

**SUPREME COURT OF QUEENSLAND**

**REGISTRY:**

**Brisbane**

**NUMBER: 4103117**

**Plaintiff:** MALLONLAND PTY LTD  
ACN 051 136 291

**AND**

**Defendant** ADVANTA SEEDS PTY LTD  
ACN 010 933 061

**CLAIM**

The Plaintiff claims on its own behalf and as a Representative Party under Part 13A of the *Civil Proceedings Act 2011 (Qld)* on behalf of Group Members:-

1. Damages pursuant to s.82 of the *Trade Practices Act 1974 (Cth)* (TPA) for conduct that was done by the Defendant in contravention of s.52 of that Act in circumstances where the relevant act or omission occurred prior to 1 January 2011.
2. Damages pursuant to s. 236 of the *Competition and Consumer Act 2010 (Cth)* for a contravention of section 18 of Schedule 2 of that Act (ACL) where the relevant act or omission occurred after 1 January 2011.
3. Damages for negligence.
4. Interest.
5. Costs.
6. Such other order as the Court thinks appropriate.

The Plaintiff makes this Claim in reliance of the Facts alleged in the attached Statement of Claim.

**CLAIM**

Filed on behalf of the Plaintiff

Form 2, Version 2

Uniform Civil Procedure Rules 1999

Rule 22

**Creevey Russell Lawyers**

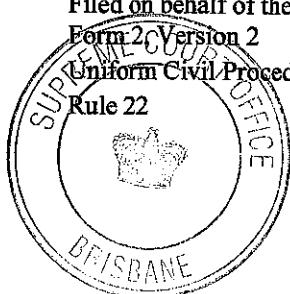
Level 24, 300 Queen Street

Brisbane QLD 4000

Tel: (07) 3009 6555

Fax: (07) 3009 6599

Ref: DJC:170260



ISSUED WITH THE AUTHORITY OF THE SUPREME COURT OF QUEENSLAND

and filed in the Brisbane Registry on 24 April 2017

Registrar: 



To the Defendant: **TAKE NOTICE** that you are being sued by the Plaintiff in the Court. If you intend to dispute this Claim or wish to raise any Counterclaim against the Plaintiff, you must within 28 days of the service upon you of this Claim file a Notice of Intention to Defend in this Registry. If you do not comply with this requirement judgment may be given against you for the relief claimed and costs without further notice to you. This Notice should be in Form 6 to the Uniform Civil Procedure Rules. You must serve a sealed copy of it on the Plaintiff's address for service show in this Claim as soon as possible.

Address of Registry: QEII Court of Law Complex, 415 George Street, Brisbane.

If you assert that this Court does not have jurisdiction in this matter or assert any irregularity you must file a Conditional Notice of Intention to Defend in Form 7 under Rule 144, and apply for an order under Rule 16 within 14 days of filing that Notice.

### **Representative Action**

The Plaintiff brings this proceeding as a Representative Party under Part 13A of the *Civil Proceedings Act* 2011.

The Group Members to whom this proceeding relates are persons or corporations who between 2010 and 2014 (the **Claim Period**):

1. Conducted a business in Queensland for the planting and commercial cultivation and sale of sorghum.
2. Purchased MR43 seed from either the Defendant directly or from a grain merchant who had been authorised by the Defendant to sell MR43 seed.
3. Purchased MR43 seed which contained shattercane seed.

4. Was not notified and was otherwise unaware that the purchased MR43 seed contained shattercane seed.
5. Planted the purchased MR43 seed in order to produce a crop of sorghum for commercial cultivation and sale.
6. Suffered loss and damage due to the presence of shattercane seed in the MR43 seed.
7. In the alternative to paragraphs (1) to (6) above:
  - (a) held an interest in land in Queensland (whether in the nature of freehold title, leasehold or otherwise) on which was planted MR43 seed;
  - (b) the MR43 seed contained shattercane seed;
  - (c) was not notified and did not otherwise become aware of the fact that the MR43 seed contained shattercane seed; or
  - (d) suffered loss and damage due to the presence of shattercane on their land due to the planting of MR43 seed.
8. In the alternative to paragraphs (1) to (7) above:
  - (a) owned land in Queensland which has become contaminated with shattercane through the use of MR43; or
  - (b) suffered loss and damage due to the presence of shattercane on their land.
9. Have not commenced and settled any legal action against the Defendant for the sale or use of MR43 seed which has been contaminated with shattercane during the Claim Period.

The claims of the Group Members give rise to the following substantial common issues of law or fact:

1. Was MR43 a sorghum hybrid variety of seed used for the commercial cultivation of grain sorghum.
2. Is shattercane a weed which, if present in a crop of sorghum:
  - (a) competes strongly with planted sorghum;

- (b) has a deleterious effect on the commercial production of sorghum;
- (c) reduces the sorghum yield;
- (d) once present on land spreads vigorously;
- (e) can germinate, propagate and multiply quickly, infesting and overrunning land;
- (f) can spread and infest surrounding land through the use of farm machinery and/or naturally;
- (g) can lie dormant in soil for up to 12 years;
- (h) is difficult to eradicate.

3. Did the Defendant:

- (a) produce MR43 for the use of some of the Group Members;
- (b) sell MR43 directly to some of the Group Members;
- (c) sell MR43 to Group Members through grain merchants who had been authorised by the Defendant to sell and market MR43.

4. Was MR43 seed sold during the Claim Period marketed by the Defendant as being a hybrid variety of grain sorghum seed that had certain characteristics.

5. Was the MR43 seed sold to some Group Members during the Claim Period packaged in 20kg bags which had attached a label (the **Label**) which was marked with the Defendant's logo and on which the following information was provided:

- (a) that the variety of the seed contained in the bag was MR43;
- (b) the applicable batch number for the seed;
- (c) that there were 29,000 of seeds per kilogram;
- (d) the packaging date of the bag;
- (e) that the minimum germination percentage was 85%;
- (f) that the minimum purity of seed was 99%;
- (g) the maximum percentage of other seeds was 0.1%;
- (h) that the maximum percentage of inert material was 0.5%;
- (i) the fact that a seed analysis certificate was available on request by texting the full batch number to 0409668671;

- (j) that the seed had been treated with an insecticide or insecticides called Thiram Concep Cruiser which was a treatment against thrips, aphids and the phytotoxic effects of metalochlor herbicides.
6. Was the information provided on the Label meant to mean or was it reasonably understood to mean that the seed contained in the bags:
- (a) was grain sorghum MR43 seed which had been produced by the Defendant;
  - (b) was at least 99% pure grain sorghum MR43 seed;
  - (c) contained no more than 0.1% other seed species;
  - (d) was free of weed seed;
  - (e) had been the subject of an expert analysis which had been undertaken to ensure that the information referred to in sub-paragraphs (a) to (d) above was correct and accurate;
  - (f) would have the characteristics of MR43 seed as marketed by the Defendant.
7. Whether the information provided on the Label represented to Group Members and the world at large that the seed:
- (a) was free of any noxious weed seed;
  - (b) contained no more than 0.1% of other seed species;
  - (c) did not contain shattercane seed;
  - (d) had been tested by or on behalf of the Defendant and was safe to be used for the commercial cultivation of Sorghum;
  - (e) could be safely used for the purpose of commercial sorghum cropping;
  - (f) would not cause damage or alternatively not cause any significant or material damage to the land on which it was planted or to other land either surrounding or near land on which MR43 was planted or land on which machinery which had been used to harvest MR43 was used.
8. Did the MR43 seed sold in the 20kgs bags during the Claim Period include shattercane seed.
9. Was MR43 seed planted or permitted to be planted by some Group Members during the Claim Period for the purpose of commercially cultivating sorghum for sale.

10. Was any warning or other notification given by the Defendant or any other person to Group Members that the purchased MR43 seed contained shattercane seed.
11. Was the effect of planting MR43 seed during the Claim Period that, in addition to growing sorghum, shattercane also grew on the land.
12. Was the effect of shattercane growing on the land that it would germinate and propagate on the land and increase its presence on the land.
13. Was an effect of shattercane growing on the land that, through the use of farm machinery or naturally, it infests surrounding land.
14. Does shattercane have a deleterious effect on the commercial production of sorghum.
15. Whether shattercane is difficult to eradicate.
16. Whether shattercane has recurring infestations.
17. Whether the presence of shattercane has an adverse impact on the land's value.
18. Whether the presence of shattercane, when active, impacts on the profitability of commercially grown crops on the land.
19. Was the production, marketing and/or sale (either by itself or through its distributors) of MR43 seed conduct undertaken by the Defendant "in trade or commerce" as that phrase is used in section 52 of the TPA and section 18 of the ACL.
20. Did the Defendant know and intend that the MR43 seed sold during the Claim Period would be sold to some Group Members for the purpose of cultivating commercial sorghum crops for sale.
21. Did the Defendant know or ought it to have known that the Group Members would rely on the information on the Label to the 20kgs bags.

22. Whether the Defendant knew or ought to have known that it was unlikely that the seed contained in the 20kgs bags would be further tested by Group Members.
23. Whether the Defendant knew or ought to have known that any contamination of the seed with shattercane seed would cause loss and damage to Group Members.
24. Whether the Defendant was silent with regard to the fact that the MR43 seed contained shattercane seed.
25. Whether Group Members purchased MR43 seed from either the Defendant or one of its Distributors for planting and cultivation of sorghum for commercial sale during the Claim Period.
26. Whether the Defendant owed Group Members a duty to exercise reasonable care in the production, sale and/or distribution of MR43 seed and to avoid causing Group Members foreseeable harm.
27. Whether it was foreseeable that:
  - (a) if shattercane seed was planted with sorghum seed then the shattercane would vigorously compete with sorghum resulting in a lower yield;
  - (b) once present on land shattercane would be difficult to eradicate;
  - (c) the eradication of shattercane would mean that the land on which it was located could not be used to its full commercial potential during this period;
  - (d) the existence of shattercane would reduce the value of the land on which it was located;
  - (e) shattercane could be spread onto other or adjoining land through the use of farm machinery and naturally.
28. Whether the Defendant breached the duty of care owed by it to Group Members by:
  - (a) procuring and selling to Group Members (either itself or through its Distributors) MR43 seed that was contaminated with shattercane seed;
  - (b) failing to properly test or otherwise ensure that the MR43 seed was free of shattercane seed before selling it to Group Members or providing it to its Distributors for sale;

- (c) failing to warn its Distributors, or otherwise cause Group Members to be warned, that the MR43 seed was or might be contaminated with shattercane seed;
  - (d) failing to warn its Distributors, or otherwise cause Group Members to be warned, that the MR43 seed may contain noxious weed seeds which would have an adverse effect on the sorghum's yield;
  - (e) failing to warn or otherwise tell Group Members of the existence of shattercane seed in the MR43 seed;
  - (f) failing to warn or otherwise tell Group Members that there may be shattercane seed or other noxious weed seeds in the MR43 seed;
  - (g) failing to undertake a proper or adequate grow-out process or to otherwise ensure that the MR43 seed was free of shattercane seed.
29. At the time Group Members purchased the MR43 seed during the Claim Period did the Defendant and/or its Distributors remain silent as to:
- (a) the possibility that the MR43 seed might in any way be contaminated or contain noxious weeds, including shattercane;
  - (b) the fact that the Plaintiff ought to test the MR43 seed itself to ensure that it did not contain shattercane seed.
30. Was the Defendant's silence misleading or deceptive or likely to mislead and deceive.
31. Did Group Members rely on the information contained on the label when purchasing MR43.
32. Was the marketing of MR43 and the representations made on the label misleading and deceptive .
33. Did the Defendant engage in misleading and deceptive conduct in contravention of section 52 of the TPA or to the extent that such acts or omissions occurred after 1 January 2011 in breach of section 18 of the ACL.
34. Due to the presence of shattercane did Group members suffer loss and damage being:
- (a) a reducing in cropping revenue;



- (b) the expense of shattercane mitigation and eradication measures;
- (c) permanent damage to the land which becomes infested with shattercane and any associated loss in value to that land.

**PARTICULARS OF THE PLAINTIFF**

Name: MALLONLAND PTY LTD ACN 051 136 291

Plaintiff's residential or

Business address:

310 Anduramba Road  
CROWS NEST QLD 4355

Plaintiff's solicitor's name:

Dan Creevey

and firm name:

Creevey Russell Lawyers

Solicitor's business address:

Level 24, 300 Queen St, Brisbane QLD 4000

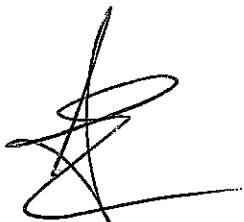
Address for service: Level 24, 300 Queen St, Brisbane QLD 4000

Telephone: (07) 30096555

Fax: (07) 30096599

E-mail address: [dcreevey@crlawyers.com.au](mailto:dcreevey@crlawyers.com.au)

Signed:



Description: **Partner, Creevey Russell Lawyers**

Dated: 24 April 2017

This Claim is to be served on: Advanta Seeds Pty Ltd

of:

268 Anzac Avenue,  
TOOWOOPA QLD 4350