



Neutral citation [2022] CAT 7

Case No: 1403/7/7/21

IN THE COMPETITION
APPEAL TRIBUNAL

BETWEEN:

DR. RACHAEL KENT

Proposed Class Representative

and

(1) APPLE INC.

(2) APPLE DISTRIBUTION INTERNATIONAL LTD

Proposed Defendants

and

MILBERG LONDON LLP

Applicant

ORDER
(NON-PARTY ACCESS TO DOCUMENTS)

UPON request from Milberg London LLP (“Milberg”) by letter dated 19 January 2022 made pursuant to paragraph 9.66 of the Competition Appeal Tribunal Guide to Proceedings 2015 (“the Guide”) for access to a non-confidential version of the Proposed Class Representative’s (“PCR”) Claim Form and accompanying documents (“the Request”)

AND UPON reading the submissions of the parties and Milberg in connection with the Request

AND UPON the order dated 4 February 2022 granting the PCR permission to re-amend her collective proceedings claim form

IT IS ORDERED THAT:

1. By 4pm on Monday 7 February 2022, the PCR shall provide Milberg with non-confidential versions of the following documents, excluding accompanying documents:
 - (a) the Re-amended Collective Proceedings Claim Form; and
 - (b) the first witness statement of Dr Rachael Kent dated 10 May 2021.

REASONS

1. Milberg is a firm of solicitors. Its Request was based on paragraphs 9.65 to 9.66 of the Guide, which provides that a pleading, skeleton argument, witness statement or expert report referred to or quoted in open court may be the subject of an application by a non-party to the Tribunal where the party who produced that document refuses to provide access to it. In accordance with paragraph 9.66, Milberg first approached the PCR directly to seek access. Milberg provided details of a number of requests to the PCR, commencing on 15 October 2021, which had not resulted in access being provided to the documents requested. The Request was submitted on 19 January 2022.
2. By letter to the Tribunal dated 19 January 2022, the PCR indicated a willingness to provide the Amended CPO Claim Form in due course, once further amended and not until four weeks before the CPO hearing listed for May 2022. However, the PCR questioned the basis of the request from Milberg, noting that Milberg had not identified itself as being or representing a “person of interest” pursuant to the Tribunal’s order of 21 December 2021. Paragraph 11 of that order provided that such persons with an interest may object to the CPO Application or the authorisation of the PCR by 4 February 2022.
3. By letter dated 26 January 2022, the Tribunal set out its provisional view on the Request, referring the parties to the Tribunal’s judgment in *Sainsbury’s Supermarkets Ltd v Mastercard Incorporated and others* [2016] CAT 16. On 31 January 2022, the parties and Milberg responded to that letter. In this correspondence:

- (a) Milberg renewed its Request for documents accompanying the Amended Claim Form, as well as the Claim form itself. This included the PCR's witness statement in support of the CPO application, which was referred to at the CMC on 14 December 2021, along with the Claim Form.
 - (b) The PCR submitted that collective proceedings may require a different approach than that taken in the *Sainsbury's* case and that the basis for the Request, and in particular whether Milberg is or represents a person of interest, is a relevant factor in the Tribunal's consideration.
 - (c) The Proposed Defendant expressed a neutral position.
4. The Tribunal concludes as follows. *First*, the Re-Amended Claim Form and the PCR's witness statement have been referred to in open court, at the CMC on 14 December. *Secondly*, and following the approach taken in *Sainsbury's*, the Tribunal has jurisdiction to make an order requiring the provision of a document to a non-party in the circumstances envisaged by paragraph 9.66 of the Guide and a discretion whether to do so. Where documents have been referred to in open court, that jurisdiction can be exercised to promote the principle of open justice. *Thirdly*, in that regard, the Tribunal does not need to be satisfied that the applicant has a special or particular interest in the proceeding. In the present case, there is no requirement for Milberg to demonstrate that it is, or is instructed by, a person with an interest or a third party with legitimate interest, either in general terms or within the meaning of those terms in paragraphs 11 and 12 of the Tribunal's order of 22 December 2021. *Fourthly*, in accordance with the principle of open justice, there can be no justification for any delay in access to documents once they have been referred to in open court. *Finally* at this stage the order is limited to the specific documents referred to in the course of the hearing on 14 December 2021, and does not extend to all documents referred to or enclosed with the Re-Amended Claim Form.

The Hon. Mr Justice Morris
Chairman of the Competition Appeal Tribunal

Made: 4 February 2022
Drawn: 4 February 2022