



[2006] CAT 22

IN THE COMPETITION

APPEAL TRIBUNAL

Case No. 1069/4/8/06(IR)

1070/4/8/06

Victoria House
Bloomsbury Place
London WC1A.2EB

19th September 2006

Before:
SIR CHRISTOPHER BELLAMY
(President)

MICHAEL DAVEY
RICHARD PROSSER OBE

Sitting as a Tribunal in England and Wales

BETWEEN:

**STERICYCLE INTERNATIONAL LLC
STERICYCLE INTERNATIONAL LIMITED
STERILE TECHNOLOGIES GROUP LIMITED**

Applicants

and

COMPETITION COMMISSION

Respondent

Mr. George Peretz (instructed by DLA Piper) appeared for the Applicants.

Mr. Ben Rayment (instructed by the Treasury Solicitor) appeared for the Respondent.

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RULING ON COSTS

1 THE PRESIDENT: In this matter the Tribunal has two applications for costs in front of it. The first
2 is in relation to the application for interim relief that the Applicants made on 19th July 2006
3 that was heard by the President of the Tribunal sitting alone. On that occasion the President
4 reserved the costs and it now falls to the President to make a Ruling as to what should happen
5 as regards the costs of that occasion.

6 That application was made as a matter of urgency and centred on para. 2(j) of the CC's order
7 of 18th July which required, among other things, Stericycle and STG to liaise with the CC in
8 order to establish suitable arrangements for ensuring that the relevant functions were carried
9 out by separate teams from Stericycle and STG. The Commission's position, as set out in
10 correspondence on 18th July, was that that imposed an obligation to establish separate teams,
11 but that the practicalities of that operation were to be the matter of liaison between the parties.
12 It emerged at the beginning of the hearing on the 19th July that the parties had reached a
13 common position to the effect that the CC would not take any steps to enforce para.2(j) until
14 the CAT had ruled on the matter if necessary. In that regard, having regard to the
15 correspondence between the parties and the wording of para.2(j), it seems to me that it was not
16 entirely clear under para. 2(j) exactly what obligation had been imposed on Stericycle and
17 STG and in the circumstances it does not seem to me to have been an unreasonable step on
18 behalf of the Applicants to apply to the CAT for relief in order to establish the position. As it
19 turned out it did not become necessary for the Tribunal to make any ruling on that application
20 so the Tribunal has not gone into the merits of the matter one way or another as it appeared to
21 be on the 19th July.

22 In those circumstances, as regards that part of these proceedings the proper order in my
23 judgment is that both sides should bear their own costs.

24 In relation to the main application, that is to say the one that has been dealt with today by the
25 Tribunal in its Judgment, the submission that has been made to us is that the CC never really
26 made it clear what its concerns were; that the discussions between the Applicants and the CC
27 centred on various specific points in relation to sales and marketing operations and finance and
28 related matters, and it was not until the Applicants received Mrs. Guy's later witness statement
29 that it became clear that what the CC was really concerned about was the single directing
30 mind, that is to say one CEO being responsible for both parts of the business.

31 The CC submits that there are two answers to that submission. First, it was made clear to the
32 Applicants, notably at p.32 of the transcript of a meeting that took place on 16th August, that it
33 was very difficult for the CC to be prescriptive about particular aspects of the business in
34 circumstances such as this; the CC had to take an overall view because it was difficult to
35 foresee everything that might happen in the future. Secondly, it was submitted that, in any

1 event, a fair reading of the transcript shows that the Applicants either knew or should have
2 known what the problem was.

3 We accept the CC's submissions in this regard. In our view there are a number of instances in
4 the transcript of the 16th August meeting in which it is indicated to the Applicants that the
5 Commission is concerned about the position of there being one CEO and particular reference
6 is made to that problem on pp.12 and 28 of the transcript among other places.

7 In those circumstances, and also having regard to the long history of this matter in which the
8 Applicants were resisting the proposals of the CC throughout, we do not think it possible to
9 displace the normal rule in cases such as this that the unsuccessful Applicant should pay the
10 costs. The staff meeting of 17th August does not in our view take matters very much further
11 since the position should already have been made sufficiently clear on 16th August, if no
12 earlier.

13 The Applicants having been unsuccessful in their application in our judgment this is a case
14 where the Competition Commission should recover its costs to be agreed within 28 days, or if
15 not agreed summarily assessed by the Tribunal.