

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INTELLECTUAL PROPERTY ENTERPRISE COURT (Ch.D)

Royal Courts of Justice
Rolls Building, London EC4A 1NL

Date: 03 December 2018

Before:

MR JUSTICE SNOWDEN

B E T W E E N:

- (1) JUUL LABS, INC.
- (2) JUUL LABS UK LIMITED

Claimants/Applicants

- and -

- (1) QUICK XUUL LIMITED
- (2) LINDA McVEIGH
- (3) NICHOLAS JASON JUUL
(also known as Nicholas Jason Place)
- (4) GARY WILSON
- (5) CAXESS CORPORATION
(a Belize corporation)

Defendants

Mr. James Mellor QC, instructed by **Pinsent Masons LLP**, for the Claimants
The application was made without notice to the Defendants

APPROVED JUDGMENT

MR JUSTICE SNOWDEN:

1. This is an application made without notice by the claimants, Juul Labs Inc and Juul Labs UK Limited, in proceedings which have been commenced against five defendants, Quick Juul Limited, Linda McVeigh, Nicholas Jason Place (also known as Nicholas Jason Juul), Gary Wilson and Caxess Corporation (a Belize corporation).
2. The background, in very broad terms is that the claimants are the manufacturers of an electronic vaping device and the materials which are used in the device, which is designed to replace conventional cigarettes. They have established a substantial business, primarily in the US but more recently in the UK. The claimants have become aware that the defendants have started to conduct trade largely online in the UK including by a website at www.quickjuul.com (the "QJ website"), offering to sell products which are either strikingly similar to the Juul products or counterfeit versions of the Juul products. The claimants have issued proceedings for trade mark infringement and passing off.
3. Interim injunctive relief was first sought from Fancourt J in relation to the activities of the first to third defendants. An order was made on 31st October 2018, which was supplemented a few days later at a hearing on 2nd November 2018. Thereafter, and for present purposes, the materially relevant orders were those granted by Marcus Smith J at a hearing on 8th November 2018, which hearing was attended by the second and third defendants in person.
4. At that hearing, Marcus Smith J granted injunctions against the first three defendants restraining them from advertising or selling products by reference to the Juul sign including via the QJ website and requiring them to give information in relation to the ownership and control of the domain name for the QJ website (the "Domain Name").
5. Marcus Smith J also made an order giving permission for the fourth and fifth defendants to be added as defendants to the proceedings and granted similar injunctive relief against them. The fifth defendant was put forward by the third defendant as a Belize corporation which had acquired the business of the first three defendants for 1, ostensibly on 23rd October 2018. The fourth defendant was put forward as an individual who had become the sole director of the first defendant and who was described in the evidence as the controller of the Belize corporation.
6. The order from Marcus Smith J authorised substituted service of these proceedings and an amended claim form on the fourth and fifth defendants through the mechanism of the service on the fourth defendant in person. I am told that an attempt has been made to serve the fourth defendant with the proceedings in person, but I understand that it has not yet proved possible. Nonetheless counsel has told me on instructions that the claimants are in e-mail communication with the fourth defendant who is, therefore, aware of these proceedings.
7. In addition to restraining all of the defendants from advertising or selling any products under or by reference to the sign JUUL including doing such acts via the QJ website, by paragraph 9(c) of the order

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against the fourth and fifth defendants and paragraph 2(c) of the order against the first three defendants, all of the defendants were restrained from:

"Taking steps as from 12.44 p.m. on 8th November 2018 to put the domain name quickjuul.com out of control of any of the defendant or transfer the domain name quickjuul.com as between any of the defendants."

8. Each of the defendants were also ordered (by paragraph 3 of the order against the first to third defendants and paragraph 10 of the order against the fourth and fifth defendants):

"To procure the taking of all such steps as are in their power to take offline immediately and in any event by noon on Friday 9th November 2018: the QJ website, Quick Juul twitter account ..., Quick Juul Instagram account ..., such pages of any of the defendant's Facebook accounts as concern Quick Juul; ... and such pages or sections of the jasons-destiny eBay account as concern Quick Juul...."

9. The orders made on 8th November 2018 were then continued until judgment in the action or further order by Marcus Smith J on 15th November 2018.
10. The background to those orders against the fourth and fifth defendants was that the QJ website appeared to be being operated under the name of the fifth defendant company, albeit that a UK telephone number is given on the website for it. I have seen references in the evidence and in the substantial exhibits to screenshots of pages which have appeared on the web site since the 26th and 27th November 2018, which refer in fairly robust and abusive terms to the conduct of these proceedings by the claimants and which make it plain to me that the third defendant continued to exert some influence or exercise some control in relation to the content of the QJ website after its supposed sale to the fifth defendant. As of this morning, the abusive pages seem to have been taken down but the website continues to contain a large number of pages which advertise for sale products under the name "XUUL" which bear a clear similarity to the claimant's Juul products and appear to be compared or cross-referred to the claimants' products.
11. Against that background, there are three headings for relief which the claimants seek from me on a without notice basis.
12. The first is that I should order the fourth and fifth defendants, within 24 hours of service of the order upon them, to take all such steps as are in their power (i) to instruct transfer of ownership and control of the Domain Name to the second claimant by the signing and return of a letter in the form which has been produced to the court addressed to the registrant of the Domain Name, and (ii) to instruct the taking down of all content on the QJ website by the signing of a letter addressed to the host of the website.
13. The order further contains provisions that require the second claimant upon receipt of such letters, to procure the transfer to it of the Domain Name and the taking down of the content on the QJ website. The

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- draft order provides that the ownership and control of the Domain Name shall be held by the second claimant to the direction of the Court without the Domain Name being used until judgment or further order.
14. In default of compliance by the defendants, the draft order contains provisions authorising a Master of the High Court to sign the two letters which I have referred to on behalf of the fourth and/or fifth defendants pursuant to section 39 of the Senior Courts Act 1981 .
15. The justification offered for seeking such relief by Mr. Mellor QC who has appeared today is that the defendants he says are unarguably in breach of the orders of Marcus Smith J, to which I have referred, which required them to cease using the QJ website for the purposes of advertising or promoting products by reference to the sign Juul and they are also in breach of the requirement in paragraph 10 of the order to which I referred, which required the fourth and fifth defendants to take down the QJ website. He contended that the Court should act to ensure compliance with its earlier orders.
16. It seems to me that since the Domain Name itself incorporates the Juul name and the content of the QJ website refers to the Juul sign there is certainly a serious issue to be tried, both to the effect that the fourth and fifth defendants are involved in a continuing breach of the claimants' trade mark rights and are passing off their products as those of the claimants, and that they simply appear to be ignoring the orders of the court which have already been made, requiring the QJ website to be taken down. I agree with Mr. Mellor's submission that if the court were to order the letters of instruction to be signed by the fourth and fifth defendants, and in default for a Master to be authorised to execute those letters, that at least may provide a prospect that some effect can be given to the orders of the court which at the moment appear to be being ignored. An eventual order for damages against the fourth and fifth defendants is unlikely to provide an adequate remedy to the claimants, and the balance of convenience thus plainly points to the making of the orders sought.
17. I also think it is appropriate to include the provisions for a Master to execute the letters in default of compliance in the same order as the requirement upon the defendants to execute the documents. Under section 39 of the Senior Courts Act 1981 , although it is not generally the case that one makes an order in anticipation of a failure to execute, that can be done where the defendant has already shown by his conduct that he refuses and will refuse to execute: see *Savage v Norton* [1908] 1 Ch 290 . That does seem to me to fit the bill in given the failure by the defendants to comply with the existing orders.
18. Mr. Mellor QC also submits that it is appropriate that this matter should be heard without notice, because if notice is given of this application, the likelihood is that the fourth and fifth defendants may act (possibly at the instigation of the third defendant) quickly to move the registration, ownership and control of the Domain Name to another third party, in much the same way as appears to have happened when the Domain Name was transferred to the fifth defendant.
19. It seems to me that this is a correct assessment of the position. Although the mechanism which has been chosen is one which itself gives the defendants 24 hours to execute the documents before a Master may do so in default on behalf of the defendants, and therefore does give an opportunity for the defendants to move

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the Domain Name in defiance of the existing orders, there may be a marginally higher prospect of compliance by the fourth and fifth defendants with an actual order of the court for transfer of the Domain Name to the second claimant, rather than if simply notice is given in the usual way of the intention to seek such an order. I think I ought not to pass up such an opportunity for effect to be given to the earlier orders of the court.

20. For those reasons, I will make the order sought against the fourth and fifth defendants in relation to the Domain Name and QJ website.
21. The second type of relief which Mr. Mellor sought today was a restraint upon the advertising and sale of products under the name XUUL, including the possible use of a new website which might be activated using the name QuickXuul. The threat in that respect is said to be evidenced by the fact that the QJ website now includes and offers products bearing the name Xuul, and does so in conjunction with the sign Juul. That is said to be designed to confuse the public and to amount either to infringement of the claimants' trade marks, alternatively to be passing off other products as the claimants' products.
22. I do not, however, think that it is appropriate to make orders in that respect on a without notice basis, especially if there is some prospect of the QJ website being taken down. It seems to me the appropriate mechanism is to give permission for an application to be issued, not only seeking the relief which I am going to grant without notice, but also that second head of relief and the third head of relief which I shall come to in a moment, and for those matters to come on for hearing inter partes this Friday in the ordinary way.
23. The third head of relief sought is an order preventing the defendants from advertising or selling or supplying any electronic nicotine delivery system product which contains material of more than 1.7% nicotine strength or which is claimed to contain material of more than 1.7% nicotine strength. The relevance of that number is that that is the maximum strength of such products which can be legally advertised or sold in the UK. The claimants contend that the defendants are advertising for sale products carrying 5% nicotine content, which are available in the United States but not lawfully available here.
24. That injunction seems on one view to be drafted as a general injunction not to break the criminal law, and it seems to me that the question of whether it is appropriate and adds anything to the claimant's existing claims based upon infringement their own trademarks and passing off, is something which should be debated inter partes later in the week.
25. For those reasons I will make an order requiring the execution of these two letters and in default for the letters to be executed by a Master transferring the Domain Name to the second claimant and requiring the QJ website to be taken down. There shall be a return date for that order together with the other applications at an inter partes hearing on Friday of this week. I shall now discuss the detailed terms of the order and provisions for service on the fourth and fifth defendants with Mr. Mellor QC.