

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 22/05/2017 8:30:46 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:	Submissions
File Number:	NSD126/2017
File Title:	Rodgers Reidy (Qld) Pty Limited ACN 117 655 973 & Ors v Google Australia Pty Limited ACN 102 417 032 & Anor
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



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

Dated: 22/05/2017 8:55:01 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.



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

No. NSD126/2017

Applicants	Rodgers Reidy (QLD) Pty Limited Rodgers Reidy (NSW) Pty Limited Rodgers Reidy (VIC) Pty Limited Rodgers Reidy (INTERNATIONAL) Pty Limited
First Respondent	Google Australia Pty Ltd
Second Respondent	Gordon Craven

**SECOND RESPONDENT'S SUBMISSIONS TO 23 MAY 2017 HEARING**

to be read in conjunction with the affidavit of Gordon James Craven sworn  
2 February 2017 and filed in the Registry (**Gordon's affidavit**)

1. It would appear that the matter has not progressed at all since 28 April 2017, given the Applicant's initial excitement to have the matter urgently heard.

THE EXCITEMENT

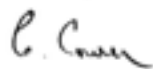
2. The affidavit by deponent Stephen Michael Polczynski sworn 1 February 2017 to the Urgent Originating Application heard on 1 February 2017 deposes at paragraph 35 that an email was sent by Polczynski Lawyers to James Smith at [qahjim@gmail.com](mailto:qahjim@gmail.com) at 11-13am on 31 January 2017 with an attached letter demanding certain (alleged) defamatory and malicious falsehood matters be removed from the website [www.pleading.com.au](http://www.pleading.com.au) that Gordon publishes.
  - 2.1 Paragraphs 53 and 54 of that affidavit, identify Gordon Craven's email address as being [gordon@getmail.com.au](mailto:gordon@getmail.com.au) which is correct.
  - 2.2 The said affidavit does not depose that an email was sent to [gordon@getmail.com.au](mailto:gordon@getmail.com.au).
3. Gordon has since checked for the email referred at paragraph 1 above to James Smith at [qahjim@gmail.com](mailto:qahjim@gmail.com), and no such email had been received.
4. The affidavit by deponent Clair Latham (for Polczynski Lawyers) sworn 2 February 2017, deposes at paragraph 2 that an email was sent to Gordon Craven's email address [gordon@getmail.com.au](mailto:gordon@getmail.com.au) on 1 February 2017 at **7-58pm** attaching a copy of the orders made on 1 February 2017.

- 4.1 The said affidavit of Clair Latham further deposes at paragraph 3 that an email was sent to Gordon Craven's email address [gordon@getmail.com.au](mailto:gordon@getmail.com.au) on 1 February 2017 at **8-12pm** attaching a copy of :
  - (a) the Urgent Application before start of proceeding that had already been heard; and
  - (b) the Originating Application that had already been heard; and
  - (c) the said affidavit Stephen Michael Polczynski sworn 1 February 2017.
5. As per Gordon's affidavit, it is deposed at paragraphs 1 and 2 that no notice of the Federal Court matter had been received prior to 7am (Qld time) on 2 February 2017.
6. From the evidence provided by Polczynski Lawyers themselves, they did not contact Gordon Craven before the initial hearing, but instead notified James Smith that in fact did not receive any such notification, **despite there having always been a prominent contact form at the bottom of the front page at [pleading.com.au](http://pleading.com.au)** which goes direct to Gordon at [gordon@getmail.com.au](mailto:gordon@getmail.com.au).
7. The result is that the facts set out in Gordon's affidavit were not before his Honour on 1 February 2017.
8. At paragraph 9 of Bromwich J. reasons for judgment, his Honour states that he has no reason to doubt that from evidence before him, that the information on the website ([www.pleading.com.au](http://www.pleading.com.au)) is incorrect.
9. Accordingly, on 1 February his Honour only had the evidence of the Applicants before him because of the failure of Polczynski Lawyers to provide Gordon with details of the 1 February hearing beforehand, as deposed at paragraph 17 of Gordon's affidavit.
10. Further, as per paragraph 1 above, his Honour would have been entitled to believe that Gordon Craven received notification via James Smith, when in fact this was not the case as per paragraph 3 above. As a result interlocutory orders were made against Gordon, *"until further order of the Court."*
11. As to the email received by Gordon Craven at **5-36pm** on Friday 19 May 2017 pursuant to order 2 of his Honour made on 28 April 2017. Contrary to it being ordered that information from Polczynski Lawyers be provided by **4-00pm**, to which to Gordon prompted them at **4-41pm**, Polczynski Lawyers replied, *"the applicants advise that they wish to seek the dismissal of the entirety of the proceeding."*

## THE ABANDONMENT

12. Despite the current Google organic listing for the website having risen to be between number two and four on entering the search words "*Rodgers Reidy*", the Applicants seek to abandon the reasons for their excited Urgent Application to deal with it when it was number one with Adwords for the search words "*Rodgers Reidy*".
13. They wish to abandon their substantive core matter claims of there being alleged untrue '**Representations**' which are listed (a) to (h) on page 3 of the Application which form the basis of the Applicant's excitement and the interlocutory orders.
14. Presumably this abandonment is by reason of the Applicant's realising that the facts deposed from paragraph 5 of Gordon's affidavit and the facts published on the website, are true.
15. As explained to the Court on 28 April 2017, Gordon Craven is only prepared to walk away from this if the interlocutory orders are set aside. Otherwise as foreshadowed on 28 April, Gordon wishes to defend and cross-claim these proceedings and seek a substantial amount of declarations.
16. Paragraphs 16 of Gordon's affidavit did not oppose a **temporary** removal of the Adwords advertisement.
17. Paragraphs 18 of Gordon's affidavit reserved the right to **reinstate** a same or similar Adwords advertisement.
18. The above events impact on the costs order the Applicants seek from Google the First Respondent.
19. Because of the Applicant's abandonment of their substantive core matter claims, Gordon has always been entitled to :
  - (a) publish the website; and
  - (b) use Adwords to promote the website; and
  - (c) as such, Google was always entitled to publish the Adwords.

SIGNED:



Gordon Craven - Second Respondent

DATE: 22 May 2017