



## Judgment Summary

### Supreme Court New South Wales

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#### Greenshades Pastoral Co Pty Ltd v Hardi Australia Pty Ltd [2022] NSWSC 755

Justice Stevenson

The Supreme Court has held that the defendant, Hardi Australia Pty Ltd, engaged in misleading or deceptive conduct in relation to one of its products, a self-propelled sprayer, known as the “Hardi Presidio 2700” under ss 18 and 29 of the *Competition and Consumer Act 2010* (Cth), Sch 2 – Australian Consumer Law. Hardi marketed and sold the Presidio through a dealer network across Australia using print and video advertising.

The first plaintiff, Greenshades Pastoral Co Pty Ltd brought the proceedings as representative proceedings under Pt 10 of the *Civil Procedure Act 2005* (NSW) in its own right and as a representative of a closed class of eight parties who purchased a Presidio between 1 April 2013 and 1 December 2018 for use in farming activities (the “Group Members”).

The first plaintiff, and the Group Members, claimed that they purchased the Presidio based on misleading or deceptive representations made by Hardi in one or more of six brochures published by Hardi, advertisements published by Hardi in agricultural magazines and YouTube videos.

During the course of the hearing, these claims were limited to three distinct issues: first, that as a result of cracking in the chassis of the Presidios, the sprayer was not “rugged and built for demanding conditions with optimised design strength and weight distribution” nor did it have a “heavy duty chassis” or “class leading performance”; second, the Presidios did not have “intelligent electronics” that would prevent wheel slippage or a “traction control valve” and were not four wheel drive (“4WD”) in that there were occasions when the Presidio’s transmission system did not cause power to be supplied to all four wheels; and finally, that due to certain issues experienced with the park brake and foot brake, the Presidios were not “built for demanding conditions” or “class leading”.

The second plaintiff, Ritter Investments Pty Ltd, in addition to the claims made by the Group Members in the representative proceedings, brought a separate claim concerning the manner in which the spray rate controller on the Presidio operated. No other Group Member made that claim.

On the basis of concurrent evidence provided by both an agricultural engineer and a mechanical engineer, the Court held that the structural cracking experienced by the plaintiffs meant that the Presidio was not “rugged and built for demanding conditions”, did not have “optimised design strength” and did not have a “heavy duty chassis”. The representations made by Hardi that the Presidio had these qualities were held to be misleading or deceptive.

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The Court also held that a reasonable member of the class of persons to whom the representations were made would have understood the representations that power would be supplied “to the wheels” of the Presidio “when needed” and “regardless of the field conditions and slopes” to mean that power would be supplied to all four wheels at all times. As the plaintiffs established occasions in which the Presidios’ transmission systems did not cause power to be supplied to all four wheels, the Court held this representation was misleading or deceptive.

It was accepted by counsel appearing on behalf of Hardi that the Presidios did not have “intelligent electronics” and a “traction control valve” as advertised. The Court held that these statements were misleading or deceptive.

The Court held that the plaintiffs had not established that Hardi engaged in misleading or deceptive conduct in relation to the braking issue or the spray rate controller issue.

The Court held, however, that the plaintiffs failed to establish that any loss suffered was “because of” the misleading or deceptive representations found to have been made by Hardi for the purposes of s 236 of the Australian Consumer Law.