



IN THE COMPETITION
APPEAL TRIBUNAL

Case Nos: 1482/5/7/22 (T)
1575/5/7/22 (T)
1492/5/7/22 (T)
1493/5/7/22 (T)

BETWEEN:

- (1) FORTNUM & MASON PLC
- (2) HEAL & SON LIMITED
- (3) HEAL'S (1810) LIMITED

Claimants

- v -

- (1) VISA EUROPE LIMITED
- (2) VISA EUROPE SERVICES LLC
- (3) VISA UK LIMITED
- (4) VISA INTERNATIONAL SERVICE ASSOCIATION
- (5) VISA INC.

Defendants

AND BETWEEN:

PRIMARK STORES LIMITED & OTHERS

Claimants

- v -

- (1) VISA EUROPE LIMITED
- (2) VISA EUROPE SERVICES LLC
- (3) VISA UK LIMITED
- (4) VISA INTERNATIONAL SERVICE ASSOCIATION
- (5) VISA INC.

Defendants

AND BETWEEN:

PRIMARK STORES LIMITED & OTHERS

Claimants

- v -

- (1) MASTERCARD INCORPORATED**
- (2) MASTERCARD INTERNATIONAL INCORPORATED**
- (3) MASTERCARD EUROPE S.A.**
- (4) MASTERCARD/EUROPAY UK LIMITED**

Defendants

AND BETWEEN:

- (1) FORTNUM & MASON PLC**
- (2) HEAL & SON LIMITED**
- (3) HEAL'S (1810) LIMITED**

Claimants

- v -

- (1) MASTERCARD INCORPORATED**
- (2) MASTERCARD INTERNATIONAL INCORPORATED**
- (3) MASTERCARD EUROPE S.A.**
- (4) MASTERCARD/EUROPAY UK LIMITED**

Defendants

ORDER

UPON the Orders of the President made on 23 December 2022 granting the Claimants in Claim Nos. 1482/5/7/22 (T), 1575/5/7/22 (T), 1492/5/7/22 (T) and 1493/5/7/22 (T) permission to amend their respective Amended Claim Forms (the “23 December Orders”)

AND UPON the application by letter dated 29 December 2022 from the solicitors for the Claimants requesting an extension of time for service of the Re-Amended Claim Forms in each of the proceedings to 4 January 2023 (the “Extension Application”)

AND UPON the Tribunal’s letter dated 29 December 2022 granting the Extension Application with a formal order to be provided in due course (the “Extension Letter”) and directing that the Claimants’ solicitors provide the Extension Letter and a copy of the

Extension Application to the solicitors for the Defendants in each of the proceedings without delay and to confirm to the Tribunal once this has been done

AND HAVING REGARD TO the Tribunal's power under Rule 53(2)(j) of the Competition Appeal Tribunal Rules 2015

IT IS ORDERED THAT:

1. The time for service of the Claimants' Re-Amended Claim Forms in each of the proceedings shall be extended to 4 January 2023.
2. The Re-Amended Claim Forms in each of the proceedings shall be served in accordance with the 23 December Orders.
3. There shall be no order as to costs.
4. There shall be liberty to apply.

REASONS

1. These four proceedings were transferred to the Competition Appeal Tribunal from the High Court, by order of the Chancellor of the High Court dated 7 April 2022 (as re-amended on 13 September 2022). The parties had previously agreed, in correspondence with the High Court, that:
 - (a) The time for service of the Amended Claim Forms in each of the proceedings against Mastercard (Claim Nos. BL-2013-000006 and BL-2013-000008) be 30 December 2022.
 - (b) The time for service of the Amended Claim Forms in each of the proceedings against Visa (Claim Nos. BL-2013-000010 and BL-2013-000007) be 31 December 2022.
2. On 19 December 2022, the Claimants in each action applied to the Tribunal to amend the Amended Claim Forms in each proceeding. The proposed reamended versions of the Re-Amended Claim Forms were provided to the Tribunal on 22 December 2022 after hours.

3. On 23 December 2022, the Tribunal granted permission to amend the Amended Claim Forms in the form of the versions provided to the Tribunal the previous night.
4. On 29 December 2022, the Claimants applied to extend time for service of the Re-Amended Claim Forms to 4 January 2023 on the basis that, given the time of year and with the intervening bank holidays, there were various absences and illnesses in the Claimants' legal team which meant that it had not been possible to effect service in the proceedings.
5. It is unsatisfactory that no reasons beyond an assertion of "various absence and illnesses" were given to explain the need for an extension of time. However, it is not difficult to infer that the very short time available to effect service after the amendments were approved, combined with the holiday season, left little contingency if the Claimants' solicitors have suffered unplanned staff absence. It is also very likely to be the case that, if requested, an extension of time would have been granted by the Tribunal (quite possibly with the agreement of the Defendants) at the time the amendments were approved. It is unfortunate that no such application was made then as a precautionary measure.
6. The Extension Application was made prior to the time for service expiring, the additional time sought was a small number of business days and there is no obvious prejudice to the Defendants (given the extensive period of time previously agreed for service of the Amended Claim Forms). Taking those matters into account, I have granted the extension sought.
7. The Extension Application was made without notice to the Defendants (with whom it is apparent that there had been historic contact, including agreement on the dates for service of the Amended Claim Forms). There is no apparent reason why the application needed to be made on this basis, even if it was urgent. It is said by the Claimants' solicitors that it was not possible to seek the agreement of the Defendants in the time available, but this confuses agreement with notice. Notwithstanding the urgency, the Claimants' solicitors should have copied their application letter of 29 December 2022 to the solicitors for the Defendants.

Ben Tidswell

Chair of the Competition Appeal Tribunal

Made: 29 December 2022

Drawn: 5 January 2023