



COMPETITION APPEAL TRIBUNAL

**NOTICE OF A CLAIM FOR DAMAGES UNDER SECTION 47A
OF THE COMPETITION ACT 1998**

Case No: 1088/5/7/07

The Registrar of the Competition Appeal Tribunal (the “Tribunal”) gives notice of the receipt of a claim for damages on 3 August 2007, under section 47A of the Competition Act 1998 (the “Act”), by M.E. Burgess, J.J. Burgess and S.J. Burgess (trading as JJ Burgess & Sons), Alfred House, The Common, Hatfield, Hertfordshire, AL10 0ND (the “claimant”) against (i) W. Austin & Sons (Stevenage) Limited, 9-11 Letchmore Road, Stevenage, Hertfordshire, SG1 3JH and (ii) Harwood Park Crematorium Limited, Watton Road, Stevenage, Hertfordshire, SG2 8XT, together (the “defendants”).

The claimant’s legal advisers are Young & Lee, Solicitors, No. 6 The Wharf, Bridge Street, Birmingham, B1 2JS (Mr Christopher Leek– reference 27466-001-7.CL.BB).

The claim arises from a judgment of the Tribunal dated 6 July 2005 ([2005] CAT 25) (the “Judgment”) in Case No: 1044/2/1/04 *M.E. Burgess, J.J. Burgess and S.J. Burgess (trading as JJ Burgess & Sons) v The Office of Fair Trading*.

For the reasons given in the Judgment the Tribunal concluded that the defendants had “infringed the Chapter II prohibition [contained in section 18 of the Act] from 18 January 2002 to 22 March 2004 by refusing access to Harwood Park except through Nethercotts for cremations to be carried out by the Knebworth and Welwyn Garden City branches of Burgess, and from 22 March 2004 by refusing all access to Harwood Park in respect of cremations to be carried out by those branches” (see paragraph 391 of the Judgment).

The claimant submits that as a result of the defendants’ unlawful refusal of access the defendants have been unjustly enriched and the claimant has suffered losses under the following heads:

- (a) loss of revenue from funerals that would otherwise have been carried out by the claimant;
- (b) costs incurred as a result of having to use another local funeral director, Nethercotts from 16 January 2004 to 22 March 2004;
- (c) costs of setting up a further office in St Albans due to the ongoing refusal to supply and the decision of the Office of Fair Trading dated 29 June 2004 No. CA98/06/2004 that the defendants had not infringed the Chapter II prohibition in section 18 of the Act, including an application by the claimant on 6 June 2002 under the original section 47(1) of the Act to vary the OFT’s earlier non-infringement decision of 28 February 2002;
- (d) costs of providing a free car to those prepared to use a further crematorium and extra petrol involved in using a further crematorium;
- (e) loss of sales of Golden Charter pre-paid funerals, where the client selects the crematorium; and
- (f) costs of the administrative procedure.

The claimant therefore claims:

- (a) loss of net profit; alternatively
- (b) loss of profit on an itemised basis; alternatively
- (c) such amount on such basis as the Tribunal sees fit; and
- (d) costs; and
- (e) interest at such rate and for such period as the Tribunal sees fit.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively the Tribunal Registry can be contacted by post at the above address or by telephone (020 7979 7979) or fax (020 7979 7978). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE

Registrar

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