

RULING

19 THE CHAIRMAN: The tribunal in these proceedings has been
20 grappling throughout with the issue of confidentiality
21 which has already led the tribunal to make a number of
22 orders. The issue continues to plague us in a manner
23 that is, if we may say so, less than satisfactory and
24 now concerns an agreement dated 24th August 2002 between
25 Umbro and Sports Soccer.

1 The immediate background to that is that on Friday
2 afternoon last we made an order ordering disclosure to
3 the appellants of various drafts of agreements between
4 Umbro and Sports Soccer. The agreement that we are now
5 considering, dated as I say 24th August 2002, was
6 executed later, and executed at a time that is
7 subsequent to the events with which we are concerned in
8 this case.

9 During the argument on Friday afternoon we reserved
10 our position as to the disclosure of this particular
11 agreement, on the understanding that Sports Soccer's
12 representatives would check with Sports Soccer as to
13 whether the executed agreement was or was not broadly in
14 line with the drafts which were being disclosed.

15 The agreement as executed states that its effective
16 date is 1st May 2000, and it is said by Sports Soccer
17 that the terms of the executed agreement do broadly
18 reflect the drafts that have already been disclosed.

19 We have not in the time available been able to
20 verify whether that is the case or not.

21 What has apparently happened since Friday is that
22 this agreement was tracked down, it not being in
23 the possession of the OFT, or at least so we were told
24 on Friday. Earlier this morning it was handed over to
25 the appellants without limitation, at that time, of use

1 by the Office of Fair Trading.

2 It is apparently Sports Soccer's submission that
3 subject to restrictions on the mention of the details of
4 the agreement in open court it, Sports Soccer, does not
5 object to this agreement being shown to the lay clients
6 of the appellants.

7 Umbro's position is, however, quite different: Umbro
8 objects very strongly to this agreement being shown to
9 the lay clients of the appellants, ie being disclosed to
10 JJB and Allsports. Umbro submits that it was not
11 consulted by the OFT before the document was handed
12 over; that it would have objected had it been consulted;
13 and that there are a number of highly sensitive matters
14 referred to in the agreement of 24th August 2002.

15 Umbro emphasises in particular that the agreement of
16 24th August 2002 is still extant. Although the matters
17 handed over on Friday referred to what was in force at
18 the time, this agreement goes effectively further in
19 referring to commercial terms that are still effective
20 as between Umbro International Limited and Sports Soccer
21 and should not, therefore, be disclosed to
22 Sports Soccer's competitors or customers of Umbro, such
23 as JJB and Allsports.

24 The tribunal has to make a balance here between
25 the interests of the various parties. In our view, in

1 a matter as sensitive as this, we should do our best to
2 proceed cautiously and in stages.

3 It is, I think, common ground that the actual
4 mention of this document in open court can be controlled
5 one way or another so as to prevent sensitive figures
6 being publicly referred to.

7 The question is to what extent the appellants need
8 to take instructions from their clients on the contents
9 of this agreement.

10 In that respect, the appellants already have draft
11 documents, and it is right to say that those
12 representing the appellants have knowledge of
13 the document and are able to put questions to
14 the witnesses in cross-examination, subject to
15 the control of the tribunal.

16 It is also right to say that Mr Hughes, who is for
17 this purpose the lay client for Allsports, has already
18 been shown a copy of the document and has had a brief
19 chance to see it, it having been handed over to him
20 without any limitation on disclosure.

21 The way we think we should approach it at this stage
22 is to give some interim protection to Umbro, subject, as
23 it were, to constant review as this case proceeds.

24 As we understand it, Umbro has identified a number
25 of terms of the agreement which it regards as currently

1 in force and particularly sensitive.

2 We are not wholly persuaded that the actual current
3 terms of the agreement are necessary to be disclosed to
4 the lay clients in addition to the material that
5 they have already had at this stage. Of course, subject
6 to review as we go along.

7 What therefore we propose in principle is that
8 the document should be disclosed to the lay clients in
9 question, subject to certain redactions which
10 provisionally would seem to us to cover the following.

11 That is to say, the definition of "customer group"
12 on page 3; the duration of the agreement on page 3;
13 the figure for the sourcing royalty on page 5;
14 the percentage figure mentioned on page 7. I will leave
15 open for the moment paragraphs 3.1B and C of
16 the agreement.

17 The figure in paragraph 6.1(ii), the figure that is
18 mentioned in that paragraph; the percentage figures that
19 are referred to in paragraph 7.1 on page 13;
20 paragraph 11.3(iii); schedule 3.

21 However, as regards schedule 5 about which there has
22 been a certain amount of debate before us,
23 the understanding of that schedule and the arrangements
24 to which it relates for the years 2001 and 2002 do seem
25 to us to be of potential relevance to the case; it

1 appears to relate to historical information. That
2 schedule does seem to us to bear on the relationship
3 between Sports Soccer and Umbro at the relevant time.
4 That schedule in our judgment should be disclosed at
5 this stage in its present form.

6 I think the clause that I left open while we were
7 going through the agreement was clause 3.1B and C.
8 I think our ruling on that at the moment is that there
9 is no need for those to be disclosed at this stage.

10 What we would invite the parties to do is to try to
11 prepare an agreed non-confidential version of
12 the agreement along the lines that we have indicated.
13 We will keep the matter under review. If at some later
14 stage we are persuaded that it is absolutely essential
15 that some further detail of agreement needs to be
16 revealed we will reconsider the matter.

17 Subject to what we have said, we are of the view
18 that the information already in the appellants' hands
19 should suffice. We are conscious that these situations
20 are not easy to resolve, and that is the balance that
21 we have struck on this particular case.