



Neutral citation [2026] CAT 61

**IN THE COMPETITION APPEAL
TRIBUNAL**

Case Nos: 1468/7/7/22

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

26 June 2026

Before:

JUSTIN TURNER KC
(Chair)

Sitting as a Tribunal in England and Wales

BETWEEN

JUSTIN GUTMANN

Applicant / Class Representative

- and -

(1) APPLE INC.

(2) APPLE DISTRIBUTION INTERNATIONAL LIMITED

(3) APPLE RETAIL UK LIMITED

Respondents / Defendants

Heard at Salisbury Square House on 26 June 2026

RULING

APPEARANCES

Philip Moser KC and Natalie Nguyen (Instructed by Charles Lyndon Limited) on behalf of Justin Gutmann

Daniel Piccinin KC and Gayatri Sarathy (Instructed by Covington and Burling LLP) on behalf of Apple Inc., Apple Distribution International Limited, and Apple Retail UK Limited

1. The background to this claim is set out in this Tribunal's judgment of 11 March 2026 ([2026] CAT 20).
2. This hearing has concerned principally a challenge by Mr Gutmann, the Class Representative, to the inclusion of documents, by the Defendants ("Apple"), in the outer ring of the confidentiality club (the "Outer Confidentiality Ring"). There has been both pre-certification disclosure and some initial post certification disclosure, comprising in total about 240 documents. Mr Gutmann's complaint has been that Apple has designated all documents as "outer ring confidential" without proper review. He contended that self-evidently a proportion of the documents were not confidential on their face, a proposition with which Apple did not actively dispute. This aspect of the application was comprised at the hearing with Apple agreeing to conduct a review to separate out those documents to which there is no proper claim to confidentiality. The scope of such review was discussed at the hearing and I do not repeat that discussion here.
3. It follows that once this review is complete there will be some documents which are subject only to the restriction that use of that document may only be for the purpose of these proceedings in accordance with rule 102(1) of the Competition Appeal Tribunal Rules 2015 (the "Rules") and other documents which remain designated as outer ring confidential.
4. Mr Moser KC, who acts on behalf of Mr Gutmann, sought an order that he may be permitted to provide documents within the Outer Confidentiality Ring to three representatives of the Class's funder, Balance Legal Capital LLP ("Balance"). These are Mr Robert Rothkopf, Managing Partner of Balance; Mr Jeremy Humm, Investment Director at Balance; and Mr Jon Lawrence of Brick Court Chambers (hereafter referred to collectively as the "Balance Representatives"). (I did not hear argument as to whether consent was necessary for the Balance Representatives to access documents which were to be de-designated from the Outer Confidentiality Ring but for the avoidance of doubt, this ruling also applies to their access to these documents).
5. Mr Moser KC made submissions on behalf of Balance in relation to this matter, and there was a witness statement in support filed from Mr Rothkopf. Mr Moser submitted

that Mr Gutmann needs to be able to discuss the merits of the case, based on the available documentary evidence, with Balance. This would allow Balance to evaluate the risks relating to the funding choices it is making. He submitted that given that most (currently all) disclosure documents are designated outer ring confidential, Balance is “flying blind”. I accept that this is a reason in favour of permitting the Balance Representatives access to the Outer Confidentiality Ring. It is desirable, both from the perspective of Balance and the perspective of the Class, that Balance is making informed decisions in assessing the risk of litigation.

6. Mr Piccinin KC for Apple submitted that an application to allow representatives from a funder into a confidentiality ring was, to his knowledge, unprecedented and that it represented a change of approach in collective actions. He accepted that Balance did have a legitimate interest in understanding the merits of the proceedings and that Apple would be prepared to disclose documents to Balance on a case-by-case basis. Apple objected however to the Balance Representatives seeing all the documents in the Outer Confidentiality Ring. He submitted that the greater the dissemination of documents the greater the risk of inadvertent disclosure. He also submitted that, as a point of principle, the Tribunal should be cautious in providing documents to a non-party who is not conducting the litigation.
7. I am going to order that these three named persons be admitted to the Outer Confidentiality Ring. I weigh the legitimate interests Balance has in understanding the case it is funding against the potential risk to Apple if these three Balance Representatives are added to the Outer Confidentiality Ring. I consider the risks to be minimal. We are concerned here with technical documents relating to mobile handsets. It is not suggested that Balance is in the business of making or designing mobile handsets such that there is any risk the named persons will consciously or subconsciously use the technical information. As to the suggestion that the documents could be dealt with on a case-by-case basis, that is potentially cumbersome. Furthermore it may be unclear to Balance as to which documents it ought to scrutinise. I therefore order that the Balance Representatives shall be added to the Outer Confidentiality Ring. Insofar as documents are removed from the Outer Confidentiality Ring then they shall continue to be bound by rule 102(1) of the Rules.

Justin Turner KC

Chair of the Competition Appeal Tribunal

Made: 23 July 2026

Drawn: 23 July 2026