

NOTICE OF FILING

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Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number: QUD395/2021
File Title: APPZoola PTY LTD ACN 645 755 755 v BPS FINANCIAL LIMITED
ACN 604 899 381 & ORS
Registry: QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 23/11/2021 4:10:00 PM AEST

A handwritten signature in blue ink that reads 'Sia Lagos'.

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 17
Rule 8.05(1)(a)

Statement of claim

No. of 2021

Federal Court of Australia
District Registry: Queensland
Division: General

APPZoola PTY LTD ACN 645 755 755

Applicant

BPS FINANCIAL LIMITED ACN 604 899 381 and others named in the schedule

Respondents

Representative proceeding

1. The applicant brings this proceeding on its own behalf and on behalf of each other person (**Group Member**) who since 1 October 2019:
 - (a) satisfies one or more of the following criteria:
 - (i) purchased or traded Qoin Tokens (as defined below) in Australia;
 - (ii) was a Qoin Merchant (as defined below) in Australia;
 - (iii) was a Qoin Consumer (as defined below) in Australia;
 - (b) suffered loss or damage by reason of the conduct pleaded herein;
 - (c) was not at any material time, and is not at the date of this originating application, any of:
 - (i) a related party (as defined by section 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**)) of any respondent;
 - (ii) a related body corporate (as defined by section 50 of the *Corporations Act*) of any respondent;
 - (iii) an associated entity (as defined by section 50AAA of the *Corporations Act*) of any respondent;

Filed on behalf of (name & role of party)	<u>Appzoola Pty Ltd ACN 645 755 755, the Applicant</u>		
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[Form approved 01/08/2011]

- (iv) a director, officer, or close associate (as defined by section 9 of the Corporations Act) of any respondent; or
- (v) a judge or the Chief Justice of the Federal Court of Australia or a Justice or the Chief Justice of the High Court of Australia.

2. At the date of this proceeding there are seven or more group members.

Brief description of the Qoin System

3. Since 1 October 2019, BPSF, BTX, and Qoin Association have, in the manner particularised below, operated a system of trading (**Qoin System**) which involved:
- (a) selling units of cryptocurrency (**Qoin Tokens**) to persons (**Qoin Consumers**) so that they could participate in the Qoin System;
 - (b) facilitating the purchase by Qoin Consumers with Qoin Tokens of goods and services from other participants in the Qoin System (**Qoin Merchants**);
 - (c) providing to participants in the Qoin System a means of holding Qoin Tokens (**Qoin Wallet**);
 - (d) permitting participants (subject to restrictions) to redeem Qoin Tokens for fiat currency with reference to a value fixed by an algorithm applied in the Qoin System.

The respondents

4. The first respondent (**BPSF**):
- (a) has at all times material been a company duly incorporated;
 - (b) has been the issuer of Qoin Tokens and Qoin Wallets in its capacity as an authorised representative (within the meaning of section 761A of the Corporations Act) of:
 - (i) in the periods of 18 December 2019 to 4 November 2021 and at all times material since 1 September 2021, the second respondent; and
 - (ii) in the period 5 November 2020 to 31 August 2021, the third respondent.
5. The second respondent (**Billzy**):
- (a) has at all times material been a company duly incorporated;
 - (b) holds Australian financial services licence number 494176 and has done since 5 October 2017; and
 - (c) permitted BPSF, as its authorised representative in the periods identified above, to issue Qoin Tokens and Qoin Wallets.
6. The third respondent (**PNI**):
- (a) has at all times material been a company duly incorporated;

- (b) holds Australian financial services licence number 408735, and has done since 8 November 2011; and
 - (c) permitted BPSF, as its authorised representative in the periods identified above, to issue Qoin Tokens and Qoin Wallets.
7. The fourth respondent (**BTX**):
- (a) has at all times material been a company duly incorporated;
 - (b) is a related entity (as defined in section 50 of the Corporations Act) to BPSF;
 - (c) operates an exchange known as "**BTX Exchange**" or "**Block Trade Exchange**", which:
 - (i) commenced operation on about 11 December 2020;
 - (ii) is accessible from the URL <http://blocktradeexchange.com/>;
 - (iii) is accessible from the Qoin Wallet app, which is a mobile app available on devices running iOS and Android operating systems;
 - (iv) is registered with AUSTRAC as a Digital Currency Exchange with the registration number 100635628; and
 - (v) is the sole exchange upon which the Qoin Token can be exchanged for fiat currency, being Australian Dollars.
8. The fifth respondent (**Qoin Association**):
- (a) has at all times material been a company duly incorporated;
 - (b) from incorporation until about 21 November 2019 had the name "**Bartercard Members Association Ltd**".
9. At all times material:
- (a) each of Rajesh Kumar Pathak and Antonie Hendrik Jakobus Wiese, who are the sixth and seventh respondents, respectively, were (and remain) the only directors of each of BPS, BTX, and Qoin Association;
 - (b) each of BPS, BTX, and Qoin Association were therefore related parties of each other.

Unconscionable conduct

10. At all times material, it was generally accepted in the Australian community that (**Relevant Norms**):
- (a) a person operating a system by which value in one form was exchanged for value in another (**Exchange System**) would ensure that information necessary to make judgments about the value of things traded on the Exchange System was reasonably available to those who participated in the Exchange System (**Free Exchange Norm**);

- (b) where such an Exchange System contemplated:
 - (i) the use of something approximating currency as a medium of exchange (**Exchange Token**); and
 - (ii) the conversion by a participant of one or more Exchange Tokens into ordinary fiat currency,

the person operating the Exchange System would take reasonable steps to ensure that the Exchange System was sufficiently liquid from time to time to ensure that any participant could convert so many of that participants Exchange Tokens into ordinary fiat currency as that participant wished (**Liquidity Norm**).

- 11. The existence of the Free Exchange Norm finds expression in:
 - (a) the regulation of financial markets under the Corporations Act to achieve equitable levels of disclosure to market participants and thereby to ensure integrity in markets;
 - (b) equitable notions of unconscionable and/or unconscientious conduct which abjure knowing exploitation by a well-informed party to a transaction of a poorly-informed party;
 - (c) the establishment within the Australian Securities and Investments Commission of market surveillance operations and investigation of regulatory breaches;
 - (d) the enactment in the *Australian Securities and Investments Commission Act 2001 (ASIC Act)* of prohibitions against misleading and deceptive conduct in connection with dealing in financial products, which have the object of ensuring that those who trade with each other in financial products properly inform each other and are properly informed as to those things usually material to the acquisition of a financial product.
- 12. The existence of the Liquidity Norm finds expression in:
 - (a) regulations which require that financial institutions maintain sufficient liquidity to ensure that customers may call on deposits as and when they wish;
 - (b) the enactment in the ASIC Act of prohibitions against misleading and deceptive conduct in connection with dealing in financial products, which have the object of ensuring that those who trade with each other in financial products properly inform each other and are properly informed as to those things usually material to the acquisition of a financial product.

Algorithm for fixing value of Qoin

- 13. At all times material:
 - (a) the Qoin Association developed an algorithm to value Qoin Tokens (**Qoin Algorithm**); and
 - (b) the BTX Exchange utilised the Qoin Algorithm to value Qoin Tokens.

14. According to a document entitled "Qoin Official White Paper" (**White Paper**) published by BPSF and Qoin Association, the Qoin Algorithm calculates the value of a Qoin Token based on the following factors:
 - (a) the number of Qoin Merchants participating in the Qoin System;
 - (b) the average annual revenue of each Qoin Merchant;
 - (c) the average available capacity of each Qoin Merchant (that is, the currently unused assets and means of production in each such Qoin Merchant);
 - (d) the number of Qoin Tokens minted and in circulation in the Qoin System.
15. By deploying the Qoin Algorithm in the Qoin System, BPSF, BTX, and Qoin Association breached the Free Exchange Norm inasmuch as:
 - (a) the value of a Qoin Token did not represent the value set as between a willing buyer and willing seller;
 - (b) the likelihood that the value of a Qoin Token would not necessarily or even usually represent the value set as between a willing buyer and willing seller was not disclosed to Qoin Consumers or Qoin Merchants.

Failure of liquidity

16. By March 2021, more than 12,000 people had registered for account with the BTX Exchange.
17. That amount far exceeded the expectations of BPSF, BTX, and Qoin Association with respect to the growth of trading on the BTX Exchange.
18. As at 9 March 2021:
 - (a) BPSF, BTX, and Qoin Association had imposed a withdrawal limit (**Withdrawal Limit**) on those holding Qoin Tokens in Qoin Wallets to prevent them from converting Qoin Tokens to fiat currency beyond the Withdrawal Limit;
 - (b) BPSF, BTX, and Qoin Association had detected that a number of participants in the Qoin System were registering multiple Qoin Wallets as a means of evading the Withdrawal Limit;
 - (c) BPSF, BTX, and Qoin Association had been attracting new Qoin Merchants by offering them Qoin Tokens for free (**Incentive Qoin Tokens**);
 - (d) Qoin Merchants issued with Incentive Qoin Tokens were attempting to convert those Incentive Qoin Tokens to fiat currency rather than use them – as BPSF, BTX, and Qoin Association intended – to purchase goods or services on the BTX Exchange;
 - (e) there was an increasing number of participants in the Qoin System who, rather than trading on the BTX Exchange by exchanging Qoin Tokens for goods or services (or vice versa) were merely purchasing Qoin Tokens from other participants (off the BTX Exchange) and then seeking to convert those purchased tokens to fiat currency;

- (f) a number of participants in the Qoin System had become concerned about its efficacy as a consequence of reading negative posts on social media;
 - (g) to preserve, as best they could, the liquidity of the Qoin System, BPSF, BTX, and Qoin Association reduced the Withdrawal Limit from \$2,000 to \$100;
 - (h) the consequences of those matters were that:
 - (i) the number of sellers of Qoin Tokens had greatly increased;
 - (ii) the price at which persons wished to purchase Qoin Tokens was far less than the price at which persons holding them had previously paid, alternatively far less than the value of the goods or services that such persons had exchanged for Qoin Tokens; and
 - (iii) the price at which persons wished to purchase Qoin Tokens was far less than the value of the Qoin Tokens as represented by BPSF, BTX, and Qoin Association.
19. On 9 March 2021, BPSF, BTX, and Qoin Association, by BTX Exchange, in a document entitled "First Quarter Progress Report" and published on its website:
- (a) made statements to the effect of the allegations set out in paragraph 17;
 - (b) stated as follows:

The above activities have triggered a considerable increase in sellers. This has caused pressure on the sell side, and consequently a larger spread to the buy side price.

As a manager we have responsibility to prudentially manage the BTX exchange on a sustainable basis for the long term. BTX must be protected against exploitation from the community or any abuse from outside the community. Based on the four new challenges above we have been advised to review and recommend corrective measures for the long term.

As a key objective it has been identified, after consultation with the leaders of the Qoin community, to better support and manage the liquidity demands of the community in general and, in particular the merchants, who supply ongoing products and services.
20. At all times material, each of BPSF, BTX, and Qoin Association understood, alternatively (given their status as sophisticated participants in the financial industry) should have understood, that:
- (a) the Qoin System was effectively one which, by accepting money in response for a Qoin Token and contemplating the later redemption of a Qoin Token for fiat currency, took deposits with a promise to redeem that deposit (subject to fluctuations of value as an incident of participation in the Qoin System);
 - (b) that being so, it was reasonably foreseeable that, from time to time, the number of persons wishing to redeem Qoin Tokens may escalate so that proper reserves of fiat currency were necessary to maintain the efficacy of the Qoin System;
 - (c) providing Incentive Qoin Tokens to participants would:

- (i) without limitation on their manner of use, likely result in some of the recipients simply seeking to convert the Incentive Qoin Tokens to fiat currency and thereby place greater demands on the liquidity of the Qoin System;
 - (ii) debase the value of Qoin Tokens generally.
21. It is to be inferred from the matters in paragraphs 15 to 19 that in establishing the Qoin System BPSF, BTX, and Qoin Association had failed to take reasonable steps to ensure that the Qoin System was sufficiently liquid and thereby breached the Liquidity Norm.

Relevant characteristics of the applicant

22. The applicant was, at all times material:
- (a) engaged in the business of website and mobile app development services;
 - (b) not well-educated in questions of financial risk;
 - (c) unaware of the conduct constituting offending of the Relevant Norms;
 - (d) therefore unaware that **(Information Deficit)**:
 - (i) there was a risk that if the applicant purchased Qoin Tokens, it may not be able, as and when it wished to redeem those Qoin Tokens, or some of them, for fiat currency;
 - (ii) there was a risk that the Qoin Tokens would not represent the value that participants in the Qoin System placed on them (as willing buyers and sellers) but instead would be valued according to the idiosyncrasies of the Qoin Algorithm.
23. By imposing the Withdrawal Limit, BPSF, BTX, and Qoin Association engaged in unfair tactics against the applicant **(Unfair Tactics)**.

Statutory unconscionable conduct

24. A Qoin Token is (and has at all times material been) a financial product within the meaning of section 12BAA of the ASIC Act because of each of:
- (a) its being a facility through which a person makes a financial investment;
 - (b) its being a facility through which a person manages financial risk;
 - (c) its being a means of making a non-cash payment; or
 - (d) alternatively, by virtue of the Qoin Wallet being a non-cash payment device and a facility in which a Qoin Consumer or Qoin Merchant would only acquire to acquire, hold or utilise the Qoin Tokens.
25. By operating the BTX Exchange, BPSF, BTX, and Qoin Association provided a financial service inasmuch as they:
- (a) dealt in Qoin Tokens by selling them to Qoin Consumers and providing Incentive Qoin Tokens to Qoin Merchants;

- (b) made a market for Qoin Tokens by:
 - (i) operating the BTX Exchange;
 - (ii) issuing Qoin Wallets;
 - (iii) providing a means of receiving fiat currency in return for Qoin Tokens and a means of receiving Qoin Tokens in return for fiat currency.
26. In the premises set out in paragraphs 1 to 22, the conduct of BPSF, BTX, and Qoin Association in breaching the Free Exchange Norm and the Liquidity Norm (**Relevant Norms**) was:
- (a) conduct in trade or commerce;
 - (b) conduct in relation to both the supply or possible supply of financial services and acquisition or possible acquisition of financial services;
 - (c) conduct which was unconscionable within the meaning of section 12CB of the ASIC Act inasmuch as:
 - (i) it offended each of the Relevant Norms (the more so together);
 - (ii) by reason of the Information Deficit, the criteria in each of sub-sections 12CC(1)(a) and 12CC(1)(i) of the ASIC Act were engaged;
 - (iii) by reason of the Unfair Tactics, the criterion in sub-section 12CC(1)(d) of the ASIC Act was engaged.
 - (d) alternatively, conduct which was unconscionable within the meaning of section 21 of the Australian Consumer Law inasmuch as:
 - (i) it offended each of the Relevant Norms (the more so together);
 - (ii) by reason of the Information Deficit, the criteria in each of sub-sections 22(1)(a) and 22(1)(i) of the Australian Consumer Law were engaged;
 - (iii) by reason of the Unfair Tactics, the criterion in sub-section 22(1)(d) of the Australian Consumer Law was engaged.

Misleading or deceptive conduct

Representations

27. At all times material, BPSF, BTX, and Qoin Association have represented that the Qoin System involves:
- (a) the purchase of Qoin Tokens from independent exchanges;
 - (b) a free-market for the exchange of Qoin Tokens; and
 - (c) no restrictions on buying or selling Qoin Tokens or exchanging Qoin Tokens for fiat currency.

(together, **Representations**)

Particulars

- (i) Publication titled "Qoin Official White Paper" accessible at the URL http://qoin.world/wp-content/uploads/2021/11/Qoin-Whitepaper_MKTWP202111.01.pdf;
 - (ii) Publication titled "Qoin Tokenomics" accessible at the URL <http://qoin.world/introducing-qoin/the-qoin-tokenomics/>;
 - (iii) Publication titled "Block Trade Exchange (BTX) Fact Sheet" accessible at the URL <https://blocktradeexchange.com/fact-sheet/>;
 - (iv) The representations in sub-paragraphs (b) and (c) are implied representations arising from those documents.
28. The Representations and each of them:
- (a) was a continuing representation made at all times from the date it was published until the date of this proceeding;
 - (b) constituted conduct occurring in trade or commerce;
 - (c) was made in connection with the supply or possible supply of services; and
 - (d) constituted conduct:
 - (i) relating to the provision of a financial service;
 - (ii) on which a third person could reasonably be expected to rely; and
 - (iii) on which the applicant and the group members in fact relied in good faith.
29. The applicant and group members, and each of them, relied on some or all of the Representations by taking one or more of the following actions:
- (a) purchasing or trading Qoin Tokens;
 - (b) accepting payment of Qoin Tokens in return for goods or services; and
 - (c) making payment in Qoin Tokens for goods and services provided to them.
30. Had the Representations and each of them not been made, the applicant and group members would not have:
- (a) purchased or traded Qoin Tokens;
 - (b) accepted payment of Qoin Tokens in return for goods or services; or
 - (c) made payment in Qoin Tokens for goods and services provided to them.

The Representations were misleading or deceptive

31. Qoin Tokens are only available for exchange on the Block Trade Exchange, which is not independent of BPSF for the reasons pleaded in paragraph 9 above.

32. The value of a Qoin Token is not determined by a free market, but rather is determined by the Qoin Algorithm.
33. Since 9 March 2021, the Qoin System has been restricted in the manner pleaded in paragraph 18 above.
34. For the reasons pleaded in paragraph 31 to 33 above, the Representations and each of them:
- (a) were misleading or deceptive; or
 - (b) likely to mislead or deceive,
- as those terms are used in, and in contravention of:
- (c) section 12DA of the ASIC Act; and
 - (d) alternatively, section 18 of the Australian Consumer Law.

Liability of Billzy and PNI

35. For the reasons pleaded in paragraphs 4(b), 26(b), and 28(d) above, pursuant to Part 7.6 Division 6 of the Corporations Act:
- (a) Billzy is liable for the conduct of BPSF which occurred from about 18 December 2019 to 4 November 2020 and from about 1 September 2021 to the date of this proceeding; and
 - (b) PNI is liable for the conduct of BPSF from about 5 November 2020 to about 31 August 2021.

Liability of Messrs Pathak and Wiese

36. At all times material:
- (a) Mr Pathak held himself out as:
 - (i) a director of BPSF, BTX, and Qoin Association; and
 - (ii) a part of the team responsible for the Qoin System.
 - (b) Mr Wiese held himself out as:
 - (i) the "Governor of the Qoin Reserve" and "Governor of the Qoin Association";
 - (ii) a director of BPSF, BTX, and Qoin Association; and
 - (iii) a part of the team responsible for the Qoin System.
 - (c) in the premises of sub-paragraphs (a) and (b) above, it is to be inferred, if not proved directly, that Messrs Pathak and Wiese knew of the conduct engaged in by BPSF, BTX, and Qoin Association pleaded in paragraphs 26 and 34 above.

Particulars

- (i) Publication titled "Qoin Official White Paper" accessible at the URL http://qoin.world/wp-content/uploads/2021/11/Qoin-Whitepaper_MKTWP202111.01.pdf;
- (ii) Publication titled "Meet the Team" accessible at the URL <https://qoin.world/the-team-2/>;
- (iii) Publication titled "Block Trade Exchange (BTX) Fact Sheet" accessible at the URL <https://blocktradeexchange.com/fact-sheet/>;
- (iv) Publication in *APAC Entrepreneur* titled "Cover Story Raj Pathak and Tony Wiese" accessible at the URL <https://qoin.world/wp-content/uploads/2020/09/APAC-ENTREPRENEUR-Coverstory.pdf>;
- (v) Publication titled "BTX Gains Unprecedented Interest in Opening Days" accessible at the URL <https://blocktradeexchange.com/btx-gains-unprecedented-interest-in-opening-days/>;
- (vi) Publication titled "BTX Commences Trading of Qoin" accessible at the URL <https://blocktradeexchange.com/btx-commences-trading-of-qoin/>.

37. For the reasons pleaded in paragraphs 9 and 36 above, Messrs Pathak and Wiese are persons involved in the conduct of BPSF, BTX, and Qoin Association:

- (a) pursuant to section 12GF(1) of the ASIC Act; and
- (b) alternatively, pursuant to sections 236(1) and 237(1) of the Australian Consumer Law, and

the applicant and group members may therefore recover the amount of loss or damage against them personally.

Loss and damage

38. As a result of the matters pleaded in this statement of claim, the applicant and group members have suffered loss and damage and are entitled to:

- (a) damages pursuant to:
 - (i) section 12GF(1) of the ASIC Act;
 - (ii) alternatively, section 236 of the Australian Consumer Law;
- (b) alternatively, compensation pursuant to section 237 of the Australian Consumer Law.

Particulars

- (i) The amount of loss and damage will be particularised following receipt of expert evidence.

Date: 23 November 2021



Signed by Cliff Savala of Salerno Law
Lawyer for the Applicant

This pleading was settled by Nick Ferrett QC and Hamish Clift of counsel

Certificate of lawyer

I, Cliff Savala, certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 23 November 2021



Signed by Cliff Savala
Lawyer for the Applicant