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Details of Filing

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A handwritten signature in blue ink, reading "Warwick Soden".

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 17

Rule 8.05(1)(a)

Third Further Amended Statement of Claim

(Filed on 19 July 2017 pursuant to the order
made by Foster J on 17 July 2017)

No. NSD 660 of 2014

Federal Court of Australia

District Registry: New South Wales

Division: General

Brian Jones

Applicant

Treasury Wine Estates Limited (ACN 004 373 862)

Respondent

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NOTE AS TO TERMINOLOGY

In this statement of claim, the following conventions are used in referring to financial results:

- (a) FY 2010 and FY 2011 (by way of example) refer to the financial years ended 30 June 2010 and 30 June 2011; and*
- (b) H1 2010 and H2 2010 (by way of example) refer to the first and second half of FY 2010 (i.e. the six month period ended 31 December 2009 and the six month period ended 30 June 2010, etc.).*
- (c) References to cases of wine are in each case references to 9LE (9 litre equivalent cases).*

The defined terms and document references in this pleading are set out in Schedule D to this Statement of Claim.

The \$ design refers to Australian dollar currency.

References to subparagraphs include their chapeau and, unless otherwise indicated, references to paragraphs include all of their subparagraphs.

A. INTRODUCTION

I The Applicant and the Group Members

1. The Applicant:

- (a)** obtained an interest in ordinary shares in the respondent (**TWE Securities**) on 21 September 2012 by purchasing 1,000 TWE Securities on the financial market operated by the Australian Securities Exchange Limited (**ASX**) and continues to hold all of his TWE Securities as at the date of the commencement of this proceeding;

Particulars

Details of the particular transactions are set out in Schedule A.

- (b)** commences this proceeding as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) (**FCAA**) on behalf of himself and all persons (**Group Members**) who or which:

(i) obtained an interest in TWE Securities during the period from 17 August 2012 to 9:30 am on 15 July 2013 (**Relevant Period**) by the purchase of those Securities on the financial market operated by ASX;

(ii) [deleted]

(iii) suffered loss or damage by reason of the Relevant Subsisting Contraventions; and

(iv) are not any of the following:

A. a related party (as defined by section 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**)) of TWE;

B. a related body corporate (as defined by section 50 of the *Corporations Act*) of TWE;

C. an associated entity (as defined by section 50AAA of the *Corporations Act*) of TWE; or

D. an officer or a close associate (as defined by section 9 of the *Corporations Act*) of TWE.

2. Immediately prior to the commencement of this proceeding, seven or more persons have claims against TWE within the meaning of section 33C of the FCAA.

II The respondent (TWE)

3. TWE is and at all material times on and after 10 May 2011 was:

(a) incorporated pursuant to the *Corporations Act* and capable of being sued;

(b) a corporation included in the official list of the financial market operated by ASX and whose Securities are ED securities for the purposes of section 111AE of the *Corporations Act*;

(c) subject to and bound by the Listing Rules of the ASX (**Listing Rules**);

(d) a listed disclosing entity within the meaning of section 111AL(1) of the *Corporations Act*;

- (e) a trading corporation within the meaning of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
- (f) a corporation within the meaning of the *Competition and Consumer Act 2010* (Cth).

III Application of section 674(2) of the Corporations Act to TWE

- 4. At all material times, the ASX was a market operator of a listing market, namely the ASX's financial market, in relation to TWE for the purposes of section 674(1) of the Corporations Act.
- 5. At all material times, Rules 3.1, 4.3A and 4.3D of the Listing Rules bound TWE.
- 6. At all material times:
 - (a) Rule 3.1 of the Listing Rules provided that once an entity is, or becomes aware of, any information concerning the entity that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must, unless the exceptions in Listing Rule 3.1A apply, tell the ASX that information immediately;
 - (b) Rule 4.3A of the Listing Rules provided that:
 - (i) an entity (other than a mining exploration entity) must give the ASX the information set out in Appendix 4E of the Listing Rules, with any necessary adaptations, at end the end of each financial year (**Preliminary Financial Report**);
 - (ii) the information in the Preliminary Financial Report and the accounts upon which it is based must use the same accounting policies and must comply with all relevant accounting standards;
 - (c) Rule 4.3D of the Listing Rules provided that, once an entity is or becomes aware of any circumstances which are likely to affect materially the results or other information contained in a Preliminary Financial Report, the entity must immediately give the ASX an explanation of the circumstances and the effects the circumstances are expected to have on the entity's current or future financial performance or financial position.
- 7. At all times:

- (a) from the start of the Relevant Period until 30 April 2013, Rule 19.12 of the Listing Rules provided that an entity becomes aware of information if a director or executive officer has, or ought reasonably to have, come into the possession of the information in the course of the performance of their duties as a director or executive officer of that entity;
 - (b) from 1 May 2013 to the end of the Relevant Period, Rule 19.12 of the Listing Rules provided 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.
- 8. At all material times, section 674(2) of the Corporations Act applied to TWE by reason of:
 - (a) the matters alleged in paragraphs 4 to 6; and
 - (b) sections 111AP(1) and/or 674(1) of the Corporations Act.

B. [deleted]

- 9. [deleted]
- 10. [deleted]
- 11. [deleted]
- 12. [deleted]
- 13. [deleted]
- 14. [deleted]
- 15. [deleted]

C. TWE – COMPANY BACKGROUND

- 16. At all material times prior to 9 May 2011, Fosters owned a wine making business that, since 21 July 2010, had been known as “Treasury Wine Estates”.
- 17. On 9 May 2011:
 - (a) Fosters demerged its wine business from its core beer business; and

- (b) the business, Treasury Wines Estates became known as TWE and was incorporated and listed on the ASX.

(Unless otherwise indicated, expressly or by context, a reference in this pleading to TWE includes a reference to Fosters' wine business prior to the demerger).

18. At all material times on and after 9 May 2011:

- (a) TWE was a wine making company with operations in business segments identified as "the Americas" (**Americas**) (which included the United States of America (**US**) and Canada), "ANZ" (Australia and New Zealand), "Asia" and "EMEA" (Europe, Middle East and Africa);
- (b) TWE manufactured and distributed the following categories of wine:
 - (i) "commercial" wine, with an average retail cost of less than \$10 a bottle;
 - (ii) "masstige" wine, with an average retail cost of \$10-20 per bottle;
 - (iii) "luxury" wine, with an average retail cost in excess of \$20 per bottle;
- (c) TWE's commercial wines were generally made to be consumed up to 24 months after production;
- (d) the Americas was TWE's largest business segment by volume of sales and by net sales revenue;

Particulars

Sales volumes and net sales revenue (NSR) achieved by each of TWE's business segments in FY 2007 to FY 2013 as reported in the Fosters and TWE annual results presentations, FY 2008 to FY 2013 are set out in Schedule C.

- (e) in each year from FY 2009 to FY 2013 (inclusive) TWE's wine sales in the US exceeded 85% of its total wines sales (by volume) in the Americas;
- (f) TWE's commercial wines made up in excess of 87% of volume and the majority of its earnings in the US;
- (g) TWE reported headline earnings as "EBITS" (earnings before interest, tax materials items and "SGARA" (**EBITS**); SGARA was an acronym for Self Generating and Regenerating Assets and a reference to the impact of AASB

141 (Agriculture) which requires changes in the net market value of agricultural assets (such as crops) to be recognised in revenue accounts);

- (h) most states of the US had legislation requiring TWE (and other wine producers and sellers) to sell wine only to licensed distributors for on-sale by the distributors to wine retailers;

Particulars

- (i) *Treasury Wine Estates - Information Memorandum, 7 March 2011, page 53 [TWE.001.0982 at 1044].*
 - (ii) *As at 22 October 2010 approximately 93% of US sales volumes were sold via distributors.*
- (i) TWE sold wines to in excess of 200 distributors in the US;
 - (i.a) TWE's three largest distributor partners in the US (including each of their affiliated entities) (**Key US Distributors**) were Southern Wine and Spirits (**SWS**), Glazer's and the Charmer-Sunbelt Group;

Particulars

- (i) *In FY 2011, TWE sold wines in the US to 43 distributors affiliated with SWS (representing 30.7% of sales by volume), 19 distributors affiliated with Glazer's (representing 12.4% of sales by volume), 17 distributors affiliated with Charmer-Sunbelt Group (representing 16.3% of sales by volume) and over 150 other distributors (representing 40.6% of sales by volume);*
- (ii) *In FY 2012, TWE sold wines in the US to 46 distributors affiliated with SWS (representing 31.1% of sales by volume), 17 distributors affiliated with Charmer-Sunbelt Group (representing 16.9% of sales by volume) and over 150 other distributors (representing 39.4% of sales by volume);*
- (iii) *In FY 2013, TWE sold wines in the US to 27 distributors affiliated with SWS (representing 39.3% of sales by volume), 16 distributors affiliated with Glazer's (representing 13.0% of sales by volume), 15 distributors affiliated with Charmer-Sunbelt Group (representing 18.3% of sales by*

volume) and over 150 other distributors (representing 31.8% of sales by volume).

- (j) stock movements from US distributor inventories to wine retailers were referred to as “depletions”;
- (ja) [deleted]
- (k) TWE’s distribution agreements with its US distributors provided for the payment of discounts and rebates to distributors in relation to stock which the distributors were unable to sell at a certain price, or at all;
- (l) TWE recorded sales revenue and booked profits for wine sales in the US on acceptance of the goods by US distributors;
- (m) at the time of recording sales to US distributors:
 - (i) TWE raised an accrual for expected levels of discounts and rebates to be paid or credited to distributors in relation to the sale; and
 - (ii) the expected accrual was deducted from TWE’s sales revenue for the period in accordance with the TWE Revenue Recognition Policy.

D. THE FY 2013 EXCESS US INVENTORY DISCLOSURES

I 15 July 2013 disclosures

19. On 15 July 2013, TWE:

- (a) lodged with the ASX and publically released an announcement entitled “*TWE takes action on US Inventory to support brand health and growth agenda*” (**15 July 2013 Announcement**) [TWE.001.041.1534]; and
- (b) gave by conference call a presentation to investment analysts concerning the 15 July 2013 Announcement (**15 July 2013 Conference Call**) [TWE.001.004.0001].

Particulars

The conference call was conducted by David Dearie (Chief Executive Officer) and Tony Reeves (Chief Financial Officer) on behalf of TWE.

20. By the 15 July 2013 Announcement TWE announced that:

- (a) it had been operating at the higher end of its desired distributor inventory levels in the US;
- (b) it was working with its major US distribution partners to address their excess, aged and deteriorating inventory;
- (c) it expected to raise provisions of up to \$160 million in FY 2013 including:
 - (i) a provision of up to \$35 million to destroy old and aged commercial stock held by US distributors;
 - (ii) a provision of up to \$40 million for additional discounts and rebates to be paid to US distributors to accelerate the sale of excess current vintage wines in the US distributor network;
 - (iii) a non-cash \$85 million net realisable value provision in relation to excess bulk and finished wine and onerous grape contracts resulting from a reduction of shipments to the US;
- (d) constant currency EBITs growth for FY 2014 would be impacted by a reduction of shipments to the US as TWE worked with distributors to deliver an increasingly efficient supply model and inventory holdings; and
- (e) the impact of lower shipments on EBITs in FY 2014 would be up to \$30 million.

21. During the 15 July 2013 Conference Call, TWE stated that:

- (a) *"The excess inventory issue in our US supply chain, which I have talked (sic) in our past results announcements, has arisen largely as a result of three elements: (1) excess old and aged commercial wine which both TWE and our distributor partners intend to destroy; (2) improved distributor logistics and warehousing; and (3) our overambitious (sic) forecasting of new commercial product launches";*
- (b) the reduction in shipments for FY 2014 in order to reduce inventory holdings was likely to have effect across TWE's commercial brands;

- (c) *"The management team constantly look at days' inventory and we provide the Board with the appropriate level of updates. What we have been looking at now is rather than looking at an average of days' inventory we're looking at actual specific inventory by SKU and by brand, and that's what's helped to provide us with some of the explanations today of what we have in excess and what products we need to be looking to destroy."*

Particulars

The statements referred to above were made by Mr Dearie during the 15 July 2013 Conference Call.

II 22 August 2013 disclosures

22. On 22 August 2013 TWE:

- (a) lodged and published with the ASX (amongst other documents) its 2013 Full Year Results Presentation (**22 August 2013 Results Presentation**); and
- (b) participated in a conference call presentation to investment analysts concerning its FY 2013 results (**22 August 2013 Earnings Call**),

(collectively, the **22 August 2013 Announcements**).

23. By the 22 August 2013 Announcements, TWE made statements to the effect that:

- (a) as at the launch of TWE in May 2011, TWE inherited inventory at a distributor level some 5 to 6 weeks in excess of its target inventory holding;
- (b) towards the end of FY 2013, Sandra LeDrew, TWE's Managing Director in the Americas Regional Business Unit (**Americas RBU**) engaged with key US distributors to review their ideal inventory requirements and conducted an in-depth review of the actual inventory holding at the distributor level;
- (c) at that time:
 - (i) TWE discovered some 500,000 to 600,000 cases of product accumulated over the past few years that it deemed to be aged and obsolete;
 - (ii) a key [distributor] partner stressed their desire to reduce their inventory levels of TWE wines to more acceptable levels;

- (iii) another key partner informed TWE of a creative solution to reduce their inventory requirement significantly below the target days TWE was aiming for; and
- (iv) as a result of those distribution efficiencies and changes to carrying levels, TWE estimated that an additional two to three weeks' inventory had to be removed in order for it to achieve its ideal inventory days; and
- (d) in order to address US distributor inventory challenges, TWE would implement actions that included managing US distributor inventories at an SKU (stock keeping unit) level, rather than by monitoring [only] total inventory days.

Particulars

- (i) *22 August 2013 Results Presentation, slide 5 [TWE.001.001.1279 at 1284].*
- (ii) *22 August 2013 Earnings Call transcript, pages 3 and 5 [TWE.001.003.0691 at 0693 and 0694].*

III 23 September 2013 announcement

- 24. On 23 September 2013 TWE announced (inter alia) that following the write-down of excess US distributor inventory announced on 15 July 2013:
 - (a) the board of TWE had undertaken a review and concluded that it was the right time to look for a new CEO;
 - (b) the board believed that TWE needed a leader with a stronger operational focus; and
 - (c) its CEO, Mr Dearie, would be leaving the business with immediate effect.

Particulars

TWE ASX Announcement dated 23 September 2013.

IV 23 October 2013 AGM address

- 25. On 23 October 2013, TWE held its annual general meeting (**AGM**).
- 26. During the AGM, TWE made statements to the effect that:

- (a) the measures taken to reduce excess US distributor inventories emanated from TWE's poor understanding of stock levels held by US distributors;
- (b) since the excess US distributor inventories were discovered, TWE had put in place systems to obtain greater visibility on stock levels at US distributors and US distributor depletion levels;
- (c) information concerning products sold to US distributors had not previously been available to TWE but was now available to it;
- (d) it was unacceptable that TWE incurred the losses relating to excess US inventories; and
- (e) that the information that had more recently become available to TWE in relation to US distributor inventory levels should have been available to it during the period in which the build up of excess inventory occurred.

Particulars

The statements were made by Paul Rayner (Chairman, TWE) during a shareholder question and answer session at the 2013 AGM, in response to a question from Mr Ritchie, a representative of the TWE shareholders' association [TWE.001.003.0696 at 0710].

E. TWE'S US PERFORMANCE AND US DISTRIBUTOR INVENTORIES: FY 2004 – FY 2013

- 27. For the 2004 financial year, Fosters announced excess wine inventory write-downs in the Americas of \$229.7 million (\$73.9 million for 1H 2004 and \$155.8 million for 2H 2004).

Particulars

(i) Fosters ASX Announcement, "Stable Normalised Group Earnings and Cash Flow", 24 August 2004, page 4 [BJO.003.001.0043 at 0051].

(ii) Fosters Annual Results Presentation, 2004, page 16 [BJO.003.001.0012 at 0019].

- 28. In FY 2008 TWE:

- (a) [deleted];
- (b) [deleted];
- (c) [deleted];
- (d) sold 15.6 million cases of wine in the US;
- (e) distributors in the US depleted approximately 16.6 million cases of wine (an average of 319,231 cases per week);
- (f) distributor inventories in the US reduced:
 - (i) by approximately 1 million cases of wine or 3.1 weeks' supply (based on the average weekly depletion rate for that year); and
 - (ii) further and in the alternative, from 117 'days on hand' at the beginning of FY 2008 (based on the average daily depletion volume or 'value of a day' for FY 2008) to 95 'days on hand' at the beginning of FY 2009 (based on the average daily depletion volume or 'value of a day' for FY 2009); and
- (g) Fosters identified surplus wine inventory in June 2008 and reported a wine inventory write-down of \$126.9 million which was, at least in part, attributable to surplus wine inventories in the Americas.

Particulars

- (i) *Fosters 2008 Annual Report, pages 10, 32 and 56 [TWE.001.005.0412 at 0424, 0446 and 0740].*
- (ii) *Fosters 2009 Annual report, page 43 [TWE.001.005.0830 at 0875].*

29. In FY 2009:

- (a) [deleted];
- (b) [deleted];
- (c) [deleted];
- (d) TWE sold 15.9 million cases of wine in the US;

- (e) TWE distributors in the US depleted approximately 16.7 million cases of wine (an average of 321,154 cases per week);
- (f) TWE distributor inventories in the US reduced:
 - (i) by approximately 800,000 cases of wine or 2.5 weeks' supply (based on the average weekly depletion rate for that year);
 - (ii) further and in the alternative, from 95 'days on hand' at the beginning of FY 2009 (based on the average daily depletion volume or 'value of a day' for FY 2009) to 84 'days on hand' at the beginning of FY 2010 (based on the average daily depletion volume or 'value of a day' for FY 2010);
- (g) Fosters reported a \$17.7 million adjustment charge to its EBITs relating to prior period discounts and rebates in the Americas.

Particulars

- (i) *Fosters FY 2009 Results Presentation dated 25 August 2009, page 29 [BJO.003.001.0591 at 0605].*
- (ii) *Fosters 2009 Annual Report, pages 36 and 41 [TWE.001.005.0830 at 0868 and 0873].*

30. On 14 September 2009 Fosters lodged and published with the ASX its 2009 Annual Report and made statements to the effect that:
- (a) it had conducted an "exhaustive review of its wine business" including an extensive review of distributor inventories;
 - (b) it was developing common, integrated information technology systems as a major enabler for greater efficiency, better performance monitoring, accountability and transparency;
 - (c) it had supported US distributor initiatives to reduce and re-align their inventories;
 - (d) as a result of its review of US distributor inventories, it had:

- (i) identified an under-accrual of distributor rebates of \$17.7 million relating to shipments in prior years and had recognised a charge for that amount in the FY 2009 reporting period; and
 - (ii) implemented initiatives to improve distributor inventory reporting in its US wine business;
- (e) during 2009 initiatives implemented by the Americas business had led to significant improvements in information on distributor claims for discounts and rebates which had provided management with a more timely and realistic position of the amount due to customers at any point in time.

Particulars

Fosters 2009 Annual Report, pages 2, 3, 36, 37, 41 and 57 [TWE.001.005.0830 at 0834, 0835, 0868, 0869, 0873 and 0889].

(individually or in any combination, the **2009 US Inventory Review Statements**).

31. In FY 2010 TWE:

- (a) [deleted];
- (b) [deleted];
- (c) [deleted];
- (d) sold approximately 15.9 million cases of wine in the US;
- (e) distributors in the US depleted approximately 15.3 million cases of wine (an average of 294,231 cases per week);
- (f) distributor depletions in the US fell by approximately 8% on the previous year;
- (g) distributor inventories in the US increased:
 - (i) by approximately 600,000 cases of wine or approximately 2 weeks' supply (based on the average weekly depletion rate for that year);
 - (ii) further and in the alternative, from 84 'days on hand' at the beginning of FY 2010 (based on the average daily depletion volume or 'value of a day' for FY 2010) to 110 'days on hand' at the beginning of FY 2011

(based on the average daily depletion volume or 'value of a day' for FY 2011).

- 31A During the 2010 calendar year, one of Foster's Wine Estates Americas Company or Treasury Wines Estates Americas Company (both entities controlled by Fosters) entered into wine supply and distributor agreements with TWE's Key US Distributors (**2010 US Distribution Agreements**).

Particulars

- (a) *Agreements with entities in the Charmer-Sunbelt Group (collectively, the **2010 Charmer-Sunbelt Agreements**), were as follows:*

- (i) *agreements with an "Effective Date" of 1 June 2010:*

- (1) *with Empire Merchants, LLC, as "Distributor" in respect of the territory described in that agreement as "Metro New York" [TWE.009.001.0162];*
- (2) *with Empire Merchants North, LLC, as "Distributor" in respect of the territory described in that agreement as "Upstate New York" [TWE.200.003.7796];*
- (3) *with Reliable Churchill, LLP, as "Distributor" in respect of the State of Maryland [TWE.200.003.7801];*

- (ii) *agreements with an "Effective Date" of 1 July 2010:*

- (1) *with Washington Wholesale Liquor Company, LLC, as "Distributor" in respect of the District of Columbia [TWE.200.003.7800];*
- (2) *with Alliance Beverage Distributing Company, LLC, as "Distributor" in respect of the State of Arizona [TWE.200.003.7797];*

- (b) *Agreements with entities in the SWS corporate group (collectively, the **2010 SWS Agreements**), were as follows:*

- (i) *agreements with an "Effective Date" of 1 July 2010:*

- (1) *with Southern Wine & Spirits of America, Inc, as “Distributor” in respect of the State of Florida [TWE.200.003.7811];*
 - (2) *with Southern Wine & Spirits of Illinois, Inc, as “Distributor” in respect of the State of Illinois [TWE.200.003.7813];*
 - (3) *with Southern Wine & Spirits of America, Inc in respect of the State of California [TWE.009.001.0037];*
- (ii) *agreements with an “Effective Date” of 1 August 2010:*
 - (1) *with Southern Wine & Spirits of America, Inc, as “Distributor” in respect of the State of Hawaii [TWE.200.003.7812];*
 - (2) *with Southern-Odom Wine & Spirits of Alaska, LLC, as “Distributor” in respect of the State of Alaska [TWE.200.003.7809];*
- (ii.a) *agreements with an “Effective Date” of 1 September 2010:*
 - (1) *with Southern Wine & Spirits of America, Inc in respect of the State of Kentucky [TWE.200.003.7814];*
 - (2) *with Southern Wine & Spirits of South Carolina, Inc, in respect of the State of South Carolina [TWE.200.003.7815];*
- (iii) *an agreement with an “Effective Date” of 1 October 2010 with Odom-Southern Wine Distributors of Washington, LLC and Odom-Southern Wine Distributors of Idaho, LLC, as “Distributors” in respect of the States of Washington and Idaho [TWE.200.003.7808].*
- (iv) *[deleted];*
- (c) *Agreements with entities in the Glazer’s corporate group with an “Effective Date” of 1 July 2010 (collectively, the **2010 Glazer’s Agreements**), were as follows:*
 - (i) *agreement with Glazer’s Wholesale Drug Company, Inc, as “Distributor” in respect of the State of Texas [TWE.200.003.7792];*
 - (ii) *agreement with Glazer’s Distributors of Louisiana, Inc as “Distributor” in respect of the State of Louisiana [TWE.001.034.0046];*

- (iii) *agreement with Reliance Wine and Spirits, Inc, as “Vendor of Record” in respect of the State of Oklahoma (**Glazer’s Oklahoma Agreement**) [TWE.200.003.7794]; and*
- (d) *Each of the 2010 US Distribution Agreements was signed by Stephen Brauer on behalf of Foster’s Wine Estates Americas Company.*

31B. Each of the 2010 US Distribution Agreements included terms pursuant to which:

- (a) each of the Key US Distributors agreed to provide profit guarantees to TWE for FY 2011 and FY 2012 (but not thereafter);
- (b) the profit guarantees were to be effected, where necessary:
 - (i) by the Key US Distributors making minimum wine purchases from TWE which were determined by reference to benchmarks set out in the agreements; and/or
 - (ii) in the case of the 2010 SWS Agreements and the 2010 Glazer’s Agreements, in the event that TWE and the distributor agreed that the purchase of additional shipments would result in excess inventory being held, by payments to TWE in lieu of some or all of the required minimum wine purchases required to meet the prescribed benchmarks;

Particulars (31B(a) and 31B(b))

- (i) *Exhibit B, paragraphs 2B(xvi), 4A-4D of each of the 2010 Charmer-Sunbelt Agreements.*
- (ii) *Clause 4 of each of the 2010 SWS Agreements.*
- (iii) *Clause 4 and Exhibit B, paragraphs 3A-3G and 4 of each of the 2010 Glazer’s Agreements.*
- (iv) *Clause 4 and Exhibit B, paragraphs 3A-3C of the Glazer’s Oklahoma Agreement.*
- (c) the Key US Distributors were to hold minimum inventory levels of TWE wines during the currency of the 2010 US Distribution Agreements;

Particulars

The applicable contractual inventory minimums for each of TWE’s Key US Distributors in each territory were as follows:

2010 US Distribution Agreements - Domestic and International Inventory Minimums				
DocID (contract)	Corporate Group	Territory	Domestic Minimum	International Minimum
TWE.009.001.0162	Charmer-Sunbelt	New York Metro	60	90
TWE.200.003.7796		New York Upstate	60	90
TWE.200.003.7801		Maryland	60	90
TWE.200.003.7800		District of Columbia	60	90
TWE.200.003.7797		Arizona	60	90
TWE.200.003.7811	SWS	Florida	45	90
TWE.200.003.7813		Illinois	45	90
TWE.009.001.0037		California	30	90
TWE.200.003.7812		Hawaii	30	90
TWE.200.003.7809		Alaska	30	90
TWE.200.003.7814		Kentucky	30	90
TWE.200.003.7815		South Carolina	30	90
TWE.200.003.7808		Washington Idaho	30	90
TWE.200.003.7792	Glazer's	Texas	* The 2010 Glazer's Agreements' obligation was for the distributor to "Maintain minimum inventory levels at all times in" the distribution centres "at approximately the levels maintained as of the Effective Date or as otherwise mutually agreed by the parties"	
TWE.001.034.0046		Louisiana		
TWE.200.003.7794		Oklahoma		

31C. Based on a blended rate for imported and domestic wines sold by TWE to the Key US Distributors:

- (a) for SWS, the contractual minimum inventory level was approximately 58.5 days (in territories in which an imported/domestic split of 90/45 days applied) or 48 days (in territories in which an imported/domestic split of 90/30 days applied);
- (b) for the Charmer-Sunbelt Group, the contractual minimum inventory level was approximately 69 days;
- (c) for Glazer's, the contractual minimum inventory level was specified as being the inventory levels held as at the "Effective Date" (i.e. the commencement) of the relevant contract;

- (d) for the Key US Distributors (in combination), the contractual minimum inventory level (on a blended domestic/imported wine basis) was no more than 70 'days on hand' (**Contractual Inventory Target**).

Particulars

- (i) *The Applicant refers to the expert report of Raymond Chadwick (**Chadwick Report**) at paras 66-68. Mr Chadwick identifies the SWS contractual minimum inventory level as being 58.5 'days on hand' or less and the Charmer-Sunbelt Group contractual minimum as being 69 'days on hand'.*
- (ii) *In the 2011 Inventory Reduction Plan [TWE.010.013.0016], Mr Brauer identified the blended contractual minimum rate for TWE's total US portfolio under the 2010 US Distribution Agreements as being 70 'days on hand'.*

31D As at 17 August 2012 and at all material times during the Relevant Period the Contractual Inventory Target represented the minimum inventory required to meet consumer demand and avoid 'out of stock' situations and TWE's Key Distributors' optimum levels of inventory.

Particulars

- (i) *The Applicant repeats the matters pleaded and particularised in paragraph 31C above and refers to the Chadwick Report at paras 60-65 and 69-71.*
- (ii) *The contractual minimum levels under the 2010 Distribution Agreements remained in force throughout the Relevant Period pursuant to those agreements or renewed versions of those agreements.*

31E At various times prior to and during the Relevant Period, TWE aimed to reduce inventory levels for US distributors to 95 'days on hand' (**TWE Inventory Target**).

Particulars

- (i) *The Applicant refers to the particulars provided by TWE to the Applicant by HSF's letter to Maurice Blackburn dated 1 December 2014 in which TWE confirmed that its inventory target as at 11 May 2011 was 95 days.*

(ii) *TWE's target level of 95 days is referred to in numerous other documents between that time and June 2013, including:*

- A. *Letter from TWE (LeDrew) to Charles Merinoff (Charmer-Sunbelt Group) dated 27 June 2012 [TWE.009.001.0105].*
- B. *"Memorandum for the WLT & the Board – WLT Meeting 22 November 2012 (scil. 22 November 2011): US Inventory Reduction Plan" (2011 Inventory Reduction Plan) [TWE.010.013.0016]*
- C. *Email from Anthony Picetti to Victoria Snyder and others dated 12 April 2013 [TWE.200.003.6868].*
- D. *Board presentation, US Inventory, 31 July 2013 [TWE.001.009.5095] (in which an ideal range of 90 – 100 days is referred to at page .5129)*

32. In FY 2011 TWE:

- (a) [deleted];
- (b) [deleted];
- (c) [deleted];
- (d) [deleted];
- (e) sold approximately 13.9 million cases of wine in the US;
- (f) distributors in the US depleted approximately 13.63 million cases of wine (an average of 262,115 cases per week);
- (g) distributor depletions in the US fell by approximately 11% compared to the previous year;
- (h) distributor inventories in the US increased:
 - (i) by approximately 270,000 cases of wine or approximately 1 weeks' supply (based on the average weekly depletion rate for that year);

- (ii) further and in the alternative, from 110 'days on hand' at the beginning of FY 2011 (based on the average daily depletion volume or 'value of a day' for FY 2011) to 120 'days on hand' at the beginning of FY 2012 (based on the average daily depletion volume or 'value of a day' for FY 2012); and
- (i) sold approximately 255,000 cases to its US distributors and received approximately \$7.85 million in payments pursuant to profit guarantee provisions in the 2010 US Distribution Agreements and a distribution agreement with Republic National Distributing Company in respect of Colorado;

Particulars

In FY 2011, TWE:

- (i) *sold approximately 130,000 9LE cases of wine to Charmer-Sunbelt Group distributors pursuant to the profit guarantee provisions of the 2010 Charmer-Sunbelt Agreements;*
- (ii) *received a cash payment of \$1.25m from Empire Merchants, LLC (a Charmer-Sunbelt Group affiliated distributor) and sold to it a quantity of California wines (resulting with the cash payment in a total additional profit to TWE of \$1.5m) pursuant to profit guarantee provisions of its 2010 Charmer-Sunbelt Agreements;*
- (iii) *sold approximately 110,000 9LE cases of wine to SWS and received a cash payment of \$4.5 million from SWS distributors pursuant to the profit guarantee provisions of its 2010 SWS Agreements;*
- (iv) *received \$1.5m from Glazer's pursuant to the profit guarantee provisions of the 2010 Glazer's Agreements; and*
- (v) *sold 15,000 9LE cases of wine to Republic National Distributing Company and received \$600,000 from it pursuant to profit guarantee provisions in its wine supply and distribution agreement.*

33. [deleted]

34. In FY 2012 TWE:

- (a) [deleted];
- (b) [deleted];
- (c) [deleted];
- (d) sold approximately 13.55 million cases of wine in the US;
- (e) distributors in the US depleted approximately 13.27 million cases of wine (an average of 255,192 cases per week);
- (f) distributor depletions in the US fell by approximately 2.6% on the previous year;
- (g) distributor inventories in the US increased:
 - (i) by approximately 280,000 cases of wine or approximately 1 weeks' supply (based on the average weekly depletion rate for that year);
 - (ii) further and in the alternative, from 120 'days on hand' at the beginning of FY 2012 (based on the average daily depletion volume or 'value of a day' for FY 2012) to 131 'days on hand' at the beginning of FY 2013 (based on the reasonable daily depletion volume or 'value of a day' for FY 2013 that TWE ought to have forecast at the end of FY 2012);

Particulars

The 'reasonable' projected daily depletion volume or 'value of a day' for FY 2013 that TWE ought to have forecast at the end of FY 2012 is that referred to in particular (ib) subjoined to paragraphs 39(aa) and 39(a) below.

- (h) required that SWS and its affiliated distributors purchase approximately 224,000 cases of wine from TWE in order to avoid a monetary penalty pursuant to profit guarantee provisions of the 2010 SWS Agreements.

35. In H1 2013:

- (a) [deleted];
- (b) [deleted];

- (c) [deleted];
- (d) TWE's wine sales in the US decreased by 100,000 cases from the previous corresponding period;
- (e) TWE's shipments to the US distributors exceeded US distributor depletions by approximately 415,000 cases;
- (f) TWE's US distributor inventories increased from 131 'days on hand' at the beginning of FY 2013 (based on a reasonable daily depletion volume or 'value of a day' for FY 2013) to approximately 145 'days' on hand' (based on the average daily depletion volume or 'value of a day' for H1 2013);
- (g) in December 2012, in order to meet its EBITs forecast announced to the market as pleaded and particularised in paragraphs 58(a), 61(b)(i), 62 and 63 below, TWE requested, encouraged and/or applied commercial pressure on SWS to purchase an additional 250,000 cases of wine;

Particulars

- (i) *Email from David Dearie to Chris Flaherty and others dated 6 December 2012 [TWE.202.001.0385].*
- (ii) *Email from Alejandro Escalante to Sandra LeDrew and Victoria Snyder dated 31 July 2013 [TWE.202.001.0380].*
- (iii) *Email from Sandra LeDrew to David Dearie dated 11 August 2013 and document titled Inventory questions for David [TWE.200.001.3795; TWE.200.001.3796].*
- (iv) *November 2012 Finance Report [TWE.200.008.8559 at _037].*
- (h) TWE encouraged SWS and other Key US Distributors (some or all of whom were already overstocked) to accept additional shipments by offering extended payment terms.

Particulars

- (i) *Email from Brad Vasser (SWS) to Walter Cowell (SWS) and others dated 6 June 2012 [TWE.010.048.0180].*

- (ii) *Memorandum from Alejandro Escalante to Mark Fleming dated 19 July 2012 [TWE.200.008.6536].*
- (iii) *Email from Sandra LeDrew to Brad Vasser (SWS) dated 25 July 2012 [TWE.001.041.0926].*
- (iv) *Presentation – Meeting of the Board of Directors, 30 March 2012 (Finance Report) [TWE.001.016 .0541 at 0573].*

36. In FY 2013 TWE:

- (a) [deleted];
- (b) [deleted];
- (c) [deleted];
- (d) sold approximately 13.31 million cases of wine in the US;
- (e) distributors in the US depleted approximately 12.83 million cases of wine (an average of 246,731 cases per week);
- (f) distributor depletions in the US fell by approximately 3% on the previous year;
- (g) distributor inventories in the US increased by approximately 480,000 cases of wine or approximately 1.9 weeks' supply (based on the average weekly depletion rate for that year).

37. [deleted]

38. .At all material times during the period from FY 2008 to FY 2013 (inclusive), TWE's management had access to and regularly monitored average days' inventory figures in relation to US distributors and provided periodic updates of such figures to the board of directors.

Particulars

- (i) *TWE repeats the matters pleaded and particularised in subparagraphs 21(c), 23(d), 30(a), 30(b), 30(d) and 30(e) above.*
- (ii) *TWE reported on current year distributor depletions (and prior year depletions) in the Americas in FY 2009, FY 2012 and FY 2013.*

(iii) *TWE reported on current year US Distributor depletions in FY 2011 and FY 2012.*

(iv) *The Applicant refers to and repeats TWE's admission in paragraph 38 of TWE's defence that, at all material times since the de-merger of TWE from Fosters (in May 2011), TWE's management had access to and monitored average days' inventory figures (which were based in part on estimates) in relation to US distributors and, from April 2012, provided periodic updates of such figures to TWE's board of directors.*

F. MATERIAL INFORMATION

I 17 August 2012 Material Information

39. By no later than 17 August 2012, TWE was "aware" within the meaning of ASX Listing Rule 19.12, and it was the fact that:

(aa) TWE's US distributors held approximately 2.16 million 9LE cases of TWE wine in excess of the Contractual Inventory Target;

(a) further, and in the alternative, TWE's US distributors held approximately 5 weeks' inventory in excess of the TWE Inventory Target;

(together and separately, **17 August 2012 Excess Inventory Position**);

Particulars of 39(aa) and 39(a)

(i) *[deleted]*

(ia) *TWE admitted in paragraph 39(a) of its Amended Defence that it was aware on 17 August 2012 that TWE's US distributors held approximately 129 days' inventory (or 19 days in excess of its alleged "then target" of 110 days). This equates to 34 days (or approximately 5 weeks) inventory in excess of the TWE Inventory Target. Mr Jones (for the avoidance of doubt) joins issue with the allegation that TWE's "then target" level of inventory was 110 days.*

(ib) *TWE knew or ought to have known that US distributors held excess inventory of approximately 2.16 million 9LE cases of TWE wine because:*

- A. Mr Picetti's "shipments and depletions cheat sheet" [TWE.001.077.0001] identified that, at the end of FY 2012, TWE's US distributors had 4,639,394 cases of inventory. This equates to 131 'days on hand' of inventory based on the depletion forecast assumption for the US that TWE would have made in the FY 2012 budgeting process had it adopted reasonable growth assumptions and results in a 'value of a day' calculation of 35,484 9LE cases (Chadwick Report, paras 223-224). Based on the Contractual Inventory Target TWE's US distributors had 51 days of inventory in excess of the Contractual Inventory Target at the end of FY 2012 or approximately 2.16 million cases (based on a value of a day of 35,484 9LE) (Chadwick Report, [226]).
- B. One or more of the directors and executive officers of TWE (or after May 2013 the officers of TWE) knew or ought to have known that the Contractual Inventory Target represented the appropriate amount of inventory required to meet consumer demand and its distributors' optimum inventory level as this was well known in the US wine industry.

(ii) [deleted]

- (b) further, and in the alternative, US distributor inventories included significant amounts of aged and obsolete stock and/or stock that was approaching expiry or obsolescence (**17 August 2012 Aged Inventory Position**);

Particulars

- (i) The applicant repeats the matters pleaded and particularised in paragraphs 18(b), 18(c), 18(f), 21(c), 23(d), 39(aa) and 39(a) above.
- (ia) In each year from FY 2009 to FY 2013, commercial wines (which were generally made to be consumed up to 24 months after production) exceeded 85% of TWE's wine sale volumes in the US. Accordingly, because of TWE's awareness of the 17 August 2012 Excess Inventory Position, it ought to have been aware of the risk that a material portion of the excess inventory holdings of its US distributors would be commercial wines with a shelf life of less than 24 months. Further, based on available

depletions and retail sales data (both from its US distributors and the Nielsen Beverage Data Network) TWE knew or ought to have known that a material portion of its commercial brands were slow moving stock. The Applicant refers further to paras 216 to 221 of the Chadwick Report.

(ii) Further and in the alternative to (i) and (ia):

A. In order to comply with its continuous disclosure obligations, TWE was required to have appropriate reporting and management communication systems which were adequate to inform it accurately as to the state of its business. In those circumstances TWE ought to have had reporting systems which allowed it to monitor or investigate rapidly US distributor inventories at an SKU level.

B. The Applicant repeats paragraph 39(b) of TWE's defence in which TWE says that, as at 17 August 2012 the level of aged and obsolete stock held by TWE's US distributors was not known or able to be accurately and reliably ascertained or assessed by TWE. Without accepting that admission, the Applicant says that, if that is true, TWE failed to have appropriate reporting and management communication systems which were adequate to inform it accurately as to the state of its business. Further the Applicant repeats the matters pleaded and particularised in paragraphs 27, 28(g), 29(g) and 30 above and says that TWE was aware from past write-downs to its business that an excessive build-up of US distributor inventories had the potential to impact adversely its financial performance and it had announced measures to improve distributor inventory reporting in response to those write-downs.

(iii) Had TWE monitored or monitored adequately US distributor inventories at an SKU level prior to 17 August 2012, it would have discovered prior to that date that a significant portion of US distributor inventories were comprised of commercial wines that had expired, were obsolete or were approaching expiry or obsolescence.

(iv) Further and in the alternative to (i) to (iii) above, TWE ought to have investigated the composition of its US distributor inventories at an SKU level prior to the commencement of the Relevant Period as (a) it was

'aware' of the increases in its US distributors' excess inventories and falling depletion rates over the period from FY 2010 to the end of FY 2012 from matters pleaded and particularised in paragraphs 31, 32, and 34 above; and (b) according to its internal records (e.g. [TWE.001.077.0001]) its US distributors held 110 days' inventory by the end of FY 2011 (at least 40 days in excess of the Contractual Inventory Target); and (c) by April 2012 SWS, TWE's largest US distributor had expressed the view to Ms LeDrew that its holdings of TWE products were "much too high" [TWE.001.106.0019 at 0023]. Had TWE commenced investigating the composition of its US distributors' inventories prior to the Relevant Period, it would have discovered prior to 17 August 2012 that a material portion of US distributor inventories were commercial wines that had expired, were obsolete or were approaching expiry or obsolescence (or ought to have done so had it had appropriate reporting systems and procedures in place).

(v) Further and in the alternative to (i)-(iv) above, each of the 2010 US Distribution Agreements included terms pursuant to which:

- A. TWE agreed to conduct quarterly "Distributor Review and Planning Meetings" to (inter alia) comprehensively review the distributor's performance versus plan, identify performance gap of the brands and products in the relevant territory, if any, and identify local market trends and competitor weaknesses [e.g. TWE.009.001.0230 at .0250; TWE.200.003.7811 at _023; TWE.009.001.0162 at .0180];*
- B. TWE and the distributors agreed to conduct "Monthly Business Review Meetings" to measure progress against the business plan risks and opportunities in the market in order to make necessary adjustments in order to achieve the business plan [e.g. TWE.009.001.0230 at .0250; TWE.200.003.7811 at _023; TWE.009.001.0162 at .0180];*
- C. Distributors were required to supply TWE with monthly depletions and product inventory information. The distributors (other than SWS) were also required to provide TWE with weekly outlet level sales data, depletions data and electronic reporting of in transits, shipment deliveries and physical inventory [e.g. TWE.009.001.0230 at .0251;*

TWE.200.003.7811 at _024; TWE.009.001.0162 at .0182). In addition to the monthly reports, SWS was required to provide TWE with weekly depletions reports: TWE.200.003.7811 at 024].

- (vi) By reason of the matters particularised in (v) above, if (which is not admitted) TWE had not received sufficient information from its US distributors to enable it to determine the amount of aged and obsolete stock and/or stock that was approaching expiry or obsolescence held by its Key US Distributors by the commencement of the Relevant Period, it could (and ought to have) have requested such further information as it required.*
- (c) further, and in the alternative, it was likely that one or more of its Key US Distributors would, in FY 2013 and/or FY 2014, reduce their inventory requirements for TWE wines to contractual minimum inventory levels.*

(17 August 2012 Inventory Target Risk);

Particulars

The Applicant repeats the matters pleaded and particularised in subparagraphs 39(a) and 39(aa) above and says further that from matters pleaded in paragraphs 27 to 34 and 38 above TWE knew or ought to have known of the 17 August 2012 Inventory Target Risk by reason of the following facts (which TWE knew or ought to have known):

- (i) US distributors had in FY 2009 taken initiatives to reduce their inventory targets due to poor US sales of TWE's wines;*
- (ii) in each of the financial years from FY 2010 to FY 2012 (inclusive) US depletions had continued to decline every year;*
- (iii) in FY 2010, FY 2011 and FY 2012 TWE's sales in the US had exceeded depletions;*
- (iv) in FY 2011 there was a significant decrease in retail sales in the US that was reflected in reduced US depletions;*
- (v) after falling by 11% in FY 2011, US depletions had continued to deteriorate by a further 2.6% in FY 2012;*

- (vi) *[deleted];*
- (vii) *[deleted];*
- (viii) *[deleted];*
- (ix) *[deleted];*
- (x) *further and in the alternative, the profit guarantees by which the Key US Distributors had been incentivised to take shipments from TWE in excess of their depletion requirements (rather than make profit guarantee payments to TWE) ended at the commencement of FY 2013 such that the Key US Distributors would no longer be penalised for failing to purchase prescribed shipment volumes and would likely seek to de-load their excess inventory from that time by reducing shipment orders from TWE and/or by reducing their internal inventory targets;*
- (xi) *further and in the alternative, in the 2011 Inventory Reduction Plan [TWE.010.013.0016], TWE's Americas RBU predicted a "natural" deload in FY 2013 as distributors adjusted inventory levels to be more in line with "historical supply chain requirements and contract minimums" and noted that a similar "natural deload" had occurred in FY 2008 and FY 2009 [TWE.010.013.0016 at 0017];*
- (xii) *further and in the alternative, on 2 April 2012, Mr Von Oehson (SVP – Strategy & Business Development, SWS) emailed Ms LeDrew, Ms Snyder and Mr Holden a slide deck entitled "Treasury Wine Estates and Southern Wine & Spirits RTM: Phase 2" in which SWS wrote: "[SWS's] current [TWE] inventory levels are much too high. SWS proposes to mutually work with TWE to reach contractual inventory levels on a managed/phased approach" [TWE.001.106.0019 at 0023].*
- (xiii) *further and in the alternative, the Contractual Inventory Target was no more than 70 'days on hand' which represented the minimum inventory required to meet consumer demand and avoid 'out of stock' situations and its Key US Distributors' optimal levels of inventory; and*
- (xiv) *further and in the alternative, by the end of FY 2012:*

- A. *SWS had approximately 150 'days on hand' of TWE inventories [TWE.001.009.5095 at 5139];*
 - B. *Charmer-Sunbelt Group had approximately 125 'days on hand' of TWE inventories [TWE.001.009.5095 at 5139];*
 - C. *Glazer's had approximately 105 'days on hand' of TWE inventories [TWE.001.009.5095 at 5139]; and*
 - D. *TWE's Key US Distributors (in combination) had approximately 131 'days on hand' of TWE inventories (Chadwick Report at paras 223 – 224).*
- (d) further, and in the alternative, there was a material risk (individually or in any combination, the **17 August 2012 Inventory Impact Risk**):
- (i) that TWE would have to provision for or outlay significant discount and rebate payments to US distributors to reduce excess inventories in FY 2013; and/or
 - (ii) that TWE would incur a significant material expense or provision in FY 2013 in order to destroy old and obsolete stock held by US distributors; and/or
 - (ii.a) that, in FY 2013, TWE would have to provision for a write-down of the net realisable value of its own excess bulk and finished wine inventories and onerous grape contracts as a result of reduced shipments to the US; and/or
 - (iii) that reduced shipments to the US would affect materially its future profitability.

Particulars

- (i) *The Applicant repeats the matters pleaded and particularised in subparagraphs 39(aa), 39(a), 39(b) and 39(c) above.*
- (ii) *Further, by reason of the matters pleaded and particularised in paragraphs 27, 28(g), 29(g) and 30 TWE knew or ought to have known that large provisions or charges had been made in its business in the past due to the excessive build up of US inventories.*

(iii) *[deleted]*

(iv) *TWE had a commercial interest in removing excess and obsolete stock from the supply chain in the US in order to; (a) protect its brand image and value; and (b) to clear the supply chain to make way for new wines (the production of which had been planned and commenced several years earlier) and could not compel US distributors to destroy excess inventory without compensation. In circumstances in which US inventory levels became too high to reduce by increasing depletions or reducing shipments, it would be left with no other commercially viable option but to destroy excess product held by its US distributors and to compensate the distributors.*

(v) *Further and in the alternative, at all material times from 17 August 2012, TWE knew or ought to have known that:*

A. for every case that TWE did not deplete as planned, there was generally up to another case in finished goods, at least one other case as bulk wine in tank and part of another case growing on TWE's vines or in committed grape contracts (see e.g. 22 August 2013 Results Presentation, slide 4 [BJO.003.001.2597 at 2601]);

B. as a result of the matters pleaded in paragraphs 39(aa) to 39(c) above and particularised immediately above, there would be a requirement to significantly reduce shipments to US distributors in FY 2013 and/or FY 2014 and/or FY 2015 and that this would have a 'multiplier effect' and create surpluses on its own bulk wine and finished goods inventories and grape sourcing commitments.

(vi) *Further and in the alternative, the Applicant says that, in TWE's 5 Year Strategic Plan (**May 2012 5 Year Strategic Plan**) [TWE.001.009.2071 at 2081 - 2266] in relation to the Americas RBU [TWE.001.009.2071 at 2219 – 2235] and TWE's FY 2013 Operating Plan [TWE.001.009.2071 at 2267-2292] (**FY 2013 Operating Plan**), which were approved by the board of TWE on 23-24 May 2012, TWE planned to deal with the excess US inventory problem by "de-loading" its US distributors by 450,000 cases in each of FY 2013 and FY 2014. That plan was based on an assumed depletion rate in the Americas of 5.5% or 5.7% in FY 2013 (and a*

compound annual growth rate of 5.8% across FY 2013 to FY 2017), compared to US market growth of 2-3%. For reasons pleaded and particularised in paragraph 81 below, TWE did not have a reasonable basis for that assumed growth or its plan to gradually de-load its US distributors over FY 2013- FY 2014 while meeting the group EBITs guidance to the market of \$220.7 million for FY 2013 and \$255.6 million for FY 2014.

- (e) further and in the alternative, TWE did not have a reasonable basis for representing that it would achieve its earnings guidance provided to the market on that day whilst reducing US distributor inventories by 300,000-500,000 cases in FY 2013 (**17 August 2012 Guidance Information**);

Particulars

- (i) *The Applicant refers to and repeats the matters pleaded and particularised in paragraphs 78, 79, 81, 82A, 82B and 82D below.*
- (ii) *As to TWE's "awareness" of the 17 August 2012 Guidance Information the Applicant:*
- A. repeats the matters pleaded and particularised in subparagraphs 39(aa) to 39(d) above and says that TWE's awareness of those matters informed its awareness of the 17 August 2012 Guidance Information;*
- B. says further that executive officers of TWE with responsibility for the Americas RBU and/or with responsibility for approving TWE's group budget forecasts and earnings guidance, including Ms LeDrew and Mr Dearie, knew or ought to have come into possession of the information particularised in relation to paragraph 81 below (including the relevant considerations referred by Mr Chadwick in paragraphs 77-169 of the Chadwick Report) because, in order to comply with TWE's continuous disclosure obligations, such persons were required to undertake all necessary and reasonable investigations into the state of TWE's business to satisfy themselves that TWE had reasonable grounds following those investigations for making public announcements concerning the financial prospects of the business; and*

C. says further that TWE was aware of the following matters referred to in the particulars to paragraph 81 below on the following bases:

1. TWE was aware of the fact that TWE's projected EBITs growth rate from FY 2012 to FY 2013 was understated due to non-recurring one off costs in FY 2013 because it was evident from Mr Fleming's presentation to the board in relation to the May 2012 5 Year Strategic Plan [TWE.001.009.2071 at 2275];
2. the fact that the May 2012 5 Year Strategic Plan and FY 2013 Operating Plan required TWE to increase depletions in the Americas by 5.5% or 5.7% in FY 2013 and 5.8% over 5 years on a compound annual growth rate (CAGR) despite projected market growth of 2-3% was evident from Ms LeDrew's presentation to the board in relation to the May 2012 5 Year Strategic Plan [TWE.001.009.2071 at 2230];
3. the following facts were evident from a presentation to the Wine Leadership Team (WLT), an executive committee comprised of Mr Dearie and his direct reports (including Ms LeDrew) on 3-4 May 2012 [TWE.200.002.2381]:
 - I. the Americas RBU had not achieved its projected level of volume (shipment) growth since 2006 when the achievement was made through a "shipment load" onto US distributors;
 - II. TWE had not had positive monthly depletions growth versus prior years since December 2009;
 - III. the Americas RBU had missed its depletions plan by 10% or greater in each of the previous three years from FY 2010 to FY 2012;
 - IV. the success of TWE's depletion growth plans was heavily tied to D&R and A&P, both of which were to be cut as part of the FY 2013 budget; and

4. *Mr Dearie and Ms LeDrew knew that the success of the FY 2013 Operating Plan for the Americas was closely tied to the successful launch of NPD products, the success of which was difficult to predict.*

IA 22 October 2012 Guidance Information

- 39A Further and in the alternative to the matters pleaded and particularised in paragraph 39 above, by no later than 22 October 2012 TWE was “aware” within the meaning of ASX Listing Rule 19.12, and it was the fact that TWE did not have a reasonable basis for representing that it would achieve its earnings guidance provided to the market on that day whilst reducing US distributor inventories by 300,000-500,000 cases in FY 2013 (**22 October 2012 Guidance Information**).

Particulars

The Applicant refers to and repeats the matters pleaded and particularised in paragraph 39(e) above and paragraphs 82F, 82G and 82I below.

II 28 February 2013 Material Information

40. Further and in the alternative to the matters pleaded and particularised in paragraphs 39 and 39A above, by no later than 28 February 2013 TWE was “aware” within the meaning of ASX Listing Rule 19.12, and it was the fact that:

(aa) TWE’s US distributors held approximately 2.35 million 9LE cases of TWE wine in excess of the Contractual Inventory Target;

(a) further, and in the alternative, TWE’s US distributors held approximately 6 weeks’ inventory in excess of the TWE Inventory Target;

(together and separately, the **28 February 2013 Excess Inventory Position**);

Particulars of 40(aa) and 40(a)

(i) *The Applicant repeats the matters pleaded and particularised in 39(a) and/or 39(aa) above.*

(ia) *The board pack for the meeting of the board of directors on 27 February 2013 contained the Finance Report for January 2013 which recorded that US distributor inventories had increased by 189k cases (or approximately*

5 days' supply) since the end of FY 2012 [TWE.001.009.3685 at 3719] which when added to the 17 August 2012 excess inventory of approximately 2.16 million 9LE, meant the total excess as at 28 February 2013 was approximately 2.35 million 9LE cases of wine.

(ii) [deleted]

- (b) further, and in the alternative, US distributor inventories included significant amounts of aged and obsolete stock and/or stock that was approaching expiry or obsolescence **(28 February 2013 Aged Inventory Position)**;

Particulars

(i) The Applicant repeats the matters pleaded and particularised in paragraphs 18(b), 18(c), 18(f), 21(c), 23(d), 39(b), 40(a) and 40(aa) above.

(ia) In each year from FY 2009 to FY 2013, commercial wines (which were generally made to be consumed up to 24 months after production) exceeded 85% of TWE's wine sale volumes in the US.

(ii) Further and in the alternative to (i) and (ia):

A. In order to comply with its continuous disclosure obligations, TWE was required to have appropriate reporting and management communication systems which were adequate to inform it accurately as to the state of its business. In those circumstances TWE ought to have had reporting systems which allowed it to monitor US distributor inventories at an SKU level.

B. The Applicant repeats paragraph 40(b) of the Defence in which TWE says that, as at 28 February 2013, the level of aged and obsolete stock held by TWE's US distributors was not known or able to be accurately and reliably ascertained or assessed by TWE. Without accepting that admission, the Applicant says that, if that is true, TWE failed to have appropriate reporting and management communication systems which were adequate to inform it accurately as to the state of its business.

(iii) Had TWE monitored US distributor inventories at an SKU level prior to 28 February 2013, it would have discovered prior to that date that a

significant portion of US distributor inventories were comprised of commercial wines that had expired, were obsolete or were approaching expiry or obsolescence.

- (iv) Further and in the alternative to (i) to (iii) above, TWE repeats particular (iv) subjoined to 39(b) above and says that TWE ought to have commenced investigations as to the composition of its US distributor inventories at an SKU level prior to the commencement of the Relevant Period (for the reasons stated in that particular). Had TWE done so, TWE would have discovered prior to 28 February 2013 that a material portion of US distributor inventories were commercial wines that had expired, were obsolete or were approaching expiry or obsolescence.*
- (c) further, and in the alternative, it was likely that one or more of its Key US Distributors would, in FY 2013 and/or FY 2014, reduce their inventory requirements for TWE wines to contractual minimum inventory levels;

(28 February 2013 Inventory Target Risk);

Particulars

- (i) The Applicant repeats the matters pleaded and particularised in relation to subparagraph 39(c) above in relation to the 17 August 2012 Inventory Target Risk.*
- (ii) By 28 February 2013 TWE knew that the 17 August 2012 Inventory Target Risk had been augmented due to the additional load of inventory on distributors in the US (particularly SWS) in H1 2013, as this increased the risk that those distributors would seek to reduce their inventory load after the expiry of the profit guarantee provisions of the 2010 US Distribution Agreements.*
- (iii) Further and in the alternative, on 19 October 2012, Ms LeDrew received an email sent on behalf of Mr Chaplin and Mr Vassar of SWS advising that SWS planned to open a new central warehouse in Tracey, Northern California, to be referred to as the “Southern Supply Centre”. The email attached a slide deck entitled “Southern Wine and Spirits of America Inc – Vision for our Supply Chain Future – Summary Overview 2012” [TWE.001.061.4299/TWE.001.061.4300]. The email stated (inter alia) as*

follows: “[the] Southern Supply Centre (SSC) approach - would establish a differentiated pathway for low versus high-velocity products. Our vision would be that high velocity products ship direct to our state warehouses (as they do today) and slower-expected-velocity products ship direct to our state warehouses via a regional Southern Supply Center (sic). This innovation of differentiating the treatment of products by their velocity through the supply chain makes possible a host of operational and commercial benefits to both of our businesses”. The email further stated that a formal briefing would later be provided to TWE, and that Mr Vasser and Mr Chaplin would be available to answer any questions about the contents of the email and the slide deck until that briefing occurred. The slide deck referred to SWS continuing to “invest and optimise [its] supply chain operations” and “significant benefits to be achieved” by adopting “leading distribution practices outside the beverage alcohol industry”. It also contained a diagrammatic representation of its proposed “differentiated inbound supply chain”. One of the stated benefits of the differentiated supply chain was “lower response time to deploy goods across the country”.

- (iii.a) On 25 October 2012 Ms LeDrew forwarded the 19 October 2012 email and its attached memorandum to Alejandro Escalante (Vice President, Commercial Finance, TWE Americas Regional Business Unit (Americas RBU)), Victoria Snyder (Vice President, Commercial Strategy, Americas RBU) and Christopher Michalik (Vice President, Supply Planning and IBP, TWE Global Supply Business Unit).*
- (iii.b) If, as stated in the 15 July 2013 Conference Call and in the 15 July 2013 Announcement, one of the reasons for the excess US inventories was “improved distributor logistics and warehousing” (which is not admitted), it was reasonable for Ms LeDrew or any of the persons referred to in (iii.a) above to have inferred from the 19 October 2012 email, its attached memorandum and/or SWS’s email of 2 April 2012 in which it expressed its desire to return to “contractual inventory levels” (see particular 39(c)(xii)), that SWS would reduce its internal TWE inventory targets, particularly in relation to “slower-expected-velocity products”. Moreover, Ms LeDrew or (in the alternative) one or more of the persons referred to in (iii.a) ought reasonably to have made enquiries of Mr Vasser or Mr*

Chaplin in order to obtain further details as to the benefits to be achieved by the proposed differentiated inbound supply chain referred to in the memorandum (which included reduced SWS inventory holdings of TWE products).

- (d) further, and in the alternative, there was a material risk (individually or in any combination, the **28 February 2013 Inventory Impact Risk**):
 - (i) that TWE would have to provision for or outlay significant discount and rebate payments to US distributors to reduce excess inventories in FY 2013; and/or
 - (ii) that TWE would incur a significant material expense or provision in order to destroy old and obsolete stock held by US distributors in FY 2013; and/or
 - (ii.a) that, in FY 2013, TWE would have to provision for a write-down of the net realisable value of its own excess bulk and finished wine inventories and onerous grape contracts as a result of reduced shipments to the US; and/or
 - (iii) that excess US distributor inventories would affect materially its future profitability.

Particulars

- (i) *The Applicant repeats the matters pleaded and particularised in relation to subparagraphs 39(d) above in relation to the 17 August 2012 Inventory Impact Risk.*
- (ii) *The Applicant further relies on the matters pleaded and particularised in paragraph 35(d) to 35(h) and sub-paragraphs 40(aa), 40(a), 40(b) and 40(c) above and says that, by virtue of those further matters, by 28 February 2013 TWE knew that the 17 August 2012 Inventory Impact Risk had been augmented in circumstances in which:*
 - A. in December 2012, in order to meet its EBITs forecast announced to the market as pleaded and particularised in paragraphs 58(a), 61(b)(i), 62 and 63 below, requested, encouraged and/or applied*

commercial pressure on SWS to purchase an additional 250,000 cases of wine; and

- B. in H1 2013 encouraged SWS and other Key US Distributors (some or all of whom were already overstocked) to accept additional shipments by offering extended payment terms;*
- C. sales to US distributors had exceeded US distributor depletions in H1 2013 by 415,000 cases and US distributor inventories had increased to 145 'days on hand' (based on the average daily depletion volume or 'value of a day' for H1 2013) (75 days in excess of the Contractual Inventory Target);*
- D. on 15 January 2013 Rik De Lange (Director – Supply Finance Americas) responded to an email from Sam Pafumi (Global Director, Supply Finance) sent to him and copied to Michael Kluczko, Michael Alter, Michael Bolch and Christopher Michalik entitled "Re Business Unit challenges to be faced in 2H13" [TWE.001.051.3389] (De Lange email) in terms including the following:*

"1. Distributor inventory levels

I've heard (but I am not officially supposed to know this) that in H1 we have loaded the trade with 0.4m 9LE [cases] when had budgeted (sic) to de-load by 450k 9LE. If they want to stick to that plan it will be 850k 9LE less shipments in H2 and this is if depletions get back on track. I heard (same comment as above) that YTD we are -2% and Dec was -11%. The budget called for a FY depletions growth of 5%.....

This is a massive (nuclear) time bomb. The roll on impact of this is incredible. At some point in time (F13, F14?) this inventory has to come out of the trade. It will mean lower sales and lower margin but also lower productions and lower intake...this will mainly be commercial and some masstige product...";

- E. Mr Pafumi subsequently forwarded the De Lange email to Stuart McNab (Chief Supply Officer - Global Wine Production), who was*

a member of the WLT. The WLT met 3 days after the email (on 18 January 2013) and the De Lange email was in response to a request from Mr Dearie (conveyed at the start of the email chain by Pafumi) for each business unit to provide comments concerning challenges faced in F13 “for Friday’s WLT”. Comments from the De Lange email were included in the WLT deck for that day and it may be inferred that the contents of the email were discussed at that meeting. Ms LeDrew, Mr McNab, Mr Dearie and each of the members of the WLT were ‘executive officers’ of TWE within the meaning of Rule 19.12 of the Listing Rules (as it was prior to 30 April 2013) and ‘officers’ of TWE within the meaning of Rule 19.12 of the Listing Rules (as it was after 1 May 2013) such that their knowledge of the contents of Mr De Lange’s email is to be attributed to TWE;

F. Further and in the alternative, Mr De Lange was aware of the potential financial implications of the US excess inventory problems by no later than 15 January 2013. Either Mr De Lange was an ‘executive officer’ of TWE within the meaning of ASX Listing Rule 19.12 as at 15 January 2013 in which case Mr De Lange’s awareness of the 28 February 2013 Inventory Impact Risk at that time as evidenced by his email is to be attributed to TWE, or Mr De Lange’s email demonstrates that, by no later than 15 January 2013, the 28 February 2013 Inventory Impact Risk was information that the executive officers of TWE were, or ought reasonably to have come into the possession of by 15 January 2013 or by no later than 28 February 2013.

(iii) Further and in the alternative, on 27 February 2013, the January 2013 Finance Report was tabled at a meeting of the board of directors on that date [TWE.001.009.3685 at 3712]. That document revealed that US distributors had been loaded with 189,000 cases of excess inventory in the financial year to date (FY 2013) against an assumed deload (in the May 2012 5 Year Strategic Plan and FY 2013 Operating Plan) of 450,000 cases [TWE.001.009.3685 at 3719].

(e) further and in the alternative, TWE did not have a reasonable basis for representing that it would achieve its earnings guidance provided to the

market on that day whilst matching shipments with depletions in FY 2013 (**28 February 2013 Guidance Information**).

Particulars

- (i) *The Applicant refers to and repeats the matters pleaded and particularised in paragraph 39(e) above and paragraphs 82K, 82L and 82N below.*
- (ii) *Further and in the alternative, as to TWE's 'awareness' that it did not have a reasonable basis for representing that it would achieve its earnings guidance provided on 28 February 2013, the plaintiff refers to an email from Mr Jason Smith (TWE's then Group Commercial Finance Director) to the members of the WLT (including Mr Fleming and Mr Dearie) dated 17 January 2013 titled "Quality of 1H13 Earnings" (TWE.001.027.1015) and the attachment to that email (TWE.001.027.1016). Those documents demonstrate that Mr Smith and each of the recipients of that email were aware: (i) of a number of accounting "adjustments" which had been made in TWE's accounts in order for it to achieve its reported H1 2013 EBITs result; (ii) of the fact that a significant amount of those adjustments had been "borrowed" from the H2 2013 EBITs result; and (iii) that, in the absence of those adjustments, TWE's H1 2013 group EBITs result would have been \$22.8 million rather than its reported H1 2013 group EBITs result of \$73.4 million.*

III April 2013 Material Information

40A Further and in the alternative to the matters pleaded and particularised in paragraphs 39, 39A and 40 above, by no later than 24 April 2013, or in the alternative 26 April 2013, TWE was "aware" within the meaning of ASX Listing Rule 19.12, and it was the fact that:

- (a) TWE's US distributors held excess inventory of approximately 2.5 million 9LE cases of TWE wine (**April 2013 Excess Inventory Position**);
- (b) further, and in the alternative, US distributor inventories included significant amounts of aged and obsolete stock and/or stock that was approaching expiry or obsolescence (**April 2013 Aged Inventory Position**);
- (c) further, and in the alternative, it was likely that one or more of its Key US Distributors would, in FY 2013 and/or FY 2014, reduce their inventory requirements for TWE wines to contractual minimum inventory levels (**April**

2013 Inventory Target Risk)'; and

- (d) further, and in the alternative, there was a material risk (individually or in any combination), the **April 2013 Inventory Impact Risk**):
- (i). that TWE would have to provision for or outlay significant discount and rebate payments to US distributors to reduce excess inventories in FY 2013; and/or
 - (ii). that TWE would incur a significant material expense or provision in order to destroy old and obsolete stock held by US distributors in FY 2013; and/or
 - (iii). that, in FY 2013, TWE would have to provision for a write-down of the net realisable value of its own excess bulk and finished wine inventories and onerous grape contracts as a result of reduced shipments to the US; and/or
 - (iv). that excess US distributor inventories would affect materially its future profitability.

Particulars of 40A(a)-(d)

- (i) *The Applicant repeats the matters pleaded and particularised in paragraphs 39 and 40 above (and their subparagraphs).*
- (ii) *Further, on 24 April 2013 Mr Picetti emailed to Ms LeDrew and others a slide deck entitled, “America’s Inventory Risk” in which TWE stated that US distributors were carrying 2.5 million cases of excess inventory based on an “ideal target” of 72 days and that distributor inventory consisted of 0.9 million cases of outdated and aged wine which it needed to destroy and 1.6 million cases of other excess inventory. The slide also contained an estimate of potential bulk wine and finished goods risk [TWE.001.037.9467/ TWE.001.037.9468]. Ms LeDrew spoke to the “Americas Inventory Risk” slide deck at a “formal review” meeting with Mr Dearie, Mr McNab, Mr Ford, Mr Snyder and Mr Escalante held in Napa, California on 26 April 2013 (AEST): Affidavit of David Dearie dated 18 February 2016 at [359] –*

G. TWE'S CONTINUOUS DISCLOSURE CONTRAVENTIONS

I 17 August 2012 Material Information

41. By reason of the matters pleaded and particularised in section F above, by 17 August 2012 TWE was "aware" within the meaning of ASX Listing Rule 19.12 of (individually or in any combination):

- (a) the 17 August 2012 Excess Inventory Position ([39(a) and/or 39(aa)]);
- (b) the 17 August 2012 Aged Inventory Position ([39(b)]);
- (c) the 17 August 2012 Inventory Target Risk ([39(c)]);
- (d) the 17 August 2012 Inventory Impact Risk ([39(d)]).
- (e) the 17 August 2012 Guidance Information ([39(e)]).

(individually or in any combination, the **17 August 2012 Material Information**).

42. The 17 August 2012 Material Information (individually or in any combination) was at all times during the Relevant Period information concerning TWE:

- (a) that was not generally available within the meaning of section 676 of the Corporations Act;
- (b) which affected the assessment of the performance of TWE and the likely future performance of TWE;
- (c) that was material to the assessment of the value of TWE and the appropriate price for TWE Securities;
- (d) that a reasonable person would expect to have a material effect on the price or value of TWE Securities within the meaning of ASX listing Rule 3.1 and section 677 of the Corporations Act;
- (e) that would be likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of TWE Securities; and

- (f) that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of TWE Securities.
43. Further and in the alternative to the matters pleaded in paragraph 42 above:
- (a) on 17 August 2012 TWE published and lodged with the ASX the 17 August 2012 Preliminary Financial Report pursuant to Listing Rule 4.3A;
 - (b) the 17 August 2012 Preliminary Financial Report did not contain the 17 August 2012 Material Information (or any of it);
 - (c) the 17 August 2012 Material Information (individually or in any combination) constituted circumstances which were likely to affect materially the results or other information contained in the 17 August 2012 Preliminary Financial Report.
44. By reason of the matters pleaded in paragraphs 42 and 43 above, on and from 17 August 2012, TWE became obliged pursuant to Listing Rule 3.1, and/or Listing Rule 4.3D to tell the ASX of (individually or in any combination):
- (a) the 17 August 2012 Excess Inventory Position ([39(a) and/or 39(aa)]);
 - (b) the 17 August 2012 Aged Inventory Position ([39(b)]);
 - (c) the 17 August 2012 Inventory Target Risk ([39(c)]);
 - (d) the 17 August 2012 Inventory Impact Risk ([39(d)]);
 - (e) the 17 August 2012 Guidance Information ([39(e)]).
45. TWE did not tell the ASX the 17 August 2012 Material Information on 17 August 2012.
46. TWE did not tell the ASX the 17 August 2012 Material Information during the Relevant Period.
47. By reason of the matters pleaded in paragraphs 41 to 46 above, TWE contravened section 674(2) of the Corporations Act by not telling the ASX on 17 August 2012 of (individually or in any combination):
- (a) the 17 August 2012 Excess Inventory Position ([39(a) and/or 39(aa)]) (**First 17 August 2012 Disclosure Contravention**);

- (b) the 17 August 2012 Aged Inventory Position ([39(b)]) (**Second 17 August 2012 Disclosure Contravention**);
- (c) the 17 August 2012 Inventory Target Risk ([39(c)]) (**Third 17 August 2012 Disclosure Contravention**);
- (d) the 17 August 2012 Inventory Impact Risk ([39(d)]) (**Fourth 17 August 2012 Disclosure Contravention**);
- (e) the 17 August 2012 Guidance Information ([39(e)]) (**Fifth 17 August 2012 Disclosure Contravention**).

48. The contraventions pleaded in paragraph 47 above were continuing contraventions:

- (a) in the case of the contraventions referred to in paragraphs 47(a) to 47(d) above, until 28 February 2013; and
- (b) in the case of the contravention referred to in paragraph 47(e), until 22 October 2012.

IA 22 October 2012 Guidance Information

48A By reason of the matters pleaded and particularised in section F above, by 22 October 2012 TWE was “aware” within the meaning of ASX Listing Rule 19.12 of the 22 October 2012 Guidance Information ([39A]) .

48B The 22 October 2012 Guidance Information was from 22 October 2012 to the end of the Relevant Period information concerning TWE:

- (a) that was not generally available within the meaning of section 676 of the Corporations Act;
- (b) which affected the assessment of the performance of TWE and the likely future performance of TWE;
- (c) that was material to the assessment of the value of TWE and the appropriate price for TWE Securities;
- (d) that a reasonable person would expect to have a material effect on the price or value of TWE Securities within the meaning of ASX listing Rule 3.1 and section 677 of the Corporations Act;

- (e) that would be likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of TWE Securities; and
- (f) that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of TWE Securities.

48C By reason of the matters pleaded in paragraph 48B above, on and from 22 October 2012, TWE became obliged pursuant to Listing Rule 3.1 to tell the ASX of the 22 October 2012 Guidance Information ([39A]).

48D TWE did not tell the ASX the 22 October 2012 Guidance Information on 22 October 2012.

48E TWE did not tell the ASX the 22 October Guidance Information during the Relevant Period.

48F By reason of the matters pleaded in paragraphs 48A to 48E above, TWE contravened section 674(2) of the Corporations Act by not telling the ASX on 22 October 2012 of the 22 October 2012 Guidance Information (**22 October 2012 Guidance Information Contravention**).

48G The contravention pleaded in paragraph 48F above was a continuing contravention from 22 October 2012 to 28 February 2013.

II 28 February 2013 Material Information

49. Further and in the alternative to the matters pleaded and particularised in paragraphs 41 and 48A above, by 28 February 2013, TWE became “aware” within the meaning of ASX Listing Rule 19.12 of(individually or in any combination):

- (a) the 28 February 2013 Excess Inventory Position ([40(aa) and/or 40(a)]);
- (b) the 28 February 2013 Aged Inventory Position ([40(b)]);
- (c) the 28 February 2013 Inventory Target Risk ([40(c)]);
- (d) the 28 February 2013 Inventory Impact Risk ([40(d)]);
- (e) the 28 February 2013 Guidance Information ([40(e)],

(individually or in any combination, the **28 February 2013 Material Information**).

50. The 28 February 2013 Material Information (individually or in any combination) was at all times during the period from 28 February 2013 to the end of the Relevant Period (inclusive) information concerning TWE:
- (a) that was not generally available within the meaning of section 676 of the Corporations Act;
 - (b) which affected the assessment of the performance of TWE and the likely future performance of TWE;
 - (c) that was material to the assessment of the value of TWE and the appropriate price for TWE Securities;
 - (d) that a reasonable person would expect to have a material effect on the price or value of TWE Securities within the meaning of ASX Listing Rule 3.1 and section 677 of the Corporations Act;
 - (e) that would be likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of TWE Securities; and
 - (f) that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of TWE Securities.
51. Further and in the alternative to the matters pleaded in paragraph 44 and 48C above, on and from 28 February 2013, TWE became obliged pursuant to Listing Rule 3.1 to tell the ASX of each of (individually or in any combination):
- (a) the 28 February 2013 Excess Inventory Position ([40(aa) and/or 40(a)]);
 - (b) the 28 February 2013 Aged Inventory Position ([40(b)]);
 - (c) the 28 February 2013 Inventory Target Risk ([40(c)]);
 - (d) the 28 February 2013 Inventory Impact Risk ([40(d)]); and
 - (e) 28 February 2013 Guidance Information ([40(e)]).
52. TWE did not tell the ASX the 28 February 2013 Material Information on 28 February 2013.
53. TWE did not tell the ASX the 28 February 2013 Material Information in the period from 28 February 2013 to the end of the Relevant Period (inclusive).

54. Further and in the alternative to the matters pleaded in paragraph 47 above, by reason of the matters pleaded in paragraphs 49 to 53 above, TWE contravened section 674(2) of the Corporations Act by not telling the ASX on 28 February 2013 of (individually or in any combination):
- (a) the 28 February 2013 Excess Inventory Position ([40(aa) and/or 40(a)]) (**First 28 February 2013 Disclosure Contravention**);
 - (b) the 28 February 2013 Aged Inventory Position ([40(b)]) (**Second 28 February 2013 Disclosure Contravention**);
 - (c) the 28 February 2013 Inventory Target Risk ([40(c)]) (**Third 28 February 2013 Disclosure Contravention**);
 - (d) the 28 February 2013 Inventory Impact Risk ([40(d)]) (**Fourth 28 February 2013 Disclosure Contravention**); and
 - (e) the 28 February 2013 Guidance Information ([40(e)]) (Fifth 28 February 2013 Disclosure Contravention).
55. The contraventions pleaded in paragraph 54 above were continuing contraventions and continued until the end of the Relevant Period.

III April 2013 Material Information

- 55A. Further and in the alternative to the matters pleaded and particularised in paragraphs 41, 48A and 49 above, by 24 April 2013, or in the alternative 26 April 2013, TWE became “aware” within the meaning of ASX Listing Rule 19.12 of each of:
- (a) the April 2013 Excess Inventory Position ([40A(a)]);
 - (b) the April 2013 Aged Inventory Position ([40A(b)]);
 - (c) the April 2013 Inventory Target Risk ([40A(c)]); and
 - (d) the April 2013 Inventory Impact Risk ([40A(d)]);
- (individually or in any combination, the **April 2013 Material Information**).
- 55B. The April 2013 Material Information (individually or in any combination) was at all times during the period from 24 April 2013, or in the alternative 26 April 2013, to the end of the Relevant Period (inclusive) information concerning TWE:

- (a) that was not generally available within the meaning of section 676 of the Corporations Act;
- (b) which affected the assessment of the performance of TWE and the likely future performance of TWE;
- (c) that was material to the assessment of the value of TWE and the appropriate price for TWE Securities;
- (d) that a reasonable person would expect to have a material effect on the price or value of TWE Securities within the meaning of ASX Listing Rule 3.1 and section 677 of the Corporations Act;
- (e) that would be likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of TWE Securities; and
- (f) that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of TWE Securities.

55C. Further and in the alternative to the matters pleaded in paragraphs 44, 48C and 51 above, on and from 24 April 2013, or in the alternative 26 April 2013, TWE became obliged pursuant to Listing Rule 3.1 to tell the ASX of each of (individually or in any combination):

- (a) the April 2013 Excess Inventory Position ([40A(a)]);
- (b) the April 2013 Aged Inventory Position ([40A(b)]);
- (c) the April 2013 Inventory Target Risk ([40A(c)]); and
- (d) the April 2013 Inventory Impact Risk ([40A(d)]).

55D. TWE did not tell the ASX the April 2013 Material Information on 24 or 26 April 2013.

55E. TWE did not tell the ASX the April 2013 Material Information in the period from 24 April 2013 to the end of the Relevant Period (inclusive).

55F. Further and in the alternative to the matters pleaded in paragraphs 47, 48F and 54 above, by reason of the matters pleaded in paragraphs 55A to 55E above, TWE contravened section 674(2) of the Corporations Act by not telling the ASX on 24 April 2013, or in the alternative 26 April 2013, of (individually or in any combination):

- (a) the April 2013 Excess Inventory Position ([40A(a)]) (**First April 2013 Disclosure Contravention**);
- (b) the April 2013 Aged Inventory Position ([40A(b)]) (**Second April 2013 Disclosure Contravention**);
- (c) the April 2013 Inventory Target Risk ([40A(c)]) (**Third April 2013 Disclosure Contravention**);
- (d) the April 2013 Inventory Impact Risk ([40A(d)]) (**Fourth April 2013 Disclosure Contravention**).

55G. The contraventions pleaded in paragraph 55F above were continuing contraventions and continued until the end of the Relevant Period.

H. TWE ANNOUNCEMENTS, PUBLICATIONS AND REPRESENTATIONS: 2009 – 15 JULY 2013

I Pre August 2012 Statements

56. Prior to the Relevant Period, Fosters and TWE made the following statements in documents lodged and published with the ASX (individually or in any combination, the **Pre August 2012 Statements**):

- (a) on 14 September 2009, the 2009 US Inventory Review Statements (pleaded and particularised at paragraph 30 above);
- (b) on 24 August 2010, that the potential benefits of the proposed demerger of its wine business would include increased transparency allowing investors to more appropriately value each business (Fosters and TWE) over time (**Demerger Transparency Statement**);

Particulars

Fosters 2010 Financial Results, page 6 [BJO.003.001.0804 at 0812].

- (c) in the TWE 2011 Annual Report:
 - (i) that TWE was committed to providing timely, open and accurate information to all its stakeholders including shareholders, regulators and the investment community;

- (ii) that TWE had policies in place setting out procedures to ensure compliance with TWE's continuous disclosure obligations and proposed to hold periodic briefing sessions for directors and members of the Wine Leadership Team with a particular focus on how the continuous disclosure obligations apply to TWE;

(together, the **2011 Continuous Disclosure Statement**).

Particulars

TWE 2011 Annual Report, page 19 [TWE.001.001.0853 at 0874].

II Relevant Period Statements

17 August 2012

57. During the Relevant Period, TWE made the following public announcements (**Relevant Period Announcements**):

- (a) on 17 August 2012 (collectively, the **17 August 2012 Announcements**):
 - (i) the 17 August 2012 Annual Results Announcement;
 - (ii) the 17 August 2012 Annual Results Presentation;
 - (iii) the 17 August 2012 Preliminary Financial Report;
 - (iv) the 17 August 2012 Earnings Call;
- (b) on 19 September 2012, the 19 September 2012 Annual Report;
- (c) on 22 October 2012:
 - (i) an ASX Announcement "TWE expects mid-single digit growth in fiscal 2013 ahead of above average EBITs growth in fiscal 2014" (**22 October 2012 ASX Announcement**);
 - (ii) the 22 October 2012 AGM Address;
- (d) on 28 February 2013 (collectively, the **28 February 2013 Announcements**):
 - (i) Appendix 4D Financial Results for the half year ended 31 December 2012 (**H1 2013 Financial Report**);

(ii) an ASX Announcement “TWE 2013 Interim Results – TWE Remains Positive on Growth Prospects” (**28 February 2013 Interim Results Announcement**);

(iii) 28 February 2013 Earnings Call.

58. In the 17 August 2012 Annual Results Announcement TWE stated that:

- (a) “...fiscal 2013 presents some challenges for our business, and as a result we expect constant currency earnings growth to be below the average achieved for the last two years, before rebounding to above average growth rates in fiscal 2014”; and

Particulars

17 August 2012 Results Announcement, page 4 [TWE.001.001.1726 at 1729].

- (b) “...in the US we are working with our distributor partners to reduce inventory levels”.

Particulars

17 August 2012 Results Announcement, page 4 [TWE.001.001.1726 at 1729].

59. During the 17 August 2012 Earnings Call, TWE made the following statements:

- (a) “On 4 April this year, we agreed to take over (sic) delivery of IT systems from SAB Miller in exchange for payment of \$31.5 million. This was done to take control of our own destiny and to deliver an IT system that was more fit for purpose for our wine business....we’ve decided that the systems as designed are not appropriate for our business in the Americas and EMEA and that, in fact, our existing systems in those areas are suitable for the foreseeable future”;

Particulars

17 August 2012 Earnings Call transcript, page 3, Mark Fleming.

- (b) “also impacting fiscal 2013 ... are our plans to ship less wine in the USA as we work to reduce our inventory days towards the middle of our acceptable range”;

Particulars

17 August 2012 Earnings Call transcript, page 9, Mr Dearie [BJO.003.001.2010 at 2018].

- (c) "...our inventory in the US hasn't really changed much in terms of inventory days holding. So our inventory has been relatively flat";
- (d) "as we go through vintage change and we go through reinvigorating a lot of our products, it (sic) ideally you want the inventory levels to be down a little bit, so you get them onto the shelf quicker. And a brand such as Rosemount that I mentioned, where the whole flavour profile is a younger, lighter, fresher style wines (sic), we want to make sure they're moving through the inventory a little quicker";
- (e) [Following directly after the previous statement]: "...So we will look to reduce [the US inventories] and we're probably talking in the range of 300,000 to 500,000 cases in the US over the course of the year just to bring it back into that more middle range";
- (f) "we're not overly concerned with the [US] inventory. It's just as we say, when we put that emphasis on the new packaging and the new vintages coming through, they want to make sure they reach the retailer shelf a little quicker";

Particulars of 59(c) to 59(f)

17 August 2012 Earnings Call transcript, page 12, Mr Dearie [BJO.003.001.2010 at 2021].

- (g) in response to the question concerning the fact that 17% of TWE's consolidated non-current inventory (i.e. inventory not available for sale in the ensuing 12 month period because it is still maturing) was commercial wine:

"A lot of that is, you know, red wines - even what we call commercial end red wines. We still mature a lot of them for a year. So its predominantly reds. We are a red - a lot of our brands are very red wine focused. And that's really the answer. It's to have growth in... future growth in the following year".

Particulars

17 August 2012 Earnings Call transcript, page 18, Mr Dearie [BJO.003.001.2010 at 2027].

- (h) in response to a question as to whether the proportion of commercial wine in TWE's non-current inventory was likely to result in future write-downs:

“No we're in good balance at the moment and have no issues in terms of that at the moment”.

Particulars

17 August 2012 Earnings Call transcript, page 18, Mr Fleming [BJO.003.001.2010 at 2027].

60. [deleted]

19 September 2012

61. In the 19 September 2012 Annual Report TWE:

- (a) [deleted];
- (b) made the following statements:
- (i) “we expect constant currency earnings growth in FY 13 to be below the average for the last two years, before rebounding to above average growth rates in FY 14”;

Particulars

19 September 2012 Annual Report, page 8 [BJO.003.001.2109 at 2119].

- (ii) “following a review of the [company's IT] systems, a decision has been taken to discontinue with the building and rolling out of the new IT systems to our Americas and EMEA regions”;

Particulars

19 September 2012 Annual Report, page 19 [BJO.003.001.2109 at 2130].

- (iii) “TWE is committed to providing timely, open and accurate information to all its stakeholders including shareholders, regulators and the investment community.

To this end, the Board has approved a Disclosure Policy that sets out both the procedures in place to ensure compliance with its regulatory obligations, including obligations under the ASX continuous disclosure regime and the expectations on all employees of the Company, including directors and senior executives. TWE also proposes to hold periodic briefing sessions for directors and members of the Wine Leadership Team with a particular focus on how the continuous disclosure obligations apply to TWE, including consideration of materiality guidelines relevant to the Company” (**2012 Continuous Disclosure Statement**),

Particulars

19 September 2012 Annual Report, page 41 [BJO.003.001.2109 at 2152].

- (iv) [deleted]

22 October 2012

62. In the 22 October 2012 ASX Announcement, TWE stated:

“We re-iterate our positive outlook for fiscal 2014, underpinned by the iconic wines crafted from an exceptional 2012 vintage and a strong increase in non-current inventory”.

63. During the 22 October 2012 AGM Address, TWE stated:

“Notwithstanding the slower start to the current financial year, we expect constant currency EBITs growth for the full year to be in the mid-single digit range before rebounding to a growth rate of greater than the 15.8% average of the past two years as we begin to see the benefits of an exceptional V12 vintage.”

Particulars

22 October 2012 AGM Address (Mr Dearie), penultimate page [BJO.003.001.2256 at 2262].

28 February 2013

64. In the 28 February 2013 Interim Results Announcement, TWE stated::

- (a) “we remain committed to the overall guidance of mid-single digit constant currency EBITs growth in fiscal 2013”; and
- (b) “Shipments are now expected to match depletions in fiscal 2013”.

Particulars

28 February 2013 Interim Results Announcement, pages 4 and 8 [TWE.001.001.1358 at 1361 and 1365]..

65. During the 28 February 2013 Earnings Call::

- (a) TWE stated “[w]hat we’re now seeing is second half of shipments will equal -- sorry, for the full year our shipments will equal depletions. In the second half we will deplete more than we ship. It really is a question now in the second half of how good that activity is. We know we have activity in place. It now depends on the consumer off-take. But at the moment we’re saying shipment in depletions for the year will be in line and therefore will continue to be at the high end of our inventory levels in the US”; and

Particulars

28 February 2013 Earnings Call transcript, page 11, Mr Dearie, Chief Executive Officer [TWE.001.003.0634 at 0644].

- (b) in response to a question about projected EBITs growth in FY 2014, TWE stated “I think we remain confident about the guidance we provided for 2014, which was that we would increase above the average. We continue to be confident.”

Particulars

28 February 2013 Earnings Call transcript, page 14, Mr Dearie, Chief Executive Officer [TWE.001.003.0634 at 0650].

I. MISLEADING OR DECEPTIVE CONDUCT

I US Inventory Representation Contravention

66. On 17 August 2012, TWE represented that US distributor inventory levels were not materially excessive (**US Inventory Representation**).

Particulars

- (i) *The representation was express and to be implied from TWE's public statements during 17 August 2012 Earnings Call pleaded and particularised in subparagraphs 59(b), 59(c), 59(d), 59(e), and 59(f) above.*
 - (ii) *Further and in the alternative, the representation is to be implied by silence from 17 August 2012 in circumstances in which TWE did not disclose that US distributor inventories were above the acceptable range and were materially excessive in circumstances in which:*
 - A. *TWE was subject to obligations imposed by Listing Rules 3.1 and 4.3A and section 674(2) of the Corporations Act;*
 - B. *TWE had not disclosed the 17 August 2012 Excess Inventory Position in the 17 August 2012 Preliminary Financial Report;*
 - C. *17 August 2012 Excess Inventory Position was information that was likely to materially affect the results or other information contained in the 17 August 2012 Preliminary Financial Report; and*
 - D. *by reason of the matters particularised in B. and C. above, TWE was obliged by Listing Rule 4.3D to disclose immediately the 17 August 2012 Excess Inventory Position to the ASX on becoming aware of it.*
67. The US Inventory Representation was a continuing representation throughout the Relevant Period.

68. By making the US Inventory Representation, TWE engaged in conduct:
- (a) in relation to financial products, within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
 - (b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or
 - (c) in trade or commerce, within the meaning of section 4 of:
 - (i) the *Australian Consumer Law (Victoria)* set out in Schedule 2 of the *Competition and Consumer Act 2010* as applicable pursuant to section 12 of the *Australian Consumer Law and Fair Trading Act 2012 (Vic)*; and/or
 - (ii) the *Australian Consumer Law (NSW)* set out in Schedule 2 of the *Competition and Consumer Act 2010* as applicable pursuant to section 28 of the *Fair Trading Act 1987 (NSW)*,
- (individually or together the **Australian Consumer Law**).
69. The US Inventory Representation was from 17 August 2012 to the end of the Relevant Period, misleading or deceptive, or likely to mislead or deceive.

Particulars

The US Inventory Representation was misleading or deceptive from 17 August 2012 by reason of the 17 August 2012 Excess Inventory Position, the 17 August 2012 Aged Inventory Position, the 17 August 2012 Inventory Target Risk and the 17 August 2012 Inventory Impact Risk as pleaded and particularised in subparagraphs 39(aa) to 39(d) above.

70. In the premises, by making the US Inventory Representation TWE engaged in conduct in contravention of:
- (a) section 1041H(1) of the Corporations Act;
 - (b) section 12DA(1) of the ASIC Act; and/or
 - (c) section 18 of the Australian Consumer Law,
- (US Inventory Representation Contravention).**

IA 2013 Inventory Impact Representation

70A Further and in the alternative to the matters pleaded and particularised in paragraphs 66 to 70 above, on 17 August 2012, TWE represented that it planned to reduce shipments to the US in order to reduce US distributor inventories by 300,000 to 500,000 cases of wine, but that the impact of that de-load would be confined to FY 2013 (**2013 Inventory Impact Representation**).

Particulars

The representation was express and to be implied from Mr Dearie's statements during the 17 August 2012 Earnings Call pleaded at 59(b), 59(e) and/or 65 above and/or TWE's statement in the 17 August Annual Results Announcement pleaded and particularised at paragraph 58(a), respectively as follows:

- (a) *"also impacting fiscal 2013 ... are our plans to ship less wine in the USA as we work to reduce our inventory days towards the middle of our acceptable range";*
- (b) *"...So we will look to reduce [the US inventories] and we're probably talking in the range of 300,000 to 500,000 cases in the US over the course of the year just to bring it back into that more middle range";*
- (c) *"I think we remain confident about the guidance we provided for 2014, which was that we would increase above the average. We continue to be confident."*
- (d) *"fiscal 2013 presents some challenges for our business, and as a result we expect constant currency earnings growth to be below the average achieved for the last two years, before rebounding to above average growth rates in fiscal 2014."*

70B The 2013 Inventory Impact Representation was a continuing representation until 28 February 2013.

70C By making the 2013 Inventory Impact Representation, TWE engaged in conduct:

- (a) in relation to financial products, within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;

- (b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or
- (c) in trade or commerce, within the meaning of section 4 of the Australian Consumer Law.

70D The 2013 Inventory Impact Representation was from 17 August 2012 to 28 February 2013, misleading or deceptive, or likely to mislead or deceive.

Particulars

- (a) *At the time the 2013 Inventory Impact Representation was made, TWE had plans to reduce its US distributor inventories by 450,000 cases in each of FY 2013 and FY 2014.*
- (b) *The Applicant refers to Ms LeDrew's presentation to the board of TWE which is part of the TWE board pack for the board meeting on 23-24 May 2012 [TWE.001.009.2071 at 2232].*

IB Flat US Inventory Representation

70E Further and in the alternative to the matters pleaded and particularised in paragraphs 66 to 70D above, on 17 August 2012, TWE represented that US distributor inventory levels had not materially changed:

- (a) during FY 2012;
- (b) further and in the alternative, since the demerger of TWE's wine business from Fosters,

(separately and together, the **Flat US Inventory Representation**).

Particulars

The representation was express and to be implied from Mr Dearie's statement during the 17 August 2012 Earnings Call (pleaded at subparagraph 59(c)) that "...our inventory in the US hasn't really changed much in terms of inventory days holding. So our inventory has been relatively flat" and further to be implied:

- (i) *as to (a), from the fact that the statement was made during a conference call concerning TWE's financial results for FY 2012 as reported in the 17 August 2012 Preliminary Financial Report; and/or*
- (ii) *as to (b), from the fact that TWE had not made any previous disclosures concerning its US inventories since the demerger.*

70F The Flat US Inventory Representation was a continuing representation throughout the Relevant Period.

70G By making the Flat US Inventory Representation, TWE engaged in conduct:

- (a) in relation to financial products, within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
- (b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or
- (c) in trade or commerce, within the meaning of section 4 of the Australian Consumer Law.

70H The Flat US Inventory Representation was from 17 August 2012 to the end of the Relevant Period, misleading or deceptive, or likely to mislead or deceive.

Particulars

- (a) *TWE's US distributor inventories had not remained flat between any two financial years from FY 2010 to FY 2013 but had significantly increased in each year, including in FY 2012.*
- (b) *The days' inventory held by TWE's US distributors at the beginning of each of FY 2010 - FY 2012 (based on the actual average daily depletion volume or 'value of a day' for the following year which was known by TWE at the commencement of the Relevant Period) and FY 2013 (based on a reasonable daily depletion volume or 'value of a day' forecast for FY 2013 which TWE ought to have been aware of at the start of the Relevant Period by reason of the matters set out in particular (ib) subjoined to paragraph 39(aa) and 39(a) above) are set out below:*

FY	Begin. Days
FY 2010	84
FY 2011	110
FY 2012	120
FY 2013	131

II US Inventory Statement Contravention

71. Further and in the alternative to the matters pleaded and particularised in paragraphs 66 to 70H above, by making the statements on 17 August 2012 pleaded and particularised in paragraphs 59(b), 59(c), 59(d), 59(e), and 59(f) (individually or in any combination) (**US Inventory Statements**) TWE engaged in conduct:

- (a) in relation to financial products, within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
- (b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or
- (c) in trade or commerce, within the meaning of section 4 of the Australian Consumer Law;
- (d) that, from 17 August 2012 to the end of the Relevant Period was misleading or deceptive or likely to mislead and deceive in contravention of:
 - (i) section 1041H(1) of the Corporations Act;
 - (ii) section 12DA(1) of the ASIC Act; and/or
 - (iii) section 18 of the Australian Consumer Law,

(US Inventory Statement Contravention).

Particulars

The Applicant repeats the particulars to paragraphs 69, 70D and 70H above.

III. Inventory Balance Representation Contravention

72. On 17 August 2012 TWE represented that:

- (a) there was no risk or an insignificant risk of a future write down to the value of TWE's own inventory despite non-current inventories comprising 17% commercial wines; and
- (b) non-current inventories were in good balance,

(Inventory Balance Representation).

Particulars

The representation was express and conveyed by TWE's public statements pleaded in subparagraphs 59(g) and 59(h) above.

- 73. The Inventory Balance Representation was a continuing representation throughout the Relevant Period.
- 74. In so far as the Inventory Balance Representation was a representation as to a future matter or future matters, the Applicant relies on:
 - (a) section 12BB(1) of the ASIC Act;
 - (b) section 769C of the Corporations Act; and/or
 - (c) section 4 of the Australian Consumer Law.
- 75. The Inventory Balance Representation, from 17 August 2012 to the end of the Relevant Period or alternatively, from 28 February 2013 to the end of the Relevant Period:
 - (a) in so far as it was a representation as to a present matter or present matters, was misleading or deceptive, or likely to mislead or deceive;
 - (b) in so far as it was a representation as to a future matter or future matters, was made without a reasonable basis.

Particulars

- (i) *As at 17 August 2012 and throughout the Relevant Period the Americas region was TWE's biggest sales market by volume and sales to that region made up approximately half of TWE's sales volumes.*

- (ii) *The prevalence of commercial grade wines in TWE's non-current inventory stock (i.e. inventory not expected to be sold in the ensuing 12 months) followed a sharp fall in demand for TWE's wines in the Americas (and, in particular in the US) in FY 2011. As wine production is planned several years in advance this sharp fall in demand from TWE's largest market segment would likely have resulted in substantial excess TWE inventories in the years immediately following.*
- (iii) *For every case that TWE did not deplete as planned there was generally up to another case in finished goods, at least one other as bulk wine in tank and part of another growing on TWE's vines or in committed grape contracts (see e.g. 22 August 2013 Results Presentation, slide 4 [BJO.003.001.2597 at 2601]). Accordingly, as a result of the 17 August 2012 and/or 28 February 2013 Excess Inventory Positions and the declining demand for TWE's commercial grade wines in the US as detailed in paragraphs 28, 29, 30, 31, 32, and 34 above there was likely to be a requirement to materially reduce shipments to the US in FY 2013 and/or FY 2014 in order to reduce US distributor inventory levels and align production with market demand which would create surpluses in TWE's own bulk wine and finished goods inventories.*
- (iv) *As a result of the reported further decline in demand for TWE wines in the US in H1 2013 pleaded in paragraph 35 above, the risk of a write down to the value of TWE's inventory was augmented by no later than 28 February 2013 (and TWE knew or ought to have been aware of that fact from that time).*
- (v) *As TWE's commercial grade wines were generally to be consumed within 24 months of production, in the above circumstances it was likely that a significant portion of commercial grade wines in TWE's non-current inventory would not be sold prior to the date of preferred consumption which would result in a significant write down to the value of TWE's non-current inventory.*
- (vi) *The Applicant repeats the matters pleaded and particularised in subparagraphs 39(d) and 40(d).*

76. In the premises, by making the Inventory Balance Representation TWE engaged in conduct in contravention of:

- (a) section 1041H(1) of the Corporations Act;
- (b) section 12DA(1) of the ASIC Act; and/or
- (c) section 18 of the Australian Consumer Law,

(Inventory Balance Representation Contravention).

IV Inventory Balance Statement Contravention

77. Further and in the alternative to the matters pleaded and particularised in paragraphs 72 to 76 above, by making the statements pleaded in subparagraphs 59(g) and 59(h) above (individually or in any combination) **(Inventory Balance Statements)**, TWE engaged in conduct:

- (a) in relation to financial products, within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
- (b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or
- (c) in trade or commerce, within the meaning of section 4 of the Australian Consumer Law;
- (d) that, from 17 August 2012 to the end of the Relevant Period or alternatively, from 28 February 2013 to the end of the Relevant Period, was misleading or deceptive, or likely to mislead or deceive, in contravention of:
 - (i) section 1041H(1) of the Corporations Act;
 - (ii) section 12DA(1) of the ASIC Act; and/or
 - (iii) section 18 of the Australian Consumer Law,

(Inventory Balance Statement Contravention).

Particulars

The Applicant repeats the particulars to paragraph 75 above.

V FY 2013-2014 Guidance Representations Contravention

78. On 17 August 2012, 19 September 2012, 22 October 2012 and 28 February 2013, TWE represented that:

- (a) it expected its constant currency EBITs growth rate to rebound to above the average growth rates of the previous two years (FY 2011 and FY 2012) in FY 2014 after below average growth or mid-single digit growth in FY 2013;

Particulars

The representation was express and conveyed by TWE's public statements made in:

- (i) the 17 August 2012 Annual Results Announcement ([58(a)])*
 - (ii) the 19 September 2012 Annual Report ([61(b)(i)]),*
 - (iii) 22 October 2012 ASX Announcement ([62]);*
 - (iv) 22 October AGM Address ([63]); and*
 - (v) 28 February 2013 Interim Results Presentation ([65]).*
- (b) it had reasonable grounds to expect below average or mid-single digit constant currency EBITs growth in FY 2013 followed by growth rates above the average of those achieved in FY 2011 and FY 2012 in FY2014,

(Individually or together, the **FY 2013-2014 Guidance Representations**).

Particulars

The representation in sub paragraph 78(b) was implied by reason of the fact that TWE published its expected EBITs growth in company documents released to the market by means of the ASX company announcements platform and TWE knew or ought to have known that investors and potential investors in its securities may rely upon the statements and forecasts in those documents in making decisions about whether to acquire or retain its securities.

79. The FY 2013-2014 Guidance Representations were continuing representations throughout the Relevant Period.

80. In so far as the FY 2013-2014 Guidance Representations were representations as to a future matter or future matters, the Applicant relies on:
- (a) section 12BB(1) of the ASIC Act;
 - (b) section 769C of the Corporations Act; and/or
 - (c) section 4 of the Australian Consumer Law.
81. The FY 2013-2014 Guidance Representations, throughout the Relevant Period, or alternatively, in the period from 28 February 2013 to the end of the Relevant Period (inclusive):
- (a) in so far as they were representations as to a present matter or present matters, were misleading or deceptive, or likely to mislead or deceive;
 - (b) in so far as they were representations as to future matters, were made without a reasonable basis.

Particulars

(i) As a result of:

- A. *the declining demand for TWE's wines in the US from FY 2010 as referred to in paragraphs 30, 31, 32, 34 and 35 above; and/or*
- B. *from 17 August 2012, the 17 August 2012 Excess Inventory Position, the 17 August 2012 Inventory Target Risk and the 17 August 2012 Inventory Impact Risk; and/or,*
- C. *from 28 February 2013, the 28 February 2013 Excess Inventory Position, the 28 February 2013 Inventory Target Risk and the 28 February 2013 Inventory Impact Risk;*

there was likely to be a requirement to reduce sales to US distributors in the future (and in particular in FY 2014) in order to reduce US distributor inventory levels and align production with market demand.

(ii) Further and in the alternative:

- A. mid single digit EBITs growth for TWE in FY 2013 would (if assumed to be 5%) equate to an EBITs result of \$220.7m (based on TWE's reported EBITs of \$210.2 million for FY 2012);*
- B. EBITs growth in excess of the previous two years' growth (FY 2011 and FY 2012) for TWE in FY 2014 would require it to achieve EBITs growth above 15.8% and EBITs in FY 2014 above \$255.6m;*
- C. the projected EBITs growth rates from FY 2012 to FY 2013 were understated due to non-recurring one off costs in FY 2013;*
- D. further and in the alternative to C., the Applicant repeats the matters pleaded and particularised in paragraphs 31A, 31B, 32(i) and 34(h) above and says that the EBITs growth rates for FY 2011 and FY 2012 on which the above forecasts were based were inflated by the shipments taken and payments to TWE by Key US Distributors pursuant to the profit guarantee provisions of the 2010 US Distribution Agreements and:*
- 1. did not reflect the true underlying demand for TWE's products in the US;*
 - 2. were unlikely to be repeated or improved upon after the profit guarantee provisions of the 2010 US Distribution Agreements ceased to operate (from the beginning of FY 2013); and*
 - 3. did not account for the likely de-load of inventory by Key US Distributors after the profit guarantee provisions ceased to operate at the beginning of FY 2013.*
- E. Further and in the alternative, the forecast EBITs growth rates for FY 2013 and FY 2014 were based on financial projections contained in TWE's May 2012 5 Year Strategic Plan and the FY 2013 Operating Plan which:*
- 1. required TWE to outperform the market in the US despite the fact that:*

- I. TWE's performance relative to its peers in the US had been declining at least since FY 2010 and the retail market in the US for Australian wines had been diminishing in that period;*
 - II. the Americas RBU had not achieved the projected level of volume (shipment) growth since 2006 when the achievement was made through a "shipment load" onto US distributors;*
- 2. required TWE to increase depletions in the Americas by 5.5% or 5.7% in FY 2013 and 5.8% over 5 years on a compound annual growth rate (CAGR) basis against the trend of its US distributor depletion rates since 2010:*
 - I. despite TWE reducing expenditure on discount and rebates (D&R) and advertising and promotion (A&P) in the Americas in FY 2013, when TWE's depletions in the Americas were highly reactive to promotional activity and competitive pricing and, accordingly, such spending was required to drive improved depletion rates;*
 - II. in circumstances in which:*
 - i. TWE had not had positive monthly depletions growth versus prior years since December 2009;*
 - ii. the Americas RBU had missed its depletions plan by 10% or greater in each of the previous three years from FY 2010 to FY 2012;*
 - iii. the projected turnaround in US depletions performance was heavily tied to the success of newly launched NPD and masstige products which were untested in the US market, and the success of which was difficult to predict;*
 - iv. many of TWE's new NPD products were late to the market (behind consumer trends) and, as a*

result, faced significant competition from more established products on launch;

v. the success of NPD was heavily tied to D&R and A&P, both of which were to be cut as part of the May 2012 5 Year Strategic Plan and the FY 2013 Operating Plan;

vi. TWE had a challenging product portfolio and position in the market in the US immediately prior to and during the Relevant Period;

3. required TWE's Americas RBU to achieve its FY 2013 EBITs target (\$81.7 million) and FY 2014 EBITs target (\$122.4 million) whilst simultaneously "de-loading" its US distributors by 450,000 cases in each of FY 2013 and FY 2014;

4. represented the high end of TWE's internal projections, without any discounting for risk; and

5. had not been subject to any or appropriate sensitivity analysis.

(ii.a) Further and in the alternative, the forecast EBITs growth rates for FY 2013 assumed at least \$6.6 million in costs of goods sold (COGS) savings which were unrealistic.

(ii.b) Further and in the alternative, in order to achieve its forecast EBITs for the Americas set out in the FY 2013 Operating Plan, TWE would have had to have loaded its US distributors by up to approximately a further 950,000 9LE cases in that year (rather than de-load those distributors by 300,000-500,000 cases as represented) if this was the only method it used to increase its EBITs.

(ii.c) In the premises of the matters particularised above, the Americas RBU could not reasonably be expected to achieve its FY 2013 and FY 2014 EBITs targets under the FY 2013 Operational Plan and the May 2012 5 Year Strategic Plan without further exacerbating excess US distributor inventories and the financial risks to the company associated with the excess inventory position.

(ii.d) *The Applicant refers to paragraphs 77-169 of the Chadwick Report.*

(iii) *[deleted]*

82. In the premises, by making the FY 2013-2014 Guidance Representations TWE engaged in conduct in contravention of:

- (a) section 1041H(1) of the Corporations Act;
- (b) section 12DA(1) of the ASIC Act; and/or
- (c) section 18 of the Australian Consumer Law,

(the **FY 2013-2014 Guidance Representations Contravention**)

VA First FY 2013 Guidance Representations Contravention

82A On 17 August 2012 and 19 September 2012, TWE represented that:

- (a) it expected to achieve constant currency EBITS growth in FY 2013 of below the average growth rates of the previous two years (FY 2011 and FY 2012) whilst reducing US distributor inventories by 300,000-500,000 cases in that year;

Particulars

The representation was express and conveyed by TWE's public statements made:

- (i) *by the 17 August 2012 Annual Results Announcement ([58(a)]);*
- (ii) *by the 19 September 2012 Annual Report ([61(b)(i)]);*
- (iii) *by Mr Dearie during the 17 August 2012 Earnings Call pleaded at 59(b) and 59(e) above respectively as follows:*
 - A. *"also impacting fiscal 2013 ... are our plans to ship less wine in the USA as we work to reduce our inventory days towards the middle of our acceptable range";*

B. *“...So we will look to reduce [the US inventories] and we’re probably talking in the range of 300,000 to 500,000 cases in the US over the course of the year just to bring it back into that more middle range”;*

- (b) it had reasonable grounds to expect to achieve constant currency EBITs for FY 2013 of below the average growth rates of the previous two years (FY 2011 and FY 2012) whilst reducing US distributor inventories by 300,000-500,000 cases in that year,

(individually or together, the **First FY 2013 Guidance Representations**).

Particulars

The representation in sub paragraph 82A(b) was implied by reason of the fact that TWE published its expected EBITs growth in company results documents released to the market by means of the ASX company announcements platform and Mr Dearie made statements about the impact of the planned reduction of US distributor inventories during the 17 August 2012 Earnings Call. TWE and Mr Dearie knew or ought to have known that investors and potential investors in its securities may have relied upon the statements and forecasts in company results documents published on the ASX company announcements platform and made during the 17 August 2012 Earnings Call concerning those results in making decisions about whether to acquire or retain its securities.

82B The First FY 2013 Guidance Representations were continuing representations from 17 August 2012 to 22 October 2012.

82C In so far as the First FY 2013 Guidance Representations were representations as to a future matter or future matters, the Applicant relies on:

- (a) section 12BB(1) of the ASIC Act;
- (b) section 769C of the Corporations Act; and/or
- (c) section 4 of the Australian Consumer Law.

82D The First FY 2013 Guidance Representations, in the period from 17 August 2012 to 22 October 2012 (inclusive):

- (a) in so far as they were representations as to a present matter or present matters, were misleading or deceptive, or likely to mislead or deceive;
- (b) in so far as they were representations as to future matters, were made without a reasonable basis.

Particulars

The Applicant repeats the particulars subjoined to paragraph 81 above.

82E In the premises, by making the First FY 2013 Guidance Representations TWE engaged in conduct in contravention of:

- (a) section 1041H(1) of the Corporations Act;
- (b) section 12DA(1) of the ASIC Act; and/or
- (c) section 18 of the Australian Consumer Law;

(the **First FY 2013 Guidance Representations Contravention**).

VB Second FY 2013 Guidance Representations Contravention

82F On 22 October 2012, TWE represented that:

- (a) it expected to achieve mid-single digit constant currency EBITs growth in FY 2013 whilst reducing US distributor inventories by 300,000-500,000 cases in that year;

Particulars

- (i) *The representation was partly express and partly implied by silence.*
- (ii) *To the extent that it was express it was conveyed by TWE's public statements made:*
 - A. *in the 22 October AGM Address ([63]); and*
 - B. *by statements made by Mr Dearie during the 17 August 2012 Earnings Call pleaded at 59(b) and 59(e) above.*
- (iii) *To the extent that it was implied by silence it was conveyed by the fact that Mr Dearie had made statements concerning TWE's plan to reduce*

US distributor inventories by 300,000-500,000 cases in FY 2013 during the 17 August 2012 Earnings Call (on the same day that TWE had announced “below average” constant currency EBITs growth for that year) and did not correct or qualify those statements when updating the company’s EBITs guidance for FY 2013 (to “mid single digit growth”) during the company’s announcement on 22 October 2012 (in circumstances in which a reasonable person investing in TWE’s securities would have expected it to do so if TWE had altered or abandoned its plans to reduce the US distributor inventories).

- (b) it had reasonable grounds to expect to achieve mid-single digit constant currency EBITs growth in FY 2013 whilst reducing US distributor inventories by 300,000-500,000 cases in that year,

(Individually or together, the **Second FY 2013 Guidance Representations**).

Particulars

The representation in sub paragraph 82F(b) was implied by reason of the fact that TWE published its expected EBITs growth in company results documents released to the market by means of the ASX company announcements platform and Mr Dearie made statements about the impact of the planned reduction of US distributor inventories during the 17 August 2012 Earnings Call and TWE did not correct or qualify those statements after updating its FY 2013 EBITs guidance on 22 October 2012. TWE and Mr Dearie knew or ought to have known that investors and potential investors in its securities may have relied upon the statements and forecasts in company results documents published on the ASX company announcements platform and made during the 17 August 2012 Earnings Call and 22 October 2012 AGM Address concerning those result in making decisions about whether to acquire or retain its securities.

82G The Second FY 2013 Guidance Representations were continuing representations from 22 October 2012 to 28 February 2013.

82H In so far as the Second FY 2013 Guidance Representations were representations as to a future matter or future matters, the Applicant relies on:

- (a) section 12BB(1) of the ASIC Act;

- (b) section 769C of the Corporations Act; and/or
- (c) section 4 of the Australian Consumer Law.

82I The Second FY 2013 Guidance Representations, in the period from 22 October 2012 to 28 February 2013:

- (a) in so far as they were representations as to a present matter or present matters, were misleading or deceptive, or likely to mislead or deceive;
- (b) in so far as they were representations as to future matters, were made without a reasonable basis.

Particulars

The Applicant repeats the particulars subjoined to paragraph 81 above.

82J In the premises, by making the Second FY 2013 Guidance Representations TWE engaged in conduct in contravention of:

- (a) section 1041H(1) of the Corporations Act;
- (b) section 12DA(1) of the ASIC Act; and/or
- (c) section 18 of the Australian Consumer Law;

(the **Second FY 2013 Guidance Representations Contravention**).

VC Third FY 2013 Guidance Representations Contravention

82K On 28 February 2013, TWE represented:

- (a) it expected to achieve mid-single digit constant currency EBITs growth in FY 2013 whilst matching shipments to depletions in that financial year;

Particulars

The representation was express and conveyed by the statements pleaded and particularised in paragraphs 64 and 65 above.

- (b) it had reasonable grounds to expect to achieve mid-single digit constant currency EBITs growth in FY 2013 whilst matching shipments with depletions in that financial year,

(Individually or together, the **Third FY 2013 Guidance Representations**).

Particulars

The representation in sub paragraph 82K(b) was implied by reason of the fact that TWE made the statements pleaded and particularised in paragraphs 64 and 65 above in an ASX company announcement and an associated briefing to investment analysts. TWE and Mr Dearie knew or ought to have known that investors and potential investors in its securities may have relied upon earnings, shipments and depletions forecasts made by TWE in those contexts in making decisions about whether to acquire or retain TWE Securities.

82L The Third FY 2013 Guidance Representations were continuing representations from 28 February 2013 to the end of the Relevant Period (inclusive).

82M In so far as the Third 2013 Guidance Representations were representations as to a future matter or future matters, the Applicant relies on:

- (a) section 12BB(1) of the ASIC Act;
- (b) section 769C of the Corporations Act; and/or
- (c) section 4 of the Australian Consumer Law.

82N The Third FY 2013 Guidance Representations, in the period from 28 February 2013 to the end of the Relevant Period (inclusive):

- (a) in so far as they were representations as to a present matter or present matters, were misleading or deceptive, or likely to mislead or deceive;
- (b) in so far as they were representations as to future matters, were made without a reasonable basis.

Particulars

(i) The Applicant repeats the particulars subjoined to paragraph 81 above.

(ii) Further and in the alternative, TWE did not have a reasonable basis for the Third FY 2013 Guidance Representations due to the matters

noted in the email from Mr Smith to the WLT dated 17 January 2013 as described in the particulars to paragraph 40(e) above, namely that:

- A. a number of accounting “adjustments” had been made in TWE’s accounts in order for it to achieve its reported H1 2013 EBITs result;*
- B. a significant amount of those adjustments had been “borrowed” from the H2 2013 EBITs result; and*
- C. in the absence of those adjustments, TWE’s H1 2013 group EBITs result would have been \$22.8 million rather than its reported H1 2013 group EBITs result of \$73.4 million.*

82O In the premises, by making the Third FY 2013 Guidance Representations TWE engaged in conduct in contravention of:

- (a) section 1041H(1) of the Corporations Act;
- (b) section 12DA(1) of the ASIC Act; and/or
- (c) section 18 of the Australian Consumer Law;

(the **Third FY 2013 Guidance Representations Contravention**).

VD FY 2013 Guidance Statements Contravention

82P Further and in the alternative to the matters pleaded and particularised in paragraphs 78 to 82O above, by making the statements pleaded in paragraphs 58(a), 58(b), 59(b), 59(e), 61(b)(i), 62, 63, 64 and 65 above (individually or in any combination) (**FY 2013 Guidance Statements**), TWE engaged in conduct:

- (a) in relation to financial products, within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
- (b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or
- (c) in trade or commerce, within the meaning of section 4 of the Australian Consumer Law;

(d) that, from 17 August 2012 to the end of the Relevant Period or, further and in the alternative, from 22 October 2012 to the end of the Relevant Period or, further and in the alternative, from 28 February 2013 to the end of the Relevant Period, was misleading or deceptive, or likely to mislead or deceive, in contravention of:

(i) section 1041H(1) of the Corporations Act;

(ii) section 12DA(1) of the ASIC Act; and/or

(iii) section 18 of the Australian Consumer Law,

(FY 2013 Guidance Statements Contravention).

Particulars

The Applicant repeats the particulars to paragraphs 81, 82E, 82J and 82O above.

VI US Inventory Management Representation Contravention

83. On 17 August 2012 and 19 September 2012, TWE represented that it had implemented appropriate reporting and management communication systems, which were adequate to inform it accurately as to the state of its business (**US Inventory Management Representation**).

Particulars

The representation was implied:

(i) from the following statements as pleaded and particularised above;

A. *(Fosters') 2009 US Inventory Review Statements referred to at paragraph 30 above;*

B. *(Fosters') Demerger Transparency Statement referred to at subparagraph 56(b) above;*

C. *TWE's 2011 Continuous Disclosure Statement referred to at subparagraph 56(c) above;*

D. *TWE's 2012 Continuous Disclosure Statement referred to at subparagraph 61(b)(iii) above;*

E. *TWE's statement on 17 August 2012 to the effect that its IT systems in the US were suitable for the foreseeable future referred to at subparagraph 59(a) above; and*

F. *TWE's statement in the 19 September 2012 Annual report to the effect that after a review of its systems, TWE had decided to discontinue the building and rolling out of new IT systems in the Americas referred to at subparagraph 61(b)(ii) above;*

(ii) *from the absence of any statement from TWE after the demerger contradicting (Fosters') US Inventory Review Statements or (Fosters') Demerger Transparency Statement in circumstances where, if those statements had been untrue or misleading in any material respect, TWE would have been bound to correct them (and ought to have known of the true position) by reason of its continuous disclosure obligations pursuant to Rule 3.1 of the Listing Rules and section 674 of the Corporations Act; and*

(iii) *by reason of TWE's continuous disclosure obligations pursuant to Rule 3.1 of the Listing Rules and section 674 of the Corporations Act to tell the ASX as soon as it was or ought to have been aware of information material to the price or value of its securities, which obligation depended for its compliance on the existence of appropriate reporting and management communication systems.*

84. The US Inventory Management Representation was a continuing representation throughout the Relevant Period.

85. In the alternative to the matters pleaded in paragraphs 39, 39A, 40 and 40A above (in so far as they allege on the part of TWE actual knowledge of undisclosed material information), the US Inventory Management Representation was, throughout the Relevant Period, misleading or deceptive, or likely to mislead or deceive.

Particulars

(i) *If TWE did not know of the material information described at paragraphs 39, 39A, 40 and 40A above during the Relevant Period (which is not*

admitted), then at all times during that period, TWE had not implemented appropriate reporting and management communication systems which were adequate to inform it accurately as to the state of its business.

- (ii) It was implicit from the contents of 15 July 2013 Announcement pleaded in paragraph 20 above and the statements made during the 15 July 2013 Conference Call pleaded and particularised at paragraph 21 above that TWE had only recently discovered the true extent of excess US distributor inventories and the extent to which those inventories were comprised of aged and obsolete stock.*
- (iii) TWE confirmed that it had discovered the excess inventory position and the amount of aged and obsolete stock held by its US distributors in late June 2013 during the 22 August 2013 Earnings Call (Dearie) and during the FY 2013 AGM (Rayner) by the statements pleaded and particularised in paragraphs 23 and 26 above.*
- (iv) If the content of TWE's statements referred to in particulars (ii) and (iii) were correct, TWE had not implemented appropriate reporting and management communication systems which were adequate to inform it accurately as to the state of its business during the Relevant Period.*
- (v) As a result of the write-down of excess US distributor inventory announced on 15 July 2013, TWE announced that its CEO, Mr Dearie, would be leaving the business with immediate effect.*
- (vi) The Applicant repeats paragraphs 39(b) and 40(b) of TWE's defence in which TWE says that, as at 17 August 2012 and 28 February 2012, the level of aged and obsolete stock held by TWE's US distributors was not known or able to be accurately and reliably ascertained or assessed by TWE. Without accepting those admissions, the Applicant says that, if they are true, TWE failed to have appropriate reporting and management communication systems which were adequate to inform it accurately as to the state of its business.*

86. In the premises, by making the US Inventory Management Representation TWE engaged in conduct in contravention of:

- (a) section 1041H(1) of the Corporations Act;

- (b) section 12DA(1) of the ASIC Act; and/or
- (c) section 18 of the Australian Consumer Law,

(US Inventory Management Representation Contravention).

VII US Inventory Management Statements Contravention

87. Further and in the alternative to the matters pleaded and particularised in paragraphs 83 to 86 above, by failing to correct or qualify the statements of Fosters concerning its wine business set out in paragraphs 30, 56(b) and 56(c) during the Relevant Period and/or by making the statements set out in 59(a) and 61(b)(ii) above (individually or in combination) **(US Inventory Management Statements)**, TWE engaged in conduct:

- (a) in relation to financial products, within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
- (b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or
- (c) in trade or commerce, within the meaning of section 4 of the Australian Consumer Law;
- (d) that, from 17 August 2012 to the end of the Relevant Period was misleading or deceptive, or likely to mislead or deceive, in contravention of:
 - (i) section 1041H(1) of the Corporations Act;
 - (ii) section 12DA(1) of the ASIC Act; and/or
 - (iii) section 18 of the Australian Consumer Law,

(US Inventory Management Statements Contravention).

Particulars

The Applicant repeats the particulars to paragraph 85 above.

VIII Listing Rule Compliance Representations Contravention

88. By making all or any one of the Relevant Period Announcements TWE represented to the ASX and to the market of investors or likely investors in TWE Securities that:

- (a) it had told or given the ASX all the information it was required to tell or give under the Listing Rules, which included Listing Rules 3.1, 4.3A and 4.3D (**Disclosure Representation**);
- (b) it had undertaken all necessary and reasonable investigations before making representations as to the state of its business and accounts and had satisfied itself on reasonable grounds following those investigations that its public statements were substantially accurate and not misleading or deceptive in any respect (**Reasonable Enquiry Representation**),

(individually or together, the **Listing Rule Compliance Representations**).

Particulars

- (i) *Each of the Disclosure Representation and the Reasonable Enquiry Representation were conveyed expressly by:*
 - A. *TWE's 2011 Continuous Disclosure Statement in the 2011 Annual Report ([56(c)]) which was continuing between 17 August 2012 and the publication of the 19 September 2012 Annual Report;*
 - B. *TWE's 2012 Continuous Disclosure Statement in the 19 September 2012 Annual Report ([61(b)(iii)]).*
- (ii) *Further and in the alternative, each of the Disclosure Representation and the Reasonable Enquiry Representation were to be implied from TWE's obligations pursuant to Listing Rules 3.1, 4.3A and 4.3D and section 674(2) of the Corporations Act and the absence of any statement by TWE in the Relevant Period to the effect that it had not complied with those obligations.*

89. The Listing Rule Compliance Representations were continuing representations throughout the Relevant Period.

90. The Listing Rule Compliance Representations were misleading or deceptive, or likely to mislead and deceive:

- (a) from 17 August 2012 and throughout the Relevant Period; or

- (a1) alternatively, from 22 October 2012 and for the remainder of the Relevant Period; or

- (b) alternatively, from 28 February 2013 and for the remainder of the Relevant Period;
- (c) alternatively, from 24 or 26 April 2013 and for the remainder of the Relevant Period.

Particulars

The Applicant repeats the matters pleaded and particularised in paragraphs 41 to 55 above and says that:

- (i) *the Listing Rule Compliance Representations were misleading or deceptive, or likely to mislead or deceive because, during the Relevant Period, TWE did not publically disclose all information that a reasonable person would expect to have a material effect on the price or value of its securities immediately as it was, or ought reasonably to have been aware of such information;*
- (ii) *TWE was aware, or ought reasonably to have been aware:*
 - A. *from 17 August 2012 and throughout the Relevant Period, of the 17 August 2012 Excess Inventory Position, the 17 August 2012 Aged Inventory Position, the 17 August 2012 Inventory Target Risk, the 17 August 2012 Inventory Impact Risk and the 17 August 2012 Guidance Information (and each of them);*
 - A1. *alternatively, from 22 October 2012 and for the remainder of the Relevant Period, of the 22 October 2012 Guidance Information;*
 - B. *alternatively, from 28 February 2013 and for the remainder of the Relevant Period of the 28 February 2013 Excess Inventory Position, the 28 February 2013 Aged Inventory Position, the 28 February 2013 Inventory Target Risk, the 28 February 2013 Inventory Impact Risk and the 28 February 2013 Guidance Information (and each of them);*
 - C. *alternatively, from 24 April 2013, or in the alternative 26 April 2013, and for the remainder of the Relevant Period of the April 2013 Excess Inventory Position, the April 2013 Aged Inventory Position,*

the April 2013 Inventory Target Risk and the April 2013 Inventory Impact Risk (and each of them);

and did not disclose those matters to the ASX as soon as it became aware of them as required by Listing Rules 3.1, 4.3A and 4.3D and/or section 674(2) of the Corporations Act.

91. In the premises, by making the Listing Rule Compliance Representations, TWE engaged in conduct in contravention of:

- (a) section 1041H(1) of the Corporations Act;
- (b) section 12DA(1) of the ASIC Act; and/or
- (c) section 18 of the Australian Consumer Law;

(individually and together, the **Listing Rule Compliance Representations Contravention**).

IX [deleted]

92. [deleted]

93. [deleted]

94. [deleted]

95. [deleted]

X [deleted]

96. [deleted]

97. [deleted]

98. [deleted]

99. [deleted]

J. CAUSATION, LOSS AND DAMAGE

I TWE Securities' price reaction to the 15 July 2013 Announcement

100. On 12 July 2013 (the last ASX trading day before the 15 July 2013 Announcement), the closing price of TWE shares was \$5.82.
101. At 9:30am on 15 July 2013 (prior to the commencement of trading on the ASX), TWE released its 15 July 2013 Announcement.
102. On 15 July 2013 and from that day TWE Securities price declined significantly.

Particulars

(i) TWE Securities price:

- A. *on 15 July 2013, fell to a low of \$5.02 per share and closed at \$5.11 per share;*
- B. *on 16 July 2013, fell to a low of \$4.63 per share and closed at \$4.80 per share;*
- C. *on 17 July 2013, fell to a low of \$4.72 per share and closed at \$4.91 per share;*
- D. *on 18 July 2013, fell to a low of \$4.84 per share and closed at \$4.87 per share;*
- E. *on 19 July 2013, fell to a low of \$4.76 per share and closed at \$4.77 per share;*

(ii) TWE Securities price history from 17 August 2012 to 19 July 2013 is set out in Schedule B to this statement of claim.

II Contraventions caused loss to the Applicant and the Group Members

103. During the Relevant Period, the Applicant and Group Members acquired an interest in TWE Securities:
 - (a) in a market regulated by, inter alia, sections 674(2) and 1041H of the Corporations Act, Rules 3.1, 4.3A and 4.3D of the Listing Rules, section 12DA of the ASIC Act, and section 4 of the Australian Consumer Law;

- (b) where the price or value of TWE Securities would reasonably be expected to have been informed or affected by information disclosed in accordance with sections 674(2) and 1041H of the Corporations Act, Rules 3.1, 4.3A and 4.3D of the Listing Rules, and by the conduct by TWE alleged in this statement of claim to be in contravention of section 12DA of the ASIC Act and section 4 of the Australian Consumer Law;
 - (c) in a market to which the representations alleged in this statement of claim had been made where a reasonable person would expect those representations to have had a material effect on the price;
 - (d) further and alternatively to paragraph (c), in a market to which the material information alleged in this statement of claim had not been disclosed and which a reasonable person would expect, had it been disclosed, would have had a material effect on the price or value of TWE Securities;
 - (e) in which falls in the price of TWE Securities on and after 15 July 2013 were a result of release of information to the market which had not been previously revealed because of the Relevant Subsisting Contraventions (as defined in Schedule D) (or any of them).
104. During the Relevant Period the Relevant Subsisting Contraventions (or any of them) caused the market price for TWE Securities to be substantially greater than:
- (a) their true value; and/or
 - (b) the market price that would have prevailed but for the Relevant Subsisting Contraventions (or any of them).

Particulars

The Applicant refers to the expert report of Professor Mark E Zmijewski dated 4 February 2017 for full particulars of TWE's share inflation during the Relevant Period.

105. Further and in the alternative to paragraphs 103 to 104, in the decision to acquire an interest in TWE Securities the Applicant relied directly on the Listing Rule Compliance Representations (and each of them).

106. Further and in the alternative to paragraphs 103 to 104, in the decision to acquire interests in TWE Securities some Group Members relied directly on one or more of:

- (a) the US Inventory Representation ([66]);
- (a1) the 2013 Inventory Impact Representation (70A);
- (a2) the Flat US Inventory Representation (70E);
- (b) the US Inventory Statements ([71]);
- (c) the Inventory Balance Representation ([72]);
- (d) the Inventory Balance Statements ([77]);
- (e) the FY 2013-2014 Guidance Representations [(78)];
- (e1) the First FY 2013 Guidance Representations ([82A]);
- (e2) the Second FY 2013 Guidance Representations ([82F]);
- (e3) the Third FY 2013 Guidance Representations ([82K]);
- (e4) the FY 2013 Guidance Statements [82P];
- (f) the US Inventory Management Representation ([83]);
- (g) the US Inventory Management Statements [(87)]; and/or
- (h) the Listing Rule Compliance Representations [(88)];
- (i) [deleted]
- (j) [deleted],

(individually or in any combination, the **Contravening Representations and Statements**).

Particulars

The identity of all those Group Members which or who relied directly on any or all of the Contravening Representations and Statements are not known with the current state of the Applicant's knowledge and cannot be ascertained unless and until those advising the Applicant take detailed instructions from all Group

Members on individual issues relevant to the determination of those individual Group Member's claims; those instructions will be obtained (and particulars of the identity of those Group Members will be provided) following opt out, the determination of the Applicant's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.

107. Further and in the alternative, one or more of the Contravening Representations and Statements materially contributed to the decision of some Group Members to purchase TWE securities at the prevailing market price during the Relevant Period.

Particulars

The Applicant repeats the particulars to paragraph 106 above.

III Loss or damage suffered by the Applicant and Group Members

108. The Applicant has suffered loss and damage in relation to his interest in TWE Securities by and resulting from the Relevant Subsisting Contraventions defined in Schedule D (or any one or combination of those contraventions).

Particulars

- (i) *The loss suffered by the Applicant is calculated by reference to:*
- A. *the difference between the price at which he acquired his interest in TWE Securities during the Relevant Period and the true value of that interest (Scenario 1); or*
 - B. *the difference between the price at which he acquired an interest in TWE Securities and the market price that would have prevailed had the Relevant Subsisting Contraventions not occurred (Scenario 2); or*
 - C. *[deleted]*
 - D. *alternatively, the days after the Relevant Period when the traded price of TWE Securities fell as a result of the disclosure of information which had not previously been disclosed because of the Relevant Subsisting Contraventions, the quantum of that fall (Scenario 3).*

(ii) On the above bases, the Applicant's loss calculations are set out below:

Scenario 1:

<i>Average price per TWE Security acquired by Applicant (excluding brokerage)</i>	<i>\$4.76</i>
<i>True value of each TWE Security acquired by Applicant (excluding brokerage)</i>	<i>\$3.72</i>
<i>Difference between Applicant's purchase price and true value</i>	<i>\$1.04</i>
<i>Number of securities acquired by the Applicant</i>	<i>1,000</i>
<i>Total loss suffered by Applicant under Scenario 1</i>	<i>\$1,040</i>

Scenario 2:

<i>Average price per TWE Security acquired by Applicant (excluding brokerage)</i>	<i>\$4.76</i>
<i>Market value of each TWE Security acquired by Applicant (excluding brokerage)</i>	<i>\$3.72</i>
<i>Difference between Applicant's purchase price and market value</i>	<i>\$1.04</i>
<i>Number of securities acquired by the Applicant</i>	<i>1,000</i>
<i>Total loss suffered by Applicant under Scenario 2</i>	<i>\$1,040</i>

Scenario 3:

<i>Quantum of fall per share on 15 July 2013 due to the disclosure of information which had not previously been disclosed because of the Relevant Subsisting Contraventions</i>	<i>\$0.72</i>
<i>Quantum of fall per share on 16 July 2013 due to the disclosure of information which had not previously been disclosed because of the Relevant Subsisting Contraventions</i>	<i>\$0.32</i>
<i>Total quantum of fall per share after the Relevant Period due to the disclosure of information which had not previously been disclosed because of the Relevant Subsisting Contraventions</i>	<i>\$1.04</i>
<i>Number of securities acquired by the Applicant</i>	<i>1,000</i>
<i>Total loss suffered by Applicant under Scenario 4</i>	<i>\$1,040</i>

Particulars

The Applicant refers to Schedule A below for full particulars of the Applicant's share purchases during the Relevant Period and the expert report of Professor Mark E Zmijewski dated 4 February 2017 for full particulars of TWE's share inflation during the Relevant Period and abnormal returns immediately after the Relevant Period.

109. Group Members have suffered loss and damage in relation to their interest in TWE Securities by and resulting from the Relevant Subsisting Contraventions defined in Schedule D (or any one or combination of those contraventions).

Particulars

The loss suffered by Group Members will also be calculated in accordance with the particular (i) subjoined to paragraph 108 above but are not particularised in this statement of claim; particulars in relation to Group Members losses will be

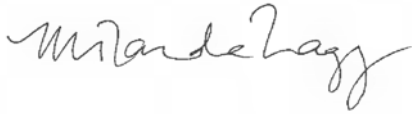
obtained (and particulars will be provided) following opt out, the determination of the Applicant's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.

This pleading was prepared by Guy Donnellan and settled by M. B. J. Lee SC.

Certificate of lawyer

I Miranda Judith Nagy, certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 19 July 2017

A handwritten signature in cursive script, reading "Miranda Nagy".

Signed by Miranda Nagy
Lawyer for the Applicant

SCHEDULE A

APPLICANT'S PURCHASE OF TWE SECURITIES

<i>Date</i>	<i>Number of securities</i>	<i>Average price per security</i>	<i>Amount paid (\$) excluding GST and brokerage</i>	<i>Brokerage (\$)</i>	<i>GST (\$)</i>	<i>Amount paid (\$) (including brokerage)</i>
21/09/2012	1,000	4.76	4,760.00	18.14	1.81	4,779.95

SCHEDULE B

TWE SECURITIES – ASX PRICE MOVEMENTS – 17 AUGUST 2012 TO 19 JULY 2013

ASX Code	Date	Opening	High	Low	Close	Volume
TWE	17-Aug-12	4.55	4.66	4.54	4.58	3,529,495
TWE	20-Aug-12	4.54	4.55	4.52	4.53	9,905,418
TWE	21-Aug-12	4.51	4.60	4.51	4.56	2,748,129
TWE	22-Aug-12	4.57	4.72	4.54	4.70	4,222,406
TWE	23-Aug-12	4.75	4.81	4.67	4.78	6,149,081
TWE	24-Aug-12	4.74	4.79	4.73	4.74	2,025,881
TWE	27-Aug-12	4.80	4.86	4.75	4.77	1,899,360
TWE	28-Aug-12	4.76	4.76	4.66	4.70	2,786,578
TWE	29-Aug-12	4.69	4.75	4.67	4.69	2,429,842
TWE	30-Aug-12	4.67	4.69	4.61	4.66	8,112,416
TWE	31-Aug-12	4.67	4.73	4.63	4.73	7,221,028
TWE	3-Sep-12	4.74	4.78	4.68	4.71	2,817,697
TWE	4-Sep-12	4.72	4.82	4.71	4.77	2,463,561
TWE	5-Sep-12	4.75	4.75	4.71	4.75	2,214,850
TWE	6-Sep-12	4.75	4.84	4.73	4.82	4,619,458
TWE	7-Sep-12	4.86	4.92	4.78	4.79	1,908,726
TWE	10-Sep-12	4.83	4.83	4.74	4.74	1,360,448
TWE	11-Sep-12	4.71	4.77	4.71	4.75	1,115,462
TWE	12-Sep-12	4.77	4.80	4.73	4.80	2,121,406
TWE	13-Sep-12	4.78	4.81	4.75	4.78	1,120,068
TWE	14-Sep-12	4.85	4.86	4.78	4.86	1,955,057
TWE	17-Sep-12	4.84	4.88	4.80	4.84	2,437,443
TWE	18-Sep-12	4.82	4.85	4.79	4.84	1,801,058
TWE	19-Sep-12	4.82	4.85	4.79	4.80	2,630,468
TWE	20-Sep-12	4.77	4.80	4.73	4.75	3,855,818
TWE	21-Sep-12	4.75	4.77	4.69	4.75	2,705,752
TWE	24-Sep-12	4.77	4.84	4.76	4.81	1,042,615
TWE	25-Sep-12	4.84	4.84	4.78	4.82	940,328
TWE	26-Sep-12	4.80	5.04	4.80	5.01	4,425,748
TWE	27-Sep-12	5.06	5.08	4.97	5.03	3,503,281
TWE	28-Sep-12	5.03	5.05	5.00	5.03	4,070,898
TWE	1-Oct-12	4.98	5.09	4.98	5.03	5,321,812
TWE	2-Oct-12	5.00	5.08	4.98	4.98	7,163,739
TWE	3-Oct-12	5.00	5.16	4.99	5.10	5,203,130
TWE	4-Oct-12	5.15	5.20	5.12	5.20	4,624,845
TWE	5-Oct-12	5.27	5.43	5.25	5.35	5,754,641
TWE	8-Oct-12	5.44	5.45	5.31	5.34	6,142,676
TWE	9-Oct-12	5.31	5.33	5.27	5.30	5,350,129
TWE	10-Oct-12	5.32	5.38	5.30	5.32	6,304,179
TWE	11-Oct-12	5.35	5.37	5.29	5.32	7,048,214

ASX Code	Date	Opening	High	Low	Close	Volume
TWE	12-Oct-12	5.28	5.31	5.20	5.22	8,711,445
TWE	15-Oct-12	5.22	5.31	5.21	5.30	3,663,436
TWE	16-Oct-12	5.32	5.33	5.25	5.27	4,549,016
TWE	17-Oct-12	5.32	5.37	5.27	5.28	4,208,658
TWE	18-Oct-12	5.37	5.39	5.31	5.36	6,323,062
TWE	19-Oct-12	5.34	5.60	5.33	5.50	9,449,263
TWE	22-Oct-12	5.40	5.40	5.03	5.10	20,682,300
TWE	23-Oct-12	5.00	5.07	4.93	4.98	15,142,555
TWE	24-Oct-12	4.91	4.99	4.90	4.97	6,590,571
TWE	25-Oct-12	4.95	4.97	4.87	4.90	6,689,134
TWE	26-Oct-12	4.91	4.94	4.87	4.89	5,233,581
TWE	29-Oct-12	4.98	5.01	4.91	4.95	3,060,847
TWE	30-Oct-12	4.95	5.05	4.91	4.99	5,156,347
TWE	31-Oct-12	4.97	4.98	4.93	4.94	6,895,790
TWE	1-Nov-12	4.92	4.96	4.82	4.90	3,810,214
TWE	2-Nov-12	4.90	5.00	4.80	5.00	3,128,099
TWE	5-Nov-12	5.00	5.01	4.90	4.94	3,170,248
TWE	6-Nov-12	4.89	4.97	4.89	4.93	2,201,436
TWE	7-Nov-12	4.94	5.02	4.94	4.99	12,351,469
TWE	8-Nov-12	4.90	5.04	4.89	5.01	6,189,843
TWE	9-Nov-12	4.96	5.11	4.96	5.06	5,866,639
TWE	12-Nov-12	5.00	5.05	4.98	5.00	4,920,868
TWE	13-Nov-12	4.97	4.99	4.88	4.91	5,632,895
TWE	14-Nov-12	4.85	4.95	4.84	4.94	3,665,290
TWE	15-Nov-12	4.86	5.03	4.85	4.90	4,900,803
TWE	16-Nov-12	4.90	4.98	4.87	4.90	3,310,328
TWE	19-Nov-12	4.86	4.93	4.86	4.93	2,541,993
TWE	20-Nov-12	4.93	5.01	4.92	4.96	4,505,926
TWE	21-Nov-12	4.95	5.00	4.92	4.99	5,078,344
TWE	22-Nov-12	5.02	5.18	5.00	5.16	6,218,301
TWE	23-Nov-12	5.18	5.18	5.10	5.15	3,090,552
TWE	26-Nov-12	5.20	5.21	5.14	5.19	3,471,372
TWE	27-Nov-12	5.15	5.19	5.06	5.16	8,972,232
TWE	28-Nov-12	5.14	5.15	5.04	5.08	7,841,138
TWE	29-Nov-12	5.04	5.10	5.04	5.06	5,803,215
TWE	30-Nov-12	5.10	5.16	5.00	5.03	80,306,456
TWE	3-Dec-12	5.06	5.13	5.03	5.10	3,422,180
TWE	4-Dec-12	5.12	5.17	5.08	5.11	2,628,457
TWE	5-Dec-12	5.11	5.20	5.10	5.12	4,891,190
TWE	6-Dec-12	5.14	5.17	5.03	5.09	2,785,656
TWE	7-Dec-12	5.12	5.15	5.05	5.08	2,700,871
TWE	10-Dec-12	5.08	5.10	5.06	5.08	2,734,190
TWE	11-Dec-12	5.12	5.14	5.09	5.10	2,131,998
TWE	12-Dec-12	5.08	5.10	5.02	5.02	3,650,689

ASX Code	Date	Opening	High	Low	Close	Volume
TWE	13-Dec-12	5.00	5.04	4.86	4.90	7,365,091
TWE	14-Dec-12	4.86	4.93	4.83	4.85	5,727,468
TWE	17-Dec-12	4.83	4.83	4.80	4.83	2,792,217
TWE	18-Dec-12	4.83	4.85	4.80	4.80	3,683,796
TWE	19-Dec-12	4.80	4.82	4.72	4.75	6,748,318
TWE	20-Dec-12	4.70	4.73	4.68	4.72	6,897,984
TWE	21-Dec-12	4.75	4.75	4.66	4.68	2,733,290
TWE	24-Dec-12	4.65	4.78	4.64	4.70	1,130,711
TWE	27-Dec-12	4.66	4.72	4.66	4.70	770,867
TWE	28-Dec-12	4.73	4.75	4.68	4.72	1,216,193
TWE	31-Dec-12	4.67	4.72	4.65	4.69	2,020,468
TWE	2-Jan-13	4.70	4.73	4.66	4.69	1,476,916
TWE	3-Jan-13	4.69	4.77	4.68	4.71	2,107,875
TWE	4-Jan-13	4.73	4.84	4.71	4.71	2,411,426
TWE	7-Jan-13	4.84	4.98	4.81	4.98	3,969,138
TWE	8-Jan-13	5.02	5.03	4.83	4.90	4,026,141
TWE	9-Jan-13	4.89	4.93	4.87	4.92	2,110,563
TWE	10-Jan-13	4.94	4.94	4.84	4.84	2,223,944
TWE	11-Jan-13	4.85	4.96	4.85	4.92	1,767,010
TWE	14-Jan-13	4.90	4.92	4.77	4.80	2,620,716
TWE	15-Jan-13	4.83	4.84	4.68	4.74	4,252,934
TWE	16-Jan-13	4.72	4.82	4.71	4.77	3,422,427
TWE	17-Jan-13	4.75	4.80	4.73	4.74	1,914,842
TWE	18-Jan-13	4.80	4.81	4.71	4.80	6,611,377
TWE	21-Jan-13	4.76	4.78	4.71	4.73	2,748,388
TWE	22-Jan-13	4.78	4.79	4.70	4.70	2,648,798
TWE	23-Jan-13	4.73	4.75	4.67	4.69	6,258,308
TWE	24-Jan-13	4.69	4.71	4.63	4.67	4,064,761
TWE	25-Jan-13	4.66	4.71	4.60	4.64	5,627,030
TWE	29-Jan-13	4.61	4.66	4.58	4.61	9,134,563
TWE	30-Jan-13	4.60	4.74	4.59	4.74	5,320,600
TWE	31-Jan-13	4.76	4.79	4.71	4.75	5,265,646
TWE	1-Feb-13	4.75	4.83	4.73	4.77	3,101,765
TWE	4-Feb-13	4.84	4.94	4.81	4.92	5,097,739
TWE	5-Feb-13	4.88	5.01	4.87	5.00	6,493,043
TWE	6-Feb-13	5.06	5.09	4.87	4.93	8,113,024
TWE	7-Feb-13	4.92	4.93	4.85	4.91	2,739,322
TWE	8-Feb-13	4.89	4.96	4.86	4.94	3,334,755
TWE	11-Feb-13	4.91	4.95	4.89	4.91	2,281,222
TWE	12-Feb-13	4.91	4.96	4.89	4.94	2,834,378
TWE	13-Feb-13	4.99	5.10	4.97	4.99	3,952,907
TWE	14-Feb-13	5.00	5.00	4.92	4.94	1,297,244
TWE	15-Feb-13	5.00	5.03	4.90	4.94	2,360,503
TWE	18-Feb-13	4.97	5.03	4.91	5.03	2,567,045

ASX Code	Date	Opening	High	Low	Close	Volume
TWE	19-Feb-13	4.98	5.02	4.93	5.00	3,297,085
TWE	20-Feb-13	5.01	5.04	4.99	5.01	1,833,241
TWE	21-Feb-13	5.02	5.14	4.95	4.99	3,731,775
TWE	22-Feb-13	5.04	5.05	4.96	4.97	2,478,201
TWE	25-Feb-13	5.00	5.05	4.96	4.98	3,773,973
TWE	26-Feb-13	4.96	5.05	4.83	4.85	2,785,005
TWE	27-Feb-13	4.90	4.94	4.84	4.90	5,420,265
TWE	28-Feb-13	5.00	5.33	4.97	5.30	15,295,810
TWE	1-Mar-13	5.27	5.57	5.25	5.51	15,559,406
TWE	4-Mar-13	5.52	5.56	5.45	5.52	3,293,540
TWE	5-Mar-13	5.52	5.69	5.51	5.69	3,550,169
TWE	6-Mar-13	5.64	5.75	5.62	5.73	5,311,639
TWE	7-Mar-13	5.85	5.92	5.74	5.85	6,271,954
TWE	8-Mar-13	5.83	5.85	5.69	5.79	3,765,407
TWE	11-Mar-13	5.79	5.87	5.77	5.85	2,282,469
TWE	12-Mar-13	5.85	5.89	5.81	5.85	4,086,592
TWE	13-Mar-13	5.84	5.87	5.77	5.85	3,609,329
TWE	14-Mar-13	5.90	5.92	5.83	5.88	4,663,424
TWE	15-Mar-13	5.90	5.91	5.77	5.90	3,688,775
TWE	18-Mar-13	5.89	5.91	5.77	5.80	2,405,144
TWE	19-Mar-13	5.87	5.87	5.66	5.78	2,763,143
TWE	20-Mar-13	5.90	6.18	5.86	6.09	7,584,654
TWE	21-Mar-13	6.07	6.16	5.91	6.09	6,371,425
TWE	22-Mar-13	6.02	6.08	5.99	6.05	2,868,149
TWE	25-Mar-13	5.98	6.03	5.90	5.92	2,700,542
TWE	26-Mar-13	5.83	5.83	5.70	5.72	5,271,099
TWE	27-Mar-13	5.75	5.77	5.67	5.71	4,699,014
TWE	28-Mar-13	5.72	5.74	5.67	5.69	4,477,629
TWE	2-Apr-13	5.76	5.78	5.67	5.69	5,596,780
TWE	3-Apr-13	5.72	5.78	5.69	5.76	5,096,435
TWE	4-Apr-13	5.73	5.87	5.72	5.86	5,390,787
TWE	5-Apr-13	5.82	5.86	5.79	5.82	7,948,167
TWE	8-Apr-13	5.80	5.83	5.71	5.71	3,506,427
TWE	9-Apr-13	5.77	5.79	5.68	5.72	5,271,109
TWE	10-Apr-13	5.74	5.76	5.62	5.64	5,824,243
TWE	11-Apr-13	5.62	5.76	5.57	5.75	2,496,616
TWE	12-Apr-13	5.80	5.80	5.69	5.72	2,782,375
TWE	15-Apr-13	5.71	5.79	5.69	5.74	3,330,396
TWE	16-Apr-13	5.74	5.79	5.68	5.76	3,851,989
TWE	17-Apr-13	5.83	5.93	5.81	5.92	3,186,091
TWE	18-Apr-13	5.93	5.93	5.85	5.90	3,591,973
TWE	19-Apr-13	5.90	5.93	5.77	5.77	2,542,653
TWE	22-Apr-13	5.77	5.93	5.77	5.93	1,969,672
TWE	23-Apr-13	5.96	6.01	5.91	5.98	1,624,456

ASX Code	Date	Opening	High	Low	Close	Volume
TWE	24-Apr-13	6.01	6.03	5.94	5.96	4,171,710
TWE	26-Apr-13	5.93	6.01	5.87	5.89	3,691,296
TWE	29-Apr-13	5.92	5.94	5.87	5.89	2,105,547
TWE	30-Apr-13	5.85	5.87	5.80	5.84	2,377,712
TWE	1-May-13	5.88	5.90	5.84	5.85	817,107
TWE	2-May-13	5.88	5.88	5.80	5.83	1,696,063
TWE	3-May-13	5.88	5.90	5.79	5.90	3,195,768
TWE	6-May-13	5.94	5.95	5.85	5.87	1,299,951
TWE	7-May-13	5.82	5.87	5.75	5.86	4,555,128
TWE	8-May-13	5.90	5.90	5.83	5.85	2,274,972
TWE	9-May-13	5.85	5.88	5.79	5.83	933,605
TWE	10-May-13	5.81	6.17	5.81	6.01	2,599,228
TWE	13-May-13	6.00	6.18	5.98	6.15	4,003,172
TWE	14-May-13	6.17	6.20	6.14	6.19	1,504,699
TWE	15-May-13	6.27	6.39	6.21	6.29	3,461,419
TWE	16-May-13	6.35	6.45	6.28	6.34	2,984,850
TWE	17-May-13	6.38	6.45	6.31	6.43	2,870,619
TWE	20-May-13	6.44	6.47	6.30	6.33	1,464,795
TWE	21-May-13	6.28	6.45	6.25	6.30	2,744,276
TWE	22-May-13	6.36	6.40	6.26	6.26	1,220,163
TWE	23-May-13	6.25	6.39	6.16	6.33	2,711,579
TWE	24-May-13	6.30	6.30	6.07	6.13	1,853,331
TWE	27-May-13	6.06	6.14	6.05	6.10	1,072,946
TWE	28-May-13	6.05	6.16	6.05	6.14	1,419,541
TWE	29-May-13	6.19	6.20	6.08	6.17	2,139,266
TWE	30-May-13	6.15	6.32	6.15	6.24	1,995,810
TWE	31-May-13	6.28	6.30	6.06	6.08	3,403,175
TWE	3-Jun-13	6.05	6.08	5.86	5.95	2,107,329
TWE	4-Jun-13	5.91	5.95	5.75	5.90	2,816,536
TWE	5-Jun-13	5.76	5.96	5.76	5.91	2,051,957
TWE	6-Jun-13	5.81	5.88	5.79	5.82	2,208,978
TWE	7-Jun-13	5.81	6.09	5.77	6.01	2,503,397
TWE	11-Jun-13	6.01	6.01	5.84	5.86	3,120,682
TWE	12-Jun-13	5.78	6.08	5.78	6.05	1,928,045
TWE	13-Jun-13	6.00	6.04	5.82	5.90	3,604,108
TWE	14-Jun-13	5.78	5.98	5.78	5.93	1,406,554
TWE	17-Jun-13	5.85	5.88	5.79	5.86	2,198,330
TWE	18-Jun-13	5.83	5.85	5.73	5.83	2,085,209
TWE	19-Jun-13	5.89	6.07	5.88	6.03	2,532,429
TWE	20-Jun-13	5.96	6.03	5.70	5.96	4,795,306
TWE	21-Jun-13	5.98	6.06	5.92	6.02	1,493,716
TWE	24-Jun-13	5.91	5.97	5.84	5.90	2,611,089
TWE	25-Jun-13	5.86	5.87	5.72	5.79	2,817,378
TWE	26-Jun-13	5.80	5.94	5.80	5.86	2,022,117

ASX Code	Date	Opening	High	Low	Close	Volume
TWE	27-Jun-13	5.97	5.97	5.82	5.82	2,517,680
TWE	28-Jun-13	5.81	5.87	5.78	5.82	1,978,906
TWE	1-Jul-13	5.71	5.75	5.62	5.70	3,489,930
TWE	2-Jul-13	5.77	6.00	5.75	5.96	3,315,046
TWE	3-Jul-13	5.88	5.89	5.73	5.79	2,365,534
TWE	4-Jul-13	5.90	5.91	5.83	5.86	1,358,756
TWE	5-Jul-13	5.92	5.92	5.83	5.84	1,915,672
TWE	8-Jul-13	5.84	5.87	5.78	5.80	1,199,168
TWE	9-Jul-13	5.90	5.90	5.80	5.85	2,436,688
TWE	10-Jul-13	5.90	5.92	5.87	5.90	4,353,530
TWE	11-Jul-13	5.93	6.00	5.90	5.91	5,086,198
TWE	12-Jul-13	5.91	5.94	5.81	5.82	1,592,132
TWE	15-Jul-13	5.28	5.44	5.03	5.11	11,558,690
TWE	16-Jul-13	4.64	4.85	4.63	4.80	30,040,619
TWE	17-Jul-13	4.73	4.91	4.72	4.91	9,251,308
TWE	18-Jul-13	4.90	4.90	4.84	4.87	10,237,983
TWE	19-Jul-13	4.93	4.93	4.76	4.77	3,264,810

SCHEDULE C

COMPARATIVE VOLUMES AND NET SALES REVENUE OF TWE'S REGIONS FY 2008- FY 2013

I Comparative sales volumes FY 2008-FY 2013 (per million 9LE cases)

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Americas	18.0	17.9	17.9	15.9	15.7	15.4
Americas % of total	46.51%	48.91%	50.28%	47.89%	49.37%	47.98%
ANZ*	10.7	9.9	7.9	7.8	8.0	8.6
EMEA	10.0	8.8	8.9	8.5	6.9	6.7
ASIA			0.9	1.0	1.2	1.4

II Comparative NSR (\$AUD millions)

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>
<u>Americas</u>	<u>978.3</u>	<u>1,093.2</u>	<u>933</u>	<u>794.7</u>	<u>707.5</u>	<u>704</u>
<u>Americas</u> <u>% of total</u>	<u>46.90%</u>	<u>50.97%</u>	<u>49.36%</u>	<u>45.20%</u>	<u>43.12%</u>	<u>41.69%</u>
<u>ANZ*</u>	<u>676.2</u>	<u>670.2</u>	<u>554.4</u>	<u>577.9</u>	<u>574.1</u>	<u>600.8</u>
<u>EMEA</u>	<u>431.6</u>	<u>381.5</u>	<u>336.4</u>	<u>303.8</u>	<u>253</u>	<u>248.5</u>
<u>ASIA</u>			<u>66.3</u>	<u>81.9</u>	<u>106.2</u>	<u>135.4</u>

* ANZ: includes Asia and Pacific business segment for FY 2008 and FY 2009 (then reported as "AAP").

SCHEDULE D

DEFINITIONS

I Date specific terms (listed in chronological order)

2009 US Inventory Review Statements means the statements of Fosters in its 2009 Annual Report as defined in paragraph 30 of this statement of claim.

2010 US Distribution Agreements means the wine supply and distributor agreements with TWE's Key US Distributors defined in paragraph 31A of this statement of claim.

2010 Charmer-Sunbelt Agreements means the wine supply and distributor agreements between TWE and affiliates of the Charmer-Sunbelt corporate group defined in the particulars to paragraph 31A of this statement of claim.

2010 Glazer's Agreements means the wine supply and distributor agreements between TWE and affiliates of the Glazer's corporate group defined in the particulars to paragraph 31A of this statement of claim.

2010 SWS Agreements means the wine supply and distributor agreements between TWE and affiliates of the Southern Wine and Spirits corporate group defined in the particulars to paragraph 31A of this statement of claim.

2011 Continuous Disclosure Statement means the statement made by TWE identified in paragraph 56(c) of this statement of claim.

2011 Inventory Reduction Plan means the document described in the particulars subjoined to paragraph 31E above.

2012 Continuous Disclosure Statement means the statement made by TWE identified at subparagraph 61(b)(iii) of this statement of claim.

17 August 2012 Announcements means the 17 August 2012 Annual Results Announcement, the 17 August 2012 Annual Results Presentation, the 17 August 2012 Preliminary Financial Report and the 17 August 2012 Earnings Call.

17 August 2012 Excess Inventory Position means the information referred to in paragraphs 39(a) and 39(aa) of this statement of claim.

17 August 2012 Aged Inventory Position means the information referred to in paragraph 39(b) of this statement of claim.

17 August 2012 Inventory Target Risk means the information referred to in paragraph 39(c) of this statement of claim.

17 August 2012 Inventory Impact Risk means the information referred to in paragraph 39(d) of this statement of claim.

17 August 2012 Guidance Information means the information referred to in paragraph 39(e) of this statement of claim.

17 August 2012 Material Information means, individually or in any combination, the 17 August 2012 Excess Inventory Position, the 17 August 2012 Aged Inventory Position, the 17 August 2012 Inventory Impact Risk the 17 August 2012 Inventory Target Risk and the 17 August 2012 Guidance Information .

17 August 2012 Preliminary Financial Report means TWE's Preliminary Financial Report for the year financial ending 30 June 2012.

17 August 2012 Results Announcement means the announcement that TWE lodged with the ASX on 17 August 2012 as defined in the particulars to paragraph 58 of this statement of claim.

19 September 2012 Annual Report means the document described in paragraph 61 of this statement of claim.

22 October 2012 ASX Announcement means TWE's announcement to the ASX release on 22 October 2012 as defined in subparagraph 57(c)(i) of this statement of claim.

22 October 2012 Guidance Information means the information referred to in paragraph 39A of this statement of claim.

22 October 2012 Guidance Information Contravention means the contravention pleaded at paragraph 48F of this statement of claim.

28 February 2013 Announcements means the H1 2013 Financial Report, the 28 February 2013 Interim Results Announcement and the 28 February 2013 Earnings Call.

28 February 2013 Excess Inventory Position means the information referred to in paragraphs 40(a) and 40(aa) of this statement of claim.

28 February 2013 Aged Inventory Position means the information referred to in paragraph 40(b) of this statement of claim.

28 February 2013 Interim Results Announcement means TWE's announcement to the ASX released on 28 February 2013 as defined in subparagraph 57(d)(ii) of this statement of claim.

28 February 2013 Inventory Target Risk means the information referred to in paragraph 40(c) of this statement of claim.

28 February 2013 Inventory Impact Risk means the information referred to in paragraph 40(d) of this statement of claim.

28 February 2013 Guidance Information means the information referred to in paragraph 40(e) of this statement of claim.

28 February 2013 Material Information means (individually or in any combination) the 28 February 2013 Excess Inventory Position, 28 February 2013 Aged Inventory Position, the 28 February 2013 Inventory Target Risk, the 28 February 2013 Inventory Impact Risk and the 28 February 2013 Guidance Information.

April 2013 Excess Inventory Position means the information referred to in paragraph 40A(a) of this statement of claim.

April 2013 Aged Inventory Position means the information referred to in paragraph 40A(b) of this statement of claim.

April 2013 Inventory Target Risk means the information referred to in paragraph 40A(c) of this statement of claim.

April 2013 Inventory Impact Risk means the information referred to in paragraph 40A(d) of this statement of claim.

April 2013 Material Information means (individually or in any combination) the April 2013 Excess Inventory Position, the April 2013 Aged Inventory Position, the April 2013 Inventory Target Risk and the April 2013 Inventory Impact Risk.

15 July 2013 Announcement means the announcement TWE lodged with the ASX on 15 July 2013 as defined in paragraph 19(a) of this statement of claim.

15 July 2013 Conference Call means the conference call presentation by TWE on 15 July 2013 as defined in paragraph 19(b) of this statement of claim.

22 August 2013 Results Presentation means the document that TWE lodged with the ASX on 22 August 2013 as defined in subparagraph 22(a) of this statement of claim.

22 August 2013 Earnings Call means the conference call presentation given by TWE on 22 August 2013 as defined in paragraph 22(b) of this statement of claim.

22 August 2013 Announcements means the 22 August 2013 Results Presentation and the 22 August 2013 Earnings Call.

2013 Inventory Impact Representation means the representation pleaded and particularised at paragraph 70A of this statement of claim.

II. Non date-specific terms

AGM means an annual general meeting.

Americas means the TWE business segment identified as “the Americas”.

Americas RBU means TWE’s Americas Regional Business Unit.

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth).

ASX means the financial market operated by the Australian Securities Exchange Limited.

Australian Consumer Law means:

- (a) the *Australian Consumer Law (Victoria)* set out in Schedule 2 of the *Competition and Consumer Act 2010* as applicable pursuant to section 12 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic); and/or
- (b) the *Australian Consumer Law (NSW)* set out in Schedule 2 of the *Competition and Consumer Act 2010* as applicable pursuant to section 28 of the *Fair Trading Act 1987* (NSW).

Chadwick Report means the expert report of Raymond Chadwick dated 2 February 2017 particularised in paragraph 31C of this statement of claim.

Contractual Inventory Target means the contractual minimum inventory level described at subparagraph 31C(d) and paragraph 31D of this statement of claim.

Contravening Representations and Statements means (individually or in any combination) the representations and statements of TWE made in contravention of statutory norms as identified in paragraph 106 of this statement of claim.

Corporations Act means the *Corporations Act 2001* (Cth).

De Lange email means the email particularised in subparagraph 40(d) of this statement of claim.

Demerger Transparency Statement means the statement made by Fosters on 24 August 2010 identified in subparagraph 56(b) of this statement of claim.

Disclosure Representation means the representation pleaded in subparagraph 88(a) of this statement of claim.

EBITS means earnings before interest, tax materials items and SGARA.

FCAA means the *Federal Court of Australia Act 1976* (Cth).

Fifth 17 August 2012 Disclosure Contravention means the contravention pleaded at subparagraph 47(e) of this statement of claim.

Fifth 28 February 2013 Disclosure Contravention means the contravention pleaded at paragraph 54(e) of this statement of claim.

First 17 August 2012 Disclosure Contravention means the contravention pleaded at subparagraph 47(a) of this statement of claim.

First April 2013 Disclosure Contravention means the contravention pleaded at subparagraph 55F(a)

First 28 February 2013 Disclosure Contravention means the contravention pleaded at subparagraph 54(a) of this statement of claim.

First FY 2013 Guidance Representations means (individually or in any combination) the representations pleaded at subparagraph 82A of this statement of claim.

First FY 2013 Guidance Representations Contravention means the contravention pleaded at paragraph 82E of this statement of claim.

Flat US Inventory Representation means the representation pleaded at paragraph 70E of this statement of claim.

Fosters means Foster's Group Limited.

Fourth 17 August 2012 Disclosure Contravention means the contravention pleaded at subparagraph 47(d) of this statement of claim.

Fourth April 2013 Disclosure Contravention means the contravention pleaded at subparagraph 55F(d) of this statement of claim.

Fourth 28 February 2013 Disclosure Contravention means the contravention pleaded at subparagraph 54(d) of this statement of claim.

Group means TWE and its controlled entities.

Group Members means the persons on whose behalf the action is brought by the Applicant as identified in subparagraph 1(b) of this statement of claim.

FY 2013-2014 Guidance Representations means (individually or in any combination) the representations pleaded at paragraph 78 of this statement of claim.

FY 2013-2014 Guidance Representations Contravention means the contravention pleaded at paragraph 82 of this statement of claim.

FY 2013 Guidance Statements means (individually or in any combination) the statements pleaded at paragraph 82P of this statement of claim.

FY 2013 Guidance Statements Contravention means the contravention pleaded at paragraph 82P of this statement of claim.

H1 2013 Financial Report means TWE's Appendix 4D Financial Results for the half year ended 31 December 2012 lodged with the ASX on 28 February 2013.

FY 2013 Operating Plan means the TWE group operating plan approved by the board at a board meeting on 23-24 May 2012 as described in the particulars subjoined to paragraph 39(d) above.

Inventory Balance Representation means the representation by TWE pleaded at paragraph 72 of this statement of claim.

Inventory Balance Representation Contravention means the contravention pleaded at paragraph 76 of this statement of claim.

Inventory Balance Statements means the statements by TWE pleaded at paragraph 77 of this statement of claim.

Inventory Balance Statements Contravention means the contravention pleaded at paragraph 77 of this statement of claim.

Key US Distributors means SWS, Glazer's and the Charmer-Sunbelt Group.

Listing Rules means the Listing Rules of the ASX.

Listing Rule Compliance Representations means (individually and together) the Disclosure Representation and the Reasonable Enquiry Representation pleaded in paragraph 88 of this statement of claim.

Listing Rule Compliance Representations Contravention means the contravention pleaded at paragraph 91 of this statement of claim.

NSR means net sales revenue.

May 2012 5 Year Strategic Plan means the 5 Year Strategic Plan approved by the board of TWE in the board meeting of 23-24 May 2012 as described in the particulars to paragraph 39(d) above.

Pre August 2012 Statements means the statements of TWE and Fosters identified at paragraph 56 of this statement of claim.

Preliminary Financial Report means the information that a disclosing entity (other than a mining exploration entity) must give the ASX pursuant to Listing Rule 4.3A and Appendix 4E of the Listing Rules, with any necessary adaptations, at end the end of each financial year.

RBU means Regional Business Unit.

Reasonable Enquiry Representation means the representation pleaded at subparagraph 88(b) of this statement of claim.

Relevant Period means the period from 17 August 2012 to 9:30am on 15 July 2013 (inclusive).

Relevant Period Announcements means the company announcements of TWE made during the Relevant Period identified in paragraph 57 of this statement of claim.

Relevant Subsisting Contraventions means (individually or in any combination):

- (a) the First 17 August 2012 Disclosure Contravention pleaded at subparagraph 47(a);
- (b) the Second 17 August 2012 Disclosure Contravention pleaded at subparagraph 47(b);
- (c) the Third 17 August 2012 Disclosure Contravention pleaded at subparagraph 47(c);
- (d) the Fourth 17 August 2012 Disclosure Contravention pleaded at subparagraph 47(d);
- (e) the Fifth 17 August 2012 Disclosure Contravention pleaded at subparagraph 47(e);
- (f) the 22 October 2012 Guidance Information Contravention pleaded at paragraph 48F;
- (g) the First 28 February 2013 Disclosure Contravention pleaded at paragraph 54(a);
- (h) the Second 28 February 2013 Disclosure Contravention pleaded at paragraph 54(b);
- (i) the Third 28 February 2013 Disclosure Contravention pleaded at paragraph 54(c);
- (j) the Fourth 28 February 2013 Disclosure Contravention pleaded at paragraph 54(d);
- (k) the Fifth 28 February 2013 Disclosure Contravention pleaded at paragraph 54(e); and
- (l) the First April 2013 Disclosure Contravention pleaded at subparagraph 55F(a);
- (m) the Second April 2013 Disclosure Contravention pleaded at subparagraph 55F(b);
- (n) the Third April 2013 Disclosure Contravention pleaded at subparagraph 55F(c);
- (o) the Fourth April 2013 Disclosure Contravention pleaded at subparagraph 55F(d).
- (p) the US Inventory Representation Contravention pleaded at paragraph 70;
- (q) the US Inventory Statement Contravention pleaded at paragraph 71;
- (r) the Inventory Balance Representation Contravention pleaded at paragraph 76;
- (s) the Inventory Balance Statements Contravention pleaded at paragraph 77;
- (t) the FY 2013-2014 Guidance Representations Contravention pleaded at paragraph 82;

- (u) the First FY 2013 Guidance Representations Contravention pleaded at paragraph 82E;
- (v) the Second FY 2013 Guidance Representations Contravention pleaded at paragraph 82J;
- (w) the Third FY 2013 Guidance Representations Contravention pleaded at paragraph 82O;
- (x) the FY 2013 Guidance Statements Contravention pleaded at paragraph 82P.
- (y) the US Inventory Management Representation Contravention pleaded at paragraph 86;
- (z) the US Inventory Management Statements Contravention pleaded at paragraph 87;
- (aa) the Listing Rule Compliance Representations Contravention pleaded at 91.

Reported 2012 NPAT Result means TWE's reported net profit after tax for FY 2012 of \$89.9 million as reported in the 17 August 2012 Preliminary Financial Report and the 19 September 2012 Annual Report.

Second 17 August 2012 Disclosure Contravention means the contravention pleaded at paragraph 47(b) of this statement of claim.

Second April 2013 Disclosure Contravention means the contravention pleaded at paragraph 55F(b) of this statement of claim.

Second 28 February 2013 Disclosure Contravention means the contravention pleaded at paragraph 54(b) of this statement of claim.

Second FY 2013 Guidance Representations means the representations pleaded at subparagraph 82F of this statement of claim.

Second FY 2013 Guidance Representations Contravention means the contravention pleaded at paragraph 82J of this statement of claim.

SGARA means AASB 335 (Self-Generating and Regenerating Assets), the relevant effect of which is pleaded at subparagraph 18(g) of this statement of claim.

SWS means Southern Wine and Spirits.

Third 17 August 2012 Disclosure Contravention means the contravention pleaded at paragraph 47(c) of this statement of claim.

Third April 2013 Disclosure Contravention means the contravention pleaded at paragraph 55F(c) of this statement of claim.

Third 28 February 2013 Disclosure Contravention means the contravention pleaded at paragraph 54(c) of this statement of claim.

Third FY 2013 Guidance Representations means the representations pleaded at subparagraph 82K of this statement of claim

Third FY 2013 Guidance Representations Contravention means the contravention pleaded at subparagraph 82O of this statement of claim

TWE means Treasury Wine Estates Limited (ACN 004 373 862).

TWE Inventory Target means TWE's target inventory level for US distributors pleaded at paragraph 31E of this statement of claim.

TWE Securities means ordinary shares in TWE.

US means the United States of America.

US Inventory Management Representation means the representation pleaded in paragraph 83 of this statement of claim.

US Inventory Management Representation Contravention means the contravention pleaded at paragraph 86 of this statement of claim.

US Inventory Management Statements means the statements pleaded in paragraph 87 of this statement of claim.

US Inventory Management Statements Contravention means the contravention pleaded at paragraph 87 of this statement of claim.

US Inventory Representation means the representation pleaded at paragraph 66 of this statement of claim.

US Inventory Representation Contravention means the contravention pleaded at paragraph 70 of this statement of claim.

US Inventory Statement means the statements of TWE referred to in paragraph 71 of this statement of claim.

US Inventory Representation Contravention means the contravention pleaded at paragraph 70 of this statement of claim.

US Inventory Statement Contravention means the contravention pleaded at paragraph 71 of this statement of claim.

WLT means the “Wine Leadership Team” described in the particulars to paragraph 39(e) of this statement of claim.