



COMPETITION APPEAL TRIBUNAL

NOTICE OF A CLAIM UNDER SECTION 47A OF THE COMPETITION ACT 1998

Case No: 1427/5/7/21

Pursuant to Rule 33(8) of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (the “Tribunal Rules”), the Registrar gives notice of the receipt of a claim for damages (the “Claim”) on 17 December 2021, under section 47A of the Competition Act 1998 (the “Act”), by Belle Lingerie Limited (the “Claimant”) against (1) Wacoal EMEA Ltd and (2) Wacoal Europe Ltd (the “Defendants”). The Claimant is represented by Sheppard Co, Central Court, 25 Southampton Buildings, London WC2A 1AL (Reference: Susannah Sheppard).

The Claim arises from an alleged infringement of the prohibition contained in section 2 of the Act (the “Chapter I prohibition”) and, until 31 December 2020, Article 101 of the Treaty on the functioning of the European Union (“TFEU”) in the UK retail market for the sale of luxury branded lingerie and swimwear. The Claimant has applied for fast-track designation of the proceedings pursuant to Rule 58 of the Tribunal Rules.

The Claimant is a company incorporated in England and Wales and operates an online business selling *inter alia* lingerie products. It uses the online selling platform eBay (eBay.co.uk) to list and sell its products in a number of countries worldwide. It also sells its products in the UK and the EU via its own website and through the online marketplace Amazon (www.amazon.co.uk). From July 2005 until 21 September 2021, the Claimant was a long-standing authorised online retailer of the Defendants’ lingerie, nightwear and swimwear products.

The First Defendant is incorporated in England and Wales and is a wholly-owned subsidiary of the Second Defendant, which is a holding company incorporated in England and Wales. The Second Defendant and another company, Wacoal America Inc, are wholly-owned subsidiaries of the ultimate parent company, Wacoal Holdings Corp., incorporated in Japan.

According to the Claim, the Wacoal Group is headquartered in Japan and is a leading global manufacturer and wholesale supplier of luxury branded lingerie and swimwear (“Wacoal Group Products”). The Defendants are in the business of selling lingerie on a wholesale basis to retailers in the UK as well as other countries including the US and Europe. The First Defendant is the operating entity which sells Wacoal Group Products in the EMEA including in the UK, and it retails its lingerie products direct to consumers in the UK through its own websites and on certain online platforms such as Amazon.com.

The Claimant contends that the Defendants form part of the same economic entity as Wacoal America Inc and Wacoal Holdings Corp and the Defendants have implemented, monitored and enforced the Wacoal Group’s policies, commercial strategy and anti-competitive practices in the UK. The various anti-competitive and discriminatory measures adopted and/or implemented by the Defendants included:

- (a) a retail price maintenance (“RPM”) policy;
- (b) a minimum retail price (“MRP”) policy;
- (c) an online platform ban, which required the Claimant to align its advertised and retail prices with the Defendants’ recommended retail prices (“RRPs”) on all eBay sites around the world or, failing that, to de-list the Defendants’ products from such eBay sites so that they were not visible in consumer searches in third countries;
- (d) a minimum advertised price (“MAP”) policy;
- (e) the monitoring, receipt and referral of complaints from competing retailers about discounted prices being offered by online retailers; and
- (f) the application of enforcement actions or sanctions such as whole or partial refusals to supply the ranges and/or volumes of the Defendants’ products ordered by the Claimant for resale in the UK.

According to the Claim, the discriminatory measures were imposed selectively and against the Claimant's will. The measures also implicated other retailers (including the Defendants' retail arm) as a horizontal price coordination arrangement, and the retailers' compliance with and/or acquiescence in and/or implementation of the same constituted a concerted practice(s) between undertakings for the purposes of the Chapter I prohibition.

The Claimant also contends that the First Defendant's repeated refusals to supply the Claimant in 2019 and 2021 constituted sanctions for the Claimant's refusal to adhere to its RPM requirements and retaliation for the Claimant's legitimate protests against the discriminatory and over-reaching application of the MRP policy, the online platform ban and the MAP policy. Those sanctions took effect as ancillary measures, reinforcing the anti-competitive effects of the concerted practices.

Further, the Claim states that the refusals to supply also constituted an element of the overall infringement in their own right as they were applied in a selective and discriminatory manner.

According to the Claim, the Defendants' infringement had the object and effect of preventing, restricting or distorting competition in the UK lingerie market. There was a common aim of maintaining or stabilising retail prices for the Wacoal Group Products at or above the Defendants' RRP which:

- (a) eliminated or limited intra-brand price competition amongst online UK distributors of Wacoal Group Products;
- (b) facilitated tacit or explicit horizontal collusion amongst independent retailers to adhere to minimum or fixed prices and minimise discounting and/or erosion of retailers' margins;
- (c) reduced price transparency over the internet so as to limit downward pressure on the retail prices of Wacoal Group Products by removing products from ebay.co.uk and/or reducing their visibility to buyers in the UK, EU, US and Canada so as to prevent the fulfilment of passive sales to customers outside the UK and damage the Claimant's online search and platform rankings; and
- (d) treated bricks-and-mortar stores preferentially over online retailers.

Further, the Claim states that the measures were applied and enforced against the Claimant on a selective and discriminatory basis, which distorted competition between UK lingerie retailers and placed the Claimant at a competitive disadvantage compared to its direct competitors, who were not subject to the same restrictions and sanctions. The overall infringement harmed consumers as its real rationale was to secure price alignment between competing retailers and prevent and/or penalise retailers such as the Claimant from offering discounts.

The Claimant alleges that the Defendants' infringing measures affected trade within the UK for the purposes of the Chapter I prohibition and/or between Member States of the European Union for the purposes of Article 101 TFEU by limiting and/or distorting competition between retailers in the UK and EU retail lingerie market.

As a result, the Claimant has suffered loss and damage.

The Claimant seeks:

- (1) A declaration that the Defendants' conduct was a breach of the Chapter I prohibition contrary to sections 2(2)(a), (b) and (d) of the Act and contrary to Article 101 TFEU.
- (2) An injunction, on a permanent basis at conclusion of the trial, requiring the Defendants to restore supplies of all stocks of Wacoal Group Products to the Claimant on a non-discriminatory basis.
- (3) Damages, together with interest.
- (4) Costs.
- (5) Such further or other relief as the Tribunal may think fit.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively, the Tribunal Registry can be contacted by post at Salisbury Square House, 8 Salisbury Square, London EC4Y 8AP, or by telephone (020 7979 7979) or email (registry@catribunal.org.uk). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, QC (Hon)
Registrar

Published 14 January 2022