



Claim No. IL-2023-000132

**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES  
INTELLECTUAL PROPERTY LIST (ChD)**

IL-2023-000132

**Mrs Justice Bacon  
29 July 2025**

**BETWEEN:**

**(1) ROADGET BUSINESS PTE. LTD. (a company incorporated in Singapore)  
(2) SHEIN DISTRIBUTION UK LIMITED**

**Claimants**

**-and-**

**WHALECO UK LIMITED**

**Defendant**

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**ORDER**

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**DEFINED TERMS USED IN THIS ORDER**

The “**Proceedings**” refers to the proceedings the subject of this Order, as per the heading to this Order.

The term “**IP Claim and IP Counterclaim**” refers to all the issues in the Proceedings except the Competition Law Issues, as defined below.

The term “**Competition Counterclaim**” refers to the Counterclaim brought by the Defendant by its Defence and Counterclaim filed on 5 February 2024 (as amended) so far as it relates to Competition Law Issues, as defined below.

The “**Competition Law Issues**” refers to all issues in the Proceedings to which the Competition Act 1998 applies, being the Competition Counterclaim and paragraph 8.6.7 of the Re-Re-Amended Defence and Counterclaim.

The term “**HC Proceedings**” refers to the issues in the Proceedings remaining in the High Court.

The term “**CAT Proceedings**” refers to the issues in the Proceedings transferred to the Competition Appeal Tribunal (“**CAT**”) by this Order.

The term “**Trial 2**” refers to the trial of the Competition Law Issues raised in these Proceedings.

The term “**Trial 3**” refers to the anticipated trial of the quantum phase of the IP Claim and IP Counterclaim (should the claims succeed at Trial 1) subject to further consideration of whether Trial 3 should also encompass the quantum of the Competition Law issues, to be determined at a further CMC.

## **RECITALS**

**UPON** the Proceedings having been commenced by Claim Form in Claim No. IL-2023-000132 dated 7 August 2023 (as amended)

**AND UPON** the Defendant’s Competition Counterclaim (as amended)

**UPON** the Order of Mrs Justice Bacon DBE dated 5 November 2024, setting the trial structure for the proceedings and directing that the issues of subsistence, ownership and infringement of copyright in both the IP Claim and IP Counterclaim shall proceed by reference to a representative sample of the copyright works

**AND UPON** the Order of Mrs Justice Bacon DBE dated 28 February 2025, directing the process for the identification of product listings and random selection from the Sample Pool

**AND UPON** the Order of Mrs Justice Bacon DBE dated 8-9 May 2025, setting out a timetable for the Selection Sample Disclosure

**AND UPON** the Order of Mrs Justice Bacon DBE dated 17 June 2025, extending the deadline for making the Selection Sample Disclosure in respect of a limited number of documents and the deadline for the selection of the Trial Sample from 31 July 2025 to 4:30pm, 7 August 2025

**AND UPON** the Court having indicated its preferred format for the Schedules identified at paragraphs 3 and 4 of this Order

**AND UPON** the Court raising the possibility of transfer of the Competition Law Issues in the Proceedings to the CAT

**AND UPON** any determination of the IP Claim in the HC Proceedings in the Claimants' favour being contingent upon the determination of the Competition Counterclaim

**AND UPON** the Claimants making the following applications:

- a) An application to de-designate the identities of Suppliers A and B referred to in paragraph 47B of the Defendant's draft Re-Re-Amended Defence and Counterclaim dated 17 April 2025 (the "**Claimants' Pleadings De-Designation Application**")
- b) An application to de-designate various items of confidential information in relation to the Defendant's alleged loss in the Competition Counterclaim dated 17 April 2025, not including the names of two entities designated by the Defendant as Confidential Information (the "**Claimants' Loss De-Designation Application**")
- c) An application dated 4 July 2025 requiring the Defendant to respond to parts of the Claimants' Request for Information dated 26 March 2025 and further requests made by letter dated 13 June 2025 (the "**Claimants' Control Application**")

**AND UPON** the Defendant making the following applications:

- a) An application to amend its Re-Amended Defence and Counterclaim in the form of the draft Re-Re-Amended Defence and Counterclaim dated 11 February 2025 (the "**Defendant's 47B Amendment Application**")
- b) An application to amend its Re-Amended Defence and Counterclaim in the form of the draft Re-Re-Re-Amended Defence and Counterclaim dated 17 April 2025 (the "**Defendant's Negligent Misstatement Counterclaim Application**")

- c) An application to amend the confidentiality arrangements in the Proceedings by the creation of a two-tier confidentiality ring in the form of the draft Confidentiality Ring Order dated 23 June 2025 (the “**Defendant’s Confidentiality Ring Order Amendment Application**”)
- d) An application to require the Claimants to provide responses to the questions contained in its Request for Further Information dated 4 July 2025 (the “**Defendant’s July RFI**” / the “**Defendant’s RFI Application**”)

**AND UPON** the Claimants’ confirmation that it does not pursue the Claimants’ Loss De-Designation Application in respect of the quantitative information that has been designated as confidential (the “**Quantitative Information on Loss**”) and seeks only the de-designation of the qualitative information described in paragraphs 20 – 27 of the 5<sup>th</sup> witness statement of Murphy Shao dated 23 June 2025 (the “**Qualitative Information on Loss**”)]

**AND UPON** the Claimants having provided a response to request 1(a) of the Defendant’s RFI Application in correspondence on 18 July 2025

**AND UPON** hearing Marie Demetriou KC for the Claimants and Scott Allen and Henry Edwards for the Defendant on 18 July 2025, hearing Marie Demetriou KC and Ali Al-Karim for the Claimants and Josh Holmes KC for the Defendant on 21 July 2025, and hearing Benet Brandreth KC for the Claimants and Simon Malynicz KC and Henry Edwards for the Defendant at CMC 3 on 22 July 2025

**AND UPON** this Order being made by the Judge in her capacity as a High Court Judge

## **IT IS ORDERED:**

### **Selection of Trial Sample**

1. By no later than 4:30pm on 14 August 2025, the Claimants, on the one hand, and the Defendant, on the other hand, shall each select and identify to the other party:
  - (a) a minimum of 2 product listings from the 35 Employee Photographs within the Selection Sample;

- (b) a minimum of 5 product listings from the 60 Supplier Photographs within the Selection Sample; and
- (c) a minimum of 1 product listing from the 5 Agency Photographs within the Selection Sample;  
- subject to -
- (d) a maximum of 10 product listings in total for each party (which may include common examples);
- (e) in relation to Supplier Photographs, no one supplier entity should appear more than once within each side's chosen set of product listings; and
- (f) in relation to Employee Photographs, no one individual employee should appear more than once within each side's chosen set of product listings,

which shall be the subject of Extended Disclosure under PD 57AD (together, the ***Trial Sample***).

#### **Extensions to existing deadlines**

2. In consequence of the extension to the Trial Sample Deadline in paragraph 1, the following deadlines in the timetable to Trial 1 attached as Annex 1 to the Order of Mrs Justice Bacon DBE dated 19 May 2025, are varied as set out below:
  - (a) The deadline for Extended Disclosure is varied from 19 September 2025 to 24 September 2025; and
  - (b) The deadline for the fact and expert evidence in chief (if any) and CPR r.33.2 hearsay notices is extended from 24 October 2025 to 31 October 2025.

#### **Pleadings on the Trial Sample**

3. By 4:30pm, on 24 September 2025, the Claimants shall plead their case on subsistence, ownership, infringement and any defences, in relation to each work in the Trial Sample.
4. By 4:30pm, on 8 October 2025, the Defendant shall plead its responsive case on subsistence, ownership, infringement and any defences, in relation to each work in the Trial Sample.
5. The parties will, in advance of the PTR, seek to narrow the issues between them in relation to each work in the Trial Sample.

#### **Amendments to pleadings in the IP Claim and IP Counterclaim**

6. The Defendant's Negligent Misstatement Counterclaim Application is refused.
7. The Claimants are to serve any draft amendments to the Re-Amended Particulars of Claim following the investigations into chain of title by 4:30pm on 25 July 2025.
8. By 4:30pm on 8 August 2025:
  - (a) the Defendant will indicate which amendments to the Re-Amended Particulars of Claim are consented to and which are opposed; and
  - (b) the Defendant may if so advised serve a consequentially amended draft Re-Re-Amended Defence and Counterclaim in respect of the consented to amendments.
9. The Claimants will bring any application to amend in respect of the draft amendments in paragraph 7 above by 22 August 2025 with that application to be resolved at CMC 4 on 17 September 2025.
10. The Defendant will serve any evidence in reply to any application in paragraph 9 above by 5 September 2025.

#### **Further Directions in the IP Claim and IP Counterclaim**

11. The parties are to exchange a list of custodians for disclosure two weeks after the date of the selection of the Trial Sample given in paragraph 1 above.
12. The Claimants' Control Application is stood over until the next CMC listed for 17 September 2025, with costs reserved.

**Defendant's 47B Amendment Application, Claimants' Pleadings De-Designation Application and Defendant's Confidentiality Ring Order Amendment Application**

13. The Defendant's 47B Amendment Application is granted.
14. The Defendant shall file and serve their Re-Re Amended Defence and Counterclaim by no later than 4:30 pm on 1 August 2025.
15. The Claimants shall file and serve their Re-Re-Amended Reply and Defence to Counterclaim by no later than 4:30 pm on 26 September 2025.
16. The Defendant shall file and serve their Re-Amended Reply to Defence to Counterclaim by no later than 4:30 pm on 10 October 2025.
17. The Claimants Pleadings De-Designation Application is refused.
18. The Defendant's Confidentiality Ring Order Amendment Application is granted. The two-tier confidentiality order in the form attached to this order (the "**Amended Confidentiality Ring Order**") shall apply in these proceedings, and the previous confidentiality ring order dated 5 November 2024 (sealed on 7 November 2024) shall cease to apply from the date of this Order.
19. By no later than the later of either (1) 4:30 pm on 1 August 2025 or (2) two working dates after the Claimant files signed undertakings in respect of the Outer Confidentiality Ring for its proposed members, the Defendant shall disclose into the Outer Confidentiality Ring (as defined in the Amended Confidentiality Ring Order):

- (a) the Confidential Schedule to the Re-Re Amended Defence and Counterclaim (containing the names of Supplier A and Supplier B) and
- (b) the Supplier A Witness Statement and the first witness statement of Gregg Rowan.

### **Defendant's RFI Application**

- 20. Within 14 days of this order the Claimants shall provide a written response to requests 1(b) and 2 of the Defendant's July RFI, confirming the approximate number of suppliers who, respectively, entered into Supplier Agreements with the Claimants and signed supplier attestations.
- 21. Request 3 of the Defendant's July RFI is dismissed.
- 22. Within the later of (i) 7 days of this order or (ii) (2) two working dates after the Defendant files signed undertakings in respect of the Outer Confidentiality Ring for its proposed members the Claimants shall respond to request 4 of the Defendant's July RFI and disclose into the Outer Confidentiality Ring of the Amended Confidentiality Ring Order the names of the 22 suppliers sought by way of that request.

### **Claimants' Loss De-Designation Application**

- 23. The Claimants' Loss De-designation Application is granted in respect of the Qualitative Information on Loss.
- 24. In respect of documents the Defendant has provided to the Claimants in the Proceedings that contain confidentiality designation markings over information that is no longer designated as Confidential Information as a result of paragraph 23 above, the Defendant shall by **4pm on 28 July 2025** provide to the Claimants versions of those documents with the confidential markings removed in respect of the Qualitative Information on Loss.



### **Transfer of the Competition Law Issues to the CAT and consequential directions**

25. The Competition Law Issues are transferred to the CAT pursuant to sections 16(1) and 16(4) of the Enterprise Act 2002 and regulation 2 of the Section 16 Enterprise Act 2002 Regulations 2015 (the “**transfer**”).
26. The sending of this Order to the parties and to the CAT shall constitute notice to them for the purposes of paragraphs 8.5 and 8.12 of Practice Direction 30 and CPR Rule 30.4(1).
27. Neither this Order giving effect to the transfer, nor the transfer itself, is intended to alter, limit or exclude in any respect any element of the Defendant’s Competition Counterclaim as constituted in this Court prior to the transfer taking effect. If and to the extent that any element of the Defendant’s Competition Counterclaim as constituted in this Court prior to the transfer taking effect is not capable of falling within the jurisdiction of the CAT on a transfer, or would be altered, limited or excluded by this Order or the transfer, it is not subject to this Order and remains within the jurisdiction of this Court.
28. The Proceedings were and shall continue to be regarded as having been commenced in this Court. Any further statements of case or amendments to a statement of case shall be made in accordance with the Civil Procedure Rules (the “**CPR**”) and not with the CAT Rules 2015 and any settlement offers made under Part 36 of the CPR prior to the date of this Order shall be treated as governed by the CPR, including as to the consequences of any such offer.
29. Any appeal to the Court of Appeal against the determination by the CAT of the issues transferred or an order of the Court giving effect to that determination shall be governed by the rules in CPR Part 52.
30. This Court may give such further directions or make such further orders as it thinks fit in connection with the transfer and/or with any such element as referred to above.

31. The CAT Proceedings shall be heard by a panel chaired by the President of the CAT, also being the assigned Judge in the Proceedings, and shall include one further CAT Chair on the panel as well as an economist.
32. Disclosure in the CAT Proceedings shall adopt the procedure in respect of the HC Proceedings, including Practice Direction 57AD. Any disclosure provided for the purposes of any part of the Proceedings shall be taken to have been provided for the purposes of both the HC Proceedings and the CAT Proceedings and may be relied upon in each of them.
33. Witness evidence in the Proceedings shall be prepared in accordance with CPR Part 32 and Practice Direction 57AC. Witness statements and expert reports filed for the purposes of the CAT Proceedings and the HC Proceedings shall be treated as evidence in both proceedings and may accordingly be relied on in either the HC Proceedings or the CAT Proceedings insofar as it may be relevant. Oral evidence given in either the HC Proceedings or the CAT Proceedings shall also stand as evidence in the other.
34. For the avoidance of doubt, the parties are entitled to refer to, and make use of, any and all disclosure and/or evidence provided in the Proceedings (whether before or after the transfer), across both the IP Claim and the Competition Counterclaim, irrespective of the forum in which such disclosure and/or evidence has been provided.

#### **Disclosure and further directions in the CAT Proceedings**

35. The Claimants shall provide Model C disclosure in respect of the following Issues in the Disclosure Review Document:
  - (a) Issues 6, 19, 25 and 27 (being the “purpose” issues); and
  - (b) Issues 7, 13, 21-24, 28-33 (being the “effects” issues).

The Defendant’s proposal for Model D disclosure is refused in respect of those issues.

36. The Claimants' Model D disclosure shall be confined (at this stage) to the 32 suppliers referred to in paragraphs 47A, 47B and 47C of the Re-Re-Amended Defence and Counterclaim. The broader Model D disclosure from the Claimants proposed by the Defendant is refused.
37. The Parties shall, subject to paragraph 38 below submit matters of disagreement on the Disclosure Review Document to the Court by 4:30pm on 24 July 2025 for determination on the papers.
38. The parties' expert advisers are to meet by 15 August 2025 regarding documents to be disclosed under Issues 1-3, 36, 37, 40, 42, 44, 45 and 61 of the Disclosure Review Document (insofar as the requests in those Issues are highlighted in the version of the Disclosure Review Document that was filed with the court on 24 July 2025) and any other issues agreed by the Parties in advance.
39. The parties are to file and serve an agreed version of the Disclosure Review Document two weeks after the conclusion of the experts' meeting(s) referred to in paragraph 38 (the **Final DRD**). If the parties are unable to agree the Final DRD following the experts' meeting(s), the parties shall file and serve by the same date a composite version of the Final DRD, showing areas of agreement and disagreement, for the Court to determine.
40. A further case management conference shall be listed in respect of the CAT Proceedings for the first available date in the Michaelmas term, in order to (a) set further directions to Trial 2; and (b) decide any outstanding disclosure issues requiring resolution.
41. Each party shall serve its Disclosure Certificate, Extended Disclosure List of Documents and production of documents in accordance with the Final DRD by 28 November 2025 at 4.30pm.

## **Confidentiality**

42. Pursuant to Rule 31.22 CPR and notwithstanding that it may have been read to or by the Court or referred to in open Court, pending trial or further order, the material designated by the parties as confidential shall remain confidential in accordance with the terms of the undertakings signed by the parties and may be used only for the purpose of these proceedings.

## **Costs**

43. The Defendant shall pay the Claimants' costs of the Defendant's Negligent Misstatement Counterclaim Application, summarily assessed in the amount of £70,000, within 21 days of the date of this order.
44. The Claimants shall pay the Defendant's costs of the Defendant's 47B Amendment Application and Claimants' Pleadings De-Designation Application, summarily assessed in the amount of £70,000, within 21 days of the date of this order.
45. Save as provided in paragraphs 12 and 43 to 44 above, costs in the case.

## **Permission to appeal**

46. Permission to appeal the order in paragraph 6 is refused.
47. Time for seeking permission to appeal from the Court of Appeal under CPR r.52.12(2) shall run from the date of this Order.

## **Liberty to apply**

48. There shall be liberty to apply.

## **Service**

49. The Defendant shall serve this Order on the Claimants.

**Service of the order**

The Court has provided a sealed copy of this Order to the serving party:  
Herbert Smith Freehills Kramer LLP, Exchange House, Primrose Street, London EC2A 2EG.