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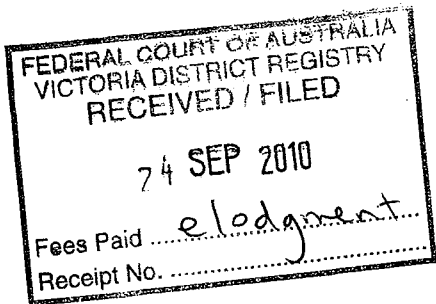
**PROCESSED**



**IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIA DISTRICT REGISTRY**

No. VID 882 of 2007

**WRIGHT RUBBER PRODUCTS PTY LTD (ACN 075384100)**  
Applicant



**BAYER AG**  
First Respondent

**BAYER AUSTRALIA LTD (ACN 000138714)**  
Second Respondent

**CHEMTURA CORPORATION**  
Third Respondent

**CHEMTURA AUSTRALIA PTY LTD (ACN 005225507)**  
Fifth Respondent

**DEFENCE**  
(Order 11, rule 20)

In this Defence, the Third and Fifth Respondents adopt (except where indicated to the contrary) the defined terms used by the Applicant in its Second Amended Statement of Claim dated 2 August 2010 (SASOC).

To the SASOC, the Third and Fifth Respondents say as follows:

**1 As to Paragraph 1:**

The Third and Fifth Respondents:

- (a) admit that the Applicant is, and has since 29 August 1996 been, a corporation incorporated pursuant to the *Corporations Act 2001* (Cth);
- (b) admit that the Applicant is entitled to sue in its corporate name;
- (c) otherwise do not admit the allegations made in this paragraph.

Filed on behalf of the Third and Fifth Respondents by:  
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**IN THE FEDERAL COURT OF AUSTRALIA (FCA)  
VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA  
GENERAL DIVISION**

**No: VID882/2007**

**NOTICE OF FILING**

This document was filed electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 24/09/2010.

**DETAILS OF FILING**

**Document Lodged:** Defence: Federal Court Rules form 16  
**File Number:** VID882/2007  
**File Title:** Wright Rubber Products Pty Ltd -v- Bayer AG & Ors  
**District Registry:** VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



★ **Dated:** 24/09/2010

**Registrar**

*Warwick Soden*

**Note**

This Notice forms part of the document and contains information that might otherwise appear elsewhere in the document. The Notice must be included in the document served on each party to the proceeding.

2 **As to Paragraph 2:**

The Third and Fifth Respondents do not plead to this paragraph as it makes no allegations against them.

3 **As to Paragraph 3:**

The Third and Fifth Respondents deny the allegations made in this paragraph. The Third and Fifth Respondents further say that they cannot plead more specifically to this paragraph because it is not clear which rubber chemicals have the various uses alleged in this paragraph.

4 **As to Paragraph 4:**

The Third and Fifth Respondents:

- (a) say that some potential Group Members have agreed with the Third Respondent not to pursue the allegations made in the SASOC against the Third and Fifth Respondents. Those agreements are confidential to the Third Respondent and the other parties to them; and
- (b) otherwise do not plead to this paragraph as it makes no allegations against them.

4A **As to Paragraph 4A:**

The Third and Fifth Respondents:

- (a) say that between 29 August 1996 and 31 December 2001, neither the Third Respondent nor the Fifth Respondent supplied any Rubber Chemicals to the Applicant; and
- (b) otherwise do not admit the allegations made in this paragraph.

5 **As to Paragraph 5:**

The Third and Fifth Respondents do not plead to this paragraph as it makes no allegations against them.

6 **As to Paragraph 6:**

The Third and Fifth Respondents do not plead to this paragraph as it makes no allegations against them.

7 **As to Paragraph 7:**

The Third and Fifth Respondents do not plead to this paragraph as it makes no allegations against them.

8 **As to Paragraph 8:**

- (a) The Third and Fifth Respondents admit that:
- (i) the Third Respondent was formerly known, at various times, as Crompton Corporation and Crompton & Knowles Corporation;
  - (ii) the Third Respondent is and was incorporated pursuant to the laws of the State of Delaware, United States of America;
  - (iii) from 21 August 1996 to 1 September 1999, Crompton & Knowles Corporation was the ultimate holding company of Crompton Manufacturing Company, Inc;
  - (iv) from 1 September 1999 to 31 December 2006, Crompton Corporation was the ultimate holding company of Crompton Manufacturing Company, Inc;
  - (v) the Third Respondent is the ultimate holding company (within the meaning of the *Corporations Act 2001*) of Chemtura Australia Pty Ltd, the Fifth Respondent; and
  - (vi) the Third Respondent carried on business as a supplier of some of the Rubber Chemicals internationally.
- (b) The Third and Fifth Respondents further say that, by virtue of section 5 of the Act, any conduct of the Third Respondent which occurred outside Australia is not subject to the operation of the *Trade Practices Act 1974* (Cth) (**the Act**).
- (c) The Third and Fifth Respondents otherwise deny the allegations made in this paragraph.

9 **As to Paragraph 9:**

- (a) The Third and Fifth Respondents admit that:
- (i) Crompton Manufacturing Company, Inc, was formerly known as Uniroyal Chemical Company Inc.;
  - (ii) between 1 July 1995 and 31 December 2001, Uniroyal was incorporated pursuant to the laws of the State of New Jersey, United States of America;
  - (iii) from 21 August 1996 to 1 September 1999, Crompton Manufacturing Company, Inc was a wholly owned subsidiary (within the meaning of the *Corporations Act 2001*) of Crompton & Knowles Corporation;
  - (iv) from 1 September 1999 to 31 December 2006, Crompton Manufacturing Company, Inc was a wholly owned subsidiary (within the meaning of the *Corporations Act 2001*) of Crompton Corporation;

- (v) Uniroyal changed its name as of 30 December 2005 to Chemtura USA Corporation;
  - (vi) Chemtura USA Corporation was merged into the Third Respondent as of 31 December 2006 and thereby ceased to exist as a separate legal entity; and
  - (vii) on 31 December 2006, the Third Respondent assumed all of the liabilities and obligations of Chemtura USA Corporation.
- (b) The Third and Fifth Respondents further say that, by virtue of section 5 of the Act, any conduct of the Fourth Respondent which occurred outside Australia is not subject to the operation of the Act.
- (c) The Third and Fifth Respondents otherwise deny the allegations made in this paragraph.

10 **As to Paragraph 10:**

The Third and Fifth Respondents:

- (a) admit that the Fifth Respondent:
- (i) was formerly known, at various times, as Crompton Specialties Pty Ltd, Uniroyal Chemical Pty Ltd and Uniroyal Australia Pty Ltd;
  - (ii) is and was at all material times incorporated pursuant to the laws of Victoria;
  - (iii) from 21 August 1996 to 10 August 2005, was a majority owned subsidiary of Uniroyal;
  - (iv) from 10 August 2005 to 24 August 2006, was a wholly owned subsidiary of Uniroyal;
  - (v) was from 24 August 2006 until the present a wholly owned subsidiary of the Third Respondent;
  - (vi) is and was a trading corporation within the meaning of section 4 of the Act; and
  - (vii) carried on business as a supplier of some of the Rubber Chemicals in Australia.
- (b) otherwise deny the allegations made in this paragraph.

11 **As to Paragraph 11:**

The Third and Fifth Respondents refer to and repeat paragraph 9(a)(vi) above and otherwise admit the matters contained in this paragraph.

12 **As to Paragraph 12:**

The Third and Fifth Respondents deny the allegations made in this paragraph.

13 **As to Paragraph 13:**

The Third and Fifth Respondents deny the allegations made in this paragraph.

**PARTICULARS**

The European Rubber Chemicals decision concerns allegations of anti-competitive conduct in the European Community. It does not address the Applicant's allegations of conduct in or relating to Australia.

14 **As to Paragraph 14:**

The Third and Fifth Respondents deny the allegations made in this paragraph.

**PARTICULARS**

- (a) The Chemtura DOJ Plea Agreement concerns allegations of anti-competitive conduct in the United States of America. It does not address the Applicant's allegations of conduct in or relating to Australia.
- (b) The Statement of Admissions and the Statement of Agreed Facts in *R v Crompton Corporation* (Court file number T-980-04) concerns allegations of anti-competitive conduct in Canada. It does not address the Applicant's allegations of conduct in or relating to Australia.
- (c) In September 2004, two former officers of the Third Respondent pleaded guilty in the United States of America to participating in certain anti-competitive conduct in relation to rubber chemicals. Those guilty pleas do not relate to the Applicant's allegations of conduct in or relating to Australia.

15 **As to Paragraph 15:**

The Third and Fifth Respondents deny the allegations made in this paragraph.

16 **As to Paragraph 16:**

The Third and Fifth Respondents deny the allegations made in this paragraph.

**PARTICULARS**

The Third and Fifth Respondents refer to and repeat the particulars to paragraph 14.

17 **As to Paragraph 17:**

The Third and Fifth Respondents deny the allegations made in this paragraph.

18 **As to Paragraph 18:**

The Third and Fifth Respondents deny the allegations made in this paragraph.

19 **As to Paragraph 19:**

The Third and Fifth Respondents:

- (a) admit that the Fifth Respondent, in the ordinary course of its business, sought and received guidance and direction from the Third Respondent as to the prices it charged for products and the volume of those products it was able to supply in Australia;
- (b) otherwise deny the allegations made in this paragraph; and
- (c) further say that they cannot plead more specifically to the allegations made in this paragraph because those allegations do not identify specific “directions”, “operational procedures” or “restrictions”.

20 **As to Paragraph 20:**

The Third and Fifth Respondents refer to and repeat paragraph 19(a) and otherwise deny the allegations made in this paragraph. The Third and Fifth Respondents further say that they cannot plead more specifically to the allegations made in this paragraph because those allegations do not identify specific “directions”, “operational procedures” or “restrictions”.

21 **As to Paragraph 21:**

The Third and Fifth Respondents deny the allegations made in this paragraph. The Third and Fifth Respondents further say that they cannot plead more specifically to this paragraph because it does not state how the Foreign Respondents “engaged” in the alleged conduct.

22 **As to Paragraph 22:**

The Third and Fifth Respondents deny the allegations made in this paragraph.

23 **As to Paragraph 23:**

The Third and Fifth Respondents deny the allegations made in this paragraph.

24 **As to Paragraph 24:**

The Third and Fifth Respondents deny the allegations made in this paragraph.

25 **As to Paragraph 25:**

The Third and Fifth Respondents:

- (a) deny the allegations made in this paragraph;
- (b) say further that any claims by the Applicant and/or any Group Members for damages under section 82 of the Act and/or compensation under section 87 of the Act which relate to conduct which occurred prior to 26 September 2001 are barred by operation of section 82(2) of the Act;

- (c) say further that if (which is denied) the Applicant and/or any Group Members paid a higher amount for any Rubber Chemicals and/or Rubber Compounds by reason of the alleged contraventions, the Applicant and those Group Members will need to prove that they have not recovered some or all of the overcharge by charging their own customers higher prices than they would otherwise have charged; and
- (d) say further that, by reason of the matters pleaded in sub-paragraph (c) above:
  - (i) the Applicant and those Group Members have not suffered any loss or damage;  
or
  - (ii) in the alternative, any loss or damage the Applicant and those Group Members have suffered has been reduced.

26 **As to Paragraph 26:**

The Third and Fifth Respondents deny the allegations made in this paragraph.

27 **As to Paragraph 27:**

The Third and Fifth Respondents deny the allegations made in this paragraph.

28 **As to Paragraph 28:**

The Third and Fifth Respondents deny the allegations made in this paragraph.

29 **As to Paragraph 29:**

The Third and Fifth Respondents deny the allegations made in this paragraph.

30 **As to Paragraph 30:**

The Third and Fifth Respondents deny the allegations made in this paragraph.

31 **As to Paragraph 31:**

The Third and Fifth Respondents deny the allegations made in this paragraph.

32 **As to Paragraph 32:**

The Third and Fifth Respondents deny the allegations made in this paragraph.

33 **As to Paragraph 33:**

The Third and Fifth Respondents deny the allegations made in this paragraph.

34 **As to Paragraph 34:**

The Third and Fifth Respondents deny the allegations made in this paragraph.

35 **As to Paragraph 35:**

The Third and Fifth Respondents:

- (a) deny the allegations made in this paragraph; and
- (b) refer to and repeat the matters set out in paragraph 25(b) to 25(d) above.

36 **As to Paragraph 36:**

The Third and Fifth Respondents deny the allegations made in this paragraph.

37 **As to Paragraph 37:**

The Third and Fifth Respondents deny the allegations made in this paragraph. The Third and Fifth Respondents further say that they cannot plead more specifically to the allegations made in this paragraph because those allegations assert a market share which fluctuates from 40% - 70% over a six year period without correlating that alleged fluctuation with specific times.

38 **As to Paragraph 38:**

The Third and Fifth Respondents deny the allegations made in this paragraph.

39 **As to Paragraph 39:**

The Third and Fifth Respondents deny the allegations made in this paragraph.

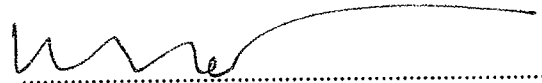
40 **As to Paragraph 40:**

The Third and Fifth Respondents:

- (a) deny the allegations made in this paragraph; and
- (b) refer to and repeat the matters set out in paragraph 25(b) to 25(d) above.

41 **As to Paragraph 41:**

The Third and Fifth Respondents refer to and repeat paragraph 44(b) above and otherwise deny the allegations made in this paragraph.



Mallesons Stephen Jaques  
Solicitors for the Third and Fifth Respondents

This pleading was settled by Philip Crutchfield and Luke Merrick.

**IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIA DISTRICT REGISTRY**

No. VID 882 of 2007

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Applicant

**BAYER AG**  
First Respondent

**BAYER AUSTRALIA LTD (ACN 000 138 714)**  
Second Respondent

**CHEMTURA  
CORPORATION**  
Third Respondent

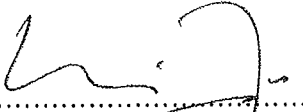
**CHEMTURA AUSTRALIA PTY LTD (ACN 005 225 507)**  
Fifth Respondent

**CERTIFICATE OF LEGAL REPRESENTATIVE  
Order 11 rule 1B**

I, Christopher John Fox, certify to the Court that, in relation to the pleading dated 24 September 2010 filed on behalf of the Third and Fifth Respondents, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non-admission in the pleading.

Date: 24 September 2010

  
.....  
Legal representative for the Third and Fifth  
Respondents

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Filed on behalf of the Third and Fifth Respondents by:  
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