

## FIRST DEFENDANT'S COMMERCIAL LIST RESPONSE

### COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity Division
List	Commercial List
Registry	Sydney
Case number	2018/52431

### TITLE OF PROCEEDINGS

First plaintiff	<b>Epaminondas Mastoris</b>
Second plaintiff	<b>Lena Mastoris</b>
First defendant	<b>DSHE Holdings Limited (receivers and managers appointed)(in liquidation) ACN 166 237 841</b>
Number of defendants	<b>3</b>

### FILING DETAILS

Filed for	<b>DSHE Holdings Limited (receivers and managers appointed)(in liquidation)</b> First defendant
Filed in relation to	Plaintiffs' claim
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### COMMERCIAL LIST RESPONSE

#### A. NATURE OF DISPUTE

1. The Plaintiffs have commenced representative proceedings against DSHE Holdings Ltd (**DSHE**) and its directors Nicholas Abboud (**Abboud**) and Michael Potts (**Potts**) on their own behalf and on behalf of persons who acquired an interest in fully paid ordinary shares in DSHE during the period 14 November 2013 to 3 January 2016.
2. The Plaintiffs allege, amongst other things, that DSHE:
  - (a) in publishing the Prospectus:
    - (i) failed to disclose material information in contravention of s728(1) of the *Corporations Act 2001* ;and

- (ii) engaged in misleading and deceptive conduct in contravention of s1041H of the *Corporations Act*, s12DA of the *Australian Securities and Investments Commission Act 2001* and/or s18 of the *Australian Consumer Law* ;
  - (b) failed to communicate information which would have had a material effect on the price or value of shares in contravention of s674(2) of the *Corporations Act*; and
  - (c) by publishing its 2014 Half Yearly Results, 2014 Yearly Results, 2015 Half Yearly Results and 2015 Yearly Results engaged in misleading and deceptive conduct in contravention of s1041H of the *Corporations Act*, s12DA of the *Australian Securities and Investments Commission Act 2001* and/or s18 of the *Australian Consumer Law*.
- 3. The Plaintiffs allege that they and Group Members suffered loss and damage as a result of the matters referred to paragraph 2 above.
- 4. DSHE denies that it is liable to the Plaintiffs and Group Members.

#### **B. ISSUES LIKELY TO ARISE**

- 1. DSHE agrees that the common questions identified the Plaintiffs in paragraph 288 of the Statement of Claim are likely to arise in the proceedings.
- 2. Whether any of the alleged breaches of s1041H, s728 and s674(2) of the *Corporations Act*, s12DA of the *Australian Securities and Investments Commission Act 2001* and/or s18 of the *Australian Consumer Law* affected the price at which shares in the First Defendant were, or would have been, bought and sold.
- 3. Whether the Plaintiff and Group Members suffered loss or damage as alleged by the Plaintiff.
- 4. Whether the Plaintiffs and Group suffered loss and damage as a result of the alleged contraventions by DSHE by reason of 'market based causation' or by reason of direct reliance on the alleged representations made by DSHE.
- 5. The quantification of any damages to which the Plaintiff or a Group Member is entitled.
- 6. If any of the defendants are found liable, whether their liability be reduced proportionately having regard to the extent of responsibility for the loss of each liable defendant and the extent to which any other concurrent wrongdoer is liable for that same loss.

**C. DEFENDANT'S RESPONSES TO CONTENTIONS**

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## **RELIEF CLAIMED**

1. DSHE denies the Plaintiffs and Group Members are entitled to the matters in paragraphs 1 to 5 of the Relief Claimed in the Statement of Claim.

## **PLEADINGS AND PARTICULARS**

### **A. PARTIES**

#### **A.1 The Plaintiffs and Group Members**

1. In answer to paragraph 1 of the Statement of Claim, DSHE:
  - (a) admits that the proceeding has been commenced as a representative proceeding;
  - (b) denies any allegation contained in paragraph 1(d); and

- (c) otherwise does not know and cannot admit any allegation contained in paragraph 1.
2. In answer to paragraph 2 of the Statement of Claim, DSHE:
- (a) does not know and cannot admit the allegations contained in paragraph A1 of Annexure A;
  - (b) does not know and cannot admit the allegations contained in paragraph A2 of Annexure A;
  - (c) does not know and cannot admit the allegations contained in paragraph A3 of Annexure A;
  - (d) does not know and cannot admit the allegations contained in paragraph A4 of Annexure A;
  - (e) denies the allegations contained in paragraph A5 of Annexure A.
3. DSHE does not know and cannot admit the allegations contained in paragraph 3 of the Statement of Claim.

**A.2 The First Defendant**

- 4. DSHE admits the allegations contained in paragraph 4 of the Statement of Claim.
- 5. DSHE admits the allegations contained in paragraph 5 of the Statement of Claim.

**A.3 DSHE's Group Reporting Obligations**

- 6. DSHE admits the allegations contained in paragraph 6 of the Statement of Claim and relies upon Australian Accounting Standards AASB 3, AASB 101, AASB 102, AASB 108, AASB 116, AASB 118, AASB 132, AASB 136, AASB 137, AASB 139 and AASB 1031 for their full terms and effect.
- 7. DSHE admits the allegations contained in paragraph 7 of the Statement of Claim.
- 8. DSHE admits the allegations contained in paragraph 8 of the Statement of Claim.

**B. THE SECOND AND THIRD DEFENDANTS**

- 9. DSHE admits the allegations contained in paragraph 9 of the Statement of Claim.
- 10. DSHE admits the allegations contained in paragraph 10 of the Statement of Claim.

11. DSHE denies the allegations in paragraph 11 of the Statement of Claim.

**C. BACKGROUND**

12. DSHE admits the allegations in paragraph 12 of the Statement of Claim.

13. DSHE admits the allegations in paragraph 13 of the Statement of Claim.

14. DSHE admits the allegations in paragraph 14 of the Statement of Claim.

15. DSHE admits the allegations in paragraph 15 of the Statement of Claim.

16. DSHE admits the allegations in paragraph 16 of the Statement of Claim.

**D. THE ACQUISITION**

**D.1 Share Sale Agreement**

17. DSHE admits the allegations in paragraph 17 of the Statement of Claim.

18. DSHE denies the allegations in paragraph 18 of the Statement of Claim and says that at the time of Acquisition Dick Smith Sub-Holdings Pty Ltd (**DSSH**) was owned:

(a) 98% by Anchorage Capital Partners Pty Ltd; and

(b) 2% by LMA Investments Pty Ltd.

19. DSHE admits the allegations in paragraph 19 of the Statement of Claim.

20. In answer to paragraph 20 of the Statement of Claim, DSHE:

(a) relies on the Share Sale Agreement for its full terms and effect; and

(b) otherwise does not admit the allegations contained in the said paragraph.

21. In response to paragraph 21 of the Statement of Claim, DSHE:

(a) relies on the Forgiveness and Release Deed for its full terms and effect;

(b) says that Woolworths would forgive all amounts owing by Dick Smith to Woolworths at the Effective Time (as defined in the Forgiveness and Release Deed) less:

(i) \$15 million;

- (ii) all amounts owing in the normal course of trading on arm's length terms by Dick Smith to Woolworths in respect of inventory procured through Woolworths' Hong Kong sourcing office at the Effective Time;
  - (iii) an amount equal to the Completion Net Amount (if any) to the extent the Completion Net Amount is payable by Dick Smith to Woolworths (as the Seller) according to the operation and terms of clause 6.1 of the Share Sale Agreement; and
  - (iv) an amount equal to the Net Amount (if any) to the extent the Net Amount is payable by Dick Smith to Woolworths (as the Seller) according to the operation and terms of clause 6.2 of the Share Sale Agreement;
- (c) otherwise does not admit the allegations contained in the said paragraph.

22. In response to paragraph 22 of the Statement of Claim, DSHE:

- (a) relies on the Anchorage Exit Payment Deed for its full terms and effect;
- (b) otherwise does not admit the allegations in the said paragraph.

23. DSHE admits the allegations in paragraph 23 of the Statement of Claim.

24. DSHE does not admit the allegations in paragraph 24 of the Statement of Claim.

25. DSHE does not admit the allegations in paragraph 25 of the Statement of Claim.

## **D.2 Acquisition Accounting**

26. DSHE does not admit the allegations in paragraph 26 of the Statement of Claim.

27. In answer to paragraph 27 of the Statement of Claim, DSHE:

- (a) says that DSSH recognised the fair value of assets acquired of \$261.056M
- (b) otherwise denies the allegations in the said paragraph.

28. In answer to paragraph 28 of the Statement of Claim, DSHE:

- (a) says that DSSH recognised the fair value of assets acquired of \$261.056M; and
- (b) otherwise does not admit the allegations in the said paragraph.

29. DSHE does not admit the allegations in paragraph 29 of the Statement of Claim.

30. DSHE does not admit the allegations in paragraph 30 of the Statement of Claim.
31. In answer to paragraph 31 of the Statement of Claim, DSHE:
  - (a) does not admit the allegations in subparagraph 31(a);
  - (b) as to paragraph 31(b):
    - (i) admits that the financial report of DSSH for the 10 month period ended 30 June 2013 recognised a discount arising on acquisition of \$145.848m; and
    - (ii) otherwise does not admit the allegations in the said subparagraph.
32. DSHE does not plead to paragraph 32 of the Statement of Claim as it does not contain any allegation against it.

**E. EVENTS FOLLOWING THE ACQUISITION**

33. DSHE admits the allegations in paragraph 33 of the Statement of Claim.
34. DSHE does not admit the allegations in paragraph 34 of the Statement of Claim.
35. DSHE admits the allegations in paragraph 35 of the Statement of Claim.
36. DSHE admits the allegations in paragraph 36 of the Statement of Claim.
37. DSHE admits the allegations in paragraph 37 of the Statement of Claim.
38. DSHE admits the allegations in paragraph 38 of the Statement of Claim.
39. DSHE admits the allegations in paragraph 39 of the Statement of Claim.
40. In answer to paragraph 40 of the Statement of Claim, DSHE:
  - (a) says the Total Sources of Funds was \$418.3m;
  - (b) says the Total Uses of Funds was \$418.3m; and
  - (c) otherwise admits the allegations in the said paragraph.
41. DSHE admits the allegations in paragraph 41 of the Statement of Claim.
42. DSHE admits the allegations in paragraph 42 of the Statement of Claim.
43. DSHE admits the allegations in paragraph 43 of the Statement of Claim.



44. DSHE admits the allegations in paragraph 44 of the Statement of Claim.

## **F. THE PROSPECTUS**

45. In answer to paragraph 45 of the Statement of Claim, DSHE;

- (a) relies on ss 709 and 710 of the Corporations Act and ASX Listing Rule 1.7 for their full terms and effect; and
- (b) otherwise admits the allegations in the said paragraph.

46. DSHE admits the allegations in paragraph 46 of the Statement of Claim.

### **F.1 The Key Offer Statistics**

47. DSHE admits the allegations in paragraph 47 of the Statement of Claim.

### **F.2 2013 Financial Representations**

48. In answer to paragraph 48 of the Statement of Claim, DSHE:

- (a) says the Prospectus stated that Historical Financial Information for the three years ended 30 June 2013, was derived from:
  - (i) the audited financial statements of Dick Smith Sub-Holdings for the period from the Acquisition to 30 June 2013; and
  - (ii) the unaudited accounting records of DSE Holdings Pty Ltd (**DSE**) for the period from 28 June 2010 to 26 November 2012;
- (b) says the Prospectus further stated that the income statements for each of the three years ended 30 June 2013 (referred to as pro forma historical financial statements) had the following adjustments applied:
  - (i) sales and contribution to EBIT of the 73 stores that were closed prior to the Acquisition were excluded;
  - (ii) depreciation expense prior to the Acquisition was adjusted to reflect the fair value adjustments recorded to plant and equipment at Acquisition;
  - (iii) interest and tax expense was adjusted to reflect the post-Offer capital structure and borrowings;

### **Particulars**

Prospectus, p 53

- (c) says the Prospectus further stated that the unaudited income statements for the period from 1 July 2010 to 26 November 2012, which were derived from the unaudited accounting records of DSE, excluded certain items, such as inventory impairment, write downs of plant and equipment and onerous lease provisions as those adjustments were not recorded in the DSE unaudited income statements. Those items were charged to either the Acquisition balance sheet or the impairment loss and restructuring provisions;

### **Particulars**

Prospectus, p 53

- (d) otherwise does not admit the allegations in the said paragraph.
49. DSHE admits the allegations in paragraph 49 of the Statement of Claim.
50. In answer to paragraph 50 of the Statement of Claim, DSHE:
- (a) admits the allegations in paragraph 50(a);
  - (b) admits the allegations in paragraph 50(b);
  - (c) admits the allegations in paragraph 50(c);
  - (d) admits the allegations in paragraph 50(d);
  - (e) admits the allegations in paragraph 50(e);
  - (f) admits the allegations in paragraph 50(f);
  - (g) admits the allegations in paragraph 50(g) and further says that depreciation was recognised so as to write off the cost or valuation of assets less their residual values over their useful lives, using the straight-line method. The estimated useful lives, residual values and depreciation method were reviewed at each year end, with the effect of any changes in estimate accounted for on a prospective basis.

### **F.3 Obsolete Stock Representations**

51. DSHE admits the allegations in paragraph 51 of the Statement of Claim.

#### **F.4 1Q2014 Representations**

52. In answer to paragraph 52 of the Statement of Claim, DSHE:

- (a) admits sub-paragraph (a);
- (b) admits sub-paragraph (b);
- (c) admits sub-paragraph (c); and
- (d) says further that the Prospectus stated that:
  - (i) pro forma sales declined by 10.6% to \$273.3 million in 1Q2014 on the previous corresponding period, while like for like pro forma sales declined by 12.2% over the same corresponding period, largely due to the cycling of increased sales in 1Q2013 that were associated with increased promotional and inventory clearance activity;

#### **Particulars**

Prospectus, p 66

- (ii) when compared against management's pro forma adjusted 1Q2013 sales, 1Q2014 pro forma sales declined by 2.2% on a total basis and declined by 3.1% on a like for like basis;

#### **Particulars**

Prospectus, p 67

- (i) The overall decline of management's adjusted like for like sales in 1Q2014 was driven by adjusted like for like pro forma sales growth in Australia of 2.4%, offset by a decline in adjusted like for like pro forma sales in New Zealand of 24.7%.

#### **Particulars**

Prospectus, p 67

#### **F.5 Transformation Representations**

53. DSHE admits the allegations in paragraph 53 of the Statement of Claim.

## **F.6 Growth & Forecast Representations**

54. In answer to paragraph 54 of the Statement of Claim, DSHE:

(a) as to paragraph 54(a)(i), says the Prospectus stated that:

- (i) for FY2014, total pro forma sales were forecast to be \$1,226.0 million, representing a 4.2% decline on FY2013 pro forma sales;

### **Particulars**

Prospectus, p 70

- (ii) Pro forma forecast of sales for 1H2014 was 52% of forecast sales;
- (iii) Pro forma forecast of sales for 2H2014 was 48% of forecast sales;

### **Particulars**

Prospectus, p 65

- (iv) Like for like sales on a pro forma adjusted basis were forecast to decline by 2.5% in FY2014;
- (v) for the forecast of like for like sale it was assumed that product and category mix would continue to be weighted towards private label brands, consistent with previous periods;

### **Particulars**

Prospectus, p 70

- (b) otherwise admits the allegations in the subparagraph 54(a);
- (c) does not admit the allegations in the subparagraph 54(b).

## **F.7 Compliance Representations**

55. DSHE admits the allegations in paragraph 55 of the Statement of Claim.

## **G. PROSPECTUS MATERIAL FACTS**

### **G.1 Sales**

## Sales Trend

56. In answer to paragraph 56 of the Statement of Claim, DSHE:

- (a) admits Dick Smith Sub-Holdings' pro forma sales decreased from \$1,369.5m in FY2012 to \$1,280.4m in FY2013;
- (b) admits 1Q2014 pro forma sales were \$273.3m;
- (c) further says that the Prospectus stated that:
  - (i) total FY2014 pro forma sales were forecast to decline by 4.2% on FY2013 pro forma sales of \$1,280.4 million;

### **Particulars**

Prospectus, p 70

- (ii) FY2014 pro forma adjusted sales were forecast to increase by 4.1% on FY2013 pro forma adjusted sales of \$1,177.8 million;
- (iii) the adjustment referred to in subparagraph (ii) above reflected the estimate of the sales impact of increased promotional activity that occurred prior to the Acquisition and the inventory clearance activity undertaken prior to and subsequent to the Acquisition to clear aged and obsolete stock. The increase in promotional activity, which was focused primarily on clearance sales, did not represent a level of clearance activity that would be incurred in a normal operating environment;

### **Particulars**

Prospectus, p 57

- (iv) that the overall forecast decline of adjusted like for like sales in 1Q2014 was driven by adjusted like for like pro forma sales growth in Australia of 2.4%, offset by a decline in adjusted like for like pro forma sales in New Zealand of 24.7%;

### **Particulars**

Prospectus, p 67

- (v) pro forma sales decreased by 6.5% to \$1,280.4 million in FY2013, while like for like pro forma sales declined by 5.2%. Pro forma sales were

boosted by the increased promotional and inventory clearance activity in 1H2013 offset by the cycling of strong sales of new exclusive products in the prior year;

**Particulars**

Prospectus, p 68

- (vi) the consumer electronics sector in Australia and New Zealand had experienced price deflation in several categories, which led to overall market value contraction;

**Particulars**

Prospectus, p 27

- (vii) Dick Smith Sub-Holding's financial performance was impacted by global economic conditions and their effect on the retail environment. As a result of subdued economic conditions both globally and in Australia and New Zealand, consumer confidence had gone through a period of decline, which had a negative impact on Dick Smith Sub-Holding's financial performance in FY2011, FY2012 and FY2013;

**Particulars**

Prospectus, p 67

- (d) otherwise does not admit the allegations in the said subparagraph.

57. DSHE does not admit the allegations in paragraph 57 of the Statement of Claim.

58. DSHE does not admit the allegations in paragraph 58 of the Statement of Claim.

59. In answer to paragraph 59 of the Statement of Claim, DSHE:

- (a) refers to and repeats paragraphs 56 to 58 of this Commercial List Response;

- (b) otherwise does not admit the allegations in the said paragraph.

Sales Accounting

60. DSHE does not admit the allegations in paragraph 60 of the Statement of Claim.

61. DSHE does not admit the allegations in paragraph 61 of the Statement of Claim.

62. DSHE does not admit the allegations in paragraph 62 of the Statement of Claim.
63. DSHE does not admit the allegations in paragraph 63 of the Statement of Claim and further says that DSHE's auditor, Deloitte Touche Tohmatsu (**DTT**) advised that the reporting of agency sales on a gross rather than net basis was immaterial and had no net income statement impact.

#### **Particulars**

- (A) DTT report to Board for the period ended 30 June 2013, section 1.1 and Appendix B
  - (B) DTT report to Finance and Audit Committee for the half-year ended 29 December 2013, section 1.1, section 3.2 and Appendix B
  - (C) DTT report to Finance and Audit Committee for the year ended 29 June 2014, Appendix B and Appendix F
  - (D) DTT report to Finance and Audit Committee for the half-year ended 28 December 2014, Appendix B and Appendix F
  - (E) DTT report to Finance and Audit Committee for the year ended 28 June 2015, Appendix B
64. In answer to paragraph 64 of the Statement of Claim, DSHE:
- (a) refers to and repeats its paragraphs 60 to 63 of this Commercial List Response; and
  - (b) otherwise does not admit the allegations in the said paragraph

65. In answer to paragraph 65 of the Statement of Claim, DSHE:
- (a) refers to and repeats its paragraphs 60 to 64 of this Commercial List Response; and
  - (b) otherwise does not admit the allegations in the said paragraph

#### **Sales Mix**

66. DSHE does not admit the allegations in paragraph 66 of the Statement of Claim.
67. DSHE does not admit the allegations in paragraph 67 of the Statement of Claim.

68. In answer to paragraph 68 of the Statement of Claim, DSHE:

- (a) refers to and repeats its paragraphs 66 and 67 of this Commercial List Response;
- (b) further says that the Prospectus stated that:
  - (i) when compared against management's pro forma adjusted 1Q2013 sales, 1Q2014 pro forma sales declined by 2.2% on a total basis and declined by 3.1% on a like for like basis;

**Particulars**

Prospectus, p 66-67

- (ii) pro forma sales decreased by 6.5% to \$1,280.4 million in FY2013, while like for like pro forma sales declined by 5.2%;

**Particulars**

Prospectus, p 68

- (iii) FY2014 pro forma like for like sales were forecast to decline by 10.1% in FY2014. Like for like sales on pro forma adjusted basis were forecast to decline by 2.5% in FY2014, with sales based on a weekly store sales run rate that was being achieved in 1Q2014, adjusted for seasonality;

**Particulars**

Prospectus, p 70

- (c) otherwise does not admit the allegations in the said paragraph.

**G.2 Rebates**

69. In answer to paragraph 69 of the Statement of Claim, DSHE:

- (a) admits that Dick Smith Sub-Holdings and/or Dick Smith Holdings obtained rebates, some which were ad hoc and individually negotiated, from suppliers and service providers (**O&A Rebates**);
- (b) says that the accounting treatment which was adopted by the management of DSHE in preparing Post Prospectus Accounts involved such O&A Rebates being recognised immediately in the P&L, either as a Cost of Doing Business or as a



Cost of Sales which derived the Gross Margin, depending on the purpose for which the O&A Rebate was allowed to DSHE;

**Particulars**

- (1) Email from Cork to Potts dated 26 May 2014
  - (2) Email from Potts to White dated 6 June 2014 attaching position papers
  - (c) otherwise does not admit the allegations in the said paragraph.
70. DSHE does not admit the allegations in paragraph 70 of the Statement of Claim,
71. In answer to paragraph 71 of the Statement of Claim, DSHE:
- (a) says that the allegations are so general, broad and vague as to be embarrassing and reserves its rights to bring an application in respect of the allegations contained in the said paragraph;
  - (b) under cover of the objection in subparagraph (a) above, denies the allegations in the said paragraph.
72. DSHE denies the allegations in paragraph 72 of the Statement of Claim.
73. DSHE denies the allegations in paragraph 73 of the Statement of Claim.
74. In answer to paragraph 74 of the Statement of Claim. DSHE:
- (a) refers to and repeats paragraph 73 of this Commercial List Response; and
  - (b) otherwise denies the allegations in the said paragraph.
75. In answer to paragraph 75 of the Statement of Claim. DSHE:
- (a) refers to and repeats paragraph 73 of this Commercial List Response; and
  - (b) otherwise denies the allegations in the said paragraph.
76. In answer to paragraph 76 of the Statement of Claim. DSHE:
- (a) refers to and repeats paragraphs 69 to 75 of this Commercial List Response;
  - (b) says that the Prospectus listed corporate/procurement efficiencies and marketing rebates as one of the major drivers of the forecast increase in EBITDA between FY2013 and the forecast period FY2014;

## Particulars

Prospectus, p 58

(c) otherwise does not admit the allegations in the said paragraph.

77. In answer to paragraph 77 of the Statement of Claim, DSHE:

(a) says that the allegations are so general, broad and vague as to be embarrassing and reserves its rights to bring an application in respect of the allegations contained in the said paragraph;

(b) under cover of the objection in subparagraph (a) above, denies the allegations in the said paragraph.

78. DSHE admits the allegations in paragraph 78 of the Statement of Claim, save that it adopts the definition of O&A Rebate in paragraph 69(a) above.

79. DSHE denies the allegations in paragraph 79 of the Statement of Claim.

80. In answer to paragraph 80 of the Statement of Claim, DSHE:

(a) refers to and repeats paragraphs 69 to 79 of this Commercial List Response; and

(b) otherwise does not admit the allegations in the said paragraph.

### **G.3 Inventories**

81. In answer to paragraph 81 of the Statement of Claim, DSHE:

(a) relies on Australian Accounting Standards AASB 3 and AASB 102 for their full terms and effect; and

(b) otherwise does not admit the allegations in the said paragraph.

82. DSHE does not admit the allegations in paragraph 82 of the Statement of Claim.

83. DSHE does not admit the allegations in paragraph 83 of the Statement of Claim.

84. DSHE does not admit the allegations in paragraph 84 of the Statement of Claim.

85. DSHE does not admit the allegations in paragraph 85 of the Statement of Claim.

86. DSHE does not admit the allegations in paragraph 86 of the Statement of Claim.

87. DSHE does not admit the allegations in paragraph 87 of the Statement of Claim.
88. DSHE denies the allegations in paragraph 88 of the Statement of Claim.
89. In answer to paragraph 89 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraph 88 of this Commercial List Response; and
  - (b) otherwise does not admit the allegations in the said paragraph.
90. DSHE does not admit the allegations in paragraph 90 of the Statement of Claim.
91. DSHE does not admit the allegations in paragraph 91 of the Statement of Claim.
92. In answer to paragraph 92 of the Statement of Claim, DSHE:
- (a) refers to and repeats paragraphs 90 and 91 of this Commercial List Response; and
  - (b) otherwise does not admit the allegations in the said paragraph.
93. In answer to paragraph 93 of the Statement of Claim, DSHE says that:
- (a) in its Report to the Finance and Audit Committee for the half-year ended 28 December 2013, DTT reported that:
    - (i) a provision for uplift of 1% was implemented by management in FY2014 as a tool to build up the obsolescence provision on purchases of inventory;
    - (ii) management made an adjustment to the system to automatically provide 1% on all purchases of inventory; and
    - (iii) a true up calculation was then made to adjust the inventory provision to the required balance and release any excess amount at balance sheet date to profit and loss.

#### **Particulars**

- (A) DTT report to Finance and Audit Committee for the half-year ended 29 December 2013, section 3.5
- (b) in its Report to the Finance and Audit Committee for the year ended 28 June 2014, DTT reported that:
  - (i) the 1% provision was recorded for management purposes only; and