

Dixons Group v **Triton Tek** Ltd.

CHANCERY DIVISION

(Transcript: Harry Counsell & Co.)

HEARING-DATES: 2 DECEMBER 1997

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COUNSEL:

Mr Bloch for the Plaintiff; Mr Craigie appeared in person

PANEL: FERRIS J

JUDGMENTBY-1: FERRIS J

JUDGMENT-1:

FERRIS J: I have before me a motion by Dixons Group Plc and a company named DSG Retail Limited which is, I understand, the main trading company within the Dixons group, for injunctive relief of various kinds against the defendant Triton Tek Limited. The claim for this relief arises out of the fact that Triton Tek has registered itself as the owner of the Internet domain name "dixons.com" and is intending to use that name in connection with a web site on the Internet for the purpose of trading in, it is said, tapes and records, which are goods which are traded in by at least some of the retail shops in the Dixons group.

I don't propose to go through the evidence in any detail. The matter has been before the court on two previous occasions: on 17 November and again on 24 November. On each occasion Rattee J granted on an ex parte basis certain injunctive and other relief. On each occasion, as I understand it, directors of the defendant appeared in person and asked for time to instruct solicitors and counsel. They have not managed to do so; and they have made the same application to me today which I have refused. It seems to me to be quite unacceptable for a defendant in the situation of this defendant to suppose that he can go on getting adjournments on the basis of taking some quite simple steps to obtain representation. In those circumstances I have been prepared, as an exception to the normal rule, to hear Mr Craigie, a director of the defendant company, on behalf of the company. Mr Craigie has also sworn two affidavits which contain a mixture of fact and argument.

Having looked at all the material which is before me, I say that I am abundantly satisfied that the plaintiffs have a well arguable - indeed somewhat stronger than that - case to restrain the use of the domain name "dixons.com" by the defendant on the basis of trade-mark infringement and passing off. I am also satisfied that there is a well-arguable case that there has been misuse of confidential information, or at any rate that the defendant has obtained confidential information in the form of E-mail messages of a confidential nature intended for the plaintiffs. That is based on admissions which are in Mr Craigie's own affidavits.

One cannot but have the gravest of suspicions as to the defendant's motives for doing what it has done but Mr Craigie has argued that it intends to use the domain name, "dixons.com", in connection with a genuine intended trade and that the purpose of the defendant in registering that name is not to obtain money from the plaintiffs but to carry on genuine trade. One's suspicions about that are enhanced by the fact that the defendant appears also to have become the registered owner of a number of other domain names incorporating the names of extremely well-known companies or other organisations. But I think that I ought not to take the matter beyond stating my suspicions because the company has not had an opportunity of replying to the evidence about its ownership of the

other trade names, although it does appear that there is no real doubt that it is the registered owner of those other trade names.

In these circumstances the question arises, what is the appropriate order to grant? On behalf of the plaintiffs, Mr Bloch asks for something rather wider and more extensive than the orders previously made by Rattee J. In particular, Mr Bloch asks that the injunction restraining the use of the mark "Dixons" should extend to all goods and not be limited to goods of the class referred to in the order of Rattee J. He asks for an order that the defendant "do forthwith transfer or procure the transfer of the domain name dixons.com' to the first plaintiff"; and he asks that in place of an order previously made by Rattee J under which the defendant was to deliver up E-mails received by it at Dixons.com by 8 December, there should be an order that the defendant shall forthwith do that.

This is a case where, as I have said, I consider that the plaintiffs have a well-arguable case. I think that if an injunction on the lines sought were not granted now, the plaintiffs might well suffer serious damage which would be difficult to quantify. The damage to the defendant if an injunction were granted when it ought not to be is not likely to be anything like so severe; and there is no doubt as to the plaintiff's ability to meet its liability under the undertaking in damages which it will give. In those circumstances I have no hesitation in saying that injunctive relief should be granted; and I am prepared to grant that relief in the form of the minute of order submitted by Mr Bloch (subject to one point, which I will come back to) that is to say, granting relief somewhat wider than that which as previously been granted by Rattee J.

The one point in which I propose to depart from Mr Bloch's minute of order is in relation to the delivery up of E-mail communications and attachments thereto. Mr Bloch's minute asks that the defendant shall do it forthwith. The word "forthwith" has a certain flexibility about it despite its apparent meaning, but as there is some positive act which will require some detailed steps to be taken to comply with it, I think that the appropriate order would be that the defendant do by 4 pm. tomorrow - that would be 3 December - deliver up the E-mail communications; and that it should continue to do so until the transfer of the domain name to the 1st Plaintiff forthwith after any such communication is received. Mr Bloch, you can no doubt formulate that in appropriate language for an order.

DISPOSITION:

Judgment accordingly.

SOLICITORS:

Hammond Suddards

Project Ref: Tony W n/c

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