



Neutral Citation Number: [2022] EWHC 1023 (IPEC)

CLAIM NO. IP-2020-000080

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND & WALES
INTELLECTUAL PROPERTY LIST (CHD)
INTELLECTUAL PROPERTY ENTERPRISE COURT
EUROPEAN UNION TRADE MARK COURT**

Judgment handed down by email
Date: 4 May 2022

Before:
NICHOLAS CADDICK Q.C.
(sitting as a Deputy High Court Judge)

BETWEEN:

**(1) MATCH GROUP, LLC
(2) MEETIC SAS
(3) MATCH.COM INTERNATIONAL LIMITED**

Claimants

-and-

**(1) MUZMATCH LIMITED
(2) SHAHZAD YOUNAS**

Defendants

TIM AUSTEN (instructed by Browne Jacobson LLP) for the Claimants

JESSIE BOWHILL (instructed by Bristows LLP) for the Defendants

Hearing on the papers

JUDGMENT

Nicholas Caddick Q.C. (sitting as a Deputy High Court Judge):

1. This judgment relates to a breach of the embargo on disclosures relating to a draft judgment.

The law

2. The embargo applies by reason of para.2.4 of Practice Direction 40E to the Civil Procedure Rules, which provides that:

“A copy of the draft judgment may be supplied, in confidence, to the parties provided that—

(a) neither the draft judgment nor its substance is disclosed to any other person or used in the public domain; and

(b) no action is taken (other than internally) in response to the draft judgment, before the judgment is handed down.”

3. The serious nature of this embargo is clear from the decision of the Court of Appeal in *R (on the application of the Counsel General for Wales) v The Secretary of State for Business, Energy and Industrial Strategy* [2022] EWCA Civ 181 (“the CGW case”). In that case, Sir Geoffrey Vos MR, having reviewed the relevant law, at [24], stated that:

“It is important, therefore, to understand why judgments are handed down in draft under embargo in the first place. Some insight is gained from the passage cited above from *Crosland*.¹ That suggests that the process is to enable the parties to make suggestions for the correction of errors, prepare submissions and agree orders on consequential matters and to prepare themselves for the publication of the judgment. The process is not for any other purpose and dissemination of the judgment or its substance beyond those that I have specifically mentioned is forbidden (unless the court expressly gives consent).”

And, at [29], that:

“It is the personal responsibility of counsel and solicitors instructed in a case in which an embargoed draft judgment is provided to ensure that [the mandatory provisions of CPR PD40E] are complied with.”

Finally, at [31(v)], he commented that:

“...in future, those who break embargoes can expect to find themselves the subject of contempt proceedings as envisaged in paragraph 2.8 of CPR PD40E.”

4. The Court of Appeal revisited the issue more recently in *The Public Institution for Social Security v Banque Pictet & Cie SA* [2022] EWCA Civ 368 (“the *Banque Pictet* case”) where, notwithstanding the final comment of Sir Geoffrey Vos MR in the CGW case, it decided against initiating any contempt proceedings. The case concerned some breaches of an embargo where the culprit was unidentifiable and the court decided that it would probably be a fruitless exercise for it to initiate further action. The case also concerned a breach of the

¹ *HM Attorney General v Crosland* [2021] UKSC 15

embargo by a lawyer for one of the parties who had sent a WhatsApp message stating that “we just won” to various fellow partners in his firm and (by mistake) to 41 international lawyers. In respect of this, the court decided not to take further action because the person concerned had provided a full apology and, as regards his disclosure to the 41 international lawyers, the breach was due to an inadvertent error which he had corrected before any damage had been done.

The present case

5. In the present case, the issue arises in relation to the draft judgment in which I set out my reasons for finding in favour of the Claimants (“Match”) in relation to their claims of trade mark infringement and passing off.
6. The draft judgment was sent to the parties by email on 12th April 2022 with the following emboldened heading:

IN CONFIDENCE

- 1. This is a judgment to which the Practice Direction supplementing CPR Part 40 applies.**
- 2. This draft is confidential to the parties and their legal representatives and accordingly neither the draft itself nor its substance may be disclosed to any other person or used in the public domain.**
- 3. The parties must take all reasonable steps to ensure that the confidentiality of this draft is preserved. No action is to be taken (other than internally) in response to the draft before judgment has been formally pronounced. A breach of any of these obligations may be treated as a contempt of court.**
- 4. The court will hand down its judgment in an approved final form. Counsel should therefore submit any list of typing corrections and other obvious errors in writing as a separate Word document or by a separate email. (Nil returns are required) to the clerk to Nicholas Caddick Q.C. by via email at [omitted], by 4pm on 19 April 2022 so that changes can be incorporated, if the judge accepts them, in the handed down judgment.**
- 5. The formal hand down of the judgment will take place on 20th April 2022.**

7. On 20th April, very shortly before the formal handing down of the judgment, I was shown an email from Counsel for Match stating that Match had been approached by members of the press who were aware of the outcome of the case (namely that Match had been successful) and asking Match for its comments. The journalists concerned made clear that they would not publish anything prior to the formal handing down.
8. Later that same day, Jeremy Blum of Bristows LLP (the Defendants’ solicitors) sent an email confirming that the Defendants had been the source of the journalists’ information and indicating that he was obtaining more information with a view to providing a full explanation.
9. In response, I sent a message to the parties stating that:

I am grateful to the parties for drawing this matter to my attention so promptly.

I note that Mr Blum is seeking further information from his client. In view of the approach adopted by the Master of the Rolls in R (Counsel General for Wales) v

Secretary of State for Business Energy and Industrial Strategy [2022] EWCA Civ 181, it would be helpful if Mr Blum could ensure that the court is provided with a full written explanation from those involved in the release to the press of information concerning the result of this case. It would also be useful to have an explanation of the steps taken to draw the clients' attention to the confidential nature of the draft judgment and its contents.

Once such information is available from Mr Blum and his client, it would be helpful if Match, having considered the information, could then comment on its stance in this regard.

Subject to the information and Match's response, I will consider whether a further hearing is needed or whether I can deal with the matter on the papers.

10. On the following day, 21st April, I was provided with the 6th Witness Statement of Mr Younas on behalf of the Defendants and the 4th Statement of Mr Blum. I will deal in greater detail with the contents of these statements later in this judgment. In summary, Mr Younas described the actions that he had taken with regard to the draft judgment. He also accepted that there had been a breach of the embargo for which he apologised unreservedly. Mr Blum's statement explained what he had done to try to ensure compliance with the embargo.
11. On 25th April, I received Match's response in the form of written submissions from Mr Austen. These make no criticism of Bristows but are highly critical of Mr Younas who, Mr Austen submits, had breached the embargo in "a calculated and flagrant manner for publicity purposes". Despite this, Match's position is that it does not intend itself to initiate contempt proceedings. On 27th April, I received the Defendants' written submissions in reply.
12. Having considered the witness statements and the parties' submissions, I have decided that it is appropriate for me to deal with the issues raised without a hearing and, instead, on the basis of the papers alone.

The position of Bristows

13. I will deal first with the actions of Bristows as the Defendants' solicitors and I will say, immediately, that I am fully satisfied that no criticism attaches to their conduct in this matter.
14. On 12th April, having received the draft judgment but before forwarding a copy to his client, Mr Blum telephoned Mr Younas. In this call, he made it very clear that Mr Younas should not tell anyone about the outcome of the case without discussing it first with Mr Blum. This was because the draft judgment and the outcome of the case were confidential and on a "need to know" basis, otherwise there was a risk of contempt of court.
15. Later that same day, Mr Blum sent the draft judgment to Mr Younas. His covering email was as follows:

"Hi Shaz,

As discussed- PLEASE DO NOT TELL ANYONE YET OR DO ANYTHING WITH THIS JUDGMENT- we can discuss soon who you can tell in order to prepare for hand down. We/you have to keep this confidential until after hand down on 20 April. Otherwise it is contempt of court.

Password is: qwerty12422

Best

Jeremy”

16. Later, again that same day, Mr Younas emailed Mr Blum asking him to arrange to file applications to register new trade marks. However, Mr Blum declined, stating that:

.....“On the TM registrations [*redacted*] we can prepare the filing but not actually file anything until after 10.30am on 20 April. Point 3 on the Embargo at the top says:

No action is to be taken (other than internally) in response to the draft before judgment has been formally pronounced. A breach of any of these obligations may be treated as a contempt of court.

The only reason you are filing is in response to the draft so if we filed the new applications, I would worry the other side says you are in breach of the embargo.”

17. In a phone conversation with Mr Younas on 13th April, Mr Blum once again stated that the draft judgment was confidential and under embargo and that the only steps that could be taken were internal steps to prepare for hand down on 20th April. He also stated that the outcome of the case could only be disclosed internally on a need to know basis to prepare for hand down. Finally, he explained that any press release could only be published after the judgment had been handed down.
18. On 19th April, the day before the judgment was handed down, Mr Younas emailed Mr Blum seeking confirmation as to the handing down and saying that “we have journo’s ready”. Mr Blum took this to mean that the journalists were aware that judgment was to be handed down and his assistant, Marc Linsner, responded saying:

“Hi Shaz,

The judgment is due to be handed down at 10:30am tomorrow morning, but we will confirm once the judgment has been handed down to ensure no steps are taken before then.

Thanks

Marc”.

19. Given this evidence, I accept Mr Blum’s statement that he took robust steps to ensure that his clients were aware of the obligations of confidentiality surrounding the draft judgment and that they should not take any steps until after the formal hand down. In my judgment, no blame attaches to Mr Blum or to Bristows in relation to what has occurred.

The position of the Defendants

20. As appears from the *CGW* case, the only disclosures that the Defendants were permitted to make in relation to the draft judgment (other than to their legal representatives) were to persons internally who fell within the category of those who needed to know in order to fulfil the purposes referred to in paragraph 3 above. In his statement, Mr Younas accepts that the advice he had received from Mr Blum from the start went even further and was that he should not tell anyone about the draft judgment without first speaking to Mr Blum and also that there should be a further discussion about who needed to be informed of the result in order to prepare for the formal hand down.

Internal disclosures by the Defendants

21. Despite this, on 12th April (and without first checking with Mr Blum), Mr Younas informed the following four Muzmatch employees of the outcome of the case:
 - a. Sim Ahmed – Head of Marketing;
 - b. Peter McCurrach – Chief Technical Officer;
 - c. Andrew Springer – Head of Mobile; and
 - d. Laura Oades – Designer.
22. Mr Younas explained that he told Mr Ahmed so that they could together prepare a press release for publication after the hand down. It seems to me (and Match accepts) that this fell within the scope of what was permissible under CPR PD40E, as explained by Sir Geoffrey Vos MR in the *CGW* case (see paragraph 3 above).
23. There is, however, an issue as to whether the three other people named above should have been told about the outcome of the case. Mr Younas stated that they were told so they could start thinking about the technical and design changes that Muzmatch may be required to make. Match asserts that that was not a proper purpose. It argues that, as a hold over order was agreed by the parties shortly after 12th April and as the Defendants were planning to appeal (and intended to keep trading as Muzmatch pending that appeal), there was no need for these people to be thinking about technical and design changes at that stage. I do not agree.
24. In the first place, it seems to me that the Defendants, in the immediate aftermath of receiving a draft judgment which was clearly likely to have very serious repercussions on their operations, would need to consult internally in order to identify any technical and design implications that might be relevant to the Defendants in preparing submissions on the judgment, in agreeing orders on consequential matters and in preparing themselves for the publication of the judgment. CPR PD40E makes clear that such internal action is not prohibited. Mr Younas emphasised that all of these people were told that the outcome of the case was confidential and should not be shared with anyone, including friends/family or other Muzmatch employees, and there is no suggestion that any further disclosures were made by any of them.
25. Second, as regards Match's point regarding the hold over order, if (as Match says), the hold over agreement was made after 12th April, then that does not show that the earlier act of telling these people of the outcome had been improper.
26. Third, as regards Match's point regarding the Defendants' stated intention to appeal, I do not accept that this meant that they had no real need to consider technical or design changes. It seems to me that a party in the position of the Defendants may well wish to appeal whilst still having other possible courses of action in mind (including ones that might require technical or design changes). Indeed, it is clear from the emails on 12th April that Mr Younas was contemplating the registration of new trade-marks, which suggests that design changes were being contemplated upon publication of the judgment.
27. According to Mr Younas, on 19th April, two more Muzmatch employees, Paolo Ressa and Alex Newell, were informed of the result so that they could help Mr Younas prepare a recorded video statement to be sent to customers after the handing down of the judgment. Match accepts that this falls within the scope of what is permitted.
28. Overall, therefore, whilst (given the advice that Mr Younas had received from Mr Blum) it is surprising that Mr Younas did not consult Mr Blum as to whether these various people really

fell within Mr Blum's "need to know" category of persons, I find that the internal disclosures made by the Defendants were not in breach of the embargo. I would say, however, that parties in receipt of a draft judgment should always give careful thought as to who really needs to know the result given the purposes outlined in paragraph 3 above. The greater the number of persons who are informed, the greater the risk that the disclosure will stray beyond the permitted purposes or that one of the people informed will themselves make an unlawful disclosure.

Other disclosures by the Defendants

29. I turn now to the other disclosures made by the Defendants.
30. Mr Younas' evidence is that, having told Mr Ahmed of the outcome as disclosed by the draft judgment, he and Mr Ahmed worked together to prepare a press release. This release had a heading saying "EMBARGOED UNTIL 20th APRIL 10:30AM BST", followed by the headline "Muzmatch ... loses fight with Match Group to keep its name". Given the comments of Sir Geoffrey Vos MR (see paragraph 3 above), there is nothing inherently improper in the mere preparation of a such a press release. However, in this case, on 19th April, Mr Ahmed emailed 10 journalists offering to provide them with a copy of the embargoed press release in advance of the hand down, provided those journalists agreed to comply with the embargo. Further, on that same day, Mr Younas sent messages via Twitter to 6 of those journalists stating:

"...Please email press@muzmatch.com TODAY to receive an embargoed press release re the muzmatch Vs Match Group judgment (20th April 10:30am it is public)."
31. Following this, the press release (with its reference to its being embargoed) was provided in advance of the hand down to various journalists who had agreed to respect the embargo. Moreover, also in advance of the hand down, Mr Younas had email exchanges and telephone conversations with some of those journalists. In these, he reiterated that the decision would only become public at 10.30 on 20th April but he also made clear, inter alia, that the Defendants intended to appeal that decision.
32. At no point did Mr Younas notify Mr Blum of what was going on with regard to the press release or of Muzmatch's dealings with the journalists. Indeed, Mr Blum only became aware that there might be a problem when Match's solicitors told him that Match had been contacted by journalists who were aware of the outcome of the case. This led Mr Blum to contact Mr Younas and, after that, to Muzmatch contacting the journalists asking them not to publish the press release or other materials.
33. In his statement, Mr Younas makes clear that he is deeply remorseful and wholeheartedly apologises to the court for his actions regarding this disclosure of information to journalists. His explanation is that he honestly believed that he could communicate the outcome of the case and share a press release with journalists provided it was done on a strictly confidential basis and provided the information was not published before the judgment was formally handed down. He comments that, when he worked in banking, it was common for embargoed information to be dealt with in such a manner.
34. I have to say that I find Mr Younas' explanation to be more than a little surprising given the lengths to which Mr Blum had gone to make the need for confidentiality clear. I note, in particular, Mr Blum's initial warning "... **PLEASE DO NOT TELL ANYONE YET OR DO ANYTHING WITH THIS JUDGMENT...**", Mr Blum's further warning that "**No action is to be taken (other than internally)...**" and Mr Blum's repeated references to the need for there

to be further discussion as to who Mr Younas could tell of the outcome prior to the hand down. I will not comment on what may or may not be the proper course with regard to embargoed, possibly price sensitive, information in the banking world. However, it seems to me that it should have been clear to Mr Younas, from the heading at the top of the draft judgment set out above and from Mr Blum's consistent and clear advice, that the outcome of the case was not something that should have been the subject of press releases sent to journalists prior to the formal handing down of the judgment, even on terms that they respected the embargo.

35. Whilst the breach was a serious one and must be seen as such, on the present facts and after careful consideration, I have decided that it is appropriate to accept Mr Younas' apology as resolving the matter. Match has confirmed that it does not intend to initiate formal contempt proceedings and I do not see the need for the court to do so of its own initiative whether to punish Mr Younas for his past actions or to educate other litigants as to the very serious nature of the embargo. For these purposes, I take the view (similar to that taken by Meade J in *Optis v Apple* [2021] EWHC 2694 (Pat) at [80]) that it is sufficient for me to express in this judgment my view that what happened was a serious breach of the embargo. I hope that Mr Younas and others will take note for the future of the need to exercise the greatest care in disseminating any information derived from a draft judgment.
36. In reaching this decision, I bear in mind that, whilst I was surprised by Mr Younas' mistake, I accept that it was a genuine mistake. In this regard, I note that Mr Younas went to some lengths to emphasise that the journalists should respect the embargo and should not publicise the story until after the handing down of the judgment. The fact that he did this suggests that, however mistakenly, he did not realise that he was himself breaching the embargo by providing the journalists with the press release. Whilst he was clearly seeking to manage the publicity that the judgment might attract when handed down, I see no reason to characterise his actions as an intentional and knowing breach of the embargo.
37. Mr Austen criticises the contents of the release pointing out that it was inaccurate for it to say that Muzmatch had lost "a right" to use its name. Mr Austen also complains about the portrayal of Muzmatch as an underdog and about references being made to Match as a "multi-billion dollar company" which was seeking "to stifle competition". However, in my judgment, this does not require the matter to be escalated to full contempt proceedings, particularly as Match does not see the need to instigate contempt proceedings itself and as it is not clear to me that Muzmatch's wrongful disclosure of the embargoed press release to journalists has caused Match any real damage. As regards Match's feeling that Muzmatch has stolen a march in putting its spin on events, the stolen march was only of one day and to counter it, Match could have put together its own press release to be made available to journalists the moment that the judgment was handed down. Insofar as Match feels that matters have been misrepresented, it could seek to correct the position, no doubt referring to relevant parts of the judgment to support its case.

Conclusion

38. For the reasons set out above, in my judgment it is not necessary to take any further action as regards the matters referred to above.
39. Having said that, it is worth reiterating the points made by Carr LJ in the *Banque Pictet* case at [18], namely that where there is an embargo on publicising either the content or substance of a draft judgment, all recipients of that draft judgment need to understand clearly:

- “i) The importance and breadth of such embargoes. They are orders of the court which prohibit communication for any purpose other than the legitimate exercise of making suggestions for the correction of errors, preparing submissions, agreeing orders on consequential matters and preparation for the publication of the judgment. Informing other lawyers within the same organisation who are not involved in the conduct of the litigation and whose input is not necessary for the purpose of carrying out these legitimate exercises will be a breach of the court's order;
 - ii) The need for utmost care in communicating the content or substance of a draft judgment in the digital age. The use of electronic messaging requires greater, not lesser, attention to detail so as to ensure that errors of the type that occurred in this instance are not repeated;
 - iii) Any breach of an embargo must be drawn to the court's attention as soon as it is identified.”
- 40. To those points, I would add that the courts are likely to look with a very critical eye at any case where a party’s wish to manage the publicity surrounding litigation has led that party to breach the embargo imposed by CPR PD40E.
- 41. Match submits that this is a case where it is appropriate for the court to make an order that the Defendants pay Match’s costs of and associated with the issues addressed in this judgment to be summarily assessed on an indemnity basis. It also raises the issue of a publicity order. It seems to me that these are both matters that can be addressed at the form of order hearing which has been set down for 25th May. On the issue of those costs, I would say that, whilst I am prepared to accept that Mr Younas made a mistake, given what I have said in paragraph 34 above, my preliminary view is that it may well be appropriate to make the order sought by Match on the basis that Mr Younas’ conduct amounted to an abuse of the court’s process and/or was objectively unreasonable within the meaning of CPR 45.30(2)(a), CPR 45.32 and CPR 63.26(2).
- 42. Finally, I agree with Ms Bowhill that this is not a case where it is necessary for the court to seek to lay down any guidance with regard to the approach to be taken by the press in relation to draft judgments.