



**IN THE COMPETITION APPEAL  
TRIBUNAL**

Case No: 1637/5/7/24

BETWEEN:

**SPORTSDIRECT.COM RETAIL LIMITED**

Claimant/ Applicant

- v -

**(1) NEWCASTLE UNITED FOOTBALL COMPANY LIMITED  
(2) NEWCASTLE UNITED LIMITED**

Defendants/ Respondents

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**ORDER (PERMISSION TO APPEAL)**

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**UPON** the application of Sports Direct for an interim injunction dated 14 March 2024

**AND UPON** hearing counsel for the Parties at an injunction hearing on 9 April 2024

**AND UPON** the Tribunal's Judgment refusing Sports Direct's application dated 12 April 2024  
([2024] CAT 26, "**the Judgment**")

**AND UPON** reading the Applicant's application for permission to appeal the Judgment dated  
16 April 2024 ("**the PTA Application**")

**AND UPON** reading the CMA's written observations pursuant to rule 50(2) of the Competition  
Appeal Tribunal Rules 2015 dated 16 April 2024

**AND UPON** reading the Respondents' observations in response to the PTA Application dated 18 April 2024

**AND UPON** the Tribunal having considered the PTA Application and the Defendants' observations

**IT IS ORDERED THAT:**

1. The Applicant is refused permission to appeal the Judgment.

**REASONS**

1. On 12 April 2024, the Tribunal issued its ruling in relation to an application by Sports Direct for an interim injunction which sought, in substance, to force Newcastle United Football Club ("NUFC") to supply Sports Direct with replica kit for the upcoming Premier League season.
2. The Tribunal considered the application through the usual prism of *American Cyanamid Co. v. Ethicon Ltd*, [1975] 1 AC 396 and found, even after assuming the facts in Sports Direct's favour, that it had failed to show that there was a serious issue to be tried. Assuming as a matter of law that prior dealings with a dominant undertaking could give rise to a legitimate expectation that those prior dealings would continue, the Tribunal found that a claim for abuse could not arguably be made on the facts adduced by Sports Direct. It therefore seems to the Tribunal that the challenge to this finding is either a challenge to a finding of fact (as to which no appeal lies) or to the application of a discretion by the Tribunal (which an appellate court will be slow to challenge).
3. Having concluded that there was no serious issue to be tried, the Tribunal nevertheless proceeded to a consideration of the other limbs of *American Cyanamid*. For the reasons set out in the judgment, the Tribunal found that the second and third limbs were met, and the Tribunal proceeded to consider the fourth and final limb: the balance of convenience.
4. The question of whether the balance of convenience lies for or against the granting of the injunction is a matter for the Tribunal's discretion, which it will exercise according

to factors it considers material on the evidence before it. That exercise was conducted in detail at paragraphs 34(1)-(5) of the judgment and pointed (in the Tribunal's judgement) quite clearly in favour of refusing the application for injunctive relief.

5. For those reasons, the Tribunal does not consider that the appeal has any real prospect of success and will refuse the application for permission to appeal.

**Sir Marcus Smith**  
President of the Competition Appeal Tribunal

Made: 19 April 2024  
Drawn: 19 April 2024