

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 21/09/2015 12:18:18 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Interlocutory Application - Form 35 - Rule 17.01(1)(a)
File Number:	NSD940/2014
File Title:	James William Christian & Anor v Societe Des Products Nestle S.A. & Anor
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink, reading 'Warwick Soden'.

Dated: 21/09/2015 2:04:06 PM AEST

Registrar

Important Information

As required by the Court's Rules, 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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



“Amended”
Interlocutory application

No. NSD940 of 2014

Federal Court of Australia
District Registry: New South Whales
Division: General

JAMES WILLIAM CHRISTIAN

Appellant

SOCIÉTÉ DES PRODUITS NESTLÉ S.A.

First Respondent

NESTLÉ AUSTRALIA LTD

ACN 000 011 316

Second Respondent

POST FOODS AUSTRALIA PTY LTD

Third Respondent

PREMIER NUTRITION CORPORATION

Fourth Respondent

To the Respondents

The Appellant applies for the interlocutory order 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.

Time and date for hearing:

Place:

Filed on behalf of	JAMES WILLIAM CHRISTIAN (APPELLANT)		
Prepared by	JAMES WILLIAM CHRISTIAN		
Law firm	N/A		
Tel	0423 511 606	Fax	N/A
Email	JAMES@A-SASHI.COM		
Address for service	23 VICTORIA AVENUE ALBERT PARK VICTORIA 3206		



The Court ordered that the time for serving this application be abridged to [Registry will insert date, if applicable]

Date:

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

Interlocutory order sought

1. Vitaco Health Australia Pty Ltd and Health Foods International Ltd both be granted leave to be joined to these proceedings as the Fifth and Sixth Respondent/Cross-Appellant respectively.

Affidavit/s

This application is supported by my (Christian) affidavit affirmed on 31 August 2015 and filed in the Court on 31 August 2015.

Service on the Respondents

It is intended to serve this application on all Respondents.

Date: 31 August 2015

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

Signed by James William Christian
Appellant

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 31/08/2015 10:35:46 AM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
File Number: NSD940/2014
File Title: James William Christian & Anor v Societe Des Products Nestle S.A. & Anor
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads 'Warwick Soden'.

Dated: 21/09/2015 10:35:52 AM AEST

Registrar

Important Information

As required by the Court's Rules, 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 and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 59
Rule 29.02(1)

Affidavit

No. NSD940 of 2014

Federal Court of Australia
District Registry: New South Wales
Division: General

JAMES WILLIAM CHRISTIAN

Appellant

SOCIÉTÉ DES PRODUITS NESTLÉ S.A.

First Respondent

NESTLÉ AUSTRALIA LTD

ACN 000 011 316

Second Respondent

POST FOODS AUSTRALIA PTY LTD

Third Respondent

PREMIER NUTRITION CORPORATION

Fourth Respondent

Affidavit of: **JAMES WILLIAM CHRISTIAN**
Address: 23 Victoria Avenue, Albert Park, Victoria 3206
Occupation: Founder of A-Sashi Vitamins
Date: 31 August 2015

I, James William Christian affirm as follows:

Introduction

1. I am the founder of the A-Sashi Vitamins business.
2. This is my fourteenth affidavit in these proceedings, the first having been affirmed on 16 September 2014, the second having been affirmed on 18 September 2014, the third (amended version) having been affirmed on 23 September 2014, the fourth having been affirmed on 25 September 2014, the fifth having been affirmed on 29 September 2014,

Filed on behalf of	<u>JAMES WILLIAM CHRISTIAN (APPELLANT)</u>		
Prepared by	<u>JAMES WILLIAM CHRISTIAN</u>		
Law firm	<u>N/A</u>		
Tel	<u>0423 511 606</u>	Fax	<u>N/A</u>
Email	<u>JAMES@A-SASHI.COM</u>		
Address for service	<u>23 VICTORIA AVENUE, ALBERT PARK VICTORIA 3206</u>		

[Version 2 form approved 09/05/2013]

A JUSTICE OF THE PEACE FOR VICTORIA
REG. No. 9921
KEVIN LEONARD BROWN
101 SIE MEWS BRUNSWICK EAST 3057

the sixth having been affirmed on 1 October 2014, the seventh having been affirmed on 2 October 2014, the eighth having been affirmed on 20 October 2014, the ninth having been affirmed on 24 October 2014, the tenth having been affirmed on 2 November 2014, the eleventh having been affirmed on 5 November 2014, the twelfth having been affirmed on 14 December 2014 and the thirteenth having been affirmed on 20 February 2015.

Purpose of affidavit

- 3. The purpose of this affidavit is to set out the grounds supporting the interlocutory application filed on 31 August 2015 applying for leave so that Vitaco Holdings Limited be joined as respondents and cross-appellants to the appeal.

Order sought

- 4. The Court order that:
 - (a) Vitaco Holdings Limited be joined as respondents and cross-appellants to the appeal.

Grounds for seeking to have Vitaco Holdings Limited joined as a party

- 5. The grounds on which the order is sought are as follows:
 - i. The Vitaco Group acquired the Musashi brand in July 2015 from Post Holdings as confirmed in the Vitaco Holdings Limited prospectus lodged with ASX Limited on 24 August 2015. Annexed to this affidavit and marked "A" are copies of pages 131 and 132 from the Vitaco Holdings Limited prospectus providing details on the acquisition of the Musashi brand; &
 - ii. It would be negligent for the respondents not to disclose that the Musashi brand has been recently acquired and therefore have the new owners, Vitaco Holdings Limited, joined as respondents and cross-appellants to the appeal.

Sworn/Affirmed by the deponent
at Melbourne
in Victoria
on 31 August 2015
Before me:

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Signature of deponent

Signature of witness

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7 ELSIE MEWS, BRUNSWICK EAST, 3057

Annexure Certificate

No. NSD940 of 2014

Federal Court of Australia
District Registry: New South Wales
Division: General

JAMES WILLIAM CHRISTIAN

Appellant

SOCIÉTÉ DES PRODUITS NESTLÉ S.A.

First Respondent

NESTLÉ AUSTRALIA LTD

ACN 000 011 316

Second Respondent

POST FOODS AUSTRALIA PTY LTD

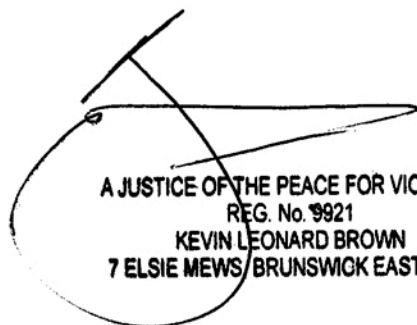
Third Respondent

PREMIER NUTRITION CORPORATION

Fourth Respondent

This is the annexure marked "A" produced by myself (**JAMES WILLIAM CHRISTIAN**) and included in this affidavit at the time of affirming on 31 August 2015.

Before me:



A JUSTICE OF THE PEACE FOR VICTORIA
REG. No. 9921
KEVIN LEONARD BROWN
7 ELSIE MEWS/BRUNSWICK EAST, 3057

Musashi Purchase

On 26 June 2015, Vitaco Australia and Health Foods (together, the **Musashi Purchasers**) entered into a share and asset sale agreement (**Musashi SPA**) with Post Holdings and Premier Nutrition (together, the **Vendors**).

Pursuant to the terms of the Musashi SPA, on 1 July 2015:

- Vitaco Australia acquired the entire issued capital of Post Australia from Post Holdings; and
- the Musashi Purchasers acquired all intellectual property rights relating to the "Musashi" brand from Premier Nutrition.

The Musashi SPA is governed by the laws of New South Wales, Australia.

Consideration

The total consideration paid by the Musashi Purchasers under the Musashi SPA is reflected in the financial information contained in Section 4.

The purchase price payable for the shares in Post Australia is subject to a post-completion working capital adjustment, which may result in Vitaco Australia paying an additional amount to Post Holdings or receiving a refund of part of the purchase price already paid.

Of the consideration paid for the shares in Post Australia, \$1.575 million is currently held by a third-party in escrow pending the outcome of the determination of the tax treatment of certain intercompany loans which were repaid by the Vendors prior to completion of the Musashi SPA. The parties will apply to the ATO for a private binding ruling in relation to the application of the debt forgiveness rules to the repayment of the intercompany loans. If the ruling is favourable to the parties, Vitaco Australia will receive up to 50% of the amount currently held in escrow as a reduction in the purchase price.

Representations and warranties

The Vendors have provided certain standard representations and warranties to the Musashi Purchasers in relation to Post Australia and its business, the shares in Post Australia which were acquired and the intellectual property rights relating to the 'Musashi' brand.



If any of the warranties or representations given by the Vendors under the SPA are untrue, incorrect or misleading, the Musashi Purchasers will have a right to bring a claim for damages against the Vendors, subject to a number of standard limitations and qualifications.

Transaction documents

As part of the acquisition of Post Australia under the Musashi SPA, the parties also entered into a number of ancillary transaction documents, as summarised below.

- **(IP Assignment Deed)** The Vendors and the Musashi Purchasers entered into a deed of assignment of intellectual property dated 1 July 2015 to effect the transfer of the intellectual property rights relating to the 'Musashi' brand in accordance with the terms of the SPA.
- **(IP Sublicense)** Premier Nutrition, the Musashi Purchasers and Post Australia entered into an intellectual property sub-licence agreement dated 1 July 2015 pursuant to which Premier Nutrition granted to the Musashi Purchasers and Post Australia a perpetual, world-wide, fully paid sub-licence of certain intellectual property rights in connection with the ongoing operation of the 'Musashi' business.
- **(Manufacturing Agreement)** PowerBar Europe and Post Australia (a wholly owned subsidiary of the Company following completion of the SPA) entered into a manufacturing agreement dated 1 July 2015 pursuant to which PowerBar Europe agreed to continue to manufacture, package and supply certain 'Musashi' branded products to Post Australia for a period of 12 months. The Manufacturing Agreement contains standard representations and warranties in relation to the quality of the products being manufactured. *Post Australia may terminate the Manufacturing Agreement at any time after 1 January 2016 by giving PowerBar Europe at least three months' written notice. The Manufacturing Agreement may also be terminated immediately in the event of a breach or if a party is or becomes insolvent.*
- **(Transitional Services Agreement)** PowerBar Europe, Premier Nutrition and Post Australia entered into a transitional services agreement dated 1 July 2015 under which Post Australia was appointed as the non-exclusive distributor of certain "PowerBar" branded products within Australia and New Zealand for a period of three months. The Transitional Services Agreement contains standard representations and warranties in relation to the quality of the products supplied. Under the Transitional Services Agreement, Post Australia is licenced to use the 'PowerBar' trade marks during the term in order to promote, advertise and market the 'PowerBar' products. The Transitional Services Agreement may be terminated immediately in the event of a breach or if a party is or becomes insolvent.