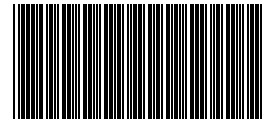




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Form 7A/B
UCPR 14.3

DEFENCE

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Equity General
Registry	Supreme Court Sydney
Case number	2019/00101980

TITLE OF PROCEEDINGS

First Plaintiff	GREENSHADES PASTORAL CO. PTY LTD ACN 003951933
First Defendant	Hardi Australia Pty Ltd ACN 076150617

FILING DETAILS

Filed for	Hardi Australia Pty Ltd, Defendant 1
Legal representative	Michelle Hamlyn
Legal representative reference	
Telephone	08 8233 5600

NOTICE OF LISTING

This matter has been listed with the statement of claim.

AFFIDAVIT

Deponent Name	William Edward Franklin
Sworn/Affirmed on	5 June 2019

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Defence (e-Services), along with any other documents listed below, were filed by the Court.

Defence (UCPR 7A/7B) (Verified Defence.pdf)

[attach.]

Form 7A (version 5)
UCPR 14.3

DEFENCE

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial List (Class Actions)
Registry	Supreme Court Sydney
Case number	2019/00101980

TITLE OF PROCEEDINGS

Plaintiff	Greenshades Pastoral Co Pty Ltd ACN 003951933
Defendant	Hardi Australia Pty Ltd ACN 076150617

FILING DETAILS

Filed for	Hardi Australia Pty Ltd ACN 076 150 617, Defendant
Filed in relation to	Plaintiff's Statement of Claim
Legal representative	Michelle Hamlyn, MinterEllison
Legal representative reference	1238534
Contact name and telephone	Michelle Hamlyn (08) 8233 5600
Contact email	michelle.hamlyn@minterellison.com

HEARING DETAILS

The matter has been listed for Directions (Commercial List) at Supreme Court Sydney on 7 June 2019 at 9.45 am.

COMMON QUESTIONS, PLEADINGS AND PARTICULARS

In response to the Statement of Claim (**Claim**), the Defendant denies that the Plaintiff is entitled to the relief sought against the Defendant. The Defendant denies that the Group Members are entitled to the relief sought against the Defendant. The Defendant further responds as follows:

A. COMMON QUESTIONS

The Defendant denies that the asserted common questions of law or fact arise and further says that the Claim, as presently pleaded, does not permit ascertainment of common questions.

B. PLEADINGS

The Proceedings and the Parties

1. In answer to paragraph 1 of the Claim, the Defendant:
 - (a) says that the Plaintiff does not bring a claim in respect of, or arising out of, the same, similar or related circumstances as those of the purported Group Members;
 - (b) otherwise does not know and cannot admit paragraph 1 of the Claim.
2. The Defendant denies paragraph 2 of the Claim.
3. In answer to paragraph 3 of the Claim, the Defendant denies any negligence or contravention of the Australian Consumer Law.
4. In answer to paragraph 4 of the Claim, the Defendant denies that the Plaintiff or any Group Member is entitled to the relief sought, or to any relief.
5. In answer to paragraph 5 of the Claim, the Defendant:
 - (a) says that, to the extent that the Plaintiff or any Group Member has suffered damage (which is denied), that will require individual assessment in every instance;
 - (b) otherwise denies paragraph 5.

6. The Defendant admits paragraph 6 of the Claim.
7. The Defendant admits paragraph 7 of the Claim.
8. In answer to paragraph 8 of the Claim, the Defendant:
 - (a) says that it is, and was at all material times, engaged in the business of:
 - (i) importing into Australia agricultural spraying equipment manufactured in Europe, including spraying equipment designed and manufactured by Préciculture SAS in France (**HARDI equipment**), including the HARDI Presidio 2700 self-propelled spray unit (**Unit**);
 - (ii) assembling HARDI equipment that it had imported into Australia and distributing the assembled HARDI equipment to an established network of dealer groups with agricultural equipment retail expertise and agricultural

machinery service expertise in Australia (**dealer groups**) pursuant to orders placed by those dealer groups on behalf of specific customers;

(b) otherwise denies paragraph 8 of the Claim.

9. In answer to paragraph 9 of the Claim, the Defendant:

(a) denies that the Unit was designed for a single purpose;

(b) says that the Unit:

(i) is a self-propelled agricultural spraying unit with a 2700L spray tank capacity, and available boom widths between 24m and 36m;

(ii) utilises a proprietary fluid delivery system designed to allow precision application of agricultural chemicals to crops;

(iii) is assembled, commissioned and delivered to order, as it can be configured in a customised manner within a confined range of available specifications;

(c) otherwise denies paragraph 9 of the Claim.

10. In answer to paragraph 10 of the Claim, the Defendant:

(a) says that:

(i) from time to time it sold Units to dealer groups with whom it has established relationships (the **Dealer Network**);

(ii) when it sold a Unit to a dealer group, it did so:

(A) on the basis that the Unit was configured and assembled by the Defendant for delivery, pursuant to a specific order placed on behalf of a customer of the dealer group and communicated to the Defendant;

(B) with an expectation that the dealer group would thereafter sell the Unit to the customer according to that customer's specific order;

(C) subject to terms and conditions specified in a limited manufacturer's warranty recorded in writing and signed by both the dealer group and

the customer on or proximate to delivery of the Unit (**Warranty Terms**);

- (b) admits that it sold Units to dealer groups in trade or commerce;
- (c) otherwise denies paragraph 10 of the Claim.

11. The Defendant denies paragraph 11 of the Claim.

Alleged Representations

12. In answer to paragraph 12 of the Claim, the Defendant:

- (a) admits that each of the words set out at subparagraphs 12(a) to (k) of the Claim was contained in a brochure produced by the Defendant in or about January 2014 and distributed to its Dealer Network;
- (b) says that the pleaded words were neither misleading nor deceptive in relation to the Units having regard to the context of those words and the terms of the brochure produced in or about January 2014 taken as a whole;
- (c) otherwise denies paragraph 12 of the Claim.

13. The Defendant denies paragraph 13 of the Claim.

14. In answer to paragraph 14 of the Claim, the Defendant:

- (a) admits that it caused the publication of an advertisement on page 35 of *Power Farming* magazine Vol 125(5) in 2015 (**the Advertisement**), which stated that the Unit had 4WD hydrostatic transmission;
- (b) says that the Units did and do have 4WD hydrostatic transmission;
- (c) otherwise denies paragraph 14 of the Claim.

15. In answer to paragraph 15 of the Claim, the Defendant:

- (a) refers to and repeats subparagraph 14(a) herein;
- (b) admits that the Advertisement was placed with the intention of advertising the Unit to potential purchasers of self-propelled sprayers;
- (c) otherwise denies paragraph 14 of the Claim.

Four Wheel Drive ("4WD")

16. In answer to paragraph 16 of the Claim, the Defendant:
- (a) says that there is no single accepted technical definition of a four-wheel drive vehicle and a range of different technologies are employed in different contexts and for different objectives to provide drive to the four wheels of a vehicle;
 - (b) admits that a four-wheel drive vehicle includes a vehicle in which:
 - (i) all four wheels are connected to a source of power;
 - (ii) there exists a transmission system with the ability to provide power to all four wheels;
 - (c) says that improved tractive performance while travelling over uneven terrain may be a desired objective for which four-wheel drive technologies are employed in vehicle design;
 - (d) otherwise denies paragraph 16 of the Claim.

Hydraulic Power

17. In answer to paragraph 17 of the Claim, the Defendant:
- (a) admits that:
 - (i) the amount of power generated within a hydraulic circuit can be calculated by applying the pleaded formula;
 - (ii) in relation to vehicles that use hydraulic power within their transmission system, the controlled movement of pressurised fluid (oil) within one or more circuits is used to transmit power to wheel motors;
 - (b) otherwise denies paragraph 18 of the Claim.

Knowledge of the respective parties

18. In answer to paragraph 18 of the Claim, the Defendant:
- (a) refers to and repeats paragraph 9 herein;
 - (b) denies paragraph 18 of the Claim;

- (c) says further that:
- (i) self-propelled sprayers such as the Unit are:
 - (A) sold and purchased exclusively for commercial use;
 - (B) large and sophisticated pieces of machinery which require skilled use and ongoing maintenance;
 - (C) able to be customised to order in numerous respects;
 - (D) used in a broad range of:
 - (I) primary industry businesses;
 - (II) terrains;
 - (III) environmental and climactic conditions;
 which are not in the ordinary course of business disclosed to the Defendant prior to sale;
 - (ii) potential purchasers of self-propelled sprayers such as the Unit, including the Plaintiff, are reasonably expected by the Defendant to be sufficiently sophisticated, experienced and knowledgeable to reach their own conclusion as to whether or not the Presidio is suitable for the specific purpose for which they wish to use it, having regard (inter alia) to the matters pleaded in subparagraph 18(c)(i) herein;
 - (iii) the Warranty Terms expressly identified the extent to which the Defendant would be liable for any claim in respect of the Units.

Acquisition

19. In response to paragraph 19 of the Claim, the Defendant:

- (a) admits that members of the Dealer Network placed orders for Units by completing and submitting to the Defendant an online form hosted on the Defendant's extranet, which:
 - (i) was, from time to time, entitled either *PRESIDIO 2700* or *PRESIDIO Special limited offer*;

- (ii) required dealers to specify the intending purchaser's name and the specific options that the intending purchaser had selected;
 - (iii) permitted dealers to generate a price for the Unit based on the specific options selected;
- (b) says further that:
- (i) the specific configuration selected by each purchaser was relied upon by the Defendant to assemble and customise that purchaser's Unit;
 - (ii) the Defendant dealt primarily with its dealer network and did not in the ordinary course of its business communicate with intending purchasers prior to delivery of a Unit.

20. In answer to paragraph 20 of the Claim, the Defendant says:

- (a) the paragraph as pleaded is vague and embarrassing and the Defendant is unable properly to respond to it;
- (b) says further, in respect of the Plaintiff, that:
 - (i) Carruthers Machinery Co, one of its dealer groups (**Carruthers**), provided the Plaintiff with:
 - (A) a document titled "Proposal" dated 15 December 2016;
 - (B) tax invoice no. 1464 in the sum of \$275,000 dated 18 January 2016 (sic);
 - (ii) the Defendant delivered a Unit to the Plaintiff at its nominated property on or about 18 January 2017;
 - (iii) the Defendant supplied the Unit to the Plaintiff pursuant to a supply agreement reached with Carruthers, comprised of:
 - (A) an order for the Plaintiff's Unit on the *PRESIDIO Special limited offer* form, submitted to the Defendant by Carruthers in or about mid-December 2016;
 - (B) an invoice issued to Carruthers by the Defendant for the wholesale cost of the Unit on 16 January 2017;

- (C) Warranty Terms executed by Bruce McGregor on behalf of Carruthers, and Steve Hicks on behalf of the Plaintiff, on 1 February 2017;
- (iv) the Defendant received payment from Carruthers for the Plaintiff's Unit;
- (c) otherwise denies paragraph 20 of the Claim.

Alleged Duty

- 21. In answer to paragraph 21 of the Claim, the Defendant:
 - (a) refers to and repeats subparagraphs 10(a) and 18(b) herein;
 - (b) says that, by reason of the matters referred to in subparagraph (a) above:
 - (i) it did not owe the plaintiff or Group Members a duty in the terms pleaded in paragraph 21 of the Claim;
 - (ii) further, any duty it did owe to the plaintiff and any Group Member was satisfied;
 - (c) otherwise denies paragraph 21 of the Claim.
- 22. In answer to paragraph 22 of the Claim, the Defendant:
 - (a) refers to and repeats paragraph 21 herein;
 - (b) denies paragraph 22 of the Claim.
- 23. In answer to paragraph 23 of the Claim, the Defendant:
 - (a) refers to and repeats paragraphs 21 and 22 herein;
 - (b) denies paragraph 23 of the Claim.

Alleged Misleading and Deceptive Conduct

- 24. In answer to paragraph 24 of the Claim, the Defendant:
 - (a) says that paragraph 24 of the Claim is embarrassing;
 - (b) for the avoidance of doubt, denies paragraph 24 of the Claim.

25. In answer to paragraph 25 of the Claim, the Defendant:
- (a) says that paragraph 25 of the Claim is embarrassing;
 - (b) for the avoidance of doubt, denies paragraph 25 of the Claim;
 - (c) says that if, which is denied, the Plaintiff and/or any Group Member purchased a Unit in reliance upon, or induced by, the pleaded representations or silence of the Defendant:
 - (i) they had and continue to have the benefit and use of the Unit from the date of delivery with the exception of brief stand-down periods associated with routine maintenance and repairs;
 - (d) the Units had, at all material times, and continue to have, substantial resale or trade-in value (allowing for the usual depreciation that applies to a used vehicle);
 - (e) they are not entitled to recover from the Defendant any damage for loss of time, inconvenience, loss of machine use or other consequential damage by reason of the Warranty Terms.

AND THE DEFENDANT FURTHER SAYS

Reduction in respect of failures to take reasonable care

26. At all material times, members of the Dealer Network were ready, willing and able to provide maintenance services as required from time to time in respect of the Units.
27. At all material times, the Defendant was ready, willing and able to assist the plaintiff and any Group Member in respect of issues associated with the Units that could be remedied by way of the provision by the Dealers Network of maintenance services.
28. At all material times, the Plaintiff and each Group Member was aware of the matters referred to at paragraphs 26 and 27 herein.
29. If, which is denied, the Plaintiff or any Group Member has suffered loss or damage in respect of their Unit:
- (a) that loss or damage could have been avoided, reduced or mitigated by the Plaintiff or Group Member, as the case may be, utilising the maintenance services referred to at paragraphs 26 and 27 herein;

(b) the Defendant did not intend to cause any such loss or damage and did not fraudulently cause any such loss or damage.

30. In the premises if, which is denied, the Plaintiff or any Group Member has suffered loss or damage in respect of a Unit, such loss or damage has occurred as a result of the Plaintiff's or Group Member's failure to take reasonable care such that any loss or damage ought to be reduced pursuant to s 137B of the *Competition and Consumer Act (2010)* (Cth).

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 defence to the claim for damages in these proceedings has reasonable prospects of success.

Signature



Capacity

Solicitor for the Defendant

Date of signature

5 June 20109

AFFIDAVIT VERIFYING

Name William Edward Franklin
 Address [REDACTED]
 Occupation Chief Executive Officer
 Date 5 June 2019

I do solemnly, sincerely and truly affirm and declare:

1. I am the Chief Executive Officer of Hardi Australia Pty Ltd ACN 076 150 617 and am authorised to verify this defence on its behalf.
2. I believe that the allegations of fact contained in the defence are true.
3. I believe that the allegations of fact that are denied in the defence are untrue.
4. After reasonable inquiry, I do not know whether or not the allegations of fact that are not admitted in the defence are true.

AFFIRMED at

Signature of deponent

Name of witness

Address of witness

Capacity of witness

Adelaide


Michelle Louise Hamlyn

25 Grenfell St Adelaide SA 5000

Solicitor


And as a witness, I certify the following matters concerning the making of this affidavit by the person who made this affidavit (**deponent**):

1. I saw the face of the deponent.
2. I have known the deponent for at least 12 months. ~~OR I have confirmed the deponent's identity using an identification document:~~

MICHELLE LOUISE HAMLYN
 A Commissioner for taking affidavits
 in the Supreme Court of South Australia

Identification document relied on (may be original or certified copy)*

Signature of witness:



Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

* 'Identification documents' include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011 or JP Ruling 003 - Confirming identity for NSW statutory declarations and affidavits, footnote 3.

FURTHER DETAILS ABOUT FILING PARTY**Filing party**

Name Hardi Australia Pty Ltd ACN 076 150 617
Address Level 10, 25 Grenfell Street, Adelaide SA 5000
Frequent user identifier 84

Legal representative for filing party

Name Michelle Hamlyn
Practising certificate number P9960
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