



**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

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**ORDER**

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**UPON** hearing Counsel for the Parties at a case management conference on 14 March 2022

**AND UPON** the Tribunal's order in respect of case management directions made on 14 March 2022

**AND UPON** the Parties having reached agreement as to the terms of this Order

**AND UPON** each of the persons named in Part A of the Schedule to this Order, giving a written undertaking to the Tribunal in the terms of Part B of the Schedule to this Order prior to receiving any Confidentiality Ring Information (as defined below)

**IT IS ORDERED BY CONSENT THAT:**

1. For the purposes of this Order (the "**Confidentiality Ring Order**"):

1.1. “**Confidentiality Ring Information**” means documents disclosed in these proceedings, including any part of those documents and any information contained within those documents which:

- (a) the disclosing Party has designated as Confidentiality Ring Information in accordance with paragraph 6 of this Order; or
- (b) are designated as Confidentiality Ring Information by the Tribunal.

1.2. “**Confidentiality Ring Members**” are:

- (a) those persons from the Claimant’s external legal and expert advisors and from the Defendants’ external legal and expert advisors listed in Part A of the Schedule to this Order, as amended from time to time in accordance with the provisions of paragraphs 3 and 4 below or by an order of the Tribunal, who have given a signed undertaking to the Tribunal in the terms of Part B of the Schedule to this Order;
- (b) trainee solicitors or paralegals, secretarial, clerking and other support personnel, any external eDisclosure or litigation support provider engaged by one of the Parties in connection with these proceedings to provide eDisclosure or similar services in support of those persons identified in (a), above, who may have access to Confidentiality Ring Information as a necessary consequence of the provision of their services whose identity is notified in writing to the other Party.

1.3. “**Party**” or “**Parties**” means each of:

- (a) The Claimant; and
- (b) The First and Second Defendants.

1.4. “**these proceedings**” means the claim filed in the Competition Appeal Tribunal on 17 December 2021 by the Claimant against the First and Defendants under Case No. 1427/5/7/21 and any connected additional claims,

inclusive of any future phased or sub-division of the proceedings (including mediation and ADR) and any appeal therefrom.

2. Confidentiality Ring Information disclosed in the context of these proceedings is to be provided or made available solely to the Confidentiality Ring Members, to be held by them on the terms set out in Part B of the Schedule to this Order, subject to the following paragraphs of this Order.

### **Confidentiality Ring Members**

3. If a Party wishes to add an additional person as a Confidentiality Ring Member:
  - 3.1. it shall notify and obtain the consent (such consent not to be unreasonably withheld) of the other Party, and, when making such notification, specify the name and role of the proposed additional person and provide an explanation of why the addition is reasonable and necessary;
  - 3.2. the consent of the other Party shall be deemed to have been granted if it has not objected in writing to the addition of the proposed additional person within 7 calendar days from the notification described at paragraph 3.1 of this Order;
  - 3.3. the additional person shall give the written undertaking to the Tribunal in the terms of Part B of the Schedule to this Order; and
  - 3.4. the Party requesting the addition shall provide the written undertaking referred to in paragraph 3.3 above and an amended version of Part A of the Schedule to this Order to the Tribunal and the other Party.
4. If a Party wishes to remove a person as a Confidentiality Ring Member, it shall:
  - (i) notify the other Party and confirm that any Confidentiality Ring Information disclosed in both hard copy and soft copy has been destroyed in accordance with paragraph 7; and
  - (ii) provide an amended version of Part A of the Schedule to this Order to the Tribunal and the other Party.
5. Should the consent referred to in paragraph 3.1 above not be obtained from the other Party, the Party wishing to add any additional person as a Confidentiality

Ring Member may apply to the Tribunal and give notice of such application to the other Party.

### **Designation of Confidentiality Ring Information**

6. A Party disclosing a document in connection with these proceedings may designate that the document is Confidentiality Ring Information provided that such information is information justifying confidential treatment by the Tribunal in accordance with Rule 101 of the Tribunal Rules 2015;
  - 6.1. Designation of a document as Confidentiality Ring Information shall be made in writing to the other Party. A designated document shall be marked or highlighted so as to indicate the parts in relation to which confidential treatment is claimed, in the manner referred to in paragraph 7.46 of the Tribunal's Guide to Proceedings 2015. A system of colour-coding shall be used to indicate to which Party the Confidentiality Ring Information belongs (or such other system as the Parties shall agree where colour-coding is considered unworkable).
  - 6.2. Failure to provide a designation for a document at the time the document is disclosed shall be deemed to be a designation that the document in question is not Confidentiality Ring Information.
  - 6.3. Within 7 days of the date of disclosure the Party providing the disclosure shall, either in respect of each document or, if appropriate, in respect of categories of documents, set out a sufficient explanation to enable the other Party to understand the confidentiality that has been claimed and to challenge the confidential treatment of that information.
  - 6.4. A Party receiving disclosure of documents in these proceedings may request that the disclosing Party amend the designation of a document that it has disclosed (including amendment to a designation of not confidential):
    - (a) that requesting Party shall provide a written request to the disclosing Party specifying the following:

- (i) the relevant Confidentiality Ring Information;
  - (ii) the designation the requesting Party believes is appropriate; and
  - (iii) why it is reasonable and necessary for the designation of the Confidentiality Ring Information to be amended;
- (b) the disclosing Party may consent in writing to amend the designation of the Confidentiality Ring Information, with such consent not to be unreasonably withheld and, in any event, a response should be provided within 10 days of having initially received the written notice referred to at paragraph 6.4(a) above. If no response is provided within 10 days, consent shall be deemed to have been given; and
- (c) should an objection be received within the 10 day period referred to in paragraph 6.4(b) above, the requesting Party may apply to the Tribunal for an order that the Confidentiality Ring Information should be designated as not confidential, provided that notice is given of that application to the other Party.

### **Treatment of Confidentiality Ring Information**

7. Subject to the exceptions in paragraph 7.1, below, copies of all or any (as appropriate) Confidentiality Ring Information disclosed pursuant to this Order (in hard and/or soft copy) shall be destroyed at the conclusion of these proceedings, or when an individual ceases to be involved in these proceedings. Each Party shall notify the other Party that the Confidentiality Ring Information has been destroyed:

- (a) at the conclusion of these proceedings;
- (b) when an individual ceases to be involved in these proceedings and ceases to be a Confidentiality Ring Member; and

- (c) if it is ordered that all or any (as appropriate) of the Confidentiality Ring Information is no longer relevant to and/or disclosable in these proceedings.

7.1. The obligation in paragraph 7 above shall be subject to the following exceptions:

- (a) Paragraph 7 shall not apply to solicitors' or counsels' notes.
- (b) Paragraph 7 shall not create an obligation to search for transitory or deeply stored soft copies of Confidentiality Ring Information which may exist on the computer system of the receiving Party and which cannot be recovered without special measures, provided that such information will be promptly deleted in the event of the restoration of such copies.
- (c) Paragraph 7 shall not apply to Parties' copies of pleadings, evidence, skeleton arguments, transcripts, applications, draft orders, correspondence referred to at trial or in a hearing or submitted in the proceedings, as well as lawyer work product referring to Confidentiality Ring Information, subject to continued compliance with the terms of this Order in respect of the Confidentiality Ring Information contained within such documents.

8. In the event of any disclosure of Confidentiality Ring Information other than in a manner authorised by this Order, including any unintentional or inadvertent disclosure, the solicitors for the improperly disclosing Party shall as soon as is reasonably practicable notify the solicitors for the other Party of all of the pertinent facts, and the improperly disclosing Party shall use its reasonable endeavours to further prevent unauthorised disclosure including seeking to retrieve all copies of the Confidentiality Ring Information from the recipient(s) thereof and to secure the agreement of the receiving person(s) not to further disseminate the Confidentiality Ring Information in any form.

9. If at any time documents containing Confidentiality Ring Information are made the subject of a judicial disclosure or discovery order (or similar) anywhere in the world, the Party upon whom the order is served shall as soon as is reasonably

practicable give written notice to the solicitors of the Party which produced the documents. If the Party which disclosed the documents in these proceedings does not take steps to prevent the further disclosure of such documents within 14 calendar days of the date on which such written notice was given, the Party against whom the order was made may produce such documents but shall take all reasonable measures to have the documents treated in accordance with the terms of this Order.

10. Paragraph 9 notwithstanding, in the event of any anticipated or actual breach of this Order, any Party may seek to enforce the terms of this Order.
11. There shall be liberty to apply to vary the terms of this Order.
12. Costs in the case.

**Bridget Lucas QC**  
Chairwoman of the Competition Appeal Tribunal

Made: 22 March 2022  
Drawn: 22 March 2022

## SCHEDULE

### PART A

This part contains the names of Confidentiality Ring Members:

#### **The Claimant**

##### *Solicitors*

Susannah Sheppard (Sheppard | Co)

##### *Counsel*

Anneli Howard QC (Monckton Chambers)

Khatija Hafesji (Monckton Chambers)

##### *Economists*

Cento Veljanovski (Case Associates)

##### *Industry Expert*

(to be confirmed)

#### **The First and Second Defendants**

##### *Solicitors*

Robert Lye (Gateley Plc)

John Burns (Gateley Plc)

Jonathan Moakes (Gateley Plc)

Emily Pritchard (Gateley Plc)

##### *Counsel*

Aidan Robertson QC (Brick Court Chambers)

Matthew O'Regan (St. John's Chambers)

##### *Economists*

(to be confirmed)

*Industry Expert*  
(to be confirmed)

## SCHEDULE

### PART B

#### CONFIDENTIALITY UNDERTAKING

In respect of any Confidentiality Ring Information disclosed to them pursuant to this Confidentiality Ring Order, each Confidentiality Ring Member undertakes that they will comply with the following requirements, to the extent applicable to them, in the terms below.

None of the requirements listed below shall prevent Confidentiality Ring Members from disclosing to any other person any information contained within the Confidentiality Ring Information which:

- (A) is or becomes publicly available otherwise than through a breach of the terms of the Confidentiality Ring Order;
- (B) was lawfully in the Confidentiality Ring Member's possession prior to the date of this Order;
- (C) is subsequently received from a third party, who obtained such information lawfully, not under any obligation of confidence in relation to the Confidentiality Ring Information; or
- (D) is required to be disclosed by operation of law or by order of a Court of competent jurisdiction or by a regulatory or other body having jurisdiction over the Confidentiality Ring Member.

If any Confidentiality Ring Member refers or submits any document(s) containing Confidentiality Ring Information to a judge or member of a tribunal, the confidential nature of the relevant document(s) will be preserved, subject to any Order that may be made.

I, [NAME], of [ORGANISATION NAME] being a [Solicitor of the Senior Courts of England and Wales] [Barrister] [Expert] undertake to the Tribunal and each of the Parties as follows:

1. I have read a copy of the Tribunal's Confidentiality Ring Order of 22 March 2022 and understand that Order and the implications of giving this undertaking.
2. I have read Rule 102 of the Competition Appeal Tribunal's Rules 2015 and am aware of and will comply with the obligations imposed by that rule.
3. I will not disclose the Confidentiality Ring Information to any person who is not a Confidentiality Ring Member.
4. I will use the Confidentiality Ring Information only for the purpose of these proceedings, including any appeal or appeals, and for the purpose of no other current or future proceedings, dispute, complaint, or other use whatsoever in any jurisdiction without the express consent of the Party originally disclosing the information or the permission of the Tribunal.
5. The documents containing any Confidentiality Ring Information will remain in my custody or the custody of another Confidentiality Ring Member at all times and be held in a manner appropriate to the circumstances so as to prevent unauthorised access or disclosure. For the avoidance of doubt, I may make reasonable use of necessary secretarial and other support personnel under my supervision or the supervision of [**insert name of organisation**], provided that such personnel have been informed of the confidential nature of the Confidentiality Ring Information and the terms of Part B of the Schedule to the Tribunal's Order.
6. The production of further copies by me of the documents containing Confidentiality Ring Information shall be limited to those required for the use of the Confidentiality Ring Members for the purposes of these proceedings only and shall be held in accordance with paragraph 5 of this undertaking.
7. With the exception of solicitors' or counsels' notes and subject to the further exceptions below, I will use reasonable efforts to ensure that any copies of the documents containing the Confidentiality Ring Information in paper or electronic form are returned to the solicitors of the disclosing Party or else be destroyed or deleted from my computer system(s) to the extent possible, within 28 days of the conclusion of these proceedings, including any appeal or appeals, or when I cease to be involved in these proceedings. The further exceptions mentioned above are that:
  - (a) there is no obligation to search for transitory or deeply stored soft copies of Confidentiality Ring Information which may exist on my or my employer's or firm's computer system and which cannot be recovered without special

measures, provided that such information will be promptly deleted in the event of the restoration of such copies; and

- (b) I may retain copies of pleadings, evidence, skeleton arguments, transcripts, applications, draft orders, correspondence referred to at trial or in a hearing or submitted in the proceedings, as well as lawyer work product referring to the Confidentiality Ring Information, subject to continued compliance with this undertaking in respect of the Confidentiality Ring Information contained within such documents.

Signed:

Name:

Organisation:

Date: