Case: S ECI 2020 01590
Filed on: 08/09/2023 03:13 PM

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT
GROUP PROCEEDINGS LIST

S ECI 2020 01590

BETWEEN:

BRETT STALLARD AS TRUSTEE FOR THE STALLARD SUPERANNUATION FUND

First Plaintiff

STEVEN NAPIER

Second Plaintiff

- and -

TREASURY WINE ESTATES LTD (ACN 004 373 862)

Defendant

DEFENCE TO AMENDED CONSOLIDATED STATEMENT OF CLAIM

Date of document: ~~25 February 2021~~ 8 September 2023	Solicitor's Code: 420
Filed on behalf of: The Defendant	DX: 240 Melbourne
Prepared by:	Tel: +61 3 9288 1234
Herbert Smith Freehills	Fax: +61 3 9288 1567
Level 24 ~~Lawyers~~	Ref: 82697622
80 ~~101~~ Collins Street Melbourne VIC 3000	Attention: Alan Mitchell
	Email: alan.mitchell@hsf.com

In answer to the amended consolidated statement of claim dated ~~20 November 2020~~ 21 April 2023, the defendant (**Treasury**) says as follows:

A. THE PARTIES AND GROUP MEMBERS

A.1 The Joint Plaintiffs and Group Members

1. It does not plead to paragraph 1, as no allegations are made against it.

2. It does not know, and therefore cannot admit, paragraph 2.

3. As to paragraph 3, it:

   (a) does not plead to sub-paragraphs 3(a) and 3(c), as no allegations are made against it;

   (b) denies sub-paragraph 3(b).

4. It does not know, and therefore cannot admit, paragraph 4.

A.2 Treasury

5. Save that the reference to section 764(1)(a) of the *Corporations Act 2001* (Cth) (**Corporations Act**) in sub-paragraph 5(c)(iv) should be a reference to section 764A(1)(a), it:

   (a) admits paragraph 5; and

   (b) says that at trial, it will refer to the full terms and effect of the Australian Securities Exchange (**ASX**) Listing Rules and the statutory provisions referred to in paragraph 5.

6. It admits paragraph 6.

B. TREASURY'S CONTINUOUS DISCLOSURE OBLIGATIONS

7. As to paragraph 7, it:

   (a) admits the contents of sections 111AP(1) and 674(2) of the Corporations Act and ASX Listing Rules 3.1 and 3.1A and that Treasury was bound by those sections and rules;

   (b) says at trial, it will rely on the full content of those sections and rules, and sections 676 and 677 of the Corporations Act;

   (c) otherwise denies that paragraph.

8. As to paragraph 8, it:

(a) admits that ASX Listing Rule 19.12 provides that an entity becomes aware of information if, and as soon as, an officer of the entity has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity;

(b) admits that Treasury was bound by ASX Listing Rule 19.12;

(c) says at trial, it will rely on the full content of the ASX Listing Rules;

(d) says further that Treasury was not relevantly aware of every opinion held by an officer of Treasury;

(e) says further that Treasury was not constructively aware of any opinions, and its officers were not required to form opinions they did not hold; and

(f) otherwise denies that paragraph.

C. TREASURY'S WINE BUSINESS

C.1 Treasury's US Wine Market

9. As to paragraph 9, it:

(a) admits that at all relevant times Treasury carried on a business that included the production, marketing, distribution and sale of wine;

(b) admits that it operated in different geographic regions, including the United States of America (**US**), Canada, Latin America, Australia, New Zealand, Asia, Europe, the Middle East and Africa;

(c) otherwise denies that paragraph.

10. As to paragraph 10, it:

(a) says the allegation that there was a single market in the US for the production, sale and distribution of wine (defined in the amended consolidated statement of claim as the **US Wine Market**) is embarrassing and renders the amended consolidated statement of claim incomprehensible;

(b) says further that the allegation is so intertwined with the remainder of the amended consolidated statement of claim, that the entire amended consolidated statement of claim is liable to be struck out;

(c) says further the matters alleged in sub-paragraphs 10(a) and (b) above mean it has not been possible for Treasury to properly plead to the amended consolidated statement of claim, and Treasury reserves its right to amend its pleading upon the provision of a pleading by the plaintiffs that complies with the pleading rules;

(ca) says further it is too simplistic to assess Treasury's performance against one single market or region, and different elements of the overall markets in which Treasury operated and Treasury's strategy and operations must all be considered to understand Treasury's performance;

(d) under cover of those objections, denies that paragraph.

11. As to paragraph 11, it:

(a) refers to and repeats paragraph 10 above;

(b) says the references to "*participated in the sale of wine*" and "*segments*" are embarrassing;

(c) says the word "*segments*" appears to have a different meaning in paragraph 9 (where the word appears to refer to geographic regions), and paragraphs 11, 39(cb), 53(g)(i), 54(ba), 72(a) (particulars), 72(g)(i), 73(ca), 78 (particulars), 91(d) (particulars), 91(g)(i), 112 (particulars) and 117 (where the word appears to refer to price ranges) of the amended consolidated statement of claim;

(d) under cover of those objections:

(i) admits that Treasury carried on a wine business which included the production, sale and / or distribution of wine in what it describes as the "*Americas*" (comprising during the **Relevant Period** (as defined in the amended consolidated statement of claim) the US, Canada, Anguilla, Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bermuda, Bonaire, Brazil, British Virgin Islands, Cayman Islands, Colombia, Costa Rica, Curacao, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guayana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Puerto Rico, St Barthelemy, St Lucia, St Vincent and Grenadines, St. Kitts and Nevis, St. Maarten, Trinidad and Tobago, Turks and Caicos, Uruguay and the United States Virgin Islands);

(ia) pleads to references to the "*Americas*" in the amended consolidated statement of claim on the basis that during the Relevant Period it comprised the geographic regions described in paragraph 11(d)(i) above;

(ii) admits that Treasury's brand portfolio in the Americas included luxury, masstige and commercial wines, with luxury wine trading at a retail shelf price of A$20+ per bottle, masstige wine trading at a retail shelf price of between A$10 to A$20 per bottle and commercial wine trading at a retail shelf price of between A$5 to A$10 per bottle, but for the avoidance of doubt denies that it sold wine from retail outlets in the US tracked by Nielsen scan data, and refers to and repeats sub-paragraphs 33(e) and 33(ea) below;

(iii) admits that during the Relevant Period Treasury had a strategy of moving away from higher volume sales of lower margin commercial wine toward lower volume sales of higher margin masstige and luxury wines ~~additional focus on its luxury and masstige portfolios while reducing focus on its lower margin commercial portfolio~~ (which was referred to as the premiumisation strategy);

(iv) otherwise denies that paragraph.

12. As to paragraph 12, it:

(a) says that the division described by Treasury as the "*Americas*" comprises the geographic regions alleged in paragraph 11(d)(i) above;

(b) on the basis that the *"Americas"* division referred to in sub-paragraph (a) comprises the geographic regions alleged in paragraph 11(d)(i) above, admits that sub-paragraph;

(c) says Treasury's **EBITS** (as defined in the amended consolidated statement of claim) on a reported currency basis for the "*Americas*" division for the 2015 financial year was A$83.2 million and for the 2017 financial year was A$189 million;

(d) otherwise denies that paragraph.

13. As to paragraph 13, it:

(a) refers to and repeats paragraphs 10 and 11 above;

(b) under cover of those objections:

(i)~~(b)~~ admits that in about January 2016, Treasury completed the acquisition of the majority of assets from Diageo Plc's US and United Kingdom wine operations;

(ii)~~(c)~~ admits that those assets included wine brands known as "*Sterling Vineyards*", "*Beaulieu Vineyard*", and "*Acacia*";

(iii)~~(d)~~ ~~under cover of those objections,~~ otherwise denies that paragraph.

14. As to paragraph 14, it:

(a) refers to and repeats paragraph 10 above;

(b) says the period of time to which the allegation relates is unclear;

(c) says further the reference to *"consumer channels*" is embarrassing;

(d) under cover of those objections:

(i) admits that prior to 31 January 2018, most of Treasury's wine sales in the US were to licensed distributors;

(ii) admits that after acquiring wine from Treasury, licensed distributors in the US on-sold that wine to retail outlets (but not to end-consumers), and that the wine was ultimately on-sold to end-consumers;

(iii) otherwise denies that paragraph.

15. As to paragraph 15, it:

(a) refers to and repeats paragraph 10 above;

(b) under cover of those objections:

(i) admits that on 31 January 2018, Treasury announced (as was the fact) that:

(A) in California and Washington, States that allow producers to distribute directly to retailers, Treasury was implementing a direct sales and distribution model for all key national retail partners;

(B) in Florida, Treasury was implementing a new hybrid distribution model with its key retail partners (national and regional) and distributor partner; and

(C) in a number of other States, Treasury had appointed new full service distributor partners; and

(ii) admits that upon the adoption and completion of the implementation of the measures referred to in sub-paragraph (b)(i) above, Treasury's distribution channel in the US was converted from one where most of Treasury's wine was sold to licensed distributors to one in which some of Treasury's wine was sold through direct and hybrid distribution models and new distributor partners;

(c) otherwise denies that paragraph.

16. As to paragraph 16, it:

(a) says the reference to "*indirect wine sales*" is embarrassing;

(b) under cover of that objection:

(i) says that Treasury recognised revenue in accordance with the Australian Accounting Standards adopted by the Australian Accounting Standards Board (AASB) and in a manner compliant with the International Financial Reporting Standards (IFRS) adopted by the International Accounting Standards Boards (IASB);

(ii) admits that Treasury recognised revenue in accordance with AASB standards when the risk and rewards of ownership passed to the buyer, which was usually upon delivery of goods or upon their dispatch;

(iii) admits that Treasury only recorded revenue:

(A) at the fair value of the consideration received or receivable, net of sales discounts and rebates, duties and taxes; and

(B) if it was probable that the economic benefits would flow to Treasury;

(iv) otherwise denies that paragraph.

17. As to paragraph 17, it:

(a) refers to and repeats paragraph 10 above;

(b) says the period of time to which the allegation relates is unclear;

(c) says further the reference to "*accounted for*" is embarrassing; and

(d) under cover of those objections, denies that paragraph.

18. As to paragraph 18, it:

(a) refers to and repeats paragraph 10 above;

(b) says the reference to "*wine sourced from wine manufacturers*" is embarrassing;

(c) says further that the plaintiffs' definition of *"private label wine"* is embarrassing;

(d) under cover of those objections:

(i) says that during the Relevant Period wine was sold, marketed and promoted by retailers under the individual retailer's own private label; and

(ii) otherwise denies that paragraph.

19. As to paragraph 19, it:

(a) refers to and repeats paragraph 10 above;

(b) says the reference to wine being "*traded in the US Wine Market*", and the acquisition of wine by "*wine companies*" is embarrassing;

(c) under cover of those objections:

(i) admits that during the Relevant Period wine traded in the US as a bulk commodity without being bottled, packaged or labelled for sale to end-consumers (**Bulk Wine**) was acquired by Treasury and other wine producers in the US primarily for the production of commercial and masstige wine;

(ii) otherwise denies that paragraph.

20. As to paragraph 20, it:

(a) says that the division described by Treasury as the "*Americas*" comprises the geographic regions alleged in sub-paragraph 11(d)(i) above;

(b) admits that in the 2014 financial year to the 2017 financial year, the division described by Treasury as the "*Americas*" contributed over 40% of Treasury's net sales revenue (**NSR**) and over 30% of Treasury's EBITS on a reported currency basis;

(c) otherwise denies that paragraph.

21. As to paragraph 21, it:

(a) refers to and repeats sub-paragraph 20(a) above;

(b) admits that in the 2019 financial year, the division described by Treasury as the "*Americas*" contributed at least 40% of Treasury's NSR on a reported currency basis;

(c) admits that in the 2018 and 2019 financial years, the division described by Treasury as the "*Americas*" contributed over 30% of Treasury's EBITS on a reported currency basis;

(d) otherwise denies that paragraph.

C.2 Alleged Treasury Officers

22. As to paragraph 22, it:

(a) says Michael Clarke was appointed Managing Director and Chief Executive Officer on 31 March 2014, and ceased in those roles on 1 July 2020;

(b) admits that Michael Clarke was an officer of Treasury at all times during the Relevant Period within the meaning of rule 19.12 of the ASX Listing Rules;

(c) otherwise denies that paragraph.

23. It admits paragraph 23.

24. As to paragraph 24, it:

(a) ~~says from 9 May 2017 until 18 January 2019, Robert Foye was the Chief Operating Officer of Treasury~~ admits sub-paragraph 24(a);

(b) ~~says from 1 January 2018 until 1 July 2018, Robert Foye, as part of his role as Chief Operating Officer, was also President, Americas~~ admits sub-paragraph 24(aa);

(ba) says Robert Foye had not been a member of Treasury's Americas Leadership Team on and from 2 July 2018;

(c) admits that Robert Foye was an officer of Treasury from the start of the Relevant Period until 18 January 2019, within the meaning of rule 19.12 of the ASX Listing Rules;

(d) otherwise denies that paragraph.

25. As to paragraph 25, it:

(a) says that from 9 May 2017, Tim Ford was given the role of overseeing Europe, South East Asia, Middle East and Africa at Treasury (in addition to his other roles relating to Global Supply Chain and Industry Affairs);

(b) ~~says further that Tim Ford was the Deputy Chief Operating Officer from 1 July 2018 to 18 January 2019~~ admits sub-paragraph 25(b);

(c) ~~says further that Tim Ford was the Chief Operating Officer from 19 January 2019 until 30 June 2020~~ admits sub-paragraph 25(c);

(d) admits that Tim Ford was an officer of Treasury, within the meaning of rule 19.12 of the ASX Listing Rules, at all times during the Relevant Period;

(e) otherwise denies that paragraph.

26. As to paragraph 26, it:

(a) admits sub-paragraph 26(a);

(b) admits ~~that from 1 July 2018 until 14 February 2019, Angus McPherson was Managing Director ANZ and Europe of Treasury~~ sub-paragraph 26(b);

(c) says that between about 15 February 2019 and about 30 September 2019, Angus McPherson was Managing Director ANZ (Australia and New Zealand), Europe, South East Asia, Middle East and Africa at Treasury;

(d) says that from about 1 October 2019 until about 1 February 2020, Angus McPherson was President, Americas & Global Sales at Treasury;

(e) says that from 6 November 2019 until 1 February 2020, Angus McPherson was on leave from his roles at Treasury;

(f) admits that Angus McPherson was an officer of Treasury, within the meaning of rule 19.12 of the ASX Listing Rules, from the start of the Relevant Period until 6 November 2019;

(g) otherwise denies that paragraph.

27. As to paragraph 27, it:

(a) ~~says that Victoria Snyder was Executive Vice President of the Americas at Treasury from 1 March 2018 until 1 July 2018~~ admits sub-paragraph 27(a);

(b) ~~says that Victoria Snyder was President of the Americas at Treasury from 2 July 2018 until 23 August 2019~~ admits sub-paragraph 27(b);

(c) admits that Victoria Snyder was an officer of Treasury, within the meaning of rule 19.12 of the ASX Listing Rules, between 1 July 2019 and 23 August 2019;

(d) otherwise denies that paragraph.

28. As to paragraph 28, it:

(a) ~~says that from 1 May 2018 until 31 August 2018, Gunther Burghardt was the Executive Vice President, Operations – Americas at Treasury~~ admits sub-paragraph 28(a);

(b) ~~says that from 1 September 2018 until 28 February 2019, Gunther Burghardt was the Executive Vice President, Supply – Americas at Treasury~~ admits sub-paragraph 28(aa);

(c) ~~says that from 21 September 2018 until 28 February 2019, Gunther Burghardt was on leave from his roles at Treasury~~ admits sub-paragraph 28(ab);

(d) otherwise denies that paragraph.

29. It admits paragraph 29.

30. ~~As to paragraph 30, it:~~ It admits paragraph 30.

(a) [not used] ~~admits that Ed Chan, Warwick Every-Burns, Garry Hounsell, Colleen Jay and Lauri Shanahan were independent non-executive directors of Treasury during the Relevant Period, and were therefore officers of Treasury, within the meaning of rule 19.12 of the ASX Listing Rules, during the Relevant Period;~~

(b) [not used] ~~says that Louisa Cheang was appointed an independent non-executive director of Treasury on 1 December 2018, and was therefore an officer of Treasury, within the meaning of rule 19.12 of the ASX Listing Rules, from 1 December 2018 until the end of the Relevant Period;~~

(c) [not used] ~~otherwise denies that paragraph.~~

31. As to paragraph 31, it:

(a) ~~says that Michael Cheek was an independent non-executive director of Treasury from 1 September 2012 until 18 October 2018~~ admits sub-paragraph 31(a);

(b) admits sub-paragraph 31(b) and further says that Michael Cheek was also an officer of Treasury, within the meaning of rule 19.12 of the ASX Listing Rules, from the start of the Relevant Period until 18 October 2018;

(c) [not used] ~~otherwise denies that paragraph.~~

32. As to paragraph 32, it:

(a) refers to paragraphs 8 and 22 to 31 above;

(b) otherwise denies that paragraph.

C.3 Treasury Monitoring Systems

33. As to paragraph 33, it refers to and repeats paragraph 10 above, and under cover of those objections:

(a) admits sub-paragraph 33(a) (except to the extent that sub-paragraph makes allegations with respect to the "*US Wine Market*", as there is no such wine market as defined by the plaintiffs), and further admits that Treasury's dedicated consumer insights and innovation team tracked consumer trends in the US;

(b) admits sub-paragraph 33(b) (except to the extent that sub-paragraph makes allegations with respect to the "*US Wine Market*", as there is no such wine market as defined by the plaintiffs), and further admits that Treasury had global business planning processes, including portfolio reviews and global volume alignment processes, with respect to the US;

Particulars

During the Relevant Period, Treasury's global business budgeting and planning processes included the following:

(i) *A global 5-year volume plan (**GVP**) (conducted annually, in two cycles), in which Treasury forecast wine volume demand and supply availability over the following 5 fiscal year period for each of its regions, based on bottom-up regional forecasting on a brand by brand and brand tier basis. The volume demand forecast was done on an "unconstrained" basis (i.e. it was based exclusively on forecast demand for each of Treasury's brands and brand tiers, without regard to any supply constraints). The unconstrained demand forecasts included "base" and "stretch" volume components. The base volume was calculated by each region in the expectation that there would be a high probability that it would be achieved. The stretch volume was less certain than the base volume, but was calculated on the basis that it would still be commercially achievable, with a meaningful portion of the stretch volume planned for a given fiscal year for the whole company being likely to be achieved. Following qualitative assessment by a central team, the regional unconstrained GVPs were consolidated into a singular unconstrained GVP. The consolidated unconstrained GVP was then "constrained" by Treasury's supply team, by assessing how much of the (unconstrained) demand forecasts for each wine brand or brand tier made by the regional divisions for each fiscal year in the 5-year plan could actually be supplied or sourced to meet that forecast demand in that fiscal year. The final (constrained) GVP was then reviewed and assessed by the CEO, COO and CFO.*

(ii) *A five-year plan (**5YP**), in which Treasury forecast (for each regional division and for its corporate division) EBITS for the following five fiscal*

*years, in which inter alia the constrained volume forecasts in the GVP for those fiscal years were monetised. The 5YP was prepared annually, generally in the period February to April. Two 5YPs were prepared: a Gold 5YP and a Red 5YP. The Gold 5YP was built from the bottom up by Treasury's regional and corporate divisions. It included both base and stretch EBITS (being respectively the monetised constrained base volumes forecast in the GVP and the monetised constrained stretch volumes forecast in the GVP). It also included costs forecast by Treasury's corporate division. From the Gold 5YP, a Red 5YP was prepared. It was a "de-risked" version of the Gold 5YP. The Red 5YP took into account the potential for execution risk of the plans within the Gold 5YP and the additional initiatives in the Platinum 5YP. (The Platinum 5YP is referred to further below. The Platinum Plan initiatives were de-risked to zero in the Red 5YP.) The starting point, and most important factor for, the Red 5YP was the monetised constrained base volume forecast in the GVP, which produced an implied base EBITS figure (using pricing and cost assumptions based on the most up to date pricing and cost information at the time) (**Base EBITS**). Treasury's CFO, with the assistance of other members of Treasury's Financial Planning and Analysis (**FP&A**) team and the CEO, managed the process to prepare the Red 5YP. The process to de-risk the Gold 5YP was finalised after the Gold 5YP was completed, in approximately March of each year. The Red 5YP was then submitted to the Board for approval, usually in April each year. By reason of the process described above, the Red 5YP comprised only Base EBITS, subject only to some adjustments.*

(iii) *A Platinum 5YP, that comprised further incremental opportunities not contained in the Gold 5YP. These further incremental opportunities were identified by the CEO, the COO and the CFO.*

(iv) *The Annual Budget. As with the 5YP, each year Treasury prepared a Gold Budget and a Red Budget. The starting assumption was that the EBITS target in year one of the Gold 5YP and Red 5YP was the headline EBITS target for the respective Gold Budget and Red Budget. The Gold Budget was sometimes referred to internally as the Business Plan Plus (or **BPP**). It was an independent bottom up build by Treasury's regional and corporate divisions, with oversight from the Group's FP&A team, which verified the EBITS target in year one of the Gold 5YP. It was used by senior management to track and evaluate internal performance across the regional and corporate divisions. However, Treasury's market guidance was not based on the Gold Budget or the Gold 5YP. The process to build the Gold Budget began in approximately February, initially in tandem with the Gold 5YP, and was usually finalised in around June. The primary difference between the Gold 5YP and the Gold Budget was that the latter was more detailed, and allowed Treasury to track performance at a more granular level. The Red Budget was prepared by de-risking the Gold Budget, by the same process by which the Red 5YP was prepared by de-risking the Gold 5YP. As with the Red 5YP, the most important factor for the Red Budget was the implied EBITS of the constrained base volumes forecast by each region in their bottom up builds (i.e. the Base EBITS). The Red Budget was the budget presented by management to the Board. It was sometimes referred to internally as the Base Plan (or **BP**).*

(v) *The January Financial Implication (or **Jan FI**). This was an annual half-year reforecast undertaken by Treasury in the period December to January/February, and was finalised after the half-year results of the then current financial year were known. The Jan FI process involved Treasury's regional and corporate divisions preparing a bottom-up forecast for the second half of the financial year, having regard to the actual results delivered in the first half of that financial year. As with the Annual Budget, there was a Gold Jan FI and a Red Jan FI. The process to build the Gold Jan FI and the Red Jan FI was essentially the same as the process to prepare the Gold Budget and the Red Budget. The only material difference was that the Budgets had a 12-month outlook, while the Jan FI reforecast used 6-months of actual data for year-to-date, and then forecast (from the bottom up) the likely financial performance for the remaining 6 months of the financial year.*

(vi) *The Integrated Business Planning (**IBP**) process. This was a monthly process to provide an outlook for year-to-go volume and financial expectation. The process to prepare the IBP outlook involved preparing a bottom-up update for the remainder of the financial year, having regard to the actual results for the year to date. The IBP process was detailed, and involved input from regional sales managers and others. The process to build the monthly IBP outlook began approximately 3-5 days before month end, and was finalised around 20 days after month end.*

(vii) *The Red plans were the basis for the market earnings guidance given by Treasury.*

(c) admits sub-paragraph 33(c) (except to the extent that sub-paragraph makes allegations with respect to the "*US Wine Market*", as there is no such wine market as defined by the plaintiffs), and further admits that Treasury had a system for inventory management which entailed a discipline of close monitoring of stock levels across its wholesale and retail partners in the US;

(d) admits sub-paragraph 33(d) (except to the extent that sub-paragraph makes allegations with respect to the "*US Wine Market*", as there is no such wine market as defined by the plaintiffs), and further admits that Treasury received detailed inventory and depletion data from most of its distributor partners in the US on a monthly basis;

(e) as to sub-paragraph 33(e), says that:

(i) Nielsen scan data records sales of wine to retail consumers (that is, consumers who purchase wine from retailers) at a limited selection of retail outlets in the US;

(ii) TWE does not (and did not at any material time) generally have access to, or use, Nielsen sales data in respect of the US;

(iii) the coverage of Nielsen data is limited within the US;

(iv) there is no data source that comprehensively records either the sale of wine to retail consumers at retail outlets in the US or other sales of wine to retail consumers in the US;

(iva) Treasury does not (and did not at any material time) sell to end-consumers via any retail channel which is captured by Nielsen data;

(v) otherwise denies that sub-paragraph;

(ea) it admits sub-paragraph 33(ea), and in further answer to that paragraph:

(i) repeats sub-paragraphs 33(e)(i), (iii), (iv) and (iva) above (which apply equally to IRI and Nielsen scan data);

(ii) says further that:

(A) IRI data captured only data which was made available to IRI by retailers;

(B) not all major and independent retailers provided data to IRI;

(C) Treasury estimated that IRI data covered approximately half of wine sold by retailers in the US;

(D) IRI data did not capture any direct-to-consumer sales, including cellar door sales;

(E) IRI data did not capture on-premises sales including sales by cruise ships, restaurants, bars, sales from certain independent liquor stores, or e-commerce sales;

(f) admits sub-paragraph 33(f);

(g) admits sub-paragraph 33(g).

D. ALLEGED JUNE 2018 CONTRAVENTIONS

D.1 Alleged June 2018 Misleading or Deceptive Conduct

34. As to paragraph 34, it:

(a) admits that it made the statements contained in the announcement titled "*Treasury Wine Estates Interim 2018 financial results*" dated 31 January 2018 (**31 January 2018 Announcement**);

Particulars

The 31 January 2018 Announcement is in writing.

(b) admits the announcement said Treasury was "*confident that the business model changes we are making this year, along with an increased availability of high-end wine, will set [Treasury] up for accelerated growth in F19, F20 and beyond*" and that "*'Fixed' regions, Asia, Europe and ANZ, are outperforming expectations, and we are now taking some exciting steps to really transform our route-to-market in the United States, and further strengthen the long-term outlook for the Americas region*";

(c) says that the announcement noted, on several occasions, there was execution risk associated with implementing the route-to-market changes;

(d) says further it will rely on the full content of the announcement at trial; and

(e) otherwise denies that paragraph.

35. As to paragraph 35, it:

(a) refers to and repeats paragraph 34 above;

(b) admits the statements that Treasury would be set up for "*accelerated growth in F19, F20 and beyond*" and that *"the long-term outlook for the Americas region"* would *"further strengthen"* were statements as to future matters;

(c) otherwise denies that paragraph.

36. As to paragraph 36, it:

(a) refers to and repeats paragraphs 5 and 34 above;

(b) admits that the statements contained in the 31 January 2018 Announcement were made:

(i) in trade or commerce;

(ii) in relation to a financial product (as that term is defined in Chapter 7 of the Corporations Act and in Part 2, Division 2 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**));

(c) otherwise denies that paragraph.

37. As to paragraph 37, it:

(a) refers to and repeats paragraph 34 above;

(b) says that if Treasury made the representation as alleged (which is denied), it did not repeat that representation at any time and it was not a continuing representation;

(c) says further that it was not during the Relevant Period under any obligation to withdraw or qualify a statement it made; and

(d) otherwise denies the paragraph.

38. As to paragraph 38, it:

(a) refers to and repeats paragraph 10 above;

(b) says further that the references to "*US wine*", "*US wineries' tanks and barrels*", "*the US Wine Market*", "*the bulk wine market*" and "*the global wine market*" are embarrassing;

(c) says further the allegation in sub-paragraph 38(e) that "*there was generally a lead time from wine grape harvest to sale of wine products in the global wine market of more than six months*" is also embarrassing, by reason of the allegation depending on an alleged "*global wine market*", which does not exist and also because it fails to specify what sales and what wine products are being referred to;

(d) says further that:

(i) Ciatti describes itself as the world's largest broker of "*bulk wine and grapes*" (which, whatever its meaning, does not mean all wine produced, sold and distributed in the US);

Particulars

The description is contained on its website (www.ciatti.com).

(ii) Ciatti produces reports for its customers, that are properly described as a form of marketing, for the supply of what is described as bulk wine and grapes;

(iii) the document referred to in particular (ii) post-dates 30 June 2018, such that the plaintiffs' reliance on those reports and documents in support of the allegations in paragraph 38 is embarrassing;

(iv) in the premises, the <u>amended</u> consolidated statement of claim's reliance on reports prepared by Ciatti is embarrassing;

(e) under cover of those objections:

(i) as to sub-paragraph 38(a), admits that as at 30 June 2018 the 2018 grape crop in California was predicted to be average to above average;

(ii) denies sub-paragraph 38(b);

(iii) denies sub-paragraph 38(c);

(iv) denies sub-paragraph 38(d);

(v) denies sub-paragraph 38(e) and further says that the lead time from grape wine harvest to the sale of wine sourced from that grape wine harvest varies significantly depending on the type of wine;

(vi) denies sub-paragraph 38(f).

39. As to paragraph 39, it:

(a) refers to and repeats paragraph 10 above;

(b) says that the allegation of *“a decline in sales”* in sub-paragraph 39(a) is embarrassing as the comparative (earlier) period from which the alleged decline in sales occurred is not identified~~;~~, and also because it is unclear whether “*sales*” means shipments by Treasury to its distributors and/or retailers in the Americas, on the one hand, or end-sales of Treasury’s wine brands by retailers in the Americas, on the other;

(c) [not used] ~~further says that the allegation of *“reduced sales growth in respect of sales”* in sub-paragraph 39(b) is embarrassing as the comparative (earlier) period from which the alleged reduced sales growth occurred is not identified;~~

(d) under cover of ~~those~~ that objection~~s~~:

(i) refers to and repeats paragraphs 16 and 33(~~e~~a) above;

(ii) [not used] ~~says Treasury does not sell to end-consumers via any retail channel which is captured by Nielsen data;~~

(iii) as to sub-paragraph 39(a):

(A) [not used] ~~says the allegation that “*Treasury had experienced a decline in sales in the US of the Key Diageo Brands*” must, by reason of the particulars thereto, be a reference to a decline in sales (by volume) by retail outlets to end-consumers (which sales were not made by Treasury);~~

(AA) says that:

(1) paragraph iv of the particulars under sub-paragraph 39(a) references shipments (not retail sales);

(2) the net sales revenue figures in paragraph iv of the particulars under sub-paragraph 39(a) are in US Dollars on a constant currency basis;

(AB) admits that as at 30 June 2018, there had been a decrease in year-to-date (**YTD**) shipments in the Americas of 13.3% year-on-year (**YOY**) (on a constant currency basis) and a decrease in YTD net sales revenue of 9.3% YOY (on a constant currency basis);

(AC) further says that a decrease in shipments in the Americas as at 30 June 2018 versus the prior year was an expected consequence of:

(1) Treasury's premiumisation strategy, under which Treasury was moving away from higher volume sales of lower margin commercial wine toward lower volume sales of higher margin masstige and luxury wines; and

(2) the transition to the new route-to-market (**RTM**) model in the US in F18, with the new RTM model only announced at the end of January 2018, and not expected to be fully implemented until 2H19;

Particulars

The full implementation of the RTM changes was planned to take some time as Treasury built relationships and operating plans with new distributors (where applicable) and retailers (in States where the direct sale model was being implemented). Treasury did not expect the RTM changes to be fully embedded as at 30 June 2018.

Further, implementing the RTM changes involved de-stocking distributors in the US (including in California) from about October 2017.

(AD) further says that paragraph v of the particulars under sub-paragraph 39(a) references IRI data, which tracks some, but not all, retail wine sales in the US, and (as to IRI data) refers to and repeats sub-paragraph 33(ea) above;

(AE) admits that as at 20 May 2018, there were retail sales volume declines (in the retail outlets that reported their scan data to IRI) for the "*Key Diageo Brands*" (as defined in the amended consolidated statement of claim) in the 52 week period to 20 May 2018, compared with the prior 52 week period;

(AF) further says that the IRI data summarised in the document referred to in particular v under sub-paragraph 39(a) showed that over the 52 weeks to 20 May 2018, Treasury had experienced 1.4% volume growth (compared to the same period the prior year) in the $4+ table wine category;

(AG) further says that retail sales volume declines in commercial wines within the "*Key Diageo Brands*" in F18 were an expected consequence of Treasury's premiumisation strategy;

Particulars

Treasury refers to and repeats sub-paragraph 39(d)(iii)(AC)(1) above.

(AH) further says that, as at 30 June 2018, the Americas achieved increases in net sales revenue per 9-litre equivalent, EBITS, gross profit margin, brand contribution margin and EBITS margin, all as compared to the prior year in US Dollars on a constant currency basis;

Particulars

Americas Commercial Review – F18 June [TRE.021.013.2902] at .2904.

(AI) further says that, as at 20 May 2018, Beaulieu Vineyard had experienced a 10.9% increase in volume for the previous 13 weeks, and a 13.5% increase in volume for the previous 4 weeks;

Particulars

IRI sales data as at 20 May 2018 [TRE.002.033.5426] at .5426.

(B) otherwise denies sub-paragraph 39(a);

(C) [not used] ~~further refers to and repeats the allegations made in sub-paragraph 33(e) above regarding the limited coverage of sales data such as Nielsen sales data;~~

(D) [not used] ~~admits the Nielsen sales data records (in respect of such of the sales to end-consumers that are tracked by Nielsen) a decline in the volume of sales to end-consumers of "*Sterling Vineyards*", "*Beaulieu Vineyard*", and "*Acacia*" brand products in the 2017 financial year and says further that the Neilsen sales data records sales of certain sub-brands of "*Sterling Vineyards*" and "*Beaulieu Vineyard*" increased in the 2017 financial year;~~

(E) [not used] ~~admits the Nielsen sales data records (in respect of such of the sales to end-consumers that are tracked by Nielsen) a decline in the volume of sales to end-consumers of "*Beaulieu Vineyard*" and "*Acacia*" brand products in the 2018 financial year and says further that the Neilsen sales data records sales of certain sub-brands of "*Beaulieu Vineyard*" increased in the 2018 financial year;~~

(F) [not used] ~~says that the particulars record that according to Nielsen sales data, the volume of sales to end-consumers of all "*Sterling Vineyards*" brand products tracked by Nielsen increased by 1.8% in the 2018 financial year and is thus inconsistent with the material fact alleged;~~

(G) [not used] ~~further says that the document relied on by the plaintiffs in support of particular (iii) to sub-paragraph 39(a) (the Credit Suisse report dated 16 August 2018) [NAP.999.002.0002] noted the lack of comprehensive available data;~~

(H) [not used] ~~further says that particular (iii) to sub-paragraph 39(a) refers to declines as recorded in Nielsen data, which data has not been provided to Treasury by the plaintiffs;~~

(iv) [not used] ~~as to sub-paragraph 39(b):~~

(A) [not used] ~~says that the allegation that "*Treasury had experienced reduced sales growth in respect of sales of its wines ... in the US in 4Q18*" must, by reason of the particulars thereto, be a reference to a decline in sales (by value) by retail outlets to end-consumers (which sales were not made by Treasury);~~

(B) [not used] ~~denies sub-paragraph 39(b);~~

(C) [not used] ~~further refers to and repeats the allegations made in sub-paragraph 33(e) above regarding the limited coverage of sales data such as Nielsen sales data;~~

(D) [not used] ~~says that the particulars refer to declines as recorded in Nielsen data, which data has not been provided to Treasury by the plaintiffs; and~~

(E) [not used] ~~further says that the second paragraph of the particulars to sub-paragraph 39(b) does not support the material fact alleged;~~

(v) as to sub-paragraph 39(c):

(A) [not used] ~~says that the impact databank depletion data relied on by the plaintiffs purports to show that between the calendar years of 2015 and 2018, Treasury had not experienced an ongoing (i.e. continuous) decline in depletions in respect of at least the following brands or groups of brands:~~

~~(1) "*Founders' Estate*";~~

~~(2) "*Other Beringer*",~~

~~(3) "*19 Crimes*";~~

~~(4) "*Matua*";~~

~~(5) "*Coastal Estates*";~~

~~(6) "*Gabbiano*";~~

~~(7) "*Other Acacia*";~~

~~(8) "*The Last Wine Co*";~~

~~(9) "*Lyric by Etude*";~~

~~(10) "*Other Etude*"; and~~

~~(11) "*Penfolds Total Top 15*";~~

(B) [not used] ~~further says that it does not know the source and provenance of the impact databank depletion data, and does not~~

~~use that data in its business, and accordingly does not know and therefore cannot admit whether that data is accurate; and~~

(C) [not used] ~~otherwise denies that sub-paragraph.~~

(D) says that as at 30 June 2018, Treasury's:

(1) YTD commercial wine depletions in the US had declined by 19% versus prior year;

(2) YTD masstige wine depletions in the US had increased by 11% versus prior year;

(3) YTD luxury wine depletions in the US had declined 7% versus prior year;

Particulars

Americas Commercial Review – F18 June [TRE.002.030.1650] at .1659.

(E) otherwise denies that sub-paragraph;

(F) says further that depletion declines in the Americas in F18 for Treasury's wines were an expected consequence of:

(1) Treasury's premiumisation strategy;

(2) the transition to the new RTM model in the US in F18;

Particulars

Treasury refers to and repeats sub-paragraphs 39(d)(iii)(AC)(1) and (2) above and the particulars under sub-paragraph 39(d)(iii)(AC)(2).

(va) as to sub-paragraph 39(ca), it:

(A) says that the allegation that distributor depletions "*were declining*" is embarrassing as it does not specify an earlier comparative point in time from which it is alleged to have declined;

(B) under cover of that objection , it:

(1) refers to and repeats sub-paragraph 39(d)(v) above;

(2) otherwise denies sub-paragraph 39(ca);

(3) further says that depletion declines in California and the Southeast (including Florida) in F18 were an expected consequence of:

a. Treasury's premiumisation strategy;

b. the transition to the new RTM model in the US in F18;

Particulars

Treasury refers to and repeats sub-paragraphs 39(d)(iii)(AC)(1) and (2) above and the particulars under sub-paragraph 39(d)(iii)(AC)(2).

(4) further says that implementing the new RTM model involved de-stocking distributors in California from about October 2017;

(5) further says that as at 18 June 2018, the RTM changes were tracking to plan;

Particulars

CEO Report for the 18 June 2018 Board meeting [TRE.003.001.2771] at .2809.

Americas presentation for the 18 June 2018 Board meeting [TRE.025.001.0381] at .0383.

(vb) as to sub-paragraph 39(cb):

(A) says the allegation that Treasury had "*lost market share"* is embarrassing as it does not specify an earlier comparative point in time or the market of which Treasury's share is alleged to have declined;

(B) repeats sub-paragraphs 11(b) and 11(c) above in respect of the phrase "*key segments*";

(C) under cover of those objections:

(1) says the allegation that "*Treasury had lost market share in key segments in the US in FY18*" must, by reason of the particulars thereto, be a reference to a decline in Treasury's share of sales (by volume) by those retail

outlets in the US who reported their scan data to IRI, as at 17 June 2018, according to IRI data;

(2) says changes in Treasury's market share (as described in sub-paragraph 39(vb)(C)(1) above) depend on the period of time being assessed;

(3) says, over the 13 weeks to 17 June 2018, Treasury's market share (as described in sub-paragraph 39(vb)(C)(1) above) increased in 4 price ranges;

Particulars

Americas Commercial Review – F18 June [TRE.021.013.2902] at .2909.

(4) otherwise denies sub-paragraph 39(cb);

(vi) further says that Treasury's plans (including budgets and forecasts) for F18 took into account and allowed for, as intended consequences of the premiumisation strategy:

(A) an expected decrease in shipments (of commercial wine) in the Americas as at 30 June 2018 versus the prior year;

(B) an expected depletions decline (of commercial wine) in the Americas for F18 for TWE's commercial wines;

(C) an expected depletions decline (of commercial wine) in California and the Southeast (including Florida) in F18;

(vii) further says that the expected consequences of the RTM changes, as referred to in sub-paragraphs 39(d)(iii)(AC)(2), 39(d)(v)(F)(2) and 39(d)(va)(B)(3)(b) above, were not taken into account in Treasury's F18 budget, because the budget was set before the RTM was a confirmed project. However, the impacts to shipments, revenues and depletions resulting from the RTM changes were all expected as part of Treasury's planned implementation of those RTM changes. Further, those expected consequences of RTM changes were taken into account, and allowed for, in Treasury's plans and budgets for F19;

(viii)~~(vi)~~ denies sub-paragraph 39(d).

39A. As to paragraph 39A, it:

(a) as to sub-paragraph 39A(a):

(i) admits that the F19-23 Strategic Plan dated 9 April 2018 included a 5YP F19-23 that:

(A) included the then current F18 forecast for the Americas of EBITS of $189 million (being the Jan FI full year reforecast for F18 carried out in January 2018 (the **F18 Jan FI Americas Forecast**));

(B) forecast EBITS of $240 million for the Americas in F19 (being the first year of the 5YP F19-23);

(C) forecast EBITS of $280 million for the Americas in F20 (being the second year of the 5YP F19-23);

(ii) otherwise denies that sub-paragraph, and specifically denies that the F19-23 Strategic Plan or the 5YP F19-23 stated that the Americas "*would achieve*" those forecasts;

(b) admits sub-paragraph 39A(b);

(c) denies sub-paragraph 39A(c);

(d) denies sub-paragraph 39A(d), and in further answer to that paragraph says that reported EBITS for the Americas for F18 was $193 million, which was $6.2 million ahead of the F18 Jan FI Americas Forecast on a constant currency basis and $4m ahead on a reported currency basis;

Particulars

Treasury's Annual 2018 financial result media release dated 16 August 2018 [TRE.004.014.8537] at .8538.

(e) denies sub-paragraph 39A(e), and specifically denies that there was a "*budget miss*" or "*shortfall against budget*" in F18 EBITS for the Americas region.

40. ~~As to~~ It denies paragraph 40, ~~it~~ and in further answer to that paragraph:

(a) refers to and repeats paragraphs 10, 38, ~~and~~ 39 and 39A above;

(aa) says further that Treasury's ability to achieve accelerated EBITS growth in F19, F20 and beyond depended on the future performance of its global operations (and not merely the future performance of its Americas region);

(b) says the particulars to paragraph 40 do not support the allegations contained therein ~~and the inference sought to be drawn from particular iii to paragraph 40 is embarrassing, and accordingly there is no proper basis for the allegations made in paragraph 40~~;

(c) [not used] ~~under cover of those objections:~~

(i) ~~denies sub-paragraph 40(a) and in further answer to that sub-paragraph refers to and repeats paragraph 58(g) below;~~

(ii) ~~denies sub-paragraph 40(b), and in further answer to that sub-paragraph says that the consolidated statement of claim does not disclose a proper basis for the allegation in sub-paragraph 40(b), as Treasury's ability to achieve accelerated EBITS growth in future financial periods depended on the future performance of its global operations (and not merely the future performance of its "*Americas*" division).~~

(d) [not used] ~~under cover of those objections, denies that paragraph.~~

41. ~~As to~~ It denies paragraph 41. ~~it:~~

(a) [not used] ~~says the paragraph is embarrassing insofar as it alleges that "*one or more of the Treasury Officers knew or ought to have known*" certain information;~~

(b) [not used] ~~says that pursuant to rule 13.10(3)(b) of the Supreme Court (General Civil Procedure) Rules 2015 (Vic), the plaintiffs are required to make clear:~~

(i) ~~which alleged officer is alleged to have known and / or is alleged ought to have known (or became aware of) which piece of information (including any opinions, which must actually have been held by an officer); and~~

(ii) ~~when such knowledge (or awareness) is alleged to have been acquired,~~

~~and until that occurs the pleading is embarrassing;~~

(c) [not used] ~~says further that the particulars are embarrassing as they assert the alleged Treasury Officers had "*knowledge of Treasury's business and sensitivities, the Treasury Monitoring Systems and information which would have come into the possession of one or more of the Treasury Officers in the proper performance of their duties*", but provide no particulars of the "*sensitivities*" and "*information which would have come into the possession*" of the alleged Treasury Officers, which~~

~~alleged Treasury Officers had or ought to have had that knowledge, and when each such alleged Treasury Officer had or ought to have had such knowledge;~~

(d) [not used] ~~says further that the particulars are embarrassing, as they assert that knowledge (actual or constructive) of the alleged Treasury Officers can be inferred from the fact that at a future time (28 January 2020) Treasury became aware of information;~~

(e) [not used] ~~refers to and repeats paragraph 10 above;~~

(f) [not used] ~~under cover of those objections, denies that paragraph.~~

42. ~~As to~~ It denies paragraph 42, ~~it:~~ and in further answer to that paragraph refers to and repeats paragraphs 10 and 37 to 40 above.

(a) [not used] ~~says the allegation that Treasury failed to adequately take into account certain information is embarrassing, as no particulars are provided as to how Treasury took into account that information, and why that (unspecified) conduct was inadequate;~~

(b) [not used] ~~says further that the particulars are embarrassing insofar as they seek to draw an inference by reference to matters arising at a future time (28 January 2020);~~

(c) [not used] ~~refers to and repeats paragraph 10 above;~~

(d) [not used] ~~under cover of those objections denies that paragraph, and in further answer to that paragraph refers to and repeats paragraphs 37, 38, 39 and 40 above.~~

43. It denies paragraph 43 and in further answer to that paragraph refers to and repeats paragraphs 37 to 42 above.

44. As to paragraph 44, it:

(a) says that insofar as the plaintiffs rely on the allegation that the January 2018 Representation was a continuing representation in the amended consolidated statement of claim, they must identify how it became known to Treasury that the alleged representation (which is denied) was false (including particulars of who had that knowledge / formed the opinion, when that person(s) acquired the knowledge / formed the opinion, and how those matters are attributable to Treasury) and, absent such allegations, the said reliance is embarrassing; and

(b) under cover of that objection, denies that paragraph and refers to and repeats paragraphs 34 to 40 and 43 above.

D.2 Alleged June 2018 Continuous Disclosure Contravention

45. As to paragraph 45, it:

(a) says the paragraph is embarrassing insofar as it alleges that "*one or more of the Treasury Officers were aware*" of certain information;

(b) refers to and repeats paragraphs 8(d), 8(e), 10 and 41 above;

(c) under cover of those objections, denies that paragraph.

46. As to paragraph 46, it:

(a) refers to and repeats paragraph 10 above;

(b) says that the particulars are embarrassing insofar as they say that the alleged information included "*Treasury's own information relating to its business, projections and sensitivities, including its future performance and performance against budget*", but provide no particulars of the "*business, projections and sensitivities*" and which alleged Treasury Officers had or ought to have had that knowledge, and when each such alleged officer had or ought to have had such knowledge;

(c) under cover of those objections, it:

(i) denies paragraph 46, and refers to and repeats paragraph 40 above;

(ii) specifically denies the alleged June 2018 US Market Conditions Impact Information was information that existed at any time during the Relevant Period;

(iii) specifically denies that information comprising the alleged June 2018 US Market Conditions and the alleged June 2018 Treasury US Market Conditions (to the extent such information in fact existed) was not generally available within the meaning of s 676 of the Corporations Act.~~;~~

(iv) [not used] ~~otherwise denies that paragraph.~~

47. As to paragraph 47, it:

(a) refers to and repeats paragraphs 45 and 46 above; and

(b) otherwise denies that paragraph.

48. As to paragraph 48, it:

(a) admits that on 28 January 2020 it published an announcement on the ASX titled "*1H20 Profit Report (subject to audit review), Revised F20 Guidance, Investor Presentation and Interim Dividend Announcement*" (**28 January 2020 Announcement**);

(b) admits that prior to 28 January 2020 it did not inform the ASX of the alleged June 2018 US Market Conditions Impact Information (the existence of which information during the Relevant Period is denied);

(c) says further it was under no obligation to make any announcement regarding the alleged June 2018 US Market Conditions Impact Information during the Relevant Period; and

(d) otherwise denies that paragraph.

49. It denies paragraph 49.

E. ALLEGED FEBRUARY 2019 CONTRAVENTIONS

E.1 Alleged February 2019 Misleading or Deceptive Conduct Contravention

50. As to paragraph 50, it:

(a) admits that it made the statements contained in the announcement titled "*Treasury Wine Estates Interim 2019 Results*" (**1H19 Presentation**), and the announcement titled "*Treasury Wine Estates Interim 2019 financial results*" (**1H19 Results Announcement**), both dated 14 February 2019 (collectively, the **14 February 2019 Announcements**);

Particulars

The 14 February 2019 Announcements are in writing.

(b) admits Treasury said in the:

(i) 1H19 Results Announcement that it "*expects growth in F20 reported EBITS in the range of approximately 15% to 20%*" and "*expects reported EBITS growth in F20 in the range of approximately 15% to 20%*"; and

(ii) 1H19 Presentation that "*EBITS growth rate of approximately 15% to 20% expected for F20*";

(c) says the 1H19 Presentation, and the 1H19 Results Announcement, both stated that EBITS growth assumed "*no material changes due to vintage or foreign exchange* *movements, and does not include impacts from the application of AASB16 Leases in F20*";

(d) says further the 1H19 Presentation stated:

> *… No representation is made as to the accuracy, completeness or reliability of this presentation…*
>
> *This presentation contains forward looking statements ... Such forward looking statements are not guarantees of future performance and involve known and unknown risks, uncertainties and other factors, many of which are beyond the control of TWE, which may cause actual results to differ materially from those expressed or implied in such statements. Readers are cautioned not to place undue reliance on forward looking statements.*
>
> *Except as required by applicable regulations or by law, TWE does not undertake any obligation to publicly update or review any forward looking statements, whether as a result of new information or future events…*
>
> *Past performance information included in this presentation is for illustrative purposes only and cannot be relied on as a guide to future performance.*

(e) says further it will rely on the full content of the 14 February 2019 Announcements at trial;

(f) otherwise denies that paragraph.

51. As to paragraph 51, it:

(a) refers to and repeats paragraph 50 above;

(b) admits the statements referred to in sub-paragraph 50(b) were statements as to a future matter; and

(c) otherwise denies that paragraph.

52. As to paragraph 52, it:

(a) refers to and repeats paragraphs 5 and 50 above;

(b) says the statements contained in the 1H19 Presentation, and the 1H19 Results Announcement were made:

(i) in trade or commerce;

(ii) in relation to a financial product (as that term is defined in Chapter 7 of the Corporations Act and in Part 2, Division 2 of the ASIC Act);

(iii) in relation to financial services for the purposes of Part 2, Division 2 of the ASIC Act;

(c) otherwise denies that paragraph.

53. As to paragraph 53, it:

(a) refers to and repeats paragraph 10, sub-paragraphs 33(e) and 33(ea) and paragraph 38 above;

(b) says the references to "*the US wine industry*", "*the US Wine Market*" and "*private label wine*" are embarrassing;

(c) says further that the allegations in sub-paragraphs 53(b) and (c) as to what was "*expected*" are embarrassing, as they do not identify who is alleged to have had those expectations;

(d) says further the documents particularised do not support the allegations made in paragraph 53 of the amended consolidated statement of claim, and that:

(i) the document titled "*State of the Wine Industry Report 2019*" ~~[SAG.001.001.0299]~~ [TRE.006.017.6996] represents the opinion of one person (Rob McMillan), and in it Mr McMillan expressly states his prior predictions have been wrong, that the information he relied on was sourced from third parties, was unverified, and may not be accurate or complete;

(ii) the document titled "*Ciatti California Report*" dated November 2018 [NAP.999.004.0004] relates to "*bulk wine*" in California;

(iii) several allegations are unparticularised;

(e) says further the particulars in support of sub-paragraph 53(f) refer to increases as recorded in Nielsen data, which data has not been provided to Treasury by the plaintiffs;

(f) says further that the document relied on by the plaintiffs [NAP.999.002.0006] in support of the allegations made in sub-paragraph 53(f) says the following:

> *No representation or warranty ... is provided in relation to the accuracy, completeness or reliability of the information contained in any materials to which this document relates (the "Information") ... The Information is*

not intended to be a complete statement or summary of the securities, markets or developments referred to in the document. UBS does not undertake to update or keep current the Information ... Any statements contained in this report attributed to a third party represent UBS's interpretation of the data, information and/or opinions provided by that third party either publicly or through a subscription service, and such use and interpretation have not been reviewed by the third party;

(fa) says further that the document relied on by the plaintiffs [TRE.006.017.6996] in support of the allegations made in sub-paragraphs 53(a), (b), (c) and (g) says the following:

This material, including without limitation the statistical information herein, is provided for informational purposes only. The material is based in part on information from third-party sources that we believe to be reliable but which have not been independently verified by us, and for this reason we do not represent that the information is accurate or complete. The information should not be viewed as tax, investment, legal or other advice, nor is it to be relied on in making an investment or other decision. You should obtain relevant and specific professional advice before making any investment decision. Nothing relating to the material should be construed as a solicitation, offer or recommendation to acquire or dispose of any investment or to engage in any other transaction.

Silicon Valley Bank is not selling or distributing wine or wine-related products. Through the online informational platform, SVB Cellar Selections, Silicon Valley Bank provides material to employees about a variety of premium Silicon Valley Bank winery clients and their wines. These communications are for informational purposes only. Silicon Valley Bank is not responsible for (or a participant in) the sales of any wineries' products in any fashion or manner and makes no representations that any promotion or sales of alcoholic beverages will or will not be conducted in a lawful manner. Further, Silicon Valley Bank disclaims any responsibility or warranty for any products sold by wineries or other wine industry service providers.

(g) says further particular ii to sub-paragraph 53(g) of the amended consolidated statement of claim is irrelevant to the allegations contained therein;

(h) under cover of those objections:

(i) denies sub-paragraph 53(a);

(ii) as to sub-paragraph 53(b), says that the 2018 grape harvest was estimated to be between 4.2-4.3 million tons in California, and further says that it does not know and therefore cannot admit whether as at 14 February 2019 the 2018 grape harvest in the North West was expected to set records, and otherwise denies that sub-paragraph;

(iii) denies sub-paragraph 53(c);

(iiia) denies sub-paragraph 53(ca);

(iv) denies sub-paragraph 53(d);

(v) denies sub-paragraph 53(e) and further refers to and repeats sub-paragraph 38(e)(v) above;

(vi) as to sub-paragraph 53(f), admits that if Bulk Wine prices decrease, this may lead to increased sales of wine that is sold, marketed and promoted by retailers under the individual retailer's own private label, but otherwise denies sub-paragraph 53(f);

(vii) denies sub-paragraph 53(g).

54. As to paragraph 54, it:

(a) refers to and repeats paragraph 39 above;

(b) as to sub-paragraph 54(a)(i), refers to and repeats sub-paragraphs 39(a), 39(b) and 39(d)(i)~~, (ii)~~ and (iii) above;

(c) as to sub-paragraph 54(a)(ii):

(i) says that the allegation of *"a further decline in the US in sales"* is embarrassing as the comparative (earlier) period from which the alleged decline in sales occurred is not identified, and also because it is unclear whether "*sales*" means shipments by Treasury to its US distributors and/or US retailers, on the one hand, or end-sales of Treasury's wine brands by US retailers, on the other;

(ii) [not used] ~~further says that particular (ii) in support of the sub-paragraph is embarrassing as it seeks to rely on data as at 29 June 2019 in support of the position as at 14 February 2019;~~

(iii) [not used] ~~further says that particular (iii) in support of the sub-paragraph is embarrassing as it is speculation;~~

(iv) under cover of that ~~those~~ objection~~s~~:

(A) says that in so far as the allegation relies on the allegation in paragraph 39(a), it refers to and repeats paragraph 39 above; ~~the allegation that Treasury was experiencing a "*further decline in sales in the US of the Key Diageo Brands*" must, by reason of the particulars thereto, be a reference to a decline in sales (by volume) to end-consumers by retail outlets in the US of all "*Sterling Vineyards*", "*Beaulieu Vineyard*", and "*Acacia*" brand products (which sales were not made by Treasury);~~

(B) otherwise denies sub-paragraph 54(a)(ii);

(C) further refers to and repeats the allegations made in sub-paragraphs 33(e) and 33(ea) above regarding the limited coverage of ~~sales data such as~~ Nielsen and IRI sales data;

(d) [not used] ~~as to sub-paragraph 54(b)(i), refers to and repeats sub-paragraphs 39(a), 39(c) and 39(d)(i), (ii) and (iv) above;~~

(e) [not used] ~~as to sub-paragraph 54(b)(ii):~~

(i) ~~says that the allegation of *"reduced sales growth in respect of sales"* is embarrassing as the comparative (earlier) period from which the alleged reduced sales growth occurred is not identified;~~

(ii) ~~under cover of that objection:~~

(A) ~~says that the allegation that "*Treasury had experienced reduced sales growth in respect of sales of its wines … in the US in FY19 to date*" must, by reason of the particulars thereto, be a reference to a decline in sales (by value) by retail outlets to end-consumers (which sales were not made by Treasury);~~

(B) ~~denies sub-paragraph 54(b)(ii);~~

(C) ~~further refers to and repeats the allegations made in sub-paragraph 33(e) above regarding the limited coverage of sales data such as Nielsen sales data;~~

(D) ~~further says the particulars refer to declines as recorded in Nielsen data, which data has not been provided to Treasury by the plaintiffs;~~

(ea) as to sub-paragraph 54(b):

(i) admits that Treasury's reported volume and net sales revenue for the Americas was higher in 1H19 than 1H18;

(ii) says further that Treasury's reported volume and net sales revenue for the Americas was also higher in 1H19 than 1H16;

(iii) admits that Treasury's reported volume for the Americas was lower in 1H19 than 1H17;

(iv) denies that Treasury's reported net sales revenue for the Americas was lower in 1H19 than 1H17;

(v) otherwise denies that sub-paragraph;

Particulars

For the Americas in 1H16, Treasury reported volume of 7.1 million 9LE and net sales revenue of $450.8m: Treasury's interim 2016 financial result media release dated 18 February 2016 [TRE.019.001.0054] at .0062.

For the Americas in 1H17, Treasury reported volume of 7.9 million 9LE and net sales revenue of $566.3m: Treasury's interim 2017 financial result media release dated 14 February 2017 [TRE.019.001.0340] at .0350.

For the Americas in 1H18, Treasury reported volume of 7.3 million 9LE and net sales revenue of $503.8m: Treasury's interim 2018 financial result media release dated 31 January 2018 [TRE.002.001.3857] at .3866.

For the Americas in 1H19, Treasury reported volume of 7.5 million 9LE and net sales revenue of $604.6m: Treasury's interim 2019 financial result media release dated 14 February 2019 [TRE.002.029.1333] at .1341; Treasury's interim 2019 results presentation dated 14 February 2019 [TRE.002.029.1273] at .1288 and .1296.

(eb) as to sub-paragraph 54(ba):

(i) admits that as at 14 February 2019, Treasury's Americas region had experienced YOY retail sales decline for its commercial wines (in retail outlets that reported their wine sales to IRI);

(ii) says further that both the premiumisation strategy and RTM changes were taken into account in Treasury's plans and budgets for F19 (including in the derisking processes undertaken to prepare the Red Plans and the Red Budget). Those plans and budgets assumed that there would be declines in shipments and depletions in F19 as a consequence of the premiumisation strategy and the RTM changes. Accordingly, Treasury's plans and budgets for F19 took into account and allowed for:

(A) an expected decrease in depletions of Treasury's commercial wines in the Americas in F19 (and thus as at the end of January 2019 versus the prior year); and

(B) an expected decrease in shipments of Treasury's commercial wines in the Americas in F19 (and thus as at the end of January 2019 versus the prior year).

Particulars

Treasury refers to and repeats sub-paragraphs 39(d)(iii)(AC)(1) and (2) above and the particulars under sub-paragraph 39(d)(iii)(AC)(2).

(iii) says further that the same IRI data relied on by the plaintiffs in support of their allegation in paragraph 54(ba) (namely, [TRE.013.014.6875] at .6891) showed that in the retail outlets that reported their scan data to IRI:

(A) in the premium $8-$10.99 category (which was Treasury's largest category by value and second largest by volume), Treasury's US business had experienced sales growth of 15.2% in dollar terms and 14.4% in volume terms in the 52 weeks to 27 January 2019, which growth was achieved despite the distributor destock;

(B) as at January 2019, the more recent trends in all categories were generally improving;

(iv) says further that sales of commercial wines in the US were at this time performing in line with (and slightly ahead of) Treasury's expectations;

(v) says further that in so far as the allegation in sub-paragraph 54(ba) relies in part on IRI data, Treasury refers to and repeats sub-paragraph 33(ea) above;

(vi) says further that the allegation that commercial wine was Treasury's "*second-largest segment by value*" is embarrassing;

(vii) otherwise denies that sub-paragraph;

(f) as to sub-paragraph 54(c)~~, refers to and repeats sub-paragraphs 39(a) and 39(d)(i), (ii) and (v) above, and otherwise denies that sub-paragraph~~:

(i) says that as at the end of January 2019, in the US:

(A) depletions were up +7% vs prior year for the month and down (1)% YTD;

(B) luxury depletions grew +25% vs prior year in January, YTD down (8)% vs prior year;

(C) masstige depletions grew +17% vs prior year in January and +11% YTD;

(D) masstige depletions excluding 19 Crimes and Matua were up +16% in January vs prior year, softening YTD decline to (5)% vs prior year;

(E) commercial depletions were down (1)% vs prior year in January, down (6)% YTD;

(F) California depletions were up +94% in the month with chains up +283% and broad market down (38)%;

(G) California depletions YTD were down (11)% with chains down (29)%, and broad market down (6)%;

(H) Florida depletions were up +1% in the month with chains up +1.6% and broad market flat to prior year;

(I) Florida depletions YTD were down (4)% with chains flat to prior year and broad market down (12)%;

(ii) refers to and repeats sub-paragraphs 39(a) and 39(d)(i) and (v) above;

(iii) says further that a decrease in depletions in commercial wines in the Americas as at the end of January 2019 versus the prior year was an expected consequence (which was taken into account by Treasury in its forward planning and forecasting) of:

(A) Treasury's premiumisation strategy, under which Treasury was moving away from higher volume sales of lower margin commercial wine toward lower volume sales of higher margin masstige and luxury wines; and

(B) the transition to the new RTM model in the US in F18 and 1H19, with the new RTM model not expected to be fully implemented until 2H19;

Particulars

The full implementation of the RTM changes was planned to take some time as Treasury built relationships and operating plans with new distributors (where applicable) and retailers (in States where the direct sale model was being implemented). Treasury did not expect the route-to-market changes to be fully embedded as at January 2019.

Further, implementing the RTM changes involved de-stocking distributors in the US (including in California) from about October 2017.

Further, Treasury refers to and repeats sub-paragraphs 54(eb)(ii)(A) and (B) above and the particulars under those sub-paragraphs.

(iv) otherwise denies that sub-paragraph;

(fa) denies sub-paragraph 54(ca) and in further answer to that sub-paragraph:

(i) says that Treasury's financial planning included conservatism to protect against unforeseen and foreseen risks regarding Bulk Wine inventory;

(ii) says further that as at January 2019 (and at all other times throughout the Relevant Period), Treasury had inventory management plans in place to deal with surplus Bulk Wine, which would not result in further provisions or write downs for inventory;

Particulars

Treasury's audited financial statements recognised provisions, including provisions relating to inventory across Treasury's entire business and Bulk Wine.

Extract of ARC pack, Key Accounting Issues, for 9 August 2019 meeting [TRE.003.001.0001] between .0023 - .0033, at .0026.

(fb) as to sub-paragraph 54(cb):

(i) says that as at the end of January 2019:

(A) 19 Crimes was up +30% in depletions and up +59% volume sales in IRI data vs prior year;

(B) 19 Crimes growth had started to slow driven by declines in Red Blend and The Banished (Dark Red Blend), which was only a small SKU;

(C) recent aggressive price increases of 19 Crimes had contributed to this downtrend in independent markets;

(D) 19 Crimes volume was up double digits in top retailers and markets;

(E) most 19 Crimes SKUs were in growth, however Red Blend and The Banished were starting to decline in the last 13 weeks;

Particulars

19 Crimes H2 Brand Update Feb 2019 [TRE.016.007.5171] at .5172 - .5173.

(ii) further says that like any brand, to properly analyse the performance of 19 Crimes regard needs to be had to amongst other things sub-brands, item product lines, and stock keeping units;

(iii) otherwise denies that sub-paragraph;

(g) as to sub-paragraph 54(d):

(i) says that the allegation that "*Treasury's market share in the US* ~~*was falling*~~ *had fallen in 2H18 and 1H19*" is embarrassing, as it is not possible to make an allegation about market share without first defining the market;

(ii) [not used] ~~says further that the particulars refer to declines as recorded in Nielsen data, which data has not been provided to Treasury by the plaintiffs;~~

(iii) [not used] ~~says further that the document relied on by the plaintiffs [NAP.999.002.0006] in support of the allegations made in sub-paragraph 54(d) says the following:~~

~~*No representation or warranty ... is provided in relation to the accuracy, completeness or reliability of the information contained in any materials to which this document relates (the "Information") ... The Information is not intended to be a complete statement or summary of the securities, markets or developments referred to in the document. UBS does not undertake to update or keep current the Information ... Any statements contained in this report attributed to a third party represent UBS's interpretation of the data, information and/or opinions provided by that third party either publicly or through a subscription service, and such use and interpretation have not been reviewed by the third party;*~~

(iiia) says further that in the retail outlets that reported their scan data to IRI, in the 52 weeks to 27 January 2019:

(A) in the premium $8-$10.99 category (which was Treasury's largest category by value and second-largest by volume), Treasury's US business had experienced sales growth of 15.2% in dollar terms and 14.4% in volume terms; and

(B) Beringer Brothers continued to drive strong growth in the $15-$20 category, in which Treasury's sales were up 19.5% by volume and 17.7% by dollars, outperforming the market (which was up 9.9% by volume and 9.1% by dollars in the same period).

Particulars

January 2019 Americas Commercial Review presentation [TRE.013.014.6875] at .6891.

(iiib) refers to and repeats sub-paragraphs 33(a) and 33(ea) above;

(iiic) says further that it will refer at trial to the full terms and effect of the document relied on by the plaintiffs in purported support of the allegation in sub-paragraph 54(d) (namely, [TRE.013.014.6875]);

(iv) otherwise denies that sub-paragraph;~~.~~

(v) refers to and repeats sub-paragraphs 39(d)(iii)(AC)(1), 39(d)(iii)(AC)(2), 39(d)(iii)(AG), 39(d)(v)(F), 39(d)(va)(B)(3), 39(d)(vi), 39(d)(vii), 54(eb)(ii)(A), 54(eb)(ii)(B) and 54(f)(iii) above;

(h) denies sub-paragraph 54(e).

55. As to paragraph 55, it:

(a) refers to and repeats paragraphs 10, 53 and 54 above;

(b) says the particulars to paragraph 55 do not support the allegations contained therein and the inference sought to be drawn from particular iii to paragraph 55 is embarrassing, and accordingly there is no proper basis for the allegations made in paragraph 55;

(c) under cover of those objections, denies that paragraph.

55A. As to paragraph 55A, it:

(a) admits sub-paragraph 55A(a);

(b) admits sub-paragraph 55A(b);

(c) admits sub-paragraph 55A(c);

(d) denies sub-paragraph 55A(d), and in further answer to that sub-paragraph says that Treasury reported an increase in EBITS for the Americas in 1H19 of $2.5 million or 2.3% on a constant currency basis, and $11.7 million or 11.7% on a reported currency basis;

Particulars

Treasury interim 2019 financial result media release dated 14 February 2019 [TRE.002.029.1333] at .1338.

(e) says further that the shortfalls referred to above at sub-paragraphs (a), (b) and (c) were immaterial for Treasury at a group level, and that as at the end of 1H19:

(i) Treasury reported group EBITS for 1H19 of $338.3 million against the F19 Red Budget for 1H19 of $306.8 million and group EBITS for 1H18 of $287.2 million on a constant currency basis;

Particulars

Treasury's interim 2019 financial result media release dated 14 February 2019 [TRE.002.029.1333] at .1338.

December 2018 Chief Financial Officer Report dated 22 January 2019 [TRE.002.030.0296] at .0299.

(ii) Treasury reported a 17.8% increase in group EBITS from 1H18 to 1H19 on a constant currency basis, and 19.4% on a reported currency basis;

Particulars

Treasury's interim 2019 financial result media release dated 14 February 2019 [TRE.002.029.1333] at .1338.

(f) otherwise denies that paragraph.

55B. As to paragraph 55B, it:

(a) refers to and repeats sub-paragraphs 10(ca) and 40(aa) above;

(b) says that the particularised documents do not support the allegation of "*monthly underperformance*" made in paragraph 55B, because the monthly flash reports for August 2018, October 2018 and November 2018 referred to in the particulars under paragraph 55B (and the correct monthly flash report for December 2018 [TRE.073.023.2059]) contain year-to-date figures, rather than monthly figures, and that year-to-date EBITS is not a metric of performance for any particular month, as it is a cumulative result that includes previous months;

(c) says further that flash results were prepared before the financial close process for the month was complete, and that while the information contained in flash results was sufficiently complete to identify some key headline results (revenue/EBITS) at a general level, it was not sufficient to enable Treasury's CFO to analyse the detail and that from time to time, the figures in the flash results were revised in the final CFO reports;

(d) says further that the Americas region exceeded its December 2018 budget;

Particulars

Americas actual EBITS for the month of December 2018 were approximately $35.9 million vs budget (cfx) of $32.7m, an approximately +9.7% variance: monthly flash report for December 2018 [TRE.073.023.2059]. The document referred to by the plaintiffs in the particulars under paragraph 55B for December 2018 is the flash report for December 2017 [TRE.015.002.9406].

(e) says further that, as at December 2018, year-to-date the Americas' actual EBITS were approximately $106.8m vs budget (cfx) of $114.5m, an approximately -6.7% variance to budget on a cfx basis;

(f) says further that to the extent there was any year-to-date *"underperformance"* in December 2018 in the Americas region it was immaterial when considered in the context of the Treasury group;

Particulars

Treasury refers to and repeats paragraph 55B(e) above.

(g) says further that Treasury's monthly flash report for December F19 showed that the Americas December month EBITS was approximately $35.9 million, being approximately $3.2 million or 9.7% above Red Plan Budget (BP) for that month on a constant currency basis;

Particulars

Draft flash report for December F19 [TRE.073.023.2059] at .2060.

(h) otherwise denies that paragraph.

55C. As to paragraph 55C, it:

(a) as to sub-paragraph 55C(a):

(i) refers to and repeats paragraph 50 above as regards the alleged *"February 2019 Representation"*; and

(ii) admits that the minutes of the meeting of Treasury's Board on 13 February 2019 (namely, [TRE.001.001.0299] at .0306) record that the Board resolved to establish a sub-committee of the Board to consider and approve the release of the 1H19 Results;

(iii) otherwise denies that sub-paragraph;

(b) as to sub-paragraph 55C(b):

(i) refers to and repeats paragraph 50 above as regards the alleged *"February 2019 Representation"*;

(ii) admits minutes of the meeting of Treasury's Board on 13 February 2019 (namely, [TRE.001.001.0299] at .0306) record that a document entitled "*F19 Forecast & F20 Preliminary Plan*" was tabled by the CFO (Mr Matthew Young);

(iii) says further that the minutes of the meeting of Treasury's Board on 13 February 2019 (namely, [TRE.001.001.0299] at .0306) record that "*Mr Young discussed with directors how the additional information supported the F19 forecast and F20 EBITS guidance range proposed in the draft F19 interim results documents, and responded to questions from directors in relation to the tabled document including the relevant assumptions underpinning the proposed disclosure.*";

(iv) says further it will rely on the full content of the minutes of the meeting of Treasury's Board on 13 February 2019 [TRE.001.001.0299] and the F19 Forecast & F20 Preliminary Plan [TRE.002.002.2555] at trial;

(v) otherwise denies that sub-paragraph.

(c) as to sub-paragraph 55C(c):

(i) admits that at the time the F19 Forecast & F20 Preliminary Plan was prepared, management was in the preliminary stages of the 5YP F20-24 process;

(ii) admits that the F19 Forecast & F20 Preliminary Plan [TRE.002.002.2555] recorded that, as part of the "*Total*" of the "*Current F20 Plan*", an amount of $36.0 million of EBITS was attributable to "*Simplify for Growth, further Asia acelleration [sic], margin expansion and improved US performance*";

Particulars

F19 Forecast & F20 Preliminary Plan [TRE.002.002.2555] at .2557.

(iii) admits that the F19 Forecast & F20 Preliminary Plan records that the "*Current F20 Plan*" for the Americas was $250 million, representing 8.7% *"Growth vs F19 forecast*" ([TRE.002.002.2555] at .2557);

(iv) says further that:

(A) the "*Current F20 Plan*" in the F20 Preliminary Plan was a rigorous plan built from the bottom up, using multiple inputs comprising the most up-to-date information available to Treasury's management at the time;

(B) the starting point for preparing the "*Current F20 Plan*" in the F20 Preliminary Plan was the *"F20 Original Strat Plan"* referred to in the Table in the F20 Preliminary Plan. The *"F20 Original Strat Plan"* was the EBITS forecast for F20 in the Red 5YP F19-23 5YP (which was approved by the Board in April 2018). As at February 2019, the 5YP F19-23 was the current 5YP, and F20 was the second year of that 5YP;

Particulars

As to the process for preparing the 5YP F19-23, Treasury refers to and repeats the particulars under paragraph 33(b) above.

(C) the forecast in the *"F20 Original Strat Plan"* was then updated as follows.

(1) first, by updating foreign exchange assumptions using Bloomberg forward foreign exchange rates for F20;

(2) secondly, using the results of:

a. a bottom-up refresh of the 5YP F19-23 conducted by Treasury's regional and corporate divisions in October and November 2018 (**the November 2018 5YP Refresh**), by which the F20 forecast in the 5YP F19-23 was updated; and

b. the Jan FI conducted in January and February 2019, which was almost completed by this time,

the *"Current F20 Plan"* was updated to take account of changes in demand volume, changes in incremental luxury volumes and pricing, supply plan changes and cost of doing business (**CODB**) changes, all of which adjustments were based on bottom-up builds;

Particulars

The November 2018 5YP Refresh was presented to Treasury's Extended Executive Leadership Team in November 2018, with minor adjustments subsequently made to it in a document dated 3 December 2018 [TRE.002.029.3061].

As to the process for preparing the Jan FI, Treasury refers to and repeats the particulars under paragraph 33(b) above. The F19 January FI was completed on 8 February 2019 [TRE.002.019.1910], [TRE.002.019.1911].

(3) the adjustments to the *"F20 Original Strat Plan",* as referred to in sub-paragraphs (B) and (C) above, gave a current F20 Red Plan (or base plan) EBITS of $758.6 million;

(4) thirdly, by identifying a further $36 million of stretch EBITS, which (together with the base plan of $758.6 million) gave a final *"Current F20 Plan"* of EBITS of $794.6 million. The $36 million of stretch EBITS was described in the F20 Preliminary Plan as *"Simplify for Growth, further Asia acelleration [sic], margin expansion and improved US performance"*. The $36 million of stretch EBITS was only a portion of the buffer of $79.32 million between the Gold F20 EBITS forecast (as updated by the November 2018 5YP Refresh) of $837.98 million and the current F20 Red Plan EBITS forecast of $758.6 million, and was regarded by senior management as very achievable;

(v) otherwise denies sub-paragraph 55C(c).

(d) as to sub-paragraph 55C(d):

(i) admits that at the time of the 14 February 2019 Announcements, the Board of Treasury had not yet approved Treasury's F20 Red Budget;

(ii) otherwise denies the allegations in that sub-paragraph;

(iii) specifically denies that the alleged "*February 2019 Forecast Process*" was as alleged in paragraph 55C;

(iv) refers to and repeats sub-paragraph 55C(c) above;

(v) says that Treasury's budgeting and planning processes provided a reasonable basis for the F20 guidance given in the 14 February 2019 Announcements.

Particulars

As to Treasury's budgeting and planning processes, Treasury refers to and repeats the particulars under paragraph 33(b) above.

55D. It denies paragraph 55D, and in further answer to that paragraph refers to and repeats paragraphs 39A, 55A, 55B and 55C above.

56. [not used] ~~As to paragraph 56, it:~~

(a) ~~refers to and repeats paragraph 24 above;~~

(b) ~~says Robert Foye had not been a member of Treasury's Americas Leadership Team on and from 2 July 2018;~~

(c) ~~otherwise denies that paragraph.~~

57. [not used] ~~As to paragraph 57, it:~~

(a) ~~refers to and repeats paragraph 10 above;~~

(b) ~~says that the 28 January 2020 Announcement is not a proper basis for the allegations made by the plaintiffs;~~

(c) ~~under cover of those objections, denies that paragraph.~~

58. It denies paragraph 58, and in further answer to that paragraph:

(a) refers to and repeats paragraphs 11, 21, 55 and ~~57~~ 55D above;

(b) says further that the amended consolidated statement of claim does not disclose a proper basis for the allegation in paragraph 58, as Treasury's ability to achieve growth in EBITS on a reported currency basis at a rate of 15% to 20% in the 2020 financial year depended on the future performance of its global operations (and not merely the future performance of its "*Americas*" division);

(c) says further that:

(i) at all material times, Treasury had ~~a~~ robust budgeting, planning and forecasting processes, based on bottom-up builds by its regional and corporate divisions, which underpinned the guidance it gave, including in respect of the 2020 financial year;

Particulars

Treasury refers to and repeats paragraphs 55C(c) and (d) above and the particulars under sub-paragraph 33(b) above.

(ii) Treasury's budgeting, planning and forecasting processes for the 2018, 2019 and 2020 financial years ~~was~~ were substantially the same;

(iii) Treasury's EBITS guidance for the 2018 financial year was reasonable and substantially in line with its budget for that financial year, and was exceeded by its results for the 2018 financial year;

(iv) Treasury's EBITS guidance for the 2019 financial year was reasonable and substantially in line with its budget for that financial year, and was met or substantially met in its results for the 2019 financial year;

(v) during the first half of the 2020 financial year Treasury was tracking to its budget for the 2020 financial year, and accordingly was on track to achieve Treasury's EBITS guidance for the 2020 financial year, which was underpinned by its budget and planning and forecasting processes;

(vi) in the premises, at all relevant times, the guidance given by Treasury in respect of the 2020 financial year had reasonable grounds, and Treasury's reliance on its budget, plans and forecast and its budgeting, planning and forecasting processes was reasonable;

Particulars

For the 2018 financial year, EBITS guidance was A$524 million and the result was A$530.2 million on a reported currency basis.

For the 2019 financial year, EBITS guidance ranged between A$665 million and A$662.7 million and the result was A$662.7 million on a reported currency basis.

For the first half of the 2020 financial year, Treasury's budget was between A$363.5 million and A$390.3 million and the result was A$366.7 million on a reported currency basis.

Treasury's Gold and Red Budgets ~~budgets~~ for the 2020 financial year were based on detailed volume plans prepared on individual product line levels. They were thorough, detailed and reasonable. As to the process for preparing Treasury's F20 Gold and Red Budgets, Treasury refers to and repeats the particulars under paragraph 33(b) above.

Treasury's 5YP F19-23 and 5YP F20-24 (both of which included forecasts for F20) were based on detailed volume plans prepared on individual product line levels. They were thorough, detailed and reasonable. As to the process for preparing the 5YP F19-23 and the 5YP F20-24, Treasury refers to and repeats the particulars under paragraph 33(b) above.

Treasury's F20 Preliminary Plan [TRE.002.002.2555], as referred to in paragraph 55C above, was a rigorous plan built from the bottom up, using multiple inputs comprising the most up-to-date information available to Treasury's management at the time. Treasury refers to and repeats sub-paragraph 55C(c)(iv) above and the particulars under that sub-paragraph.

(d) says further that the size and quality of each vintage grown in the US is not generally known until October to December of each year;

(e) says further that thereafter some time is required to assess the impact of that information, and refers to and repeats sub-paragraph 50(c) above and sub-paragraph 69(c) below;

(f) further relies on the matters alleged in sub-paragraph 117A below.~~;~~

(g) [not used] ~~says further that the inference the plaintiffs seek to draw in particular ii is not open in circumstances where:~~

(i) ~~according to paragraph 9 of the consolidated statement of claim, the "*Americas*" includes the US and Canada (and it in fact includes all the geographic regions alleged in sub-paragraph 11(d)(i) above);~~

(ii) ~~the consolidated statement of claim does not make any allegations as to what percentage of NSR and EBITS derived from what Treasury described as the "*Americas*" is attributable to Treasury's operations in Canada (or any of the other geographic regions alleged in sub-paragraph 11(d)(i) above) as distinct from Treasury's operations in the US;~~

(iii) ~~there are no allegations relating to Treasury's operations in Canada (or any of the other geographic regions alleged in sub-paragraph 11(d)(i) above, other than the US) in the consolidated statement of claim.~~

59. ~~As to~~ It denies paragraph 59, ~~it:~~ and in further answer to that paragraph refers to and repeats paragraphs 53, 54, 55, 55D and 58 above.

(a) [not used] ~~refers to and repeats paragraph 41 above (which applies *mutatis mutandis* to the information the subject of paragraph 59 of the consolidated statement of claim);~~

(b) [not used] ~~says that the particulars are circular and embarrassing insofar as they assert the alleged Treasury Officers were aware of information because Treasury was aware of information;~~

(c) [not used] ~~says further that the particulars are embarrassing as they say that the alleged Treasury Officers had "*knowledge of Treasury's business and sensitivities to leadership changes, the Treasury Monitoring Systems and information that one or more of the Treasury Officers would come across in the proper performance of their duties*", but provide no particulars of the "*sensitivities to leadership changes*" and "*information that one or more of the Treasury Officers would come across in the proper performance of their duties*", which alleged Treasury Officers had or ought to have had that knowledge, and when each such alleged Treasury Officer had or ought to have had such knowledge;~~

(d) [not used] ~~under cover of those objections:~~

(i) ~~says that the directors of Treasury knew when Robert Foye ceased to work at Treasury;~~

(ii) ~~otherwise denies that paragraph.~~

60. ~~As to~~ It denies paragraph 60, ~~it:~~ and in further answer to that paragraph refers to and repeats paragraph 59 above.

(a) [not used] ~~refers to and repeats paragraphs 42 (which applies *mutatis mutandis* to the information the subject of paragraph 60 of the consolidated statement of claim), 53 to 59 above;~~

(b) [not used] ~~under cover of those objections:~~

(i) ~~denies that paragraph;~~

(ii) ~~says further that in the 1H19 Results Announcement, Treasury:~~

(A) ~~said "*US wine market volume (excl. bag-in-box) continues to be flat*" with some decline;~~

(B) ~~referred to high quality and high volume 2018 vintages from California;~~

~~**Particulars**~~

~~*The 1H19 Results Announcement is in writing.*~~

(iii) ~~says further it will rely on the full content of the 1H19 Results Announcement at trial.~~

61. It denies paragraph 61 and refers to and repeats paragraphs 53 to 60 above.

62. As to paragraph 62, it:

(a) refers to and repeats paragraph 50 above;

(b) says that if Treasury made the representation as alleged (which is denied), it did not repeat that representation at any time and it was not a continuing representation;

(c) says further that it was not during the Relevant Period under any obligation to withdraw or qualify a statement it made; and

(d) otherwise denies that paragraph.

63. As to paragraph 63, it:

(a) says that insofar as the plaintiffs rely on the allegation that the February 2019 Representation was a continuing representation in the amended consolidated statement of claim, they must identify how it became known to Treasury that the alleged representation (which is denied) was false (including particulars of who had that knowledge / formed the opinion, when that person(s) acquired the knowledge / formed the opinion, and how those matters are attributable to Treasury) and, absent such allegations, the said reliance is embarrassing; and

(b) under cover of that objection, denies that paragraph and refers to and repeats paragraphs 50 to 58, 61 and 62 above.

E.2 Alleged February 2019 Continuous Disclosure Contravention

64. As to paragraph 64, it:

(a) refers to and repeats paragraphs 10, 45 (which apply~~ies~~ *mutatis mutandis* to the information the subject of paragraph 64 of the amended consolidated statement of claim), 55, 55D, 58 and 59 above;

(b) [not used] ~~says the inference sought to be drawn in particular ii is embarrassing;~~

(c) under cover of ~~those~~ that objection~~s~~, denies that paragraph.

65. As to paragraph 65, it:

(a) refers to and repeats paragraph 10 above;

(b) says that the particulars are embarrassing insofar as they say that the alleged information included "*Treasury's own information relating to its business, projections and sensitivities, including its future performance and performance against budget*", but provide no particulars of the "*business, projections and sensitivities*" and which alleged Treasury Officers had or ought to have had that knowledge, and when each such alleged officer had or ought to have had such knowledge;

(c) under cover of those objections:

(i) denies paragraph 65, and refers to and repeats paragraphs 55, 55C, 55D, ~~57~~ ~~and~~ 58 and 59 above;

(ii) specifically denies the alleged February 2019 US Market Conditions Impact Information, ~~the alleged February 2019 Leadership Impact Information~~ the alleged February 2019 Forecast Risks and the alleged February 2019 Combined US Impact Information was information that existed at any time during the Relevant Period;

(iii) specifically denies that information comprising the alleged February 2019 US Market Conditions~~,~~ and the alleged February 2019 Treasury US Market Conditions~~, and the alleged February 2019 Leadership Changes~~ (to the extent such information in fact existed) was not generally available within the meaning of s 676 of the Corporations Act~~;~~.

(iv) [not used] ~~otherwise denies that paragraph.~~

66. ~~As to~~ It denies paragraph 66, ~~it~~ and in further answer to that paragraph:

(a) refers to and repeats paragraphs 7, 8, 64 and 65 above~~;~~. ~~and~~

(b) [not used] ~~otherwise denies that paragraph.~~

67. As to paragraph 67, it:

(a) admits that it published the 28 January 2020 Announcement;

(b) admits that prior to 28 January 2020 it did not inform the ASX of the alleged February 2019 US Market Conditions Impact Information, ~~the alleged February 2019 Leadership Impact Information~~ the alleged February 2019 Forecast Risks or the alleged February 2019 Combined US Impact Information (the existence of which information during the Relevant Period is denied);

(c) says further it was under no obligation to make any announcement regarding the alleged February 2019 US Market Conditions Impact Information, ~~the alleged February 2019 Leadership Impact Information~~ the alleged February 2019 Forecast Risks or the alleged February 2019 Combined US Impact Information during the Relevant Period; and

(d) otherwise denies that paragraph.

68. It denies paragraph 68.

F. ALLEGED AUGUST 2019 CONTRAVENTIONS

F.1 Alleged August 2019 Misleading or Deceptive Conduct Contravention

69. As to paragraph 69, it:

(a) admits that it made the statements contained in the announcement titled "*Treasury Wine Estates Annual 2019 Results*" (**FY19 Results Presentation**), and in the announcement titled "*Treasury Wine Estates Annual 2019 financial results*" (**FY19 Results Announcement**), both dated 15 August 2019;

Particulars

The FY19 Results Presentation, and FY19 Results Announcement are in writing.

(b) admits Treasury said in the:

(i) FY19 Results Presentation that "*[r]eported EBITS growth rate of approximately 15% to 20% re-iterated for F20*";

(ii) FY19 Results Announcement that Treasury "*reiterates F20 guidance of reported EBITS growth of approximately 15% to 20%*", "*reiterates guidance of approximately 15% to 20% reported EBITS growth for F20, which will be delivered by growth in all markets*" and "*reiterates guidance for F20 reported EBITS growth of approximately 15% to 20%*";

(c) says that the FY19 Results Presentation and FY19 Results Announcement both stated that EBITS growth assumed "*no material changes due to vintage or foreign exchange movements [and] [d]oes not include impacts from the application of AASB16 Leases or one-off*" costs or charges;

(d) says further the FY19 Results Presentation stated:

> *… No representation is made as to the accuracy, completeness or reliability of this presentation.*
>
> *This presentation contains forward looking statements... These forward looking statements are not guarantees of future performance and involve known and unknown risks, uncertainties and other factors, many of which are beyond the control of TWE, and which may cause actual results to differ materially from those expressed or implied in such statements. Readers are cautioned not to place undue reliance on forward looking statements.*
>
> *Except as required by applicable regulations or by law, TWE does not undertake any obligation to publicly update or review any forward looking statements, whether as a result of new information or future events…*
>
> *Past performance information included in this presentation is for illustrative purposes only and cannot be relied on as a guide to future performance.*

(e) says further it will rely on the full content of the FY19 Results Presentation and FY19 Results Announcement at trial;

(f) otherwise denies that paragraph.

70. As to paragraph 70, it:

(a) refers to and repeats paragraph 69 above;

(b) admits the statements referred to in sub-paragraph 69(b) above were statements as to a future matter;

(c) otherwise denies that paragraph.

71. As to paragraph 71, it:

(a) refers to and repeats paragraphs 5 and 69 above;

(b) says the statements contained in the FY19 Results Presentation and FY19 Results Announcement were made:

(i) in trade or commerce;

(ii) in relation to a financial product (as that term is defined in Chapter 7 of the Corporations Act and in Part 2, Division 2 of the ASIC Act);

(iii) in relation to financial services for the purposes of Part 2, Division 2 of the ASIC Act;

(c) otherwise denies that paragraph.

72. As to paragraph 72, it:

(a) refers to and repeats paragraph<ins>s 10, 18 and</ins> 53 above;

(b) says <ins>that</ins> the allegations in sub-paragraphs 72(a) and (b) are ~~inconsistent~~ <ins>embarrassing because:</ins>

<ins>(i) as to sub-paragraph (a), the reference to “*had grown significantly*” does not specify a particular metric for which the alleged significant growth is said to have occurred;</ins>

<ins>(ii) as to sub-paragraph (b), the reference to “*a record*” does not specify a comparative (earlier) period or any metric for which the 2018 California grape harvest is alleged to be *“a record”*;</ins>

(c) says further the references to “*the US Wine Market*”, and “*normal or average to above normal or average*” are embarrassing;

(d) says further the documents particularised do not support the allegations made in paragraph 72 of the <ins>amended</ins> consolidated statement of claim, and that the particulars in support of the allegations made in sub-paragraphs 72(c), (d) and (e) of the amended consolidated statement of claim insofar as they concern the US relate only to California;

(e) says further that the allegation in sub-paragraph 72(c) as to what was "*expected*" is embarrassing, as it does not identify who is alleged to have had that expectation;

(f) says further the particulars in support of sub-paragraph 72(a) of the amended consolidated statement of claim refer to declines as recorded in Nielsen data, which data has not been provided to Treasury by the plaintiffs;

(g) says further the document relied on by the plaintiffs [NAP.999.002.0006] in support of the allegations made in sub-paragraph 72(a) says the following:

> *No representation or warranty ... is provided in relation to the accuracy, completeness or reliability of the information contained in any materials to which this document relates (the "Information") ... The Information is not intended to be a complete statement or summary of the securities, markets or developments referred to in the document. UBS does not undertake to update or keep current the Information ... Any statements contained in this report attributed to a third party represent UBS's interpretation of the data, information and/or opinions provided by that third party either publicly or through a subscription service, and such use and interpretation have not been reviewed by the third party;*

(h) says further that the reports prepared by Ciatti referred to in particulars ii and iii to sub-paragraph 72(c) and particulars i and ii to sub-paragraphs 72(d) and (f) [SAG.001.001.0412 and SAG.001.001.0433]:

(i) relevantly relate to "*bulk wine*" in California; and

(ii) contain the following disclaimer:

> *Whilst we have tried to ensure the accuracy and completeness of the contents of the ... Report, Ciatti cannot offer any undertaking, warranty or guarantee, either expressly or implicitly ... regarding how correct, complete or up to date the contents of the ... Report is…*

(i) under cover of those objections:

(i) admits that there was private label growth in the US in 2H19 in commercial wines, but otherwise denies sub-paragraph 72(a) ~~and refers to and repeats paragraph 53~~;

(ii) admits that the California grape harvest was 4.28 million tons of grapes, but otherwise does not know and therefore cannot admit sub-paragraph 72(b);

(iii) denies sub-paragraph 72(c) and says further that as at 15 August 2019 the 2019 grape harvest in the US was expected to be average;

(iv) as to sub-paragraph 72(d), says that as at 15 August 2019 surplus stock of Bulk Wine from the 2018 harvest in the US remained available, but otherwise denies that sub-paragraph;

(v) denies sub-paragraph 72(e);

(vi) denies sub-paragraph 72(f);

(via) as to sub-paragraph 72(fa):

(A) admits that Constellation Brands released a press release dated 3 April 2019 (at EXP.NAP.003.0001) which recorded that Constellation Brands, Inc. had signed an agreement with E&J Gallo Winery "*to divest approximately 30 brands from its wine and spirits portfolio principally priced at $11 retail and below, and related facilities located in California, New York and Washington for $1.7 billion, subject to closing adjustments"* and that *"[t]he transaction is also subject to the satisfaction of certain closing conditions, including the receipt of regulatory approval, and is expected to close at the end of the company's first quarter of fiscal 2020"*;

(B) further says that it will refer at trial to the full terms of the announcement (at [EXP.NAP.003.0001]);

(C) otherwise denies that sub-paragraph.

(vii) denies sub-paragraph 72(g).

73. As to paragraph 73, it:

(a) refers to and repeats paragraph 54 above;

(b) as to sub-paragraph 73(a):~~; refers to and repeats sub-paragraphs 39(a), 39(b), 39(d)(i – (iii), and 54(a)-(c) above;~~

(i) refers to and repeats sub-paragraphs 39(a), 39(b), 39(d)(i) and 54(a)-(c) above;

(ii) says further that the IRI data relied on by the plaintiffs in support of their allegation in sub-paragraph 73(a) (namely, [TRE.002.007.0005] at .0010) also showed that for the retail outlets that reported their scan data to IRI, in the 52 weeks to 14 July 2019:

(A) in the premium $8-$10.99 category (which was Treasury's largest category by value and second largest by volume), Treasury's US business had experienced sales growth of 8.8% in dollar terms and 7.3% in volume terms in the 52 weeks to 14 July 2019 ([TRE.002.007.0005] at .0005);

(B) that the rate of sales % change for BV increased over the past 52 weeks by 19.8% ([TRE.002.007.0005] at .0010);

(iii) admits that as at 14 July 2019, in the retail outlets that reported their scan data to IRI, there were retail sales volume declines for the "*Key Diageo Brands*" (as defined in the amended consolidated statement of claim) in the 52 week period to 14 July 2019, compared with the prior 52 week period;

(iv) further says that it will refer at trial to the full terms and effect of the IRI data summarised in the document referred to in the particulars under sub-paragraph 73(a);

(v) otherwise denies that paragraph.

(c) [not used] ~~as to sub-paragraph 73(b), refers to and repeats sub-paragraphs 54(a), 54(d) and 54(e) above;~~

(d) [not used] ~~as to sub-paragraph 73(c), refers to and repeats sub-paragraph 54(a) and 54(f) above;~~

(da) as to sub-paragraph 73(ca):

(i) says it is not possible to make an allegation about market share without first defining the market;

(ii) says further that the allegation that Treasury had experienced a "*loss of market share*" is embarrassing as it does not specify an earlier comparative point in time or the market of which Treasury's share is alleged to have declined;

(iii) says further that the allegation in sub-paragraph 73(ca) is embarrassing because the particulars do not support the allegation made in it;

(iv) under cover of those objections, says that the IRI data relied on by the plaintiffs in support of the allegation in sub-paragraph 73(ca) (namely, [TRE.010.045.0004] at .0004) showed that, for the retail outlets that reported their scan data to IRI, in the 52 weeks to 16 June 2019:

(A) the "Popular $4.00-7.99" price segment was Treasury's largest segment by volume and second-largest by value;

(B) in the "Popular $4.00-7.99" price segment, Treasury had experienced negative sales growth of 12.7% in dollar terms and 12.2% in volume terms;

(v) says further that a decrease in Treasury's market share in the commercial wine segment over the 52 weeks to 16 June 2019 was an expected consequence (which was taken into account by Treasury in its forward planning and forecasting) of:

(A) Treasury's premiumisation strategy, under which Treasury was moving away from higher volume sales of lower margin commercial wine toward lower volume sales of higher margin masstige and luxury wines; and

(B) the distributor destock associated with the transition to the new RTM model in the US.

Particulars

Treasury refers to and repeats sub-paragraph 39(d)(iii)(AC)(2) above and the particulars under that paragraph and the particulars under paragraph 54(f)(iii) above.

(vi) further refers to and repeats sub-paragraphs 39(d)(iii)(AC)(1), 39(d)(iii)(AC)(2), 39(d)(iii)(AG), 39(d)(v)(F), 39(d)(va)(B)(3), 39(d)(vi), 39(d)(vii), 54(eb)(ii)(A), 54(eb)(ii)(B) and 54(f)(iii) above;

(vii) says further that the IRI data relied on by the plaintiffs in support of the allegation in sub-paragraph 73(ca) (namely, [TRE.010.045.0004] at .0004) showed that, for the retail outlets that reported their scan data to IRI, in the 52 weeks to 16 June 2019:

(A) in the $8-$11 category (which was TWE's largest segment by value and second largest segment by volume), TWE's sales had grown 9.1% in dollar terms and 7.2% in volume terms, outperforming the market (+1.1% in dollar terms and +0.6% in volume terms);

(B) in the $15-$20 category, TWE's sales had grown 23.6% in dollar terms and 30.3% in volume terms;

(viii) says further that the particulars under sub-paragraph 73(ca) reference IRI data, which tracks some, but not all, retail wine sales in the US, and refers to and repeats sub-paragraph 33(ea) above;

(ix) says further that it will refer at trial to the full terms and effect of the IRI data summarised in the document referred to in the particulars under sub-paragraph 73(ca);

(x) otherwise denies that paragraph;

(db) as to sub-paragraph 73(cb):

(i) says that the allegation of "*slowing sales growth*" in sub-paragraph (i) is embarrassing because it is unclear whether "*sales*" means shipments by Treasury to its US distributors and/or US retailers, on the one hand, or end-sales of Treasury's wine brands by US retailers, on the other;

(ii) admits that the IRI data relied on by the plaintiffs in support of the allegation in sub-paragraph 73(cb)(i) (namely, [TRE.002.007.0005] at .0010) showed that, for the retail outlets that reported their scan data to IRI, the rate of sales change for the 19 Crimes brand was (-4.8)%, compared to the previous 52 weeks to 14 July 2019, and (-10)% compared to the previous 13 weeks to 14 July 2019;

(iii) admits that the 19 Crimes brand had experienced slowing depletion growth in F19, and further says that depletion declines in the Americas in 1H19 were an expected consequence (which was taken into account by Treasury in its forward planning and forecasting) of the transition to the new RTM model in the US in F18 and 1H19;

Particulars

Treasury refers to and repeats sub-paragraphs 39(d)(AC)(2) and sub-paragraph 54(f)(iii) above and the particulars under those sub-paragraphs.

(iv) says that the document particularised at i ([TRE.002.007.0005] at .0010) relied on by the plaintiffs in support of the allegation at sub-paragraph 73(cb)(i) also shows that, for the retail outlets that reported their scan data to IRI, as at 14 July 2019:

(A) compared to the previous 52 weeks, the dollar % change for the 19 Crimes brand was up 31.2%, and the volume % change was up 31.4%;

(B) compared to the previous 13 weeks, the dollar % change was up 16.6% and the volume % change was up 18.4%;

(C) Matua growth (in the same category) was consistently +23% and CSJ (also in the same category) was in growth;

(D) in the popular $4-$7.99 category Total Main & Vine outperformed the commercial segment by strong growth in Publix;

(v) as to sub-paragraph (v), says that the performance of 19 Crimes had been taken into account in preparing Treasury's F20 plans;

(vi) otherwise denies that paragraph;

(e) as to sub-paragraph 73(d):

(i) says the allegation made in that sub-paragraph that "*Treasury's market share in the US ~~was falling~~ had fallen in FY19*" is embarrassing, as it is not possible to make an allegation about market share without first defining the market;

(ii) [not used] ~~says further the particulars in support of sub-paragraph 73(d) of the consolidated statement of claim refer to declines as recorded in Nielsen data, which data has not been provided to Treasury by the plaintiffs;~~

(iia) admits that the IRI data relied on by the plaintiffs in support of the allegation in sub-paragraph 73(d) (namely, [TRE.002.007.0005]) showed that, for the retail outlets that reported their scan data to IRI, in the 52 weeks to 14 July 2019, the overall market sales volume in the non-box table wine over $4 was flat, and that Treasury's sales volume of non-box table wine over $4 had fallen by 3.6% over this 52 week period;

(iib) says that this 3.6% decline in the sales volume of Treasury's non-box table wine over $4 was a consequence of a decline in the sales volume of Treasury's commercial wines ($4-$7.99) over the 52 weeks to 14 July 2019;

(iic) further refers to and repeats sub-paragraphs 54(eb)(ii)(A) and 54(eb)(ii)(B) above;

(iid) says further the document relied on by the plaintiffs in support of the allegations made in in sub-paragraph 73(d) (namely, [TRE.002.007.0005]) showed that, for the retail outlets that reported their scan data to IRI, for the 52 weeks to 14 July 2019:

(A) in all price categories above $8, there was market growth;

(B) in the premium $8-$10.99 category, Treasury's sales had increased 8.8% by dollars and 7.3% by volume, outperforming the market (+0.9% by dollars and +0.3% by volume);

(C) in the super premium $11-$14.99 category, Treasury's sales had increased 4.2% by dollars and 11.2% by volume, compared with the market (+6.1% by dollars and +5.8% by volume);

(D) in the ultra premium $15-$20 category, Treasury's sales had increased 27.9% by dollars and 39.8% by volume, outperforming the market (+9.1% by dollar and +10.9% by volume);

(iii) [not used] ~~says further the document relied on by the plaintiffs [NAP.999.002.0006] in support of the allegations made in sub-paragraph 73(d) says the following:~~

~~*No representation or warranty … is provided in relation to the accuracy, completeness or reliability of the information contained in any materials to which this document relates (the "Information") … The Information is*~~

~~*not intended to be a complete statement or summary of the securities, markets or developments referred to in the document. UBS does not undertake to update or keep current the Information ... Any statements contained in this report attributed to a third party represent UBS's interpretation of the data, information and/or opinions provided by that third party either publicly or through a subscription service, and such use and interpretation have not been reviewed by the third party;*~~

(iv) otherwise denies that sub-paragraph~~.~~;

(f) denies sub-paragraph 73(e).

74. As to paragraph 74, it:

(a) refers to and repeats paragraphs 10, 72 and 73 above;

(b) says the particulars to paragraph 74 do not support the allegations contained therein and the inference sought to be drawn from particular ii to paragraph 74 is embarrassing, and accordingly there is no proper basis for the allegations made in paragraph 74;

(c) under cover of those objections, denies that paragraph.

74A. As to paragraph 74A, it:

(a) admits that the F20 earnings guidance it gave on 15 August 2019 was based in part on the F20 EBITS forecast for the first year of the Red 5YP F20-24 (i.e. F20);

Particulars

The F20 forecast in the 5YP F20-24 [TRE.003.001.3873] at .3939 was for EBITS of $759m (pre-AASB 16 lease adjustment) and $775m (post-AASB lease adjustment), which represented approximately 15% growth vs F19 EBITS.

As to the process for preparing the Red 5YP F20-24, Treasury refers to and repeats the particulars under paragraph 33(b) above.

(b) further says that at the time Treasury reiterated its F20 guidance on 15 August 2019:

(i) Treasury's Gold EBITS Plan for F20 in its Gold 5YP F20-24 was for EBITS of $874.4 million (pre-AASB 16 lease adjustment), which comprised base EBITS of $758.6 million (pre-lease adjustment) and stretch EBITS of approximately $116m (pre-lease adjustment);

Particulars

Gold F20 5YP slide deck dated 1 April 2019 [TRE.004.045.4594] at .4595.

As to the process for preparing the Gold 5YP F20-24, Treasury refers to and repeats the particulars under paragraph 33(b) above.

(ii) the difference between Treasury's Gold EBITS Plan for F20 (in its Gold 5YP F20-24) and its Red EBITS Plan for F20 (in its Red 5YP F20-24) was accordingly approximately $116 million;

(iii) the upper end of the F20 guidance reiterated on 15 August 2019 (approximately 20% EBITS growth vs F19) was based on Treasury achieving its Red EBITS Plan of $759 million (pre-lease adjustment) plus additional stretch EBITS of only $36 million of the approximately $116 million of stretch EBITS in the Gold 5YP F20-24;

(c) admits that the Red 5YP F20-24 forecast F19 EBITS of $240m (lease adjusted) and F20 EBITS of $268m (lease adjusted) for the Americas region;

(d) admits that the Red 5YP F20-24 forecast shipments of 15.1m 9LE, NSR of $1,270m, and an average NSR per 9LE of $84.1 for the Americas region in F20;

(e) otherwise denies that paragraph.

74B. As to paragraph 74B, it:

(a) denies sub-paragraph 74B(a), and in further answer to that paragraph:

(i) refers to and repeats paragraph 73A above;

(ii) says that the group EBITS forecasts prepared by the regions from the bottom-up in their 5YP Gold Plans and 5YP Gold Budgets were not based on, and did not have regard to, consensus estimates of analysts;

Particulars

As to the process for preparing the 5YP Gold Plans and Gold Budgets, Treasury refers to and repeats the particulars under paragraph 33(b) above.

(iii) further says that when de-risking the Gold Plans to Red Plans, Treasury had regard to consensus estimates, as it needed to assess whether the Red Plans were aligned to broker consensus to ensure that it complied with its continuous disclosure obligations;

Particulars

As to the process for de-risking Gold Plans to Red Plans, Treasury refers to and repeats the particulars under paragraph 33(b) above.

(b) denies sub-paragraph 74B(b), and in further answer to that paragraph refers to and repeats paragraph 33(b) above and the particulars under that paragraph;

(c) as to sub-paragraph 74B(c), it:

(i) admits that the Red 5YP F20-24 (and the Red Budget) were not used operationally by Treasury's regional businesses, but rather those regional businesses used operationally the Gold 5YP F20-24 (and the Gold Budget or BPP), which senior management pushed them to achieve;

(ii) further says that senior management did not expect the Group to achieve all of the stretch EBITS in the company's Gold Plans;

(iii) further says that employee bonuses did not depend upon achieving the EBITS targets in the 5YP Gold Plan or the Gold Budget, but rather depended upon achieving the Red Budget;

(d) otherwise denies that sub-paragraph;

(e) specifically denies that the "FY20 5YP Process" as alleged in paragraph 74B was the process used or followed by Treasury to prepare the 5YP F20-24.

Particulars

As to the process for preparing the 5YP F20-24, Treasury refers to and repeats the particulars under paragraph 33(b) above.

74C. As to paragraph 74C, it:

(a) as to sub-paragraphs 74C(a)-(e), admits that for F19, Treasury's Americas region achieved:

(i) shipments of 14,026,600 9LE, against a forecast of 14,421,900 9LE;

(ii) net sales revenue of $1,134.4 million, against a forecast of $1,219.5 million, on a constant currency basis;

(iii) net sales revenue per 9LE of $80.87, against a forecast of $84.6, on a constant currency basis;

(iv) EBITS of $218.7 million, against a forecast of $232.6 million, on a constant currency basis;

(v) EBITS growth of 1.8% year on year, on a constant currency basis;

Particulars

Treasury Annual 2019 financial result media release dated 15 August 2019 [TRE.002.010.5386] at .5394.

June 2019 Chief Financial Officer Report dated 7 August 2019 [TRE.003.001.4314] at .4398.

(b) otherwise denies that paragraph.

74D. As to paragraph 74D, it:

(a) as to sub-paragraph 74D(a), refers to and repeats paragraph 55B above, and otherwise denies that sub-paragraph;

(b) as to sub-paragraph 74D(b):

(i) says that the particularised documents do not support the allegation of "*monthly underperformance*" made in that sub-paragraph, because the Americas Commercial Review decks referenced in the table in the particulars under sub-paragraph 74D(b) contain year-to-date figures, rather than monthly figures, and that year-to-date EBITS is not a metric of performance for any particular month, as it is a cumulative result that includes previous months;

(ii) further says that the table in the particulars under sub-paragraph 74D(b) shows that in May 2019 and June 2019 the Americas exceeded its monthly Gold budget (as reset under the under the Jan FI), because in each of those months the YTD budget miss was reduced (from -9.7% to -9.6% in May YTD and from -9.6% to -7.7% YTD in June);

(iii) further says that the Americas Commercial Review decks referred to in the table in the particulars under paragraph 74D(b) (and the figures extracted from those decks) compare performance with the Gold Jan FI, not the Red Jan FI;

(iv) further says that as at the end of June 2019, in the Americas region:

(A) depletions were up +15% vs prior year and flat on a YTD basis;

(B) luxury depletions were up +18% vs PY in June, and flat vs prior year;

(C) California YTD growth was up slightly +1% overall with chains up +7%, and broad market down (18%);

(D) Florida depletions YTD were up +16% in the chains, and flat in the broad market vs PY;

Particulars

Americas Commercial Review pack [TRE.022.001.8628] at .8632.

(c) otherwise denies that paragraph, and specifically denies that there was a *"monthly underperformance"* in F19 in the Americas region.

74E. As to paragraph 74E, it:

(a) refers to and repeats paragraph 74D above;

(b) says that the particularised documents do not support the allegation of a *"monthly metrics miss"* made in that paragraph, because the Americas Commercial Review decks referenced in particulars under paragraph 74E contain year-to-date figures, rather than monthly figures, and that year-to-date EBITS is not a metric of performance for any particular month, as it is a cumulative result that includes previous months;

(c) further says that the Americas Commercial Review decks referred to in the table in the particulars under paragraph 74D (and the figures extracted from those decks) compare performance with the Gold Jan FI, not the Red Jan FI;

(d) otherwise denies that paragraph, and specifically denies that there was a *"monthly metric miss"* for 2H19 in the Americas region.

74F. As to paragraph 74F, it:

(a) says that the flash report for the period July 2020 YTD showed that the actual results (-$11.9 million) was ahead of the Red Budget cfx (-$23.6 million);

(b) otherwise denies that paragraph, and specifically denies that there was a *"budget miss"* for July 2019 in the Americas region;

(c) refers to and repeats sub-paragraph 55B(c) above.

74G. It denies paragraph 74G, and in further answer to that paragraph refers to and repeats paragraphs 74B, 74C, 74D, 74E and 74F above.

75. As to paragraph 75, it:

(a) refers to and repeats paragraphs 24 and 26 to 28 ~~and 56~~ above;

(b) admits that the Americas Leadership Team included the President, Americas, Executive Vice President of Operations, and Chief Marketing Officer;

(c) admits ~~says~~ that Michelle Terry ceased her employment as Chief Marketing Officer on 31 July 2019;

(d) [not used] ~~refers to and repeats paragraph 28 above and says that Gunther Burghardt ceased his employment as Executive Vice President of Supply on 28 February 2019;~~

(da) says that paragraph 75 is embarrassing in that the particulars for the alleged "*August 2019 Leadership Changes*" include the departures of Robert Foye and Gunther Burghardt, who left their employment at Treasury in January 2019 and February 2019 respectively;

(e) otherwise denies that paragraph.

76. As to paragraph 76, it:

(a) refers to and repeats paragraphs 10 and 75 above;

(b) says that the 28 January 2020 Announcement is not a proper basis for the allegations made by the plaintiffs;

(c) under cover of those objections, denies that paragraph.

77. It denies paragraph 77, and in further answer to that paragraph:

(a) refers to and repeats paragraphs 11, 21, 73, 74, 74G and 76 above;

(b) says further that the amended consolidated statement of claim does not disclose a proper basis for the allegation in paragraph 77, as Treasury's ability to achieve growth in EBITS on a reported currency basis at a rate of 15% to 20% in the 2020 financial year depended on the future performance of its global operations (and not merely the future performance of its "*Americas*" division);

(c) refers to and repeats sub-paragraphs 58(c), (d), (e) and (f) above;

(d) [not used] ~~says further that the inference the plaintiffs seek to draw in particular ii is not open in the circumstances alleged in sub-paragraph 58(g) above.~~

78. It denies paragraph 78. ~~As to paragraph 78, it:~~

(a) [not used] ~~refers to and repeats paragraphs 41 and 59 above (which apply *mutatis mutandis* to the information the subject of paragraph 78 of the consolidated statement of claim);~~

(b) [not used] ~~under cover of those objections:~~

(i) ~~says that the directors of Treasury knew when Michelle Terry, Victoria Snyder and Gunther Burghardt ceased their employment with Treasury, and when Angus McPherson was appointed President, Americas; and~~

(ii) ~~otherwise denies that paragraph.~~

79. ~~As to~~ It denies paragraph 79, ~~it:~~ and in further answer to that paragraph refers to and repeats paragraphs 72 to 78 above.

(a) [not used] ~~refers to and repeats paragraphs 42 and 60 (which apply *mutatis mutandis* to the information the subject of paragraph 79 of the consolidated statement of claim), 72 to 78 above;~~

(b) [not used] ~~under cover of those objections:~~

(i) ~~denies that paragraph;~~

(ii) ~~says further that the FY19 Results Announcement said on several occasions that there had been "*competitor discounting*";~~

~~**Particulars**~~

~~*The FY19 Results Announcement is in writing.*~~

(iii) ~~says further it will rely on the full content of the FY19 Results Announcement at trial.~~

80. It denies paragraph 80 and refers to and repeats paragraphs 72 to 79 above.

81. As to paragraph 81, it:

(a) refers to and repeats paragraph 69 above;

(b) says that if Treasury made the representation as alleged (which is denied), it did not repeat that representation at any time and it was not a continuing representation;

(c) says further that it was not during the Relevant Period under any obligation to withdraw or qualify a statement it made; and

(d) otherwise denies that paragraph.

82. As to paragraph 82, it:

(a) says that insofar as the plaintiffs rely on the allegation that the August 2019 Representation was a continuing representation in the amended consolidated statement of claim, they must identify how it became known to Treasury that the alleged representation (which is denied) was false (including particulars of who had that knowledge / formed the opinion, when that person(s) acquired the knowledge / formed the opinion, and how those matters are attributable to Treasury) and, absent such allegations, the said reliance is embarrassing; and

(b) under cover of that objection, denies the paragraph and refers to and repeats paragraphs 69 to 77 and 80 to 81 above.

F.2 Alleged August 2019 Continuous Disclosure Contravention

83. As to paragraph 83, it:

(a) refers to and repeats paragraphs 45 (which applies *mutatis mutandis* to the information the subject of paragraph 83 of the amended consolidated statement of claim) and 74 to 78 above;

(b) [not used] ~~says the inference sought to be drawn in particular ii is embarrassing;~~

(c) otherwise, denies that paragraph.

84. As to paragraph 84, it:

(a) refers to and repeats paragraph 10 above;

(b) says that the particulars are embarrassing insofar as they say that the alleged information included "*Treasury's own information relating to its business, projections and sensitivities, including its future performance and performance against budget*", but provide no particulars of the "*business, projections and sensitivities*" and which alleged Treasury Officers had or ought to have had that knowledge, and when each such alleged officer had or ought to have had such knowledge;

(c) under cover of those objections:

(i) denies paragraph 84, and refers to and repeats paragraphs 74, 74G, 76 and 77 above;

(ii) specifically denies the alleged August 2019 US Market Conditions Impact Information, the alleged August 2019 Forecast Risks, the alleged August 2019 Leadership Impact Information~~,~~ and the alleged August 2019

Combined US Impact Information was information that existed at any time during the Relevant Period;

(iii) specifically denies that information comprising the alleged August 2019 US Market Conditions, the alleged August 2019 Treasury US Market Conditions, and the alleged August 2019 Leadership Changes (to the extent such information in fact existed) was not generally available within the meaning of s 676 of the Corporations Act~~;~~.

(iv) [not used] ~~otherwise denies that paragraph.~~

85. ~~As to~~ It denies paragraph 85, ~~it:~~ and in further answer to that paragraph refers to and repeats paragraphs 74G, 83 and 84 above.

(a) [not used] ~~refers to and repeats paragraphs 83 and 84 above; and~~

(b) [not used] ~~otherwise denies that paragraph.~~

86. As to paragraph 86, it:

(a) admits that it published the 28 January 2020 Announcement;

(b) admits that prior to 28 January 2020 it did not inform the ASX of the alleged August 2019 US Market Conditions Impact Information, the alleged August 2019 Forecast Risks, the alleged August 2019 Leadership Impact Information or the alleged August 2019 Combined US Impact Information (the existence of which information during the Relevant Period is denied);

(c) says further it was under no obligation to make any announcement regarding the alleged August 2019 US Market Conditions Impact Information, the alleged August 2019 Forecast Risks, the alleged August 2019 Leadership Impact Information or the alleged August 2019 Combined US Impact Information during the Relevant Period; and

(d) otherwise denies that paragraph.

87. It denies paragraph 87.

G. ALLEGED OCTOBER 2019 CONTRAVENTIONS

G.0 1Q20 Performance

87A. It admits paragraph 87A.

87B. It denies paragraph 87B.

87C. It denies paragraph 87C.

87D. As to paragraph 87D, it:

(a) admits that the August flash results [TRE.002.002.1648] showed YTD flash results as at 31 August 2019 as alleged in paragraph 87D;

(b) otherwise denies that paragraph;

(c) refers to and repeats sub-paragraph 55B(c) above;

(d) further says that up until August 2019, depletions were ahead of shipments by around 350k 9LE, which was a monthly phasing difference, meaning that shipments would be expected to catch up this gap by December 2019 so that inventory levels remained consistent;

(e) further says that $10.8 million below budget on a constant currency basis was a very small deficit to budget, only 2 months into a year, noting that depletions were ahead of shipments in the US (which, it was reasonable to assume, would re-align later in F20).

87E. As to paragraph 87E, it:

(a) admits that the September flash results [TRE.002.001.1622] showed YTD flash results as at 30 September 2019:

(i) as alleged in sub-paragraph 87E(a);

(ii) as alleged in sub-paragraph 87E(b);

(b) otherwise denies sub-paragraphs 87E(a) and (b);

(c) refers to and repeats sub-paragraph 55B(c) above;

(d) says further that the September flash results showed that the company as a whole was $18.3 million EBITS ahead of budget YTD on a constant currency basis;

Particulars

September F20 flash report [TRE.002.001.1622] at .1623.

(e) admits sub-paragraph 87E(c), and in further answer to that sub-paragraph says that it is not (and was not during the Relevant Period) the practice for flash reports to speak to factors such as the August 2019 Penfolds release.

87F. It denies paragraph 87F.

G.1 Alleged October 2019 Misleading or Deceptive Conduct Contravention

88. As to paragraph 88, it:

(a) admits that on 16 October 2019, in the announcement titled "*2019 AGM Chairman and CEO Address*" dated 16 October 2019 (**October 2019 Announcement**) Treasury said "*[i]n closing, I'd like to report that we are pleased with our first quarter and we re-affirm our guidance of 15% to 20% reported EBITS growth in fiscal 20*";

Particulars

The October 2019 Announcement is in writing.

(b) refers to and repeats paragraphs 34, 50 and 69 above;

(c) says further it will rely on the full content of the October 2019 Announcement at trial; and

(d) otherwise denies that paragraph.

89. As to paragraph 89, it:

(a) refers to and repeats paragraph 88 above;

(b) admits the statement "*we re-affirm our guidance of 15% to 20% reported EBITS growth in fiscal* 20", which is contained in the October 2019 Announcement, was a statement as to a future matter;

(c) otherwise denies that paragraph.

90. As to paragraph 90, it:

(a) refers to and repeats paragraphs 5 and 88 above;

(b) says the statements contained in the October 2019 Announcement were made:

(i) in trade or commerce;

(ii) in relation to a financial product (as that term is defined in Chapter 7 of the Corporations Act and in Part 2, Division 2 of the ASIC Act);

(iii) in relation to financial services for the purposes of Part 2, Division 2 of the ASIC Act;

(c) otherwise denies that paragraph.

91. As to paragraph 91, it:

(a) refers to and repeats paragraph<u>s 10 and</u> 72 above;

<u>(aa)</u> <u>says further that the documents particularised at paragraph 72(a) of the amended consolidated statement of claim do not support the allegation at paragraph 91 of the amended consolidated statement of claim;</u>

(b) says the references to "*the US Wine Market*"~~, and "*casegood sales*"~~ are embarrassing;

(c) says further the document relied on by the plaintiffs [NAP.999.002.0006] in support of the allegations made in sub-paragraph 91(a) says the following:

> *No representation or warranty ... is provided in relation to the accuracy, completeness or reliability of the information contained in any materials to which this document relates (the "Information") ... The Information is not intended to be a complete statement or summary of the securities, markets or developments referred to in the document. UBS does not undertake to update or keep current the Information ... Any statements contained in this report attributed to a third party represent UBS's interpretation of the data, information and/or opinions provided by that third party either publicly or through a subscription service, and such use and interpretation have not been reviewed by the third party;*

(d) says further the particulars to sub-paragraph 91(a) refer to declines as recorded in Nielsen data, which data has not been provided to Treasury by the plaintiffs;

(e) says further that the allegations in sub-paragraph 91(b) as to what was "*expected*" is embarrassing, as it does not identify who is alleged to have had that expectation;

(f) says further the documents particularised do not support the allegations made in paragraph 91 of the <u>amended</u> consolidated statement of claim, and that the particulars in support of the allegations made in sub-paragraphs 91(b) to 91(~~e~~<u>c</u>)<u>, and 91(e)</u> of the <u>amended</u> consolidated statement of claim <u>insofar as they concern the US</u> relate only to California;

(g) says further that the reports prepared by Ciatti referred to in the particulars to sub-paragraphs 91(b) to 91(e) [SAG.001.001.0468 and SAG.001.001.0489]:

(i) relevantly relate to "*bulk wine*" in California; and

(ii) contain the following disclaimer:

> *Whilst we have tried to ensure the accuracy and completeness of the contents of the … Report, Ciatti cannot offer any undertaking, warranty or guarantee, either expressly or implicitly … regarding how correct, complete or up to date the contents of the … Report is…*

(h) says further the allegation in sub-paragraph 91(e) is irrelevant and thus embarrassing and/or is embarrassing because it is not supported by the particulars under that sub-paragraph;

(i) under cover of those objections:

(i) admits that there was private label growth in the US in 2H19 in the commercial wines segment, but otherwise does not admit ~~denies~~ sub-paragraph 91(a) ~~and refers to and repeats sub-paragraph 72(i) above~~;

(ii) denies sub-paragraph 91(b) and says further that as at 16 October 2019 the 2019 grape harvest in the US was expected to be average;

(iii) as to sub-paragraph 91(c), says that as at 16 October 2019 surplus stock of Bulk Wine from the 2018 harvest in the US remained available but otherwise denies that sub-paragraph;

(iv) denies sub-paragraph 91(d);

(v) as to sub-paragraph 91(e):

(A) admits the Ciatti September 2019 report said "*[t]here is an awareness among bulk wine sellers … that the slowness of the market domestically is not a short-term phenomenon*";

(B) otherwise denies that sub-paragraph;

(vi) denies sub-paragraph 91(f);

(via) admits that the acquisition of Constellation Brands commercial wine brands by E. & J. Gallo Winery had not completed as at 16 October 2019, and that Treasury considered that this was resulting in some discounting of commercial wine in the US, but otherwise denies sub-paragraph 91(fa);

(vii) denies sub-paragraph 91(g).

92. As to paragraph 92, it:

(a) refers to and repeats paragraphs 13 and 73 above;

(b) as to sub-paragraph 92(a)(i), refers to and repeats sub-paragraphs 39(d)(iii), 54(a)-(c) and 73(a)~~-(c)~~ above;

(ba) as to sub-paragraph 92(a)(ii):

(i) says the allegation that "*Treasury had experienced year-on-year declines for the Key Diageo Brands*" must, by reason of the particulars thereto, be a reference to a decline in sales (by volume) by retail outlets to end-consumers (which sales were not made by Treasury);

(ii) admits that the IRI Topline report dated 6 October 2019 [TRE.002.002.8115] showed that in respect of sales by US retail outlets that reported their scan data to IRI, there had been year-on-year declines for the Key Diageo Brands;

(iii) refers to and repeats sub-paragraph 33(ea)(ii) above;

(iv) otherwise denies that sub-paragraph;

(v) further says that it will refer at trial to the full terms and effect of the IRI data summarised in the document referenced in the particulars under sub-paragraph 92(a);

(c) [not used] ~~as to sub-paragraph 92(b):~~

(i) ~~as to sub-paragraph 92(b)(i), refers to and repeats sub-paragraphs 73(a) and (c) above;~~

(ii) ~~as to sub-paragraph 92(b)(ii):~~

(A) ~~says that the allegation of *"reduced sales growth in respect of sales"* is embarrassing as the comparative (earlier) period from which the alleged reduced sales growth occurred is not identified;~~

(B) ~~under cover of that objection:~~

~~(1) says that the allegation that "*Treasury had experienced reduced sales growth in respect of sales of its wines … in the US in FY20 to date*" must, by reason of the particulars thereto, be a reference to a decline in sales by retail outlets to end-consumers (which sales were not made by Treasury);~~

~~(2) denies sub-paragraph 92(b)(ii);~~

(3) ~~further refers to and repeats the allegations made in sub-paragraph 33(b) above regarding the limited coverage of sales data such as Nielsen sales data;~~

(4) ~~says further that particulars (ii) and (iii) in support of that sub-paragraph are embarrassing as they seek to rely on data that post-dated 16 October 2019 in support of the position as at 16 October 2019;~~

(5) ~~says further that the particulars thereto refer to declines as recorded in Nielsen data, which data has not been provided to Treasury by the plaintiffs;~~

(6) ~~says further that the documents relied on by the plaintiffs in support of the allegations [NAP.999.002.0005 and NAP.999.002.0006] say the following:~~

~~*No representation or warranty ... is provided in relation to the accuracy, completeness or reliability of the information contained in any materials to which this document relates (the "Information") ... The Information is not intended to be a complete statement or summary of the securities, markets or developments referred to in the document. UBS does not undertake to update or keep current the Information ... Any statements contained in this report attributed to a third party represent UBS's interpretation of the data, information and/or opinions provided by that third party either publicly or through a subscription service, and such use and interpretation have not been reviewed by the third party;*~~

(d) [not used] ~~as to sub-paragraph 92(c), refers to and repeats sub-paragraphs 73(a) and 73(d) above;~~

(da) as to sub-paragraph (ca):

(i) says that the allegation that "*the 19 Crimes brand had continued to experience slowing sales growth*" must, by reason of the particulars thereto, be a reference to a decline in sales (by volume) by retail outlets to end-consumers (which sales were not made by Treasury);

(ii) admits that the particularised document (at IRI Topline: 10.6.19: TWE Brands [TRE.002.002.8115] at .8120) showed that, in respect of sales by retail outlets that reported their scan data to IRI, as at 6 October 2019, 19 Crimes had experienced:

(A) in the 52 weeks prior, 18.1% growth in sales dollars and 18.3% growth in sales volume;

(B) in the 13 weeks prior, 3.6% growth in sales dollars and 3.9% growth in sales volume;

(C) in the 4 weeks prior, 0.4% shrinkage in sales dollars and 0.7% shrinkage in sales volume;

(iii) refers to and repeats paragraph 33(ea)(ii) above;

(iv) otherwise denies that sub-paragraph;

(v) further says that it will refer at trial to the full terms and effect of the IRI data summarised in the document referenced in the particulars under sub-paragraph 92(ca);

(e) as to sub-paragraph 92(d):

(i) says the allegation made in that sub-paragraph that "*Treasury's market share ~~in the US was falling~~ had continued to fall since 15 August 2019 in value terms*" is embarrassing, as it is not possible to make an allegation about market share without first defining the market;

(ii) [not used] ~~says further that the particulars thereto refer to declines as recorded in Nielsen data, which data has not been provided to Treasury by the plaintiffs;~~

(iii) [not used] ~~says further that the document relied on by the plaintiffs in support of the allegations [NAP.999.002.0006] say the following:~~

~~*No representation or warranty … is provided in relation to the accuracy, completeness or reliability of the information contained in any materials*~~

~~*to which this document relates (the "Information") ... The Information is not intended to be a complete statement or summary of the securities, markets or developments referred to in the document. UBS does not undertake to update or keep current the Information ... Any statements contained in this report attributed to a third party represent UBS's interpretation of the data, information and/or opinions provided by that third party either publicly or through a subscription service, and such use and interpretation have not been reviewed by the third party;*~~

(iiia) under cover of that objection:

(A) admits that, for US retail outlets that reported their scan data to IRI, in the 13 weeks to 6 October 2019, total sales in the US for non-box table wine priced at or above $4 had grown 0.8% by dollars, whereas Treasury's total sales for non-box table wine priced at or above $4 had grown by 0.7%;

(B) otherwise denies sub-paragraph 92(d);

(C) further refers to and repeats sub-paragraphs 54(eb)(ii)(A) and 54(eb)(ii)(B) above;

(D) says further that both the premiumisation strategy and RTM changes were taken into account in Treasury's plans and budgets for F20 (including in the derisking processes undertaken to prepare the Red plan and the Red budget). Those plans and budgets assumed that there would be declines in shipments and depletions in F20 as a consequence of the premiumisation strategy and the RTM changes. Accordingly, Treasury's plans and budgets for F20 took into account and allowed for:

(1) an expected decrease in depletions of Treasury's commercial wines in the Americas in F20 (and thus as at 16 October 2019); and

(2) an expected decrease in shipments of Treasury's commercial wines in the Americas in F20 (and thus as at 16 October 2019).

Particulars

Treasury refers to and repeats sub-paragraphs 39(d)(iii)(AC)(1) and (2) above and the particulars under sub-paragraph 39(d)(iii)(AC)(2).

(iv) refers to and repeats sub-paragraphs 54(a) and 54(g) above;

(iva) further says that the particularised document (at IRI Topline: 10.6.19: TWE Brands [TRE.002.002.8115] at .8120) showed that, for US retail outlets that reported their scan data to IRI, in the 52 weeks to 6 October 2019, overall Treasury was growing in line with market, and was outperforming the market in the higher margin masstige and luxury categories which were the focus of its premiumisation strategy;

Particulars

In the premium $8 – $10.99 category, Treasury's sales had grown 4.9% by dollars and 4.4% by volume, outperforming the market (which was flat).

In the super premium $11 – $14.99 category, Treasury's sales had grown 26.8% by dollars and 46.2% by volume, outperforming the market in both metrics (market +7.9% by dollars and +8% by volume).

In the ultra premium $15 – $20 category, Treasury's sales had grown 58.3% by dollars and 79.9% by volume, outperforming the market in both metrics (market +9.2% by dollars and +10.3% by volume).

(v) [not used] ~~otherwise denies that sub-paragraph;~~

(ea) as to sub-paragraph 92(da):

(i) admits that there had been some adverse pricing against plan and prior year in each of July, August and September 2019;

(ii) otherwise denies that sub-paragraph;

(f) denies sub-paragraph 92(e).

93. As to paragraph 93, it:

(aa) says that the reference to the undefined "*October 2019 US Wine Market Conditions"* is embarrassing;

(ab) under cover of that objection, pleads to paragraph 93 on the basis that the plaintiffs intended the capitalised term "*October 2019 US Wine Market Conditions"* to be the "*October 2019 US Market Conditions*" as defined in paragraph 91;

(a) refers to and repeats paragraphs 10, 91, and 92 above;

(b) says the particulars to paragraph 93 do not support the allegations contained therein and the inference sought to be drawn from particular iii to paragraph 93 is embarrassing, and accordingly there is no proper basis for the allegations made in paragraph 93;

(c) under cover of those objections, denies that paragraph.

93A. It denies paragraph 93A, and in further answer to that paragraph refers to and repeats paragraph 74G above.

93B. It denies paragraph 93B, and in further answer to that paragraph refers to and repeats paragraphs 33(b), 58, 74A, 74B, 74C, 74D, 74E, 87B, 87C and 87F above.

94. As to paragraph 94, it:

(a) refers to and repeats paragraphs ~~56~~ 26, ~~and~~ 75 and 76 above;

(b) says that during the second quarter of the 2020 financial year, Angus McPherson had been unable to relocate to the US as planned, and Ben Dollard was subsequently appointed to the role as President, Americas;

(c) otherwise denies that paragraph.

95. As to paragraph 95, it:

(a) refers to and repeats paragraphs 10 and 94 above;

(b) says that the 28 January 2020 Announcement is not a proper basis for the allegations made by the plaintiffs;

(c) otherwise denies that paragraph~~.~~;

(d) says further that the departure of Victoria Snyder and the appointment of Angus McPherson as President of the Americas division is not one of the alleged "*October 2019 Leadership Changes*".

96. It denies paragraph 96, and in further answer to that paragraph:

(a) refers to and repeats paragraphs 11, 21 and 91~~, 93 and~~ to 95 above;

(b) says further that the amended consolidated statement of claim does not disclose a proper basis for the allegation in paragraph 96, as Treasury's ability to achieve growth in EBITS on a reported currency basis at a rate of 15% to 20% in the 2020 financial year depended on the future performance of its global operations (and not merely the future performance of its "*Americas*" division)~~.~~;

(c) refers to and repeats sub-paragraphs 58(c), (d), (e) and (f) above.~~;~~

(d) [not used] ~~says further that the inference the plaintiffs seek to draw in particular ii is not open in the circumstances set out in sub-paragraph 58(g) above.~~

97. It denies paragraph 97. ~~As to paragraph 97, it:~~

(a) [not used] ~~refers to and repeats paragraphs 41, 59 and 78 above (which apply *mutatis mutandis* to the information the subject of paragraph 97 of the consolidated statement of claim);~~

(b) [not used] ~~under cover of those objections:~~

(i) ~~says that the directors of Treasury knew of the matters referred to in paragraph 94(b) above; and~~

(ii) ~~otherwise denies that paragraph.~~

98. As to paragraph 98, it:

(a) refers to and repeats paragraphs 42, 60 and 79 (which apply *mutatis mutandis* to the information the subject of paragraph 98 of the amended consolidated statement of claim)~~,~~ and 91 to 97 above;

(b) under cover of those objections:

(i) denies that paragraph;

(ii) says further it will rely on the full content of the October 2019 Announcement at trial.

99. It denies paragraph 99 and refers to and repeats paragraphs 91 to 98 above.

G.2 Alleged October Performance

99A. As to paragraph 99A, it:

(a) says that the reference to "*any further deterioration in Treasury's performance at the Group level and/or in the Americas division*" is vague and embarrassing as it does not specify a metric of "*performance*" or type of "*deterioration*";

(b) under cover of that objection:

(i) refers to and repeats paragraphs 58(c)(v) above;

(ii) says that Treasury's ability to achieve growth in EBITS on a reported currency basis at a rate of 15% to 20% in the 2020 financial year depended on the future performance of its global operations (and not merely the future performance of its "*Americas*" division);

(iii) says further that as at 1 November 2019 Treasury's internal outlook analysis indicated that it was likely to exceed the group Red Budget for H1 F20;

Particulars

Email from David Breckenridge to Michael Clarke and Matt Young dated 31 October 2019 and its attachment "F20 outlook 20191031.pdf", which indicated H1 estimated group EBITS of $375.7 million, being $12.2 million above H1 group Red Budget EBITS [TRE.002.002.1511], [TRE.002.002.1512].

(iv) says further that subsequently, as at 18 November 2019, Treasury's review of risks and opportunities for group F20 EBITS indicated no major risk to its group F20 Red Budget of $775 million, which would meet Treasury's guidance as to group F20 EBITS;

Particulars

October 2019 Chief Financial Officer Report [TRE.013.016.8483] at .8486.

(c) otherwise denies that paragraph.

99B. As to paragraph 99B, it:

(a) refers to and repeats paragraph 99A above;

(b) admits that Treasury's draft October 2019 flash results in [TRE.002.002.1509] were prepared on or around 8 November 2019;

(c) says that the draft October 2019 flash results in [TRE.002.002.1509] were the flash results as at 31 October 2019 and indicated approximate performance as at that date;

(d) subject to sub-paragraph 99B(c) above, admits sub-paragraph 99B(a);

(e) subject to sub-paragraph 99B(c) above, admits sub-paragraph 99B(b);

(f) refers to and repeats sub-paragraph 55B(c) above;

(g) otherwise denies that paragraph.

99C. It admits that as at 8 November 2019, one or more of Treasury's officers knew of the information contained in the draft October 2019 flash results in [TRE.002.002.1509], but otherwise denies paragraph 99C, and in further answer to that paragraph refers to and repeats paragraphs 55B(c), 99A and 99B above.

100. As to paragraph 100, it:

(a) refers to and repeats paragraph 88 above;

(b) says that if Treasury made the representation as alleged (which is denied), it did not repeat that representation at any time and it was not a continuing representation;

(c) says further that it was not during the Relevant Period under any obligation to withdraw or qualify a statement it made; and

(d) otherwise denies that paragraph.

101. As to paragraph 101, it:

(a) says that insofar as the plaintiffs rely on the allegation that the October 2019 Representation was a continuing representation in the amended consolidated statement of claim, they must identify how it became known to Treasury that the alleged representation (which is denied) was false (including particulars of who had that knowledge / formed the opinion, when that person(s) acquired the knowledge / formed the opinion, and how those matters are attributable to Treasury) and, absent such allegations, the said reliance is embarrassing; and

(b) under cover of that objection, denies that paragraph and further refers to and repeats paragraphs 88 to 96~~,~~ and 99 ~~and~~ to 100 above.

G.~~2~~ 3 Alleged October 2019 Continuous Disclosure Contravention

102. As to paragraph 102, it:

(a) refers to and repeats paragraphs 45, 64 and 83 (which apply *mutatis mutandis* to the information the subject of paragraph 102 of the amended consolidated statement of claim) and 93 to 97 above;

(b) [not used] ~~says the inference sought to be drawn in particular iv is embarrassing;~~

(c) otherwise, denies that paragraph.

103. As to paragraph 103, it:

(a) refers to and repeats paragraph 10 above;

(b) says that the particulars are embarrassing insofar as they say that the alleged information included "*Treasury's own information relating to its business,* *projections and sensitivities, including its future performance and performance against budget*", but provide no particulars of the "*business, projections and sensitivities*" and which alleged Treasury Officers had or ought to have had that knowledge, and when each such alleged officer had or ought to have had such knowledge;

(c) under cover of those objections:

(i) denies paragraph 103, and in further answer to that paragraph refers to and repeats paragraphs 93, 93B, 95, ~~and~~ 96 and 99B above;

(ii) specifically denies the alleged October 2019 US Market Conditions Impact Information, the alleged October 2019 Forecast Risks, the alleged October 2019 Results Information, the alleged October 2019 Leadership Impact Information and the alleged October 2019 Combined US Impact Information was information that existed at any time during the Relevant Period;

(iii) specifically denies that information comprising the alleged October 2019 US Market Conditions, the alleged October 2019 Treasury US Market Conditions, and the alleged October 2019 Leadership Changes (to the extent such information in fact existed) was not generally available within the meaning of s 676 of the Corporations Act.~~;~~

(iv) [not used] ~~otherwise denies that paragraph.~~

104. As to paragraph 104, it:

(a) refers to and repeats paragraphs 102 and 103 above; and

(b) otherwise denies that paragraph.

105. As to paragraph 105, it:

(a) admits that it published the 28 January 2020 Announcement;

(b) admits that prior to 28 January 2020 it did not inform the ASX of the alleged October 2019 US Market Conditions Impact Information, the alleged October 2019 Forecast Risks, the alleged October 2019 Results Information, the alleged October 2019 Leadership Impact Information or the alleged October 2019 Combined US Impact Information (the existence of which information during the Relevant Period is denied);

(c) says further it was under no obligation to make any announcement regarding the alleged October 2019 US Market Conditions Impact Information, the alleged October 2019 Forecast Risks, the alleged October 2019 Results Information, the alleged October 2019 Leadership Impact Information or the alleged October 2019 Combined US Impact Information during the Relevant Period; and

(d) otherwise denies that paragraph.

106. It denies paragraph 106.

H. ALLEGED SUSTAINABLE GROWTH MISLEADING OR DECEPTIVE CONDUCT

107. [not used] ~~As to paragraph 107, it:~~

(a) ~~admits it made the statements recorded in the announcements it released to the ASX, and particularised by the plaintiffs, before and during the Relevant Period, and that it will rely on the full contents of those announcements at trial;~~

~~Particulars~~

~~The announcements are in writing.~~

(b) ~~otherwise denies that paragraph.~~

108. [not used] ~~As to paragraph 108, it:~~

(a) ~~refers to and repeats paragraph 5 above;~~

(b) ~~says the statements contained in the announcements made by Treasury to the ASX were made:~~

(i) ~~in trade or commerce;~~

(ii) ~~in relation to a financial product (as that term is defined in Chapter 7 of the Corporations Act and in Part, 2 Division 2 of the ASIC Act);~~

(iii) ~~in relation to financial services for the purposes of the ASIC Act from 26 October 2018;~~

(iv) ~~otherwise denies that paragraph.~~

109. [not used] ~~As to paragraph 109, it:~~

(a) ~~says that if Treasury made the representation as alleged (which is denied), it:~~

(i) ~~says the alleged representation is alleged to have arisen by reason of a combination of express and implied statements;~~

(ii) ~~says further it did not repeat that representation at any time and it was not a continuing representation;~~

(b) ~~says further that it was not during the Relevant Period under any obligation to withdraw or qualify a statement it made; and~~

(c) ~~otherwise denies that paragraph.~~

110. [not used] ~~As to paragraph 110, it:~~

(a) ~~says the particulars do not support the allegations made in paragraph 110 of the consolidated statement of claim, which are embarrassing;~~

(b) ~~says further that the allegation that Treasury's alleged strategy for its global business was underpinned by the performance of two brands of wine is embarrassing;~~

(c) ~~says further that the material facts pleaded in paragraph 110 do not disclose a cause of action, and that the paragraph is liable to be struck out on that basis;~~

(d) ~~under cover of those objections:~~

(i) ~~refers to and repeats paragraphs 16, 38, 39, 53, 54, 72, 73, 91, and 92 above;~~

(ii) ~~says further that:~~

(A) ~~at all times from 14 February 2019 (when Treasury gave guidance for the 2020 financial year in the 14 February 2019 Announcements (**Initial FY20 Guidance**)) until the Board of Treasury resolved on 28 January 2020 to give the revised guidance for the 2020 financial year, which was given later that day in Treasury's 28 January 2020 Announcement, Treasury was in a position to meet its Initial FY20 Guidance; and~~

(B) ~~rather than focusing on the short-term goal of meeting the Initial FY20 Guidance, Treasury elected to maintain its strategy of sustainable growth in preference to short term profits;~~

(iii) ~~otherwise denies that paragraph.~~

111. [not used] ~~It denies paragraph 111.~~

I. ALLEGED DIAGEO BRANDS MISLEADING OR DECEPTIVE CONDUCT

112. As to paragraph 112, it:

(a) admits it made the statements recorded in the announcements it released to the ASX, and particularised by the plaintiffs, before and during the Relevant Period, and that it will rely on the full contents of those announcements at trial;

Particulars

The announcements are in writing.

(b) otherwise denies that paragraph.

113. As to paragraph 113, it:

(a) refers to and repeats paragraph 5 above;

(b) says the statements contained in the announcements made by Treasury to the ASX were made:

(i) in trade or commerce;

(ii) in relation to a financial product (as that term is defined in Chapter 7 of the Corporations Act and in Part 2, Division 2 of the ASIC Act);

(iii) otherwise denies that paragraph.

114. As to paragraph 114, it:

(a) says that if Treasury made the representation as alleged (which is denied), it:

(i) says the alleged representation is alleged to have arisen by reason of a combination of express and implied statements;

(ii) says further it did not repeat that representation at any time and it was not a continuing representation;

(b) says further that it was not during the Relevant Period under any obligation to withdraw or qualify a statement it made; and

(c) otherwise denies that paragraph.

115. As to paragraph 115, it:

(a) refers to and repeats paragraphs 13, 38, 39, 53, 54, 72, 73, 91 and 92 above;

(b) otherwise denies that paragraph;~~.~~

(c) further says that an effect of the Diageo acquisition was that Treasury acquired luxury and masstige assets, including vineyards, which enhanced Treasury's premiumisation strategy, and that that was the primary driver for the acquisition.

116. It denies paragraph 116.

J. INFORMATION DISCLOSURE AND ALLEGED SHARE PRICE IMPACT

117. As to paragraph 117, it:

(a) refers to and repeats paragraph 10 above;

(b) says that in the 28 January 2020 Announcement, it said:

(i) "*we slightly missed our 1H20 EBITS versus our own expectations*";

(ii) "*[a]s a result of challenging conditions in the US wine market, TWE now expects F20 reported EBITS growth of approximately 5% to 10%*";

(iii) the downgrade had been "*driven primarily by underperformance in our US results in the first half and is expected to continue through the second half, due to:*

1. Unexpected changes in our Americas leadership, resulting in a loss of execution momentum through the first half that will carry into the second half.

2. US wine market dynamics where suppliers are trying to move surplus wine across the market at lower prices, resulting in an accelerated growth of private label, which is up approximately 15% in a market that is flat to down. This is a significant market shift in a very short period, especially after the recent US vintage in October and towards the end of the half.

3. As a result of these market dynamics, we were unable to recover or offset higher US Luxury COGS and higher Australian Commercial COGS, with higher levels of discounting required to try to maintain share across all price points. We also walked away from just under half a million cases of Commercial volume in the US due to private label growth, aggressive market pricing and our higher COGS.

(iv) "*Americas reported a 17% decline in EBITS to $98.3m and an EBITS margin of 16.1% (down 3.6ppts)*";

Particulars

The announcement is in writing.

(c) otherwise denies that paragraph.

117A. Treasury says further that at all times from 14 February 2019 (when Treasury gave guidance for the 2020 financial year in the 14 February 2019 Announcements (**Initial FY20 Guidance**)) until the Board of Treasury resolved on 28 January 2020 to give the revised guidance for the 2020 financial year, which was given later that day in Treasury's 28 January 2020 Announcement, Treasury was in a position to meet its Initial FY20 Guidance.

118. As to paragraph 118, it:

(a) admits that Treasury's share price declined from A$16.68 per share at the close of trading on 28 January 2020 to A$12.35 per share at the close of trading on 29 January 2020;

(b) otherwise denies that paragraph.

119. As to paragraph 119, it:

(a) admits sub-paragraph 119(a); and

(b) otherwise denies that paragraph.

K. ALLEGED CONTRAVENTIONS CAUSED ALLEGED LOSS OR DAMAGE

120. As to paragraph 120, it:

(a) admits sub-paragraph 120(a); and

(b) does not know, and therefore cannot admit, sub-paragraph 120(b).

121. It denies paragraph 121.

122. It denies paragraph 122.

123. It denies paragraph 123.

124. As to paragraph 124, it:

(a) says the allegation that the second plaintiff and some group members relied on "*the Representations, or one or more of them*" is embarrassing; and

(b) otherwise denies that paragraph.

125. It denies paragraph 125.

126. As to paragraph 126, it:

(a) refers to and repeats paragraph 125 above; and

(b) otherwise denies the paragraph.

126A. In further answer to paragraphs 120 to 123 and 125 to 126, it:

(a) denies that the doctrine of market-based causation is part of Australian law;

(b) alternatively, says that if the doctrine of market-based causation is part of Australian law (which is denied), then:

(i) the plaintiffs and the group members are not entitled to invoke or rely on that doctrine and/or that doctrine can have no application, unless they plead and prove that, had Treasury not engaged in the alleged contravening conduct - but rather informed the ASX of the alleged material information at the time(s) the plaintiffs allege Treasury was required to do so, and not made the alleged representations the plaintiffs allege were misleading or deceptive, with the consequence (as alleged by the plaintiffs) that the "inflation" in the price of Treasury Shares alleged at paragraphs 121 and 122 of the amended consolidated statement of claim would not have been in the Treasury Share price at the time they acquired their Treasury Shares – they nevertheless would have proceeded to acquire those Treasury Shares on that counterfactual; and

(ii) any group member who engaged in short selling of Treasury Shares at any material time cannot invoke or rely on that doctrine in order to establish that any of the alleged contraventions (all of which are denied) caused that group member any loss or damage (which loss and damage is also denied).

126B. In further answer to the whole of the amended consolidated statement of claim, insofar as the plaintiffs and group members make claims for compensation pursuant to section 1317HA(1) of the Corporations Act for damage resulting from one or more of Treasury's alleged contraventions of section 674(2) of the Corporations Act (which are denied), and it appears to the Court that Treasury has, or may have, contravened section 674(2) of the Corporations Act (which is denied), Treasury:

(a) says that it has acted honestly;

(b) says further that having regard to all the circumstances of the case, Treasury ought fairly be excused for any contravention of section 674(2) of the Corporations Act;

(c) in the premises, the Court should relieve Treasury wholly or partly from the liability to which it would otherwise be subject, or which might otherwise be imposed on it, because of any contravention of section 674(2) of the Corporations Act.

Particulars

Treasury relies on the Corporations Act, s 1317S.

126C. In further answer to the whole of the amended consolidated statement of claim, insofar as the plaintiffs and group members make claims for compensation pursuant to:

(a) section 1041I(1) of the Corporations Act in relation to economic loss caused by conduct of Treasury that was allegedly done in contravention of section 1041H of the Corporations Act (which is denied); and/or

(b) section 12GF(1) of the ASIC Act in relation to economic loss caused by conduct of Treasury that was allegedly done in contravention of section 12DA of the ASIC Act (which is denied); and/or

(c) section 236(1) of the Australian Consumer Law in relation to economic loss caused by conduct of Treasury that was allegedly done in contravention of section 18 of the Australian Consumer Law (which is denied),

Treasury says that:

(d) if the plaintiffs or any group member suffered the loss claimed or any loss at all (which is denied) it was as a result wholly or partly of the plaintiffs' or any group member's failure to take reasonable care, by failing to have adequate regard to the full terms of any or all of Treasury's announcements (including disclaimers and warnings), insofar as:

(i) the plaintiffs or any group members allege that they directly relied on any or all of the announcements made by Treasury in their decision to acquire shares in Treasury;

(ii) further or alternatively, the plaintiffs or any group members made the decision to purchase shares in Treasury without reading those announcements;

(e) Treasury did not intend to cause the loss claimed by the plaintiffs or any group member, or any loss at all and did not fraudulently cause the alleged loss or damage; and

(f) in the premises, if the plaintiffs or any group member suffered the loss claimed or any loss at all (which is denied), the damages which the plaintiffs or any group member may recover in relation to any losses are to be reduced to the extent to which the Court thinks just and equitable having regard to the plaintiffs' or group member's share in the responsibility for the loss.

Particulars

Treasury relies on the Corporations Act, s 1041I(1B), the ASIC Act, s 12GF(1B) and the Competition and Consumer Act 2010 (Cth), s 137B.

L. ALLEGED ENTITLEMENT TO RELIEF

127. It denies paragraph 127.

128. It denies paragraph 128.

128A. In further answer to paragraphs 127 and 128, Treasury says that if it engaged in the alleged contravening conduct (which is denied) and if that alleged contravening conduct caused the plaintiffs and group members loss and damage (which is also denied), then:

(a) following the issue of its 28 January 2020 ASX Announcement in which Treasury announced an earnings downgrade in respect of its expected F20 earnings (the **28 January 2020 F20 Earnings Downgrade**):

(i) in the period from 28 January 2020 to 25 February 2020, the continuing and developing coronavirus outbreak negatively impacted Treasury's financial performance in China and was likely negatively to impact Treasury's global financial performance for the balance of F20;

(ii) on 25 February 2020, Treasury issued a further ASX Announcement in which it withdrew altogether its F20 guidance by reason of the financial impact (and likely future financial impact) of the coronavirus outbreak on its business;

Particulars

ASX Announcement dated 25 February 2020 [TRE.002.010.4226].

(b) had Treasury not issued the 28 January 2020 F20 Earnings Downgrade:

(i) it would have been required to issue (and would have issued) the 25 February 2020 ASX Announcement withdrawing altogether its F20 guidance;

Particulars

As at 25 February 2020, the financial impact of the coronavirus outbreak on Treasury's business in China – and its potential future financial impact on Treasury's business in markets outside China – meant that it was no longer possible for TWE to give or maintain any F20 guidance from that time forward.

(ii) the withdrawal of Treasury's F20 guidance on 25 February 2020 would have had a significantly greater negative impact on Treasury's share price than any negative impact the 28 January F20 Earnings Downgrade in fact had on Treasury's share price (which negative impact is not admitted);

(iii) accordingly, the Joint Plaintiffs and group members would, in any event, have suffered the same losses they allegedly suffered by reason of Treasury's alleged contraventions, and so are not entitled to recover any damages from Treasury in respect of those alleged contraventions.

M. COMMON QUESTIONS OF FACT OR LAW

129. It does not plead to paragraph 129, as it contains no allegations against Treasury.

Dated ~~25 February 2021~~ 8 September 2023

M GARNER

G KOZMINSKY

Amendments settled by:

P NESKOVCIN

G KOZMINSKY

D LORBEER

Herbert Smith Freehills

Herbert Smith Freehills
Solicitors for the defendant