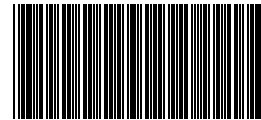




Filed: 3 April 2019 12:18 PM



D0001483BJ

### Amended Summons

#### COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Commercial
Registry	Supreme Court Sydney
Case number	2017/00193375

#### TITLE OF PROCEEDINGS

First Plaintiff	TW McConnell Pty Ltd ACN 000 217 890 as trustee for the McConnell Superannuation Fund
First Defendant	SURFSTITCH GROUP LIMITED ACN 602288004
Second Defendant	Justin Peter Cameron

#### FILING DETAILS

Filed for	TW McConnell Pty Ltd ACN 000 217 890 as trustee for the McConnell Superannuation Fund, Plaintiff 1
Legal representative	Glenn McGowan
Legal representative reference	
Telephone	(03) 9252 2587
Your reference	GYM: 21605811

#### ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Amended Summons (Amended Summons (Final) 3.4.2019.PDF)

[attach.]

Form 4A (version 4)  
UCPR 6.2

**AMENDED SUMMONS**

**COURT DETAILS**

Court	Supreme Court
Division	Equity
List	Commercial (Representative Proceeding)
Registry	Sydney
Case number	<u>2017/193375</u>

**TITLE OF PROCEEDINGS**

Plaintiff	<b>TW McConnell Pty Ltd ACN 000 217 890 as trustee for the McConnell Superannuation Fund</b>
First Defendant	<b>SurfStitch Group Limited (<u>Administrators Appointed</u>) ACN 602 288 004</b>
Second Defendant	<b>Justin Peter Cameron</b>
<u>Third Defendant</u>	<b><u>Chubb Insurance Australia Limited ACN 001 642 020</u></b>

**FILING DETAILS**

Filed for	<b>TW McConnell Pty Ltd ACN 000 217 890 as trustee for the McConnell Superannuation Fund (Plaintiff)</b>
Legal representative	Gadens
Legal representative reference	GYM:21605811
Contact name and telephone	Glenn McGowan (03) 9252 2587
Contact email	glenn.mcgowan@gadens.com

**HEARING DETAILS**

These proceedings are listed for an initial case conference at 9.00am on the Wednesday after the expiration of 42 days following the filing of this Summons.

This summons is listed at

**TYPE OF CLAIM**

Commercially misleading conduct and Other (Commercial List)

## RELIEF CLAIMED

On the grounds stated in the accompanying Amended Commercial List Statement, the plaintiff claims on its own behalf and on behalf of Group Members (as defined below):

1. Pursuant to section 1317HA of the *Corporations Act 2001* (Cth), an order that:
  - (a) the first defendant (**SurfStitch**) compensate the plaintiff and Group Members for the damage suffered by them which resulted from SurfStitch's contraventions of section 674(2) of the Corporations Act; further or in the alternative
  - (b) the second defendant (**Cameron**) compensate the plaintiff and Group Members for the damage suffered by them which resulted from SurfStitch's contraventions of section 674(2) of the Corporations Act, in which contravention he was involved within the meaning of section 674(2A) of the *Corporations Act*.
2. Further or in the alternative, an order that SurfStitch and/or Cameron pay to the plaintiff and the Group Members statutory compensation pursuant to:
  - (a) section 1041I of the Corporations Act;
  - (b) section 12GF of the *Australian Securities and Investments Commission Act 2001*; and/or
  - (c) section 236 of the *Australian Consumer Law (New South Wales)*.
3. Further or in the alternative:
  - (a) a declaration that the third defendant (**Chubb**) is liable to pay the Plaintiff and the Group Members an amount equal to the maximum amount available under the Director's and Officer's Liability Policy (and any other relevant policy) as defined in the Amended Commercial List Statement in respect of the loss and damage to the Plaintiff and Group Members caused by the first and second defendant's contraventions of s1317HA and s 1041I of the *Corporations Act 2001*; and
  - (b) an order that Chubb pay to the Plaintiff and Group Members the amount referred to in (a) above.
4. Interest up to the date of judgement pursuant to section 101(1) of the *Civil Procedure Act 2005* (NSW).

5. Costs.
6. Such further or other relief as the Court determines to be just.

### QUESTIONS COMMON TO THE PLAINTIFF AND GROUP MEMBERS

NB: capitalised terms have the same meaning as in the Plaintiff's Commercial List Statement filed herewith.

The questions of law or fact common to the plaintiff and the Group Members are as follows:

1. Whether and if so at what time(s) SurfStitch had, within the meaning of the ASX Listing Rules:
  - (a) the October Information;
  - (b) the November Information; and/or
  - (c) the February Information.
2. Whether, and if so from what dates, SurfStitch contravened section 674(2) of the *Corporations Act* by not immediately telling the ASX:
  - (a) the October Information;
  - (b) the November Information; and/or
  - (c) the February Information.
3. Whether Cameron was involved in the contraventions in 2 within the meaning of section 674(2A) of the *Corporations Act*.
4. Whether SurfStitch and/or Cameron by making or at any time failing to correct or qualify:
  - (a) the October Representations, being the:
    - (i) October Express Representation; and
    - (ii) October Implied Representations;
  - (b) the November Representations, being the:
    - (i) 10 November AGM Statements;
    - (ii) 12 November Statement;
    - (iii) November FY2016 EBITDA Upgrade; and
    - (iv) November Implied Representations; and/or
  - (c) the February Representations, being the:

- (i) February Express Representations; and
- (ii) February Implied Representations;

contravened sections 1041E and/or 1041H of the *Corporations Act*, section 12DA of the *ASIC Act*, and/or section 18 of the *ACL*.

5. Whether Cameron was involved in the contraventions by SurfStitch in 4 above, within the meaning of section 1041I of the *Corporations Act*, section 12GF of the *ASIC Act* and/or section 236 of the *ACL*.
6. Whether any and if so which contraventions by SurfStitch and/or Cameron had the effect that traded prices for SurfStitch Securities were, during the Inflation Period, higher than their true value, alternatively the prices at which the shares otherwise would have traded, and if so the timing and extent of that inflation.
7. If any contraventions by SurfStitch and/or Cameron had an effect as described in 6:
  - (a) whether compensation is recoverable by the Plaintiff and the Acquisition Subgroup Members;
  - (b) whether compensation is recoverable by the Plaintiff and the Retention Subgroup Members; and
  - (c) the measure of compensation recoverable by the Plaintiff and Group Members.
8. Whether Chubb is liable to pay an amount equal to the total amount that the defendants would be ordered to pay the Plaintiff and Group Members, whether by virtue of section 4 of the *Civil Liability (Third Party Claims Against Insurers) Act 2017 (NSW)* or otherwise.

## REPRESENTATIVE ACTION

The plaintiff commences this proceeding as a representative party pursuant to Part 10 of the *Civil Procedure Act 2005 (NSW)*.

The Group Members are persons who:


1. on any of 25 February 2016, 3 May 2016 or 9 June 2016 held an interest in shares in SurfStitch acquired before those dates; and
2. are alleged to have suffered loss and damage by reason of the matters set out in the Commercial List Statement.

#### SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014* that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the plaintiff[s] that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

Solicitor on record

Date of signature

3 April 2019

#### NOTICE TO DEFENDANTS

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the relief claimed in the summons and for the plaintiff's costs of bringing these proceedings.

Before you can appear before the court you must file at the court an appearance in the approved form.

#### HOW TO RESPOND

**Please read this summons very carefully. If you have any trouble understanding it or require assistance on how to respond to the summons you should get legal advice as soon as possible.**

You can get further information about what you need to do to respond to the summons from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au).
- The court registry for limited procedural information.

Court forms are available on the UCPR website at [www.ucprforms.justice.nsw.gov.au](http://www.ucprforms.justice.nsw.gov.au) or at any NSW court registry.

**REGISTRY ADDRESS**

Street address	Law Courts Building, 184 Phillip Street, Sydney
Postal address	Supreme Court of New South Wales, GPO Box 3, Sydney NSW 2001, Australia
Telephone	1300 679 272

**FURTHER DETAILS ABOUT PLAINTIFF[S]****Plaintiff**

Name TW McConnell Pty Ltd ACN 000 217 890 as trustee for the  
McConnell Superannuation Fund

Address Unit 22  
2-4 Sturt Place  
St Ives New South Wales 2075  
Australia

**Legal representative for Plaintiff**

Name Glenn McGowan

Practising certificate number P0013596

Firm Gadens

Address Level 25, Bourke Place  
500 Bourke Street  
Melbourne Victoria 3000

DX address 304, Melbourne

Telephone 03 9252 2555

Fax 03 9252 2500

Email glenn.mcgowan@gadens.com

Electronic service address glenn.mcgowan@gadens.com

**DETAILS ABOUT DEFENDANT[S]****First Defendant**

Name SurfStitch Group Limited (Administrators Appointed) (ACN  
602 288 004)

Address 225 Burleigh Connection Road  
Burleigh Heads QLD 4220  
Australia

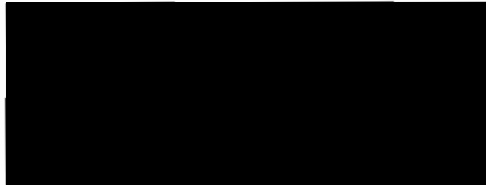


**DETAILS ABOUT DEFENDANTS**

**Second Defendant**

Name Justin Peter Cameron

Address



**Third Defendant**

Name Chubb Insurance Australia Limited ACN 001 642 0202

Address

Grosvenor Place  
Level 38, 225 George Street  
Sydney New South Wales 2000  
Australia