



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

ORDER

UPON considering the Claimant's request by letter dated 2 September 2022 from its solicitor for permission to amend its Amended Claim Form on the basis that the proposed amendments clarifies the Claimant's case in relation to the availability of injunctive relief and enclosing a draft Re-Amended Claim Form

AND UPON considering the letter dated 2 September 2022 from the solicitors for the Defendants to the Claimant, refusing consent to the proposed amendments

IT IS ORDERED THAT:

1. The Claimant shall be granted permission to amend its Amended Claim Form in the form of the draft Re-Amended Claim Form provided to the Tribunal on 2 September 2022.
2. The Claimant shall file and serve its Re-Amended Claim Form by 4pm on 6 September 2022.

3. The Defendants shall have permission to file and serve, if so advised, (1) a short supplemental skeleton argument responding to the Claimant's skeleton argument in so far as it addresses the point pleaded by way of re-amendment, and/ or (2) a Re-Amended Defence addressing the Claimant's amendments in its Re-Amended Claim Form, by 4pm on 9 September 2022.
4. The Claimant shall have permission, if so advised, to make any consequential amendments to its Reply. Such Amended Reply shall be filed and served by 4pm on 12 September 2022.
5. The Claimant shall pay the Defendants' costs of and occasioned by its Re-Amended Claim Form.
6. Liberty to apply.

REASONS

1. The hearing of the Phase 1 trial in this case is due to start on 15 September 2022, with a time estimate of five days. The Claimant has belatedly applied to re-amend the Amended Claim Form specifically in relation to its claim to be entitled to an injunction requiring the Defendants to reinstate the supply of goods to it.

2. The Claimant seeks to amend paragraph 83 so that it reads:

“As an intended and/or foreseeable consequence of the Defendants’ breach, the Claimant has suffered and continues to suffer loss and damage in the form of lost sales, lost profits and lost growth to its business. The Claimant is entitled, by way of an award of damages and/or permanent injunction, to be placed in the position that it would have been in had the overall infringement not occurred. If the Tribunal is not minded to exercise its discretion to grant an injunction to restrain future wrongs (or the First Defendant is not willing to reinstate supplies properly in practice), the Claimant will ask that damages are assessed on an alternative basis, including for the avoidance of doubt, as may be appropriate, under the equitable principles under the Chancery Amendment Act 1858 (“Lord Cairns Act”), now found in s.50 of the Senior Courts Act 1981, being damages in addition to or in substitution for an injunction, thereby reflecting a higher level of damages “once and for all” in respect of continuing infringements resulting in future harm and losses to the Claimant’s business and its future growth, that would have been obviated by the specific relief that the court has declined.” (The proposed amendment is underlined.)

3. The Claimant also seeks to amend the prayer for relief so that it seeks:

“(2) An injunction, in such terms as may be just and convenient for the purpose of obtaining, on a permanent basis at conclusion of the trial, or on an interim basis from time to time, effective compliance with and/or to prevent future conduct in breach of, the Chapter I prohibition and/or requiring the Defendants to restore supplies of all stocks of Wacoal Group Products to the Claimant on a non-discriminatory basis.

(3) Damages, to be assessed either with or without an injunction, together with interest thereon, as set out above, including for the avoidance of doubt, as may be appropriate, under the equitable principles under the Chancery Amendment Act 1858 (“Lord Cairns Act”), now found in s.50 of the Senior Courts Act 1981, being damages in addition to or in substitution for an injunction.” (The proposed amendments are underlined.)

4. The Claimant submits that the proposed amendment clarifies its case in relation to the availability of injunctive relief and the alternative in damages if injunctive relief is not available; that the claim was originally particularised in its original Claim Form at paragraph 95¹; that Counsel, Mr Steven Gee QC (who has been retained to argue the point) has advised that the Claimant’s pleaded case should be recognised as a claim for damages under Lord Cairn’s Act (now s.50 of the Senior Courts Act 1981), whether granted in substitution or in addition to injunctive relief; and that the proposed amendments clarify the legal basis for the claim for higher damages in the event that the Tribunal declines to award an injunction. The Claimant also submits that this is an issue of wider public interest as it relates to the question of the effective remedies that are available for breach of competition law.
5. The Defendants object to the proposed amendment at what is undoubtedly a late stage in the proceedings, and reserve their right to re-amend their Defence should permission be granted.
6. I will grant permission to re-amend the Amended Claim Form. The proposed amendments are short and provide further clarification of the legal basis for a point that is already pleaded. The Claimant accepts that the Defendants may wish to submit a further responsive skeleton argument once the Defendants see the way the point is put in its skeleton argument. That seems to me to be sensible. In addition, the Defendants may consider that a formal response to the Re-Amended Claim Form is required in the

¹ Paragraph 95 reads as follows: “However, should the Tribunal be unwilling to grant a permanent injunction reinstating supplies of Wacoal Group Products during 2022, then it will take much longer for the Claimant to recover its market position and it may never do so. The Claimant has therefore, in the alternative, projected losses for a further 5 years from the final refusal to supply in September 2021, which would substantially increase the damages awarded for future losses. The total losses in the absence of the grant of a permanent injunction reinstating supplies are estimated as being: £7,709,038.”

form of a Re-Amended Defence. If they wish to do that, then I will direct that they may do so by the same date as I will direct any supplemental skeleton is due. In the circumstances, it seems to me that the Defendants will not be prejudiced by what is undoubtedly a late amendment.

Bridget Lucas QC

Chair of the Competition Appeal Tribunal

Made: 5 September 2022

Drawn: 5 September 2022