



Amended Originating Application

Amended pursuant to orders made by Moshinsky J on 12 December 2024

No. VID 659 of 2024

Federal Court of Australia
District Registry: Victoria
Division: General

Progressive Green Pty Ltd t/a Flow Power (ACN 130 175 343)

Applicant

Flo Energy Australia Pty Ltd (ACN 664 209 330) and another named in the schedule

Respondents

To the Respondents

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:

Date:

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

Filed on behalf of	Progressive Green Pty Ltd t/a Flow Power, the Applicant		
Prepared by	Caroline Ryan		
Law firm	Allens		
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Email	Caroline.Ryan@allens.com.au		
Address for service (include state and postcode)	101 Collins Street, Melbourne VIC 3000		



Details of Claim

On the grounds stated in the Statement of Claim, the Applicant claims:

1. A declaration that the Respondents have infringed, and have threatened to infringe, Australian Registered Trade Mark Nos. 1828**633** and 1895**059** (**Flow Power Marks**) by using, and threatening to use each of:

- (a) FLO;
- (b) FLO ENERGY;
- (c) floenergy.com.au;



- (d)  (collectively, the **Flo Energy Marks**),

as a trade mark in relation to goods and services in respect of which the Flow Power Marks are registered, pursuant to s 120(1) of the *Trade Marks Act 1995* (Cth).

1A. A declaration that the Respondents have infringed, and have threatened to infringe, Australian Registered Trade Mark No. 1842**461** by using, and threatening to use, the sign FlowSmart as a trade mark in relation to services in respect of which the 461 Mark is registered, pursuant to s 120(1) of the *Trade Marks Act 1995* (Cth).

2. An order that the Respondents, whether by themselves, their employees, servants, agents, or otherwise, be permanently restrained from using as a trade mark in Australia, or procuring or acting in concert with others to use as a trade mark in Australia:

- (a) the Flo Energy Marks;
- (b) any other mark which is substantially identical thereto,

on or in relation to:

- (c) electricity (energy); electrical energy, including electrical energy generated using non-renewable energy sources such as coal and renewable energy sources such as solar, wind, wave and geothermal energy;
- (d) retailing of electricity,

including by way of advertising, promoting, providing, offering for sale and/or selling to consumers, businesses or industry in Australia:

- (e) electricity;



(f) retail electricity services.

2A. An order that the Respondents, whether by themselves, their employees, servants, agents, or otherwise, be permanently restrained from using as a trade mark in Australia, or procuring or acting in concert with others to use as a trade mark in Australia:

(a) the 461 Mark;

(b) any other mark which is substantially identical thereto,

on or in relation to services in respect of which the 461 Mark is registered including:

(c) collection of data regarding energy usage; pricing analysis; cost price analysis associated with electricity usage; analysis of energy usage for businesses;

(d) information services relating to the supply of electricity;

(e) recording of data relating to energy consumption; provision of non-downloadable software for managing the use of electricity.

3. Damages pursuant to s 126 of the *Trade Marks Act 1995* (Cth).

4. In the alternative, an account of profits for trade mark infringement.

4A. A declaration that Australian registered trade mark no. 1553374 for FlowSmart is invalid and liable to be cancelled or removed.

4B. An order that Australian registered trade mark no. 1553374 for FlowSmart be cancelled or removed from the Register of Trade Marks.

5. Interest pursuant to s 51A of the *Federal Court of Australia Act 1976* (Cth).

6. Costs.

7. Such further or other orders as the Court thinks fit.

Claim for interlocutory relief

~~The Applicant also claims interlocutory relief.~~

~~1. An interlocutory injunction restraining the Respondents from advertising, promoting, providing, offering for sale and/or selling to consumers, businesses and industry in Australia, electricity and/or retail electricity services under and by reference to any of the Flo Energy Marks, or any other mark which is substantially identical thereto, until further order.~~

~~2. Such further or other orders as the Court thinks fit.~~

**Applicant's address**

The Applicant's address for service is:

Place: Allens, 101 Collins Street, Melbourne, Victoria, 3000

Email: Caroline.Ryan@allens.com.au

The Applicant's address is 109-133 Burwood Road, Hawthorn, Victoria, 3122.

Service on the Respondent

It is intended to serve this application on all Respondents.

Date: 24 December~~10 July~~ 2024

A handwritten signature in blue ink that reads "Caroline Ryan".

Signed by Caroline Ryan
Lawyer for Applicant

**Schedule**No. VID 659 of 2024

Federal Court of Australia
District Registry: Victoria
Division: General

Respondents

Second Respondent: Flo Holding Pte. Ltd. (UEN 202006024R)

Date: 24 December ~~10 July~~ 2024