



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1604/5/7/23(T)

BETWEEN:

- (1) **JAGUAR LAND ROVER LTD**
- (2) **JAGUAR LAND ROVER HOLDINGS LTD**

Claimants

- v -

- (1) **DENSO AUTOMOTIVE UK LTD**
- (2) **DENSO EUROPE BV**
- (3) **DENSO CORPORATION**

Defendants

REASONED ORDER (COSTS – NON-PARTY ACCESS TO DOCUMENTS)

UPON Willkie Farr & Gallagher (UK) LLP (“**Willkie Farr**”) writing to Hausfeld & Co LLP (“**Hausfeld**”) on 24 January 2024 requesting a non-confidential copy of the Claim Form and Particulars of Claim in the above proceedings

AND UPON Willkie Farr writing to the Tribunal on 12 February 2024 requesting a non-confidential copy of the Claim Form and Particulars of Claim

AND UPON further correspondence between the Tribunal, Willkie Farr and Hausfeld relating to that request

AND UPON Willkie Farr making a formal application dated 22 March 2024 to the Tribunal for a non-confidential copy of the Claim Form and Particulars of Claim

AND UPON Hausfeld consenting to Willkie Farr’s application for a non-confidential copy of the Claim Form and Particulars of Claim

AND UPON Willkie Farr applying for a costs order against Hausfeld in relation to their request for a non-confidential copy of the Claim Form and Particulars of Claim

AND UPON the Tribunal considering the submissions of Willkie Farr and Hausfeld in relation to that costs application

IT IS ORDERED THAT:

1. Jaguar Land Rover Ltd and Jaguar Land Rover Holdings Ltd (together, “Jaguar”) shall pay Volkswagen AG’s (“VW”) costs of the application, assessed on a summary basis, in the sum of **£4,529.25** (exclusive of VAT), such sum to be paid within 14 days of the date of this Order.

REASONS:

1. VW, being a third party to these proceedings, applies for its costs of £5,032.50, to be assessed on a summary basis, in an application dated 22 March 2024. In substance, the application sought an order that Jaguar should provide a copy of the Claim Form and Particulars of Claim in these proceedings (the “Requested Documents”).
2. VW (through its solicitors Willkie Farr) first sought a copy of the Requested Documents in a letter dated 24 January 2024. When Jaguar’s solicitors (Hausfeld) did not respond to that letter, VW’s solicitors wrote to the Tribunal on 12 February 2024, seeking a copy of the Requested Documents. Jaguar’s solicitors responded to that letter on 12 February 2024 in the following terms:

“...we respectfully observe only that the issue of whether the Tribunal has power to provide non-confidential copies of pleadings to non-parties in proceedings where no hearing has taken place and are now settled is a matter for the Tribunal. Our client does not take a position in relation to this issue. If the Tribunal does grant the request, we respectfully request the opportunity to comment on the version of the documents to be provided.”

3. The Tribunal, in a letter dated 13 February 2024, indicated that it would be most appropriate for Jaguar’s solicitors to provide a non-confidential version of the Requested Documents and directed the parties to liaise to that effect. Jaguar’s solicitors responded on 14 February 2024 as follows:

“The Claimants’ position in relation to the request to the Tribunal is respectfully set out in our letter of 12 February. It is for the Tribunal to determine under its rules whether orders for disclosure of statements of case to non-parties are within its power and should be made in proceedings where no hearing took place and the claim is settled.

In relation to the request to the Claimants, and with the greatest of respect to the Tribunal, the Claimants maintain their rights not to facilitate the dissemination of the details of their claim to non-parties, or in any way encourage or assist further claims, in the absence of an order.”

4. The Tribunal therefore invited VW’s solicitors to make an application for an order that Jaguar provide the Requested Documents. Once that application was made, on 22 March 2024, Jaguar consented to the provision of the Requested Documents. However, it resisted VW’s application for costs, on the basis that:
 - a. It was not apparent until the application was made that VW relied on paragraph 9.66 of the Tribunal’s Guide to Proceedings (the “Guide”), and instead all previous correspondence had referred to CPR 5.4C as the basis for the request.
 - b. It was not until the application was made that the identity of the applicant was known, which is said to have been unreasonable behaviour on VW’s part.
5. Jaguar submits that a costs order of £280.50 (excluding VAT) would be appropriate, allowing for three hours of solicitor time at the London 1 ratings and reduced by 75% to reflect unreasonable behaviour by VW.
6. I do not accept Jaguar’s argument on either point:
 - a. It is not material that VW’s solicitors had not specified the relevant part of the Guide before the application. The reference to CPR 5.4C was in fact directed at an earlier request to the High Court (from which the proceedings had been transferred) for provision of the documents, which had been declined because the conditions of that rule had not been met. I do not consider that there was any

room for confusion about the basis of the request from VW, such requests being a well-established practice in proceedings before the Tribunal.

- b. There is no rule or other reason which would require VW to disclose its identity prior to making a formal application. It could not therefore be unreasonable for its solicitors not to disclose the identity of their client at an earlier stage, or indeed at all. Similar requests for documents are often made by solicitors without disclosing for whom they act.
7. On the contrary, the approach taken by Jaguar was in my judgment deliberately uncooperative, in resisting the Tribunal's invitation to provide the documents and effectively forcing VW to make a formal application. It is Jaguar that has behaved unreasonably, not VW.
8. In these circumstances, it is appropriate that VW should recover its costs (which is not contested by Jaguar as a matter of principle) and I will assess those costs on a summary basis.
9. The statement of costs provided with the application seeks costs of £5,032.50 (exclusive of VAT) and sets out the following details:
 - a. A grade A fee earner at £695.00 for 3 hours worked.
 - b. A grade C fee earner at £325.00 for 7 hours worked.
 - c. Additional time of 0.5 hours (for the grade A fee earner) and 1 hour (for the grade C fee earner) in preparing the statement of costs.
10. I consider the time spent to be reasonable. The rates are slightly above the London 1 rate for A and C grade fee earners (£546 and £288 per hour respectively). Taking into account the unreasonable behaviour of Jaguar, as described above, I will reduce the claimed amount by 10%.

Ben Tidswell

Chair of the Competition Appeal Tribunal

Made: 23 April 2024

Drawn: 23 April 2024