

THE HIGH COURT

[2017 No. 3001 P]

**BETWEEN**

**TEAMDRIVE SYSTEMS GMBH**

**PLAINTIFF**

**AND**

**GOOGLE IRELAND LIMITED AND GOOGLE COMMERCE LIMITED**

**DEFENDANTS**

**EX TEMPORE JUDGMENT of Mr. Justice Tony O'Connor delivered on the 5th day of May, 2017**

1. This judgment concerns an application by the plaintiff for an injunction pending the determination of these proceedings restraining the defendants, whether individually or by its officers, servants or agents from infringing the plaintiff's European Union Community trade mark 'TeamDrive', which is registered in Class 9: computer hardware and computer software, and Class 38: data transmissions via computer networks, ("EU trade mark"). Nothing more specific was sought in the notice of motion issued on 3rd April, 2017, which was the last Monday of Hilary term, with the Easter term beginning on 24th April, 2017.
2. It was submitted that the defendants, in replying affidavits, indicated the steps which would have to be taken if such an order was made. I will deal with that later in the judgment.

**History**

3. The trade mark application filed on 15th December, 2005, led to registration on 26th October, 2006, of the EU trade mark. The name of the registered holder was changed on 2nd February, 2011, to the plaintiff. The Court has learned from uncontradicted affidavit evidence that the customers of the plaintiff have used the plaintiff's services for working collaboratively on electronic files and documents from different locations, computers and mobile devices. The Court also notes the uncontroverted averment that the United Nations' Accredited Diplomatic Council Security Forum has singled out the services provided by the plaintiff under the EU trade mark for its security and high level of encryption.
4. The plaintiff's target market is accessed throughout the European Union by the internet, while the plaintiff itself is incorporated in Germany. The plaintiff's software is further available to download on platforms such as Amazon Web Services or Microsoft Azure, while original equipment manufacturers resell the plaintiff's products under various guises.
5. The plaintiff is also the registered holder of a German and United States federal trade mark for similar classes which have been deemed incontestable at law by the plaintiff's trade mark attorney for those jurisdictions. This Court does make any finding in that regard.
6. The affidavit evidence before the Court refers to global turnover for the plaintiff in 2015 being in excess of €800,000 and an expectation for €1.1 million in turnover in 2016, with further growth in 2017. The plaintiff has registered various domains which provide an

English language version of its website. All domains redirect to the English language version of [www.TeamDrive.com](http://www.TeamDrive.com).

7. The chief executive of the plaintiff, Mr. Oboda, explained on affidavit that most of the plaintiff's turnover occurs in Germany, with some 3% to 1% in the Netherlands, Austria, Finland, United Kingdom and Belgium and a tiny percentage in Ireland. About €100,000 of turnover has arisen from global sales outside the European Union.
8. The plaintiff's principal activity, as described, is distributed under the EU trade mark and similar trade marks registered in Germany and the United States of America.

#### **Defendants**

9. The defendants are indirect subsidiaries of Google Inc., which provide a range of services to users based in Europe, the Middle East and Africa. One of those services is called "G Suite", formerly known as "Google Apps", which is a suite of cloud-based applications which accommodate, *inter alia*, storage, filing and editing of shared e-mail, calendars, documents, PDFs and videos. "Google Drive", launched on 24th April, 2012, is an application of the G Suite service which is utilised globally.

#### **The relevant services of the defendants**

10. The defendants are at pains to describe the collaborative working of individuals through a feature of Google Drive known as "Team Drive". The feature, according to the defendants, allows secure handling of large volumes of files which are created and stored in the cloud. Team Drive is listed as a feature in a taskbar on a web page which includes "My Drive", "Recent", "Starred" and "Trash". The defendants maintain in these proceedings that "Team Drive" is a generic type term which they are entitled to use without infringing the EU trade mark. It is sold with the benefit of the goodwill and trade mark of Google and its various entities.

#### **Chronology**

11. The following chronology is clearly not exhaustive and the parties, throughout the course of the last four days, have laid emphasis on many other facts. Considering the relevant legal issues for the grant of an interlocutory injunction, the Court believes that it is best to set out this type of summary first.

2013-2016      According to Mr. Vogenthaler, (group product manager for Google Drive at Google Inc.), his predecessor, in 2013, created the designation "Team Drive" without any knowledge of the plaintiff's products. He explained that the designation went from "Drive For Teams" to "Shared Drives/Team Ownership" in 2014 and remained "Team Drive" until 2016, when it became "Team Drives". He then exhibited what he called a clearance search for Team Drive to justify the use of the designation "Team Drive" in the English language versions of Google Drive. That clearance search was conducted on 19th July, 2016, and the impression given to the Court, following exchanges with counsel, was that this was the first time that the principal person handling the development and distribution of Team Drive and Google Drive became aware of a potential conflict with the plaintiff. This fact may be the subject of specific evidence and cross-examination at the plenary hearing of these

proceedings. Suffice to say that the information put forward on behalf of both parties in this application accentuated the best points in their favour, while the Court makes no finding about the extent of candour displayed by the various deponents for the parties.

- 29.09.16 A G Suite update alert was issued about the new Early Adopter Programme called "Team Drive" and a new hangout video meeting experience. The Early Adopter Programme envisaged trials by users of the Google Drive.
- 17.10.16 The senior vice president and general counsel of Google Inc. received a letter from the plaintiff's New York lawyers in respect of intellectual property matters which highlighted that "TeamDrive" was an international software manufacturer that specialises in creating solutions for secure and collaborative work online. The lawyers expressed surprise that Google Inc. had announced the proposed launch of a new product called "Team Drive" and gave various references with weblinks for the plaintiff's trade mark. There is no doubt that the plaintiff was asserting its intellectual property right through the trade mark at this stage.
- This was also the date on which Google's enterprise-focused Cloud Next conference in San Francisco on 17th March was announced, with a further blog that the conference would include a presentation on Team Drives.
- 21.11.16 Lawyers in Washington DC, in reply to the letter of 17th October, referred to Team Drives within the Google Drive product. In short, the Washington lawyers asserted that the use of TeamDrive was "textbook descriptive use". Interestingly, the letter kept repeating that it was for settlement purposes only. The letter, in the context of the issues now before the Court, referred to only one version of Team Drive as it is used in various forms within the Google Drive product.
- 21.11.16 A director of the plaintiff applied to Google to be accepted into the Early Adopter Programme where the new feature could be explored.
- 08.12.16 The plaintiff's New York lawyers replied to the Washington lawyers for Google Inc. referring to various cases in the United States which challenged the view expressed for Google that it was making fair use of the plaintiff's trade mark, before expressing extreme concern that the actions of Google would cause confusion and diminish the value of the plaintiff's intellectual property. Significantly, the lawyers did not allege that it would obliterate the plaintiff's business, as is now suggested for the plaintiff. The lawyers sought a constructive discussion to resolve the dispute, without mentioning any imminent litigation in default of resolution. No reply was given to this letter by or on behalf of Google.
- 21.12.16 Mr. Schmuck, director of the plaintiff, was accepted into the Early Adopter Programme, which referred throughout to Team Drive. The plaintiff, at this stage, was aware then that the Team Drive cloud file sharing services of the defendants in Germany were going to be offered in Germany and Europe.

- 03.01.17 The plaintiff instituted proceedings against the defendants before the Landgericht in Hamburg. A Munich lawyer for the defendants swore an affidavit on 18th April, 2017, outlining how he had received a copy of a letter dated 13th January, 2017, from the plaintiff's German lawyers. He ultimately made contact with the plaintiff's German lawyer. The Munich lawyer, notably emphasised to the plaintiff's German lawyer that he could not accept service of any court documents on behalf of the defendants. The defendants' German lawyer then mentioned negotiations and his preparation of a protective brief.
- 27.01.17 The brief was uploaded into the general registry for protective briefs in the Hamburg court on behalf of the defendants, which was the exact same day that the Hamburg court granted preliminary injunctive relief prohibiting the defendants from using the designation "Team Drives" in the course of trade in Germany for the provision of cloud storage. The reasons given in the Hamburg court order included that the court had jurisdiction by reference to the European jurisdiction and enforcement regulation. In the context of the defendants from another Member State it said that the plaintiff had satisfied the court that the defendants were offering IT services with the designation "Team Drives" via the internet in Germany and there was justification for the plaintiffs to claim injunctive relief under the German Trade Mark Act, in addition to the fact that the plaintiff has a right to the business name TeamDrive since 2008, using TeamDrive as a company slogan on a nationwide basis. In circumstances where no attorney came on record with authority to receive a copy of the court documents, the Hamburg court made an order granting service abroad through diplomatic channels. It is a curiosity that the defendant did not opt to accept service of court documents and relied on their rights to ensure that the order did not become effective and binding until 27th January, 2017. The Court was told that Google intend to challenge the order and that it will take six to twelve weeks for a determination from the commencement of that challenge.
- 28.01.17 The plaintiff's German lawyers filed further protective proceedings, called a Klage, against Google Inc., a US corporation, seeking damages for an infringement of its right in the EU trade mark, the registered company name and the German trade mark, including permanent injunctive relief.
- 07.02.17 Irish solicitors and trade mark attorneys ("the Irish solicitors"), who are now on record for the plaintiff in these proceedings, sent a letter to the company secretary of the first named defendant describing the trade mark and, more importantly, the EU trade mark. It set out a history of the plaintiff's discovery of the relevant proposed service of the Defendants in late November/December 2016 with the Early Adopter Programme. The Irish solicitors asserted that the use of Team Drives for the relevant servers or feature of Google Drive was an infringement of the trade mark, contrary to Article 9(1)(a) of Council Regulation (EC) 207/2009 of 26 February 2009 on the Community trade mark, O.J. L78/1, 24.3.2009, as amended by Regulation (EU) 2015/2424 of the European Parliament and of the Council of 16

December 2015, O.J. L341/21, 24.12.2015 ("Council Regulation 207/2009"). A letter of undertaking was given for the first named defendant to consider and return within a short period of time, along with a recommendation that the defendants seek independent legal advice. A threat of an application for injunctive relief was also included in that letter of 7th February, 2017. The letter was mild in tone.

- 09.02.17 The Irish solicitors, pursuant to a request from the Munich patent lawyers for the defendants, extended by letter the deadline for a response to Friday, 17th February, 2017, without prejudice to other rights and remedies to which the plaintiff may be entitled.
- 16.02.17 A further letter from the plaintiff's Irish solicitors pursuant to a request from the Munich patent lawyers for the defendants extended the deadline for a response to 17:00 on Friday, 24th February, 2017.
- 24.02.17 The solicitors on record for the defendants in these proceedings entered the fray and wrote a terse letter to the Irish solicitors expressing their view and the view of the defendants that the plaintiff's claim concerning the use of the words "Team Drives" within the Google Drive service constituted an infringement of the plaintiff's EU trade mark was legally and factually misconceived. The letter continued: -

*"Your client's assertion that Google's use of the words 'Team Drives' is identical to your client's trade mark 'TeamDrive' is self evidently incorrect. To the contrary, your client has clearly not registered the phrase 'Team Drives' as a trade mark, nor will it be possible to register such a descriptive phrase. At most, your client's registration may claim to convey very narrow rights in the unitary term 'TeamDrive', although Google expressly reserves the right to challenge the validity of this registration, but not in the individual terms 'Team' and 'Drives' as used by Google, which are ordinary words used in their everyday descriptive sense. Those words as used by Google cannot be portrayed as either usage or representation of your client's specific mark."*

The letter continued to express what I have sought to describe as the relevant service of the defendants and summarised their position: -

*"Google's use of 'Team Drives' is purely descriptive as to the function of the corresponding servers, a document storage drive for use by teams. The use is non distinctive, necessary",*

and I emphasise that, because it is hotly contested by the plaintiff that it is not necessary,

*"... describing this particular function within Google Drive and carried out in accordance with the fair and honest commercial practices. As you will be aware, Article 12(1)(b) of the Trade Mark Regulation confirms that such use of language is entirely permissible and does not constitute an infringement."*

It ended by rejecting any suggestion of trade mark infringement and confirmed that it had instructions to accept service for the defendants in relation to the threatened claim only.

- 01.03.17 The plaintiff's solicitors replied to disagree with the characterisation, while mentioning that the defendants' announcements proclaimed that Team Drives were launched to "*keep pace with the business collaboration and work spaces sector. It redefines the model for that sector.*" The said letter sought confirmation that the defendant would cease to use 'Team Drive'. There was no reply from the defendants' letter to this letter.
- 09.03.17 At a major Google "cloud expo" and conference held in San Francisco, which I mentioned earlier in the context of the announcements and the blog the previous autumn, Google launched its Team Drive software and services within its G Suite for its business enterprise and education licence holders. An excerpt from the Google cloud official YouTube channel of 10th March showed a picture of Mr. Vogenthaler with a caption "Team Drives" before describing the video of Mr. Vogenthaler discussing features, tips and tricks of Team Drives, with a quote: "*Our recent product launch that is aimed at advancing collaboration in the workplace.*" The excerpt from the YouTube video exhibited, which is not disputed, is, according to the defendants, highly selective. It is sprinkled with the use of the term "Team Drives" and mentions essentially a fundamental rewrite of all of Google Drive.
- 31.03.17 Mr. Oboda, the chief executive officer and co-founder of the plaintiff swore a 22-page affidavit in Dublin for this application.
- 03.04.17 The plenary summons was issued, followed by the granting of an *ex parte* order of Gilligan J. of this Court giving liberty to issue and serve the notice of motion with the copy of the plenary summons.
- 07.04.17 The defendants' Irish solicitors entered an appearance on this Friday.
- 18.04.17 Mr. Vogenthaler and the Munich lawyer for the defendants swore affidavits.
- 19.04.17 An eight-page affidavit was sworn by the partner in the Irish firm on record for the defendants. On instructions from the defendants, he averred that the defendants' position was that there is no fair or serious issue to be tried in these proceedings, while indicating an intention on behalf of the defendants to seek the cancellation of the plaintiff's EU trade mark on the grounds that it is descriptive or non-distinctive.
- 26.04.17 Mr. Oboda's second affidavit was sworn in Hamburg (16 pages), along with the affidavit of the plaintiff's Hamburg lawyer concerning the proceedings in Germany.
- 28.04.17 A seven-page statement of claim was delivered, giving particulars of the EU trade mark infringement and setting out the various reliefs sought. On this day also, the partner in the firm on record for the defendants swore an affidavit identifying that the various Dutch and Swedish printouts relied upon by Mr. Oboda had "*isolated*

*translation errors*" which do not reflect any intention on the part of the defendants being Google to depart from this approach to language localisation of the Google Drive service. Other issues were also addressed in this affidavit.

- 30.04.17 The principal of the firm of solicitors on record for the plaintiff, pursuant to instructions, took issue with the affidavit sworn by the partner in the firm for the defendants that these proceedings may be regarded as "*this very recent attempt at quashing generic uses of 'Team Drives' by third parties and is motivated by a desire on the part of the Plaintiff to pre-empt the cancellation of the Plaintiff's EU trade mark in these proceedings.*" This letter also exhibited various cease and desist letters sent to other undertakings dating back to 2009 which were honoured by the third parties after the plaintiff asserted its right to the EU trade mark.
- 02.05.17 The hearing of this application began.
- 03.05.17 The partner in the firm on record for the defendants sought to clarify, following the first day of hearing, that the local language version of Google Drive incorporating the Team Drives feature do in fact lead to local language support materials, while not suggesting that "Team Drives" is a term that can be accessed in Google Drive in non-English speaking countries within the European Union. The principal in the firm on record for the plaintiff swore an affidavit which identified screen images and downloads of a number of pages of Google material published on the internet and which supported the plaintiff's arguments about an infringement of the plaintiff's EU trade mark by the defendant in Europe.
12. It is helpful to set out the above chronology in view of the issues which the Court now proceeds to concentrate on in light of the extensive and informed submissions made in writing and orally over the course of the last four days. I emphasise that this Court is not making any finding of fact which is disputed because the only evidence adduced has been on affidavit. The parties rely heavily on hearsay evidence, as is allowed in this type of application. They also rely on selected legal advice from different jurisdictions given to the parties without the Court knowing of the circumstances and facts given to lawyers for the purpose of giving advice.
13. All of the above is to explain context. Nothing should be taken from the above chronology to impose a view at a plenary hearing. This Court will not be bound in the future by the summary given. There are issues of fact and of opinion which may have to be decided upon at the plenary hearing of these proceedings, which can benefit from case management, with a view to an early hearing.
14. The principles applicable to the determination of an interlocutory injunction restraining a defendant are well established. There are issues to be decided and then factors to be taken into account by the court.

15. The last four days has indicated that these are not proceedings which will end with the granting of an interlocutory injunction. Senior counsel for the defendants cogently pointed to two substantive questions which will need to be determined: -
- (i) Whether the use by the defendants of the words (irrespective of whether they are in the singular or plural) "Team Drive" in its Google Drive feature or service is an infringement of the EU trade mark?
  - (ii) Can the defendants, at this late stage, set aside the EU trade mark registration which was registered over 11 years ago?
16. The defendants maintain that there is not a fair issue to be tried. Both parties took the opportunity before this Court, which is noted to be the subject of lengthy daily transcripts, to ensure that this Court's view would not be tainted by the apparent strength or weakness of each party's position concerning the issues to be tried at a plenary trial. Suffice to say it is clear that there is at least one, if not more substantive issues to be tried. The Court will give directions later to ensure an efficient and effective determination of those issues.

#### **Adequacy of Damages**

17. Mr. Oboda described a swamping effect following the defendants' launch and continued provision of the feature or service using the relevant words. There is no doubting the penetrating effect of the defendants' services into the lives of those living in the European Union. The Court cannot make a final determination at this stage about the fear *"of untold damage to the value of the plaintiff's business, particularly amongst average consumers and commercial customers, who place a high value on data protection and encryption."*
18. Nevertheless, the Court is alert to the plaintiff's fear that it may be obliterated, a term used in submissions for the plaintiff, if the defendants maintain the relevant service without change. In the circumstances, the Court, for the purposes of this application, accepts that the fears are credible, despite the absence of an objective view.
19. For reasons concerning the parallel proceedings issued in Germany, the Court refrains from deciding that the plaintiff has established on the balance of probabilities from the subjective evidence of Mr. Oboda that damages will be inadequate. Furthermore, the Court is conscious that exemplary damages may be awarded if the necessary proofs at plenary trial are given, or fulfilled.
20. In relation to adequacy of damages for the defendants, the defendants have submitted subjective views that their customers may be affected by any interlocutory order. It is fair to say that the Court regards each parties' subjective views or fears with a bit of scepticism in view of the established patterns of change in the technical and marketing world which are served by the parties. Nevertheless, the Court is satisfied on the balance of probabilities from the extensive affidavits and submissions that damages will not be an adequate remedy for each of the parties.



### **Undertaking as to damages**

21. The next principle to be applied which was the subject of detailed submission concerns the undertaking as to damages.
22. Senior counsel for the plaintiff candidly accepted that the plaintiff will not have the resources to discharge an award of damages to the defendants if the defendants were successful at plenary hearing. The following two sentences from O'Donnell J.'s judgment in *Minister for Justice v. Devine* [2012] IESC 2; [2012], 1 I.R. 326, where O'Donnell J. was in the minority for the main issue in the case, were relied upon by the plaintiff's counsel: -

*"It would clearly be wrong that the deserving plaintiff with a good claim would be denied an injunction simply because he or she was without assets. In such a case the court must take into account the unlikelihood of such a party being able to satisfy an undertaking as to damages as one of the factors ...."* (para. 97, p. 360).

23. The principle asset of the plaintiff is at play here and the argument goes that the defendant, if successful, may be satisfied by the undertaking having regard to that asset, i.e. the EU trade mark, which will have to be disposed of in order to satisfy any award of damages to the defendants on foot of the undertaking.
24. There is an instinct demonstrated by O'Donnell J. in the Supreme Court not to shut out claimants who have significantly less resources than a defendant which has vast resources. Survival is at issue, according to the plaintiff.
25. On occasion it may be unnecessarily harsh to favour well-endowed defendants which may be satisfied with, what might be described in graphic terms, as the entrails of the plaintiff if the defendants succeed. However, this Court is bound and guided by the Supreme Court. It is therefore noteworthy that Fennelly J. in *Minister for Justice v. Devine* at para. 43 on p. 342 refers to Lord Diplock's words in *American Cyanamid Co. v. Ethicon Ltd.* [1975] A.C. 39 at pp. 407-408: -

*"One of the reasons for the introduction of the practice of requiring an undertaking as to damages upon the grant of an interlocutory injunction was that 'it aided the court in doing what was its great object, viz. abstaining from expressing an opinion upon the merits of the case until the hearing'."*

26. Fennelly J. did not exclude the possibility of exceptional cases where an undertaking as to damages might be dispensed with. He specifically refrained from commenting on the observations of O'Donnell J. just quoted.
27. I accept the submission for the defendants that the plaintiff is a commercial entity engaged and is wise to worldwide activities. It is at the end of the table where the defendants might feel entitled to be regarded as at the top end. It is not inconceivable for the plaintiff to secure the value of its undertaking by means other than as offered by way of affidavit. This is not the situation where a poor old pensioner's back garden has

been annexed. In fact the plaintiff here has launched parallel proceedings in Germany and has been involved with lawyers in the US also.

28. Presently, therefore, the plaintiff cannot be excused for giving a meaningful undertaking, but the Court in reaching its conclusions will allow the plaintiff to return to this Court with a more meaningful undertaking. I will come back to that presently.

#### **Balance of Convenience**

29. The plaintiff, without an interlocutory injunction, has fears that its entire business will be obliterated. On the other hand the defendants describe how they will have to undertake technical marketing and educational chores which run the gauntlet of customer kickback. Again the lack of specifics as opposed to the bald assertions made by deponents, with all due respect to the deponents for all sides, having certain loyalties, have failed to disclose the exact basis for many averments. This goes back to the difficulties of affidavit evidence based on hearsay. There is the overriding concern which arises from the somewhat parallel proceedings in Germany which I will discuss later.

#### **Delay**

30. One of the principal purposes of the chronological summary set out earlier in this judgment was to identify and understand the position under this heading. A lot of time was spent by counsel for both sides urging the Court to take a view on the failure or reluctance of the plaintiffs to commence proceedings in this jurisdiction where the defendants are incorporated and on the alleged masking approach of the defendants and their parent corporation, which I might liken to gambits in a chess game: it is repeated that the Court is making no finding in regard to either the plaintiff's reluctance or the alleged masking by the defendants.
31. The requests for time to negotiate and proceeding with a launch knowing of the risk of infringements are factors which the plaintiff urges this Court to take into account. This Court does not have the luxury at this stage to engage with the rather lengthy point scoring which has evolved in the multiple affidavits and which were circumscribed by the inability to elucidate on what transpired before or in the negotiations in multiple jurisdictions.
32. The judgment of Hedigan J. in *The Irish Times Ltd v. Times Newspapers Ltd* [2015] IEHC 490 (unreported, High Court, 27th July 2015), reviews and applies the principles. In short, the Court expects the parties to move with reasonable expedition where interlocutory relief is sought. This Court engaged with counsel about the analogy of someone using the back garden or laneway attached to a family home. The owners might not want to go to litigation with neighbours, but there may come a striking point like a family occasion when the intruding neighbour acts unreasonably a few months after the initial or continued incursion without consent.
33. The plaintiff took action in Germany and senior counsel for the plaintiff this afternoon set out plausible grounds for understanding the plaintiff's decision to commence proceedings in Germany. Likewise, the defendants' criticisms for allowing the defendants to proceed

without the threat or commencement of proceedings in this state appear equally reasonable.

34. Without the benefit of cross-examination of witnesses, this Court is not in a position to speculate with the benefit of hindsight. Yes, the plaintiff was slow. Was it naive or was it devious? Well, I cannot decide that from the evidence adduced. So in regard to the evidence about delay as a factor, it is best to deal with that by the order which this Court will make having regard to the proposed challenge by Google in Germany.

**Non-disclosure**

35. I listened carefully to the complaints made on behalf of the defendants that the plaintiff has not been as forthcoming or candid as it should have been. The Court is conscious of the demands on legal practitioners and on deponents when preparing and advising within short time constraints and with different time zones. The plaintiff's emphasis on issues of fact was self-serving in many respects, but that unfortunately is the nature of hastened applications.
36. The defendants complain bitterly about the lack of attention to detail by the plaintiff. It has to be acknowledged that Mr. McDonald, senior counsel for the plaintiff, was extremely careful to keep the Court fully informed. Both senior counsel before this Court, in the best traditions of the Bar, answered questions of the Court fully and helpfully.
37. Both sides now recognise that the EU regulation and case-law such as Council Regulation 207/2009 and the European Court of Justice judgment in *Arsenal Football Club plc v. Matthew Reed (Case C-206/01)* [2002] E.C.R I-10273, concerning the sale of scarves with the word "*Arsenal*", which made it clear that the function of a trade mark is to establish and maintain a guarantee that all services bearing a trade mark carries a responsibility for quality, and other authorities in the booklets given to the Court will be relevant at any plenary trial.
38. Lest it be forgotten, the defendants emphasise that the French version of its function has "*nouveaux drive d'équipe*" and the German version does not have TeamDrive on the legend. This localisation has reduced the concern of this Court, but this Court cannot decide, on the evidence available to it at the moment, to what extent such localisation will successfully eliminate the fears of the plaintiff.

**Order to be made**

39. Where both sides have now offered to the Court a schedule and a timetable to bring these proceedings to an early trial, and having regard to the proposed challenge in the German court by these defendants and its parent corporation, this Court proposes an order along the following lines to ensure that the German court process is started very shortly by Google and to give liberty to the plaintiff to seek a protective application under the Regulation by coming back to this Court at a later stage. In this respect the Court envisages that the plaintiff will come to this Court with an affidavit setting out any delays on the part of Google in Germany in relation to the actions. This Court is not making any finding that Google or the defendants in these proceedings have actually delayed in that

process, but the Court wants the process in Germany to be completed before any further interlocutory restraining order is sought in this Court.

40. It is unusual to determine an interlocutory injunction application in this manner, but given what has actually transpired across different jurisdictions in conducting business and negotiations, the Court will exercise its discretion for the equitable relief sought.
41. In short, the plaintiff and the defendants should conclude the German interim or interlocutory proceedings before returning to this Court for further interlocutory relief. In the meantime, directions concerning the plenary hearing of these proceedings will be given.
42. Directions have been suggested and there seems to be no disagreement between the parties up to a certain date, that is 12th July. The Court has in mind to set a date for the hearing of motions, including any motion which might be sought to restart this particular interlocutory injunction application.
43. I suggest now at this late hour that we could finalise matters next Tuesday. That will facilitate the drawing up of the order as well.

**The following order was made on Tuesday 9th May, 2017**

44. An order: -

- (i) refusing the plaintiff's application for an interlocutory injunction;
  - (ii) giving the plaintiff liberty to renew its application for an interlocutory injunction, including liberty to rely on the affidavits filed in this Court for this application following the conclusion of the challenge to the *ex parte* order obtained in the District Court of Hamburg on 27th January 2017, or in the event of the plaintiff wishing to contend that there has been undue delay in the prosecution of that challenge.
45. If the *ex parte* order is dealt with in Hamburg definitively then an application to this Court can be made. If there is delay on the part of Google or one of the other enterprises in relation to the challenge the plaintiff is at liberty to return also.

**Postscript**

46. On the 1st December, 2017, on the consent of the parties before Gilligan J., the proceedings were struck out on terms as agreed between the parties and no order as to costs.