



## COMPETITION APPEAL TRIBUNAL

### NOTICE OF A CLAIM UNDER SECTION 47A OF THE COMPETITION ACT 1998

**Case No: 1637/5/7/24**

Pursuant to Rule 33(8) of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (the “Tribunal Rules”), the Registrar gives notice of the receipt of a claim for damages (the “Claim”) on 15 March 2024, under section 47A of the Competition Act 1998 (the “Act”), by SportsDirect.com Retail Limited (the “Claimant”) against: (1) Newcastle United Football Company Limited; and (2) Newcastle United Limited (together, the “Defendants”). The Claimant is represented by Travers Smith LLP, 10 Snow Hill, London, EC1A 2AL (Reference: Barney Stannard / Stephen Whitfield).

The Claimant, part of Frasers Group plc, is an undertaking active in sports retailing in the UK through group companies operating under the “Sports Direct” brand and a number of subsidiary brands, including in the market for the retail supply of Newcastle United replica kit.

The First Defendant is the operating company of Newcastle United Football Club, the well-known Premier League side. The Second Defendant is a holding company and owns 100% of the First Defendant. According to the Claim, together, they form a single economic undertaking (the “Club”) that is active, inter alia, in the market for the wholesale supply of Newcastle United replica kit, manufactured from next season by Adidas on a licenced basis and is dominant on that market being the only wholesale supplier in the UK.

In summary, the Claimant alleges that:

1. The Club has abused its dominant position in the market for the wholesale supply of Newcastle United replica kit in the UK, in breach of the prohibition in Chapter II of the Act, by refusing to supply Sports Direct with the Club’s replica kit for the 2024/25 season and granting JD Sports, another UK sports retailer, exclusive rights as a third-party retailer of the Club’s replica kit (alongside only the Club’s and Adidas’s own channels), thereby foreclosing Sports Direct from the downstream retail market and eliminating effective competition on that market; and
2. If and to the extent that the Club contends that the refusal to supply is the necessary result of exclusivity arrangements it has agreed with JD Sports and/or Adidas, any such agreement is itself in breach of the prohibition in Chapter I of the Act and therefore void, and insofar as the Club implements any such agreement, it is breaching the Chapter I prohibition.

The Claimant seeks an injunction restraining the Defendants from engaging in, and/or implementing the above breaches, damages and other relief.

According to the Claim, replica kit are authentic reproductions of the short- and long-sleeved shirt, shorts, training wear, and socks (home, away, third, goalkeeper and special edition) in adult, junior and infant sizes to which a football club’s trademark is applied and which are worn by the club’s players when competing in professional football matches.

Replica kit items are desirable items for supporters of the respective club to purchase. The kit design changes every year. The cycle for Premier League replica kit typically begins in June each year, when the teams’ home replica kit is launched, although that can sometimes be brought forward to May. The launch is an important event for the retailing of replica kit, and as a rough estimate, around 60% of annual sales of replica kit will

typically occur around this time. The period between the launch and start of the new season in August forms one of the main peaks in demand for replica kit, with the second occurring around Christmas.

Clubs usually contract exclusively with one manufacturer for the production of replica kit items. Often that manufacturer also handles the wholesale distribution of replica kit. This is the case in particular for more prestigious clubs with significant national and global retail demand for their replica kit. Some less prominent clubs exclusively sell and distribute replica kit themselves, often carrying over arrangements such as exclusive retail through the club's own store or local outlets in place before a club's promotion to the Premier League.

Major retailers, such as Sports Direct, would in the ordinary course place a significant order for replica kit items, for the upcoming season by the end of December of the previous year, typically with the licensed manufacturer of those items, following the presentation of the new kit by the manufacturer. This lead time is common in the industry and reflects, for example, the lead time Adidas requires on orders for kit that it distributes. This annual order would be for a substantial amount of kit and would be based around what the retailer would expect to sell in the course of a season during which the respective club performs as expected. Further orders may follow later on if, for example, the club performs better than expected and demand for its kit is accordingly greater.

Clubs similarly in the ordinary course would agree the size of the manufacturing run required for their kit with their manufacturer based on their expectation of demand for the whole season, although an initial order for the launch period may only be for around 70% of that volume with further orders that are generally subject to shorter lead times to follow later in the season.

Both Sports Direct and JD Sports would generally stock the replica kit of most Premier League sides, and at the very least, the replica kits of the most prestigious clubs, which have the largest following and generate the largest sales: Arsenal, Chelsea, Manchester United, Liverpool, Tottenham Hotspur, Manchester City, West Ham United and Newcastle United.

Replica kit items are important items for sports retailers to attract customers into their stores. Around 60% of replica kit purchases from Sports Direct continue to be made in brick-and-mortar stores, rather than online. At the beginning of the season this share tends to be even higher with more purchases happening in store. Once attracted into the store, customers are likely to make other sportswear purchases in that store as well. This effect extends beyond the visit to purchase replica kit items, as the association of a retailer's brand with the replica kit of a specific club will contribute to the retailer's goodwill and reputation with supporters of that club, and vice versa, a retailer's brand and reputation will suffer in standing with supporters of any club whose replica kit it does not stock.

Historically, the Club has not manufactured or sold replica kit items itself. Most recently, it had licensed the manufacture and distribution of the replica kit, and the operation of the Club's own on-site store, to Castore since the 2020/21 season.

During that period, Castore consistently supplied Sports Direct with the Club's replica kit, and Sports Direct had every expectation that this supply would continue from Castore, or any successor. Indeed, Sports Direct has been supplied with and has sold the Club's replica kit without interruption, at least since Newcastle United joined the Premier League in its second season.

With effect from next season, the Club has terminated its agreement with Castore and has licensed Adidas as its exclusive manufacturer. It has also granted Adidas certain distribution and retail rights in various jurisdictions but, so far as the Claimant presently understands, has reserved wholesale distribution, or the right to direct wholesale distribution in the UK exclusively to itself.

The Claimant contends that the Club occupies a dominant position on the market for the wholesale supply of the Club's replica kit: having reserved the distribution rights for the Club's replica kit in the UK to itself in its agreement with Adidas, the sole licensed manufacturer of the Club's replica kit, the Club is the sole supplier on the market for the wholesale supply of the Club's replica kit. Accordingly, its dominance on that market can be presumed.

The Claimant submits further that the Club, unconstrained by competitors, has committed and continues to commit an abuse of its dominant position in the market for the wholesale supply of the Club's replica kit in the UK, contrary to s.18 of the Act, by refusing to supply Sports Direct with the Club's replica kit for the 2024/25 season and granting JD Sports exclusive rights as a third-party retailer to retail the same (subject only to carve-outs for the Club's and Adidas's own channels), thereby foreclosing the Claimant from the downstream market for the retail supply of the Club's replica kit.

Further or alternatively, the Club is breaching the Chapter I prohibition to the extent that its arrangements with JD Sports (and/or Adidas) contain an agreement not to supply Sports Direct and/or contain exclusivity arrangements to the same effect. Pending disclosure and evidence, and on the basis of the only limited information provided by the Club in pre-action correspondence, the Claimant is not able to discern the precise contractual arrangements that are said by the Club to preclude it from supplying Sports Direct.

The Claimant claims:

- (1) An injunction restraining the Club (and each of the Defendants) from (i) continuing to abuse its dominant position by adopting a strategy of excluding Sports Direct from the market for the retail supply of the Club's replica kit; and (ii) continuing to breach the Chapter I prohibition by including unlawful exclusivity provisions in contracts governing the distribution and retail of the Club's replica kit.
- (2) Damages.
- (3) Interest to be calculated under Rule 105 on such sum, at such rate, and for such periods as the Tribunal considers it appropriate to award.
- (4) Costs.
- (5) Such further and other relief as the Tribunal considers appropriate.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at [www.catribunal.org.uk](http://www.catribunal.org.uk). Alternatively, the Tribunal Registry can be contacted by post at Salisbury Square House, 8 Salisbury Square, London EC4Y 8AP, or by telephone (020 7979 7979) or email ([registry@catribunal.org.uk](mailto:registry@catribunal.org.uk)). Please quote the case number mentioned above in all communications.

*Charles Dhanowa OBE, KC (Hon)*  
Registrar

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