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IN THE COMPETITION
APPEAL TRIBUNAL

Case No. 1014 and 1015/1/1/03

New Court,
Carey Street,
London WC2A 3BZ.

30 July, 2003

Before:
SIR CHRISTOPHER BELLAMY
(The President)
THE HONOURABLE ANTONY LEWIS
MRS VINDELYN SMITH-HILLMAN

Sitting as a Tribunal in England and Wales

BETWEEN:

(1) ARGOS LIMITED
&
(2) LITTLEWOODS LIMITED

Appellants

and

THE OFFICE OF FAIR TRADING
(formerly the Director General of Fair Trading)

Respondent

Mr Mark Hoskins (instructed by Burges Salmon) appeared for Argos.

Mr Nicholas Green QC and Miss Marie Demetriou (instructed by DLA) appeared for Littlewoods.

Mr Meridith Pickford (instructed by Director of Legal Services, Office of Fair Trading) appeared for the Respondent.

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PROCEEDINGS

1
2 THE PRESIDENT: The Tribunal is handing down an interim judgment today in which, for the
3 reasons given in the judgment, we stay the appeal and remit the matter to the Director with a
4 view to the Rule 14 procedure being continued.
5 Are there any applications?
6 MR HOSKINS: I think following on from the invitation in the judgment, there have been
7 discussions about a draft order. Perhaps I could hand up as far as we have got. [Document
8 handed to Tribunal]
9 THE PRESIDENT: Thank you, Mr Hoskins.
10 MR HOSKINS: Sir, the intention is that this should reflect paragraph 102 of the judgment in the
11 sense that there is a need for a stay for a remittal for Rule 14.
12 THE PRESIDENT: Yes.
13 MR HOSKINS: Sir, you will see the stay. (2) is worded as it is to make sure - this came up in
14 *Aberdeen Journals* - that the remittal is limited in scope, if I can put it like that. It is for a
15 particular purpose and that why (2) is worded in that way. It is not a general remittal. The
16 timetable is agreed between Argos and Littlewoods. The Director, or rather the Office, would
17 like to make submissions - I think they would like some more time in relation to certain
18 aspects - but I think it is better that you hear from the Office on what they would like.
19 THE PRESIDENT: Yes.
20 MR HOSKINS: But it is agreed between Argos and Littlewoods. It is intended also to follow the
21 indication that was given at paragraph 100 of the judgment, of a three month delay, so this
22 would come in just short of three months.
23 THE PRESIDENT: Yes.
24 MR HOSKINS: And costs would be reserved again as indicated in the judgment.
25 THE PRESIDENT: Yes.
26 MR HOSKINS: The only other point the Tribunal might like to consider is whether a direction
27 should be made at this stage for a CMC to be put in following the amended decision, so that
28 we all know where we go from there, because it is not obvious that we will all want to
29 relaunch the appeal process, we will obviously consider where we are at, but it may well be
30 that a CMC may be something that could be put in there.
31 THE PRESIDENT: Yes.
32 MR HOSKINS: That is as far as we have got. I think it is probably best to hear from the Office.
33 THE PRESIDENT: But this draft is agreed as between Argos and Littlewoods at least, at the
34 moment?
35 MR HOSKINS: It is, yes.
36 THE PRESIDENT: Yes. Mr Pickford?
37 MR PICKFORD: Sir, may I apologise on behalf of Mr Doctor and Ms Smith for being unable to
38 be here today.

1 THE PRESIDENT: No, thank you for standing in for them.

2 MR PICKFORD: On the matter of the timetable there are two respects in which the OFT would
3 like further time.

4 First, they would seek to have matters 3(a) to 3(c) extended by two weeks, so the
5 timetable put back by two weeks for those, the reason being that Mr Doctor is on vacation
6 during the entirety of August. They would obviously like to involve him in the supplementary
7 process. It is obviously new ground, and they would like a short amount of time to be able to
8 do that. If the matter was extended by two weeks, which would take 3(a), the service of the
9 supplemental Rule 14 Notice, from 29th August to 12th September, that would enable Mr
10 Doctor to have a little under two weeks in which to be involved, and we say that is really a
11 minimum and obviously the matters after that would be extended accordingly.

12 Also, we request four weeks from any oral hearing to the issue of an amended
13 decision. Again, we say in the light of the importance of this matter that four weeks would be
14 a reasonable period in which to undertake that procedure.

15 THE PRESIDENT: So (c) on this becomes 17th October?

16 MR PICKFORD: That is right, so (b) becomes 3rd October, (c) becomes 17th October, and (d)
17 would become 14th November.

18 THE PRESIDENT: Today is 30th July, that is three and a half months, but you say the vacation
19 period intervenes.

20 MR PICKFORD: Indeed, Sir. There is a further matter which the Tribunal may wish to address
21 in the draft order, or at least it may wish to express a view on it which is what the position of
22 Hasbro will be.

23 THE PRESIDENT: Yes.

24 MR PICKFORD: The OFT's position is neutral on this, and we are presuming, certainly from the
25 way that the draft order has been put that the appellants are taking the view that this would be
26 purely a matter between themselves and the OFT and that Hasbro would not be invited.

27 THE PRESIDENT: You mean should the proceedings restart in some way against Hasbro as
28 well?

29 MR PICKFORD: Yes.

30 THE PRESIDENT: Yes. Do you have a submission on that?

31 MR PICKFORD: No, I mean essentially we are neutral on the issue. We would be happy to
32 include them if needs be, but in the light of the fact that this is the Tribunal's decision on the
33 procedure that should be followed, we are happy essentially to be guided by the Tribunal's
34 views on this.

35 THE PRESIDENT: I am just thinking aloud. One possibility might be to simply give notice to
36 Hasbro of the supplemental Rule 14 Notice, and permit them to respond in any way they
37 wish, and it may be that they would not wish to respond at all because they regard the matter
38 as done and dusted, but that might be one possibility.

1 Let's see, what are you thinking of? Are you thinking of Hasbro in its capacity as
2 addressee of the original decision? Or are you thinking of Hasbro in its capacity as employer
3 of these three witnesses?

4 MR PICKFORD: The former, in that obviously that decision was addressed to them, and the
5 amended decision may take a slightly different view from the former one and they may take a
6 different view in the light of it.

7 THE PRESIDENT: Yes. Thank you very much. Let us look at timetable first, I think, Mr
8 Hoskins, Mr Green. What do you suggest, and what do you say about the suggested
9 timetable? It is true we are on the brink of the vacation and not everybody is going to be here
10 in August, so it might be feasible to allow an extra two weeks.

11 MR HOSKINS: Sir, I do hear that and I had similar thoughts myself at various stages of various
12 cases at this time of year. However, it was pointed out that there is a certain amount of not
13 inconvenience, but it is not very satisfactory, certainly for Argos to be in the position where a
14 decision has been taken against us on infringement. We have been fined considerable sums.
15 Because the way the OFT has conducted itself, rather than having this matter resolved within
16 the next few months it is now going to go off.

17 In the judgment the indication was given that this should be able to be dealt with
18 within three months.

19 THE PRESIDENT: Yes.

20 MR HOSKINS: If my arithmetic was working well, what is suggested is an extra one month and
21 one week over the original timetable that was suggested. We simply would like the OFT to
22 get on with it, to put it crudely.

23 THE PRESIDENT: Yes, thank you. Mr Green?

24 MR GREEN: We have no particular problem with the extension. We do want them to get on with
25 it, but recognise that if they need a few extra weeks it is not going to cause any material
26 difference. As to whether five weeks is too long is a matter for the Tribunal. We are not going
27 to begrudge them the extra week or two weeks.

28 THE PRESIDENT: Yes, very well. Let's just see what we think. [The Tribunal confer] I think we
29 will accept the OFT's suggestion as to the timetable.

30 MR HOSKINS: Sir, on that basis - I am sorry to interrupt - if the process is to be elongated,
31 then my instructions are that we would like an extra week for our responses to the
32 supplemental Rule 14. We suggested that on the basis that it would all be done in three
33 months, but if it is to be elongated then we would ask for another week at 3(b).

34 THE PRESIDENT: But not to alter the date of the oral hearing?

35 MR HOSKINS: Everything would be pushed by a week, I am sorry, Sir, yes. That would be the
36 knock-on effect. I think the problem, Sir, if it is not all pushed by a week and we have our
37 responses on 26th September, all the oral hearings have to be by 3rd October.

38 THE PRESIDENT: Let's just see where we are. At the moment, the supplemental notice goes out

1 on 12th September, or before. It may be that somebody can do it before. Then your
2 responses are due on 3rd October, and the oral hearing is due on 17th October, with the
3 amended decision to be taken by 14th November.

4 MR HOSKINS: I am sorry, yes.

5 THE PRESIDENT: I do not think the Tribunal would want the oral hearing to slip any further
6 back.

7 MR HOSKINS: I am in your hands, it is just my clients are concerned that if we suggest a
8 timetable to keep within the three months, the OFT turned up and extended it by a month and
9 one week, and we are simply asking for another week. I cannot put it any other way, but my
10 clients do feel strongly that if accommodation is to be given to the OFT of five weeks then we
11 should have a further week. But I cannot put it any other way, Sir.

12 THE PRESIDENT: Today is 30th July. You have two months and a few days knowing effectively
13 what the allegation is. In my mind at the moment, and I will ask the Tribunal members in a
14 moment, in my mind the two possibilities are first that the written response slips by a week,
15 but we hold the date for the oral hearing; or alternatively that we leave the timetable as it is
16 and if you are in difficulties, you ask the Tribunal nearer the time for more time.

17 MR HOSKINS: It may well be then, if one were to adopt the first suggestion, which was 10th
18 October for written responses, and oral hearings by 17th, I say this out loud so the Office can
19 hear it, one way to do it maybe to pencil in now, towards the end of that week ending 17th,
20 the oral hearings.

21 THE PRESIDENT: Yes.

22 MR HOSKINS: Because obviously there may be availability problems of counsel and indeed of
23 Argos and Littlewoods employees who have to attend - I am concerned about that as well as
24 the time for preparation.

25 THE PRESIDENT: Yes.

26 MR HOSKINS: That may be a way to deal with it if the OFT is happy to do that. We can fix
27 those dates at the end of that week.

28 THE PRESIDENT: The important date to hold from everyone's point of view, I think, is the date
29 of 14th November. Yes, Mr Pickford, have you got a contribution on this?

30 MR PICKFORD: If I may just interject on the issue of fixing a date for the oral hearing now,
31 apparently that would not be practicable, we do not have diaries to enable that to be done.

32 MR HOSKINS: I did not mean on the spot now, it could be tomorrow or in a couple of days.

33 MR PICKFORD: Right.

34 [The Tribunal confer]

35 THE PRESIDENT: The Tribunal thinks that the timetable should stay where it is, that is to say:
36 * 12th September for Rule 14 Notice,
37 * 3rd October for replies,
38 * 17th October, hearing,

1 * 14th November, decision.
2 If Argos or Littlewoods are in difficulties in meeting that timetable they can apply to the
3 Tribunal nearer the time.
4 MR HOSKINS: Thank you, Sir. I think the only other remaining thing in the timetable was the
5 suggestion I floated, but nobody has picked up, as to whether we ought to fix a date for the
6 CMC.
7 THE PRESIDENT: Yes, I would have thought that that is a good idea. We may not be able to do
8 it now because of diaries and other things, but I would have thought a CMC in the week that
9 contains, say, 28th November, which is two weeks after the Decision - 28th November is
10 actually a Friday, so I would have thought a CMC in the week beginning 1st December
11 should be fixed provisionally and I will ask the Registry to fix a firm date.
12 MR HOSKINS: Thank you.
13 THE PRESIDENT: So we can crack, as it were, straight on. As far as Hasbro is concerned, I
14 would have thought, procedurally speaking, it is appropriate for the OFT to serve the
15 supplemental Rule 14 Notice on Hasbro, if necessary only for information, and for them to
16 have an opportunity to make any representations if they wish to do so, and apart from
17 ordering that they be served also on Hasbro, I do not think we need make any consequential
18 directions. I think it is unlikely that they will wish to react, but if they do we will cross that
19 bridge when we get to it.
20 Very well, are there any other points or observations which anybody has?
21 MR GREEN: One other matter which is really a point of clarification, I think. The liberty to apply,
22 which is included in the order, I think is intended to ensure that if there are any interlocutory
23 disputes they can be brought back in front of the Tribunal, for example, in relation to
24 disclosure?
25 THE PRESIDENT: Yes.
26 MR GREEN: I do not think that there is any dispute that that is a sensible approach to take in this
27 case?
28 THE PRESIDENT: Well the liberty to apply is in very general terms. We trust that there will not
29 be occasion to use it very much, but the Tribunal is here if anybody does wish to apply and
30 we will have to cross that bridge when we get to it, depending on what the application is.
31 MR GREEN: But this is an on-going appeal---
32 THE PRESIDENT: Yes.
33 MR GREEN: So the Tribunal retains jurisdiction over it.
34 THE PRESIDENT: Yes. So I do not think we can clarify it much beyond that, Mr Green.
35 Very well. If that is everything, thank you all very much.
36 (The hearing concluded at 2.25 pm)
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