

DEFENCE

IN THE SUPREME COURT
OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION

No. S CI 2010 05318

B E T W E E N

ERIN DOWNIE

Plaintiff

and

SPIRAL FOODS PTY LTD (ACN 006 292 780)

Defendants

& Ors (according to the Schedule)

Date of Document:	4 March 2013
Filed on behalf of:	Third Defendant
Prepared by:	101079
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In answer to the Amended Statement of Claim dated 21 December 2012, the Third Defendant, Marusan–Ai Co Ltd, (**'Marusan'**), says as follows:

- 1 It admits paragraph 1.
- 2 It admits paragraph 2 insofar as the paragraph is descriptive of the generic parties said to be encompassed within the Group Members on whose behalf the claim is brought.
- 3 It does not plead to paragraphs 4 and 5.
- 4 It admits paragraph 6.

- 5 It makes no admission to paragraphs 7.
- 6 It denies paragraphs 8(b) and (c).
- 7 It admits paragraph 9.
- 8 It makes no admissions to paragraph 10.
- 9 It makes no admissions to paragraph 11.
- 10 It does not plead to paragraphs 12-30 as these paragraphs make allegations against Spiral Foods.
- 11 It admits paragraph 31 insofar as paragraph 31 relates to matters contained in Marusan's discovered document 26 but otherwise it denies paragraph 31.
- 12 It admits paragraph 32.
- 13 It makes no admissions to paragraphs 33 and 34.
- 14 It does not plead to paragraphs 35 - 37 as these paragraphs make allegations against Spiral Foods.
- 15 It does not plead to paragraphs 38 – 66 as these paragraphs make allegations against Muso.
- 16 It admits paragraph 67.
- 17 It admits paragraph 68.
- 18 It admits paragraph 69.
- 19 It admits paragraph 70.
- 20 It admits paragraph 71.
- 21
 - (a) Marusan admits that Spiral Foods advised Muso in 2002, and thereafter Muso advised Marusan, that Spiral Foods wished to change the ingredients in Bonsoy for marketing reasons. Spiral Foods wished to remove salt from the product and from any reference on the packaging of Bonsoy.
 - (b) Marusan proposed to Muso and Spiral Foods to substitute salt with Kombu.

- (c) Marusan provided to Muso and Spiral Foods samples of the reformulated Bonsoy for approval.
- (d) Muso and Spiral Foods thereafter approved the recipe as reformulated and instructed Marusan to manufacture Bonsoy to the reformulated specification.
- (e) Marusan has at all times made known to Muso the level of Kombu in the reformulated specification which was recorded in a Questionnaire supplied by Muso in September 2003.

but otherwise denies paragraph 72.

22 It admits paragraph 73.

23 It denies paragraph 74.

24 It denies paragraph 75.

25 In respect of paragraph 76 it admits as follows:

- (i) by an email dated 12 June 2006, Muso advised Marusan that there had been an enquiry from Spiral Foods in Australia with respect to iodine content of Bonsoy. Muso requested the ratio of Kombu in Bonsoy, the level of iodine in Kombu and the level of iodine in Bonsoy. In the email Muso advised that based on the information in its possession it had analysed Kombu which showed 257mg/100g of iodine in Bonsoy. Marusan was asked to make enquiries with its supplier of Kombu to ascertain the level of iodine;
- (ii) By an email dated 13 June 2006 Marusan advised Muso that enquiries with the supplier of Kombu indicated that the requested analysis did not exist. Muso asked Marusan to undertake an analysis of the level of iodine; and
- (iii) On or about 7 July 2006 Marusan received a results of the requested analysis. The analysis showed that the level of iodine in the sample tested was 3.0mg/100g by the gas chromatographic method. This level of iodine is consistent with formally recommended iodine daily intakes recommended in Japan for the serving size of Bonsoy nominated by Spiral Foods on its packaging, which is stated to be a serving size of 100g. The analysis dated 7 July 2006 was forwarded and made known to Muso and by Muso to Spiral to enable Spiral to deal with the original enquiry made referred to in

(i) above. Marusan understands Muso provided the details of the analysis dated 7 July 2006 to Spiral Foods.

Otherwise it makes no admission to paragraph 76.

26 In respect of paragraph 77 it repeats its plea in respect of paragraph 76 above.

27 It makes no admissions to paragraph 78.

28 It denies paragraph 79.

29 It denies paragraph 80.

30 It denies paragraph 81.

31 Further if, the Plaintiff and/or each Group Member establishes injury loss and damage, such loss or damage was caused by the acts and omissions of Muso and Spiral Foods.

Particulars

Marusan repeats the allegations of the Plaintiff against Spiral and Muso in its amended Statement of Claim. Marusan also says that at all material times Muso and Spiral Foods know the level of Kombu in Bonsoy as from 2003.

32 It admits paragraph 82.

33 It admits paragraph 83 insofar as it alleged that paragraphs 57 and 58 of the Statement of Claim represents a translation of Articles 2 and 3 of the Product Liability Act (Japan).

34 It admits paragraph 85.

35 It denies paragraph 86. Without prejudice to its denial it says that at all material times Marusan made known to Muso and Spiral Foods the level of Kombu in Bonsoy as from 2003 and subsequently, in which regard it repeats its particulars under paragraph 24 above.

36 It denies paragraph 87.

37 It denies paragraph 88.

- 38 It denies paragraph 89.
- 39 It denies paragraph 90.
- 40 It does not plead to paragraphs 91 or 92.
- 41 Unless otherwise admitted or not admitted, Marusan denies that the Plaintiff or any Group Member is entitled to the relief claimed or at all.

Dated: 4 March 2013

Wotton + Kearney

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WOTTON+ KEARNEY
Solicitors for the Third Defendant

Schedule of Parties

ERIN DOWNIE

Plaintiff

and

SPIRAL FOODS PTY LTD (ACN 006 292 780)

First Defendant

MUSO CO LTD

Second Defendant

MARUSAN-AI CO LTD

Third Defendant