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IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1745/5/7/25 (T)

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Thursday 30th July 2026

Before:

Andrew Lykiardopoulos KC

(Sitting as a Tribunal in England and Wales)

BETWEEN:

Claimant

**Roadget Business Pte. Ltd. and Shein Distribution
UK Limited**

V

Defendant

Whaleco UK Limited

A P P E A R A N C E S

Tony Singla KC & Ali Al-Karim (instructed by Freshfields LLP) on behalf of Roadget
Business Pte. Ltd. and Shein Distribution UK Limited

Daniel Piccinin KC & Nikolaus Grubeck
(instructed by Herbert Smith Freehills Kramer LLP, Gibson, Dunn & Crutcher UK LLP and
Allen Overy Shearman Sterling LLP) on behalf of Whaleco UK Limited

Digital Transcription by Epiq Europe Ltd
Lower Ground, 46 Chancery Lane, London, WC2A 1JE

Tel No: 020 7404 1400

Email: ukclient@epiglobal.co.uk

1 Thursday, 30 July 2026

2 (10.28 am)

3 Housekeeping

4 THE CHAIR: Good morning, everyone.

5 MR PICCININ: Good morning, sir.

6 MR SINGLA: Good morning.

7 THE CHAIR: Some of you are joining us live stream on our website so I must start
8 with the customary warning. An official recording is being made and an authorised
9 transcript will be produced. It is strictly prohibited for anyone else to make an
10 unauthorised recording, whether audio or visual, of these proceedings and breach of
11 that provision is punishable as a contempt of court.

12 Good morning. Do we have an agenda?

13 MR PICCININ: We do, sir. I should say I appear with Mr Grubeck for Whaleco and
14 Mr Singla KC, my learned friend and Mr Al-Karim appear for Shein.

15 There are five items on the agenda, sir, but you'll be pleased to hear that the first of
16 them, the Xinpinmu application made by Shein, looks likely to fall away. As of
17 yesterday, our position is that we've provided them with all that there is and none of it
18 supports their case. Mr Singla has told me that he's taking instructions and will let us
19 know where he lands later, but he proposed that we move that to the back of the
20 agenda. So if that's okay with the Tribunal as well, we'll just see how we get on with
21 that one and proceed with the others.

22 THE CHAIR: That's fine with me. I also received a letter from Herbert Smith Freehills
23 Kramer concerning length of skeleton arguments.

24 MR PICCININ: Yes.

25 THE CHAIR: I'm going to give us permission now for the 25 pages long, but I do take
26 notice that this is a repeat offence and I will direct that, in the future in this case, if

1 permission is not obtained beforehand, any skeleton beyond the practice direction will
2 be rejected and will have to be refiled.

3 MR SINGLA: Sir, could I just address you on that, please? Because Freshfields have
4 responded to that letter, and that letter may not have made its way to you. Our
5 position -- and it's important that I make this point now, given what you've just said -- is
6 that there is an order from the President of the Tribunal when she transferred the case
7 from the High Court to the CAT. The order makes clear that the provisions of the
8 Chancery Guide should apply, and the Chancery Guide in relation to heavy
9 applications imposes a page limit of 25 pages. So (a) we don't accept the usual rules
10 in the Tribunal apply, and (b) as Freshfields have noted in their letter, in previous
11 hearings, skeletons have run to 25 pages and no objection has been taken.

12 So if, sir, you are minded to vary the President's order, that's one thing. But I don't
13 accept, with respect, that there has been a breach in today's hearing.

14 THE CHAIR: Well, thank you. That hasn't come to our attention at all. We had the
15 letter from Herbert Smith and I haven't seen any response, and that was from
16 yesterday so I was working on the basis that there had been no response. If there has
17 been a response -- is that accepted by both sides, that the order was made for the
18 usual rules to apply for 25 pages?

19 MR PICCININ: Sir, no, but I want to take some of the heat out of this if I can. I don't
20 think we need to spend time arguing about it. I think what matters is really, for the
21 future, if we just have clarity on what it is the Tribunal wants from us and we'll both
22 stick to that.

23 THE CHAIR: I will look at this. What I'll direct is that you can let me know, both of
24 you, very briefly, what was ordered in the past so I can find it. My concern is not for
25 today, because the ship has sailed for today, but I don't want going forward every
26 hearing to have someone complaining about injustice due to longer skeletons. So for

1 | today, I see it as a ship has sailed moment. For the future, I think that whatever has
2 | been directed, be it CAT rules or more general rules, needs to be complied with and
3 | anything that does not comply with it will be rejected and have to be refiled. Because
4 | I don't want every hearing starting with a letter such as this.

5 | MR PICCININ: No. I'm grateful for that, sir.

6 | So the agenda items as reordered are first, our application for what I'll call objective
7 | justification disclosure; that includes the little points at the end of it relating to GMV.
8 | The second is supplier interviews disclosure. The third is the additional custodian,
9 | Mr Xu. Finally, there's a point about confidentiality redesignation.

10 | In terms of allocation of responsibilities, for our side, Mr Grubeck will deal with the
11 | supplier interviews and the confidentiality redesignation. And, sadly, you have the
12 | misfortune to hear from me in relation to the rest of them.

13 | Objective justification disclosure

14 | Submissions by MR PICCININ

15 | MR PICCININ: If I could begin then with objective justification, and I should say at the
16 | start that these agenda items are in decreasing order of length, so please don't panic
17 | that this one is going to take a while. We should be fine in total because the third and
18 | the fourth ones are both quick, and plus, I think we've lost the Xinpinmu one, it's gone.
19 | So my starting point is to locate the issue in the case. I want to do that by looking at
20 | what we've said about the agreements and then what they've said in response by way
21 | of defence in the pleadings. So, sir, if you could take the core bundle and go to
22 | page 37, that's where our counterclaim is, there's a heading, "The Infringing Conduct"
23 | and it's paragraph 42.

24 | You can see that the first bit of infringing conduct that we plead is a series of exclusive
25 | supplier relationships with Shein that are given effect in a number of agreements. In
26 | paragraph 42.1, we refer to agreements and we say there have been various versions,

1 | and we plead specifically to the two that we knew about at that time. If we just look at
2 | 42.1.1, you can see that one of our complaints is that they purport to assign IP rights
3 | in, amongst other things, the product designs.

4 | Then, we don't need to go through all of it, but just over the page and at the top of the
5 | page at (iii), you'll see reference to the fact that the agreements:

6 | "... prohibit suppliers from using or displaying the aforementioned products [and] styles
7 | so that such suppliers would not be able to list any of the same (or highly similar)
8 | products or styles through any third-party platforms, including the Temu platform."

9 | So that one is actually a freestanding exclusivity obligation that doesn't depend on
10 | there being any IP or any IP that has been validly transferred to Shein.

11 | Now, after the disclosure of their agreements, Shein asked us to particularise our case
12 | further and identify the particular provisions that we were objecting to, and we did that.

13 | If we can go on in the bundle to page 160, you find there our RFI response. In
14 | paragraph 1 of that document -- are you there, sir, on page 161 -- paragraph 1 of that
15 | document. And we expand on paragraph 42 that we were just looking at in our
16 | pleadings. We identify four types of provisions to which we object: (a) is provisions
17 | that purport to transfer IP to Shein, in some cases without any payment; (b) is exclusive
18 | supply provisions, and again, just note that this is irrespective of whether the supply
19 | of the products would involve the use of any IP at all, any of Shein's IP, and then
20 | there's another two that don't matter for the purposes of the argument that I'm making
21 | today.

22 | If you then go on to page 163, what you can see there is that we go through the various
23 | documents that have been disclosed to us, the agreements at various forms, and we
24 | identified the particular clauses that we object to with pinpoint references and we say
25 | which species of offensive, restrictive term they are.

26 | So that's our case. I'll be corrected if I'm wrong, but I think Shein has never said that

1 | we're wrong about any of that.

2 | Let's look at what they plead in their defence about this. So if we go to page 59 of the
3 | same bundle, then you've got their defence to the counterclaim. You need to go all
4 | the way to page 102.

5 | THE CHAIR: Sorry, give me the page number again.

6 | MR PICCININ: Well, if you just go to page 102, perhaps we don't need to see the front
7 | page.

8 | THE CHAIR: Yes.

9 | MR PICCININ: So this is where they respond to our allegation that the exclusivity
10 | obligations do not reflect standard industry practice and do not have a sound
11 | commercial rationale and are not objectively justified. You can see in paragraph 35
12 | that they disagree with that in 35(a) and then they go on in 35(b). In 35(b)(i), they say
13 | that "The terms of those Agreements" -- so in the body of (b), they say that the terms
14 | "do reflect standard industry practice, have a sound commercial rationale and are
15 | objectively justified". That seems to be a response to all of them. Then in (i), they say
16 | in particular:

17 | "The terms of those Agreements which assign to Shein intellectual property rights over
18 | the designs, photographs and videos of clothing products which are supplied for sale
19 | on the Shein website are justified by the fact that these are Shein-branded products."

20 | That's the justification. They go on to say:

21 | "It is [standard practice] and justified, for Shein to take the intellectual property rights
22 | in its own branded products."

23 | That's all they say. They don't say that they have any involvement at all in designing
24 | the products; they don't say that they invest anything in the products or in their design,
25 | and they certainly don't say that their involvement in investment is so great, so
26 | significant, that it's necessary for them to take exclusivity. They rely on the bare fact

1 | of the brand which they say then gives rise to the standard industry practice and
2 | justification.

3 | Sir, I'm sure that you're acutely aware that on the Sunday just gone, it was Wuthering
4 | Heights day where, as I'm sure you know, people of all genders dress up as Kate Bush
5 | and essentially perform her famous video clip en masse at a picturesque location --

6 | THE CHAIR: I don't want to be trapped into saying I was aware, but yes.

7 | MR PICCININ: You weren't, sir? Sadly, for my part, I don't mind saying I wasn't able
8 | to make it down to Folkestone Pier to participate this weekend because of work, but if
9 | I had been able to, I would have needed a simple plain red dress and a black belt. It
10 | won't surprise you, sir, that there are many such on the Shein platform.

11 | So Shein's case seems to be that even if it is a completely trivial design that was briefly
12 | cobbled together from something that someone has seen somewhere on the internet,
13 | perhaps copying Ms Bush's original red dress from the video clip, still they say that the
14 | mere fact that Shein has chosen to sell that on its website under the Shein brand is
15 | enough to mean that the supplier can't sell it anywhere else. It's enough to justify
16 | preventing the supplier from selling it anywhere else. I'm not here to argue about
17 | whether that's right or wrong, but that seems to be the implication of their case.

18 | So that's the bit where they respond to our case. We also need to go on to page 112.
19 | If you go there, you can see where they plead their formal objective justification
20 | defence. I think at the bottom, that's right, and then over the page. So on page 113
21 | right at the top in (a), you can see that it's "objectively justified and therefore exempt".
22 | All it says is that paragraph 35(b) above is repeated. That's the paragraph that we
23 | were looking at before.

24 | Now we sent them -- I mean, that's quite a bare pleading, so we sent them an RFI on
25 | this to give them a chance to elaborate. It's on page 137. You can see this is a very
26 | long time ago.

1 | If you go on to page 153, you get the particular question. You can see request 49:
2 | "On what basis do the claimants contend these agreements are objectively justified?"
3 | You can see that their response is:
4 | "Please refer to paragraph 35(b) of the defence to counterclaim."
5 | So that was their chance, we say, to tell us if there was anything else in their case,
6 | and they confirmed that there is not.
7 | There's one more bit of pleading that I need to show you on this, which is our response
8 | to an RFI that they sent to us about these sorts of issues. If we could go forward to
9 | page 177, you'll see that. It's a request for -- you can see they ask us whether it is our
10 | case that it's anti-competitive for a fashion retailer to agree with its suppliers, that they
11 | will assign their IP to it, where the retailer itself has designed the products. It's phrased
12 | as though it's a hypothetical question, or at least a question with no allegation of any
13 | facts in it, as is normal, to be fair.
14 | Our response is at paragraph 10, where we say it depends on the circumstances. You
15 | can see that we enumerate five circumstances in particular. The ones that are relevant
16 | for what I'm going to be saying to you today are (iii), (iv) and (v). (iii), we refer to the
17 | extent of investment by the respective parties in the design.
18 | (iv), we raise the question of whether there is in fact any IP there. (v), we refer to the
19 | necessity, the commercial necessity, of retail exclusivity in view of any order volume
20 | commitments that are being given by the retailer. You can understand why. If you're
21 | committing to purchase very large volumes, that's a significant investment. That would
22 | obviously be relevant to the question of whether you really need exclusivity to protect
23 | that investment.
24 | Then in paragraph 11, we set out our case on those various characteristics as they
25 | apply to Shein. Again, I just note, if you look at (iv) just over the page, we say that
26 | Shein has pleaded no case and adduced no evidence of any significant involvement

1 | in design. At (v) we note that Shein has not pleaded any basis for asserting that its
2 | products are actually protected by any IP. Then at (vi), we say that they place minimal
3 | order volumes --

4 | There are various other factors too, but they go to the scale of the harm that the
5 | exclusivity does, which is also relevant. But for today's purposes, what is most
6 | relevant is that we're saying that they haven't pleaded any case, and that could explain
7 | why they really need exclusivity. That's important because at trial, we will say that
8 | they have to show that it's strictly necessary. Exclusivity is strictly necessary in order
9 | for them to make out the defence.

10 | Now, you've probably seen in the skeletons, sir, that in relation to disclosure, my
11 | learned friends point out that model B was ordered in relation objective justification.
12 | That's true. But of course that reflected the state of the objective justification defence
13 | as it had been pleaded at the time. If the full extent of Shein's case was that it sells
14 | these products under its brand, and that anyone who sells a product under a brand,
15 | irrespective of any other circumstances, is ipso facto entitled to demand exclusivity,
16 | then you could understand why model B was the appropriate order, because there is
17 | no factual dispute about the fact that Shein sells these products under its own brand;
18 | and that's not in dispute.

19 | But the reason we're here today is that Shein has now adduced fact evidence that is
20 | running a much more substantial factual case on these issues. I just want to show
21 | you some excerpts from it, to show you why we're concerned. And if you take
22 | bundle B1, and go to page 1020, tab 34, if you're using the hard copy.

23 | THE CHAIR: Yes, indeed.

24 | MR PICCININ: So you'll see there the second witness statement of Mr Adam Li. If we
25 | pick that up from page 1029, please. Just cantering through it, and I'll dwell on the
26 | points that matter. You've got the heading, "Various Models of Cooperation between

1 | Shein and Suppliers". In paragraph 24, and Mr Li introduces us to the three different
2 | co-operation models. So the FOB and the OEM and the ODM.

3 | Paragraph 25, he explains across the board that there are four stages in the entire
4 | process of manufacturing products, from design at the beginning to production at the
5 | end. Then, over the page, in paragraph 27, he tells us what Shein's degree of
6 | involvement in and what the suppliers degree of involvement is in each of those
7 | stages, broken down by co-operation model.

8 | You can see he says that in FOB, the suppliers only do production, and Shein does
9 | everything else. In OEM, Shein does the design and the photography, and the
10 | suppliers do stages (2) and (4), which are the pattern making and the production.

11 | Then in ODM, suppliers participate in all four stages, but he tells us that Shein is also
12 | involved throughout.

13 | Then, at the bottom of that page, he tells us that under all of the co-operation models,
14 | the products are Shein branded. But all that seems to mean is that the brand appears
15 | on the packaging materials, and on the bags and labels. It's not on the clothing itself.
16 | The key point is that all of those things can either be removed or simply not applied,
17 | and then what you have is a product like a Cathy dress, which is the same design but
18 | not Shein branded at that point. Yet the exclusivity provisions that are being justified
19 | here would prevent a supplier from selling such a Cathy dress on Temu.

20 | It goes, on over the page, paragraph 31, essentially what Mr Li does here is he
21 | expands on what's involved in each of those stages. So 31, he deals with FOB, and
22 | says more or less what I've just said, that Shein does the design, development,
23 | pattern-making and photography, and it's presented as not just for some products in
24 | this category, but for all of them.

25 | At paragraph 32, we're dealing with OEM. He says it's the same except the suppliers
26 | do the pattern-making and produce the product and sample. But still Shein does the

1 | design work and provides the pattern sheet. Again, the claim is that that's how it works
2 | in general, not just in a small number of cases. That's the way it's being presented.

3 | Then 33, we've got the ODM where the supplier does the design, but over the page 34,
4 | you can see a claim that Shein's buyers department still has a significant involvement,
5 | a significant involvement in the design and the visuals. At (a), they say that that is
6 | said to drive the product development; Shein is said to drive the product development,
7 | maximising the chance of developing a trendy product for customers. So there's an
8 | allegation that Shein's buyers department, the work they're doing on design and
9 | visuals, is driving the success of these products.

10 | Then on page 1036, more detail on that, at paragraph 50. So there's an assertion that
11 | during the ODM production process, both generally and when developing specific
12 | products, the Shein buyers provide various forms of "empowerment". That's the term
13 | they use. That includes guidance on products, on colours and on patterns.

14 | Over the page, paragraph 52, what he says is that other platforms or brands do not
15 | provide the same level of support to suppliers as Shein does. He says that that's why
16 | Shein's business has been successful, and that's why it's perceived positively by
17 | suppliers compared to other platforms and brands. So that's important because
18 | they're saying that this level of involvement is not inherent in selling own-brand
19 | clothing. It's not a corollary of that. It's something special that Shein does above and
20 | beyond just normal own-brand fashion retailing. So that's Mr Li's statement.

21 | I also need to show you a couple of paragraphs from Kechang Ju's statement, in
22 | tab 35, and that begins on page 1063. I want to pick it up from 1069, paragraph 19,
23 | final sentence. You see the claim that:

24 | "... Shein bears significant [underline significant] costs and risks, including the costs of
25 | product development, placing orders with suppliers, quality risks, and the risk of unsold
26 | stock if sales fall short of expectations."

1 | So there's an allegation that there's significant inventory risk being taken by Shein.
2 | Then going on to 1071, paragraph 22. Just cast your eye down it. You'll see there
3 | are more assertions of investment, which they say enable the suppliers to achieve
4 | what the suppliers couldn't achieve on their own. So again, in that sense, this
5 | investment is being said to be commercially significant. I'll just give you a moment to
6 | read that. (Pause)

7 | THE CHAIR: Okay.

8 | MR PICCININ: Then go to 1085. I won't ask you to read this, but I'll just show you the
9 | extent of it. You can see paragraph 68. It's all the (a), (b), (c)s and (d)s over a couple
10 | of pages. We've got a whole section on "Training and investing in suppliers".

11 | Then, if you go to paragraph 84, which is on page 1091. He says that suppliers,
12 | although they can't have autonomy, they can't sell Shein's own-brand products to third
13 | parties. Then he says:

14 | "... Where Shein has designed or developed a product, or where a supplier has
15 | developed a product together with Shein ... that product is made for Shein is intended
16 | to be sold by Shein as a Shein-branded product."

17 | Then he says:

18 | "... The commercial logic is that these styles are products through which Shein
19 | competes in the market. Under the FOB and OEM models, these products are usually
20 | developed or designed by Shein. Even under the ODM model, suppliers develop
21 | styles with Shein's support and guidance, and Shein ultimately decides which styles
22 | are put into production. Suppliers therefore cannot take those products and sell them
23 | to third parties or on other platforms."

24 | So he's telling us facts about the way the restrictions work, but he's also making an
25 | argument, and it's an argument about justification. It is the brand he refers to, but it's
26 | also Shein's involvement in design that is being relied on as a justification. That's

1 | therefore.

2 | THE CHAIR: Can I just check, you took me to the 16 June RFI response where you
3 | were answering questions about where the fashion retailer agrees that suppliers are
4 | able to assign IP rights which a retailer itself has designed.

5 | MR PICCININ: Yes.

6 | THE CHAIR: And you showed me that it was pointed out there that Shein has pleaded
7 | no case and adduced no evidence of any significant investment. Was there an answer
8 | back to that?

9 | MR PICCININ: No. I don't have the reference to it. We sent them a letter drawing
10 | their attention to that and saying, "We're actually quite concerned that you asked us
11 | that question because it doesn't seem to have any relationship to anything that you've
12 | pleaded and that if you did, that would have significant implications for disclosure".
13 | They wrote a letter back saying, "What are you talking about? Our case is clear."
14 | Perhaps someone can find the references for me.

15 | THE CHAIR: It might be worth seeing that letter.

16 | MR PICCININ: Yes. I should say, that this was recently. This was before the fact
17 | evidence, but you saw when it was from; it was from June.

18 | THE CHAIR: Yes.

19 | MR PICCININ: If someone can find it, though?

20 | THE CHAIR: I mean, it would have been at a time when the fact evidence would have
21 | been well under preparation, indeed almost prepared, I suspect, but not served, if I'm
22 | understanding.

23 | MR PICCININ: Not served, and obviously I don't know how advanced it was in
24 | preparation.

25 | THE CHAIR: No, but I think one can guess.

26 | MR PICCININ: Yes.

1 THE CHAIR: If maybe someone gives me that, and shows me that in due course.
2 Sorry, I didn't mean to take you out of your ...
3 MR PICCININ: No, no. No, that's a fair question. Yes. So none of that has been
4 pleaded. Importantly, there's just no disclosure at all on Shein's involvement in product
5 design. But there are some tidbits on generalised training, but we're told that the
6 training isn't product specific anyway. So nothing on the way they design individual
7 products.
8 Someone is just giving me a reference, so I'll see if it's the thing I was thinking about.
9 (Pause).
10 Yes. If you take bundle C, the correspondence bundle.
11 THE CHAIR: Yes.
12 MR PICCININ: And go to page 72 -- or perhaps, first, 59, you'll see our letter, and
13 then to 72, you'll see theirs. If you just read our letter of 22 June, if you just read that
14 to yourself. (Pause)
15 THE CHAIR: Right.
16 MR PICCININ: Then if you go to page 72. It's really paragraph 2. (Pause)
17 THE CHAIR: Right.
18 MR PICCININ: For all we know, sir, across all three co-operation models, the practical
19 reality may be that the supplier is the one who's coming up with the design, or,
20 perhaps, really no one's doing any substantial design work, and the supplier or Shein
21 is just copying something they've seen elsewhere. If that is the factual position, then
22 we will say in trial that that has significant implications for the objective justification
23 defence.
24 You know, we'll say that because we pleaded that in our RFI response that I showed
25 you earlier. So that is an important factual issue that has only arisen in Shein's witness
26 evidence for the first time and on which there is absolutely zero disclosure.

1 So the Tribunal is going to have to decide at trial whether Shein is essentially just
2 a traffic-generating platform, where what they really offer is an e-commerce solution
3 that connects consumers to the suppliers that produce the products. And what their
4 brand is is a word on the packaging or a label for their e-commerce platform. That's
5 one possibility. The other possibility is that Shein is right to say that it's much more
6 than that. It's like a fashion house that competes by investing to design distinctive
7 fashion products that are worthy of protection. It's very difficult for you to do that
8 without disclosure.

9 Sir, I was going to say that they have two answers to that. Neither of which stacks up.
10 The first one, we say, is really just sophistry. They say that the witness evidence on
11 involvement in investment, in design that you've seen is not an additional case. The
12 word they use is it's the "commercial context" for their case based on brand. You can
13 see that in paragraph 26 of their skeleton argument. In paragraph 32, final sentence,
14 they go on, and they say that it's actually just the "corollary" of the facts that suppliers
15 are producing Shein-branded products.

16 But involvement and investment in design is not a corollary of selling branded
17 products. A corollary is a proposition that follows immediately and inevitably from the
18 premise. Indeed, if it was a corollary, it wouldn't have needed evidence.

19 But in any event, you will remember Mr Li was talking about Shein's provision of
20 branded packaging materials and labels. They could do that even with a simple Cathy
21 dress, in which they've had no involvement at all.

22 THE CHAIR: If I -- I'll obviously need to hear from Mr Singla, but if I was with you that
23 the current pleading is not sufficient, are we putting the cart before the horse in
24 requesting disclosure?

25 In this sense, if I was with you on that and said, well, if Shein wants to run a case
26 relying on the extent of development, work, design, investment or any differences

1 | between its objective justification case between the various models, if it wanted to run
2 | that case, it would require particularising that in the pleading.

3 | If I was with you on that, shouldn't that come first and disclosure follows? I'm just
4 | slightly worried that otherwise, disclosure is being done without knowing what the case
5 | being advanced is. Do you see what I mean?

6 | MR PICCININ: Yes, sir.

7 | THE CHAIR: It would also follow without the pleading, the case could not be
8 | advanced.

9 | MR PICCININ: Well, I see that, sir. We could have turned up today with a different
10 | application, which is an application to exclude this evidence from trial.

11 | THE CHAIR: Yes.

12 | MR PICCININ: I anticipate if I'd done that, that would have been met with an
13 | application to amend the pleading to plead exactly the things we've just seen in the
14 | evidence. Then I would make this application for disclosure. The problem is that then
15 | we would be in at the end of September. It's getting on for, you know, the expert
16 | reports and trial.

17 | THE CHAIR: Right.

18 | MR PICCININ: So you're right. I could have done that. If Mr Singla says he doesn't
19 | want to run this case, that would of course be a different matter. But that's not what
20 | they say in their skeleton. They say they're entitled to run this case. So rather than
21 | have an argument about that, which seems to be generative of -- waste of time and
22 | money rather than progress.

23 | We do know what their case is, their factual case is, not because it's in the pleadings,
24 | but because it's in the witness statements. So this is us actually being generous, and
25 | trying to be constructive and productive and turning up and saying, "Well, give us the
26 | documents. That way we can see, then".

1 THE CHAIR: I'll need to hear obviously from Mr Singla. It may be worth us doing
2 these things -- I don't know if you were thinking of going through all your applications
3 in one go --

4 MR PICCININ: No.

5 THE CHAIR: But I was going to do them separately.

6 Before I do, I did have questions for you, unless you've got more to say on the basis
7 the reason for the request. I have questions on the order itself, which I'd like to ask
8 you about.

9 MR PICCININ: I was going to come to that, but I just want to finish on the reasons for
10 the request.

11 THE CHAIR: Yes, please.

12 MR PICCININ: So the key answer to that first point is that whether you want to call it
13 "commercial context" or "corollaries" or not, these are facts that they are alleging, and
14 there's no disclosure on them. The only way you're going to be able to decide whether
15 they're right on the facts or not is with disclosure. So that's the first point.

16 Then the second answer, then, is to say that their justification case is not product
17 specific; see paragraph 33 of their skeleton, second sentence. They say it's not about
18 the particular investment made in relation to each product.

19 As to that, that's noted. It sounds like they accept that for at least some of their
20 products that they have no significant investment to protect them. But you'll have seen
21 in the evidence that they do say that their investment and involvement is significant
22 overall. It is that overall commercial significance which is said to justify universal
23 restrictions that they impose across all products.

24 They're not running a factual case that spending just one Yuan or unit of any currency
25 on some minor tweak to a single feature of a single product is enough to justify their
26 universal restrictions. That'd be silly. They also can't rely on their generalised

1 investment in training, generalised training for suppliers, because their case is that
2 suppliers are free to take that generalised training and go and design and sell different
3 products elsewhere and using whatever skills that they've learned from Shein.

4 So it has to be Shein's involvement in the design of the products that is specific to the
5 case that they're running that they should be able to prevent suppliers from selling
6 those same or similar products elsewhere. At the very least, that is an element of their
7 case as we've seen. So we do need to find some way to test their case that they are
8 involved in the design of particular products and to get some sort of measure of the
9 scale and significance of their involvement and investment. So that's what I wanted
10 to say about the principle.

11 If we can just turn up the order at 237, the core bundle. (Pause)

12 THE CHAIR: Yes.

13 MR PICCININ: Over the page at 1(a) -- it essentially comes in three parts, there's
14 1(a), 1(b) and 1(c). 1(a) begins by asking for the supplier numbers and GMV split
15 between the three co-operation models. We need that because Shein's own case is
16 that the extent of their involvement in the three models is different. We don't know if
17 that's right. We'll see that when we get to the evidence from 1(b). But if it is right, then
18 the evidence that we get in the rest of this draft order should show a different level of
19 involvement in the products falling under each category.

20 Now it's possible, at least in theory, that the restrictions may be justified for some
21 categories and not others. If that's the case, then we're going to need to know how
22 much of it was justified in order to work out whether that affects our case on foreclosure
23 or not. If it turns out that the only bit that is justified is, say, the FOB model and that
24 that's a small fraction of the commerce, then that's not going to make any difference
25 to the analysis of the case. So it's important that, you know, it's small.

26 THE CHAIR: Does it require them to be relying on differences in the collaboration

1 | models? Or are you saying that you may want to rely on differences yourself?

2 | MR PICCININ: Yes. I mean, at the moment, it seems to me that they are relying
3 | on -- I mean, they've adduced evidence to say that there are different levels of
4 | involvement across the three of them. We don't know whether that's true.

5 | THE CHAIR: The question is whether they're relying -- that may be a question for
6 | Mr Singla, but I don't know whether they're relying on any differences for the objective
7 | justification case.

8 | MR PICCININ: Yes. The way I understand it, what they're saying, is that all of them
9 | are justified. So it's justified even in the ODM case. But I infer the reason they tell us
10 | they do more for the other OEM and for FOB is because if they end up losing on ODM,
11 | then they could still win on OEM and FOB. I can't see what --

12 | THE CHAIR: I think what the point is -- the point is made. You've already or they've
13 | already disclosed numbers of suppliers by country and Chinese province and GMV of
14 | Chinese province.

15 | MR PICCININ: Yes, yes.

16 | THE CHAIR: So what this adds, if I understand it, is the breakdown by collaboration
17 | model; yes?

18 | MR PICCININ: Exactly right, sir, yes.

19 | THE CHAIR: Then you've also gone to 2022. Why is that?

20 | MR PICCININ: Yes. That's the year before we entered, so that we can see the
21 | development in Shein's involvement over time and have a picture of what was actually
22 | going on when we get into (b) -- so (a) and (b) go together, sir. When we get to (b),
23 | what we're going to want -- we asked for 2022 as well. So (a) the data needs to match
24 | the disclosure, the documents.

25 | THE CHAIR: Yes.

26 | MR PICCININ: So we want the --

1 THE CHAIR: That's for (inaudible).

2 MR PICCININ: No, no it is, sir, that's right. But I'm just explaining why I'm talking
3 about the documents. We want to know what the state of their involvement in these
4 products were at the time that we entered and then at the time when they started
5 enforcing their exclusivity rights against us. So that's why we ...

6 THE CHAIR: Why is it that the -- why was the previous order -- because I thought the
7 previous order was 2023, because that's when Temu commenced trading.

8 MR PICCININ: That's right.

9 THE CHAIR: Could you help me with what the difference is? Why does it matter now
10 and it didn't then to go back a year?

11 MR PICCININ: Yes, it does matter actually for the GMV generally as well. So when
12 we get on to the second part of this application, we are now asking for 2022 as well,
13 which I was going to say should be a trivial thing for them to give us. We'll show what
14 the impact of Temu's entry was and allow us to look at their market share before and
15 after. That's the point. But it should be a simple thing for them to do.

16 Equally, sir, if you, at the end of the day, want to order a subset of what we're asking
17 for rather than order all of it, then the assessment of proportionality is ultimately for
18 you.

19 THE CHAIR: Yes. Okay, I understand 1(a) now. That helps you with the significance
20 or potential significance of ODM, OEM, FOB.

21 MR PICCININ: And then on 1 --

22 THE CHAIR: I understand that. But, of course, that of itself doesn't really get you very
23 much information what you're looking for.

24 MR PICCININ: No.

25 THE CHAIR: Because the nub of it is later. That's what I need to understand what
26 therefore (b) --

1 MR PICCININ: And (c).

2 THE CHAIR: Effectively (b), I think. As for (c) --

3 MR PICCININ: Well, (b) and (c) are the --

4 THE CHAIR: (c) is the same thing, but more products.

5 MR PICCININ: Well, different products, different products.

6 THE CHAIR: But let's just go with (b) at the moment.

7 MR PICCININ: Exactly.

8 THE CHAIR: So you've got "top 5 products".

9 MR PICCININ: That's right. Sir, can I just explain what we're trying to do?

10 THE CHAIR: Yes.

11 MR PICCININ: Our basic idea here -- and I should say we're now focused on (i) in

12 each case, in light of the answers that we've been given to us by Shein. Our basic

13 idea is that the simplest way to get to grips with this issue is to look at how the designs

14 are actually made, so we can see where they come from and what Shein's contribution

15 actually is. That way the Tribunal can make its own assessment.

16 Obviously, we can't do that for the whole product universe, because that would just be

17 too much. So we've decided to focus on the important ones. It's important in different

18 ways. So in (b), it's important, because they're the biggest ones. In (c), it's important,

19 because they're the ones where Shein has actually sought to enforce its exclusivity

20 obligations; this would be us.

21 So the idea is that if Shein's design contribution is so significant, as they say, then it

22 should be significant in the designs that are most successful, so let's see them.

23 Then what we're actually asking for is a pretty narrow selection. So it's that:

24 "... the top 5 products ... for each [co-operation] model for each of [those four years]."

25 Although I've heard what you say about three versus four. If it's four years, that --

26 THE CHAIR: Is that 60? Did I read 60?

1 MR PICCININ: It is 60. Yes, exactly. So that's five times four times three.

2 THE CHAIR: Yes.

3 MR PICCININ: Yes. So the fact that it's 60 is good because that will give you
4 a reasonable set of material to look at, enough to learn something about how
5 significant and important Shein's contribution really is. In terms of what we're asking
6 for, what we're asking for is all correspondence in an incredibly short period of time,
7 which is the time between --

8 THE CHAIR: What is the incredibly short period of time?

9 MR PICCININ: That's what I was about to tell you, sir. It's the time, whatever it may
10 be, between the first conception of the design and the point at which it's launched. In
11 this industry, we know that's short because that's what this industry is all about. You
12 know, we call it ultra-fast fashion. I think Shein prefers to call it fast fashion. But it
13 could be as little as a period of days because that's what these suppliers have: the
14 ability to spin around from an idea to launch on the website in a matter of days.

15 So it shouldn't be hard for them to do. Once they've identified the product, all they
16 need to do is look on their systems to see when it was launched and then look for
17 correspondence with that supplier going backwards from there to the first discussion
18 of the product which, as I say, should be a period of days or, you know, maybe
19 a couple of weeks tops.

20 So that is why we say that that is narrow and proportionate and very useful. And it will
21 show us what the supplier contributed, because you'll be able to see that in the back
22 and forth, and it will show us what Shein contributed because you'll see that too. It
23 should also show us how much costs and inventory risk there really was in the initial
24 orders, because we'll see what the first orders were. And it will show us any paperwork
25 for the transfer of IP, if there is any, beyond the contracts themselves.

26 So that's the way we're approaching it.

1 THE CHAIR: The period leading up to the product launch -- obviously, when I read
2 this it did not seem very clear to me. What you mean by that is from first conception
3 to launch?

4 MR PICCININ: Yes, that's right. Sir, that's --

5 THE CHAIR: Do you have any -- I mean, it may be agreed, but do you have evidence
6 that fast fashion could just be a matter of days?

7 MR PICCININ: I'm sure we do somewhere, if someone can send me a note of where
8 we've got that. I'm sure that's in one of the witness statements.

9 THE CHAIR: That makes a bit of a difference, doesn't it?

10 MR PICCININ: It does, sir, I see your point. But certainly the concept is -- I think there
11 is agreement -- that on both platforms what's going on is incredibly quick turnover of
12 designs with new ones being launched all the time.

13 THE CHAIR: Right. I understand that order.

14 MR PICCININ: Yes. Okay. So then --

15 THE CHAIR: Two, three and four, you may accept, have gone away. They don't have
16 the documents with a caveat (overspeaking) their skeleton.

17 MR PICCININ: Yes, that's right. They say that they don't have them and we say that
18 itself is significant. But that's a matter for later.

19 THE CHAIR: A matter for another day. Yes.

20 MR PICCININ: Exactly. But on that basis, we're not going to ask for them. But we do
21 want to see, in (i), all of the correspondence up to launch. So that should give us, like
22 I was just saying, the initial orders and if there was any IP transfer documentation or
23 discussion in that time, that would be picked up as well.

24 So that's (b). Then in (c), as I said, we approached the same issue from a different
25 angle, which is instead of asking for their biggest products, we ask for the top ten
26 takedown notice products. That's very useful because that will focus on the products

1 | where they've actually gone to the trouble of enforcing, or attempting to enforce their
2 | purported exclusivity rights.

3 | THE CHAIR: Do you need both? (b) and (c)?

4 | MR PICCININ: Yes, sir, for that reason, because they're informative for different
5 | reasons. So (c) is informative because it's showing you the enforcement that they're
6 | doing against Temu specifically. So these are instances where they're actually trying
7 | to prevent someone from selling a product on Temu so that's significant for the case.
8 | And it would be nice to know, it would be informative for the Tribunal to know if, where
9 | they're doing that, they're situations where they've actually had any involvement in the
10 | design of any significance or not. So (c) is, you know, really targeted at what's very
11 | important.

12 | (b) is important for two reasons. One is it's a greater number overall so that would
13 | give you more material to work with, to form an impression, rather than just ten. But
14 | the other is that it's the most significant products, which is, as I said, another way to
15 | test the significance of Shein's investment. Because you would expect that if what the
16 | evidence you've seen is true, the evidence that Shein's investment is what is causing
17 | Shein to be successful, then there should be investment in those most successful
18 | products.

19 | And actually, whether those suppliers are suppliers who have tried to sell the same
20 | products on Temu or not is not determinative of whether it's relevant because of
21 | course, in the real world where they've made whatever their decision is to sell them
22 | on Temu or not sell them on Temu, they're operating in an environment where they've
23 | had to sign exclusivity obligations. Whereas in the counterfactual world without those
24 | exclusivity obligations, they may well have made a different decision.

25 | THE CHAIR: Also a point floated in the evidence, I think, is that it goes broader than
26 | previous orders which are limited disclosure of correspondence to Relevant Suppliers.

1 | Can you just help me with why it couldn't be limited in that sense?

2 | MR PICCININ: Oh, that's a complete red herring, sir. The Relevant Suppliers are not
3 | suppliers that are relevant to the case. They're the particular suppliers that were the
4 | subject of, I think, the interview conduct that Mr Grubeck will be talking to you about
5 | later. So there's no reason to focus on only those ones.

6 | THE CHAIR: Okay, I understand.

7 | MR PICCININ: That's not the point we're dealing with here.

8 | THE CHAIR: Okay, it was just it was a point that was raised, I think, by Mr Democratis
9 | in his evidence.

10 | MR PICCININ: Another point he makes is that it's all correspondence that we're asking
11 | for. He doesn't make a counter-proposal for a narrower set of correspondence. It
12 | seemed to us that asking for all correspondence in the launch period is helpful rather
13 | than unhelpful, because it means no one needs to do a review exercise to work out
14 | which side of the line -- we could have said all correspondence relating to the design
15 | or the order volumes or the transfer of IP. But it seems unlikely in this short period
16 | there's going to be very much else anyway and our approach just saves time by
17 | making it an across-the-board dump of the material.

18 | I've just been given a reference to your point. (Pause)

19 | THE CHAIR: Is this to the short period point?

20 | MR PICCININ: Yes, it's not exactly on the length of design, but I'll show it to you
21 | anyway. It's on bundle B, page 1037 in Mr Li's report.

22 | THE CHAIR: I've got it.

23 | MR PICCININ: Yes. Paragraph 54 refers to the short ten-day period from the placing
24 | of an order. So if Shein commissions a supplier to produce a dress, Shein might place
25 | an order for a thousand dresses and require the supplier to deliver them to Shein's
26 | designated warehouse within ten days.

1 | That gives a sense of the time periods that we're talking about. Also, I'm being told,
2 | paragraph 80 on page 1089. Yes, this is more a point. Sorry, perhaps someone can
3 | tell me which statement this one is.

4 | THE CHAIR: Kechang Ju.

5 | MR PICCININ: Kechang Ju, yes, okay. Paragraph 80. This is --

6 | THE CHAIR: Let me just see who this is. Head of supply chain management
7 | department.

8 | MR PICCININ: Very grateful. So it says:

9 | "In my view, what makes this model innovative is not the
10 | 'planning -- development -- production -- sales' process itself ..."

11 | THE CHAIR: Sorry, help me. What model is she or he talking about? What makes
12 | this model --

13 | MR PICCININ: This is Shein's model. It's not, I think, distinguishing between the
14 | different co-operation models; it's talking about --

15 | THE CHAIR: All right. Okay.

16 | MR PICCININ: -- Shein's business model. So it's not the fact that they do planning,
17 | development, production, sales; everyone does that. It's the speed at which it
18 | operates. They point out that some traditional clothing brands have a similar process,
19 | but operate on a quarterly basis or even longer. But:

20 | "Shein ... has developed various systems to continuously repeat this process at
21 | a much higher frequency. Every day, we develop new styles, analyse feedback, and
22 | process repeat orders ..."

23 | THE CHAIR: Thank you.

24 | MR PICCININ: Then there's also our pleaded case. That's core bundle, page 126,
25 | paragraph 5(b), where we say that suppliers to these sorts of platforms need to be
26 | able to design and launch new products:

1 | "... very quickly, across design, pattern-making, sampling, on demand production and
2 | delivery cycles, with a short turnaround between ... the new product and delivering the
3 | first orders and any subsequent orders."

4 | That's really what's special about these businesses.

5 | So that's objective justification. Just before I hand over to Mr Singla, just while we're
6 | on this topic, I should just finish off the final two items from that draft order, which were
7 | (d) and (e). This is the point that you've already referred to where we're asking for the
8 | GMV data for -- we've already got it for 2023 and 2024, but we're asking it for 2022
9 | and 2025 as well. We say it would be very useful to have those two additional data
10 | points and having just 2023 and 2024 is not very much. 2022 is important because it
11 | gives you the impact of Temu's entry and 2025 is important because it gives you
12 | another year of development.

13 | But I should just show you what Mr Democratis says about that at 1136, paragraph 23.
14 | He says that Shein is effectively already given us 2025, because it has given us GMV
15 | data of suppliers by Chinese province that have fashion products available in the UK.
16 | Effectively, what he's saying is, "Well, why don't you just add that up?" But once you've
17 | added that up, you would then need to gross it up for the fraction of Shein's total
18 | commerce that comes from Chinese suppliers. He's got the percentage. He's got
19 | percentage range in green there.

20 | Our answer to that is, "Rather than doing that, why don't you just tell us what the
21 | answer is?" That way everyone's got it neatly, and we're all working from the same
22 | number and we've got it with some precision. It seems silly to have us go off and make
23 | an estimate rather than use the correct number. This really should be trivial for them:
24 | to give us both numbers, 2022 and 2025.

25 | We're not pursuing 1(e), which is the point about TikTok Shop.

26 | THE CHAIR: Okay.

1 MR PICCININ: I think that's all I've got to say about objective justification, about that
2 draft order. So, at that point, I'm going to just hand over to Mr Singla, unless you've
3 got any other questions for me?

4 THE CHAIR: No, that's very helpful. Thank you.

5 Submissions by MR SINGLA

6 MR SINGLA: Sir, I'd like to start with four preliminary points which are relevant to all
7 of the disclosure applications that you'll have to consider from Temu. It's interesting
8 that my learned friend jumped straight into the applications, because when I take you
9 through the principles and the cases, you'll see that they actually have to satisfy criteria
10 such as necessity and proportionality. In my submission, when we come to each of
11 the applications in turn, they can't satisfy either criterion.

12 So let me begin by reminding you, the governing principles, because, as I said earlier,
13 when the case was transferred, the President made various provisions in her 29 July
14 order. Practice direction 57AD continues to govern disclosure in this case,
15 notwithstanding the transfer. That shouldn't be controversial, and I'm not going to take
16 time showing you the order, but for your note, it's at B1, tab 3, page 158, and it's
17 paragraph 32 of the President's order.

18 Sir, the starting point is that, leaving aside the redesignation application, Temu's
19 applications are properly characterised as specific disclosure applications under
20 paragraph 18 of Practice direction 57AD. In other words, they are seeking further
21 disclosure in relation to objective justification, additional market share data, and
22 additional custodian, and further disclosure in relation to supplier interviews.

23 The reason this is significant, sir, is because they need to do much, much more than
24 simply show that this disclosure is relevant or it's nice to have. Let me just remind you
25 of what paragraph 18 says. You should have a bundle E, and we've included it behind
26 tab 2. It's an important distinction between paragraph 17 and 18. I'm at page 3 of the

1 bundle, sir.

2 THE CHAIR: Yes.

3 MR SINGLA: Now we're not in paragraph 17 territory because it's not being said that
4 we've failed adequately to comply with any orders. What's being said is that they're
5 entitled to vary orders for extended disclosure or seek additional orders. You'll see
6 that the heading of paragraph 18. You'll see what 18.1 says:

7 "The court may, at any stage, make an order that varies an order for extended
8 disclosure. This includes making an additional order for disclosure of specific
9 documents or narrow classes relating to a particular issue for disclosure." [as read]

10 Then 18.2:

11 "The party applying for an order must satisfy the court that varying the original order
12 is necessary for the just disposal of the proceedings and is reasonable and
13 proportionate." [as read]

14 So it's necessary for the just disposal and reasonable and proportionate.

15 Now, it's quite interesting, we've included an authority in the bundle. I apologise this
16 wasn't referred to in the skeleton. But it's in the bundle now behind tab 8. Perhaps
17 you're familiar with this anyway, but let me just quickly show you what the case law
18 says about paragraph 18.

19 THE CHAIR: I don't have a tab 8. I have a tab 7.

20 MR SINGLA: I see. Well you should have a tab 8 with the invest bank case. Don't
21 know if that's made its way into your bundle?

22 THE CHAIR: No.

23 MR SINGLA: It was sent to the registry yesterday, I understand.

24 THE CHAIR: It may be in a supplemental bundle?

25 MR PICCININ: I'm afraid I don't have it either, but that may well be my fault.

26 MR SINGLA: I'm sorry. This was sent across yesterday.

1 | MR PICCININ: I'm not disputing that.

2 | THE CHAIR: It may be some documents that are here. Yes.

3 | MR SINGLA: I'm grateful. Perhaps I can just take this relatively speedily. It's
4 | a decision called Invest Bank in the Commercial Court. But it's an important decision
5 | on paragraph 18. Could I ask you to turn to paragraph 17, please? Obviously, the
6 | facts of the case don't matter for present purposes.

7 | Paragraph 17, just to show you that there was an argument in that case about
8 | paragraph 17 and 18 of the practice direction. Do you see that?

9 | THE CHAIR: Well, at the moment, no.

10 | MR SINGLA: In the case it's paragraph 17, a heading, "Legal Basis". I don't know if
11 | you have pagination, but it's 158 of my bundle.

12 | THE CHAIR: No. Unfortunately this goes from 156 to 158, which is unhelpful.

13 | MR SINGLA: Right. Can I check. It's a decision of Adrian Beltrami KC in
14 | Invest Bank v El-Husseini.

15 | THE CHAIR: That's right.

16 | MR SINGLA: Yes.

17 | THE CHAIR: The copy I've been sent has got 156 to 161. Basically, I haven't got
18 | bundle pages 157 to 167.

19 | MR SINGLA: Right. Do you have paragraph 17 though?

20 | THE CHAIR: One seven?

21 | MR SINGLA: Yes.

22 | THE CHAIR: No.

23 | MR SINGLA: I see.

24 | THE CHAIR: Maybe read it out for the moment, and if it could be sent again we could
25 | look at that.

26 | MR SINGLA: Yes, exactly. Perhaps I could just draw out the key points. They ought

1 | not to be -- I will represent the case fairly. There's a debate in the case about
2 | paragraph 17 versus paragraph 18.

3 | THE CHAIR: Mr Piccinin, have you got it up on screen? Have you found it?

4 | MR PICCININ: No, but it's being sent to me. I think it was copied to my solicitors.
5 | They're sending it to me.

6 | THE CHAIR: Okay. Mr Singla, if you let us both know which paragraphs you're
7 | referring to, because whilst I entirely trust you to be honest about it, you can be
8 | completely honest, but Mr Piccinin may still have a different take.

9 | MR SINGLA: No, of course. But I don't want to, as it were, take up too much time on
10 | this point because I want to move on to the substance. But the critical passage that
11 | I would ask you to look at in due course is paragraphs 21 through to 29. I was just
12 | showing you 17 so you can see the heading. If you haven't got a copy, let me just
13 | draw out the three points. The first is, it's accepted by the judge that the test is
14 | additional disclosure needs to be necessary for the just disposal of the proceedings.
15 | So that's the first point. That's at paragraph 21.

16 | The second point is that there was a debate about to what extent one needs to show
17 | a change of circumstances when making an application under paragraph 18. What
18 | the judge finds -- and this is paragraphs 24 through to 25 -- is he says, there's no
19 | hard-edged principle to that effect, no hard precondition but:

20 | "... it will no doubt often be relevant and perhaps in any given case, determinative, to
21 | explore why a variation is being sought and whether it could and should have been
22 | raised at an earlier stage."

23 | That's important, because when I come on to respond to the applications, we say
24 | a number of aspects of these applications could have been brought earlier and there
25 | are no changed circumstances.

26 | Then the third point that I draw out of this case is paragraph 26. The judge accepts

1 | an argument that if you look at paragraph 18.3 of the practice direction, perhaps we
2 | should just go back there, if you do have a copy of that. 18.3 contains a mandatory
3 | requirement for an application to be supported by a witness statement. So 18.3 at
4 | bundle page 4, an application must be supported by a witness statement. That was
5 | not the case in certain respects in the Invest Bank case, and the judge notes that it
6 | was unsupported by evidence.

7 | So the first preliminary point I make is it's actually a very high bar. In relation to all of
8 | these applications, they need to satisfy you item by item that this disclosure is
9 | necessary. They've not, in breach of that mandatory requirement, filed any evidence.
10 | Whilst you may say that's a technical point, and no doubt Mr Piccinin will say that, it
11 | actually is more than that. It's a substantive problem for all of these applications,
12 | because what you find across all of the various letters that have been filed is no
13 | adequate explanation of why this additional and voluminous disclosure is said to be
14 | necessary. So that's the first point.

15 | THE CHAIR: Can I just check?

16 | MR SINGLA: Yes.

17 | THE CHAIR: I haven't got it; I can't see. But did Mr Beltrami KC in the Invest case
18 | hold that the lack of a witness statement was determinative?

19 | MR SINGLA: He did at paragraph 29. He says:

20 | "... the wording of [18.3] is clear and the distinction with [17.3] is telling. The
21 | information specified ..."

22 | Let me check that. I think he did regard it as determinative. But it's complicated in
23 | that case because, I think, some of the applications were supported by evidence and
24 | other bits weren't. So it's a bit more nuanced. Whereas we say here there's no witness
25 | evidence. Unlike the application that Shein brought, there's not been a single witness
26 | statement, still less anything from an expert saying why this disclosure is necessary.

1 | So we do say it's a mandatory requirement, but even if it's not a knockout point, we
2 | say it's highly relevant as a discretionary factor that you have not had any adequate
3 | explanation by way of witness evidence.

4 | But the second related point is that to the extent these applications are brought on the
5 | basis that the experts need this material, or like this material, you've heard nothing
6 | from Temu's experts. At most, we've had references in correspondence saying the
7 | experts would find this jolly useful, or it would be interesting to see X, Y, Z. Now, that's
8 | incredibly thin. It's also contrary, in my respectful submission, to the ordinary practice
9 | in this Tribunal. Where additional disclosure is sought, an expert usually tells the
10 | Tribunal, either directly or through a solicitor's witness statement, why they need it.

11 | Their failure to put forward anything from an expert means two things. It means, first
12 | of all, we are impeded in our ability to respond because we can't put anything in from
13 | our expert saying why a particular methodology is not necessary or appropriate,
14 | et cetera. But more importantly, sir, you cannot be satisfied that this disclosure is
15 | necessary. What, in my submission, is remarkable is that they say expressly at
16 | paragraph 17 of their skeleton, that they've been working with their experts to
17 | formulate their requests. We know that expert evidence is due in September. So if
18 | the experts genuinely consider this disclosure is necessary, then we say you would
19 | have had something either from the experts or a solicitor in a witness statement.

20 | Sir, my third point, again, relevant to all of these applications, is proportionality. Now,
21 | you will be familiar with the jurisprudence in this Tribunal as regards the need to keep
22 | disclosure proportionate. We've hopefully helped you by citing a number of cases at
23 | paragraphs 13 to 14 of our skeleton and in footnotes, 3 to 6. I won't now go through
24 | each of those.

25 | But what one sees consistently through the case law over a number of years is the
26 | Tribunal saying time and time again, disclosure orders have to be tailored to what is

1 proportionate. It has to be shown that additional disclosure is necessary. The Tribunal
2 does not endorse a no-stone-unturned approach. And even where experts, which is
3 not this case, come to the Tribunal saying, "We need this disclosure", the Tribunal has
4 emphasised more than once that that is not determinative, because proportionality is
5 always the touchstone.

6 So that's what we say the cases tell you about the approach you should take in relation
7 to each of these applications. But sir, specifically on proportionality, looking at the
8 case in front of you, you will have seen the damages claim for competition law is
9 £4 million. Mr Democratis explains in evidence that Shein has already spent about
10 £3.5 million on disclosure alone. That is notwithstanding the President's attempt to
11 keep this confined to the 319 suppliers and so on. So notwithstanding all of those
12 guardrails, we have now spent almost as much as this competition case is said to be
13 worth.

14 I'm not going to take you, but Mr Democratis explains the huge amount of work that
15 has been undertaken. It's paragraphs 8 to 11 of his witness statement and also
16 paragraph 29. We've sought to summarise the key points at paragraph 17 of our
17 skeleton.

18 But we do, sir, say that all of Temu's applications have to be viewed in that context.
19 They have to be weighed against the amount of money that's already been spent, the
20 amount of work that's already been done, the value of the claim, and, in my
21 submission, the inherently diminishing returns in terms of disclosure in a case such as
22 this.

23 Then the fourth point, sir, again, is just related to proportionality. But it's important to
24 remind you of just how late we are in terms of the stage of these proceedings. We've
25 set out at paragraph 19 of our skeleton the procedural timetable. There's been a very
26 protracted disclosure process in this case. The parties started corresponding in

1 | relation to the DRD almost two years ago, in October 2024, and Shein has been giving
2 | disclosure at various points in time, beginning in December 2024.

3 | Now, applications brought at this stage will inevitably serve to distract from all of the
4 | work that needs to be undertaken. Reply and factual evidence is due on 21 August.
5 | Expert evidence is due on 30 September. An experts meeting has to take place by
6 | 4 December. So in the context of the trial timetable, this is a very late application
7 | indeed. Sir, with that introduction -- but that applies to all of the applications before
8 | you. But with that introduction, I was going to turn specifically --

9 | THE CHAIR: Can you just remind me that the trial itself is February, is that right?

10 | MR SINGLA: March.

11 | THE CHAIR: March.

12 | MR SINGLA: I think it's 3 March 2027.

13 | Now, turning to the objective justification disclosure application. The first point to make
14 | is they've abandoned significant parts of their draft order; you've seen that this
15 | morning, and many of the justifications put forward or the reasons put forward for the
16 | disclosure that Mr Piccinin outlined this morning were actually directed at points that
17 | have fallen away, so I have to come back to this.

18 | But in respect of what remains live, we still say the disclosure sought is unnecessary
19 | and disproportionate. So this was misconceived, to begin with. They've recognised
20 | that in a number of respects. But we still say it's an improper application.

21 | Now, the way to approach this, sir, is to first be clear about the nature and basis of this
22 | application. To a certain degree, you pre-empted a point I was going to make in
23 | exchanges with Mr Piccinin. The first point to stress is: this is said to arise out of our
24 | case, not their case. So although references have been made to their RFI response,
25 | that's not the hook on which this disclosure application is brought. It's said to be
26 | necessary out of our case.

1 | So then one looks at our case, and we submit our pleading is clear. The objective
2 | justification is that the relevant provisions are in accordance with industry practice and
3 | have a sound commercial rationale, because the products are the Shein brand. We're
4 | not saying that one has to look at the level of investment in each product and so on.
5 | But importantly for present purposes, sir, there is no issue before you today or
6 | application before you today about the pleading. They're not here seeking further
7 | information. So although complaints are made that the pleading's thin and so on, that's
8 | actually not something that you have to grapple with, and you're not being asked to
9 | grapple with. As you know, they --

10 | THE CHAIR: Could I just interrupt?

11 | MR SINGLA: Yes.

12 | THE CHAIR: Could I just understand what you just submitted?

13 | MR SINGLA: Yes.

14 | THE CHAIR: Do I understand it, therefore, that Shein will not rely at trial on the extent
15 | of development, design or investment, as part of its case on objective justification?

16 | MR SINGLA: Not at a product level. This is why this is not --

17 | THE CHAIR: That wasn't my question.

18 | MR SINGLA: No, I understand your question. But the application is really directed at
19 | product by product. Let me take this in stages.

20 | THE CHAIR: But Mr Piccinin says it's not. So I'd like to just -- I've just heard him; I'd
21 | like you to deal with that. He says it's not product by product. He says your evidence
22 | is more general and that your evidence is showing -- we've gone through it; we don't
23 | need to go through it all again, and I read it beforehand.

24 | MR SINGLA: Yes.

25 | THE CHAIR: But it does appear that you have decided to put forward quite a lot of
26 | evidence that, at a general level, seems to be relying on the extent of, if I may call it,

1 | development work, and that would include design and investment. My question, again,
2 | is: are you intending to rely on that as part of your case?

3 | MR SINGLA: Yes.

4 | THE CHAIR: Right.

5 | MR SINGLA: Yes, we are, we are. But --

6 | THE CHAIR: But you're not giving any disclosure on it?

7 | MR SINGLA: Well, can I take this in stages? Because one has to -- the first point is:
8 | are we relying on those parts of the witness statements in relation to objective
9 | justification? Yes, we rely on them in relation to other parts of the case. But the
10 | answer to that question is: yes. But the next --

11 | THE CHAIR: But are they tested?

12 | MR SINGLA: Well, sir, but one has to then come back to the disclosure that's being
13 | sought. In my submission, I need to spend a bit of time responding to the various
14 | points that have been made. But in my submission, what you're now looking at in
15 | terms of what's live on the draft order does not join up with some of the reasons and
16 | points that were being made, and, in fact, the point you're making to me.

17 | Because when we get to the draft order, which I'd like to address you on at the end of
18 | my submissions, actually, there's a disconnect in my submission between what they're
19 | now asking for, a breakdown of GMV data, for example -- it's got nothing to do with
20 | investment and so on. So one has to be very careful about taking this application in
21 | stages, because the way in which it's been presented, either mischaracterise our case,
22 | which I need to clarify, and/or there's actually a problem in terms of their own draft
23 | order not matching with their stated reasons for applying.

24 | THE CHAIR: Right. I completely understand that. Of course, I want to listen to
25 | you -- hear you on that, but it's helpful, just so I understand, that as I understand it,
26 | you are intending to rely on the evidence that I've been shown on the case of objective

1 | justification.

2 | Can I also ask: do you also -- as part of that, are going to rely on potential differences
3 | between the various models? I mean, do you say they're relevant?

4 | MR SINGLA: No, no.

5 | THE CHAIR: You don't, so you're not relying on that.

6 | MR SINGLA: Sir, in my respectful submission, this is actually completely obvious,
7 | because -- I don't mean that disrespectfully, but I mean this in terms of why the
8 | application was always misguided. Because our case has always been at the highest
9 | level that this breakdown, we say, just doesn't arise out of our case. Our case is all at
10 | the level of the overall commercial position. The rationale and so on is all at the Shein
11 | brand level. It's not supplier by supplier, and it's not product by product.

12 | But can I just go back -- because one has to be, actually, quite specific about what's
13 | going on here.

14 | First thing is it's said to arise out of our case.

15 | Second thing is this is not a complaint about our pleadings, so you're not being asked
16 | to order further information.

17 | Third point is they're not saying the witness evidence goes beyond the pleaded case,
18 | therefore relevant passages should be struck out. I mean, that would have been
19 | completely hopeless, but that's not what's being said. So the only question that arises
20 | is disclosure.

21 | Now, objective justification disclosure was the subject of the DRD, as Mr Piccinin
22 | recognised. The question is whether additional disclosure is necessary for the fair and
23 | just disposal of this case, and is it proportionate?

24 | Sir, as to why it's not necessary, you have the point that I've just made, which is it's
25 | not necessary, because we're dealing with this at the Shein brand level. What the
26 | factual evidence is doing, sir, is it's explaining Shein's business model and the bargain

1 | that it strikes with suppliers. So an important point that is traversed at length in the
2 | witness statements is the distinction between the own brand model and the
3 | marketplace model. Many of the passages which you were taken to earlier were
4 | actually dealing with that point. So that's the introduction to the whole case, which has
5 | to be explained in the witness evidence. This is own brand, not marketplace.

6 | Then what the witnesses go on to say is that there's a reciprocal bargain whereby
7 | Shein commissions suppliers to manufacture products which are then sold to
8 | consumers as Shein brand. Shein itself bears the costs and risks associated with
9 | product development and marketing and inventory and so on. But in return, Shein
10 | gets the IP rights and exclusivity insofar as the products are sold under Shein's brands.
11 | But in return, the suppliers get access to Shein's brand and global sales channels, and
12 | they remain free to manufacture these products for other customers, but Shein invests
13 | in the suppliers by guiding them on the operational and technical know-how. That's
14 | all of the empowerment references in the witness statements.

15 | But importantly, sir, that the references to the fact that Shein has these three different
16 | models, that doesn't mean that we're somehow running a different case in relation to
17 | each model. It's just a total misreading of what the pleading and what the witness
18 | statements say.

19 | Sir, it's a very straightforward case. We say we're entitled to seek IP protection in
20 | relation to Shein's brand. There is, of course, a relationship with the suppliers, which
21 | is explained in the witness statement. But insofar as the disclosure requests as
22 | originally formulated were put forward on the basis that our case is product by product
23 | or model by model, all of that falls away. They've simply misunderstood our case.

24 | We're either right or wrong about that case. That's the important thing. We can't be
25 | driven by the way in which Temu has provided its answer to the RFI. If they want to
26 | say at trial that objective justification requires Shein to prove on a product-by-product

1 basis the level of investment that was being made, they can make that case at trial.
2 We say it's completely misguided, and we either stand or fall with that submission at
3 trial.

4 But what we can't accept, sir, is that the disclosure process should be driven by a case
5 that we are not advancing. That's why we've said in our skeleton and in our witness
6 statement: this is all proceeding on a false premise. And they've now -- insofar as the
7 witness statements were referring to training manuals and so on, that's all fallen away.
8 They've abandoned that. So that's why it's very important, sir, now, to look at the draft
9 order.

10 We do say --

11 THE CHAIR: Before we move to the draft order, I just want to ensure I understand
12 what you say about this.

13 MR SINGLA: Yes.

14 THE CHAIR: One of the points that Mr Piccinin made -- and I have to say it occurred
15 to me when I was reading the papers, and I picked up your reference to it -- the
16 process of design being a "corollary" of the fact that suppliers are producing Shein
17 brand products; your skeleton paragraph 32. It does seem to me that there is
18 a difference. I think your evidence, like Mr Li, paragraph 29, between branding and
19 using a brand which could be on white goods that the brand is attached as a label and
20 design and implementation of the design. Although your pleas relate to branded
21 products, it does seem to me that does that not encompass both the white-goods-type
22 analysis and a more in-depth, analysis of what you might do?

23 It sounds to me from your evidence that you're relying on a more in-depth approach:
24 you're involved in design; you're involved in investment. It's not just white goods, and
25 they can put a Shein label on it.

26 MR SINGLA: Yes. I mean, we say it's a corollary because we say, as it were, it follows

1 | from the fact that these are Shein-branded products and so Shein has an interest in
2 | ensuring that these suppliers are properly trained and so on. So we say corollary in
3 | the sense that it's the other side of the coin, but one always has to come back --

4 | THE CHAIR: I see that in terms of -- I can see that in terms of a brand owner wanting
5 | to ensure consistency or ensuring a level of quality, I understand that. It's not
6 | a corollary, though, is it, that just because it's a branded product, it means that the
7 | brand owner has expended considerable investment and effort in the design of the
8 | product itself? That doesn't follow, does it?

9 | MR SINGLA: Well, I mean, I'm not sure it's very productive to debate whether or not
10 | it's strictly accurate to describe it as a corollary in that respect. But in my submission,
11 | what we need to do is we need to look at the remaining bits of the draft order, which
12 | are live, and you have to ask yourself, "Are each of these provisions necessary and
13 | proportionate?" We say they're not.

14 | Let's just first look at 1(a) because it's actually quite important. Because even if you're
15 | superficially attracted to the idea that the witnesses have dealt with investment,
16 | therefore there ought to be some disclosure, that's actually not what we're currently
17 | debating. That's the interesting thing about the way this application has moved.
18 | Because they've abandoned so many paragraphs, we're now looking at paragraphs
19 | of the draft order that bear no relationship either in terms of necessity or proportionality.
20 | So if we look at --

21 | THE CHAIR: Well, I do get the point that 1(a) could have come after 1(b) because
22 | 1(a) when you first read it doesn't necessarily stagger that point. But anyway, let
23 | me -- I am interested in -- well, I'm interested in all your submissions, but I'm interested
24 | in getting on to the draft order.

25 | MR SINGLA: Yes, just before I turn to the draft order, perhaps I can just emphasise
26 | this point again: we don't have anything from the experts and that is important for you

1 | to bear in mind, particularly when one looks at 1(a).

2 | Let's just turn to 1(a). There's actually no explanation from the experts as to what
3 | they're going to do with the material in 1(a). As you know, in relation to supplier
4 | numbers, Shein has already disclosed that data without the model breakdown; we've
5 | already disclosed GMV data for 2023 to 2025; and we've also provided aggregate
6 | GMV data by Chinese province. And so the question, again, that you need to consider
7 | is: do they need this further granularity and have they properly justified a case that
8 | they should go back to 2022?

9 | We say they have just, with respect, completely failed to explain to you why they need
10 | these additional bits of disclosure. So why do they need the breakdown? I've just
11 | confirmed we're not, and it's actually never been a fair reading of any of our materials
12 | to think that we're running objective justification on a model-by-model basis. But I've
13 | now made that completely clear today.

14 | In those circumstances, in my submission, even if you accept the basic rationale of
15 | what's being said as to what they want to test in the witness statements, that wouldn't
16 | justify 1(a). Just complete disconnect between 1(a) and the objective justification
17 | pleading.

18 | There are other problems with 1(a). So not only are they asking for the breakdown,
19 | but as you picked up, they're also looking to go a year back in time. Again, that would
20 | represent a change in the way this disclosure process has been undertaken to date
21 | with no explanation or proper explanation of why they need to go back to 2022.

22 | Then you will have no doubt seen also the reference to marketplace in 1(a). On what
23 | conceivable basis should they now get disclosure in relation to Shein's marketplace?

24 | I mean, this whole claim relates to the own brand platform.

25 | So again, none of this has been adequately explained, sir. In my respectful
26 | submission, you should be very careful about making any disclosure order which

1 | represents an extension or a variation to what's been ordered to date, unless you're
2 | satisfied they've justified their case. None of that bears any relationship to the
3 | references in the witness statements.

4 | Then proportionality. Mr Democratis on 1(a) has said in his evidence that
5 | disaggregating this data would take time, so there is a proportionality point that arises
6 | in relation to 1(a). But in relation to 1(b)(i) and 1(c)(i), there is a very, very big
7 | proportionality concern. He addresses this at 21(b) of his witness statement, but if
8 | I just summarise the points.

9 | This would require disclosure of all correspondence between Shein and suppliers,
10 | whether or not they are Relevant Suppliers and this would cover 60 products in total.
11 | And it's actually an additional ten in 1(c). So we're talking about 70 products, we're
12 | talking about all correspondence, and no distinction between any types of suppliers.

13 | In my submission, that only has to be stated for you to see, sir, this is grossly
14 | disproportionate, bearing in mind all of the points that I made at the outset.

15 | We do respectfully submit that to make this swingeing disclosure order now would
16 | undercut everything that has been carefully calibrated by the Tribunal at all of the
17 | multiple hearings that have taken place in this case.

18 | And you did ask Mr Piccinin about why he needs to go back to 2022. Why does he
19 | have no time period? This is just completely open ended. And he didn't adequately
20 | deal with this. There's been no attempt to formulate this in a way that meets the
21 | tramlines set down by the Tribunal in its case law. So on any view, this is going to
22 | take a lot of time to do, and it's going to cost a lot of money. And the question is, is it
23 | necessary? Is it proportionate? My final point, sir, is just to --

24 | THE CHAIR: Hang on.

25 | MR SINGLA: I'm sorry.

26 | THE CHAIR: You took me to the evidence of Mr Democratis. One thing that struck

1 | me, which is what he says in the middle where he says really that the issue -- and this
2 | is in the middle of (i) on 1133 -- is identifying the relevant period itself would take
3 | a considerable amount of time to establish. Of course, that goes with it being grossly
4 | disproportionate because it could be a very long period or an unknown period.

5 | Now, we heard today that the period being requested is from first inception or
6 | conception to point of launch. And I was directed to a number of pieces of evidence
7 | that suggest that could be a matter of days; some of your own evidence is ten days in
8 | relation to dresses and other evidence in relation to it being extremely fast for fast
9 | fashion. What do you say about that? Because that's not dealt with at all by your
10 | evidence, because your evidence --

11 | MR SINGLA: No, no, it's --

12 | THE CHAIR: Your evidence is all correspondence over an indeterminate amount of
13 | time. That's fine, I get that. We're now talking about evidence with documents in
14 | relation to what is an extremely short period of time. Of course, one might say, if
15 | Mr Piccinin is correct and his evidence is correct, then it's strange that Mr Democratis
16 | didn't know that because he's talking as if it could be years.

17 | MR SINGLA: Well, with respect, he's dealing with the application and so --

18 | THE CHAIR: Yes, I understand. I'm not criticising him; I'm just saying I would like to
19 | understand what you say about that.

20 | MR SINGLA: No, absolutely. It's a fair question and I've taken instructions in the light
21 | of the submissions, all the exchanges that you had with Mr Piccinin. The answer is it
22 | just depends, but it can be two months. So I wouldn't accept for a moment that you
23 | can proceed on the basis that it's ten days and that essentially, if what's being said is
24 | (b)(i) and (c)(i) is really asking for ten days' worth of disclosure for each of those
25 | products, I do not accept that that's the case. That's on instructions which I've taken
26 | this morning in the light of those exchanges. It can be two months. But even if --

1 THE CHAIR: Can I ask you what your instructions would be as to what the norm would
2 be? I mean, because the trouble is we're talking "can be two months". Maybe there
3 isn't a norm. It seems strange to me that everyone talks about fast fashion and the
4 evidence I've got is ten days from you, and that's quite a big difference from two
5 months. So I just wonder, is there a -- I mean, the one that your evidence put forward,
6 I think it was your evidence from Li, was a ten-day period. It seems strange to put that
7 forward if in fact the norm is two months.

8 MR SINGLA: Well, yes, obviously you're entitled to probe. My instructions are, or if
9 this assists, in the IP litigation, as I understand it, this disclosure was done on
10 a two-month basis. I mean, obviously there are references to ten days and perhaps
11 that is the case for certain products. But until one actually goes and tries to collate all
12 these materials, I think the position is we just don't know. But it would be wrong --

13 THE CHAIR: This disclosure was either -- what was this disclosure was done over
14 a two-month period?

15 MR SINGLA: Disclosure on -- let me just take instructions.

16 THE CHAIR: It hasn't already been done, has it, for the IP litigation?

17 MR SINGLA: Can you just give me a moment, because actually we also need to check
18 the reference to ten days because I'm being told that we don't accept that that was
19 fairly characterised as being our position.

20 THE CHAIR: (Overspeaking).

21 MR SINGLA: Yes. In terms of the IP litigation, I'm told that there was disclosure of
22 correspondence between buyers and suppliers in relation to the use of photos. And
23 that disclosure was on a two-month basis which rather suggests ten days is not
24 accurate. I think we just need to check the reference to ten days that was made
25 earlier.

26 But the point remains, sir, whilst we're checking that point about time period, and you'll

1 | of course understand that we're just addressing the application as framed, the
2 | disclosure is still being sought across 70 products and across all suppliers so they've
3 | had absolutely no regard to proportionality in terms of products or suppliers. And
4 | they're looking to go back several years. So, if you were minded to make any sort of
5 | order on, on this correspondence, it would have to be much, much more narrowly
6 | confined, in my respectful submission. It's just too late and it's too broad.

7 | And it's not ultimately of sufficient relevance to the issues in the case. I mean, again,
8 | one has to keep coming back to this. This starts with the pleaded case on objective
9 | justification, which is our case to run in the way that we want to run it. We put forward
10 | some witness evidence to support that case. They say we'd like to test that case. We
11 | say, well, we don't accept you actually need any of this, but if you do, it certainly
12 | shouldn't be such a wide-ranging order at such a late stage of the proceedings.

13 | My final point on this, and I'll come back to you on the timing, is we do actually say, in
14 | addition to it not being necessary, in addition to it not being proportionate, we also
15 | submit, sir, this is actually extremely late and they've delayed in bringing this
16 | application. Because although it is said to arise out of the factual evidence served by
17 | Shein on 3 July, that's the way they try to justify bringing this now, in reality, sir, they've
18 | obviously known about the three different models for a very long time and they could
19 | have asked for the broken down data at the same time as they're asking for the
20 | aggregated data. So there's no justification for the timing there.

21 | In relation to the correspondence between suppliers and Shein. I mean, obviously
22 | that sort of correspondence would exist. It's hardly news to them that there's
23 | correspondence between suppliers and Shein, and they could have asked for that
24 | earlier.

25 | So we do submit, for all of those reasons, it's actually a misguided -- what's left of the
26 | application is misguided, as was the application as originally formulated.

1 | In relation to the timing point, I'm told that the ten day reference is from commission,
2 | which is post-design, to delivery to Shein. And that's Mr Li's paragraph 54.

3 | THE CHAIR: Can you just show me that?

4 | MR SINGLA: Yes. That will be B1, pages 1037 to 1038.

5 | THE CHAIR: Show you the bit I need to be reading where it says that.

6 | MR SINGLA: Yes. Sorry, just give me a moment to find the --

7 | THE CHAIR: No, no, don't worry.

8 | MR SINGLA: I'm in hard copy, sir. It's behind tab 34, page 1037, and it's
9 | paragraph 54.

10 | THE CHAIR: Yes.

11 | MR SINGLA: And it's under a heading, "Management of Shein's Partnership with
12 | Suppliers". And it's:

13 | "If Shein commissions a supplier to produce a dress, Shein might place an order ...
14 | and then require the supplier to deliver [to the] warehouse within 10 days."

15 | So that's just talking about the period of time between the commission and delivery.
16 | But what it's not --

17 | THE CHAIR: That must also be the same period as design, or is it not?

18 | MR SINGLA: No, I'm told it's not.

19 | THE CHAIR: The design period may be earlier? Okay.

20 | MR SINGLA: Exactly, that's why this is so significant and why the reference to
21 | ten days is actually not apposite in this context. So the reason I'm getting instructions
22 | about two months is if one's talking about inception, going all the way back to day 1
23 | for design, it's a two-month window.

24 | I'm not saying that's across the board; obviously it just depends. But in order to answer
25 | your question accurately, one actually needs to go away and do the disclosure
26 | exercise. That's the difficulty.

1 So, sir, for all those reasons, we do ask you to dismiss this application.

2 Then can I come to the final element of this, which even on Temu's case has got
3 nothing to do with objective justification. It's the disclosure that's being sought. It's
4 1(d), 1(e) now having fallen away. What we say about this is that this is a classic
5 example of an application for additional material, so going back to 2022, which is not
6 properly justified. So even taking the application at its highest, what's said in the
7 application letter, paragraph 23, and I think it's also the skeleton of Temu at
8 paragraph 23, it said that this disclosure would be "very useful". We say actually that
9 just reveals that it's obviously not said to be necessary, nor have we seen anything
10 from Mr Parker as to why the current GMV data is inadequate, nor have we heard
11 what he intends to do with the 2022 disclosure. All that's said is they'd like to
12 understand the development of Shein's market share. I mean, with respect, it's
13 actually completely hopeless in the context of all of the points I made at the outset to
14 ask you now to extend the disclosure order for GMV data back to 2022.

15 The best that my learned friend can do is to say, "Well, it shouldn't be very onerous",
16 but in my respectful submission, that is taking things the wrong way round. Actually,
17 as all the cases and the rules show, it's for them to justify why they need it, because
18 ordering additional disclosure will inevitably add to the costs of the proceedings.
19 People will review it, the experts will presumably try to do something with it. In my
20 submission, that's why the onus is on them to establish a compelling reason to order
21 this disclosure and to say, "It would be jolly useful", in my submission, doesn't go
22 anywhere.

23 Unless I can assist further, that's all we wanted to say on objective justification.

24 THE CHAIR: Thank you. I've been told we should be taking a break fairly soon, but
25 are you going to be quick, Mr Piccinin, or --

26 MR PICCININ: Very quick.

1 THE CHAIR: Okay.

2 Reply submissions by MR PICCININ

3 MR PICCININ: I'll be very quick.

4 Sir, just running through the points very briefly. Firstly on the test, my learned friend
5 says the test is it needs to be necessary, reasonable and proportionate. But that's
6 always the test for disclosure in this Tribunal, sir, and we accept that and we satisfy it
7 handily.

8 There was then a technical point taken on the basis of paragraph 18.3 of the practice
9 direction about the fact that there was no witness statement explaining the reasons
10 why the disclosure order should be varied. Sir, that is a cheap technical point. It's
11 also an ambush because it wasn't even taken in their skeleton argument. There's no
12 reference that I've been able to find to that paragraph the practice direction. That's
13 unfair because, if it had been taken and if it was of any significance to the Tribunal,
14 then we could have produced a one-page witness statement, a one-sentence witness
15 statement just adopting the contents of our letters which do explain why we're seeking
16 disclosure and why we're seeking this disclosure now at this stage of the proceedings.
17 So we say there's no substance to that point.

18 You always have the power to regulate your own procedure and to make orders that
19 seem appropriate to you. You're not bound to dismiss the application because there
20 is no witness statement. Indeed, just looking at the Invest Bank case that Mr Singla
21 cites, it doesn't seem to us that paragraph 29, if you ever get to it, is actually saying
22 that that is strictly necessary in that case. What it said in that case was that there was
23 no explanation at all as to why the new request was being made at that time, justified
24 on the basis of a change in circumstances.

25 Here, the change of circumstances is very clear: it's that they're running a case that
26 hasn't been pleaded, and they're running it for the first time very recently when these

1 | witness statements were exchanged.

2 | My learned friend also complains that there's no statement from an expert. Well, at
3 | least for this application, I don't need a statement from an expert. The President has
4 | directed that we shouldn't run our entire cases through the economists in these
5 | proceedings and that the factual issues raised by these witness statements about the
6 | factual extent of Shein's involvement is obviously a matter that we're going to have to
7 | cross-examine on. So this one's for me, I'm afraid.

8 | My learned friend also makes the point about the size of the damages claim that we're
9 | bringing in this case being small and therefore you shouldn't order disclosure. That's
10 | not right, sir. This case is about a lot more than just damages claims. This case is
11 | seeking injunctive relief to protect the integrity of competition in this jurisdiction. This
12 | case is very important. In any event, if it's going to be tried, it needs to be tried on
13 | a fair basis.

14 | Just three more points. In relation to timing, my learned friend, I think, is suggesting
15 | that it's too late to be useful because it's July now and the trial is in March and the
16 | expert reports are in September. It's not too late, sir, because I'm going to use this
17 | material at trial. So as long as we get it in good time for us to be able to do that, then
18 | there isn't going to be a problem here. Disclosure happening in July, August for a trial
19 | happening in March is not unusual in narrow specific disclosure like this.

20 | They also say it's too late, but it can't be too late because we're reacting to a change
21 | in their case that has only just become apparent through the witness statements. If
22 | we'd made this application last year or earlier this year, they would have said it wasn't
23 | responsive to any pleaded issue and they would have been right. But it is now
24 | responsive to the case that they're running.

25 | I don't think I need to say anything about the substance of the case that they're running
26 | because it's clear from the documents I've shown you that they are running this case.

1 | It's also clear that there is no disclosure on this case, and so that's why I say we need
2 | it.

3 | And as to the terms of the order, I can be very brief on this. Firstly, yes, you're right,
4 | sir. 1(a) comes after 1(b) and 1(c). The relevance of 1(a) is not to go into any
5 | convoluted economic assessment, but it's to give meaning to what we discover in 1(b)
6 | and 1(c). That's what it's for, to show us the scale of what we find in each of those
7 | groups in 1(b) and 1(c).

8 | Then as for proportionality, there's no substance to Mr Democratis' evidence. He
9 | doesn't say how long it's going to take to look for this material. He doesn't give you
10 | any concrete basis to conclude that it's actually going to be difficult. The main issue
11 | seems to be this spat about whether it's ten days or even less than that, or whether
12 | it's two months. As to that, sir, you'll remember the other piece of evidence I showed
13 | you that Mr Singla didn't go to was on page 1089 of the bundle. That was
14 | paragraph 80 of Mr Kechang Ju's statement, where he refers to traditional clothing
15 | brands following a quarterly basis, which would be three months or longer, and then
16 | he says that Shein operates at a much higher frequency than that and "every day" is
17 | developing new styles. Now, if it's "much higher" frequency than three months, he
18 | can't mean it's two months. That doesn't sound right. So, we say there's nothing to
19 | that.

20 | My learned friend says that two months was the period used in some order in the IP
21 | proceedings. Sir, I don't know which order that is. I don't know why it was made.
22 | I don't know what the scope of it is; it just had something to do with photographs rather
23 | than product design. So I can't help you on that.

24 | Unless you had any other questions for me, those are my submissions.

25 | THE CHAIR: I do have -- and we must go for a break, so maybe think about this over
26 | the break. Just on the point about -- I take your point about ambush, unless Mr Singla

1 | is going to tell me it was mentioned before, and I'll do that after the break as well. But
2 | the practice direction point. I did notice the practice direction, I think, uses the phrase
3 | "shall", or must.

4 | MR PICCININ: Yes.

5 | THE CHAIR: And I just want to know, I got the impression from Mr Singla he was not
6 | saying it was a hard-edged, he said to me it was -- put down his
7 | phrase -- a discretionary matter. But I would like to hear from both of you whether in
8 | fact you're saying I am not allowed to do it or you're not going that far. I didn't hear
9 | that from Mr Singla, but I want to make sure of that.

10 | MR PICCININ: No, I don't think that can be right. I don't think the practice direction
11 | can have that effect, actually.

12 | THE CHAIR: It may be a question for Mr Singla. I don't think you're --

13 | MR SINGLA: Sir, I'm happy to deal with this now. Just to be clear, we did refer in our
14 | skeleton to the fact that this was properly characterised as an application under
15 | PD 57AD paragraph 18. It's completely fair to say that we didn't cite the Invest Bank
16 | case in our skeleton. It was added to the bundles yesterday, so I accept all of that.

17 | But we're not seeking to say you should close your mind, as it were, to all of these
18 | applications and knock them out for lack of a witness statement. But we say two
19 | things. We say, (a) it's highly relevant as a discretionary factor, because 18.3 uses
20 | mandatory language, and (b), we say, as we would have said in any event, and as
21 | indeed we I think we did say, it's actually very, very striking, the inadequacy of the
22 | explanations. So those points are connected, sir, but I'm not seeking to say this is
23 | a knockout point. But we do say it's highly relevant.

24 | THE CHAIR: I take that and I accept and understand your submission. I just wanted
25 | to clarify and ensure that I'd understood it.

26 | I think we should take a break, because I apologise to the shorthand writer because

1 | it's been a very long morning, in fact, almost the entire morning so apologies for that.
2 | Why don't we take a break until 12.35 and then I will rule on this and then we can move
3 | on. Hopefully, at least Mr Piccinin suggested, it will go faster from now on. Mr Singla
4 | didn't agree with that or didn't say otherwise, but I hope it will.

5 | MR PICCININ: Particularly the third and fourth ones are going to be quick.
6 | Mr Grubeck has a substantial one next.

7 | THE CHAIR: Okay, let's come back at 12.35.

8 | (12.23 pm)

9 | (A short break)

10 | (12.36 pm)

11 | THE CHAIR: Is everybody online? Looks like so.

12 | (12.37 pm)

13 | **Ruling**

14 | THE CHAIR: This is the first judgment in these applications. As a general matter,
15 | I was reminded by Mr Singla KC (who appears for Shein) about the importance of
16 | practice direction 57AD, which governs these proceedings, following an order of the
17 | President earlier in the proceedings. In particular, certain elements of the practice
18 | direction as discussed in *Invest Bank*. The propositions are not in dispute.
19 | Importantly, when varying any previous disclosure order, further disclosure must be
20 | necessary for the just disposal of the proceedings, be proportionate and cost effective.
21 | Whilst such an application does not depend on there being a material change of
22 | circumstances, this is a relevant consideration to consider. Finally, the application
23 | must be supported by witness evidence. That is not the case with Temu's applications.
24 | However, neither side suggests that this is an answer to today's applications. Instead,
25 | it is advanced by Shein as a further discretionary matter to be taken into account.

26 | It has also been stressed by Shein that they have already provided a large amount of

disclosure, costing up to about £3.45 million, and that this should be kept in mind, particularly in light of the likely value of the claim. I will do just that. Finally, Shein say that these applications are being made too late in proceedings. In my view, this is overblown. The trial is in March 2027. But plainly, I must keep in mind the impact of any orders on the good management of the case going forward.

I now turn to the first of the applications that we are dealing with today, which has been termed "Temu's objective justification application". This arises from paragraph 35(b) of the Reply and Defence to Counterclaim, where Shein pleads that terms transferring IP rights are justified because they relate to Shein branded products and is industry practice. Following a number of RFIs and in letters on 22 June and 26 June 2026, Shein reiterated that the case was as pleaded in paragraph 35(b).

Yet, in early July 2026, Shein served witness evidence making it clear that behind that plea lies a case that Shein makes (potentially substantial) investment in product development and plays an active role in the design process generally. They also led evidence of three agreement models they use called ODM, OEM, and FOB, the distinction between them does not matter for present purposes. During the hearing, Shein confirmed that they wish to rely on this evidence at trial as part of their case on objective justification.

The problem, as I see it, is that the pleading does not necessarily carry with it the notion of investment, design and development in the branded products (or any idea of the degree of investment and development). A supplier can make white goods, which are then later branded with another company's brand without the brand owner being very involved at all, a point made by Mr Piccinin KC who appears for Temu.

In my view, to analyse the position, I should assume that Shein's pleading had expressly relied on the fact that there were three categories of branded products, and

1 | there was investment, design and development by Shein in each category, and that
2 | this supports their case on objective justification. Had the pleading said that, in my
3 | view, disclosure would have been necessary for the just disposal of the proceedings
4 | and would have been proportionate and cost effective. This case has only come to
5 | light following the witness evidence served in July and as confirmed at the hearing
6 | today. In circumstances where I am not being asked to strike out the evidence but
7 | instead order disclosure, I direct that disclosure must be given.

8 | Turning to the draft order. Paragraph 1(b)(i) logically comes first. I am troubled that
9 | this is very broad and covers 60 or 70 products from 2022-2025. The search period
10 | is also unclear. That was clarified by Mr Piccinin today who explained the intention is
11 | for the order to cover the period from first conception of design to point of launch. He
12 | said the evidence suggests that is likely to be a matter of days. That was not accepted
13 | by Mr Singla who says (under instruction) that it may actually stretch to a couple of
14 | months (although I accept Mr Piccinin's point that Shein's evidence does point more
15 | towards a matter of days than the two-month period put forward). It is unfortunate that
16 | neither side engaged with the terms of the order, as opposed to the principle, to seek
17 | to iron out such matters prior to the hearing.

18 | A possible fair way to limit para 1(b)(i) of the order is for it to cover only the top ten
19 | products in each of the requested years. That would then bring to the fore which of the
20 | collaboration models is likely to be the most important. It lowers the number of
21 | products that are involved (which deals in part with the concerns of Mr Democratis
22 | from Shein). It also mirrors what is requested in paragraph 1(c)(i), which I will also
23 | provisionally order. I accept Mr Piccinin's reasons as to why having the information
24 | sought in paragraph 1(c)(i) in respect of the products the subject of takedown notices
25 | is likely to be relevant.

26 | As regards paragraph 1(a), Temu have not convinced me that this is necessary at

1 present and so I will not order paragraph 1(a). This is without prejudice to a further
2 application by Temu in the future. Paragraphs 1(b)(ii), (iii) and (iv) have fallen away.

3 Not much was said about 1(b)(v). I decline to order it because at present I consider
4 that my provisional orders for 1(b)(i) (as amended) and 1(c)(i) will be sufficient.

5 As regards paragraph 1(d), Mr Democratis for Shein says that the information has
6 already been given for 2025 but requires calculation. It is better for Shein to calculate
7 and give the 2025 GMV figures as requested and so I will direct that this is done. I
8 reject the request for GMV figures for 2022 (in the absence of expert or any evidence),
9 without prejudice to any further request by Temu in the future. The TikTok Shop
10 request at paragraph 1(e) is not pursued.

11 Accordingly, I provisionally direct that disclosure is given in respect of paragraphs
12 1(b)(i) (as amended) and 1(c)(i) and 1(d) (only for 2025).

13 I am conscious that limiting the order at 1(b)(i) to ten products for each year was not
14 debated as a specific limitation by the parties and was a compromise put forward by
15 me at the hearing in light of Shein's concerns as to the breadth of the requested order.

16 Accordingly, I ask the parties to consider this provisional order and, if agreement
17 cannot be reached, I direct that the parties file short written submissions by 5pm on
18 Thursday 6 August 2026 as to form of Order. I will then make a final determination on
19 the papers.

20
21 (12.51 pm)

22 MR SINGLA: Sir, I'm very grateful. We will certainly consider written submissions,
23 particularly on the question of how long this would take us to do, which is again
24 something that hasn't really been canvased to date. But before we move on to the
25 next topic --

26 THE CHAIR: May I also say the confidentiality ring it goes into. I would also want to

1 | know where it gets. No one's really debated that, but obviously we can (overspeaking).
2 | MR SINGLA: We can address that. I'm grateful for the opportunity to iron out the
3 | details in written submissions, but could I respectfully seek clarification on what you've
4 | directed today, which I understand is subject to those further submissions? You were
5 | saying top ten products, across, is it --
6 | THE CHAIR: The identity of top ten products for 2022? I'm not taking into account
7 | models. So I'm going for your top ten products. The idea was --
8 | MR SINGLA: Across the whole period?
9 | THE CHAIR: Across the period. Because that might bring the top model to the
10 | surface, if you see what I mean.
11 | MR SINGLA: Yes, the top ten products across that whole period.
12 | THE CHAIR: Yes.
13 | MR SINGLA: I'm very grateful.
14 | MR PICCININ: It should be 40 products then, yes?
15 | THE CHAIR: I think that must be right.
16 | MR SINGLA: Well, no, that's the point I was seeking clarification on. Top ten across
17 | the whole period would be ten products?
18 | MR PICCININ: I thought it was top ten per year?
19 | THE CHAIR: Per year, per year, per year.
20 | MR SINGLA: Per year, right.
21 | THE CHAIR: Yes. Per year. That's what I meant, per year. So rather than going top
22 | five products for each model for each year, it's top ten products for each year.
23 | MR SINGLA: Sir, I'm grateful. I hadn't understood you were directing 40, as opposed
24 | to ten. So I'm glad I asked for clarification. But if you did have in mind 40, then either
25 | now or in written submissions, just perhaps to put the marker down now, we may
26 | respectfully submit that a more proportionate way to go about achieving what clearly

1 | you've directed -- I'm not trying to push back on the principle now. But it may be more
2 | cost effective and efficient for us to provide that disclosure by reference to the 31
3 | Relevant Suppliers.

4 | If, for example, we had one product for each of the Relevant Suppliers, that would be
5 | 31, which was close to 40, but is just much more manageable, and we might be able
6 | to streamline it.

7 | THE CHAIR: I've directed you give me submissions. My suggestion is that you do
8 | discuss it beforehand so that the submissions to me can then be directed to the
9 | proposals that -- I'm not criticising -- but that I would suggest would have been better
10 | done prior to this hearing. Both of you suggested that it could be a more limited order.
11 | I agree with that. A better way forward is normally for those discussions to have
12 | happened beforehand. I understand that a point of principle was taken by both parties.
13 | I accept that.

14 | What I'm now trying to do is, in a case management way, arrive at a way that either
15 | you can agree a proportional way forward. That's either the way I've directed, which
16 | will be the fallback if there's no agreement, or I don't mind if further a different
17 | agreement can be made. Or, if you're saying a more proportionate way can be done
18 | because my approach is disproportionate, I'm allowing you to do that. I don't normally
19 | allow that because the direction is the direction. The only reason I have is I think it's
20 | fair that where the Tribunal comes up with its own direction, the parties have a right
21 | make submissions on it.

22 | MR SINGLA: I'm extremely grateful. We'll also talk about the question of timing with
23 | the other side as well. That's obviously bound up with what we're giving disclosure by
24 | reference to. I'm very grateful.

25 | THE CHAIR: Of course. And obviously you will take direction from me that timing, or
26 | has to have it taken into account where we are in the proceedings, and it mustn't drag.

1 | But I also accept, and I've read your evidence, that these things can take a bit of time
2 | to do.

3 | MR SINGLA: I'm very grateful.

4 | THE CHAIR: I think we can now move to lunch probably, and, come back a little early
5 | from lunch. It's 12.57 now. Do you think we're on course for finishing today?
6 | Otherwise, I will maybe have a ...

7 | MR PICCININ: I think it is a little bit squeezed now, sir. I think that that took a little bit
8 | longer than I was planning on the first one. But we will speed up, and do it as quickly
9 | as we can. I don't know if Mr Singla can say whether Xinpinmu has gone away?

10 | MR SINGLA: Well, no. We're going to discuss that at lunchtime, but I mean I think on
11 | any view that won't take very long. So that's not the concern. I think the two biggest
12 | remaining applications are the interviews and the custodians, both of which require,
13 | I'm afraid, some going over the history. So I will have to deal with those quite fully, but
14 | I'm obviously very keen to finish today, as I'm sure we all are.

15 | THE CHAIR: I think we do need to finish today. I'll talk at lunch as to whether we can
16 | run over a bit from the normal end time, but I don't think it's very practical to try and
17 | come back tomorrow.

18 | MR SINGLA: No.

19 | THE CHAIR: I think you'll have to cut your cloth.

20 | MR SINGLA: I think we estimated an hour for each application. I think the
21 | redesignation one certainly doesn't require an hour, but the other two are significant,
22 | sir, as you'll understand. So I suspect we will be here the whole afternoon, particularly
23 | if you're giving ex tempore judgments.

24 | THE CHAIR: Likely to. If in fact that's going to run into difficulties, I can curtail that,
25 | but I prefer, my practice on case management is to strike while the iron is hot, as it
26 | were.

1 | MR SINGLA: Of course.
2 | Particularly on 30 July, I suspect.
3 | THE CHAIR: Particularly on 30 July. At that note, it is now 12.59, so we might as well
4 | come back at 2.00.
5 | (12.56 pm)
6 | (The short adjournment)
7 | (2.00 pm)
8 | THE CHAIR: Are we all here? Sorry, I was a little late. I think we're turning now to
9 | the next application with the supplier interviews. Unless we've got any update on what
10 | was the first application.
11 | MR SINGLA: Sir, I can update you. We're not pressing the application at the moment.
12 | We will write. There was some further disclosure provided yesterday. So we'll send
13 | a letter explaining our position, but there's no need to trouble you today, if that's the
14 | short point.
15 | THE CHAIR: Okay. Did you hear that, Mr Piccinin? He appears to have frozen.
16 | MR GRUBECK: I've heard it, but I'm not hearing Mr Piccinin.
17 | THE CHAIR: Mr Grubeck, is this the application you were going to be addressing me
18 | on?
19 | MR GRUBECK: It is, yes.
20 | THE CHAIR: Because if so -- ah, I think Mr Piccinin has come back. I was going to
21 | suggest we press on, although I mean no disrespect to Mr Piccinin, but I'm worried
22 | about time.
23 | MR PICCININ: I can hear now.
24 | THE CHAIR: Oh, good. We have two of you on the screen, so I don't know if that'll
25 | cause trouble. All right. Please proceed.
26 | Supplier interview disclosure

1 Submissions by MR GRUBECK

2 MR GRUBECK: Sir, let's start by looking at the draft order. That's in bundle A, the
3 core bundle, tab 25, page 246. Just over the page, page 247, you see what we're
4 asking for. The disclosure sought is interview notes, recordings and/or transcripts
5 arising from or relating to interviews or meetings with suppliers, as referred to in
6 paragraph 94 of the fourth witness statement of Ms Lin. Then paragraph 2 imposes
7 various further restrictions so as to limit the scope of what needs to be provided.

8 Now, can we turn up the witness statement of Ms Lin from 3 July 2026? It's in
9 bundle B1, tab 33, page 982.

10 THE CHAIR: Yes.

11 MR GRUBECK: I'll quickly take you through that. Just paragraph 2. She says she's
12 the head of Shein's supply chain compliance department. I note in passing that Shein
13 tells us in paragraph 49(b) of its skeleton that this is a legal department, emphasising
14 the word "legal". I'll pick up that point later.

15 Going on to paragraphs 12 and 13, she gives a bit more of a description of her role.
16 So it concerns supplier management, and she's responsible for handling legal matters
17 concerning supply chain. Then at paragraph 13, she says that everyone in the team
18 is a lawyer.

19 Now turning forwards to paragraph 54 on page 999. She explains there that the
20 obligations of the suppliers under the agreements are regulated by various
21 departments in Shein. She mentions the quality management department and the
22 supply chain management department here.

23 Paragraphs 55 to 59, and I won't take you through them in detail, but just to give you
24 the context, explain that the supply chain compliance department, so Ms Lin's
25 department, conducts periodic visits to suppliers, usually in co-ordination with the
26 supply chain management department. Then at paragraph 60 to 61, she notes that

1 | breaches of IP or supplier provisions are sometimes observed on these visits.

2 | Turning now to paragraph 75. That's on page 1004. Ms Lin states that investigating
3 | suppliers' breaches of intellectual property provisions is not the primary purpose of the
4 | supply chain compliance department site visits. So, as she says, sometimes they
5 | might spot something that makes them suspicious, but that's not their primary purpose.

6 | She goes on to explain, though, that where such breaches are identified, they are
7 | notified to the supply chain management department, which will investigate them
8 | further, and that department then feeds its findings back to the compliance
9 | department. That's paragraph 76.

10 | The supply chain compliance department is then involved in fixing a penalty imposed
11 | on those suppliers, what Ms Lin refers to as "liquidated damages", or she also says
12 | there could be other responses. You have that in paragraph 77 to 79.

13 | Continuing then to paragraph 80 of her statement. She deals with the interviews that
14 | were conducted by the internal investigations department. So those are the interviews
15 | in respect of which we've had disclosure. Yet another department within Shein. In
16 | essence, it appears that supply chain management department arranged for the
17 | internal investigation department to come in and conduct interviews with suppliers, in
18 | cases where the supplier didn't accept the allegation that there was a breach. The
19 | internal investigations department then notified Ms Lin's compliance department of its
20 | findings. You have that in paragraph 82.

21 | In paragraph 83, she explains that her primary role was essentially as a go between,
22 | between the supply chain management department and the internal investigations
23 | department. At paragraph 86, page 1008, she then says the internal investigations
24 | department did not conduct all relevant interviews, and that's partly because they
25 | focused on cases they perceived to be stronger. So they say there was more
26 | substantial evidence.

1 THE CHAIR: Sorry. You just read that; I couldn't see those words. Where were you
2 reading from there?

3 MR GRUBECK: So it's page 1008, paragraph 86.

4 THE CHAIR: She doesn't say "relevant" interview. She says:

5 "I understand that the Internal Investigations Department did not conduct interviews
6 with all the suppliers listed on the list of interviewees."

7 MR GRUBECK: Yes, sorry.

8 THE CHAIR: I think you said "relevant" interviews, and I was looking for that wording.

9 MR GRUBECK: Apologies. The bit I was reading out was the second sentence.

10 THE CHAIR: Okay.

11 MR GRUBECK: Then she goes on and she says that another reason is practical in
12 nature. So it could be geographic or, it could be simply that suppliers didn't attend or
13 something like that. Going on to 87, she states that the compliance departments, or
14 her department, did not participate in the interviews by the internal investigations
15 department. But, we see from the next paragraphs 89 to 91, that she was again
16 involved in setting a penalty where breach was admitted.

17 That background, which I've cantered through, brings us to the key paragraphs for
18 today's purposes. At paragraph 93, bottom of page 1009, she says:

19 "The interviews led by the Internal Investigations Department mainly took place around
20 November to December 2023. I remember that, during January and February 2024,
21 there may still have been interviews by the Internal Investigations Department with
22 suppliers but I cannot be sure ..."

23 Then she says it was lunar New Year after that point, so there was a natural break.

24 That position changed, and that's what she describes in the next paragraph, 94, which
25 is the one the order relies on.

26 "Afterwards, in around February 2024, the Supply Chain Compliance Department,

1 | rather than the Internal Investigations Department, followed up on breaches of the
2 | intellectual property provisions and ownership issues. Therefore, beginning from late
3 | February 2024 onwards, if the Supply Chain Management Department identified a
4 | suspected breach by a supplier of the agreement's intellectual property provisions, it
5 | would notify the Supply Chain Compliance Department. The Supply Chain Compliance
6 | Department would then meet with the supplier to confirm the facts of the breach and
7 | handle subsequent matters such as liquidated damages. The process for this was
8 | similar to that described in paragraphs 75 to 78."

9 | So we know that from February 2024, Shein's supplier interrogations in respect of
10 | suspected IP breaches and sales on other platforms, were taken over by the supply
11 | chain compliance department. It's a legal department rather than the internal
12 | investigations department. But what matters is we know those interviews continued.
13 | And it's quite clear from her witness statement that what is happening, in substance,
14 | remains the same.

15 | We've got a supplier who is suspected by Shein of breaches of intellectual property
16 | provisions of the agreement. Shein representatives therefore meet with that supplier
17 | and question them. If that breach is admitted, Shein imposes a penalty.

18 | Now, I say it's readily apparent why Whaleco is asking for disclosure in respect of
19 | these further interviews, because they fall squarely within our core case of Shein
20 | putting pressure on suppliers not to deal with Temu. We'll have a look at that in
21 | a minute. Because Shein's objections to providing this disclosure essentially come
22 | down to four points.

23 | They say the change in responsible department somehow brings this outside of
24 | Whaleco's case. The interviews by the compliance department were materially
25 | different in nature to those by the internal investigations department, and they also
26 | take points on the timing of the application and on the proportionality of ordering

1 disclosure.

2 Now, let me deal first with the pleadings point. That is premised on a distinction
3 between pleaded supplier interviews, in which the internal investigations department
4 was involved on the one hand and, on the other hand, legal supplier meetings. You
5 see that in paragraph 49 of Shein's skeleton argument. But that distinction, as you've
6 seen, is simply not reflected in the evidence. What appears to have been happening
7 is that one department was responsible first, and then the next department picks up.
8 But there's no fundamental difference between that. It's a suspected breach of IP.
9 They are then interviewed, and there's potentially a penalty.

10 So the mere fact that the questioning was conducted by different departments within
11 Shein doesn't change its nature or its impact. Nor does this distinction somehow
12 reflect Whaleco's pleaded case. Can I just quickly show you this? It's, core bundle A,
13 tab 2, page 37.

14 So this is the most recent amended version of the counterclaim, the heading, "The
15 Infringing Conduct". If we can jump forwards to paragraph 47, just on page 40:

16 "Shein has placed further or other pressure on suppliers not to deal with Temu through
17 punitive action. In particular, it has ..."

18 Then paragraphs 47(1) and (2) deal with threats of onerous fines and penalties, and
19 issuing of public and/or private penalty notices.

20 Then paragraph 47(3) specifically deals with these intimidating, we say, interviews
21 where people are detained, questioned, have their electronic devices searched, are
22 made to sign various papers. So that is the general case. Then there are examples
23 of this, on what has been available to Whaleco to date. Those examples you see at
24 47A onwards. You can see immediately it's without prejudice to the generality of
25 paragraph 47 above.

26 That "without prejudice" wording is repeated in 47B by way of example, without

1 | prejudice, and again 47C. So these are specific instances of these oppressive
2 | interviews and fines, but they are not the sole case. And there's no mention of the
3 | internal investigations department. So the point that this is somehow limited to our
4 | pleading doesn't hold. Nor is there any difference in the nature of the interviews that
5 | were carried out by the compliance department. So there's simply no basis to say
6 | that, "Oh, somehow we had initially strict interviews by the internal investigations, but
7 | then pleasant meetings with the compliance team".

8 | What we have suggests that is not the case. Ms Lin, you've seen says in 94 that the
9 | process was similar. Now, of course, I acknowledge she wasn't there. It's second
10 | hand knowledge. She didn't participate in the internal investigations interviews, only
11 | in those of her own team; her or her team members. But what evidence we do have
12 | in respect of the individual interviews after February 2024 also suggests that they were
13 | no less oppressive in their nature.

14 | We cite in our skeleton argument at footnote 23 an example of this. It's the witness
15 | statement of Kemo Li, also from 3 July. Can I just briefly take you to that? I'll just take
16 | you straight to one example. It's bundle F, the supplemental bundle, tab 6, page 309.

17 | So he specialises in swimwear and he's talking about reports he received from
18 | swimwear merchants in a cluster in an area of China focusing on swimwear. He had
19 | various reports of people expressing concern about being interviewed by Shein and
20 | asking to meet with Shein and then wanting to take down their sites from Temu. What
21 | he does is he goes off to visit that area and has various meetings. What I'm about to
22 | show you is just one example out of the four meetings he had, which is a meeting with
23 | this swimwear merchant named in paragraph 49. I won't say the name out loud.

24 | Over the page at paragraph 52, he says the representative of this merchant came to
25 | him around mid-April 2024, and says he:

26 | "... was being closely scrutinised by Shein. They were quite frightened, and asked me

1 | how to close [their] store on the Temu platform to avoid Shein finding out [they] were
2 | continuing to operate on Temu."

3 | He then goes on to describe how that interview took place. You see at paragraph 53
4 | the Shein interview with this merchant was at a local hotel and had interviewed them
5 | and required them to de-list products from the Temu platform. Told if they didn't de-list,
6 | they would face penalties. And said it was Shein's legal personnel which made them
7 | sign a record of the interview.

8 | Then they also meet a different representative. Again, I won't give the details for
9 | confidentiality. They do say they were interviewed by Shein at a local hotel, again
10 | required to de-list. Can't remember whether he was shown the interview record at the
11 | time, but says:

12 | "... told me Shein had threatened that if they did not comply with [the] demands, they
13 | would face penalties including restrictions on new styles, launches, fines and style
14 | transfer.

15 | "I do recall that [these two representatives] expressed to us at the time that they were
16 | afraid and did not dare to let Shein know they were continuing operating on the Temu
17 | platform. Before we visited their factory, they had already delisted most of the products
18 | from the Temu platform. I noticed that after the interview, [the merchant] essentially
19 | stopped listing new products, and their store GMV [had certain impact]. [They then]
20 | remained in an inactive state."

21 | So this is one example, but it also suggests, what we have, that there were no
22 | fundamental changes in the way Shein approached these interviews following the shift
23 | from internal investigations to compliance. At any rate, it'll be our case at trial that the
24 | 2024 interviews carried out by Ms Lin's team were a continuation of the earlier
25 | interviews and similarly intimidating, falling within paragraph 47 of the pleaded case.

26 | We are entitled to disclosure to advance that case. Certainly good reasons for Shein

1 | to provide the records pertaining to these interviews, and it's necessary for the just
2 | disposal so the Tribunal can form its own view at trial on the basis of the
3 | contemporaneous records.

4 | You will recall, sir, that Shein has previously resisted fiercely providing any disclosure
5 | in relation to the other interviews, the internal investigations interviews, and when that
6 | eventually came, it also proved to be very informative. So that's why this is necessary.

7 | Briefly, on timing --

8 | THE CHAIR: Why is it necessary -- I don't understand -- over the disclosure you've
9 | already got on the interviews? Why is more of the same necessary? I just want to
10 | understand.

11 | MR GRUBECK: Because the disclosure we are --

12 | THE CHAIR: If it is more of the same.

13 | MR GRUBECK: The disclosure we already have from the internal investigations team
14 | can be portrayed as a limited snapshot in time. What we are saying is there is
15 | a continuation. This is a systematic programme. These interviews continue. They
16 | continue to have an effect on multiple suppliers, which goes to our foreclosure case.
17 | And they are run across multiple different Shein departments, suggesting a much
18 | more systematic approach. That ties in with our wider case on anti-competitive
19 | conduct.

20 | Then finally, if you look at the wider set of interviews, it also becomes relevant to the
21 | effects case because you see lots of people interviewed, not just in that internal
22 | investigations window, but also afterwards in a compliance department time, and they
23 | stop dealing with Temu. So all of those are reasons why more is necessary.

24 | Now, dealing with timing, we say Ms Lin's statement really speaks for itself. Now,
25 | there may have been hints in the disclosure; at the IP trial, she spoke about these
26 | interviews and that's really, in May, the first time there was a proper indication. But

1 | this really crystallised for us in this July statement, paragraph 94, it's quite clear that's
2 | what's happening. We're continuing this programme of interviews and, as you've
3 | seen, there's also then the responsive evidence which shows actually they're having
4 | a real impact. That was therefore the impetus for the present application.

5 | Just one thing to point out. I needn't take you there at the moment, but the initial
6 | disclosure order, which ordered disclosure only in respect of these internal
7 | investigations unit conducted interviews, that was expressly envisaged by the
8 | President as a starting point. She says that in CMC 2 transcript, it's on page 113 of
9 | bundle B1 if you wanted to look at it in due course.

10 | THE CHAIR: I wouldn't mind looking at that now. So where was that? B1?

11 | MR GRUBECK: B1, tab 2, page 113.

12 | THE CHAIR: Internal page?

13 | MR GRUBECK: Page 7 internal. You'll see Mrs Justice Bacon, line 5:

14 | "I'm going to confine the order to the 30 suppliers as a starting point and ..."

15 | THE CHAIR: Hang on, hang on. I'm not with you, I'm sorry. I'm on page 113 of the
16 | bundle.

17 | MR GRUBECK: Yes.

18 | THE CHAIR: And then internal pages, is it 207, 208, 209, 210? Which one?

19 | MR GRUBECK: That's correct. We start page 207 internal.

20 | THE CHAIR: Yes, I'm with you.

21 | MR GRUBECK: Line 7:

22 | "I am going to confine the order to the 30 suppliers as a starting point. The question
23 | is whether that will provide sufficient examples of the effects. That is a point that can
24 | be revisited once model D disclosure has been provided."

25 | And she then says again at 14:

26 | "I am not precluding coming back to this, but I think that is an appropriate starting

1 point."

2 And Mr Holmes KC then says:

3 "I am grateful. We do see the sense of what you say in relation to a rolling approach
4 and we can keep the matter under review."

5 Having done so, we now see there's a much more systematic continuation of this
6 interview programme with significant ongoing effects and we say that is something
7 that needs to be elaborated upon in disclosure so a proper assessment can be made
8 by the Tribunal at trial and so we can properly test Shein's case on this.

9 Now, proportionality finally is addressed in paragraph 56 of Shein's skeleton
10 argument. In essence, it boils down to two points. The first is that the compliance
11 department had many meetings with suppliers over the years in relation to different
12 topics. That may well be the case, but as you've seen from the draft order we looked
13 at earlier, that's very clear on what we actually need and what we're looking for.

14 Now, there's an obvious starting point, which is Ms Lin herself knows what she's talking
15 about. She in paragraph 94 quite clearly speaks about what these interviews are and
16 she must have some records. There's just one example of this. I'll show you. It's in
17 the disclosure, supplemental bundle F, page 328.

18 THE CHAIR: Yes.

19 MR GRUBECK: You can see about two thirds down the page, Carmen Lin, there it's
20 19 September 2024, 2.29 pm re-review of the listing status. And she says, "The 233
21 merchants interviewed this year", so she's clearly got a record of who was interviewed
22 and for what presumably. So that's an obvious starting point how you find them.

23 The same goes for her evidence in trial one in the IP trial in May. It's B1 tab 8,
24 page 308 and it's bottom of internal page 5. She's asked, when did the interview start?

25 And she then actually says, well:

26 "When you ask about interviews, are you referring to the interviews conducted by other

1 teams, or are you referring to interviews conducted by my team?"

2 So that was the point I made earlier about: ah, this is where we suddenly start seeing
3 something's going on.

4 "Question: Well, in relation to both teams ...

5 "Answer: With respect to other teams, the interviews started around 2023. With
6 respect to the interviews conducted by my team, those start at the beginning of 2024."

7 "Then she clarifies:

8 "When I talk about the interviews of my team, I am referring to the interviews that we
9 have conducted looking into the IP infringements of vendors using the same images,
10 same styles, and selling on different platforms. In the meantime, the teams would also
11 conduct interviews as throughout the daily course of their work in terms of interviews
12 with suppliers."

13 It's quite clear from that she's got a distinct understanding of those interviews being
14 different from other meetings and she can be asked. At a minimum, that information
15 seems like a sensible and proportionate basis for reasonable searches. Shein has not
16 given you any specific evidence on why that wouldn't be possible, and we certainly
17 don't have any evidence from Ms Lin saying she's unable to locate the interview
18 records or doesn't have any, or anything like that. We simply have the very high-level,
19 generic evidence of Mr Democratis. Ultimately, if this were to prove overwhelming for
20 any reason, then obviously she can come back and explain why that is, but at the
21 moment, there's nothing to support that.

22 The second point made on proportionality is that, in essence, Temu already has
23 significant material of such interviews and further disclosure is unlikely to move the
24 dial. That's similar to the question you posed to me before. Sir, the overall scope of
25 these interviews is material as it goes to the case that Shein's conduct materially
26 limited its access to suppliers, the foreclosure case. If there was a prolonged

1 | campaign encompassing multiple departments, that is significant and we need to know
2 | that from the disclosure.

3 | The substance of what is in these interviews also matters because Temu's case is that
4 | Shein has been targeting it specifically. That's what the evidence we have to date
5 | from these interviews suggests, but obviously showing that as a campaign is
6 | something you are likely to get from a larger selection of interviews over time. It is
7 | very likely, we say, that further disclosure would reveal significant examples of this
8 | conduct and would help crystallise its nature.

9 | So all of that, in short, we say, are very good reasons why it is necessary to order
10 | disclosure and why it is of significant importance to the pleaded case and would be
11 | proportionate for you to order it at this stage. Sorry, I'm conscious I have cantered
12 | through this.

13 | THE CHAIR: No, no. I'm following and that was very helpful. Thank you very much.
14 | Mr Singla.

15 | Submissions by MR SINGLA

16 | MR SINGLA: Sir, in my respectful submission, this is another completely misguided
17 | application which fails to have any proper regard to the principles that I referred you
18 | to earlier. Can I begin by just taking you back to the relevant part of the pleading? It's
19 | 47A, which is bundle A, tab 2, page 40.

20 | THE CHAIR: I believe Mr Grubeck started at 47.

21 | MR SINGLA: Right. Well, I think 47.3 is there to tee up 47A but the issue that I'm
22 | really concerned with is the pleading concerning the interviews, which I think is largely
23 | in 47A.

24 | Now, there are three points really I want to make about the pleaded case. The first is:
25 | one has to have in mind the distinction between two types of suppliers when you're
26 | considering this application. Sir, you know that we have the Relevant Suppliers on the

1 | one hand and then the non-Relevant Suppliers, everyone else, on the other. The
2 | important point to note is that the disclosure process to date has proceeded on the
3 | basis of the Relevant Suppliers only. So although of course it's right that they have
4 | pleaded, as everyone always does, that this is all without prejudice and so on, actually,
5 | since the middle of last year, disclosure has been by reference to the Relevant
6 | Suppliers only. You can well understand why the President was minded to make an
7 | order in those terms to try and keep some sort of control of the disclosure process.
8 | So the first point is, although it may be pleaded in a non-exhaustive way, the case has
9 | been proceeding on the footing of the Relevant Suppliers only for at least a year.
10 | The second point --
11 | THE CHAIR: Just remind me, remind me the definition of "Relevant Supplier".
12 | I should know it, but I just need the definition. What is the actual definition of that?
13 | MR SINGLA: I think it's -- just check --
14 | THE CHAIR: You'd signed the attestation but I can't --
15 | MR SINGLA: I've got a reference to the order, but I'm not sure what the definition is.
16 | Someone will help me.
17 | THE CHAIR: Yes, there was --
18 | MR SINGLA: Yes. Just give me one moment. (Pause)
19 | Yes, I think it's the July 2025 order, which is B1, tab 3, if I'm not mistaken. There's no
20 | dispute about this, but you'd asked the questions so ...
21 | THE CHAIR: No, no, it's just for me.
22 | MR SINGLA: No, of course, no, no.
23 | THE CHAIR: I'm not suggesting it's disputed. I just want to keep it in my head.
24 | MR SINGLA: No, of course. Well, it's very important. So I'm happy to show you.
25 | I think it's paragraph 30. (Pause)
26 | Sorry. Just, sir, if you just bear with me, I'm ... (Pause)

1 | MR GRUBECK: It's page 1, line 1, paragraph 3(a).

2 | MR SINGLA: I'm grateful. I think there is another reference, so let me just check that
3 | one, 191.

4 | THE CHAIR: Struggling seeing it on 191 at the moment.

5 | MR SINGLA: No, sir, so am I. So I was being taken -- sir, if you look at 159 of the
6 | bundle, I think the way this comes into the whole disclosure process at the outset is if
7 | you go to 159, there's an order from the President from July last year.

8 | THE CHAIR: My recollection was it was not in the DRD, is it? I'd thought it might be.
9 | Anyway, go on.

10 | MR SINGLA: I think it's in the DRD as well. But let me just show you what the
11 | President ordered. So paragraph 36, if you've got 159 of the bundle.

12 | THE CHAIR: Yes. Okay. The 32 suppliers in 47A, B and C.

13 | MR SINGLA: Yes. I'm told it's actually an error and it's 31. But yes, the crucial point,
14 | although it's not a defined term, the crucial point is the suppliers essentially pleaded
15 | at 47A, B and C. As I say, there's no issue about that, and the disclosure has
16 | proceeded on that basis.

17 | The particular reason the President was keen to confine it was proportionality. So
18 | although she said it was an appropriate starting point and everything can be
19 | revisited -- you know, importantly, that was the starting point and that was for
20 | proportionality reasons. So insofar as one's looking at the pleading, the three points
21 | I wanted to make:

22 | One, the pleaded case is all about the Relevant Suppliers.

23 | The second point is that insofar as 47A is making a complaint about this so-called
24 | "interrogation", leaving aside all of the tendentious language, what's being alleged in
25 | 47A is, importantly, in relation to interviews with the internal investigations team.

26 | Now, my learned friend said they haven't pleaded this specifically by reference to the

1 | internal investigations team. It may be right that you can't see those words in their
2 | pleading. But again, one has to understand the whole basis on which this case has
3 | been proceeding hitherto.

4 | So if I take you to our pleading, which I don't think you did see, it's A/4, page 106. This
5 | is our response. Sir, do you see paragraph 40A?

6 | THE CHAIR: Yes.

7 | MR SINGLA: What we've pleaded back on the footing that what they were getting at
8 | were the interviews with the internal investigations team. You can see references to
9 | that team in subparagraph (a), three lines up and also in subparagraph (e), and that's
10 | important, subparagraph (e):

11 | "... the only suppliers that were interviewed by the Internal Investigations Team in
12 | Shein's offices [during that period] were the 22 suppliers ..."

13 | So the whole case in this respect has been moving on the basis of Relevant Suppliers
14 | and interviews with the internal investigations team. So although Mr Grubeck took you
15 | to a witness statement saying that they've also got some other complaints about the
16 | legal team, and that was referred to at footnote 23 of their skeleton, none of that is
17 | pleaded. It's just quite important to actually understand what their case is and what
18 | their case isn't.

19 | So there's nothing in the pleading about the legal team. The whole case has been
20 | proceeding on the basis this is all about internal investigations, and that's the pleadings
21 | and disclosure.

22 | Now, the third --

23 | THE CHAIR: Can I just stop you there. I'm struggling to follow that.

24 | MR SINGLA: Right.

25 | THE CHAIR: I'm struggling to follow that, because when they pleaded the case, they
26 | can't have known about differences between internal investigations team and legal

1 teams or compliance teams or whatever teams. The case was pleaded, was it not, on
2 47A, B and C in relation to specific individual suppliers about whom they had some
3 information.

4 MR SINGLA: That's right, but it was also pleaded --

5 THE CHAIR: Then it was without prejudice to paragraph 47, which says more
6 generally, that there's paragraphs 47.1, 47.2, 47.3, which I was taken to there this
7 morning. I mean, they're not struck out or anything. So they are in issue, and they
8 go, do they not, to the case of effects and foreclosure.

9 MR SINGLA: I'll come back to --

10 THE CHAIR: They're expressly not limited.

11 MR SINGLA: No, no. I'll --

12 THE CHAIR: I don't really understand how you say that it's all limited. I understand
13 how you say it. I'm just trying to understand -- I don't see it on the pleading at the
14 moment.

15 MR SINGLA: No, it's actually very, very important. I'm going to come back to the
16 foreclosure point in a moment --

17 THE CHAIR: All right.

18 MR SINGLA: But it's actually really quite important that I do try and explain this.

19 THE CHAIR: Yes, I'm just not understanding it, I have to say.

20 MR SINGLA: Yes. Okay. The starting point is their pleading. They allege certain
21 things about certain interviews in relation to certain suppliers.

22 Now, you're right, it's all done on a non-exhaustive basis and on the basis of the
23 information they had at the time. But what subsequently occurs in the litigation -- now
24 a very long time ago -- is that we plead back saying what you must have in
25 mind -- because you're talking about November, December 2023 at the behest of the
26 office of general manager in the main offices in China, right? That's all they're

1 | pleading. So we plead back, saying, "What you have in mind are these interviews
2 | conducted by the investigations team. That is where the pleadings end up". So
3 | although there's --

4 | THE CHAIR: That's right in relation to 47A, B and C, but at the time you knew that
5 | they didn't know that there was also a supply chain management team that was
6 | conducting interviews from 2024.

7 | MR SINGLA: Yes.

8 | THE CHAIR: But why did you make the assumption that they were not included in
9 | 47?

10 | MR SINGLA: Because 47A says quite a lot about the types of interviews that were
11 | being conducted. You see, for example -- I don't want to read it all out, but you can
12 | see -- I mean, sir, this has been going on for quite a long time in terms of the parties
13 | going back and forth about the way in which the case should proceed on the back of
14 | this pleading. In a sense, it's uncontroversial that we have pleaded back, saying, "You
15 | have in mind these types of interviews conducted by the investigations team. And
16 | you've named particular suppliers".

17 | So just taking both of those points, it's really important I take time over this, because
18 | I don't want there to be any misunderstanding about this aspect of the case.

19 | THE CHAIR: No, I think it is important. I can tell you what at the moment I'm coming
20 | from, and then you can tell me why I'm wrong.

21 | At the moment, it seems to me that the evidence of Ms Lin at 4 suggests that, if I may
22 | put it this way, it is like a continuum. So there are interviews that were conducted by
23 | the internal investigations department that were then taken over by the supply chain
24 | compliance department in 2024.

25 | At the moment, I'm not understanding why you've taken the position that the earlier
26 | set of interviews are relevant and the later are not. It seems it's only because they

1 | pleaded November, December 2023, because that's what they knew about. But that's
2 | the only reason. Now you've said, "Actually, it was like a continuum. We took over
3 | where they left off". You're telling me that that's not underpinning. That's what I'm not
4 | understanding. I'd like you to explain that.

5 | MR SINGLA: Right, well, okay. Let me take this in stages. You'll see what they're
6 | complaining about in 47A. They are complaining about suppliers being placed in
7 | rooms and they call it "interrogation"; you see all of that?

8 | THE CHAIR: Yes.

9 | MR SINGLA: And the allegations about --

10 | THE CHAIR: I don't want to get into that at the moment.

11 | MR SINGLA: No, nor do I, nor do I.

12 | THE CHAIR: I take the point that's contentious language. That's a matter for trial.

13 | MR SINGLA: It's actually completely inappropriate in a pleading. But leaving that to
14 | one side, on the basis of what they had said in 47A, that is a very specific allegation.
15 | That is not, sir, an allegation about Shein meeting suppliers. I mean, Shein meets
16 | suppliers the whole time, and Shein has many, many suppliers. So they have some
17 | material which they have used to plead a very particular and serious allegation about
18 | the way in which particular interviews with particular suppliers were conducted.

19 | So they've identified suppliers, they've identified a time period, they've identified
20 | a location and they've identified or they've alleged a particular type of conduct. So
21 | taking all of those points in the round, we pleaded back -- and as I say, this is all, as it
22 | were, water under the bridge in terms of the pleadings, because the pleadings closed
23 | a long time ago, and we're not currently dealing with an application to amend. So let's
24 | just take the pleadings as they have crystallised at the end of the pleadings process.

25 | We plead back, saying we don't accept any of these allegations, but insofar as we can
26 | comprehend what you're saying, it can only be a reference to these types of interviews

1 | with 22 suppliers.

2 | Again, there's no issue about that. I've showed you our pleading. It's not being said
3 | that our pleading is somehow defective. So in terms of what the issues are in dispute
4 | arising out of the pleadings, as things stand, they've alleged what they've alleged at
5 | 47A. We've said, "What you have in mind are these interviews. We don't accept your
6 | allegation".

7 | THE CHAIR: That can't, on your case, surely be anything more than the dates, unless
8 | you're submitting -- are you submitting that when they alleged that people were taken
9 | into small rooms and interrogated, et cetera, et cetera, with intimidation, they could
10 | only have been referring to the interviews by the internal investigations department?

11 | MR SINGLA: That's exactly the point, sir. If I may respectfully say, that's exactly the
12 | point. This is actually pretty fundamental to what we're arguing about. Well, this is
13 | very fundamental.

14 | THE CHAIR: The way they describe that can only have been the internal
15 | investigations. Why?

16 | MR SINGLA: Because, sir --

17 | THE CHAIR: That surprises me.

18 | MR SINGLA: Well, they --

19 | THE CHAIR: I'm not sure that's what you really mean that that description said to you,
20 | "Ah, they're talking about the internal investigations department".

21 | MR SINGLA: Sir, there have been many, many letters --

22 | THE CHAIR: I think what you mean is it goes back to November, December, doesn't
23 | it? Is that not right?

24 | MR SINGLA: It's both, it's both. I'm not resiling from anything I've said. I mean, I've
25 | been quite clear. So far as we are aware -- I mean we've written, Freshfields have
26 | written many letters about this. So far as we are aware, the only interviews that fall

1 | within the four corners of 47A are the ones conducted by the internal investigations
2 | team. What's striking is that there is nothing pleaded. Although they've known about
3 | interviews by the legal team for a very long time, you'll see -- or you won't see, any
4 | reference to the interviews conducted by the legal team. So this is actually a very
5 | bright line distinction.

6 | The reason I started with these points is because one has to actually get this clear to
7 | begin with before one goes to consider the new application. So the way this whole
8 | case has proceeded up until now, if he wants to apply to amend or apply for further
9 | disclosure, that's a different story. But I'm just trying to explain at the moment the
10 | basis on which this case has been proceeding for, as I say, at least 12 months. The
11 | basis on which it's been proceeding, in terms of pleadings, is we've pleaded back, and
12 | the four corners of the pleadings are the internal investigations team in late 2023, and
13 | disclosure has been done on that basis and by reference only to the Relevant Supplier.
14 | So that's where we are now, as it were. And none of that actually should be, if I may
15 | respectfully say so, none of that should be controversial. That's just as it were, the
16 | state of play and the backdrop against which you now need to consider what they're
17 | trying to do today.

18 | But crucially, sir, before I leave the pleadings and move on, what is not alleged is any
19 | wrongdoing by Ms Lin's department or the legal team or any of that material that he
20 | now says he relies on in Kemo Li's witness statement and footnote 23 of the skeleton.
21 | None of that is pleaded. That's again, very important for you to understand in terms
22 | of where we are now.

23 | Then the final point, I was still on my introductory three points.

24 | THE CHAIR: Sorry.

25 | MR SINGLA: No, no. It's very important, sir. It's very helpful to get these questions
26 | because there is a danger in taking these things too quickly and not actually

1 understanding what they're trying to do.

2 So the first two points were so far, it's all about Relevant Suppliers. It's all about
3 internal investigations teams. The third point is at its highest, this is all a peripheral
4 issue in terms of where this issue sits in the case as a whole. At footnote 16 of our
5 skeleton, we included something that the President said at the April CMC, where she
6 said to Shein's leading counsel on that occasion, because they were applying at that
7 stage for additional disclosure in relation to interviews, a point I'll come back to. They
8 were trying to widen our disclosure obligation in April. The President said, you can
9 say this is all peripheral relevance because this only relates to a small part of the
10 allegations.

11 Now, of course, that's just a comment made by the President in the course of
12 argument. But (a) she's very familiar with this case, and (b) she was absolutely right.
13 The reason this is all peripheral -- so I'm focusing on what is currently in issue, before
14 we get on to what they want to introduce additionally, by way of issue. The reason
15 that it's objectively correct to say this is all peripheral, even if you're looking at the
16 Relevant Suppliers with the investigations team, is if you go back to the pleadings, so
17 we're looking at 47.

18 I mean, they like 47A because it's full of tendentious language and it's all highly
19 prejudicial. But actually, if you think about it in competition law terms, the case starts
20 at 42. What this case is really about -- and I think my learned friend actually may have
21 mentioned this in the course of his submissions. It's actually about foreclosure and
22 whether there's something anti-competitive about the exclusive dealing agreements,
23 as they describe them in 42.1. So I hope, sir, that all of those points help put into
24 context the present application.

25 So at best, this is all actually at the margins of this case. That's why we say the
26 disclosure sought is not necessary and is disproportionate. So let me just develop my

1 | submissions in that respect.

2 | Once you understand what is currently within the four corners of the case, as you
3 | would expect, a substantial amount of disclosure has already been provided. It's
4 | probably most efficient if I just remind you of what Mr Democratis says about this. If
5 | you could turn up his witness statement, please, B1, tab 37.

6 | He explains, and it's a very helpful summary at paragraphs 8 and 9, of what disclosure
7 | has already been provided. You'll see it's very voluminous in relation to these
8 | interviews.

9 | If you have paragraph 8, you'll see he talks about the extended disclosure in February
10 | with model C and model D audio recordings, transcripts, translations of interviews.
11 | But then look at 9. Before that, disclosure was given, you'll see 9(b) notes of the
12 | pleaded supplier interviews and audio recordings.

13 | Then, if I could take you to paragraph 29. He says:

14 | "... Shein has provided extremely extensive disclosure ...80 hours of audio recordings
15 | and 3,000 pages of English transcripts ..."

16 | Then, in addition to the model C and model D disclosure. So a massive disclosure
17 | exercise has already been undertaken in relation to those things which are actually
18 | pleaded.

19 | The question then arises: is any further disclosure necessary? You have my points
20 | about costs as well that Mr Democratis has already says, in the statement about how
21 | much has been spent. But in terms of whether any further disclosure is necessary,
22 | I would respectfully suggest it's helpful to think about the Relevant Suppliers and the
23 | non-Relevant Suppliers separately.

24 | So if you take the Relevant Suppliers, they've already received extensive disclosure,
25 | and any further disclosure after February 2024 would have been conducted, by
26 | definition, without the investigations team being present. They are, as Ms Lin explains,

1 | interviews by the legal team. In my submission, in circumstances where they've made
2 | no allegations about the legal team or Ms Lin's conduct personally, more disclosure
3 | from February 2024 onwards is not going to shift the dial. Because the high water
4 | mark of their case is the conduct which they allege occurred in late 2023. So getting
5 | further disclosure from Ms Lin's legal team, whose conduct has not been impugned
6 | even though they've had materials from the legal team for over two years, they've
7 | never amended to allege anything about the legal team's conduct.

8 | We say if one thinks about the Relevant Suppliers, first of all, additional material won't
9 | help. If you look at paragraph 55 of our skeleton, that's where we've referred to the
10 | fact that they've been on notice that Shein's legal team had interviews with suppliers
11 | in 2024. They've been on notice of that fact for over two years, and never have they
12 | pleaded a case that there was anything inappropriate about those interviews. So this
13 | is not going to take their case any further forward so far as the Relevant Suppliers are
14 | concerned.

15 | So far as the non-Relevant Suppliers are concerned, there is nothing to suggest,
16 | again, that the legal team did anything inappropriate. It's pure speculation that there
17 | may be something in the interviews post-February 2024 that might allow them to allege
18 | something. But with respect, this is going to open up an entirely new avenue because
19 | there hasn't been any disclosure, by definition, in respect of the non-Relevant
20 | Suppliers. So you'd be opening up a whole new avenue. We say it's plainly not
21 | necessary for the non-Relevant Suppliers.

22 | Then that takes me to the next point, on necessity, which is they already have some
23 | post-February 2024 material. It's quite interesting that this has not been referred to at
24 | all by Temu in their applications. Although Mr Grubeck took you to some material,
25 | I just want to show you what Mr Democratis says about this, because it's just easier to
26 | take you to the witness statement rather than showing you all the underlying

1 | documents.

2 | If you go to paragraph 32, of his 18th witness statement, he explains that they already
3 | have material about meetings between Ms Lin's department and Shein's suppliers,
4 | including documents from February 2024 onwards. He refers to what sort of material
5 | that is: lots of one-page pro-forma documents and so on. So it's not very interesting
6 | material in any event. But the key point that I'm on is that they've actually already got
7 | some post-February 2024 material.

8 | Then he goes on to say at 33(c) again, he says:

9 | "Temu has not reflected in its application that it has in fact had in its
10 | possession ... numerous copies of Shein's records of discussions with suppliers since
11 | February 2024 ..."

12 | Because very wide disclosure has been given of Ms Lin's documents. She was
13 | a custodian for model D purposes.

14 | Now, we say, therefore, that Mr Grubeck showing you material post-February 2024
15 | rather confirms our point, that no further disclosure is necessary. Because if all of this
16 | is said to be, "We would like to cross-examine Ms Lin on her paragraph 94," well,
17 | they've got material to do that already. So that's why we say none of this is necessary.

18 | Then on proportionality, Mr Democratis has said a lot about this. In the interest of
19 | time, I'd just point you to paragraphs 31 and 32 and 33, the paragraphs were already
20 | looking at, where he says effectively, there are lots and lots of these interviews, lots
21 | and lots of suppliers. There's going to be lots and lots of material. None of it's going
22 | to be interesting because it's all these one-page pro-forma documents, and it's going
23 | to be expensive and broad and wide-ranging and time-consuming.

24 | So it's either unnecessary or it's sufficiently unnecessary that we shouldn't be required
25 | to carry out a very burdensome exercise.

26 | Then my final point is this is all terribly and unreasonably late because although they

1 | tried to present it now as arising solely out of paragraph 94 of Ms Lin's statement, with
2 | respect, that's just plainly wrong. At the April CMC, they issued an application and
3 | pressed an application for further interview-related disclosure. They asked for two
4 | more custodians, as I recall, and they asked for an extended date range, and there's
5 | absolutely no reason, still less any explanation, of why at that stage they didn't say,
6 | "We would like all suppliers' interviews from February 2024 onwards".

7 | In my submission, if they had made that application in front of the President in April,
8 | they would have been told it's all completely unnecessary and disproportionate.

9 | So for all those reasons, sir, we say this is again an application that is cast in incredibly
10 | wide terms, is not properly justified, and doesn't come anywhere close to satisfying
11 | the necessity criterion.

12 | THE CHAIR: Just a question. I'm not sure you may have done this, but I'm not sure
13 | I fully understood your answer. It was said against you that it was relevant both to
14 | paragraph 47, the foreclosure case, and obviously effects, and they were worried that
15 | one of the reasons it was relevant was because otherwise it could be said that the
16 | current disclosure could be portrayed as a limited snapshot. And now that there's
17 | evidence that more was done, it's fair that disclosure was given to show it's not
18 | a snapshot or it is more general and systemic. What's your ...

19 | MR SINGLA: Yes. It's such a vague submission, it's quite difficult to respond, sir.
20 | Because I think the thing is, it's not relevant to foreclosure because the foreclosure
21 | case, as I've said, is completed at paragraph 42, which is all about the exclusivity. So
22 | the interviews are not, in my submission, going to take the case on foreclosure very
23 | far forward. But, in any event, one comes back to the point, they've already got the
24 | material that deals with 47A. The question is, to the extent this is going to advance
25 | their foreclosure case, which I say it won't, the question is whether they need further
26 | material to make that case. As I say, where the President has said it's all peripheral

1 | relevance, now they're coming back saying, we want more; we say it's a rather
2 | hopeless position.

3 | It is important, sir, you mentioned in that question that they're saying now that there's
4 | more, they need more. But that takes me back to my point that they've been on notice
5 | that Ms Lin's team was having interviews in 2024; they've been on notice of that for
6 | over two years. So that is not a new development. I mean, that's the difficulty with
7 | these applications: they're all put on in terms of, "It arises out of some new
8 | circumstance", but one has to actually test that sort of point and on this, it's plainly
9 | wrong because -- that's why I pointed you to paragraph 55 of our skeleton -- they've
10 | known about these interviews with the legal team since April 2024.

11 | THE CHAIR: I thought I saw some correspondence somewhere where it was asked
12 | whether there were interviews beyond 23 and the response was they weren't by the
13 | internal investigations team. I don't know whether that's right?

14 | MR SINGLA: That is right. That's exactly -- that's why the bright-line distinction is so
15 | important that we had exchanges about, sir, because that is absolutely right, there's
16 | nothing further to provide in relation to interviews with the internal investigations team.

17 | THE CHAIR: If I may, that is there for the basis of your disclosure statement at B1
18 | tab 20, page 561 where you explain that you've done your disclosure by formal
19 | interviews with the internal investigations team, and that's what you disclosed?

20 | MR SINGLA: Exactly.

21 | THE CHAIR: Right.

22 | MR SINGLA: The crucial point is they've never pleaded a case about the legal team's
23 | conduct, so that's why the disclosure was carried out on that basis. I mean, if they
24 | were trying today, sir, to apply to amend to say, "Well, in light of what Kemo Li is
25 | saying, we now want to make allegations about the legal team", then, first of all, we'd
26 | resist the application but secondly, some disclosure might flow out of that sort of

1 | allegation if it was allowed in. But at the moment, they're jumping several hoops,
2 | really. They're going from 47A, which, as I say, the Tribunal has kept quite confined
3 | in terms of disclosure to date, they're jumping from that to say, "Ah, but a different
4 | team had different interviews with a whole bunch of suppliers, some relevant, some
5 | non-relevant so we'll have that material too". In my submission, it just doesn't follow.

6 | THE CHAIR: Okay. Mr Grubeck.

7 | Reply submissions by MR GRUBECK

8 | MR GRUBECK: Sir, just a few quick points. The first is on the pleadings. It's very
9 | problematic. It becomes quite clear from my learned friend's submissions the extent
10 | to which Shein is focused on paragraph 47A at the expense of paragraph 47.
11 | Paragraph 47 is not there to tee up 47A. It was actually pleaded as an example in
12 | a round of subsequent amendments, and it's expressly without prejudice to
13 | paragraph 47. As you say, sir, it is because it was pleaded on the basis of some
14 | material that was available at the time, and the material we are now asking for might
15 | then give rise to a 47AA. But one cannot just say, "Oh, your case is confined to 47A
16 | and we're going to politely ignore 47".

17 | That also is relevant to this concept of Relevant Suppliers, which we say is a red
18 | herring and a misnomer in terms of the definition. Sir, as you say, I recall it being in
19 | the DRD, but we can find it in the bundle. It's in your recent order of 6 November 2025
20 | and it's on page 191 of bundle B1.

21 | THE CHAIR: Yes.

22 | MR GRUBECK: If you go down to paragraph 3(a), you can see:

23 | "... search terms shall be included ... [and the name] of the individual representing
24 | a Relevant Supplier [(being the suppliers relevant to paragraphs 47A-47C of the
25 | Defence)] ..."

26 | And there's actually a second occasion where that is repeated in the reasons, the end

1 of paragraph 5 in the reasons, that's at page 193 below.

2 So they are suppliers pertaining to the specific allegations in 47A, B, and C. They do
3 not go to paragraph 47 and they are certainly not a reason that new disclosure should
4 be provided on 47.

5 Shein says: it's all completely different; this is the internal investigations team; your
6 case must be confined to that. But we're simply not in a position to say which team
7 conducted these interviews without disclosure. We're not making allegations against
8 Ms Lin or Ms Lin's team or against internal investigations team. We are making
9 allegations against Shein and it is for Shein to properly provide disclosure on those.

10 Now, we're initially told that is the period where the interviews happened. That was
11 the disclosure provided. Now we have Ms Lin's evidence in paragraph 94 which
12 makes very clear that the interview programme continued. And from what we can see
13 from her evidence, it continued very much in the same vein. She actually says it was
14 a similar process. Now, that requires disclosure in respect of that.

15 What we're talking about is an ongoing programme of suppliers being interviewed by
16 Shein personnel at local hotels about listings on Temu and, as a result of those
17 interviews, they're so frightened that they want to stop listing on Temu. That is (1)
18 ongoing conduct and (2) more than pure speculation: it is something that we've now
19 got, not just in Ms Lin's evidence, but I've also showed you the evidence of Mr Li. Sir,
20 you've got that in witness statements before you and it's obviously something we're
21 concerned about.

22 My learned friend says it's not necessary to provide disclosure on this because we can
23 already say there were interviews on the basis of the material we have. But disparate
24 references to the fact of interviews happening are just not the same as the records
25 and transcripts of those interviews that we're now asking for. And, sir, you may
26 remember from the previous batch of interviews, there was a long fight about getting

1 the transcripts and once we got them, there were things like, "May I be struck by a car
2 if I'm still dealing on PDD". I've not got the actual document in the bundle, but you can
3 see Mr Holmes quoting that at B1, page 85.

4 Finally, in terms of relevance, it is of course relevant in terms of ongoing conduct and
5 examples of how that looks, but also the scale is critical to foreclosure. You can see
6 that pleaded in paragraph 50 of our counterclaim at page A44 where we talk about the
7 effect. Of course, there is a material difference between a programme confined to one
8 department between the period in 2023 and early 2024 to an ongoing programme that
9 involves yet another department from February 2024. Indeed, we say it's ongoing
10 conduct, so disclosure is all the more relevant.

11 In all those circumstances, sir, we say it is necessary and appropriate and indeed
12 proportionate to make this order.

13 THE CHAIR: Thank you.

14 (3.06 pm)

15 **Ruling**

16 THE CHAIR: I now have to decide the supplier interviews application by Temu. Temu
17 seeks disclosure of interview notes, recordings and/or transcripts arising from
18 meetings with suppliers from February 2024 onwards insofar as they relate to selling
19 on the Temu platform.

20 Disclosure has already been given in respect of Relevant Suppliers (as defined in
21 previous orders). The reason for the request today is because it is said in Shein's
22 evidence from Ms Lin (served on 3 July 2026), that further interviews were conducted
23 from February 2024 by a different department within Shein referred to as the "supply
24 chain compliance department" and they would follow up on breaches of IP provisions
25 and ownership issues. The evidence of Ms Lin suggests that the supply chain
26 compliance department picked up where the internal investigations department left off.

1 | There is a sense of a continuum between the two. In light of that evidence, I accept
2 | that the disclosure sought is relevant to issues 28 or 31 of the DRD and paragraph 47
3 | of the Defence and Counterclaim.

4 | I accept the point made by Mr Singla that the disclosure given to date has focused on
5 | paragraphs 47A, B, and C of the Counterclaim. However, paragraph 47 is a separate
6 | and broader allegation. It was suggested by Shein that the pleading might require
7 | amendment in order to cover interviews by the supply chain compliance department.
8 | I do not accept that an amendment is needed. I consider that the disclosure sought is
9 | relevant to the current pleaded case.

10 | Shein raised six main points in response. First, it is said that the President ordered
11 | model D limited to relevant suppliers at the July CMC. It is right that model D was
12 | limited in that way, but it is also clear that this was a starting point and the President
13 | was not ruling out further disclosure as things progressed. Second, Temu is said to
14 | have delayed unreasonably in making the application. There is some force in that
15 | point, but I accept that the issue crystallised on service of Lin 4 on 3 July 2026. Third,
16 | Lin 4 refers to meetings but not to intimidation and that there has been no allegation
17 | of intimidation by a legal department. I do not think that is relevant and at this stage,
18 | I would be surprised if there were allegations of intimidation prior to disclosure being
19 | given. What is relevant is that interviews are a continuum of interviews throughout the
20 | period. Fourth, Shein point out that at the last CMC, the President referred to this as
21 | a peripheral issue. I am not sure to what the President was referring, but this was a
22 | comment in the course of argument and not a finding. At this stage, I cannot say the
23 | interviews are a peripheral issue and I cannot refuse disclosure on that basis. Indeed,
24 | I have been shown why the disclosure might be relevant to the case on effects and in
25 | particular to foreclosure. Fifth, Shein point out that they have already given extensive
26 | disclosure. I have huge sympathy with that. However, that does not alter the fact that

1 | this is a pleaded issue at paragraph 47; it has not been struck out; it is an issue that
2 | needs to be considered at the trial; and disclosure is required where it is relevant.

3 | I find that it is. Sixth, it is said that the new disclosure will take a considerable amount
4 | of effort. However, the evidence on this was based, in part, on the fact that Ms Lin's
5 | department conducts meetings and discussions on a wide variety of topics, and
6 | therefore it would require identifying, collating relevant documents, which would be
7 | unduly burdensome. I have looked at the order sought and looked at the evidence of
8 | Ms Lin. The order sought is limited to the interviews and meetings to which she refers
9 | in paragraph 94 of Lin 4. From what I have seen in the evidence, Ms Lin knows what
10 | she is referring to, and it is only in respect to alleged breaches concerning suppliers
11 | on the Temu platform. In the end, the concerns expressed by Mr Democratis for Shein
12 | do not outweigh the need for this disclosure to be given.

13 | Timings for the disclosure and, of course, whether disclosed to the inner or outer
14 | confidentiality ring, need to be considered by the parties and, if not agreed, brief
15 | submissions given at the same time as the written submissions ordered in respect of
16 | the Objective Justification Application.

17 |
18 | (3.16 pm)

19 | THE CHAIR: We have that from the first application that we have just dealt with.
20 | Maybe the parties could give me their submissions on that at the same time.

21 |
22 | Custodian

23 | THE CHAIR: So now I believe we now move to the third of our four applications today,
24 | which is the custodian application.

25 | Submissions by MR PICCININ

26 | MR PICCININ: That's right, sir, I'm grateful. I'm afraid that means it's back to me.

1 (Pause)

2 Sir, you froze for a moment, but I think you're back.

3 Sir, this application is for a targeted search for documents belonging to Shein's chief
4 executive, Mr Xu. You will appreciate that our case is that Shein's supplier interviews
5 conduct, which is what you've just been dealing with, formed part of an overall plan,
6 the purpose of which was to foreclose competition from Temu. That's what we pleaded
7 in paragraph 31 of our counterclaim, which you can see at core, 34, if you want to turn
8 it up. But we describe it as a:

9 "... deliberate and multi-pronged strategy by Shein to undermine Temu's ability to
10 compete [and] to slow down Temu's growth ..."

11 THE CHAIR: Can I interrupt --

12 MR PICCININ: Of course.

13 THE CHAIR: -- maybe to speed things up, but maybe not. What I'd like to understand,
14 and maybe you could just address this now, is why was it dropped last time?

15 MR PICCININ: Okay. Yes. Sir, last time is the relevant time to focus on because that
16 came after we had disclosure of the interviews, which contain numerous references to
17 Mr Xu's involvement. Last time, we decided to take a proportionate approach. Rather
18 than going straight to a sensitive request of having the chief executive's documents
19 searched, we would go below that and ask for only two individuals and to have their
20 documents searched in the hope that they would give us what we need.

21 Because what we're missing at the moment -- I've just said that what we say the
22 purpose of the exercise was -- is any documents that shed light on the genesis of this
23 programme, and why Temu was targeted, and also why the particular suppliers were
24 selected.

25 So if we had got those documents from the two individuals, whose documents we
26 sought at the last CMC, then we could have stopped there, and we may not have

1 | needed to go any further. It was also possible that they would have had
2 | correspondence with Mr Xu, in which case, again, no one would have needed to
3 | bother him and search his documents. But it hasn't turned out that way.

4 | Sir, I was going to show you this anyway.

5 | THE CHAIR: What would help me is also to show -- sorry, I don't want to take you out
6 | of your programme.

7 | MR PICCININ: No, that's fine.

8 | THE CHAIR: But I have read quite a lot of this. But I would be interested in seeing
9 | where that was made clear to the Tribunal last time that --

10 | MR PICCININ: Well, that's what I was going to show you. In fact, I was going to do
11 | one better than that, which is to show you what the Tribunal said.

12 | Sir, if we go to B1, and it's page 232. It starts at 231. This is the transcript from the
13 | CMC. You can see it's the ruling from the President.

14 | If you go over the page, I'm just orienting to show you what you were looking at. But
15 | over the page at 232 from line 2, she gets on to the question of custodians, and she
16 | says that:

17 | "Mrs Justice Bacon: There is evidence that there were several additional
18 | custodians ..."

19 | I think what she must have meant by that was several additional people involved,
20 | rather than several additional custodians that have been searched. She goes on to
21 | say that:

22 | "Mrs Justice Bacon: ... [that was] narrowed by Mr Holmes at the hearing to Mr Zhu and
23 | Mr Liu -- whose involvement in the interviews is identified in [the] relevant documents."

24 | So that's because their involvement in the interviews was identified in the documents.

25 | "Mrs Justice Bacon: It seems not disproportionate to ask for their documents to be
26 | searched also. If Mr Holmes seeks something beyond those, then that is a matter for

1 | another day. But at this stage, I think it is appropriate to make the order for searches
2 | to be carried out across the longer date period ..."

3 | So the point is that she certainly wasn't shutting out anything more. I'm not saying that
4 | any further application would necessarily have been granted. She was just leaving
5 | that open for another day to see where we got to. You can see that it was narrowed
6 | in order to make it more proportionate. So that's our answer to that point.

7 | As I said, what this is really about is trying to get something that tells us about the
8 | genesis and the purpose of this programme of interviews. While our case doesn't
9 | depend on the orders for this programme to have come straight from the very top of
10 | the organisation, if the CEO was involved, his documents would be very likely to shed
11 | light on what the operation was really about.

12 | The one thing that the interview documents that have been disclosed does show us is
13 | strong evidence that he was involved in its genesis and in its direction.

14 | I know you've read the material, sir, I'm not going to take you through all of it by any
15 | stretch, but I do just want to show you a little bit about the way we've organised it.

16 | So it's in the core bundle, at page 255, which I think is tab 26, annex 2 to the
17 | application.

18 | THE CHAIR: Yes.

19 | MR PICCININ: You can see from the headings that we've organised the material
20 | thematically, so that the first batch is about statements about Mr Xu's personal
21 | involvement in picking out the suppliers.

22 | If you just look at the very first one where Mr Liang expressly states that:

23 | "Xu Yangtian personally marked out thirty-odd suppliers ..."

24 | So there's no doubt who he was talking about. This wasn't just a generic reference to
25 | management; it is to the CEO.

26 | If you go on to page 257, you can see the next section, which is about the direction

1 | and initiation. If you look at the one relating to supplier number 4, you can see -- I've
2 | not read out the confidential bit, but you can see that:

3 | "... management has asked us to gain a comprehensive understanding of what [PDD,
4 | which is our group] is like."

5 | So it's targeted at us and it's coming from above, and that's what we've not seen
6 | documents about yet.

7 | But over the page, to 258, you can see the couple of references to the supplier
8 | number 10. Again, you can see express references to Mr Xu and to him being
9 | annoyed and directing this programme. So that's section B.

10 | Then if you go to page 260, you can see section C is about reporting to Mr Xu. If you
11 | just read that the first one, you can see the references to the boss.

12 | If you go to page 262, you can see the last one on that page says that -- now, this is
13 | another speaker. He says:

14 | "But now we need to look at the specific underlying reasons, so I can report back to
15 | my superiors [it's reporting back] So that management can report this reason to the
16 | boss ... Because this matter is being personally overseen by Mr Xu himself ..."

17 | So again, very specific statements there.

18 | Then over the page, 263, we've got the next one, which is section D, which is about
19 | sanctions being directed or approved. Again, if you can just cast your eye down that
20 | list.

21 | Then on 264, we got section E, which is about oversight and organisational structure.
22 | Over the page, then, you can see, again, there's another speaker referring to:

23 | "It's just that our boss, our CEO, has heard some rumours that some of our better
24 | suppliers at Shein are doing ... A: Pinduoduo? F: Ah, yes ... that project."

25 | So we've counted up 90 references in total that have come out of the supplier interview
26 | transcripts that we've got from a variety of different Shein employees, all saying similar

1 | things about him actively directing this process.

2 | Now, you will have seen that Shein's position is that none of those people meant what
3 | they said. That's obviously not an issue for today. That's a matter for trial. We say
4 | it's incredible in circumstances where these statements are not just made to the
5 | suppliers, but they're also made to colleagues. That's in paragraph 43 of the skeleton.
6 | It seems very unlikely that people are going to be making specific reference to the
7 | CEO in some kind of -- they've got various euphemisms for it. But as far as
8 | I understand it, what they mean is that the person says that the boss was involved,
9 | knows that to be untrue and intends for the person who hears it to believe that it is
10 | true. Of course, we have many words in English law for what that kind of rhetorical
11 | device is. So that will be what we say at trial.

12 | The short point is that fair disclosure is not optional. You don't have an option as
13 | a party to proceedings to say that I'll just take my chances on adverse inferences and
14 | submissions at trial, rather than search the relevant documents. That's not good
15 | enough, nor would adverse inferences be enough anyway, because the question isn't
16 | just whether the CEO was involved. We can already prove that with the documents
17 | we've got. The question is what the CEO said and did, about this programme, because
18 | we suspect that his documents will bear out our case, and that this was an exercise
19 | that was targeted at restricting competition from Temu.

20 | Now, on the substance of the application, my learned friends have no real answer to
21 | that submission. All they really do is try to defeat it with a kind of res judicata
22 | submission to the effect that we've already made this application, and it's failed. That's
23 | paragraph 19 of their skeleton argument, which it might be useful just to turn up.
24 | (Pause)

25 | THE CHAIR: No?

26 | MR PICCININ: I think I might have the wrong reference. (Pause)

1 | I think it's page 19 -- yes, page 19 -- where they set out the four so-called attempts to
2 | obtain this document. The first two so-called attempts are completely irrelevant,
3 | because they date from before we received the disclosure of the interview transcripts
4 | that provided the basis to say that the CEO was involved.

5 | You can also see just from the text that there weren't actually -- this application that
6 | we're making here, we didn't pursue an application for the search terms to be applied
7 | to his documents specifically in this way.

8 | The third one is the one that I addressed, which is from --

9 | THE CHAIR: So I haven't really understood why -- can you help me with why he was
10 | not within the custodians in the first place from my order in November?

11 | MR PICCININ: Yes. I think the reason is that Shein confirmed that senior
12 | management didn't fall within the scope of that order, because they didn't have
13 | authority to investigate enforcement action. But you can see that in (a).

14 | THE CHAIR: Right.

15 | MR PICCININ: End of (a).

16 | THE CHAIR: Am I right that if they had fallen within that, they'd have had to have
17 | given this -- you wouldn't be making this application, is that right? Because they'd be
18 | custodians and have to give disclosure?

19 | MR PICCININ: Therefore they would have been searched. But importantly, because
20 | they say that he didn't have authority to instigate enforcement action, they didn't then
21 | have to search his documents to see whether he had anything to say about this
22 | programme at all.

23 | The problem --

24 | THE CHAIR: I saw you said that. I was just trying to find -- maybe you can help me,
25 | or maybe it's a matter of Mr Singla -- where they said that. Because I was looking in
26 | Mr Democratis's 13th statement.

1 MR PICCININ: That's what they say it is.

2 THE CHAIR: Okay. Well, maybe it's a matter for Mr Singla. I'll ask him.

3 MR PICCININ: Okay.

4 THE CHAIR: Because, at the moment, of course, if he fell within that order, they
5 should be giving the disclosure anyway, shouldn't they?

6 MR PICCININ: Exactly. But they never searched his documents, that's my
7 understanding. Mr Singla can say if I've got that wrong.

8 THE CHAIR: Okay. I've given you a warning, that's what I'm thinking, so he can ...

9 MR PICCININ: Exactly. But that is the key point that we say. There's plenty of
10 material here to suggest that he was involved. If he was involved, his documents are
11 going to be highly relevant by their nature, because they'll tell us what the programme
12 was about. And no one has searched his documents. But those are really the three
13 pillars of my submission as to why we need this. So we say the only sensible
14 discussion to be had is not whether, but what, what should be the terms of the order.

15 As to that, I should say that the trick we may have missed last time with the searches
16 that were conducted from Mr Liu and Mr Zhu, was to use just the same search terms
17 that had been deployed under issue 31, for the original lower level searches that
18 produced the interview disclosure. You can see that at B1 566, and see what the
19 search terms were under issue 31. So this was all that we sought and all that was
20 ordered in relation to Mr Liu and Mr Zhu. I'm not seeking to go behind that; I'm just
21 trying to explain why we've taken a different approach to the search terms now for the
22 CEO.

23 So if you've got page 566 there, you can see that those are not well suited for the
24 exercise we're now trying to conduct, which is not looking for interview transcripts or
25 anything like that, but what we're trying to look for is the CEO's involvement in the
26 genesis and direction of the overall programme.

1 | Quite a lot of these search terms are really focused on the bits of conduct that the
2 | actual people doing the interviews would be responsible for, words like "detain" and
3 | words like "password". You can see "account", that kind of thing. So that's not well
4 | targeted.

5 | Then the other issue is that at the end of it, there's an "and" connector for then another
6 | series of words that basically mean "us". It basically means Temu.

7 | That's also potentially a problem because it's easy to imagine a document that
8 | discusses all of this without actually using the word "Temu" or anything similar. You
9 | could imagine an oral conversation about the need to target Temu taking place, and
10 | then documents that are exchanged that say, "Here's a list of suppliers". Or, you
11 | know, information about which one should be targeted or that they should go in hard,
12 | you know. There could be all sorts of things that could be discussed.

13 | It's also possible that you end up searching his documents, but the actual reference to
14 | Temu is in a hyperlinked document within the document that is actually in his custody.
15 | So that's why what we've done on this application is we came up with an additional
16 | set of search strings, which are at page 270 of the core bundle. One can always
17 | discuss the details of them. They look slightly scary because there is a whole page of
18 | them, but actually the point of what we tried to do here is construct something that is
19 | quite specific, so that it narrows down and will catch things that it should be catching
20 | and will not catch things if actually he had no involvement in this program at all.

21 | You can see in (a) for example, that we've got some words that are associated with
22 | people doing these interviews. Then there's an "or" and effectively we've got "Temu".
23 | But then you've got an "and" to the use of the word like "supplier". This is the important
24 | bit that really narrows it down: you've got the "within 20" so close to, the words like
25 | "infringement" and "investigation".

26 | Of course, if Mr Xu has no involvement at all in these types of exercises, then he

1 | probably won't have any documents that say infringement or investigation. So that's
2 | the intention here. Again, if there'd been some dialogue about, "Well, could you take
3 | out this word; could you substitute that word?" We could have had that debate, but
4 | this was our attempt to try and get something that was discriminating in the sense that
5 | it would capture things we want and not capture things we don't.

6 | The one comment I did see in Mr Democratis's statement about the particular words
7 | was that he said that they were too broad because they contain words like "Temu" and
8 | "competitor". Of course, Temu is competitor and therefore, you know, would be
9 | mentioned in his documents. I think that must be a reference to (e) Because (e) is --

10 | THE CHAIR: Is this paragraph 40, somewhere like that, I'm trying to find? Yes.

11 | MR PICCININ: I'm sorry.

12 | THE CHAIR: Yes. No, no. It's 40.

13 | MR PICCININ: Yes. So if you just go back, I think it must be E that he is concerned
14 | with because that's the only one that doesn't have what.

15 | THE CHAIR: What's the difference between A and E? Sorry, I'm being slow.

16 | MR PICCININ: I was about to say, his point about E is fair. So I think we can live with
17 | that one then because that one doesn't contain the "within 20" connection.

18 | THE CHAIR: So what, E comes out?

19 | MR PICCININ: Yes.

20 | THE CHAIR: And why do you need A, B, C and D? I'm just trying to understand what
21 | the difference is between each of them.

22 | MR PICCININ: Yes. They all just take a different approach to getting to the wording.
23 | So if you look at A, like I said, what you've got is the kind of people who we know who
24 | are involved in doing the interviews, and they've been mentioned in the interviews,
25 | and "supplier" and then close to "infringement", and similar. The next one, the same
26 | sort of starting point, you could combine these, of course. Same connector to supplier

1 | or merchant, but then we've just got an additional set of words. So we've got words
2 | focused on, you know, "interview", "interview notes", "interview records", those kind of
3 | words.

4 | So, as I said, those could be combined into a single one. It just seemed easier to set
5 | them out clearly as separate items.

6 | Then C is different because it doesn't use words connected with "interview" just in
7 | case this discussion takes a different course, and these documents discuss the issue
8 | of exclusivity and loyalty and those kind of things, without making specific reference,
9 | in the document that's in his custody itself, to "interviews". Then at D, and D fits more
10 | into the A and B category again, where again, you've just got more general words or
11 | different words, to capture what was going on in this program. So that's what we're
12 | trying to do here. We're trying to come up with forms of words that include this "within
13 | 20" connector and include, you know, an "and" with "supplier" or something like
14 | "supplier", and in that way we're going to be capturing things that you wouldn't expect
15 | him to have if he wasn't involved, but that he would have, if he was involved. That's
16 | the concept.

17 | As I said, if there is constructive feedback on them and particular bits that could be
18 | narrowed, then of course we can discuss that in the same way you've directed for
19 | them for the other ones.

20 | But those are my submissions, unless you've got any questions?

21 | THE CHAIR: No, thank you.

22 | Submissions by MR SINGLA

23 | MR SINGLA: Sir, we say this application should be dismissed. As you know, it's
24 | seeking to relitigate for the fourth time an issue which would bear upon (inaudible)
25 | because this question of involvement of senior management has come up on three
26 | previous occasions. Therefore, the question for you today is actually, in my respectful

1 | submission, whether there's been any material change in circumstances which would
2 | justify a departure from the way in which the disclosure process has been carried out.

3 | I'll develop my submissions in due course.

4 | Essentially, what's being said to the Tribunal is, "On the basis of various documents,
5 | we decided in April to drop Mr Xu and focus on two individuals". What changed, they
6 | say -- and the only thing they can point to by way of a development since April -- is the
7 | fact that disclosure from those custodians has not given them any further evidence.
8 | So they say, "Well, in the absence of any evidence, anything helpful coming out of
9 | those two custodians, we now want to fish around for disclosure from a custodian who
10 | is right at the top of the organisation and therefore, by definition, is even more remotely
11 | involved in any of these things". So it's entirely speculative. But, in my submission,
12 | it's actually borderline abuse of process to come back to the Tribunal and not able to
13 | point to anything concrete that's changed, other than an absence of disclosure.

14 | So let me just take this in stages. The full procedural history is important, and it's set
15 | out in length, at paragraph 36 of Mr Democratis's witness statement. It's not right, in
16 | my submission, to focus on April. We do say, actually even if you start the clock in
17 | April, this is all misguided. But let's just go back to paragraph 36. It all goes back, sir,
18 | to October 2025, when they first sought information about custodians, and they
19 | pointed out that Mr Xu wasn't a named custodian. Then I think an order was made by
20 | you, sir, in November, asking for the parties to file submissions, including in relation to
21 | senior management.

22 | Then Mr Democratis says he provided his 11th witness statement, in which he
23 | explained the request didn't reflect the realities of how Shein operates. You'll see that
24 | he says there was a concern about Temu seeking to fish for commercially-sensitive
25 | documents. Footnote 11 goes to his 11th witness statements, and I think this answers
26 | the question that you posed earlier, sir, so let me just show you that.

1 That's in, bundle B1, tab 21, paragraph 10. So it's page 574, at paragraph 10. If you
2 see on page 574, what Mr Democratis has said in response to the order that you
3 made. That hopefully answers your question. You said you couldn't find it. It's in the
4 11th witness statement, served in, I think it was November, 2025. Then if one goes
5 back.

6 THE CHAIR: It doesn't actually. Sorry to stop you. I noticed that, I saw that.

7 MR SINGLA: Yes.

8 THE CHAIR: Which was referring to being involved in decisions regarding specific
9 custodians. I was going to ask you because Mr Democratis came back to it in his 12th
10 statement at B1, 25, para 20, page 684.

11 MR SINGLA: That's his 13th witness statement, is it?

12 THE CHAIR: Sorry. It is 13th, yes, sorry, 13th.

13 MR SINGLA: Yes.

14 THE CHAIR: At the moment I'm not understanding. He sets out at 18 what was what
15 we call the three-limb test of the Tribunal's order, my order, which was anyone from
16 Shein's management team including the CEO. So at that stage, it includes the CEO.
17 If they have authority to make enforcement decisions and have documents relevant to
18 Relevant Suppliers. At 20, it said they confirmed they do not exercise "responsibility"
19 for taking "enforcement decisions", which doesn't seem to me to be the same as
20 authority.

21 I can see that it's rather difficult to suggest the CEO doesn't have authority. So we've
22 moved to "responsibility". Then we're not aware of "specific enforcement actions",
23 which is the point you just took me to there, which is rather different to documents
24 relevant to Relevant Suppliers. So at the moment, I'm not seeing why he's not already
25 captured by the order I made in November, and should have been searched. At the
26 moment, the reason given, to my eye, does not seem to meet the order. It seems to

1 | have changed the order, or put a gloss on it.

2 | MR SINGLA: Right. So I'm going to have to just take instructions because it's not
3 | a point made by the other side. There's not been any suggestion that there's been
4 | any noncompliance with this previous order. The only reason this is referred to in
5 | Mr Democratis's 18th witness statement is by way of background to explain the
6 | process leading up to, first, the December 2025 CMC and then the April CMC.

7 | THE CHAIR: I agree, I appreciate that. But by giving me the background, led me to
8 | look back.

9 | MR SINGLA: Right.

10 | THE CHAIR: Of course, it was my order and I've got a jurisdiction to ensure that it's
11 | being complied with, and I want -- at the moment, what's being told as to why this has
12 | not been searched, the CEO's documents have not been searched, at the moment
13 | I was expecting them to say, would have to say, that the CEO does not have authority
14 | to make enforcement decisions, or has no documents relevant to Relevant Suppliers.
15 | But that's not what it says.

16 | MR SINGLA: No. Well, my immediate answer, sir, is to say that in substance, this is
17 | responsive to your order. I mean, I accept what you're saying about, if I may
18 | respectfully describe it as such, the semantic point about the difference between
19 | authority and responsibility. But in substance --

20 | THE CHAIR: Just stopping there, if it's a semantic point, is your submission that the
21 | CEO does not have authority to make enforcement decisions? Is that your
22 | submission?

23 | MR SINGLA: Well, I can't answer that without -- I need to take instructions on these
24 | points, sir, because I haven't come today prepared to answer a question about
25 | whether or not previous orders have been complied with, because everyone's been
26 | proceeding -- we've had two CMCs since these materials were filed in December and

1 April, and I'm not aware that the other side has ever taken a point on this. At the
2 moment, I'm not able to answer these questions. I need to take instructions, sir, in
3 order to answer these questions and deal with this in a fair way.

4 THE CHAIR: I think you should, because obviously it's my job as Chairman of the
5 Tribunal is to ensure, as well as a good hearing, that orders are complied with. I'm not
6 at all saying that there's been non-compliance; what I'm saying is what's been shown
7 to me so far does not appear to me in my order. And I think it's reasonable for me, as
8 the Chairman of the Tribunal, to raise that and for you then to get instructions as to
9 the position. But at the moment, from what has been said -- and I was led to this by
10 your evidence so I went and read it, and --

11 MR SINGLA: I completely understand where you're coming from, but I think what I'm
12 really saying is, this is, as it were, a completely new point that I haven't come prepared
13 to deal with.

14 THE CHAIR: I don't want to take you procedurally unfair, but equally, I need to
15 understand the position. Because obviously, if you should have been searched in the
16 first place, then none of this application is relevant because it's already been ordered.

17 MR SINGLA: No, I follow that point. But you'll recall that I haven't actually previously
18 appeared at these hearings so my ability to answer questions on the hoof about the
19 past history of this case is somewhat limited. I can either continue with my
20 submissions or I can -- would have to take a break to take instructions.

21 But really the key point for today's purposes -- subject to what you've just put to me
22 which, as I say, has never been raised by Temu before -- the key point, if one leaves
23 that point to one side, is that nothing materially has changed since April. That, in my
24 submission, is actually a very important point. You actually started, sir, by asking
25 Mr Piccinin, and if I may respectfully say so, you were trying to cut to the chase, to
26 say: "Well, you were before the Tribunal in April and you expressly dropped this

1 application so what has changed?"

2 Let me just maybe take you back to the transcript, because it's actually quite
3 interesting to see what Temu were doing at the last hearing. If we just go back to the
4 April transcript.

5 THE CHAIR: Yes.

6 MR SINGLA: Because Mr Piccinin -- it's in bundle B1, and 232 is the passage he took
7 you to. It's behind tab 6.

8 THE CHAIR: Yes.

9 MR SINGLA: So what he took you to was the President's comments.

10 "The other question concerns custodians. There is evidence that there were several
11 additional custodians ... whose involvement ... is identified in relevant documents. It
12 seems not disproportionate to ask for their documents to be searched also. If [he]
13 seeks something beyond those, then that is a matter for another day."

14 Now, in my submission, that's not saying if another day comes and you haven't come
15 up with anything further, then have another go at those applications that you've
16 abandoned. What she's saying is: there are two custodians where Temu has pointed
17 to something in documents and so those are now appropriate custodians. What she's
18 saying is, if they come back with material referring to other individuals, then that's
19 a matter for another day.

20 If you just go back in the argument, you can see that Temu dropped the other
21 custodians and focused on two individuals where they said they could point to things
22 in the documents. So, for example, if you go back to 215 of the bundle, lines 3 to 5,
23 Mr Holmes said that they were focusing those individuals:

24 "... two individuals, because they appear to us to be -- on the evidence available to us,
25 they are the ones who seem to have been centrally involved."

26 Those two individuals. So that was the context: the President was asking why they

1 | whether they were still pursuing others and he was saying, "No, we're focusing on the
2 | two based on the documents".

3 | If you look at page 214, you'll see lines 12 to 20. Again, references to Shein's
4 | disclosure suggesting that that individual played an important role. Back at 210,
5 | lines 1 to 2, again in relation to the other individual, they were relying on documentary
6 | evidence.

7 | So what was happening at the April hearing was that the application was in broad
8 | terms, but then they confined it to two particular custodians who, on their own case,
9 | they said: well, we've got material to suggest that these two individuals were, to use
10 | Mr Holmes's words, "centrally involved". Those individuals were added as custodians.
11 | Then, in the event, nothing of interest came out of their disclosure, as we had said all
12 | along would be the case. Now they're saying, "We'd like to resurrect an application in
13 | respect to Mr Xu that we previously decided to abandon".

14 | That's why we say there's been no material change of circumstances, because the
15 | only thing that's happened, all of the documents that are referred to in the application,
16 | the transcripts and so on, all of that material was available to Temu back at the April
17 | hearing. So they haven't alighted upon any new material that wasn't available at that
18 | stage. As I say, the only thing that they're pointing to is the absence of disclosure.
19 | That's clear from -- their application, the letter from Gibson Dunn makes it clear that
20 | what they're saying is it's the lack of disclosure from the two individuals that they say
21 | renders it necessary for Mr Xu to be added as a custodian. That's also clear from their
22 | skeleton, paragraphs 44 and 45. We say it's actually a rather surprising submission,
23 | that "Because we've been chasing for disclosure from some custodians and it's turned
24 | out that you, Shein, were correct, there's nothing relevant to disclose, we should now
25 | be entitled to go further up the chain". We say that's not a material change of
26 | circumstances. You decided to drop this application in April and you can't now

1 | resurrect it unless something very compelling can be pointed to. So --

2 | THE CHAIR: I mean, what Mr Piccinin said today was that it was done for what he
3 | said was proportionate reasons to go with two, because that might pick up the
4 | documents from higher up, but it didn't. Was any of that discussed in front of the
5 | President at the last hearing as to why the two were chosen and why the others were
6 | dropped? Was there any discussion about a staged approach to disclosure? I'll put it
7 | that way.

8 | MR SINGLA: No, they never said they were going to come back for Mr Xu. They
9 | never said, if we get -- what they said was, the application back in April was for
10 | a number of custodians. Then, as I've just shown you in the transcript, they then said,
11 | "We're being realistic about this: the only two who we can actually say are referred to
12 | in the documents are the following so we'll go for those". They didn't say, "But if those
13 | custodians, if their disclosure takes us nowhere, we're going to come back for different
14 | custodians". In my submission, that plainly wasn't the basis on which the President
15 | was saying "a matter for another day". What she's saying was, "If things change and
16 | you do a light upon material that points to other individuals, then of course I can't shut
17 | you out". What she wasn't saying is, "If nothing changes, come back in July and have
18 | another go at Mr Xu". In my submission, that would just be completely bizarre if
19 | a party, having decided to abandon a disclosure application, can then resurrect it
20 | without anything having changed. And the absence of disclosure from the two
21 | custodians that they chose to focus on in April rather supports our position, which is
22 | you focused on two, you've got nothing, and therefore it follows it's just inherently
23 | unlikely you'll get anything from the custodian who's further up the chain.

24 | I mean, if they had some further material -- sir, I wonder if I could try and help you to
25 | understand the point I'm making. If you test it the other way, if they had had disclosure
26 | from these two individuals which they could point to and say, "Ah, this changes

1 everything; now let's look at the material we've got to implicate Mr Xu", then they might
2 be able to say with a straight face, there's been a material change of circumstances.

3 This is why we find this so perplexing, sir, because they're coming to the Tribunal
4 seeking further disclosure and you have my submissions on the test that applies. But
5 what they're using to support the application for further disclosure is an absence of
6 disclosure. It's actually completely the wrong way round.

7 So subject to the point that you raised with me, which I'll have to take instructions on,
8 we say that is actually the long and the short of it and where you started, sir, was really
9 the critical point. They had this material before the April hearing; they decided to focus
10 on two individuals, and nothing relevant has been forthcoming and that is the end of
11 it.

12 I do have a couple of further points. I mean, they make some submissions in their
13 skeleton based on the documents. But in relation to those documents, we say, well,
14 you've had them before and nothing's changed. At paragraph 21, they make a point
15 about interdepartment co-operation, which we respectfully submit is just
16 a non-sequitur and doesn't justify adding Mr Xu as a custodian.

17 Then they also make this point about Mr Xu not giving evidence at trial. And again,
18 that is, in my submission, completely misconceived. We've heard today another
19 application where they say Ms Lin deals with a point in her witness statement and we
20 need to cross-examine her. But here, Mr Xu's not giving evidence, so they can't say
21 we need material to cross-examine Mr Xu. They want to make a submission about
22 adverse inferences; they can do that at trial. But you don't generally get disclosure
23 and add an individual as a custodian because they're not a witness. That, again, is
24 just the wrong way round.

25 Then I've also got some submissions about the search strings, which I'll try to make
26 as simple as possible. We say you never get to this point because you should dismiss

1 | this application on the basis that it's all relitigation of the same point. But on the search
2 | strings, this again is actually remarkable. Instead of coming to the Tribunal saying,
3 | "We'd like to add the custodian and like to do in relation to his documents what we've
4 | done with the existing custodians", they're actually now trying to ask you, sir, to order
5 | a whole host of different search terms that have been applied.

6 | We say that's completely inappropriate. It has not been properly explained why
7 | different search strings should be applied to this individual than have been applied to
8 | all the other individuals, and Mr Democratis has explained they're exceptionally broad.

9 | So we say you should dismiss the application, but if you're not going to do that for
10 | some reason, either the same search terms should apply as did apply to everyone
11 | else under issue 31, or we'll have to park this point so that we can properly discuss
12 | with the other side some reasonable and proportionate search terms. But in my
13 | submission, it's actually doubly unsatisfactory, both the application that he should be
14 | added as a custodian and then on top of that to say much wider search terms should
15 | be applied than have been applied for other custodians.

16 | So, sir, I'm conscious we need to take a break for the transcriber, and I also need to
17 | take instructions to answer your question.

18 | THE CHAIR: Yes. Well, I think we should take a break now and then you can get
19 | instructions. Then Mr Piccinin, I'm assuming you'll be relatively short. Then -- we are
20 | 4.00, we're not doing terribly well, but hopefully the last one will be quick.

21 | MR SINGLA: I'm grateful.

22 | THE CHAIR: Okay, let's take a break for -- sorry, how long do you think you need for
23 | instructions?

24 | MR SINGLA: Can I take ten minutes? Just because I don't know how long it's going
25 | to take. Five minutes may be tight. I just need to go back through some of the
26 | materials.

1 THE CHAIR: Let's take ten minutes because I think it is, from my point of view, an
2 important point to understand.

3 MR SINGLA: I'm grateful.

4 THE CHAIR: Thank you. We'll reconvene at 4.10.

5 (3.58 pm)

6 (A short break)

7 (4.09 pm)

8 MR SINGLA: Thank you, sir. I've had an opportunity, albeit not as much time as
9 I really need, but I can give you the beginnings of an answer to your question.

10 The November order, just to sort of take this in stages, you obviously have that at
11 page 191 of bundle B1, tab 5.

12 THE CHAIR: Yes.

13 MR SINGLA: So your question arises out of the reference in the order to the words
14 "authority to make enforcement decisions". Just to complete the chronology, that
15 November order followed some submissions that were made by the parties. We
16 haven't, in the time, located our submissions, but we do have Mr Democratis's 11th
17 witness statement, which I think I took you to earlier, but it's at 574 just to make sure
18 I've shown you that again. This is 30 October.

19 The context is that, on 21 October, Temu had pointed out in correspondence from
20 Herbert Smith that the custodian list didn't include any of Shein's senior executives,
21 such as Mr Xu, and requested confirmation of whether any such custodian was likely
22 to hold relevant documents. That's a letter from Herbert Smith on 21 October,
23 paragraph 12. And Shein responded, I think with written submissions which I can't
24 locate at the moment, but also with Mr Democratis's 11th witness statement, saying:
25 "Temu's proposal that senior Shein executives should be listed does not reflect the
26 realities ... Based on my experiences, [they] are unlikely to be involved ..."

1 | Then I think, sir, you made your November order, which we just looked at. Then in
2 | response to the November order, Mr Democratis provided his 13th witness statement,
3 | which is behind tab 25. Just perhaps pausing here, paragraph 20, you see that he
4 | says:

5 | "Members of Shein's senior management team, including the Shein CEO and
6 | cofounder have confirmed to me that (i) they did not, and do not, exercise responsibility
7 | for taking these enforcement decisions, or involve themselves ... More junior
8 | colleagues (i.e., Ms Lin and Mr Li) are responsible for taking enforcement decisions ..."

9 | Then can I direct your attention, sir, to footnote 4, which says:

10 | "Even if Shein's senior management team did have 'authority', that does not mean that
11 | they actually had responsibility for taking enforcement decisions."

12 | Now, the point, sir, that is important here is I'm not in a position at the moment to give
13 | you a clear answer to whether or not Mr Xu had "authority" because one would need
14 | to check that point. It raises the question of possibly Chinese law and so on so I'm not
15 | going to commit to a position on that. But let's just assume for present purposes, the
16 | CEO, because he's CEO, he had authority in the loosest possible sense.

17 | In my submission, the whole disclosure process was not targeted at those individuals
18 | who had authority in the sense of corporate governance, but in the sense of: were
19 | these people directly involved in taking the relevant decisions? Because otherwise,
20 | sir, a CEO would be included as a custodian in every disclosure exercise simply by
21 | virtue of being the CEO and having authority to do all manner of things.

22 | So in my submission, the question that everyone was focused on was not so much
23 | authority in a technical sense, but actual direct responsibility. And in my submission,
24 | the point I'm making now is actually common ground and that's why the whole debate,
25 | insofar as we've drawn attention to the various attempts by Temu to include Mr Xu, it's
26 | all been on the footing that he must have been involved in a direct and first hand way.

1 | It's never been their case that, well, he's CEO and that, as it were, is enough.

2 | So I do completely understand why you've asked the question, sir, because I do
3 | understand that the reference to authority, you may say: well, he's CEO and therefore
4 | he's got authority and that's it. But in my submission, what is really going on in terms
5 | of the disclosure exercise is actually an attempt not merely to identify people who are
6 | sufficiently senior that they have authority in that sense, but actually to identify those
7 | senior management individuals, as Temu keeps referring to them, who had actual
8 | involvement. If one's asking that latter question, then not only has Mr Democratis
9 | given evidence to the Tribunal that he's spoken to the CEO and the co-founder
10 | confirming that they didn't have direct responsibility, but there's also positive evidence
11 | from Ms Lin and Mr Li that they were the individuals with sole responsibility.

12 | So unless I can assist further -- at this point, as I say, I wasn't anticipating having to
13 | argue about this because it's not a point raised by Temu, but I hope that in the time
14 | that you've given me, sir, for which I'm grateful, that provides a response as to why we
15 | say that there's not been non-compliance with your previous order and, until you raised
16 | it, that was in fact accepted by Temu. So the real question is, is there a reason to add
17 | him on the basis that he had actual responsibility for these enforcement decisions?
18 | On that, you have my submission that the position hasn't moved on since they
19 | abandoned the application in April.

20 | Unless I can assist any further, I'm sorry about the time, but it was very important that
21 | I had the opportunity to speak to those instructing me because I'm relatively new to
22 | the case.

23 | THE CHAIR: Thank you.

24 | Reply submissions by MR PICCININ

25 | MR PICCININ: So just very briefly, starting with that point about the order, it's evident
26 | from Mr Singla's submissions just now that Shein must be taking a narrow view, or

1 | perhaps a broader view, of what is meant by authority that it had to involve -- extend
2 | to actual involvement or personal responsibility. Obviously, it's a matter for you what
3 | you meant by the order and I don't propose to make any further submissions on it other
4 | than to say that we agree.

5 | But the substantive point that matters is that the CEO obviously does have the power,
6 | to pick a different word, to direct his employees to go out and conduct this sort of
7 | exercise. In circumstances where it seems from the documents that we now have that
8 | we didn't have at that time, that that is what he did, then there should obviously be
9 | a search for those documents.

10 | Just while we're on B1 page 684 that Mr Singla was just showing you,
11 | paragraph 20 -- of course, I think he didn't show you paragraph 19, but just so you've
12 | got it in paragraph 19 that there is a blanket statement from Mr Democratis to the
13 | effect that he just doesn't believe that anyone from Shein's senior management team,
14 | including the CEO, satisfied the criteria in the order.

15 | That may be because, if you look at paragraph 18, he's underlined the word "and". So
16 | he seems to be taking the position that, whatever the position is in relation to authority,
17 | the CEO was not likely to have any documents relevant to the Relevant Suppliers.

18 | My points are, just standing afresh -- I mean, the issue of compliance with the order is
19 | a matter for you, but my point, just looking at the application that we're making here
20 | today, is that nothing in paragraphs 18 to 20 shed any light at all on whether Mr Xu is
21 | likely to have documents of the kind we're looking for, which are documents concerned
22 | with the initiation of this programme because those are not enforcement decisions and
23 | they may not mention the Relevant Suppliers by name.

24 | So in my submission, whether Mr Singla is right about that or not, it just doesn't shed
25 | light on the issue of whether the order we're now seeking is appropriate.

26 | Obviously, if the order is to be interpreted more broadly than Shein seem to have

1 | interpreted it, then that disposes of the matter anyway.

2 | The only other point I wanted to address you on is the argument that we've abandoned
3 | this application and that we're essentially saying, "Well, because the first search didn't
4 | work and threw up nothing, it follows we should just get to keep searching". That's
5 | a mischaracterisation of our application.

6 | The programme must have had some genesis. That's really our starting point. There
7 | must have been some reason why this programme was conducted. At the moment,
8 | we don't have documents that explain what that genesis was or that record the
9 | genesis.

10 | So what we were doing at the last disclosure hearing is we were starting with the
11 | breadcrumbs that we had from the documents, from the actual interviews themselves,
12 | that showed the people who were closest to the interviews. That was a sensible and
13 | a proportionate approach because the idea is that those people would be most likely
14 | to have documents and then we could follow the trail from the documents and see the
15 | genesis, if they didn't have the genesis themselves.

16 | Now, obviously, we could have insisted at that hearing in an application on taking both
17 | approaches simultaneously: the one that we actually took and the one that I'm taking
18 | now. We could have said, "Let's start with the two people who the breadcrumbs
19 | suggest were absolutely closest to the interviews and get their documents, and also
20 | go to the other end of the trail and get Mr Xu's documents at the same time".

21 | If we had made that application equally, obviously, we don't know what the President
22 | would have said. But in my submission we can't be criticised or sensibly shut out now
23 | simply on the basis that we did take it in stages. It doesn't matter whether Mr Holmes
24 | said the words, "taking it in stages". I've shown you that the President didn't
25 | understand the application to be a once and done, this is it, we can never ask for
26 | anything again. She was clear that any further application would need to be

1 | considered on its merits.

2 | Sometimes, when you have a disclosure application, a sensible conclusion that you
3 | can draw from its failure to produce documents is that there are no documents. If
4 | you're asking for the documents to show a particular thing happened and the thing
5 | might not have happened and disclosure throws a nil return, it's sometimes sensible
6 | to draw the conclusion, "Well, maybe the thing didn't happen". But here we know the
7 | thing did happen because there was a programme of interviews and it must have had
8 | a genesis. That's why the only sensible inference to draw is that we weren't
9 | conducting the right searches of the right people. I'm not picking somewhere at
10 | random today, asking you to order us to go search Mr Xu's documents and picking
11 | someone at the top of the organisation whose names are littered through -- 90 times
12 | there's reference to him -- the interviews.

13 | So having tried one approach, now we're trying the other approach. But the failure of
14 | the first approach is not in these circumstances, a reason to think that the programme
15 | just started on its own without any kind of discussion or thought process or strategy.
16 | That just doesn't --

17 | THE CHAIR: The point being made against you is it's a drip, drip, drip approach. You
18 | went to -- you had all the information to Mr Xu last time.

19 | MR PICCININ: That's true.

20 | THE CHAIR: And you dropped it, is what's said. Then okay, you didn't get what you
21 | wanted. Now, you've raised it again, which is an unfortunate approach to litigation
22 | where, on the same information, you just keep coming back for more. I think that's
23 | what Mr Singla is saying. I haven't yet seen anywhere where you pointed out to the
24 | Tribunal that you were taking that approach. The approach you just very eloquently
25 | said to me, which was we're going to those in the documents that were the closest to
26 | the interviews, and most likely -- I can understand that, but I just -- was there anything

1 | at all last time about that?

2 | MR PICCININ: Well, that is what Mr Holmes said to the Tribunal in the passages that

3 | Mr Singla showed you before that he was selecting the two people who the documents

4 | showed were most closely involved in the interview.

5 | THE CHAIR: I may not have taken in the closely involved one, but show me that again.

6 | Because I remember going to those, and maybe I didn't pick up -- sorry, I know we

7 | haven't got much time, but ...

8 | MR PICCININ: No, no. That's all right. I'm sorry. I -- can someone --

9 | THE CHAIR: Maybe I wasn't --

10 | MR PICCININ: -- shout a reference out to me?

11 | THE CHAIR: I think he took me to page 214, as we started at 210.

12 | MR PICCININ: Yes. That's right. 210 and 214.

13 | THE CHAIR: Tell me that much. 214. (Pause)

14 | Okay. So yes, I think you're thinking about 215, line 4 to 5. They're the ones that have

15 | been centrally involved.

16 | MR PICCININ: Yes.

17 | THE CHAIR: But as I understand your evidence, Mr Xu is -- sorry if I'm

18 | mispronouncing his name -- is centrally involved.

19 | MR PICCININ: In a different way, sir, at a higher level, at the highest possible level.

20 | Whereas Mr Zhu and Mr Liu were if you look at, for example, 7 to 8, what's being said

21 | there:

22 | "Mr Holmes: ... taken over the infringement prevention and control workstream at

23 | Shein."

24 | Down at 16:

25 | "Mr Holmes: ... Mr Liu [is informed by Mr Lin] that she will send him information

26 | collected during the interviews."

1 | So that was the kind of thing because none of the documents that -- none of the
2 | references that I've shown you are references to Mr Xu being directly involved in -- you
3 | know, right at the coalface. That's not what we're saying. What we're saying is that
4 | he was the directing mind of the programme and --

5 | THE CHAIR: Okay.

6 | MR PICCININ: -- from higher up. So that's the point, sir. But I just come back to the
7 | basic point that there's no -- at the moment we don't have the documents. If they had
8 | some documents which showed what the genesis was and we were trying to say, oh,
9 | but maybe there's something higher, then I could understand this reaction.

10 | But in circumstances where nothing has come up to show what the genesis was, there
11 | is a proper basis for saying that there's something else out there. It's not too late, and
12 | the fact that we're doing it in stages makes it more proportionate, not less. Because if
13 | one of them had -- if the first approach had borne fruit, there would have been no need
14 | for the second. That's the point.

15 | MR SINGLA: Sir, just before you rule, could I perhaps just make one short point?
16 | Which is this: if you're still concerned about the point about the order that you
17 | previously made, then I would respectfully ask for an opportunity for further evidence
18 | to be put in on that, just to cover off the position, because, as I say, we didn't have
19 | notice of this. It does involve going back over some materials.

20 | I would hope that I've assuaged any concern you had in my submissions earlier, but if
21 | you still have an issue about that, I would ask for that indulgence just as a matter of
22 | fairness, so that we can explain to the Tribunal why we say that there's not an issue.

23 | But I stand by my submissions on the substance. If you leave that point to one side,
24 | I think you've heard what we say about why this application should be dismissed. If
25 | you're with me on that, but you're troubled by the point that you raised with me for the
26 | first time this afternoon, then I would ask, as a matter of fairness, for a short period, to

1 put a statement in. (Pause)

2 (4.26 pm)

3 **Ruling**

4 THE CHAIR: I have to rule on the next application, called the custodian application. It
5 is a request by Temu for the documents of the chief executive officer, Mr Xu, to be
6 searched.

7 The first question is why Mr Xu's documents have not already been searched. In
8 November 2025, I ordered that custodians for disclosure should include anyone from
9 Shein's senior management team, including the co-founder and CEO who had
10 authority to make enforcement decisions and who have documents relevant to the
11 Relevant Suppliers. I was directed to an explanation as to why it was said that Mr Xu
12 did not fall within that Order. The reason given was that he does not exercise
13 "responsibility" for taking enforcement decisions and is not aware of "specific
14 enforcement actions". This would appear to involve two glosses on the terms of the
15 Order. The first is the reference to exercising responsibility rather than authority. The
16 second is knowledge of specific enforcement actions rather than documents relevant
17 to the Relevant Suppliers. Today, Mr Singla, on instructions, has explained that a view
18 was taken that "authority" must mean those with responsibility and involvement in the
19 actions. Otherwise, any executive officer having potential authority could be
20 a custodian. He did not address me about why the relevance test was glossed to
21 involvement in specific enforcement actions. However, as he fairly pointed out, this is
22 a point raised by me today and he and his clients have not had time to consider it
23 properly. He asked for permission to give a further witness statement to explain the
24 position. I accede to that request. It can be done in the same time frame as the further
25 submissions in respect of the other orders.

26 Turning to the present application on the footing that Mr Xu's documents were not

covered by the existing Order, the issue arises because the interview transcripts that have been disclosed indicate, at least on their face, that the interviews were done at the behest of Mr Xu or that he was involved in why they were being done. Mr Piccinin says that Temu's case will be that they are part of a program orchestrated by Mr Xu. Mr Piccinin points out that the disclosure has around 90 references to Mr Xu. They are in terms such as "the boss instructed us to investigate this matter", "the boss can make a decision", "commissioned by the boss" and the like. The boss often is also sometimes referred to by name. Shein points out that that these references may not actually mean that Mr Xu was involved. At this stage, I cannot say whether that is right or wrong. All I can say is the documentary disclosure has a very large number of references to Mr Xu, and yet his documents have not been searched. Temu has satisfied me that Mr Xu is a person whose documents should be searched. I do not consider that a search would be disproportionate and this potential objection was not pressed today orally by Mr Singla. The main point against making an order, a point made with some force by Mr Singla today, is that Mr Xu was on a list of custodians at the CMC in April and the request was not pursued, even though Temu had the disclosure on which they now rely. Mr Singla makes the powerful point that there is no material change of circumstances. Indeed, he says that Temu has simply come back because they got nothing last time. He complains of a drip-drip approach to disclosure, which he says is bordering on abuse. I do not accept the latter point, but I do accept it is a powerful point that this request was not advanced last time. Having looked at the transcripts of that hearing, Mr Holmes KC, who was then acting for Temu, made clear that a decision was made to focus on two individuals because they appeared to Temu as the people most centrally involved in the interviews. I have also been shown the direction from the President, where she made clear that it was not disproportionate for the two individuals then in the frame, Mr Zhu and Mr Liu, to be

1 | searched, but, and I quote:

2 | "If Mr Holmes seeks something beyond those, then that is a matter for another day."

3 | Accordingly, I do not accept that it would be abusive or wrong for this to be
4 | re-considered. I also accept the points made by Mr Piccinin that Temu started with the
5 | people closest to the interviews -- that accords with what was said at the last
6 | hearing -- as they would be most likely to have documents, but now they need to widen
7 | the net. That is a proportionate way of approaching matters. Overall, in the
8 | circumstances, it is right to search Mr Xu's documents and I direct that this should be
9 | done.

10 | Turning to the order itself, other than timing the only issue is the five search strings
11 | that have been added. It was explained to me that the reason for their addition is that
12 | the last search strings proved to be inadequate, and better search strings might
13 | elucidate better results. It is reasonable, if search strings have not worked, to learn
14 | as one proceeds. However, I am concerned, as with everything in this CMC, that there
15 | has been no discussion between the parties on the search strings other than
16 | Mr Piccinin agreeing not to pursue search string E. Shein's evidence complains that
17 | they are overly broad, but that evidence appears to overlook the "within a 20-word"
18 | limit which narrows them. Further, nothing is suggested in their place. So the evidence
19 | opposing the terms does not fully grapple with them and makes no counter proposal.
20 | Accordingly, and with a relatively heavy heart, I will permit discussion between the
21 | parties on the search strings to try to agree them, or I will rule on them in the same
22 | period set out for the earlier judgments.

23 |
24 | The end result of this CMC is that there is going to have to be further rulings on the
25 | papers next week. In the future, I would encourage discussion between the parties
26 | prior to the hearing on counter proposals if an Order is made, rather than focussing

1 only on the point of principle on whether any order ought to be made at all.

2
3 (4.39 pm)

4
5 Redesignation

6 THE CHAIR: I think then that then takes us to the re-designation application.

7 Submissions by MR SINGLA

8 MR SINGLA: Sir, could I make can I make a pragmatic proposal in relation to this,
9 which is I see the time. But during the lunch adjournment we were sent an amended
10 version of the order. So whereas previously they were seeking re-designation in
11 respect of 151 documents, they've added 76 documents at lunchtime.

12 As you'll understand, those instructing me have just not had a chance to look at 76
13 documents since 1.30 this afternoon. So I would respectfully suggest that we be given
14 time to look at those documents, and we can then identify whether any issue arises in
15 respect of them, or whether they stand or fall with the 151 that are within the
16 application. But subject to that point, we would be content for you to rule on this on
17 the papers, given that we've now overrun quite considerably. It was supposed to be
18 a half day, and I'm very conscious, sir, that we're taking your time. So that would be
19 my pragmatic suggestion as to how to cut through this.

20 THE CHAIR: That is very welcome.

21 I don't know, Mr Grubeck or Mr Piccinin, what your reaction is to that?

22 Submissions by MR GRUBECK

23 MR GRUBECK: Sir, just to quickly explain the revised order. It was noticed this
24 morning that there was an error in the list of documents in the annex, which was
25 corrected. Basically, what happened is it missed out one batch of disclosure, which is
26 what was added in. It's the same type of information; it's information identifying

1 | suppliers. There's nothing materially different, so it does stand and fall with the rest of
2 | the application. That said, conscious of the time, sorry.

3 | THE CHAIR: No. Go ahead.

4 | MR GRUBECK: I'm conscious of the time. So if it is the Tribunal's preference, the
5 | Tribunal is content to rule on this on the papers, so are we.

6 | THE CHAIR: I am, although I have two questions for you, Mr Grubeck, which I think
7 | would be better to be done orally rather than try to do so on the papers. It's difficult to
8 | ask questions on the papers.

9 | The first is, at the previous April CMC, I ordered re-designation of 450 suppliers. I think
10 | the ones who'd been asked to sign attestations. You remember that?

11 | MR GRUBECK: Yes.

12 | THE CHAIR: And there was discussion. The reason was to enable Temu to
13 | interrogate its systems, which could not be sensibly done by the inner ring.

14 | I noticed in Mr Democratis's evidence, he said there's no evidence of anything being
15 | done with that information by Temu. You haven't put evidence to the contrary. He
16 | also said that Shein had randomly checked 39 of those suppliers and found 18, so
17 | almost half of them, had been contacted by Temu around the time of the disclosure.
18 | Although he doesn't go as far as to say anything more than that was what they found,
19 | I noticed I've had nothing back from you. In deciding whether to de-designate further
20 | confidential information, I am troubled by a situation where last time it's not clear that
21 | anything was done in terms of what was said was going to be done. Then there's
22 | a suggestion that, whether it's coincidence or otherwise, some discussions with those
23 | suppliers. I'm just troubled I've had nothing from you on that, in terms of evidence or
24 | response. I just wondered what is your response?

25 | MR GRUBECK: Certainly, sir. I'm grateful that you're giving me the opportunity to
26 | address this. It's paragraph 46 of Mr Democratis's witness statement that I think

1 | you're referring to. It's page 1151 of bundle B., just so we have it in front of us.

2 | THE CHAIR: Yes.

3 | MR GRUBECK: So, to deal with (a) and (b), which is this point that something that
4 | supposedly should have been done that hasn't been done. There has been an
5 | exchange of correspondence on this. The relevant letter raising this is one from
6 | Freshfields, on page 359 of the supplemental bundle, you'll see here that they -- we
7 | need not go through it in detail -- but it's basically, "Oh, you should have done the
8 | following expert analysis; that's what we would have expected, and in the
9 | circumstances, clearly this shouldn't have been redesignated".

10 | Over page, starting 362, you see the response from Temu's solicitors. What they said
11 | is it is a "mischaracterisation". What our experts are saying is simply that one
12 | particular analysis that you're suggesting is impossible; the specific before and after
13 | analysis. That doesn't mean it's not useful. There's quite a lot of ways in which this is
14 | useful. Those are set out in paragraph 5 of this letter. The reason you don't have
15 | evidence on this before you yet is quite simply because this will be part of the economic
16 | evidence, and that doesn't arrive until 30 September, which is the deadline. So short
17 | answer is that point goes nowhere.

18 | THE CHAIR: Just so that I understand, you're telling me, through an instruction, that
19 | indeed there has been interrogation of the Temu platform and that the documents
20 | have been used in a way that was suggested at the last CMC?

21 | MR GRUBECK: My understanding is, yes, that they are being interrogated and that
22 | the experts are looking at this, but I'm happy to double check.

23 | THE CHAIR: You can understand why I'm interested. Because it's the same claim.
24 | It's important to have it.

25 | MR GRUBECK: Of course.

26 | THE CHAIR: And what about the other point raised by Mr Singla?

1 | MR GRUBECK: The other point is indeed one I need to address. So just to confirm,
2 | I have been given instructions. What I've just told you is correct.

3 | THE CHAIR: Thank you.

4 | MR GRUBECK: So that is the position. We are interrogating the documents and the
5 | experts will factor it into their analysis in the reports coming on the 30th.

6 | Now the second point, the one raised by Mr Democratis in paragraph 46(c) of his
7 | statement is actually something that is extremely problematic for him to adduce, we
8 | say. Because it's a really serious allegation against professionals who have signed
9 | undertakings to the parties and the tribunals, who are bound by strict obligations, and
10 | it should not be made lightly.

11 | We have responded to this in our skeleton argument. The paragraph -- just one
12 | second, I just need to find that in our skeleton argument.

13 | THE CHAIR: Yes.

14 | MR GRUBECK: Yes, paragraph 59 of our skeleton argument, where:

15 | "It is confirmed in respect of paragraph 46(c), there has been no breach of the
16 | confidentiality order by Whaleco, and the outer confidentiality ring information has
17 | been handled solely by the designated ring members." [as read]

18 | That confirmation was included in the skeleton argument, and I repeat it here, is also
19 | on instructions. So that is quite simply wrong and it is inappropriate to give this sort of
20 | speculation.

21 | If you look at the numbers involved, there's actually a very small percentage of the
22 | 450. They're talking about 19 suppliers being contacted. Ultimately, our case, as
23 | you're aware, is we're fishing from a small pool. It is unsurprising there'll be a certain
24 | amount of overlap in circumstances where we are in a continuous battle to try and
25 | attract this limited pool of suppliers with the right skills.

26 | THE CHAIR: Yes. I think, Mr Grubeck, the reason for my question, and I knew you'd

1 | said that in the skeleton, it was more that it hadn't come, I hadn't seen it in evidence.
2 | Or, for instance, the point you just made about fishing in a small pool. Or some
3 | response. I was expecting something evidentially from you. But there we have it. You
4 | have given me that on instruction as to your answer to that point.

5 | I don't think that Mr Democratis was saying anything other than: this is what they
6 | found. Indeed, he goes, I think, out of his way to say he's not throwing allegations
7 | around. But obviously the fact that it's been put in there means I read it; I need to ask
8 | about it. Because it's important to ensure that court orders are complied with, and
9 | tribunal orders.

10 | MR GRUBECK: Of course. And you have our response on that.

11 | THE CHAIR: Is there anything you want to add to that, Mr Singla, or is the rest of this
12 | application then to be, unfortunately for me, on the papers?

13 | MR SINGLA: Well, I am sorry to ask you to deal with that on the paper, sir. But I just
14 | consider that that might be, given the number of people attending right now, I'm just
15 | conscious of the court's resources as well. So if you are able to deal with this on
16 | paper, we'd be happy for you to do that, subject, as I say, to having an opportunity to
17 | check the 76 additional documents that have been added.

18 | THE CHAIR: Yes. You can check that. I don't quite know what that means for me,
19 | though. Does that mean you're going to give me more submissions on the 76
20 | documents or what does that mean?

21 | MR SINGLA: Well, no, I mean --

22 | THE CHAIR: Because then Mr Grubeck will want to give ...

23 | MR SINGLA: No, no. Well, Mr Grubeck has said clearly that their position is it all
24 | stands or fall and falls with the other materials. That may be right, but we obviously
25 | need to have an opportunity to check that.

26 | THE CHAIR: All right.

1 | MR SINGLA: So I would suggest, in accordance with the other submissions we're
2 | going to be providing you, that we perhaps let you know if there is any separate issue
3 | that arises as regards the 76 documents, or whether we're content for it all to stand or
4 | fall as one. So we can do that in the same time frame as you've directed for everything
5 | else.

6 | In relation to that, at the risk of seeking a further indulgence, you've mentioned
7 | five days. I don't know whether that was deliberate, or whether I could ask you for five
8 | working days, which would take us essentially to next Friday. Those instructing me
9 | are just conscious there's actually a fair amount to do if we're going to have a sufficient
10 | amount of time to engage with the other side, as you want us to. If we could put
11 | submissions in at the end of next week? I'm very conscious of what that may do to
12 | you and your availability, though, sir. So I ask genuinely whether that's possible.

13 | THE CHAIR: For me, it would be preferable Thursday evening, not Friday evening.
14 | Can your side work with that?

15 | MR SINGLA: Yes, of course. We can do that.

16 | THE CHAIR: Because that would give me Friday. I'm very keen to resolve this without
17 | delay, and for us all to move on. Therefore I would have Friday then to resolve it and
18 | to give a final (inaudible) on it.

19 | MR SINGLA: I'm grateful.

20 | THE CHAIR: Then the final point before we stop is no one has said anything about
21 | costs. Has this been dealt with at a CMC, and I haven't got to worry about costs? Or
22 | is anyone making costs?

23 | MR PICCININ: The parties have agreed that costs will be dealt with afterwards in
24 | writing. That's what we did for the last CMC as well.

25 | THE CHAIR: I'm sorry, maybe I missed that.

26 | MR PICCININ: It's possible we didn't write to the Tribunal; I'm not sure. I don't know

1 the reference. But that's what the parties agreed.

2 THE CHAIR: Excellent. Everyone will also ensure that when you give your
3 submissions next Thursday, you also include matters such as the confidentiality ring
4 that you say this needs to go into, because it is important that I get that right. Thank
5 you.

6 Is there anything else, or are we done for today?

7 MR PICCININ: From our side, we're done. I'm very grateful to you and the court staff,
8 sir, for sitting late.

9 THE CHAIR: Thank you to all of you and to the excellent submissions, and have
10 a very good weekend.

11 (4.51 pm)

12 (The court adjourned)

1	
2	
3	

Key to punctuation used in transcript

--	Double dashes are used at the end of a line to indicate that the person's speech was cut off by someone else speaking
...	Ellipsis is used at the end of a line to indicate that the person tailed off their speech and did not finish the sentence.
- xx xx xx -	A pair of single dashes is used to separate strong interruptions from the rest of the sentence e.g. An honest politician - if such a creature exists - would never agree to such a plan. These are unlike commas, which only separate off a weak interruption.
-	Single dashes are used when the strong interruption comes at the end of the sentence, e.g. There was no other way - or was there?