



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

Case No: 1359/5/7/20

BETWEEN:

**REST & PLAY FOOTWEAR LTD**

Claimant

- v -

**GEORGE RYE & SONS LTD**

Defendant

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**ORDER**

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**UPON** reading the claim form and fast-track application filed by the Claimant on 6 August 2020

**AND UPON** reading the defence and counterclaim filed by the Defendant on 2 October 2020

**AND UPON** reading the reply to the Defendant's defence and the application to strike out the Defendant's counterclaim filed by the Claimant on 30 October 2020

**AND UPON** reading the written submissions of the parties and witness statements filed in advance of a case management conference ("CMC")

**AND UPON** a CMC held remotely on 10 June 2021

**AND UPON** hearing Counsel for the Claimant and Leading Counsel for the Defendant

## **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 commercially sensitive information (“**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).
4. Any document, statement of case, witness statement or expert report disclosed or filed by a party in relation to the proceedings which contains Confidential Information shall not be disclosed from the Tribunal’s records without appropriate redaction of the Confidential Information without further order.
5. If a document which contains Confidential Information is relied on or referred to at hearings before or at trial, that part of the document which contains Confidential Information shall not be regarded as having been read to or by the Tribunal or referred to for the purposes of Rule 102(5) of the Tribunal Rules / CPR 31.22 without further order.

### **Fast Track**

6. The Claimant’s application for fast-track designation of the claim is refused, for the reasons given by the Tribunal.

## **Further Information**

7. By 4pm on 14 June 2021, the Claimant is to provide specific disclosure of financial statements prepared by it for the financial years ending 31 March 2016, 31 March 2017, 31 March 2018, 31 March 2019, 31 March 2020 and 31 March 2021 (or, where approved full financial statements are not available, the most up to date management accounts).
8. By 4pm on 18 June 2021, the Defendant will respond to the Claimant's request for information.
9. By 4pm on 30 June 2021, the Claimant is to provide a response, supported by a statement of truth, to Questions 1(a), (b) and (c) of the Annex to the Tribunal's letter of 24 August 2020 insofar as it is able to do so, together with the underlying data (which, in the case of costs data are to be prepared in accordance with a methodology to be agreed between the experts).
10. By 4pm on 30 June 2021, the Claimant is to provide a witness statement, supported by a statement of truth, explaining the Claimant's approach to pricing in relation to Grisport products, including its use of any dynamic pricing software (or similar), together with any floor or profitability controls incorporated in the same, in order to respond to price competition from other retailers, with reference both to what it did in fact do during the relevant period and what it would have done absent the infringement (if different).
11. By 4pm on 17 September 2021, the Claimant is to file and serve supplemental particulars of loss, including indicative particulars (pending further disclosure and economic evidence) on the prices, volumes, revenues and profits that the Claimant contends it would have achieved on its sales of Grisport products absent the infringement.

## **Disclosure**

12. The parties shall provide disclosure in two phases, namely the Initial Quantum Disclosure and Further Factual Disclosure as defined in paragraphs 24 and 31 below.

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).

#### **Claimant's application to strike out the Defendant's counterclaim**

14. No order is made on the Claimant's application to strike out the counterclaim, for the reasons given by the Tribunal.
15. The time for the service of any defence to the counterclaim is stayed until further order of the Tribunal.
16. By 4pm on 18 June 2021, the Defendant shall inform the Tribunal and the Claimant as to whether it intends to (i) maintain the counterclaim and refer the question of strike out to the fully constituted Tribunal, (ii) withdraw its counterclaim or (iii) apply to transfer the Claimant's claim and the Defendant's counterclaim to the High Court.

#### **Costs management**

17. The costs recoverable by either party from the other in respect of these proceedings shall be capped at £120,000.
18. By 4pm on 11 June 2021, the Claimant shall file and serve a signed copy of its costs budget with a copy of the Appendix referred therein.
19. By 4pm on 17 June 2021, the Claimant is to provide details of its financial position and ability to fund this litigation and meet any adverse costs award, through its own funds or ATE insurance, and/or to notify the Defendant of any conditional fee or damages-based arrangements that it has entered into.

#### **Directions to Trial: Phase 1**

20. Each party shall have permission to adduce evidence from a single expert in the field of economics.

21. The parties' expert evidence on economics shall be confined to any economic questions raised in connection with the breach of competition law, including anti-competitive effects of the infringement, causation, quantification of any losses suffered by the Claimant, and interest/financial loss suffered by the Claimant.
22. By no later than 18 June 2021, the parties' experts shall, on a without prejudice basis, attend a further meeting to discuss and agree:
  - (a) a common methodology to be used to assess: the effects of the breaches of competition law, causation, the quantum of any loss suffered by the Claimant, and the quantum of any interest/financial losses suffered by the Claimant (the "**Agreed Methodology**");
  - (b) an outline and/or table of contents of the experts' respective without prejudice outline position papers;
  - (c) the categories of documents and/or data required from the parties as part of disclosure in order to implement the Agreed Methodology;
  - (d) an appropriate format by which to present the results of the experts' implementation of the Agreed Methodology to the Tribunal; and
  - (e) an appropriate overview of the Agreed Methodology to be submitted to the Tribunal.
23. By 4pm on 21 June 2021, the parties shall file an agreed overview of the Agreed Methodology with the Tribunal.
24. By 4pm on 2 July 2021, the parties shall seek to agree a priority list of categories of documents and/or data to be disclosed for the purposes of the Agreed Methodology (the "**Initial Quantum Disclosure**").
25. By 4pm on 23 July 2021, inspection of the Initial Quantum Disclosure shall be given in an electronic format and on an electronic medium to be agreed by the parties.

26. By 4pm on 17 September 2021, the Claimant's expert shall, on a without prejudice basis, set out his/her outline position on the effects of the breaches of competition law and the quantum of any loss, including interest and financial loss, suffered by the Claimant (taking into account the Defendant's counterclaim), in accordance with the Agreed Methodology and presenting the underlying calculations and evidential support.
27. By 4pm on 8 October 2021, the Defendant's expert shall, on a without prejudice basis, set out his/her outline position on the effects of the breaches of competition law and the quantum of any loss, including interest and financial loss, suffered by the Claimant (taking into account the Defendant's counterclaim), in accordance with the Agreed Methodology and presenting the underlying calculations and evidential support.
28. By no later than 15 October 2021, the parties' experts shall, on a without prejudice basis, meet to discuss and narrow the areas of disagreement regarding their respective outline positions.
29. By no later than 22 October 2021, the parties' legal representatives and/or experts shall meet, on a without prejudice basis, meet to discuss and attempt to settle the claim.

## **Directions to trial: Phase 2**

30. By 4pm on 29 October 2021, the parties shall file and serve disclosure reports and electronic disclosure questionnaires.
31. By 4pm on 1 November 2021, the parties shall agree a list of further categories of documents and data (the "**Further Factual Disclosure**") to be disclosed.
32. By 4pm on 12 November 2021, inspection of the Further Factual Disclosure shall be given in an electronic format and on an electronic medium to be agreed by the parties.

33. The parties shall file and serve signed statements of witnesses of fact by 4pm on 3 December 2021. Unless otherwise ordered, statements of witnesses of fact shall stand as the evidence of the witness in question at trial.
34. The parties shall (if necessary) file and serve reply statements of witnesses of fact by 4pm on 17 December 2021.
35. By 4pm on 7 January 2022, the parties shall each file and serve signed expert reports.
36. The parties' experts shall meet, on a without prejudice basis, to discuss their respective reports by no later than 14 January 2022 and shall produce a joint statement of matters agreed and not agreed that shall be filed by 4pm on 21 January 2022.
37. Preparation of trial bundles shall be completed and filed by no later than 4pm on 4 February 2022. The parties are to liaise with the Tribunal regarding the appropriate format for the bundles (i.e. electronic and/or hard copy).
38. Skeleton arguments shall be exchanged simultaneously and filed by 4pm one week before the start date of the trial.
39. Agreed authorities bundles shall be filed by 4pm five days before the start date of the trial. The parties are to liaise with the Tribunal regarding the appropriate format for the bundles (i.e. electronic and/or hard copy).
40. The trial shall be fixed to commence on the first available date on or after 25 February 2022, with a provisional estimate of 4 days, and taking into account, so far as reasonably practicable, the availability of parties' counsel.

### **Costs**

41. There shall be no order as to costs.

**Other**

42. Liberty to apply.

**The Hon Mrs Justice Bacon**

Chairwoman of the Competition Appeal Tribunal

Made: 10 June 2021

Drawn: 11 June 2021