



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1351/5/7/20

BETWEEN:

(1) CHURCHILL GOWNS LIMITED
(2) STUDENT GOWNS LIMITED

Claimants

- v -

(1) EDE & RAVENSCROFT LIMITED
(2) RADCLIFFE & TAYLOR LIMITED
(3) WM. NORTHAM & COMPANY LIMITED
(4) IRISH LEGAL AND ACADEMIC LIMITED

Defendants

ORDER

UPON the Claimants filing a Re-Amended Claim Form on 25 March 2021 and an Amended Reply on 4 June 2021

AND UPON the Claimants filing witness evidence in support of their claim by Stefan Muff, Ruth Nicholls and Oliver Adkins on 20 August 2021

AND UPON the Defendants' application dated 30 September 2021 in respect of certain allegations contained in the Claimants' witness evidence ("the New Allegations Application")

AND UPON reading the correspondence between the parties dated 12 and 18 October 2021 narrowing the "New Allegations" in dispute

AND UPON adopting the following definitions used in this Order:

- (1) "**Allegation (b)**" refers to the allegation that the Defendants are refusing to sell graduation ceremony tickets to people who have not hired their gown from the Defendants and that the Defendants are bundling ceremony tickets together with gown hire (contained within the second and third sentences of paragraph 21 of

the first witness statement of Ruth Nicholls and the second sentence of paragraph 35 of the first witness statement of Oliver Adkins);

- (2) “**Allegation (d)**” refers to the allegation that the Defendants do not have any promotional or marketing schemes for their academic dress attire because they can simply rely on their exclusivity agreements (contained within paragraph 59 of the first witness statement of Ruth Nicholls and paragraph 55 of the first witness statement of Oliver Adkins); and
- (3) “**Allegation (e)**” refers to the allegation that the Defendants seek to encourage secrecy about the university academic dress regulations so that other suppliers are unable to compete in the market (contained within the last sentence of paragraph 68 of the first witness statement of Ruth Nicholls)

(together, the “Disputed New Allegations”).

AND UPON considering on the papers the written submissions filed by the parties in respect of the Disputed New Allegations in accordance with paragraphs 6 to 8 of the Tribunal’s order made on 22 October 2021

IT IS ORDERED THAT:

1. Allegations (b) and (e) shall be struck out and cannot be advanced by the Claimants.
2. Allegation (d) shall be permitted to remain. The Defendants have permission to file and serve any evidence in response to Allegation (d) by **4pm on 15 December 2021**.
3. Costs of the New Allegations Application reserved to the First Trial listed for 24 January 2022.

REASONS

1. It is trite law that witness statements should contain evidence relevant to allegations that are contained within the existing pleadings and are not the place to introduce new allegations. There is no application by the Claimants to amend their pleadings, so the only question is whether each of the disputed passages in the witness statements is evidence relating to an allegation that is made in the pleadings.
2. As to **Allegation (b)**, the only pleaded allegation is that the Defendants provide a package of services to universities, including tickets and photography services.

There is no allegation, however, that students cannot take one of the services without the other. The Claimants are accordingly not permitted to make the allegation in the second and third sentences of paragraph 21 of Ms Nicholls' first statement (the first sentence is unobjectionable) and in the second sentence of paragraph 35 of Mr Adkins' first statement (the first sentence is unobjectionable). Those sentences should be struck out of the statements.

3. In respect of **Allegation (d)**, the fact that Ms Nicholls is not aware of any promotional or marketing schemes for the Defendants' graduation attire is evidence going to the issue of whether the Defendants did have such schemes (assuming that, had there been any, Ms Nicholls was likely to have known of them). The allegation that the Defendants do not have any promotional or marketing schemes is not, however, pleaded. The Claimants nevertheless contend that the lack, or otherwise, of marketing schemes is itself a matter of evidence which goes to the question of whether the Defendants have agreements with the universities that confer exclusivity on them.
4. While I see that the fact that the Defendants do not have promotional or marketing schemes could be pleaded as a matter from which it is to be inferred that there is exclusivity, a claimant is not required to plead every matter which supports the pleaded case of exclusivity. On balance I consider that this falls on the "evidence" side of the line. It is, for example, something that could legitimately be asked of the Defendants' witnesses in cross-examination to test their evidence that they did not have exclusivity agreements in place. Accordingly, I will not order this part of Ms Nicholls' witness statement to be struck out.
5. **Allegation (e)** is not a pleaded allegation. Paragraph 42 of the Re-Amended Claim Form provides examples of steps which it is alleged the Defendants have taken to preserve their exclusivity rights. Encouraging secrecy about academic dress regulations is not one of those steps. Paragraph 8.4 of the Amended Reply pleads reliance on any specification in agreements between universities and the Defendants which are unavailable to competitors. That is not an allegation that the Defendants encouraged secrecy about academic dress regulations.

6. The Claimants contend that Ms Nicholls' evidence (by reference to an email from Mr Middleton) is an example of a specification that is unavailable to competitors. Paragraph 18 of Ms Nicholls' witness statement is referred to. But paragraph 18 is not objected to. It is the allegation in the last sentence of paragraph 68 that is objected to. That, in my judgment, is a materially different allegation which is not pleaded and the last sentence of paragraph 68 should for that reason be struck out.

The Hon Mr Justice Zacaroli
Chairman of the Competition Appeal Tribunal

Made: 30 November 2021
Drawn: 1 December 2021