010* (Cth) (the **CCA**); ss 18, 29(1)(i), 224, and 246 of the Australian Consumer Law (the **ACL**), being Schedule 2 to the CCA; and ss 19, 21, and 43 of the *Federal Court of Australia Act 1976* (Cth) (the **Federal Court Act**).

These proceedings relate to alleged contraventions of ss 18 and 29(1)(i) of the ACL by the Respondent (**Coles**), comprising conduct in trade or commerce which was misleading or deceptive and further, or in the alternative, which constituted the making of false or misleading representations with respect to the price of goods.

On the grounds stated in the accompanying Concise Statement, the Applicant claims:

## Declarations

1. A declaration pursuant to s 21 of the Federal Court Act that, between February 2022 and May 2023 (the **Relevant Period**), Coles:
  - (a) made representations to consumers on 'Down Down' promotion tickets (**'Down Down' Tickets**) associated with at least 245 different products (**Affected Products**) in-store and online to the effect that each product's 'Down Down' promotional price was a genuine reduction to, or discount from, the product's previous regular price in circumstances where, in fact:
    - (i) Coles had increased the price of each Affected Product for only a relatively short period of time (the **Price Spike Period**) prior to placing the product on the 'Down Down' promotion — and, in most cases, displaying that higher price as the relevant 'was' price on the product's 'Down Down' Ticket; and
    - (ii) the price at which Coles offered each Affected Product for sale during the 'Down Down' promotion (as displayed on the product's 'Down Down' Ticket) was, in fact, higher than or the same as the Affected Product's previous regular price (i.e. the price at which Coles had previously offered the product for sale prior to the Price Spike Period, excluding any short-term specials or promotions); and
  - (b) thereby, on numerous occasions:
    - (i) engaged in conduct, in trade or commerce, which was misleading or deceptive, or likely to mislead or deceive, in contravention of s 18 of the ACL; and



- (ii) made false or misleading representations with respect to the price of goods in trade or commerce and in connection with the supply or possible supply of goods, in contravention of s 29(1)(i) of the ACL.

### ***Pecuniary penalties***

2. An order pursuant to s 224 of the ACL that within 30 days of the date of this order, Coles pay to the Commonwealth of Australia such pecuniary penalties as the Court determines to be appropriate in respect of its contraventions of s 29(1)(i) of the ACL.

### ***Community service orders***

3. An order pursuant to s 246(2)(aa) of the ACL requiring Coles, at its expense, to engage a registered charity in Australia to deliver a quantity of meals considered appropriate by the Court, to persons in Australia within 12 months of the date of this order (in addition to any meals which it might otherwise have delivered through pre-existing programs).

### ***Compliance orders***

4. An order pursuant to s 246(2)(b) of the ACL directing Coles, at its own expense, to:
- (a) engage a third-party expert, to be agreed by Coles and the ACCC, to conduct an independent review of its ACL compliance program within 2 months of the date of this order;
  - (b) within 2 months of receiving a report from the third-party expert recording the outcome of the independent review referred to in subparagraph 4(a) above, update its ACL compliance program in accordance with any recommendations made in such report; and
  - (c) for a period of three years from completing the update referred to in subparagraph 4(b) above, maintain and continue to implement the ACL compliance program referred to in subparagraph 4(b) above.

### ***Publication orders***

5. An order pursuant to s 246(2)(d) of the ACL requiring Coles to, within 14 days of the date of order, publish at its own expense a corrective notice on:
- (a) its websites (<https://coles.com.au> and <https://colesgroup.com.au>); and
  - (b) the landing page of the Coles online shopping applications on Android and iOS devices,



in a form and in terms to be agreed between the Applicant and Respondent (or, in the absence of such agreement, to be determined by the Court) following the publication of reasons for judgment on liability in the proceeding, but which, at a minimum:

- (c) includes the findings of the Court;
- (d) includes a description of the Respondent's conduct which is the subject of the proceeding (as found by the Court);
- (e) includes the Respondent's obligations under:
  - (i) the ACL; and
  - (ii) the Court's orders; and
- (f) is maintained for a period of at least 90 days from the date on which the notice is first published.

***Other orders***

- 6. An order that Coles serve on the Applicant:
  - (a) an affidavit verifying that it has carried out its obligations under paragraph 3 above, to be served within 12 months and 1 week of the date of order; and
  - (b) an affidavit verifying that it has engaged a third-party expert to conduct an independent review of its ACL compliance program referred to in paragraph 4(a) above, to be served within 2 months and 1 week of this order;
  - (c) an affidavit verifying that it has carried out its obligations under paragraph 4(b) above, to be served within 4 months and 1 week of receiving this order;
  - (d) an affidavit verifying that it has carried out its obligations under paragraph 4(c) above, to be served within 3 years and 5 months of this order; and
  - (e) an affidavit verifying that it has carried out its obligations under paragraph 5 above, to be served within 21 days of this order.
- 7. An order, pursuant to s 43 of the Federal Court Act, that Coles pay the Applicant's costs of and incidental to the proceeding.
- 8. An order that a copy of the reasons for judgment, with the seal of the Court thereon, be retained in the Court for the purposes of s 137H of the CCA.
- 9. Such further or other orders as the Court considers appropriate.

**Applicant's address**

The Applicant's address for service is:

Place: Johnson Winter Slattery  
Level 34, 55 Collins Street  
Melbourne VIC 3000

Email: James.Love@jws.com.au

The Applicant's address is:

Australian Competition and Consumer Commission  
Level 17, 2 Lonsdale St,  
Melbourne VIC 3000

**Service on the Respondent**

It is intended to serve this application on the Respondent.

Date: 23 September 2024

A handwritten signature in black ink, appearing to read 'James Love'.

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Signed by James Love  
Johnson Winter Slattery  
Lawyer for the Applicant