Order Entered

Order NOT Entered

No: (P)NSD660/2014

# Federal Court of Australia

District Registry: New South Wales

Division: General

**BRIAN JONES**

Plaintiff

**TREASURY WINE ESTATES LIMITED (ACN 004 373 862)**

Defendant

**ORDER**

|  |  |
| --- | --- |
| **JUDGE:** | Justice Foster |
| **DATE OF ORDER:** | 23 March 2017 |
| **WHERE MADE:** | Sydney |

**THE COURT ORDERS THAT:**

**Opt Out Orders**

1. Pursuant to s 33J of the *Federal Court of Australia Act 1976* (Cth) (**Act**), 4.00 pm on 26 May 2017 be fixed as the date on or before which a group member may opt out of this proceeding (**Class Deadline**).
2. Pursuant to s 33ZF of the Act, any group member who wishes to opt out of this proceeding must, before the Class Deadline, deliver an opt out notice in the form of the opt out notice which is Schedule C to these Orders to the New South Wales District Registry of the Federal Court of Australia.
3. Pursuant to s 33X and s 33Y of the Act, the terms of the opt out and claim registration notice set out in Schedule A to these Orders (**Notice**) are approved.
4. Pursuant to s 33X and s 33Y of the Act, the terms of the notice set out in Schedule B to these Orders (**Abridged Notice**) are approved.
5. Pursuant to s 33Y of the Act, the Notice and the Abridged Notice be given to group members according to the following procedure:
   1. On or before 29 March 2017, the plaintiff cause the Notice to be displayed on the website of the plaintiff’s solicitors, http://www.mauriceblackburn.com.au, and to remain so displayed on and until 29 May 2017;
   2. On or before 29 March 2017, the defendant cause the Notice to be sent to each person or entity listed in the defendant’s share register as having purchased shares in the defendant between 17 August 2012 and 15 July 2013 inclusive, such Notices to be sent by email where an email address is available, or failing that, by ordinary mail;
   3. On or before 29 March 2017, the District Registrar of the New South Wales District Registry of the Federal Court of Australia cause the Notice to be:
      1. Posted on the Federal Court website; and
      2. Available for inspection at the District Registry of the Federal Court in Sydney, Melbourne, Canberra, Brisbane, Adelaide, Perth, Hobart and Darwin.
   4. On or before 13 April 2017, the plaintiff cause an advertisement in the terms of the Abridged Notice to be published in the legal notices or equivalent section in one weekday edition of each of the following newspapers, namely:
      1. *The Australian*; and
      2. *The Australian Financial Review*.
6. On or before 29 March 2017, the plaintiff cause the opt out notice that is Schedule C to these Orders to be made available on the website of the plaintiff’s solicitors and to remain so until 29 May 2017.
7. The costs of and incidental to the procedure set out in Orders 5 and 6 above be initially borne by the plaintiff but on the basis that those costs will subsequently fall to be dealt with by the Court as part of the costs of the proceeding.
8. Both parties have liberty to apply on short notice concerning the quantum and method of payment of the said costs.
9. If, on or before the Class Deadline, the solicitors for either party receive a notice purporting to be an opt out notice referable to this proceeding, the solicitors file such notice in the New South Wales District Registry of the Federal Court of Australia within fourteen (14) days of receipt and the notice shall be treated as an opt out notice received by the Court at the time when it was received by the solicitors.

**Class Closure and Claim Preclusion Orders**

1. Subject to Order 12 below, pursuant to s 33ZF of the Act, any group member who wishes to participate in any distribution of any amount agreed in a settlement of this proceeding be obliged, by the Class Deadline, to complete an online TWE Group Member Registration Form at the domain hosted by IMF Bentham Limited www.tweclassaction.com.au (**Registration Form**).
2. In completing the Registration Form, and in order to register for the purpose of Order 10 above, each group member (other than those who are deemed to have registered by Order 12 below) be required to submit:
   1. The group member’s name, address and email address;
   2. Any relevant and available Holder Identification Number (**HIN**) or Security Reference Number (**SRN**);
   3. The number of Treasury Wine Estates Limited securities (**TWE securities**) held by the group member immediately prior to the commencement of trade on 17 August 2012;
   4. For each purchase by the group member of TWE securities during the period from 17 August 2012 to the date of submission of the Registration Form, all transactional information regarding the purchase, including in respect of each such purchase:
      1. The date of purchase;
      2. The quantity of securities purchased; and
      3. The consideration paid (including brokerage); and
   5. For each sale by the group member of TWE securities during the period from 17 August 2012 to the date of submission of the Registration Form, all transactional information regarding the sale, including in respect of each such sale:
      1. The date of sale;
      2. The quantity of securities sold; and
      3. The consideration received (net of brokerage).
3. A group member be deemed to have complied with Order 10 above if, by 29 March 2017, the group member has:
   1. Engaged the plaintiff’s solicitors in writing to act for that group member in connection with this proceeding; and/or
   2. Retained IMF Bentham Limited in writing to provide litigation funding services to that group member in connection with this proceeding.
4. Group members who are deemed to have registered by the operation of Order 12 above be required to submit to IMF Bentham Limited as soon as practicable but, in any event, by no later than 26 May 2017, and to the extent that they have not already done so, the same information as other group members are required to submit to IMF Bentham Limited pursuant to Order 11(a) to (e) above.
5. By 4.00 pm on 7 June 2017, the plaintiff:
   1. Deliver to the solicitors for the defendant a list of all persons who completed a Registration Form pursuant to Order 10 above or who are deemed to have done so by Order 12 above (**Registered Group Members**), which list shall contain:
      1. A unique identification number for each listed Registered Group Member;
      2. The information referred to in Orders 11(b), (c), (d) and (e) above for each listed Registered Group Member; and
      3. Any amendments to the above information as notified to the solicitors for the plaintiff by that date,

but which shall not identify the Group Members other than by the identification numbers described in Order 14(a)(i) above;

* 1. File, in a sealed envelope marked *“Confidential List of Group Members – Not to be Opened without leave of the Court or a Judge”*, a list of Registered Group Members, which list shall contain:
     1. A unique identification number for each listed Registered Group Member;
     2. The information referred to in Orders 11(b), (c), (d) and (e) above for each listed Registered Group Member; and
     3. Any amendments to that information as notified to the solicitors for the plaintiff by that date.

1. Pursuant to s 33ZF of the Act, any group member who does not opt out and who is not a Registered Group Member:
   1. Remain a group member for all purposes, including for the purpose of being bound by any judgment in this proceeding and being entitled to participate in any award of damages by the Court if this proceeding does not settle; but
   2. Subject to any further order of the Court, will not be entitled to receive a distribution from any settlement of this proceeding.
2. The plaintiff’s solicitors be granted leave to inspect the Court file and to copy any opt out notices filed by group members.
3. The defendant’s solicitors be granted leave to inspect the Court file and to copy any opt out notices filed by group members (but the defendant’s solicitors not be permitted to view the Confidential List of Group Members described in Order 14(b) above without further order of the Court).

**Other Orders**

1. The parties have general liberty to apply on 48 hours’ written notice.
2. The costs of and incidental to the applications determined this day (23 March 2017) be costs in the proceeding.

**THE COURT ALSO ORDERS, BY CONSENT, THAT:**

1. On or before 28 March 2017, the plaintiff file and serve any additional affidavit evidence in support of the plaintiff’s Interlocutory Application lodged for filing on 21 March 2017 in respect of the proposed Second Further Amended Statement of Claim (**Pleading Application**).
2. On or before 5 April 2017, the defendant file and serve any affidavit evidence in opposition to the Pleading Application.
3. On or before 12 April 2017, the plaintiff file and serve Written Submissions of no more than ten (10) pages in length in support of the Pleading Application.
4. On or before 19 April 2017, the defendant file and serve Written Submissions of no more than ten (10) pages in length in opposition to the Pleading Application.
5. On or before 24 April 2017, the plaintiff file and serve Written Submissions in reply of no more than five (5) pages in length.
6. The Pleading Application be listed for hearing at 9.30 am on 27 April 2017 before Foster J.

Date that entry is stamped:

Deputy District Registrar

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

**SCHEDULE A**

**OPT OUT AND CLAIM REGISTRATION NOTICE**

**FEDERAL COURT OF AUSTRALIA**

*Treasury Wine Estates Class Action*

**What is this Notice?**

On 2 July 2014, a class action was commenced by Brian Jones in the Federal Court of Australia against Treasury Wine Estates Limited (**TWE**). The Federal Court has ordered that this Notice be published for the information of persons who are members of the class on whose behalf the action is brought.

If you purchased shares in TWE between 17 August 2012 and 14 July 2013 (inclusive), you should read this notice carefully as it may affect your ability to participate in the class action.

If there is anything in this notice that you do not understand, you should seek legal advice. Any questions you have concerning the matters contained in this notice should not be directed to the Court.

**Key points to be aware of**

1. If you wish to register to obtain compensation from any settlement of this proceeding you must:

(a) Have already retained Mr Jones’ solicitors, Maurice Blackburn, to act for you in writing and/or signed a funding agreement with IMF Bentham Limited (**IMF**) in relation to this proceeding; or

(b) Before 4.00 pm on 26 May 2017 complete and submit the online TWE Class Member Registration Form accessible at the domain hosted by IMF www.tweclassaction.com.au.

2. If you do not wish to be involved in the class action, before 4.00 pm on 26 May 2017, you must complete and submit an opt out notice in the form available on the Maurice Blackburn website.

3. If you wish to challenge the orders of the Federal Court, before 4.00 pm on 26 May 2017, you must write to Maurice Blackburn stating the reasons for your challenge.

4. If you have not already retained Maurice Blackburn and/or signed a funding agreement with IMF and you do nothing, your rights (if any) may be determined without your participation.

**What is a class action?**

A class action is an action brought by one person (plaintiff) on his or her own behalf and on behalf of a group of people (class members) against another person (defendant), where the plaintiff and the class members have similar claims against the defendant.

Class members are bound by any judgment or settlement in the class action, unless they have opted out of the proceeding. This means that:

1. If the class action is successful, class members may be eligible for a share of any settlement monies or Court-awarded damages;

2. If the class action is unsuccessful, class members are bound by that result; and

3. Regardless of the outcome of the class action, class members will not be able to pursue their claims against the defendant in separate legal proceedings unless they have opted out.

The plaintiff does not need to seek the consent of class members to commence a class action on behalf of those persons. However, class members can cease to be class members by opting out of the class action. Unless you opt out, you will be bound by the outcome of the class action. An explanation of how class members may opt out of this proceeding is set out below.

**The TWE class action**

The TWE class action was commenced on 2 July 2014 by Mr Jones. Mr Jones brings the proceeding on his own behalf, and on behalf of all persons who are class members as defined in the proceeding. The definition of class member is set out below.

Mr Jones’ principal allegation relates to TWE’s Australian Securities Exchange (**ASX**) release on 15 July 2013 announcing expected provisions to its FY13 accounts and lower earnings growth in FY14, arising from actions it had determined it would take in respect of wine inventory held by its US distributors.

In summary, Mr Jones alleges that in the period from 17 August 2012 to 14 July 2013 (inclusive), TWE failed to advise the ASX of information which was likely to have a material impact on the value of TWE’s shares and made statements that misled or deceived the market about TWE’s expected earnings.

Mr Jones claims that this conduct breached TWE’s continuous disclosure obligations under the *Corporations Act 2001* (Cth) (**Corporations Act**) and the ASX Listing Rules and the prohibition against misleading or deceptive conduct under the Corporations Act and the Australian Consumer Law.

Mr Jones claims that he and the class members suffered loss as a result of these alleged breaches. TWE denies the allegations and is defending the class action.

The TWE class action is funded by IMF.

Another class action against TWE has been filed by Melbourne City Investments Pty Ltd (**MCI**) as lead plaintiff. That proceeding was brought on behalf of the same or substantially the same class of persons as the TWE class action and includes the same or similar claims to those made in the TWE class action. On 5 July 2016 the Federal Court of Australia found that MCI had brought its class action for an illegitimate or collateral purpose and, on that basis, found that it was an abuse of process and should be permanently stayed. The Court stated in its reasons that the TWE Class Action, in which Maurice Blackburn act as solicitors, is a preferable vehicle for litigating the core claims made against TWE. The decision is available at: http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2016/2016fca0787. MCI has applied to the Court to set aside its decision. That application has been heard but has not yet been determined.

**Are you a class member?**

You are a class member in the TWE class action if you:

1. Purchased ordinary shares in TWE on the ASX during the period from 17 August 2012 to 9.30 am on 15 July 2013;

2. Suffered loss or damage as a result of the conduct of TWE, as alleged in the Further Amended Statement of Claim; and

3. Are not any of the following:

(a) A related party of TWE;

(b) A related body corporate of TWE;

(c) An associated entity of TWE; or

(d) An officer or a close associate of TWE.

If you are not a class member in the TWE class action, you may disregard this Notice. If you are a class member, you should read this Notice carefully as it will affect your rights. If you are unsure whether you are a class member, you should contact Maurice Blackburn Lawyers at TWEClassAction@mauriceblackburn.com.au or seek your own legal advice without delay.

You may inspect copies of the relevant documents filed in connection with the TWE class action:

1. During business hours at the Sydney office of Maurice Blackburn;

2. On the Federal Court website at http://www.fedcourt.gov.au; or

3. At a District Registry of the Federal Court in Sydney, Melbourne, Canberra, Brisbane, Perth, Adelaide, Hobart or Darwin.

**What class members must do**

If you have already signed a retainer with Maurice Blackburn and/or a funding agreement with IMF in relation to this class action, you are deemed to have already registered. Notwithstanding this, you must contact Maurice Blackburn or IMF in order to provide certain information concerning your dealings in TWE shares.

If you are a class member in the TWE class action, and have not retained Maurice Blackburn and/or signed a funding agreement with IMF, you must select one of the following options by 26 May 2017:

***Option 1 – Register your interest in receiving compensation***

If you wish to make a claim for any loss you may have suffered as a result of TWE’s alleged conduct, you must complete the online TWE Class Member Registration Form available on the TWE class action website, accessible at www.tweclassaction.com.au.

Registration Forms must be completed online before 4.00 pm on 26 May 2017. Registration Forms completed after this time will not be accepted and you will be treated as having not responded to this notice (see Option 4 below).

***Option 2 – Opt out and cease to be a class member***

If you do not wish to remain a class member in the TWE class action, you must opt out of the proceeding by completing the opt out notice that is available on the Maurice Blackburn website at https://www.mauriceblackburn.com.au/current-class-actions/treasury-wine-estates-limited-class-action. If you opt out of the TWE class action you will:

1. Not be affected by any orders made in the TWE class action;

2. Not be permitted to participate in the distribution of any damages award or settlement outcome; and

3. Be entitled to commence separate legal proceedings against TWE in relation to the matters the subject of the TWE class action on your own behalf if you so wish.

Completed opt out notices must be submitted to the New South Wales District Registry of the Federal Court of Australia at Level 17, Law Courts Building, Queens Square, Sydney NSW 2000 on or before 4.00 pm on 26 May 2017. Opt out notices received after this time will not be accepted and you will be treated as having not responded to this notice (see Option 4 below).

***Option 3 – Apply to the Federal Court to vary orders regarding opt out and registration protocol***

If you wish to challenge the orders made by the Federal Court in relation to either Option 1 or Option 2 above, you must send a written notice to Maurice Blackburn setting out the challenge you will make and the reasons for that challenge. You will be required to attend the Federal Court in Sydney at a later date in order to have your challenge heard and decided by the Court.

Any notice challenging the Federal Court orders must be delivered to Maurice Blackburn before 4.00 pm on 26 May 2017. Any such notice received after this time will not have any effect.

***Option 4 – Not respond to this Notice***

If you do nothing, i.e. you do not act in accordance with Options 1, 2 or 3 above, you will remain a class member in the TWE class action and be bound by any judgment or settlement agreement in the proceeding. However if there is a settlement, you will not be entitled to make a claim for part of that settlement.

In other words, if you do nothing, you will lose your right to share in the proceeds of any settlement with TWE in relation to the matters the subject of the allegations made against TWE in the TWE class action.

If Mr Jones and TWE reach an in-principle settlement of the TWE class action, Mr Jones will seek orders that are commonly sought in relation to the settlement of class actions. The effect of these will be that all group members as defined in the TWE class action will be bound by the settlement of that proceeding and will be prohibited from bringing a further claim against TWE in relation to the same issues as are raised in the TWE class action. If these orders are granted, this will mean that group members in the TWE class action will not be permitted to continue claims under the MCI proceeding described above. This will only ever be relevant if MCI succeeds in setting aside the orders of the Court staying the MCI proceeding and the permanent stay is lifted.

**Will you be liable for legal costs?**

You will not become liable for legal costs simply by remaining as a class member for the determination of common questions or by registering your interest in receiving compensation.

If the TWE class action is unsuccessful, IMF will pay Mr Jones’ costs and satisfy any order against Mr Jones to pay TWE’s costs.

**Other matters**

If the TWE class action resolves by way of a judgment in favour of Mr Jones or by way of a negotiated settlement arrangement, then:

1. The finalisation of your personal claim might require work to be done in processing your claim. If such work is required you may need legal assistance. You may enter into a retainer agreement with Maurice Blackburn (or other solicitors) to do that work if it becomes necessary and you will be liable for legal costs associated with the determination of issues concerned only with your claim; and

2. If any compensation becomes payable to you as a result of any order, judgment or settlement in the TWE class action, the Court may order that some of the compensation be used to pay a portion of the legal costs incurred by Mr Jones in running the TWE class action. Mr Jones may also seek an order that part of any compensation that becomes payable to class members who have not signed a funding agreement with IMF is paid to IMF in return for IMF funding the action. Alternatively Mr Jones may apply for orders that class members receive the same rate of return in the TWE class action, whether or not they have signed a funding agreement with IMF.

**Questions**

If you are unclear about whether you are a class member, or if you have any other questions regarding the TWE class action, you should contact Maurice Blackburn at TWEClassAction@mauriceblackburn.com.au or by writing to Maurice Blackburn, Level 32, 201 Elizabeth Street, Sydney NSW 2000, Attention: Ben Slade. Alternatively, you can seek legal advice from other solicitors.

**SCHEDULE B**

**ABRIDGED NOTICE**

**FEDERAL COURT OF AUSTRALIA**

*Treasury Wine Estates Limited (****TWE****) Class Action*

The Federal Court of Australia has ordered that this notice be published for the information of class members in the TWE class action. Any person who bought shares in TWE between 17 August 2012 and 15 July 2013 (inclusive) should read this notice carefully as it may affect their rights.

**What is the TWE class action?**

The plaintiff in the TWE class action, Mr Jones, alleges that from 17 August 2012 to 14 July 2013 (inclusive), TWE failed to advise the ASX of information which was likely to have a material impact on the value of TWE’s shares and made statements that misled or deceived the market about TWE’s expected earnings.

The plaintiff claims that this conduct breached TWE’s continuous disclosure obligations under the *Corporations Act 2001* (Cth) (**Corporations Act**) and the ASX Listing Rules and the prohibition against misleading and deceptive conduct under the Corporations Act and the Australian Consumer Law.

The plaintiff claims that he and the class members suffered loss as a result of these alleged breaches.

TWE denies the allegations and is defending the class action.

**Are you a class member?**

You are a class member in the class action if you:

1. Purchased ordinary shares in TWE on the ASX during the period from 17 August 2012 to 9.30 am on 15 July 2013;

2. Suffered loss or damage as a result of the conduct of TWE, as alleged in the Further Amended Statement of Claim; and

3. Are not any of the following:

(a) A related party of TWE;

(b) A related body corporate of TWE;

(c) An associated entity of TWE; or

(d) An officer or a close associate of TWE.

**Class action deadline**

The Court has made orders that (amongst other things):

1. Any person who wishes to make a claim in any settlement of the TWE class action for loss suffered as a result of TWE’s alleged conduct must register at the domain hosted by IMF Bentham www.tweclassaction.com.au by 26 May 2017; and

2. Any person who wishes to have no part in the class action must opt out of the class action by 26 May 2017.

**More information**

If you believe you may be a class member it is very important that you read the further information available at Maurice Blackburn’s website as soon as possible: https://www.mauriceblackburn.com.au/current-class-actions/treasury-wine-estates-limited-class-action

**SCHEDULE C**

Form 21

Rule 9.34

**OPT OUT NOTICE**

No: (P)NSD660/2014

Federal Court of Australia

District Registry: New South Wales

Division: General

**BRIAN JONES**

Plaintiff

**TREASURY WINE ESTATES LIMITED (ACN 004 373 862)**

Defendant

To: The Registrar

Federal Court of Australia

New South Wales District Registry

Level 17, Law Courts Building, Queens Square, Sydney NSW 2000

(print name), a class member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976* (Cth), that [he, she or it] (circle as applicable) is opting out of the representative proceeding.

Date:

Signed by (print name)

Class Member/Lawyer for the Class Member

[(please complete the next page)]

**Class member details**

Telephone:

Email:

Address:

ACN/ABN (if a company or trustee):

HIN/SRN:

If the shares were acquired on behalf of another person/entity, name of that person/entity:

**If you are signing as the solicitor or representative of the class member:**

Name:

Capacity in which you are signing:

Telephone:

Email:

Address: