



**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case No: 1262/5/7/16 (T)

BETWEEN:

**AGENTS' MUTUAL LIMITED**

Claimant

-v-

**GASCOIGNE HALMAN LIMITED (T/A GASCOIGNE HALMAN)**

Defendant

AND BETWEEN:

**AGENTS' MUTUAL LIMITED**

Claimant

-v-

**MOGINIE JAMES LIMITED**

Defendant

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**ORDER**

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**UPON** reading the papers filed with the Tribunal

**AND HAVING REGARD TO** the Order of the Tribunal of 26 July 2016 setting down directions to a trial in these proceedings and the Order of the Tribunal of 13 September 2016 establishing a confidentiality ring in these proceedings (“the Confidentiality Ring Order”)

**AND UPON** the applications of Gascoigne Halman Ltd (“Gascoigne Halman”) of 7 December 2016 that:

- (a) the Claimant provide disclosure of documents requested at paragraphs 3.1 to 3.3 of Gascoigne Halman’s notice of application
- (b) the Claimant review its confidentiality claims for consistency by 22 December 2016 and that the parties liaise by 6 January 2017 to reach

agreement in respect of the Claimant's claims to confidentiality ("the Confidentiality Review Application")

- (c) the Claimant respond to the Gascoigne Halman's request for further information annexed to its notice of application by 19 December 2016
- (d) the Trial in these proceedings listed to commence on 3 February 2017 be adjourned for two weeks ("the Adjournment Application")

**AND UPON** the application of Claimant of 8 December 2016 that Gascoigne Halman:

- (a) disclose a copy of the data underlying the analysis of Gascoigne Halman's loss of profits resulting from its adherence to the One Other Portal Rule contained in the first witness statement of Mr Anthony Glasgow dated 27 June 2016 ("the Glasgow Data").
- (b) provide a witness statement or disclosure statement, signed by a person of appropriate authority, setting out the searches it understands to have been undertaken, the parameters and terms used, and the documents such a search produced, in connection with the search for documents referred in the second witness statement of Mr David Livesey dated 15 November 2016 ("the Livesey Application").

**AND UPON** the Claimant and the Gascoigne Halman agreeing certain other matters by consent

**AND UPON** hearing from Alan Maclean QC and Josh Holmes for the Claimant, from Paul Harris QC and Philip Woolfe for Gascoigne Halman and James Hall for Moginie James Limited on 15 December 2016

**AND UPON** the Claimant and Gascoigne Halman agreeing to the Tribunal's proposal that the Livesey Application be disposed of by Gascoigne Halman preparing a witness statement confined to addressing the comprehensiveness of the search conducted by Mr Livesey

**IT IS ORDERED BY CONSENT THAT:**

**Highly confidential materials**

1. The Confidentiality Ring Order be amended such that:
  - 1.1 copies of any documents previously identified by the Claimant as being "super confidential" are to be released into the confidentiality ring with any suitable redaction of customer details; and
  - 1.2 unredacted versions of super confidential documents previously provided only to Gascoigne Halman's external legal representatives are to be withheld from Gascoigne Halman's in-house legal team.

### **Evidence and further information**

2. Gascoigne Halman has permission to rely on the third witness statement of Mr Jonathan Notley dated 2 December 2016.
3. By 4pm on 19 December 2016 the Claimant shall provide clarification and/or additional information of the matters set out in Annex A to Gascoigne Halman's application of 7 December 2016.
4. By 4pm on 19 December 2016 the Claimant to conduct the searches set out at paragraphs 3.2.1 and 3.2.3 of Gascoigne Halman's application and disclose and provide inspection of any relevant documents found.
5. By 4pm on 19 December 2016 the Claimant to disclose and provide inspection of the materials requested at paragraph 3.3.1 of Gascoigne Halman's notice of application, namely fully unredacted versions of the Claimant's management accounts from February 2014 to date.

### **IT IS ORDERED THAT:**

#### **Specific disclosure**

6. By 4pm on 21 December 2016 Gascoigne Halman disclose and provide inspection of the Glasgow Data. The Glasgow Data is to be treated as highly confidential material pursuant to paragraph 1 above.
7. Gascoigne Halman's applications for further specific disclosure under paragraphs 3.1, 3.2.2, 3.2.4, 3.3.2 and 3.3.3 of its notice of application are dismissed.

#### **Joint statements**

8. The parties' experts of shall meet (without the parties or their representatives) and discuss on a without prejudice basis according to the provisions of Civil Procedure Rule 35.12, and identify in a joint memorandum (a "Joint Statement"), clearly and concisely and in terms that can be understood by a non-expert:
  - (a) the areas agreed between them;
  - (b) the areas in dispute between them;
  - (c) whether each area in dispute is material to the outcome of the case;  
and
  - (d) in relation to each material area in dispute:
    - (i) the extent to which it is material and why;

- (ii) their opinions on what the Court has to decide in order to resolve the particular areas of dispute and how this can be achieved.
  - (iii) any assumptions underpinning each expert's views; and
  - (iv) a summary of each expert's criticism of the other expert's position.
9. The parties' legal representatives where necessary may assist in preparations for the expert meetings (including preparing an agenda), but will otherwise not be involved in the production of any Joint Statement.

**Other matters**

- 10. Gascoigne Halman's Confidentiality Review Application and its Adjournment Application be dismissed.
- 11. The parties liaise to arrange for live transcription of the Trial and shall update the Tribunal Registry promptly once arrangements are finalised.
- 12. Cost in the case.
- 13. There be liberty to apply.

**Marcus Smith Q.C.**  
Chairman of the Competition Appeal Tribunal

Made: 15 December 2016  
Drawn: 20 December 2016