



[2003] CAT 25

IN THE COMPETITION
APPEAL TRIBUNAL

New Court,
48 Carey Street,
London WC2A 2JT

Case No. 1019/1/1/03
1020/1/1/03
1021/1/1/03
1022/1/1/03

23 October 2003

Before:
SIR CHRISTOPHER BELLAMY
(The President)
BARRY COLGATE
RICHARD PROSSER OBE

BETWEEN:

UMBRO HOLDINGS LIMITED	<u>Applicant</u>
and	
THE OFFICE OF FAIR TRADING	<u>Respondent</u>
MANCHESTER UNITED PLC	<u>Applicant</u>
and	
THE OFFICE OF FAIR TRADING	<u>Respondent</u>
ALLSPORTS LIMITED	<u>Applicant</u>
and	
THE OFFICE OF FAIR TRADING	<u>Respondent</u>
JJB SPORTS PLC	<u>Applicant</u>
and	
THE OFFICE OF FAIR TRADING	<u>Respondent</u>

Miss Kelyn Bacon appeared for Umbro Holdings Limited.

Mr Paul Harris appeared for Manchester United PLC.

Mr Laurence West-Knights QC and Mr George Peretz appeared for Allsports Limited

Lord Anthony Grabiner QC and Mr Mark Hoskins appeared for JJB Sports PLC.

Mr Andrew McNab appeared for Sports World Int. Ltd (applicant Intervener).

Mr Jon Turner and Miss Anneli Howard appeared for the Respondent.

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RULING: REFUSAL OF REQUEST FOR PERMISSION TO INTERVENE

RULING

1. **THE PRESIDENT:** In this part of the case management conference Sports World International Limited applies to intervene in the appeals pending before the Tribunal on the grounds that it has a sufficient interest within the meaning of Rule 16(1) of the Tribunal's Rules.
2. Three arguments are put forward. First of all that Sports World has a commercial interest in upholding the appeals, and it would be commercially and reputationally damaged if any of the appeals were to succeed, and it therefore has an interest in intervening in that context.
3. Secondly, that Mr Ashley, who is the chief executive and owner of Sports World, is likely to come under attack during the appeal and be criticised in particular by other appellants and Sports World would wish to have the opportunity principally on behalf of Mr Ashley, as we understand it, to themselves make submissions and cross-examine JJB's witnesses and make submissions on the cogency or credibility of those witnesses' evidence.
4. Thirdly, it is said that Sports World (then Sports Soccer Limited) was the original whistle-blower in this affair and brought the matter to the attention of the Office of Fair Trading originally and that is also a matter giving rise to a sufficient interest. It is also submitted that Sports World's general interest is not necessarily the same as that of the Office of Fair Trading.
5. The application is opposed by all four of the appellants, by JJB in particular, who submit that:
 - the intervention regime cannot have been intended to turn these proceedings into a legal jamboree with many parties;
 - the Office of Fair Trading is represented by counsel and that any points that can be made should be made via the Office of Fair Trading;
 - the Tribunal should not run the risk of introducing a second prosecutor; and
 - Sports World itself has been found guilty and has chosen not to appeal, therefore a collateral intervention in a case such as the present is both inappropriate and an abuse of the process.
6. Those arguments are supported by Allsports who submit that if Sports World is simply co-equal with the Office of Fair Trading and has nothing to add, which is the situation foreseen in paragraph 9.4 of the Tribunal's Guidelines, then their interests are already adequately protected by the Office of Fair Trading.

On the other hand, if it is a question of Sports World wishing to put before the

Tribunal new evidence, then that is inappropriate, because the foundation of this Tribunal's procedure is that there should not be new material introduced at this stage in principle since the matter depends on what was before the Office of Fair Trading below.

7. Manchester United and Umbro both adopt those points and submit further that Sports World has no particular interest in either of those appeals, because in particular Manchester United and Umbro are only appealing the penalty and Sports World can have no conceivable interest in those appeals.
8. In our judgment at this stage of the proceedings we are not persuaded that it would be right to permit Sports World International to intervene. Being, formally speaking, an intervener carries certain legal consequences. As an intervener, one is entitled in principle to service of the various Notices of Appeal. One is entitled to put in a statement of intervention. One is entitled to participate in a hearing and make submissions and possibly to cross-examine witnesses. Even if - which at this stage we are not deciding - Sports World has a sufficient interest within the meaning of the Rules we take the view, as a matter of our discretion, that it would over complicate these proceedings for Sports World to be permitted to intervene at this stage. The proceedings are essentially between the appellants and the Office of Fair Trading. It is for the Office of Fair Trading to establish its case and to have the main carriage of the matter.
9. We do not wish, at this stage, to complicate matters by introducing the possibility of another party who may be also making submissions and cross-examining witnesses, as a second prosecutor, as it were, in support of the Office of Fair Trading, who is the primary prosecutor.
10. We are, however, conscious of the fact that circumstances may arise in which it is convenient for Sports World International to follow these proceedings closely. As far as we can see there is no objection to Sports World, if so advised and if it so wishes, collaborating with the Office of Fair Trading in supplying information to the Office of Fair Trading and assisting with the presentation of the Office of Fair Trading's case. I stress the Office of Fair Trading's case and not Sports World's case. If circumstances were to arise in which fairness required that we heard directly from Sports World then we, the Tribunal, would be open to a second application, either for a formal intervention or for Sports World to be heard, as it were, informally. That is a bridge we are prepared to cross if and when it arises, so we are not entirely, as it were, slamming the door to Sports World at this stage.
11. For the reasons given by the appellants it does not seem to us that there are

sufficient grounds to permit the intervention at this stage. Those grounds are necessarily of course stronger, indeed determinative, in the cases of Manchester United and Umbro, but equally strong in our judgment in the cases of Allsports and JJB.

12. So I think the result, Mr McNab, is that you are not permitted to intervene at this stage, but you are fully entitled to collaborate with the Office of Fair Trading if that is what you wish to do, and you are entitled to a kind of informal observer status and, if at any stage, you or your clients feel that they are prejudiced by that procedural situation then it is open to you to make a further application.

MR McNAB: I am obliged, Sir, yes.

THE PRESIDENT: Thank you.