



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

No: NSD516/2016

DOMINO'S PIZZA ENTERPRISES LTD
Applicant

PRECISION TRACKING PTY LTD and another/others named in the schedule
Respondent

ORDER

JUDGE: JUSTICE ROBERTSON

DATE OF ORDER: 16 August 2017

WHERE MADE: Sydney

THE COURT ORDERS THAT:

1. The First Respondent be granted leave pursuant to rule 34.66 to serve a subpoena in New Zealand, in the form annexed hereto, in the manner set out in the affidavit of Odette Margaret Gourley sworn 31 July 2017 and by no later than 31 August 2017.
2. The amount to be tendered to Andrew Franchuk to meet his reasonable expenses of complying with the subpoena is NZ\$500 (in the first instance).

Date that entry is stamped: 16 August 2017


Registrar

Filed on behalf of (name & role of party)	Precision Tracking Pty Ltd, the Respondent/Cross Claimant of the First Cross Claim/Cross Respondent to the Second Cross Claim
Prepared by (name of person/lawyer)	Odette Margaret Gourley
Law firm (if applicable)	Corrs Chambers Westgarth
Tel (02) 9210 6066	Fax (02) 9210 6611
Email	odette.gourley@corrs.com.au
Address for service (include state and postcode)	Level 17, 8-12 Chifley Square, SYDNEY NSW 2000

**Schedule**

No: NSD516/2016

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

Second Respondent VLADIMIR LASKY
Third Respondent NATHAN PARROTT
Fourth Respondent ALEXANDER GREEN

CROSS CLAIM

Cross-Claimant PRECISION TRACKING PTY LTD
Cross Respondent DOMINO'S PIZZA ENTERPRISES LTD
Second Cross
Respondent NAVMAN WIRELESS AUSTRALIA PTY LTD ACN 123 981
457

CROSS CLAIM

Cross-Claimant NAVMAN WIRELESS AUSTRALIA PTY LTD ACN 123 981
457
Cross Respondent PRECISION TRACKING PTY LTD

Form 98B



Rule 34.67(b)

Subpoena to produce documents (New Zealand)

No. 516 of 2016

Federal Court of Australia

District Registry: NSW

Division: General

Domino's Pizza Enterprises Limited ACN 010 489 326

Applicant/First Cross Respondent

Precision Tracking Pty Ltd ACN 133 616 369

Respondent/Cross Claimant

Navman Wireless Australia Pty Ltd ACN 123 981 457

Second Cross Respondent/Cross Claimant

Notice to Witness

Trans-Tasman Proceedings Act 2010

This Notice is very important

Please read it and the attached document or documents very carefully.

If you have any trouble understanding these documents you should get legal advice as soon as possible.

Attached to this notice is a subpoena.

The subpoena has been issued by the Federal Court of Australia.

The subpoena may be served in New Zealand under New Zealand law (see section 14 of the Evidence Amendment Act 1994 (New Zealand)).

This notice:

- sets out your rights relating to the subpoena; and
- sets out your obligations relating to the subpoena; and
- includes information about the way in which you may make an application to have the subpoena set aside.



Your rights

1. You are entitled to receive payment of an amount equal to the reasonable expenses you incur in complying with the subpoena.
2. An amount of money, or money and vouchers, not to be less than NZ\$500.00, that is sufficient to meet your reasonable expenses of complying with the subpoena must be given to you within a reasonable time before the date for compliance with the subpoena (see below: 'YOUR OBLIGATIONS').
3. If, in complying with the subpoena, you incur expenses that are more than the amount that was given to you before you complied, you may obtain an order from the Federal Court of Australia that you be paid the additional amount you incurred.
4. You may apply to the Federal Court of Australia to have the subpoena wholly or partly set aside. If you wish to apply to have the subpoena set aside you should get legal advice as soon as possible.
5. An application can be made and determined by that court without you having to go to Australia, or to retain Australian lawyers. All the necessary arrangements can be made in New Zealand.

Note: Details of some of the grounds on which a subpoena can be set aside and the procedures for setting aside a subpoena are set out at the end of this notice.

Your obligations

1. Unless the subpoena is set aside, you must comply with the attached subpoena if:
 - (a) when the subpoena was served on you, or at some reasonable time before the date specified in the subpoena for compliance with it, you were offered or given either:
 - (i) enough money to meet your reasonable expenses in complying with it, including any travel and accommodation expenses; or
 - (ii) a combination of money and vouchers (for example, travel tickets) to meet those expenses; and
 - (b) you were given with the subpoena a copy of an order by a judge giving leave to serve the subpoena in New Zealand; and



- (c) the subpoena was served on you before or on the date specified in the order as the last day on which the subpoena may be served; and
 - (d) service of the subpoena complied with any other conditions specified in the order; and
 - (e) you are over the age of 18 years.
2. If the subpoena only requires you to produce documents or things, it must specify the date on which the documents or things are required for production in the court or tribunal that issued the subpoena. You may comply with the subpoena by producing the documents or things at a registry of the High Court of New Zealand at least 10 days before the date specified in the subpoena. When you produce the documents or things at the registry you will be required to produce the subpoena and to pay the cost of sending the documents or things to the court or tribunal that issued the subpoena. You will be able to pay that cost out of the money given to you to meet your reasonable expenses of complying with the subpoena.

Failure to comply with the Subpoena

If you do not comply with this subpoena you may be arrested and taken before the High Court of New Zealand. Unless the High Court is satisfied that failure to comply should be excused, a fine not exceeding NZ\$10,000 may be imposed.

Grounds for setting aside a Subpoena

1. The Court must set aside the subpoena if the subpoena requires you to attend at a place in Australia and:
 - (a) you do not have necessary travel documents and cannot reasonably get them within the time allowed for compliance with the subpoena; or
 - (b) if you complied with the subpoena — you would be liable to be detained for the purpose of serving a sentence; or
 - (c) you are being prosecuted or you are liable to prosecution for an offence in Australia; or
 - (d) you are liable to imposition of a penalty in civil proceedings in Australia (other than proceedings under the Australian Consumer Law); or



- (e) you are subject to a restriction on your movements imposed by law or an order of a Court that is inconsistent with you complying with the subpoena (for example, bail conditions, release conditions or terms of a community based sentence).
2. The grounds on which the court may set aside the subpoena include:
- (a) the evidence you would give in the proceedings can be obtained satisfactorily by other means without significantly greater expense;
 - (b) compliance with the subpoena would cause you hardship or serious inconvenience;
 - (c) if the subpoena requires you to produce a document or thing and:
 - (i) that document or thing should not be taken out of New Zealand; and
 - (ii) satisfactory evidence of the contents of the document or satisfactory evidence of the thing can be given by other means.

Note: The above list does not include all the matters the court will consider in an application to set aside a subpoena, but if any of the matters in the list apply to you they should be included in your application.

Procedure for applying to set aside a Subpoena

1. Application must be made to the Federal Court of Australia.
2. You may fax your application to that court on fax number (02) 9230 8535.
3. Your application must contain an address for service in New Zealand or Australia. Any documents to be served on you will be delivered, faxed or posted to you at that address.
4. The Registrar of the Federal Court of Australia will arrange for service of your application and of any affidavit you lodge with the court with your application.
5. The court may determine your application without a hearing unless you, or the person who requested that the subpoena be issued, asks for a hearing.
6. If there is a hearing the Court can direct that it be held by video link (that is, a conference television link) or telephone. In that case you or your lawyer can take part in the hearing by video link or by telephone from a place in New Zealand.



7. If, in your application or within a reasonable time after lodging your application, you request that the hearing be held by video link or telephone, the court must hold a hearing by video link or telephone. However, in such a case, the court will determine which of video link or telephone will be used.

Subpoena to produce documents



No. 518 of 2016

Federal Court of Australia

District Registry: NSW

Division: General

Domino's Pizza Enterprises Limited ACN 010 489 326

Applicant/First Cross Respondent

Precision Tracking Pty Ltd ACN 133 616 369

Respondent/Cross Claimant

Navman Wireless Australia Pty Ltd ACN 123 981 457

Second Cross Respondent/Cross Claimant

To: Andrew Franchuk

165A Long Drive, St Heliers, Auckland 1071, New Zealand

You are ordered to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents. See next page for details.

Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest and the imposition of a fine under section 16 of the Evidence Amendment Act 1994 (New Zealand).

Please read Notes 1 to 13 at the end of this subpoena.

The last date for service of this subpoena is 31 August 2017. (*See Note 2*)

Filed on behalf of (name & role of party)

Precision Tracking Pty Ltd, the Respondent/Cross Claimant of the First Cross Claim/Cross Respondent to the Second Cross Claim

Prepared by (name of person/lawyer)

Odette Margaret Gourley

Law firm (if applicable)

Corrs Chambers Westgarth

Tel (02) 9210 6066

Fax (02) 9210 6611

Email odette.gourley@corrs.com.au

Address for service

Level 17, 8-12 Chifley Square, SYDNEY NSW 2000

(include state and postcode)

Error! Unknown document property name.

[Version 3 form approved 3/09/2014]



Date: August 2017

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

Issued at the request of Precision Tracking Pty Ltd, whose address for service is:

Place: Corrs Chambers Westgarth, Level 17, 8-12 Chifley Square, Sydney New South Wales
2000

Email: odette.gourley@corrs.com.au



Details of subpoena

You must comply with this subpoena:

- (a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents below at the date, time and place specified for attendance and production; or
- (b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule of documents below to:
 - (i) the Registrar of the Federal Court at the address specified in the subpoena for the purpose, or if more than one address is so specified, at any one of those addresses, so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and production; or
 - (ii) the Registrar of the High Court of New Zealand at the address specified in the subpoena for the purpose, or if more than one address is so specified, at any one of those addresses, so that they are received not less than 10 clear days before the date specified in the subpoena for attendance and production. (*See Notes 6–12*)

Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things:

Date:

Time:

Place: Federal Court of Australia, Sydney District Registry

184 Phillip St

SYDNEY NSW 2000

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted:

The Registrar
Federal Court of Australia
Sydney District Registry
Law Courts Building
Queen Square Sydney
Locked Bag A6000



Sydney South NSW 1235

Australia

Or

The Registrar

Auckland High Court

24 Waterloo Quadrant

CX10222

Auckland

New Zealand



Schedule of documents

Defined Terms

“Domino’s” means Domino’s Pizza Enterprises Limited.

“Domino’s GPS Driver Tracker” means the system for GPS tracking of pizza drivers in relation to which Navman provided services to Domino’s.

“Navman” means Navman Wireless Australia Pty Ltd.

“Precision Delivery System” means the system for GPS tracking of pizza drivers developed by Precision Tracking Pty Ltd for Domino’s.

“Digicode” means any persons or entities associated with the software development business the subject of the website at <http://mydigicode.com>.

The documents and things you must produce are as follows, to the extent they are within your custody or possession or under your control:

1. All documents recording access to or use of the Precision Delivery System by Andrew Franchuk or Digicode between July 2014 and July 2015.
2. All communications between Andrew Franchuk and any other person, including Digicode, between July 2014 and July 2015 having as a subject the Precision Delivery System or any part of it.
3. All communications between Andrew Franchuk and any other person or entity (including without limitation Digicode) in the period July 2014 to July 2015 having as a subject any confidentiality obligations or intellectual property rights of Precision Tracking Pty Ltd.
4. All documents dated prior to 31 July 2015 recording directions, instructions, engagement or terms concerning the performance of work or provision of goods or services sent to or received by Navman, Andrew Franchuk, or Digicode in connection with the Domino’s GPS Driver Tracker.
5. All documents, including computer applications and computer programs, recording or evidencing the development of the Domino’s GPS Driver Tracker which is, or at any time was, stored at <http://203.35.115.155/Dominosweb>, including:
 - (a) the “admin app” referred to in the email dated 14 October 2014 attached as Annexure A to this subpoena, and
 - (b) any user interface program.



6. Documents and communications recording the development of any program, other than the “admin app”, developed solely or jointly by you in connection with the Domino’s GPS Driver Tracker for the assignment of electronic tags to individuals or the management of personnel, or any part thereof, including its user interface.

You may produce an electronic storage medium containing copies of the documents and things listed above.



Notes

Leave to serve subpoena

1. You need not comply with the subpoena unless it is accompanied by:
 - (a) a copy of the order giving leave to serve the subpoena in New Zealand; and
 - (b) a notice in the prescribed form that:
 - (i) sets out your rights and obligations in relation to the subpoena; and
 - (ii) includes information about the way in which an application to have the subpoena set aside may be made.

Last day for service

2. You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for service of the subpoena.

Informal service

3. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements, if you have, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

Addressee a corporation

4. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

Production of subpoena or copy of it and documents or things by delivery or post

5. In so far as this subpoena requires production of the subpoena or a copy of it and a document or thing, instead of attending to produce the subpoena or a copy of it and the document or thing, you may comply with the subpoena by delivering or sending the subpoena or a copy of it and the document or thing:
 - (a) the Registrar of the Federal Court at the address specified in the subpoena for the purpose, or if more than one address is specified, at any of those addresses, so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and production; or
 - (b) the Registrar of the High Court of New Zealand at the address specified in the subpoena for the purpose, or if more than one address is specified, at any of those



addresses, so that they are received not less than 10 clear days before the date specified in the subpoena for attendance and production.

6. If you object to a document or thing produced in response to this subpoena being inspected by a party to the proceeding or any other person, you must, at the time of production, notify the Registrar of the Federal Court in writing of your objection and of the grounds of your objection.
7. Unless the Court otherwise orders, if you do not object to a document or thing produced by you in response to the subpoena being inspected by any party to the proceeding, the Registrar of the Federal Court may permit the parties to the proceeding to inspect the document or thing.

Production of a number of documents or things

8. If you produce more than one document or thing, you must, if requested by the Registrar of the Federal Court, produce a list of the documents or things produced.

Production of copy instead of original

9. You may, with the consent of the issuing party, produce a copy, instead of the original, of any document that the subpoena requires you to produce.
- 9A. The copy of a document may be:
 - (a) a photocopy; or
 - (b) in an electronic form in any of the following electronic formats:

.doc and .docx – Microsoft Word documents

.pdf – Adobe Acrobat documents

.xls and .xlsx – Microsoft Excel spreadsheets

.jpg – image files

.rtf – rich text format

.gif – graphics interchange format

.tif – tagged image format

Return or destruction of documents or copies

10. You may, at the time of production, inform the Court that any document or copy of a document produced need not be returned and may be destroyed.



11. If you have so informed the Court, the Registrar of the Federal Court may destroy the document or copy instead of returning it to you.

Applications in relation to subpoena

12. You have the right to apply to the Court for an order with respect to any claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of the subpoena.

Loss or expense of compliance

13. If you are not a party to the proceeding, you may apply to the Court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with the subpoena.

Banker's book

14. In so far as this subpoena requires production of the subpoena or a copy of it and a banker's book, if section 47B of the Evidence Act 1908 (New Zealand) would have applied if this subpoena has been issued in a New Zealand proceeding, instead of producing the banker's book, you may produce proof of the relevant entries in accordance with section 47B of the Evidence Act 1908 (New Zealand).

Contempt of court — arrest

15. Failure to comply with this subpoena without lawful excuse may result in your arrest and the imposition of a fine under section 16 of the Evidence Amendment Act 1994 (New Zealand).
16. Note 15 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.



Schedule

No. 516 of 2016

Federal Court of Australia

District Registry: NSW

Division: General

Second Respondent: Vladimir Lasky

Third Respondent: Nathan Parrott

Fourth Respondent: Alexander Green

Cross Claim

Cross Claimant: Precision Tracking Pty Ltd ACN 133 616 369

Cross Respondent: Domino's Pizza Enterprises Ltd ACN 010 489 326

Second Cross Respondent: Navman Wireless Australia Pty Ltd ACN 123 981 457

Cross Claim

Cross Claimant: Navman Wireless Australia Pty Ltd ACN 123 981 457

Cross Respondent: Precision Tracking Pty Ltd ACN 133 616 369

Date: August 2017



ANNEXURE A

From: Andrew Franchuk [<mailto:Andrew.Franchuk@NavmanWireless.com>]
Sent: Tuesday, 14 October 2014 12:31 PM
To: Renee Rametta; Daron Brinsdon
Subject: RE: URL to start testing a setup

Hi Renee,

The admin app is here <http://203.35.115.155/Dominosweb>

That's pre-POC release. We'll do another drop tonight.

Uname: Hamilton Harbour
pwd: test

Admin uname: admin
pwd: 123

Thank you,

Andrew