



Federal Court of Australia
District Registry: Queensland
Division: General

No: QUD184/2019

MOUNTAIN BLUE ORCHARDS PTY LTD ACN 068 706 650
Applicant

JASON RICHARD CHELLEW and others named in the schedule
Respondent

ORDER

JUDGE: JUSTICE GREENWOOD

DATE OF ORDER: 11 October 2019

WHERE MADE: Brisbane

THE COURT ORDERS THAT:

1. Pursuant to section 21 of the *Federal Court of Australia Act 1976 (Cth)*, it is declared that each of the First Respondent and Third Respondent has infringed, pursuant to section 53(1)(a) of the *Plant Breeder's Rights Act 1994 (Cth)* (**Act**), the plant breeder's rights in the Ridley 1111 plant variety (**Variety**) registered pursuant to Australian Plant Breeder's Rights Application Number 2009/113 under the Act (**PBR**) by, without the licence or authority of the Applicant:
 - a. producing and reproducing propagating material of the Variety (**Propagating Material**);
 - b. selling Propagating Material;
 - c. offering Propagating Material for sale;
 - d. producing fruit harvested from Propagating Material in circumstances where the Applicant did not have a reasonable opportunity to exercise its right in relation to the Propagating Material;
 - e. offering to sell fruit harvested from Propagating Material in circumstances where the Applicant did not have a reasonable opportunity to exercise its right in relation to the Propagating Material; and



- f. selling fruit harvested from Propagating Material in circumstances where the Applicant did not have a reasonable opportunity to exercise its right in relation to the Propagating Material.
2. Pursuant to section 21 of the *Federal Court of Australia Act 1976 (Cth)*, it is declared that the First Respondent and Third Respondent has infringed, pursuant to section 53(1)(b) of the Act, the PBR by, without the licence or authority of the Applicant:
 - a. claiming to have the right to sell Propagating Material; and
 - b. claiming to have the right to sell fruit harvested from Propagating Material without the licence or authority of the Applicant in circumstances where the Applicant did not have a reasonable opportunity to exercise its right in relation to the Propagating Material.
 3. Pursuant to section 56(3) of the Act, the First Respondent, Second Respondent and Third Respondent, whether by themselves, their servants, agents or otherwise howsoever, are restrained from infringing the PBR.
 4. Pursuant to section 23 of the *Federal Court of Australia Act 1976 (Cth)*, the First Respondent, Second Respondent and Third Respondent must within 14 days of the date of this Order:
 - a. make, file with the Court and serve on the Applicant an affidavit setting out the number and location of:
 - i. plants of the Variety (**Plants**);
 - ii. any other items of Propagating Material; and
 - iii. fruit harvested from Plants (**Fruit**),in the applicable Respondent's possession, custody or control; and
 - b. deliver up for destruction in the presence of the Applicant or the Applicant's nominee to the Applicant or the Applicant's nominee at 370 Orara Road, Lanitza NSW 2460 (the "**Orara Road Property**") all Plants, other Propagating Material and Fruit in the applicable Respondent's possession, custody or control.




5. Pursuant to section 23 of the *Federal Court of Australia Act 1976 (Cth)*, the First Respondent, Second Respondent and Third Respondent on or before 7 days after the delivery up mentioned in order 4.b above:
 - a. permit the Applicant (by its authorised representatives) to enter the Orara Road Property (and to visually inspect any structures and vehicles located on the Orara Road Property) to check the applicable Respondent's compliance with order 4.b above; and
 - b. by its proper officer in the case of the Second Respondent, make, file with the Court and serve on the Applicant, an affidavit stating whether the applicable Respondent has complied with order 4.b above.

6. Pursuant to section 23 of the *Federal Court of Australia Act 1976 (Cth)*, the First Respondent, Second Respondent and Third Respondent:
 - a. make, file and serve on the Applicant within one month after the making of this order an affidavit setting out to the best of their information and belief:
 - i. on an annual basis, the total number of Plants grown by or on behalf of the applicable Respondent, when each Plant was created and/or acquired by or on behalf of each applicable Respondent, the name and contact details of the person or entity who created each Plant and/or from whom each Plant was acquired by or on behalf of each applicable Respondent and the price at which each Plant was acquired by or on behalf of each applicable Respondent;
 - ii. on an annual basis, the number of Plants sold or otherwise supplied by or on behalf of the applicable Respondent, when each Plant was sold or supplied, the name and contact details of the person or entity to whom each Plant was sold or supplied, the price at which each Plant was sold or supplied, the costs to the applicable Respondent of production and sale or supply of each Plant, the method of allocating overheads which the applicable Respondent regards as reasonably appropriate, the amount of the profit the applicable Respondent made from the sale or supply of Plants, and the steps or reasoning by which the amount calculated has been arrived at;



- iii. on an annual basis, the volume of Fruit harvested by or on behalf of the applicable Respondent, when Fruit was sold or otherwise supplied, the name and contact details of the person or entity to whom Fruit was sold or supplied, the price at which Fruit was sold or supplied, the costs to the applicable Respondent of the production and sale or supply of Fruit, the method of allocating overheads which the applicable Respondent regards as reasonably appropriate, the amount of the profit the applicable Respondent made from the sale or supply of Fruit, and the steps or reasoning by which the amount calculated has been arrived at;
 - iv. on an annual basis, the amount of profit the applicable Respondent made from infringement of the PBR to the extent such profit is not otherwise identified, and the steps or reasoning by which the amount calculated has been arrived at; and
 - v. the name and contacts details of each person (including any corporate entity) to whom any Plant or Fruit was offered for sale, if that person has not already been identified as a person to whom Plants or Fruit was sold or otherwise supplied; and
- b. within one month after the making of this order, give verified discovery of all documents relating to the growing, creation, acquisition, and sale or other supply of Plants and Fruit and of all documents relied upon for the purpose of making the affidavit referred to in order 6.a above and permit the Applicant to inspect such documents by arrangement between the relevant parties.
7. The First Respondent, Second Respondent and Third Respondent pay the Applicant the sum of \$290,000 on account of compensatory damages, additional damages, interest and costs in respect of the proceeding and the infringements the subject of orders 1 and 2 above.

Date that entry is stamped: 11 October 2019


Registrar



Schedule

No: QUD184/2019

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Second Respondent CHELLEW INVESTMENTS PTY LTD ACN 167 632 653

Third Respondent MESHEL CHELLEW