



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1427/5/7/21

BETWEEN:

BELLE LINGERIE LIMITED

Claimant

- v -

(1) WACOAL EMEA LTD
(2) WACOAL EUROPE LTD

Defendants

ORDER

UPON reading the claim form (the “Claim”), filed by the Claimant on 17 December 2021, the defence filed by the Defendants on 4 February 2022 and the reply filed by the Claimant on 25 February 2022

AND UPON reading the Claimant’s fast-track application filed on 17 December 2021, and the Defendants’ response filed on 4 February 2022

AND UPON reading the Claimant’s costs capping application filed on 17 December 2021 and the Defendants’ response filed on 28 February 2022

AND UPON reading the Claimant’s request for confidential treatment filed on 9 March 2022

AND UPON reading the written submissions of the parties, the witness statements filed by the Claimant, and the correspondence from the legal representatives in advance of a case management conference (“CMC”)

AND UPON a CMC held in person on 14 March 2022

AND UPON hearing Counsel for the Claimant (Anneli Howard QC and Khatija Hafesji) and for the Defendants (Aidan Robertson QC and Matthew O’Regan) at the CMC

IT IS ORDERED THAT:

Forum

1. Pursuant to Rules 52 and 18 of the Tribunal Rules, the forum for the proceedings shall be England and Wales.

Confidentiality

2. The parties shall identify documents and any parts of their statements of case, witness statements and expert reports which contain confidential information within paragraph 1(2) of Schedule 4 to the Enterprise Act 2002, the disclosure of which would or might cause significant harm to an undertaking or person (“Confidential Information”) and agree a suitable mechanism to avoid the risk of inadvertent disclosure or reading out of those documents or parts aloud in Court.
3. Any dispute between the parties as to whether a particular document, statement of case, witness statement or expert report, or part thereof, contains Confidential Information shall be referred to the Tribunal and be determined on the papers without a hearing (unless the Tribunal directs otherwise).

Split Trial

4. There shall be a split trial of the issues in these proceedings comprising:
 - (a) A Phase 1 Trial dealing with issues of liability, theory of harm and injunctive relief.
 - (b) If required, a Phase 2 Trial dealing with issues of causation, quantum and mitigation of loss, which will be subject to further directions as appropriate in due course.

Fast-Track

5. The Claimant’s application for fast-track designation of the Claim is refused for the reasons given by the Tribunal at the CMC and in its separate Ruling.

Costs Management

6. The Claim shall be subject to costs management pursuant to Rule 53(2)(m).
7. The parties shall liaise and agree the format of their respective estimated costs budgets, which are not required to take the form of Precedent H. Such proposed format shall be submitted for approval by the Tribunal by 4pm on 18 March 2022.
8. The parties shall, having received the Tribunal's approval of the format for their respective estimated costs budgets, file and serve their respective estimated costs budgets by 4pm on 25 March 2022.
9. There shall be a second Costs and Case Management Conference listed on 5 April 2022, with a time estimate of half a day, to determine how the costs of the proceedings are to be managed, including the Claimant's application for a costs capping order.

Disclosure

10. By 4pm on 19 April 2022, the parties shall file and serve disclosure reports and electronic disclosure questionnaires.
11. By 4pm on 3 May 2022, the parties shall agree a list of further categories of documents and data to be disclosed ("Phase 1 Disclosure").
12. By 4pm on 10 May 2022, inspection of the Phase 1 Disclosure shall be given in an electronic format and on an electronic medium to be agreed by the parties.
13. Any dispute between the parties as to whether a particular document or particular data or category of document or category of data should be disclosed (or in which phase) shall be referred to the Tribunal and be determined on the papers without a hearing (unless the Tribunal directs otherwise).

Factual Evidence

14. The parties shall file and serve signed statements of witnesses of fact by 4pm on 10 June 2022. Unless otherwise ordered, statements of witnesses of fact shall stand as the evidence of the witness in question at trial.
15. The parties shall (if necessary) file and serve reply statements of witnesses of fact by 4pm on 24 June 2022.

Industry Experts

16. Permission shall be granted to each party, if advised, to rely on the written evidence of an industry expert at the Phase 1 hearing to explain how listings, rankings, prices and international advertising and/or shipping work on the eBay platform in the UK (ebay.co.uk) and how it relays those listings to the eBay platform in the US (ebay.com).
17. By 4pm on 17 June 2022, any party who intends to rely upon the written evidence of an industry expert shall file and serve a signed report from their respective industry expert, addressing the matters set out at paragraph 16 above.
18. By 4pm on 1 July 2022, if required, the parties shall each file and serve signed reply expert reports from their respective industry expert.
19. The parties' industry experts shall meet, on a without prejudice basis, to discuss their respective reports by no later than 15 July 2022 and shall produce a joint statement of matters agreed and not agreed that shall be filed by 4pm on 27 July 2022.

Economic Experts

20. Permission shall be granted to the parties, if advised and to the extent they consider it necessary, to rely on the written evidence of an economic expert at the Phase 1 hearing to address issues of (i) market definition; (ii) the theory of harm in relation to retail price maintenance and horizontal price coordination (including via the minimum retail prices ("MRPs")) and hardcore online restrictions on passive sales in respect of sales of the Defendants' products in the UK/EU/EEA; (iii) whether the alleged imposition of MRPs pertaining to the

advertising of the Defendants' products for sale to consumers in the United States and Canada was capable of having negative effects on competition in the United Kingdom, EU Member States and EEA States and (iv) alleged anticompetitive effects relating to the alleged imposition of the platform ban and its alleged discriminatory application.

21. By 4pm on 15 July 2022, any party who intends to rely upon the written evidence of an economic expert shall file and serve a signed expert report from their respective economic expert, addressing the matters set out at paragraph 20 above.
22. By 4pm on 29 July 2022, if required, the parties shall each file and serve signed reply expert reports from their respective economic expert.
23. The parties' economic experts shall meet, on a without prejudice basis, to discuss their respective reports by no later than 12 August 2022 and shall produce a joint statement of matters agreed and not agreed that shall be filed by 4pm on 24 August 2022.

Hearing Bundles

24. The parties shall agree an index for the trial bundle and file the agreed index by 31 August 2022.
25. The parties shall liaise with the Tribunal as to the format of the trial bundle (including whether the bundles filed with the Tribunal ought to be electronic and/or hard copy, and the size of any hard copy bundle).
26. Trial bundles (in the format(s) required by the Tribunal) shall be filed no later than 4 pm on 5 September 2022.
27. Agreed authorities bundles shall be filed by 4pm on 9 September 2022.

Phase 1 Trial Listing and Preparation

28. The parties are to agree a trial timetable and file it by 31 August 2022.

29. The Phase 1 hearing shall be listed, with a time estimate of five days, on 15, 16, 19, 20 and 21 September 2022.
30. Skeleton arguments shall be exchanged simultaneously and filed by 4pm on 7 September 2022.
31. The parties shall agree a chronology, dramatis personae and list of issues and shall file agreed versions with the Tribunal by 4pm on 7 September 2022

Costs

32. Costs in the case.

Other

33. Liberty to apply.

Bridget Lucas QC
Chairwoman of the Competition Appeal Tribunal

Made: 14 March 2022
Drawn: 24 March 2022