

IP STRATEGIES

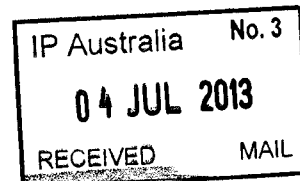
creating IP to create wealth

DARRYL MISCHLEWSKI
registered patent and trade mark attorney
ABN 58 249 752 596

TXR
TDC

NOTE - EVIDENCE FORWARDED
TO EXAM SERVICES

3rd July 2013



TO THE Registrar of Trademarks
P O Box 200
Woden ACT 2606

Attention: **Adam Hamilton**

Sir,

**Re: Trademark application 1528641
by Elixir Gaming Technologies (Hong Kong) Limited**

In reply to the examiner's report of the 16th April 2013, the applicants enclose here with a declaration with exhibits by Tsui Kin Ming

The applicant and its predecessor in business, has been using the Dolphin trademark since 1946. The examiner is invited to visit the website www.dolphinproducts.com.au

I await early and favourable reconsideration.

Yours respectfully,

A handwritten signature in black ink, appearing to read 'Darryl Mischlewski'.

Darryl Mischlewski

DECLARATION

**In the matter of:
Trademark application 1528641**

I, Tsui, Kin Ming

of unit C1 Ground Floor, Koon wah Building no.2 ,Yuen Shun Circuit ,Yuen Chau
Kok, Shatin, New territories HONG KONG SAR

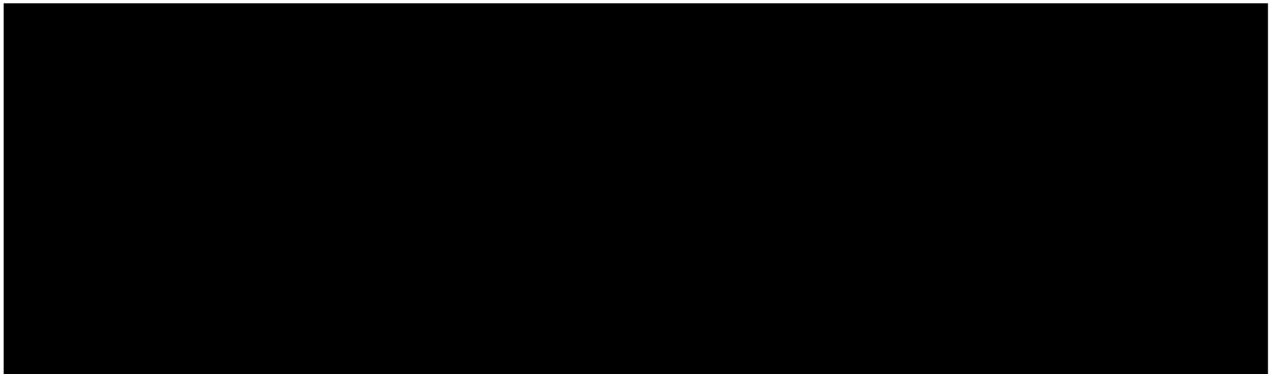
do solemnly and sincerely declare as follows:

- 1 I am Chief Accounting officer of Entertainment Gaming Asia Inc. and I make this declaration based on my personal knowledge and from access to my company's records.
- 2 Up to the 27th March 2013 Dolphin Products Pty Ltd was an indirect wholly owned subsidiary of Entertainment Gaming Asia Inc . On 28th March 2013 the business was transferred to Elixir Gaming Technologies (Hong Kong) limited a wholly owned subsidiary of Entertainment Gaming Asia Inc .
- 3 Dolphin Products Pty Ltd manufactured high precision injection moulded plastic components from 1946 to the present time. The business has been in continual business since 1946 providing an integrated approach of designing, tooling, manufacturing and assembling a wide variety of products to a diverse range of local and international industries, including the Automotive, Industrial, Mining and Medical industries.
- 4 Automotive components manufactured by Dolphin Products Pty Ltd cater for both interior and exterior applications including safety products. Dolphin supplies direct to major automotive companies such as General Motors and Toyota. Dolphin Products Pty Ltd was also a tier 2 supplier to automotive component manufacturers such as, Autoliv Australia Pty Ltd, Futuris Automotive and Bridgestone Australia Ltd. Attached hereto as exhibit A is a brochure relating to Dolphin automotive products.
- 5 Dolphin Products manufactured and exported a wide range of components for the mining, telecommunication and appliance industries. The companies capabilities extended to providing design and tooling for light to medium weight (plastic products, clean room moulded products and high frequency integrated RFID technologies. Attached hereto as exhibit B is a brochure relating to Dolphin industrial products.
- 6 Dolphin Products is a world-class manufacturer of medical devices and is geared to meet the relevant standards of the global healthcare industry. Attached hereto as exhibit C is a brochure relating to Dolphin medical products.

- 7 The promotion of Dolphin products primarily relies on the long standing reputation attached to the DOLPHIN Trademark. The business has a website www.dolphinproducts.com.au which assists in promoting the business.
- 8 Adverting expenses for the Dolphin trademarks for the last 4 years to December 2012 are



- 9 Sales figures for products sold under the Dolphin brand are only available for the past 6 financial years.



I make this declaration conscientiously believing the statements contained in this declaration to be true and correct.


.....
Tsui, Kin Ming

Declared at Hong Kong

Dated:

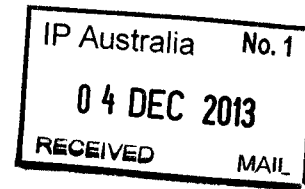
I P S T R A T E G I E S

creating IP to create wealth

DARRYL MISCHLEWSKI
registered patent and trade mark attorney
ABN 58 249 752 596

TXR

3rd December 2013



TO THE Registrar of Trademarks
P O Box 200
Woden ACT 2606

Attention: **Adam Hamilton**

Sir, **Re: Trademark application 1528641**
by Elixir Gaming Technologies (Hong Kong) Limited

In reply to the examiner's report of the 18th October the applicants provide a second Declaration in support of the application.

The examiners argument that the trade mark dolphin has not been used since 1946 is incorrect. The current form of the trademark was adopted in 1997 but since 1946 the word dolphin has been in use continuously as a trademark. The device of a dolphin adds nothing to the trademark in terms of its connection with the applicant and its predecessors in title. A dolphin device by itself will be called dolphin and orders for products sold under the trademark will specify dolphin. This is exactly the same as the use of the word "dolphin" alone. In terms of reputation and distinctiveness the use of the word dolphin since 1946 can be added to the use of the current form of the trademark since 1997.

The dolphin trade mark is inherently adapted to distinguish. The examiners objections are based on the existence of prior registrations owned by 13 different owners. If those registrations can coexist so can the current application coexist with them. Only a few of those prior registrations predate the use of the current form of the trademark and none predate the adoption of the word dolphin in 1946; which predates the earliest prior registration by over 20 years.

In class 12 there are prior registrations for Dolphin owned by 5 different owners. *Dolphin* automotive products have been marketed in Australia by the applicant and its predecessor in business for over 40 years. There has been no confusion with the applicants products during that time. In this regard I refer the examiner to Turcarelli's declaration paragraphs 5, 8 and 11.

The applicants products are primarily sold to other businesses as can be seen from looking at the products sold by the company. Business buying decisions are not made spontaneously and the applicant does not operate in a retail

environment. This explains why there has been no confusion because customers deal directly with the manufacturer and the trademark is the name of the business entity.

Similar considerations apply to the class 9 goods where the prior registrations are owned by 5 different proprietors. Again I refer the examiner to Turcarelli's declaration paragraphs 6, 9 and 11.

With reference to class 10 the prior registration 1323288 is for implants that are degradable in the body. These are quite distinctly different to the class 10 products of this application. Again the buyers of these products are businesses or medical professionals and the possibility of confusion is non-existent. Again I refer the examiner to Turcarelli's declaration paragraphs 6, 10 and 11.

In summary the evidence shows that the principal component of the trademark , the word dolphin was originally adopted before any of the cited registrations and the adoption was clearly honest. The trade mark has been in use on all of the goods for an extensive period. The nature of the goods are such that they are purchased by businesses or professionals and confusion is unlikely.

I await early and favourable reconsideration.

Yours respectfully

Darryl Mischlewski



**Dolphin Products
Pty Ltd**

ABN 54 004 241 945

Innovation Always

600 Waterdale Road
Heidelberg West Victoria
Australia 3081

Telephone
61 · 3 · 9455 4500

Facsimile
61 · 3 · 9455 3877

E-Mail Address
sales@dolphinproducts.com.au

www.dolphinproducts.com.au

DECLARATION

In the matter of: Trademark application 1528641

I, Mario Turcarelli of
of 600 Waterdale Road Heidelberg West VIC 3081

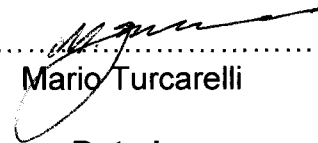
do solemnly and sincerely declare as follows:

- 1 I am the Managing Director of Dolphin Products Pty Ltd and I make this declaration based on my personal knowledge and from access to my company's records.
- 2 I was employed on 1st March 2010 as General Manager of Operations for Dolphin Products.
- 3 Up to the 27th March 2013 Dolphin Products Pty Ltd was an indirect wholly owned subsidiary of Entertainment Gaming Asia Inc. On 28th March 2013 the Trademarks was transferred to Entertainment Gaming Asia Inc formerly named Elixir Gaming Technologies (Hong Kong) Limited. Dolphin Products has an exclusive licence to continue using the trademark subject of application 1528641.
- 4 Since 1st April 2013, I purchased the business and I am Managing Director of Dolphin Products Pty Ltd. Prior to my employment at Dolphin Products, I was employed at General Motors Holden Australia for 23 Years over two terms, in variety roles including Reliability Engineer, Trim Engineering, Engineering Manager, Program Manager and Chief Engineer, between November 1979 to April 1990 and April 1996 to September 2009. In between I worked for two major Auto Plastic supplier (Nylex, and F&T Industries), who competed with Dolphin Products.
- 5 During my time at General Motors I became aware of Dolphin Products as a supplier of injection moulded vehicle components. In 1988 I remember speaking with the then owner, of Dolphin Products, Bill Purton, in respect to the development and supply of the inner door handle and other plastic parts for the VN Commodore. I was aware that Dolphin Products was a plastics supplier to Ford Australia and Toyota Australia.

- 6 Dolphin Products Pty Ltd has manufactured high precision injection moulded plastic components from 1946 to the present time. The business has been in continual business since 1946 providing an integrated approach of designing, tooling, manufacturing and assembling a wide variety of products to a diverse range of local and international industries, including the Automotive, Industrial, Mining and Medical industries.
- 7 The word Dolphin has always been used as a trademark in relation to the products made and sold by Dolphin Products Pty Ltd. The logo which is subject of application 1528641 was adopted in early 1997 prior to filing trademark registration 733385.
- 8 Automotive components manufactured by Dolphin Products Pty Ltd cater for both interior and exterior applications including safety products. Dolphin supplies direct to major automotive companies such as General Motors, Ford and Toyota. Dolphin Products Pty Ltd is also a tier 2 supplier to automotive component manufacturers such as Autoliv Australia Pty Ltd, Futuris Automotive and Bridgestone Australia Ltd. Attached hereto marked exhibit A are copies of correspondence evidencing use of the logo with these customers in 1998 and 1999. The use has been continuous since the adoption of the logo and continues today.
- 9 Dolphin Products manufactures and exports a wide range of components for the mining, telecommunication and appliance industries. The companies capabilities extended to providing design and tooling for light to medium weight plastic products, clean room moulded products and high frequency integrated RFID technologies. Attached as exhibit B are copies of correspondence with a major electrical components customer Warren and Brown in 1998 and 1999. The use has been continuous since the adoption of the logo and continues today.
- 10 Dolphin Products is a world-class manufacturer of medical devices and is geared to meet the relevant standards of the global healthcare industry. Sales have been made to various medical product companies. Attached as exhibit c are copies of correspondence in relation to orders for biomedical products with customers in 1998 and 1999. The use has been continuous since the adoption of the logo and continues today.
- 11 I have read the trademark examiners' reports and have perused all of the prior registrations cited by the examiner. I was not aware prior to reading the reports of the trademarks which are subject of registrations, 399466, 443583, 521810, 713483722680903226, 933450, 962999, 968762, 1030364, 1127198, 1175638 and 1323288. To my knowledge

there has never been any confusion or conflict between Dolphin Products Pty Ltd any other company over the use of the Dolphin trademark. I am personally aware of the Dolphin trade mark as used by Energizer Australia Pty Ltd on torches. However there has never been any confusion or conflict arising from the use of the Dolphin trademarks by Dolphin Products Pty Ltd and Energizer Australia Pty Ltd.

I make this declaration conscientiously believing the statements contained in this declaration to be true and correct.


.....
Mario Turcarelli

Declared at Heidelberg West

Dated:

EXHIBIT A



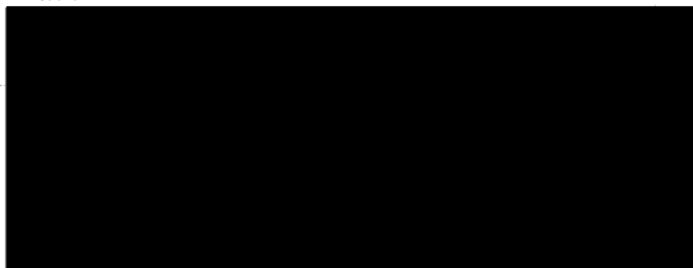
Dolphin



Dolphin Products
Pty Ltd
ACN 004 241 945

Precision in Plastic
An ISO9002
Accredited Company

Facsimile



350 Murray Road
Preston Victoria
Australia 3072

Telephone
61 · 3 · 9470 3055

Facsimile
61 · 3 · 9470 3499

Number of Pages 1

E-Mail Address
Sales@dolphinproducts.com.au

Re :- E-Mail Addresses

Please find the following Email address & web site for our company as requested.

Wed Site : WWW.dolphinproducts.com.au

Email : sales@dolphinproducts.com.au

Emails shall be forwarded to each department/personnel from there on. Could you also please forward a copy of this fax to our buyer [redacted] as we could not obtain the fax numbers from any of your purchase orders.

Should you have any queries please do not hesitate to contact me.

Thanking you.

Best regards



Quality Assurance Engineer



Dolphin



Dolphin Products
Pty Ltd
ACN 004 241 945

Precision in Plastic
An ISO9002
Accredited Company

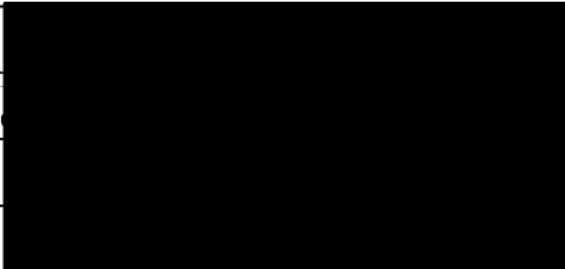
Facsimile

To

Attention

From

Date



350 Murray Road
Preston Victoria
Australia 3072

Telephone
61 · 3 · 9470 3055
Facsimile
61 · 3 · 9470 3499

Number of Pages 4

E-Mail Address
Sales@dolphinproducts.com.au

Re :- Toyota O20N Sunvisor

Please find the attaches material data sheets for the Pivot Assembly – Arm as advised by [redacted] at Bridgestone TG Australia.

The attached material data sheets from two material suppliers for Nylon 6 + 50% glass fill which we believe complies with Toyota Standards TSM5603G-1C-L.

Akulon K224-TG0 from DMS

Grilon PVS-5H from EMS.

Thanking you.

Best regards



Quality Assurance Engineer

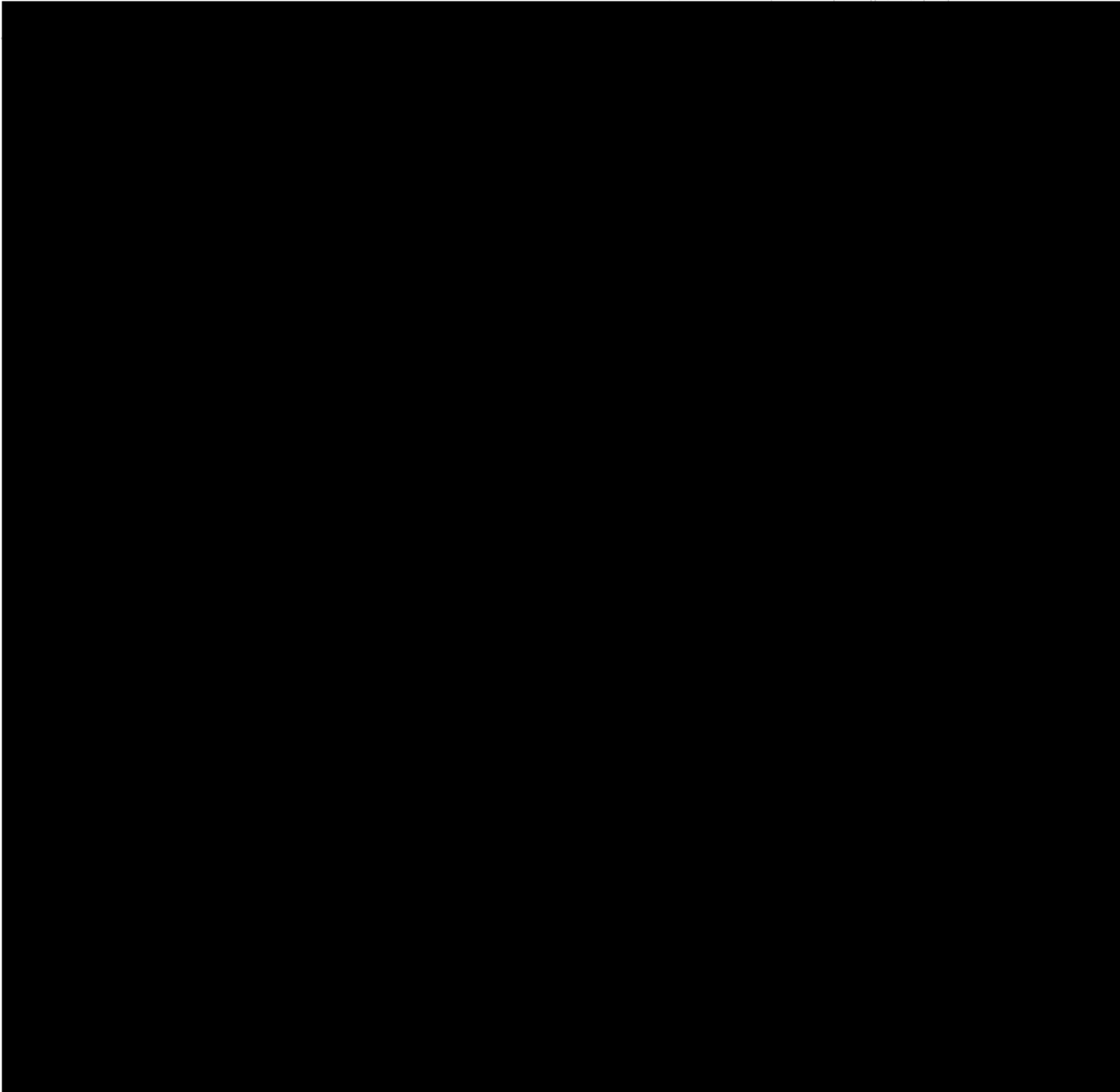


Dolphin



Dolphin Products
Pty Ltd
ACN 004 241 945

Precision in Plastic
An QS9000
Accredited Company



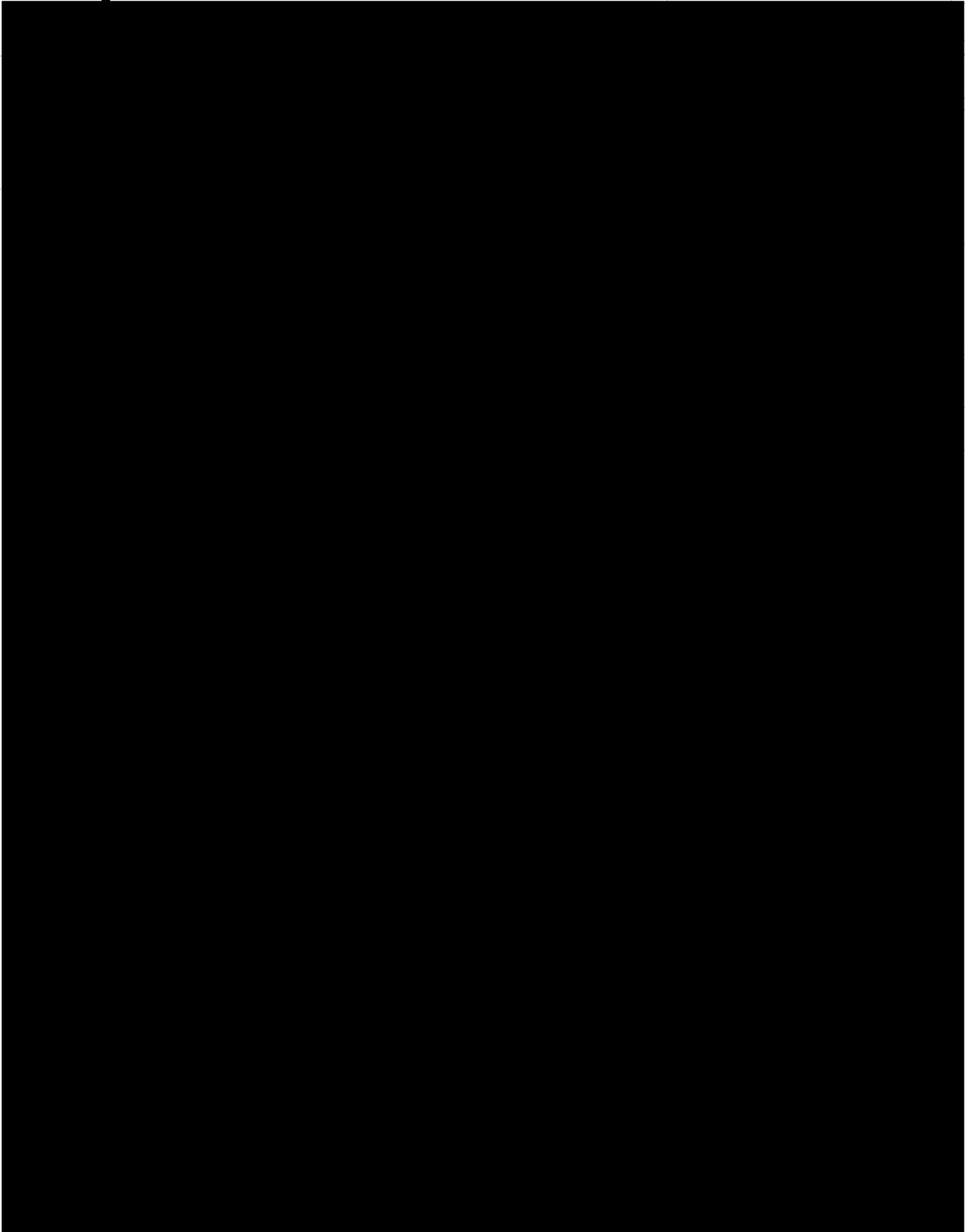


Dolphin



Dolphin Products
Pty Ltd
ACN 004 241 945

Precision in Plastic
An QS9000
Accredited Company





Dolphin



Dolphin Products
Pty Ltd
ACN 004 241 945

Precision in Plastic
An QS9000
Accredited Company

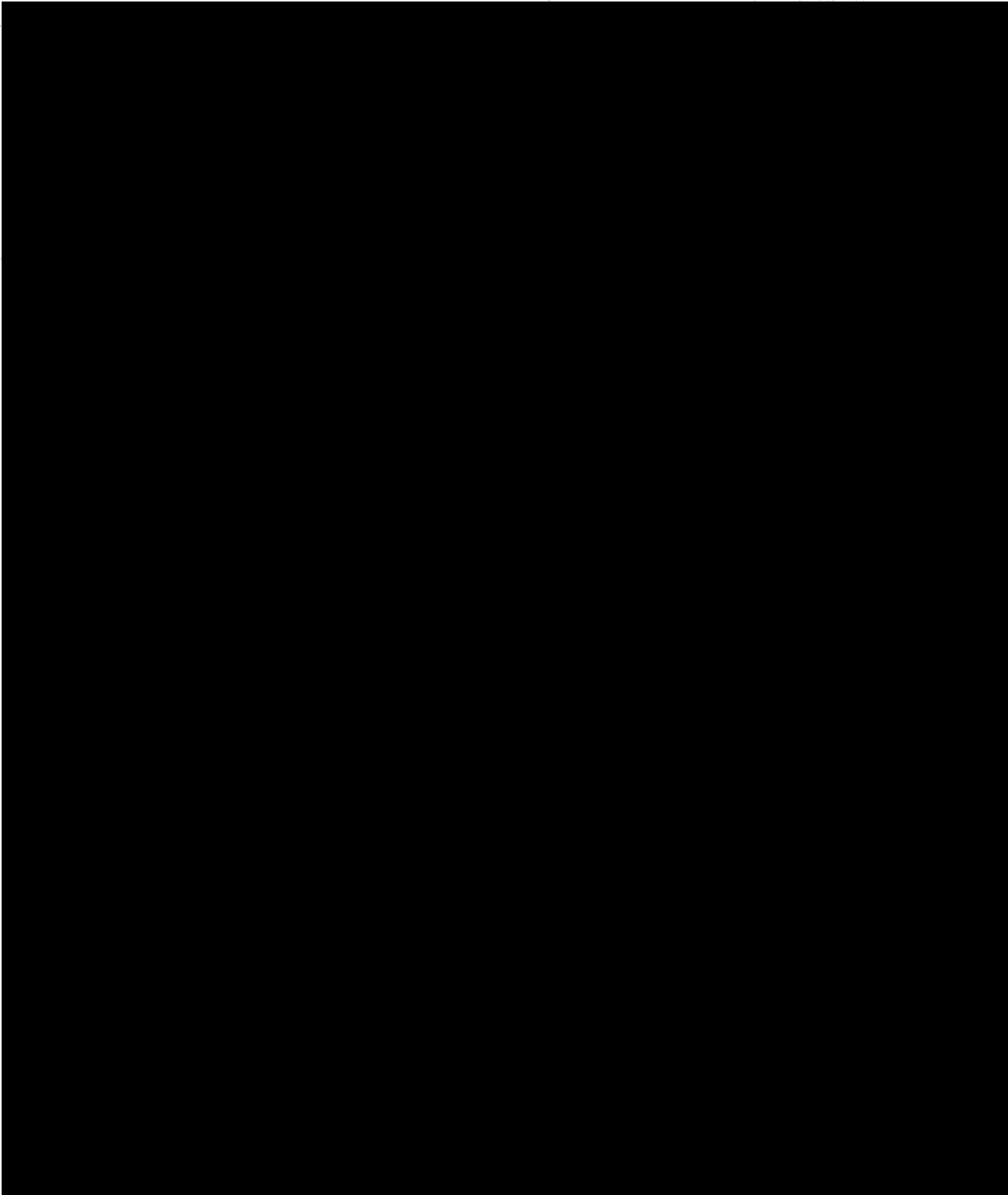
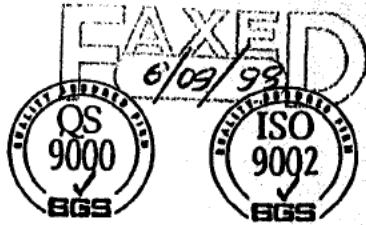


EXHIBIT B

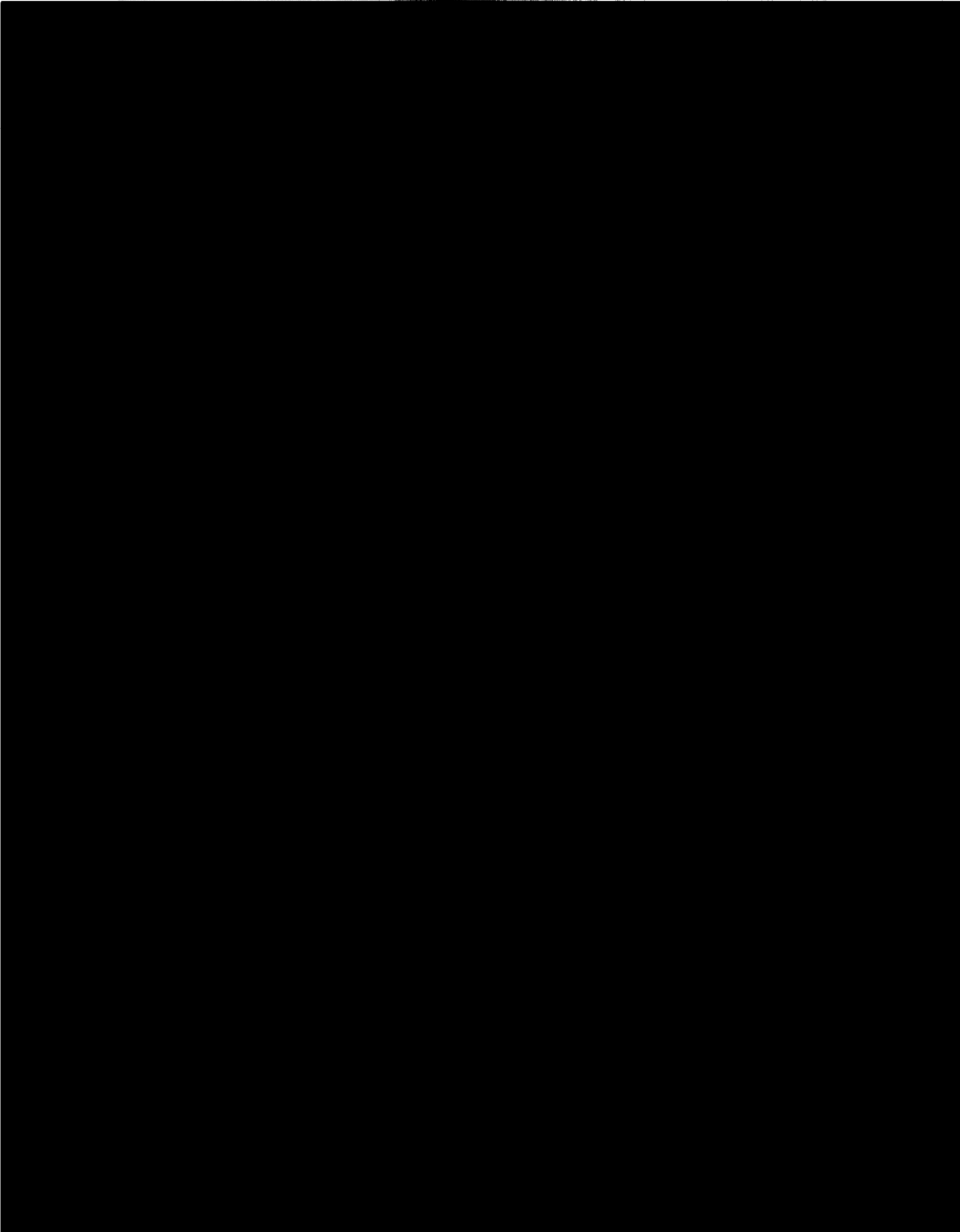


Dolphin



Dolphin Products
Pty Ltd
ACN 004 241 945

Precision in Plastic
An ISO9002
Accredited Company





Dolphin



FAXED
25/7/04

Dolphin Products
Pty Ltd
ACN 004 241 945

Precision in Plastic
An ISO9002
Accredited Company

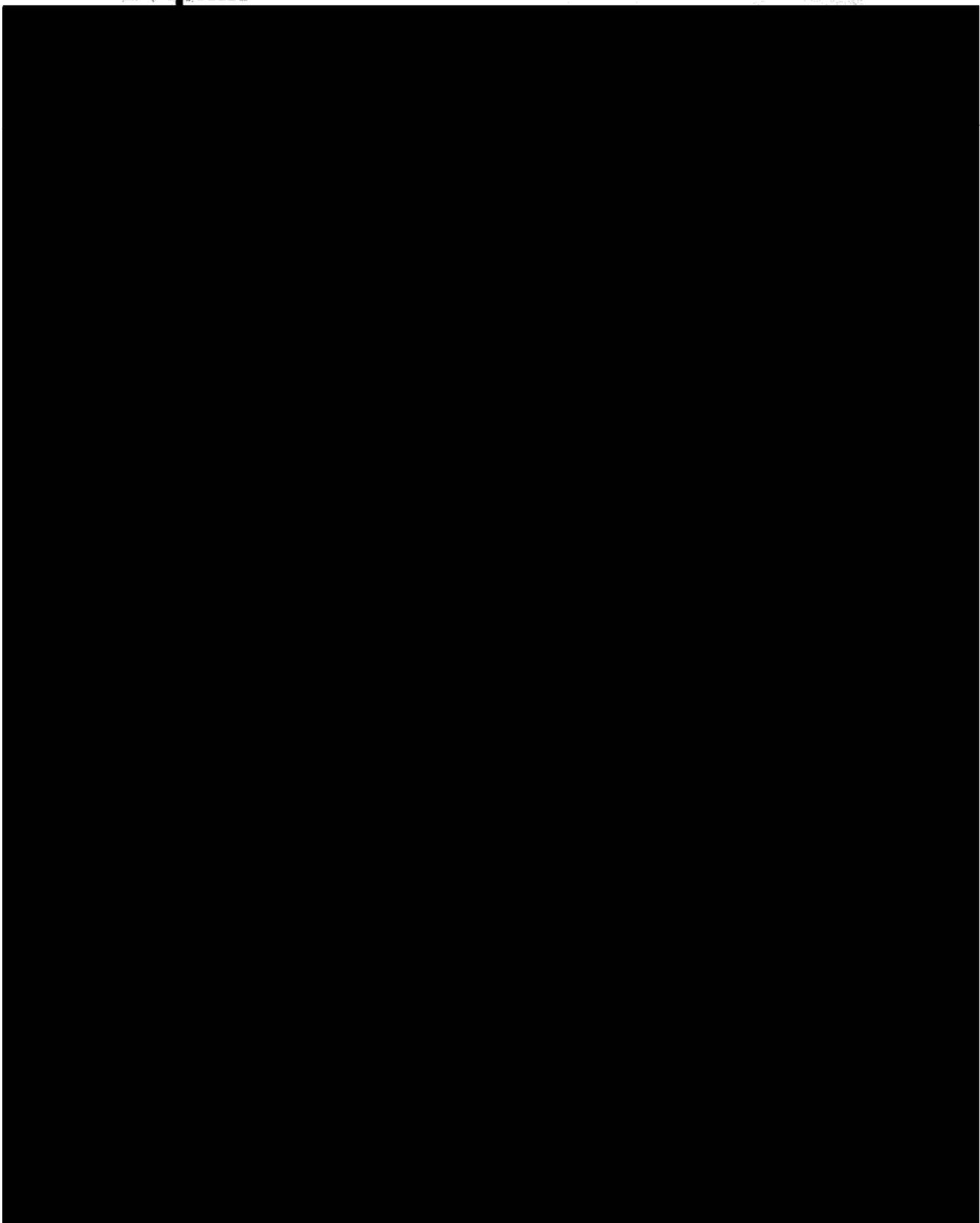


EXHIBIT C



Dolphin



Dolphin Products
Pty Ltd
ACN 004 241 945

Precision in Plastic
An ISO9002
Accredited Company

Facsimile

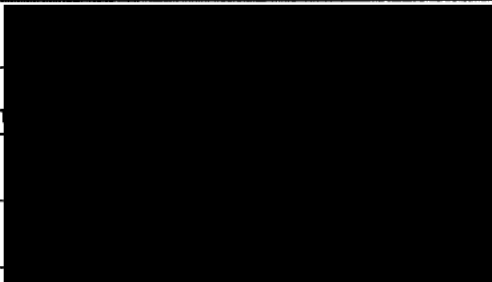
600 Waterdale Road
Heidelberg West Victoria
Australia 3081

To

Attention

From

Date



Telephone
61 · 3 · 9455 3933
Facsimile
61 · 3 · 9455 3877

Number of Pages 2

E-Mail Address
sales@dolphinproducts.com.au

Dear Sir / Madam,

Please find attached the registration form for the MEDTEC - RAI International Exhibition & Congress Centre, Amsterdam, Netherlands (21-23 September, 1999) that I am enquiring about.

Could you please inform me whether or not it is possible to gain reprints – information on the Sessions circled.

- Session 104 The Next Generation of Medical Materials For Processing Applications – Part 2.
- 202 Materials Processing For Medical Manufacturing – Part 1.
- 204 Materials Processing for Medical Manufacturing – Part 2.

We are a plastic injection moulding company who manufacture a variety of different medical applications – equipment. At this point in time it was not suitable to have sent a representative to the conference but if you could inform me as to cost or where to obtain this information it would be most appreciated.

If you have any further queries or require clarification please do not hesitate to make contact with me.

Yours sincerely,
Dolphin Products Pty Ltd



Marketing Assistant



Dolphin



FAXED
3/03/88

Pty Ltd
ACN 004 241 945

Precision In Plastic
An ISO9002
Accredited Company



Dolphin



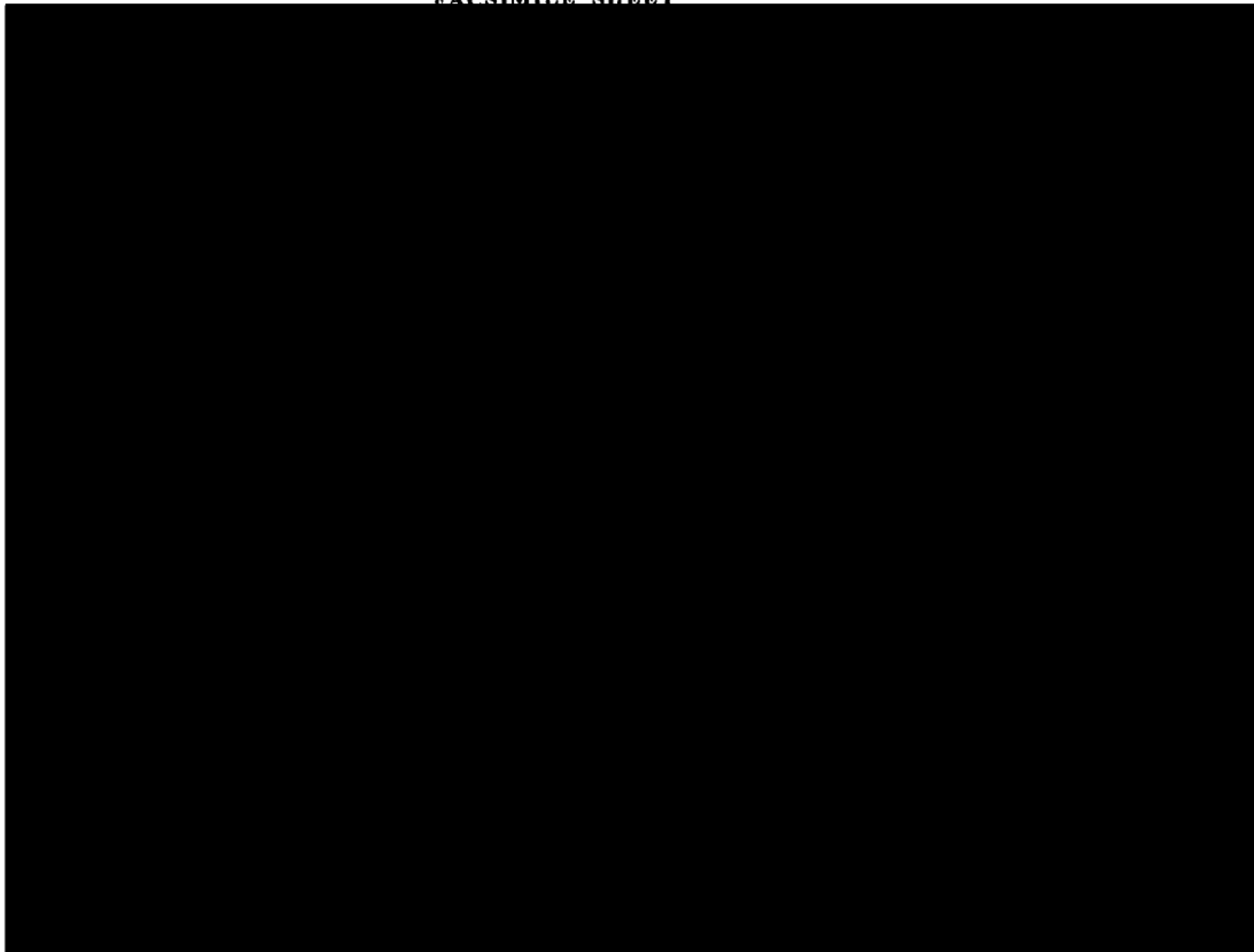
TGA
Lic 140013

Dolphin Products
Pty Ltd
Precision in Plastic

ABN 54 004 241 945

An ISO9002
Accredited Company

FACSIMILE SHEET



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RE: **FAXED**
8.2.05

FAXED