



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

Case No: 1351/5/7/20

BETWEEN:

- (1) CHURCHILL GOWNS LIMITED**  
**(2) STUDENT GOWNS LIMITED**

Claimants

- v -

- (1) EDE & RAVENSCROFT LIMITED**  
**(2) RADCLIFFE & TAYLOR LIMITED**  
**(3) WM. NORTHAM & COMPANY LIMITED**  
**(4) IRISH LEGAL AND ACADEMIC LIMITED**

Defendants

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**ORDER**

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**UPON** the Claimants' application for further initial disclosure made by letter to the Tribunal dated 7 January 2021 (the "Claimants' Disclosure Application")

**AND UPON** reading the submissions of the parties filed in advance of a costs and case management conference ("CCMC")

**AND UPON** hearing Counsel for the parties at a CCMC held remotely on 12 January 2021

**AND HAVING REGARD TO** the Tribunal's powers under the Competition Appeal Tribunal Rules 2015 (the "Rules")

## **IT IS ORDERED THAT:**

### **Disclosure**

1. The Claimants' Disclosure Application is dismissed.
2. By no later than 9 April 2021:
  - (a) the Claimants shall give specific disclosure of the categories of documents set out in Annex A to this Order; and
  - (b) The Defendants shall give specific disclosure of the categories of documents set out in Annex B to this Order.
3. For the avoidance of doubt, the parties' disclosure obligations under paragraph 2 above shall be confined to an obligation, following a reasonable and proportionate search, to give disclosure of documents falling within the specified categories that are (i) within the parties' possession or control and (ii) likely to support or adversely affect the parties' respective cases.

### **Scope of expert evidence**

4. The scope of the expert economic evidence to be given in these proceedings pursuant to paragraph 16 of the Order of 27 October 2020 shall be as set out in the agreed document entitled "List of Issues for Economic Experts".

### **Costs budgeting**

5. The Tribunal makes a costs management order in the following terms and the parties shall file and serve amended front sheets by 4pm on 26 January 2021:
  - (a) The right of both parties to make detailed submissions regarding incurred costs shall be reserved to be heard at a Detailed Assessment Hearing.

(b) In respect of the Claimants' budget, the budgeted costs in the sum of £721,950.00 are approved.

(c) In respect of the Defendants' budget, the budgeted costs in the sum of £1,198,415.00 are approved.

### **Costs**

6. Costs in the case, save that the Claimants shall pay the Defendants' costs of the Claimants' Disclosure Application.

### **Provision of further information by Claimants**

7. By no later than 4.00pm on the day after receipt of this Order, the Claimants shall inform the Defendants whether the Claimants intend to maintain their pleaded case that their gowns and hoods are made from recycled plastic bottles.

### **Miscellaneous**

8. By agreement the parties may vary without further Order any deadline in this Order provided that they inform the Tribunal of such agreement in advance of the expiry of the relevant deadline and the extension does not affect the date of the pre-trial review or the trial.

9. There be liberty to apply.

**ANNEX A - CATEGORIES OF DISCLOSURE TO BE PROVIDED BY  
CLAIMANTS**

1. Documents going to Claimants' attempts to break into or expand their presence on the market(s) for sale and hire of academic dress at UK universities including for example business plans, sales pitches to universities and/or to students, marketing and publicity materials and copies of website in its various incarnations from 2016 - present.
2. Documents recording Claimants' sales/hires to students since 2016, broken down by University.
3. Designs and specifications for gowns said to be made from recycled materials.
4. Documents setting out the Claimants' pricing of academic dress sales and hires since 2016 (including any postage or other additional charges), together with any internal documents or communications setting out or explaining the Claimants' decisions as to how to set their prices (including postage or other additional charges) during the same period.
5. Documents going to market analysis, business model, market share of Churchill Australia and allegation of gain of market share rapidly.
6. Copy of sales website established by Churchill Australia for use by Churchill UK prior to July 2016.
7. Churchill Australia company accounts for 2013-15 (entity Churchill Gowns) and Churchill Australia company accounts for 2015 onwards (entity Churchill Gowns Pty Ltd); and documents going to University of Sydney pricing pre-2013 and post-2013.
8. Copies of any internal/external correspondence or documents relating to the decision to incorporate the Second Claimant in 18 September 2017.
9. Documents going to ethical choice marketing by Churchill and documents on which Claimants rely (or are adverse) as to the ethical manufacturing, living wages and working conditions of those producing garments manufactured for Churchill in factories.
10. Documents recording 100% recycled bottles used in manufacturer of products offered for hire/sale by

Claimants – including supply chain documents and any formal credentials/standards as to origin of materials; and documents recording or analysing the attractiveness to potential consumers of use of recycled materials in gowns offered by Claimants.

11. Customer reviews of Claimants' products and complaints about the Defendant's workmanship and stitching
12. Documents going to the carbon footprint of stock importation and the offset of the carbon footprint.
13. Documents recording communications with Sunday Times in lead up to article 2 June 2019.
14. Email from Oliver Adkins dated 23 March 2017 to "numerous universities" and the responses to that email.
15. The Claimants' designs for the hood for the University of Bedfordshire and any documents including internal correspondence/notes going to the creation or copying of the design from other sources.
16. Documents recording concerns and/or complaints raised as to the correctness and/or quality of any academic dress supplied by the claimants to students; and any internal documents analysing the relative quality of the Claimants' products compared to those of other suppliers of academic dress.
17. Documents going to the First Claimant's plans and projections (including market share, revenue and profitability forecasts) in advance of the intended commencement of trading including any documents going to analysis of the UK market or markets for the sale and/or hire of academic dress, as well as any subsequent analyses of the UK market(s) carried out by or on behalf of either or both claimants, plus any market analysis carried out by or on behalf of either or both claimants in respect of the supply of academic dress in the Republic of Ireland.

18. Documents going to the matters causing the First Claimant not to trade immediately upon its incorporation or at all including documents going to the investment capital raised and/or the availability of funding and/or further investment capital.
19. Documents going to the Claimants' fundraising efforts since 2016 whether directed at existing investors or potential new investors and whether in relation to the raising of equity or debt, including both copies of 'pitches' by the Claimants and copies of documents containing or recording decisions/feedback from existing or potential investors.
20. Documents going to stock levels and the claimants' ability to offer for sale or hire items of academic dress in respect of UK universities and academic institutions as at 2016, 2017, 2018, 2019 and 2020 including specifically stock levels in respect of each item.
21. Documents going to sales/hires and/or pre-orders of items of academic dress as at each of the above years for each institution for which the Claimants have offered academic dress during that period.
22. Management accounts for the Claimants from 2015 to date showing losses.
23. Documents going to reasons for return of capital to shareholders in 2018/19 – including requests, proposals as between company and shareholders.
24. Documents going to Claimants':
  - a) Direct engagement with universities
  - b) Sponsoring of student societies
  - c) Marketing to and via student societies and student unions
  - d) Appointment/remuneration of brand ambassadors
  - e) Advertising of their products, including via GoogleAds.
25. Copies of any internal correspondence or documents analysing or commenting on the reasons for the Claimants' commercial performance in relation to the sale and hire of academic dress to UK university students over the period from 2016 – present.
26. Copies of any communications between the Claimants and Churchill Gowns Pty Ltd (i.e. the Australian parent company) relating to the Claimants' commercial performance over the period from 2016 – present.

27. Copies of correspondence between the Claimants (or either of them) and UK universities relating to the Claimants' marketing of their products to those universities' students, and/or correspondence from UK universities in relation to the same which is (for whatever reason) in the Claimants' possession or control
28. Copies of any tenders, bids or other (formal or informal) approaches submitted by the Claimants to UK universities be appointed as official suppliers to those universities in the period between 2016 and the present.
29. Documents showing or tending to show why the Claimants did not respond to any tenders of which the Claimants are or were aware during the claim period
30. Copies of any communications from UK Universities in response to tenders, bids or other (formal or informal) approaches by the Claimants to be appointed as official suppliers for those universities in the period between 2016 and the present, in particular communications explaining why those universities have rejected those tenders (etc.) or otherwise setting out the universities' views on the merits of those tenders.
31. Internal correspondence, documents or reports setting out any consideration by the Claimants as to whether to supply products other than academic dress, or to supply academic dress in geographical areas other than UK.
32. Internal correspondence, documents or reports setting out any consideration by the Claimants of the nature of any barriers to entry in the market or markets for the supply of academic dress to students at UK universities.
33. The results of any customer surveys carried out by or on behalf of the Claimants from 2016-present, and copies of any communications or documents analysing the results of such surveys
34. Other documents containing consideration or analysis of the nature of UK student demand in terms of their

preferences concerning e.g. price, quality, range and service

35. Documents setting out the basis for the Claimants' estimate of the value of the alleged counterfactual market, including their assumptions that, in the alleged counterfactual market, (i) prices would have been lower, (ii) sales (as opposed to rentals) would have accounted for a greater proportion of overall supply, and (iii) the number of students attending graduation ceremonies would have been higher.
  
36. Documents relating to the Claimants' complaint to the Competition and Markets Authority, including, in particular, any internal communications or other documents evidencing the Claimants' deliberations in relation to the complaint (both before and after the complaint was submitted), as well as any correspondence from the CMA in relation to the complaint.

**ANNEX B - CATEGORIES OF DISCLOSURE TO BE PROVIDED BY  
DEFENDANTS**

*References to the “claim period” below mean the period from 1 July 2016 - present.*

1. Official supplier agreements (“OSAs”) between the Defendants<sup>1</sup> and UK universities and/or any other documents containing the terms of any contractual arrangements between the Defendants and UK universities relating to the supply of academic dress and associated services, to the extent that such arrangements were in force in any part of the claim period and to the extent not already disclosed.
2. Invitations to tender issued to the Defendants (whether or not the Defendants tendered for and/or won the contract concerned) and the documents containing contractual terms concluded following a tender process (to the extent not already disclosed) in the claim period.
3. Documents relating to directions given (during the claim period) by any University to whose students the Defendants have supplied academic dress at any time during the claim period to its students to the relevant Defendant’s services in relation to academic dress supply.
4. Documents showing the nature and extent of the investments the Defendants have made to meet the Universities’ requirements during the claim period, including for the avoidance of doubt investments that have been made to produce a university’s academic dress from that previously supplied to another university.
5. Documents showing the calculations (if any) that the Defendants made in order to work out how long OSAs would need to be in place in order to meet the cost of the investments in relation to the supply of academic dress to Universities during the claim period.
6. Documents evidencing the typical lifespan/replacement rate of gowns, hoods and hats supplied by the Defendants for use by

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<sup>1</sup> The expression “the Defendants” should be taken to mean the First, Third and Fourth Defendants unless the context requires otherwise.

students at graduation ceremonies during the claim period.

7. Documents going to internal consideration by the Defendants of the options open to them to ensure that academic dress investments required by universities are recovered during the claim period.
8. Documents going to whether it is generally important to universities that academic dress is of a uniform and high quality and/or that the type of materials used for its production are consistent across students.
9. Documents going to Universities' specification – whether contractual or as part of a design process – as to the material required for their academic dress, measurements or colours, or their desire to inspect sample materials and/or any other requirement not included in the relevant scheme.
10. Documents going to the material(s) from which the Defendants make their gowns and hoods.
11. Documents evidencing complaints about the quality of workmanship and stitching of (i) the Claimants' academic gowns, hoods and/or hats and (ii) the Defendants' academic gowns, hoods and/or hats.
12. Internal documents making comparisons between the Defendants' academic dress and that supplied by the Claimants.
13. Documents going to the decline in the number and proportion of graduating students that the Defendants have supplied over the claim period.
14. Documents going to the proportion of students supplied by the Defendants at each relevant University during the claim period.
15. Documents going to the Defendants' and/or competitors' shares of supply of academic dress to students for use at graduation ceremonies by any relevant metric, including by university and nationally, during the claim period.
16. Documents going to whether in the absence of OSAs universities would or would be likely to charge their students and/or their students' family members a fee, or a higher fee, to attend graduation ceremonies and/or charge their students higher fees for other services so as to be

able to cover the cost of graduation ceremonies and/or fund the cost or part of the cost of graduation ceremonies using funds from elsewhere in their budgets.

17. Documents going to universities' expectations that suppliers of academic dress will also provide a range of other services.
18. Documents going to whether students who wear academic dress that is of visibly different quality from that worn by other students (but which meets the university's specification) imposes a disbenefit on a university and/or other students.
19. Documents going to the incidence of supply by the Defendants' competitors (or any of them) in relation to Universities which have appointed the Defendants as official supplier during the claim period.
20. Documents setting out the Defendants' pricing of academic dress sales and hires since 1 July 2016, together with any internal documents or communications setting out or explaining the Defendants' decisions as to how to set their prices during the same period.
21. Documents relating to the emails sent by Oliver Adkins to various universities dated 23 March 2017, including correspondence between relevant Universities and the Defendants and internal documents commenting on the said emails.
22. Documents going to the reasons for the Defendants suggesting that certain Universities incorporate coats of arms or other logos into items of academic dress during the claim period.
23. Documents evidencing discussions with Universities of whether to incorporate coats of arms or other logos into items of academic dress during the claim period.
24. Internal documents relating to the email sent by James Middleton to a representative of the Burgon Society dated 8 November 2018.
25. Correspondence or documents evidencing other communications between the Defendants and Universities in relation to the existence or potential existence of intellectual property rights in the design of the Universities' academic dress

during the claim period.

26. Documents showing the steps taken to prevent other suppliers from unlawful copying of the Defendants' designs during the claim period.
27. Documents from the claim period showing the licensing of intellectual property rights that the Defendants hold/held in a University's academic dress to the University itself or to a newly-appointed supplier where a University appointed a new official academic dress supplier in place of the Defendants.
28. Documents from the claim period containing instructions/advice issued to the Defendants' teams of dressers concerning the wearing by students of academic dress not supplied by the Defendants
29. Documents from the claim period setting out or otherwise evidencing the reason or reasons for the Defendants' practice of bundling hoods, gowns and/or mortarboards or other headgear.
30. Documents from the claim period going to whether (and if so to what extent) the Defendants' hire of items of academic dress separately led to students failing to hire all of the necessary items.
31. Documents evidencing discussions between Defendants and Universities during the claim period concerning the design of latter's tender processes for appointing an "official" supplier.
32. Documents showing Universities requiring suppliers to guarantee the availability of academic dress for their students' graduation ceremonies in sufficient quantities at the relevant times of year.
33. Documents evidencing whether and to what extent the Second Defendant has taken steps to influence the commercial decisions of the Third or Fourth Defendant in relation to the supply of academic dress to UK universities.
34. Documents from the claim period containing market analysis in relation to the supply of academic dress for use by students at graduation ceremonies, including analysis of profit margins achieved by the Defendants and competitive threats to the Defendants' businesses.

35. Internal correspondence, documents or reports from the claim period setting out any consideration by the Defendants as to whether to supply academic dress in geographic areas other than the UK
36. Internal correspondence, documents or reports from the claim period setting out any consideration by the Defendants of the nature of any barriers to entry in the market or markets for the supply of academic dress to students at UK universities
37. Documents containing consideration or analysis of the nature of UK student demand in terms of their preferences concerning price, quality, range and/or service, including the results of any customer surveys carried out by or on behalf of the Defendants from 1 July 2016-present and any documents analysing the results of the same
38. Documents evidencing discussions between the Defendants and Universities during the claim period concerning agreements or potential agreements (whether formal or informal) in relation to commission payments or other benefits in kind provided by the Defendants to Universities.
39. Documents from the claim period going to Universities' requirements as to stock and excess.