



**IN THE COMPETITION
APPEAL TRIBUNAL**

Case No: 1601/7/7/23

BETWEEN:

DR SEAN ENNIS

- v -

Class Representative

- (1) APPLE INC.
(2) APPLE DISTRIBUTION INTERNATIONAL LIMITED
(3) APPLE CANADA INC.
(4) APPLE PTY LIMITED
(5) APPLE SERVICES LATAM LLC
(6) ITUNES K.K.
(7) APPLE (UK) LIMITED
(8) APPLE EUROPE LIMITED

Defendants

REASONED ORDER

UPON the Reasoned Order of the Tribunal made and drawn on 15 June 2026 (the “**June CMC Order**”)

AND UPON the procedure for the conduct of searches provided for at paragraph 1 of the June CMC Order

AND UPON the case management conference held on 17 September 2026

AND UPON hearing counsel for the Class Representative and the Defendants

IT IS ORDERED THAT:

Disclosure

1. The Class Representative shall, if so advised, by **4pm** on **25 September 2026**, file and serve an application for directions in relation to any disclosure matters that remain outstanding following the case management conference on 6 May 2026.
2. The Defendants shall, by **4pm** on the day **one week** after any application is served pursuant to paragraph 1 above, file and serve any response to such application.
3. The Class Representative shall, by **4pm** on **25 September 2026**, provide to the Defendants a proposed list of issues for disclosure.
4. The Defendants shall, by **4pm** on the day **one week** after the proposed list of issues for disclosure is provided, provide to the Class Representative a markup of the proposed list of issues.
5. The Class Representative shall, by **4pm** on the day **one week** after receipt of the Defendants' revised draft list of issues for disclosure, confirm to the Defendants whether the revised list is agreed and/or identify which (if any) issues remain disputed.
6. Failing agreement, the parties shall, by **4pm** the day **one week** after receipt of the Class Representative's confirmation of any areas of remaining disagreement, refer any such areas to the Tribunal for determination. Each party may file submissions, not exceeding ten pages, in support of their position on the proposed list of issues for disclosure.
7. Within **8 weeks** of either (i) the parties' agreement on the list of issues for disclosure or (ii) the Tribunal's determination of the same (whichever is the earlier), and by **4pm** on that day, the Defendants shall produce to the Class Representative all documents (to the extent not already disclosed in these Proceedings) that:
 - a. are within the datasets described in paragraph 1 of the June CMC Order (save for that relating solely to investigation DMA 100203);

- b. are returned by searches applying the search terms applied for the purposes of giving disclosure in *Kent v Apple Inc* (1403/7/7/21); and
- c. are relevant to the issues in the list of issues for disclosure (as agreed or determined).

Costs Transparency

- 8. The Class Representative and the Defendants shall each file and serve an analysis setting out their incurred costs as at **3 January 2027**, and thereafter at four-monthly intervals.

Reserved Matters

- 9. Judgment is reserved on all other matters raised at the case management conference on 17 September 2026.

Costs

- 10. Costs in the case.

Liberty to apply

- 11. The parties have liberty to apply to vary any of these directions on cause shown.

REASONS:

Disclosure

- 1. In advance of the Case Management Conference on 6 May 2026, the Class Representative raised a number of disclosure issues. The Tribunal was told that a number of these were the subject of agreement, or ongoing discussions, between the parties and that it was unnecessary for the Tribunal to make any order. The Tribunal addressed the remaining disclosure issues raised at that CMC in paragraphs 1 to 3 of its order of 15 June 2026. These comprised: (i) the

approval in paragraph 1 of a process which was intended to lead to the agreement, or approval by the Tribunal, of search terms to be applied to certain specified datasets and disclosure of the documents identified by the application of those search terms; (ii) an order in paragraph 2 requiring the Defendants to respond within one month to certain requests for information which the Class Representative had made; and (iii) an order in paragraph 3 requiring the Defendants to disclose within two months or such longer period as the Tribunal might allow, documents falling within two specific categories. Those periods for compliance with paragraphs 2 and 3 were both extended, in the case of paragraph 3 first to 4 September 2026 and then to 14 September 2026.

2. At the Case Management Conference on 17 September 2026, the Tribunal was advised as follows. First, the orders in paragraphs 2 and 3 had been complied with. Secondly, certain of the issues which the Tribunal had in May 2026 been advised required no order remained unresolved between the parties. Thirdly, the Defendants had, by the end of June, intimated to the Class Representative that they considered that they should be entitled to apply a relevancy and privilege review to any documents identified as a result of the procedure set out in paragraph 1. The Class Representative took issue with this, and stood on the terms of the order, which required disclosure of any documents in the specified datasets which were identified by running agreed or approved search terms.
3. By the date of the Case Management Conference, the question of a privilege review had fallen away, but the issue in relation to a relevance review remained. On questioning from the Tribunal, it transpired that there had been no agreement on search terms. The Defendants' position was that this could not be reached until there was clarity as to whether they were entitled to apply a relevancy filter to the output of the searches ordered by the Tribunal.
4. It is evident that less progress has been made with disclosure than the Tribunal reasonably expected at the May CMC. It took the Defendant materially longer than expected to comply with paragraph 3. Issues in relation to which the Tribunal made no order because it had been told that this was unnecessary remained unresolved. The procedure in paragraph 1, on its face, requires disclosure of documents in the specified datasets without any relevancy filter. That procedure, which is applied only to specified datasets, was prescribed on the footing that a search using agreed or approved search terms of those specific datasets would be a proportionate mechanism for achieving appropriate disclosure without the need to apply a

separate relevancy filter. Although the dispute about that issue, which had apparently prevented progress, had been identified early in the summer, it was not brought before the Tribunal at the time.

5. Against that background, the Tribunal was concerned to make progress on the outstanding issues. It accordingly requires the Class Representative to bring forward an application for any orders required to resolve outstanding disclosure issues within a short period, with a short period for a reply, and determination thereafter. As regards the procedure set out in paragraph 1 of the 15 June order, the Class Representative intimated that he did not wish to pursue disclosure from one of the specified datasets, DMA 100203. The Defendants, for their part, advised that they should be able to carry out a relevancy review of the documents which had been identified in the remaining databases by the application of the search terms which had been applied in *Kent v. Apple* within six weeks of there being a fixed list of issues against which to test relevancy. The Tribunal took the view that the most expeditious way to make some progress with disclosure would be to require an exchange between the parties with a view to agreeing such issues, failing which the Tribunal would adjudicate on the issues, with an order for disclosure of relevant documents from those in the remaining datasets identified by running those search terms eight weeks thereafter. This seemed likely to achieve swifter progress than to leave matters on the footing in paragraph 1 of the 15 June order. That is without prejudice to any agreement which the parties may reach on search terms for the purposes of that paragraph, or any future adjudication by the Tribunal on such search terms once they have been exchanged between the parties. The Class Representative may also, if such disclosure invites further legitimate investigations, come forward with a further application thereafter.

Costs Transparency

6. The parties had both filed high level statements of their costs incurred. Neither party sought an order for costs budgeting. The Class Representative suggested that there should be disclosure of costs incurred quarterly. The Defendants proposed that there should be a further disclosure of costs incurred after the filing of factual statements. They also emphasised that any such disclosure would involve their best endeavours, but could not, without undue work, be warranted. Mr Carrall-Green, for the Class Representative, recognised that any high-level disclosure of costs would be a best estimate.

7. The Tribunal accepted that a slightly longer costs reporting interval than that proposed by the Class Representative would be appropriate. Regular disclosure of the parties' best estimate of costs incurred will not only give the Tribunal visibility of the costs of these proceedings, but will allow the parties to assess and review their adverse costs exposure. We accordingly order a report to be made every four months of costs incurred. The question of costs budgeting will be kept under review.

James Wolffe KC
(Chair)

Tim Frazer

Anthony Neuberger

Made: 17 September 2026

Drawn: 22 September 2026