Neutral citation [2026] CAT 89

Case No: 1720/7/7/25

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

26 November 2026

Before:

THE HONOURABLE MR JUSTICE PICKEN
(Chair)
JOHN DAVIES
ROBERT HERGA

Sitting as a Tribunal in England and Wales

BETWEEN:

OR BROOK CLASS REPRESENTATIVE LIMITED

Class Representative

- v -

(1) ALPHABET INC

(2) GOOGLE LLC

(3) GOOGLE IRELAND LIMITED

(4) GOOGLE UK LIMITED

(5) GOOGLE ASIA PACIFIC PTE LIMITED

(6) GOOGLE COMMERCE LIMITED

Defendants

RULING (PLEADING AMENDMENT)

A. INTRODUCTION

1. This ruling is in respect of an application by the Class Representative (**Brook**) to amend its collective proceedings claim form following certification (by a differently constituted Tribunal) in a judgment dated 5 August 2026 ([2026] CAT 65) (the **CPO Judgment**). The application is contested by the Defendants (together, **Google**).

2. Brook sought to amend its claim form in advance of the hearing of its application for a collective proceedings order (**CPO**) – a hearing (the **Certification Hearing**) that took place on 8 July 2026 – by way of a draft amended claim form filed on 4 February 2026. The draft amendments, among other things, sought permission for Brook to claim for losses on behalf of class members on a continuing basis, i.e., beyond the issue of the claim form, and indeed beyond any trial in the proceedings.

3. The relevant draft amendments in respect of continuing loss now sought to be made by Brook, and at issue in the present application, are to §§11 and 50 of the claim form such that, if permission were to be granted, those paragraphs would read as follows:

> "11. The CR brings these proceedings on an opt-out basis on behalf of all UK-domiciled advertisers that have, during the '*Relevant Period*' (defined below), paid for search advertising on Google search (either directly or *via* an advertising agency). The CR seeks damages on behalf of those class members, including after the end of the '*Relevant Period*' in respect of ongoing loss, until the earlier of: (i) the cessation of the relevant infringement's harmful effects; and (ii) the date fixed for the assessment of damages. The CR estimates that there are approximately 250,000 such advertisers. Any recovery will be confined to claims and losses that are not barred by the limitation or prescription regime applicable to the relevant class member.
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> …
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> 50. In the present case, the class is identifiable because it is possible objectively to determine whether a person is a CM by reference to the Class Definition: a person is a CM if, and only if, that person paid for advertising (either directly or *via* a media agency) on Google search within the Relevant Period (albeit that the CR seeks damages in relation to losses suffered after the end of the '*Relevant Period*', down to the earlier of: (i) the cessation of the relevant infringement's harmful effects; and (ii) the date fixed for the assessment of damages)." (footnotes omitted)

B. BACKGROUND

4. The draft amendments sought at the time of the Certification Hearing, although slightly different to those described above, raised similar issues in respect of whether Brook could claim for loss on a continuing basis, particularly as to whether it could claim for losses continuing after any trial in the proceedings concluded. However, it appears that the main focus of the Certification Hearing was not as to that but, rather, as to whether Brook could claim for losses suffered on an open-ended basis, i.e., with no end date.

5. Google contested the draft amendments and argument on the issues was heard by the Tribunal. The CPO Judgment dealt with these as follows (at §§107–110):

> "107. Google objected to proposed amendments by the PCR to claim for PCMs' losses with an open-ended end date. We heard argument from both sides about the theoretical basis on which losses continuing past any eventual trial or judgment might be claimed, including about the position under the Civil Procedure Rules and the Rules of the Supreme Court before that, and whether those carry across to the Tribunal.
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> 108. Interesting as the discussion was, we do not need to decide the point. The PCR accepts that it will be appropriate to limit, and it will limit, the relief sought so as to claim loss only in the period from the issue of the Claim Form through to a suitable, defined moment pre-trial. So loss continuing past a trial and judgment will not be claimed. The PCR says the suitable moment may be the last CMC or the pre-trial review. The PCR points out that this approach was adopted in *Kent v Apple* [2026] CAT 1 at §6.
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> 109. On this basis, as matters stand, only proposed class members who fit the class definition and had a crystallised loss at the date of the final amended version of the Claim Form will be included upon certification. The losses for which they can claim will have an end date as indicated above. We envisage, and the PCR agreed, that this will be achieved by an amendment of the Claim Form at the appropriate point indicated above (or possibly by the issue of an additional Claim Form, although we think that would be less desirable).
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> 110. The choice of an appropriate point will be a case management decision. The PCR will no doubt want to make it as late as possible to cover as much loss as possible but that will not be the only constraint because it will need to account for the need for the final contentions on quantum to be appropriately recalculated and addressed by the experts. In any event, though, this is and will be a matter of case management decisions and on the basis indicated above. Google's principled objection to continuing losses post-trial being claimed no longer arises, as it effectively accepted at the hearing. We should mention that after the hearing before us and while this decision was in preparation, another panel of the Tribunal gave a decision in *Kent v Apple* [2026] CAT 57 concerning the permissible period for claiming losses, and Google very fairly drew our attention and the attention of the PCR to it, by letters of 27 July 2026. Google says that the decision is to the effect that losses may be claimed up to

> the date of judgment, but not beyond. We have not had submissions from the PCR in response and consider we do not need to, because Google's letter to the PCR about the decision noted and endorsed the approach arrived at during the hearing before us, that the PCR will need to propose an appropriate end date for losses, and Google will comment. So in terms of our decision, nothing relevant has changed."

6. Later, in respect of the continuing loss issue (and other issues which are immaterial to the application), the Tribunal stated at §114:

> "Our decisions on these issues are indicated above. We consider the position on each of them to be clear, but it depends in each case to some extent on what the PCR argued at the hearing. We think it is desirable that it be formalised, and require the PCR to put its position in writing in a clear and concise way. A letter will be adequate, and it must be provided within 14 days of this decision. This is to be used only for the PCR to record its positions as taken at the hearing. New points are not to be raised. Google may comment if it wishes, but strictly on whether what the PCR says properly embodies what was said at the hearing."

7. As is clear from these extracts, Google drew the Tribunal's attention to the publication of *Kent v Apple* [2026] CAT 57 (***Kent 2***) in the period between the Certification Hearing and production of the CPO Judgment. The continuing loss issue was addressed both in *Kent 2* and, to some extent, in an earlier judgment in the same case, *Kent v Apple* [2026] CAT 1 (***Kent 1***). The upshot of these decisions is that there is a distinction between claiming for losses continuing beyond the point of trial on behalf of a defined class, and "closing the class". *Kent 2* addressed the former in more detail, and the Tribunal concluded that "there is no legal impediment to a claim which pleads loss and damage beyond the date of issue of the claim form and up until the date of judgment" (§13). In *Kent 2*, the application to claim for losses suffered by class members up to the point of judgment was filed following judgment in the class representative's favour, and so the question of whether to grant the amendment sought (which was refused) was tied up with questions around reopening the judgment and the finality principle.

8. On 19 August 2026, Brook filed its **Formalisation Letter** setting out its position on the continuing loss issue (as well as those other matters). The Formalisation Letter enclosed an updated version of its draft amended claim form, setting out what it characterised as amendments required by certification

and the CPO Judgment. Brook indicated it would seek to agree those amendments with Google.

9. In respect of the continuing loss issue, the Formalisation Letter stated:

> "21. The CR distinguishes between:
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> (a) persons who had suffered relevant loss and therefore possessed an accrued cause of action when the Claim Form was issued; and
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> (b) persons who had not suffered any relevant loss by that date but may do so subsequently.
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> 22. The presently certified class is confined to the former category. A person must have had an accrued claim by the relevant date in order to be a member of the class as presently defined.
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> 23. A class member who had already suffered relevant loss by that date may, however, recover further loss caused by the same pleaded infringement after the issue of the Claim Form. That is not a claim by a person whose cause of action did not exist when proceedings were commenced. It is the continuing quantification of an existing claim arising from conduct alleged to be ongoing.
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> 24. Accordingly, for existing class members, the CR claims loss suffered:
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> (a) before the issue of the Claim Form; and
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> (b) thereafter, until the earlier of:
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> (i) the cessation of the relevant infringement or its harmful effects; and
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> (ii) the date fixed for the assessment of aggregate damages.
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> 25. For the avoidance of doubt, the references to continuing or ongoing losses in paragraphs 11, 50, 210, 214, 218, 222 and 227 of the Amended Claim Form are to be understood in that sense. They do not purport automatically to add to the class persons who had no accrued claim at the date of issue, or to seek losses beyond the date fixed for the assessment of aggregate damages. This is explained in the CR's skeleton argument at [58]–[59].
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> 26. If the pleaded infringement and resulting loss continue, the CR anticipates applying at an appropriate stage—likely at a pre-trial review or other case-management hearing before trial— to amend the Relevant Period for the question of class membership so as to include additional claims and persons who first suffered relevant loss after the issue of the Claim Form until that date.
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> 27. This letter is accompanied by draft amendments to paragraphs 11 and 50 of the Claim Form which reflect the CR's position as set out above."

10. As noted in §114 of the CPO Judgment, Google was given the opportunity to comment "strictly" on whether what was in the Formalisation Letter properly

embodied what was said at the Certification Hearing. Views between the parties diverged as to what any response by Google was intended to cover, and indeed, whether that "strict" limitation on Google extended to its comments on the draft amendments. In any event, Google filed its response to the Formalisation Letter by way of a letter dated 4 September 2026, confirming that it would be making no submissions on the Formalisation Letter and indicating that the parties would seek to agree the draft amendments in *inter partes* correspondence.

11. Brook filed an agreed draft collective proceedings order on 16 September 2026 (which was finalised in an Order dated 29 September 2026) and informed the Tribunal that the parties had reached agreement on the majority of the new draft amendments, but that they remained disagreed on the continuing loss issue. The parties then filed submissions on that issue and requested that the Tribunal determine it on the papers.

C. SUBMISSIONS

12. In summary, Google considers that Brook should be held to the concession recorded at §108 of the CPO Judgment (see §5 above), such that it should be permitted to "claim loss only in the period from the issue of the Claim Form through to a suitable, defined moment pre-trial" (emphasis added). Google considered that that sentence, read together with §§107–110, clearly entailed Brook making a concession that it will not claim for losses suffered at any time after any trial has commenced. Moreover, Google suggests, if Brook considered that the concession was incorrectly recorded, it should have raised this when it received the draft CPO Judgment in the standard embargo process prior to publication where it was given the opportunity to correct mistakes.

13. Brook's overarching position is that the alleged concession recorded was never made and what was recorded at §108 was a reference to a different concession, namely that Brook would not claim for open-ended loss but loss up to the date at which the aggregate damages are awarded. Insofar as the CPO Judgment records otherwise, Brook invites the Tribunal to correct it under the "slip rule" (r. 114(3) of the Competition Appeal Tribunal Rules 2015 (the **Rules**)), by omitting the word "pre-trial".

14. Brook notes that at the Certification Hearing Mr Beal KC made the following statement (see pages 128–129 of the transcript) and that this is the relevant (and only) concession which should have been recorded in the CPO Judgment:

> "And so what we've done in our claim is to say we will be asking this Tribunal to make an assessment of an aggregate award of damages that will cover not simply the damages that reflect the loss suffered to date, but also loss suffered through, effectively, to the period of assessment. Now, true, it is the pleader when making these amendments -- and I'm sure that probably includes me -- could have said through to the date at which the aggregate damages are awarded. And if that meets my learned friend's concern, so be it, that's what we'll do."

15. Brook adds that in §24 of its Formalisation Letter, it recorded clearly its understanding of the CPO Judgment to mean that it could claim up to the point of the assessment of damages.

16. In these circumstances and for these reasons, Brook's position is that whatever issues may arise at trial as to quantification of any loss post-trial, it should at least be allowed to claim for those losses, and if the evidence is not made out, so be it.

17. Google argues that this is not the appropriate case for the use of the slip rule and, furthermore, contends that the draft amendments are inconsistent with the Tribunal's governing principles under r. 4(2) of the Rules, such that for proceedings to be dealt with fairly, there needs to be a determined date of assessment for disclosure purposes. Google adds that allowing the amendments would increase expense since expert evidence and submissions post-trial may be required.

18. It should be noted also that Brook observes that Google did not point in its submissions to any concession which reflects that set out in §108 of the CPO Judgment. Brook argues, therefore, that, if not under the slip rule, then the issue should be clarified by way of a ruling determining that that concession was incorrectly recorded. Moreover, Brook contends that, if Google disagreed with the position as set out in the Formalisation Letter, it was permitted to respond as to its own understanding, but it chose not to do so.

19. All in all, Brook's position is that it should be allowed to at least pursue all damages which it is entitled to plead (Brook's emphasis). Brook filed further letters in support of its position, relying on the Supreme Court's judgment in *The Kingdom of Spain v The London Steam-Ship Owners' Mutual Insurance Association Limited (No 2)* [2026] UKSC 36 and *Kent 2*.

D. DISCUSSION

20. It is important first to put the discussion that took place at the Certification Hearing into context. First, it was a discussion which took place prior to the judgment in *Kent 2*. Secondly, it should be appreciated that the discussion between the parties and the Tribunal was concerned with Brook seeking to plead damages in respect of losses with no end date. It is clear that Mr Beal at the Certification Hearing certainly conceded that this would not be possible (see §14 above). However, from our review of the transcript, it is not clear that Mr Beal conceded at any point that the end point at which losses could be claimed had to be for those suffered pre-trial. Google, we note in this regard, has not been able to point to anywhere in the transcript or, indeed, in any other submissions filed in advance of or after the Certification Hearing, where Brook conceded that particular point.

21. As is clear from §24 of the Formalisation Letter, Brook's understanding was (and is) that damages may be claimed up to the point of assessment of damages. Although we do not agree with Brook that the words of §108 should be regarded as referring to Mr Beal's concession set out at §14 above, we nonetheless recognise that Brook apparently considered that to be the case – and so that the concession recorded was different to what it actually was.

22. Regardless, we are, in any event, clear that the concession recorded at §108 was inaccurate. Thus, whilst at §110 the Tribunal stated that "Google's principled objection to continuing losses post-trial being claimed no longer arises, as it effectively accepted at the hearing", the Tribunal went on at §114 to indicate a level of uncertainty with recording that concession. That is indeed why Brook felt it necessary to confirm its position by way of the Formalisation Letter in denying that such a concession was made. This meets the point made by Google

that Brook should have pointed out the inaccurate concession by way of the embargo process: the formalisation process was expressly set down for the purpose of confirming Brook's position at the Certification Hearing and so, although it might have been sensible to have raised the point when the judgment was still in draft (and under embargo), the fact that Brook did not do this needs to be viewed against the backdrop of the Formalisation Letter process allowing Brook an opportunity to correct the record. That said, it is unfortunate that neither the Formalisation Letter nor, indeed, Google's response to it stated explicitly that the CPO Judgment recorded a concession that was not, in fact, made.

23. Be all this as it may, we do not think it would be just and reasonable now to hold Brook to a concession that it is adamant it did not make and did not intend to make. Moreover, in the light of *Kent 2*, it would appear that there is no legal impediment to Brook claiming damages for loss suffered up to the point of judgment. The reasons given in *Kent 2* for refusing to allow the class representative to amend her claim form were in relation to finality of judgment and, we think, the fact that the trial had already concluded many months beforehand, with no consideration of evidence of loss and damage going beyond the trial. We are not in such a position now – with a trial still very far away.

E. DISPOSITION

24. Accordingly, we order as follows:

(1) The concession at §108 of the CPO Judgment was incorrectly recorded, but given the process set down by §114 of that judgment, there is no need to correct it by way of the slip rule.

(2) Brook has permission to amend its claim form in the terms set out at §3 above.

The Honourable Mr Justice Picken John Davies Robert Herga

Charles Dhanowa CBE, KC (*Hon*) Date: 26 November 2026
Registrar