



## **Press Summary**

**15 May 2024**

### **Lifestyle Equities CV and another (Appellants) v Ahmed and another (Respondents); Lifestyle Equities CV and another (Respondents) v Ahmed and another (Appellants)**

**[2024] UKSC 17**

*On appeal from [2021] EWCA Civ 675*

**Justices:** Lord Lloyd-Jones, Lord Kitchin, Lord Leggatt, Lord Stephens, Lord Richards

#### **Background to the Appeal**

Mr Kashif Ahmed and his sister, Ms Bushra Ahmed, were directors of Hornby Street Ltd, a company which arranged for the manufacture of clothing, footwear and headgear and sold it to retailers. During a period of roughly 10 years, Hornby Street sold various items bearing logos with the words ‘SANTA MONICA POLO CLUB’ and pictures of polo players on horses. The Lifestyle companies own trade marks featuring a polo player on a horse and the words ‘BEVERLY HILLS POLO CLUB’. Lifestyle sued Hornby Street alleging that the use of the ‘SANTA MONICA POLO CLUB’ signs infringed Lifestyle’s trade marks. Lifestyle also sued the Ahmeds personally, claiming that they were jointly liable with Hornby Street for the infringements.

The trial judge found that the use of the ‘SANTA MONICA POLO CLUB’ signs by Hornby Street infringed Lifestyle’s trade marks, both because the signs were sufficiently similar to Lifestyle’s ‘BEVERLY HILLS POLO CLUB’ signs to give rise to a likelihood of confusion on the part of the public and because such use took unfair advantage of, and was detrimental to, the distinctive character and reputation of Lifestyle’s trade marks. The judge also held that the Ahmeds were jointly liable with Hornby Street on the grounds both that they had procured the infringements of Lifestyle’s trade marks and that the infringements were committed pursuant to a common design. The judge made no findings that the Ahmeds knew or ought to have known that there was a likelihood of confusion or infringement. But, on the judge’s view of the law, the absence of such knowledge did not affect their liability.

Hornby Street has since been dissolved. Against the Ahmeds, Lifestyle claimed the remedy of an account of profits. The judge held that the Ahmeds were not liable to account for profits made by Hornby Street from its infringements of Lifestyle's trade marks but were liable to account for profits which they had themselves made from the infringements. He apportioned 10% of their salaries during the relevant period to such profits and also decided that a loan made by Hornby Street to Mr Ahmed was a profit derived from the infringements.

On appeals by both parties, the Court of Appeal upheld this decision, except as regards the loan to Mr Ahmed which, it held, was not a profit.

Both parties appealed to the Supreme Court.

## **Judgment**

The Supreme Court unanimously dismisses Lifestyle's appeal (which argued that the Ahmeds should have been ordered to account for profits made by Hornby Street) and allows the Ahmeds' appeal. The Ahmeds could not be liable either for procuring the infringements of Lifestyle's trademarks or on the basis of a common design, when they were not aware of the essential facts which made the use of the 'SANTA MONICA POLO CLUB' signs by Hornby Street wrongful. In any case the Ahmeds could not be required to account for profits made by Hornby Street and on the facts found had not themselves made any profits from the infringements.

Lord Leggatt gives the judgment, with which the other Justices agree.

## **Reasons for the Judgment**

### Accessory Liability

Liability for infringing a trade mark is strict. To establish an infringement, there is no need to prove knowledge or fault - only that the person concerned, without the consent of the owner of the trade mark, used a sign identical with or similar to the trade mark in circumstances which amount to an infringement. Here, however, the Ahmeds did not themselves infringe Lifestyle's trademarks. The sales of goods bearing the 'SANTA MONICA POLO CLUB' signs were made, and the other infringing acts were done, by Hornby Street in the course of its trade [13]–[26]. The case against the Ahmeds is that they are liable as accessories, either because they procured the company to infringe Lifestyle's trademarks or because they participated in a common design with the company to do so [28]. The key issue is whether, when the wrong is one of strict liability, liability as an accessory is also strict, or whether proof of knowledge or any other mental element is required [29].

The Ahmeds argued that, where directors of a company perform their duties in good faith and with reasonable care, they cannot be held jointly liable with the company for infringements because their acts are treated in law as being the company's acts [32]. This argument is rejected. It does not follow that, because an act done by a director is treated as the company's act for which the company can be held liable, the director is immunised from liability. There is no principle of English law which exempts a director, acting in that capacity, from ordinary principles of liability for wrongful acts [33]–[40].

The court nevertheless agrees that it is unjust to hold an individual whose act causes another person to commit a wrong jointly liable for the wrong as an accessory if the individual was acting in good faith and without knowledge of facts which made the act of

the other person wrongful [85]. This point is not particular to company directors and does not depend on any special feature of their role, as some cases have incorrectly suggested [64]–[85]. There is no logical requirement that the knowledge or other mental state required for liability as an accessory must be the same as that required for primary liability; so that, if the primary liability is strict, liability as an accessory must also be strict [86]–[89]. That approach would be logical if inducing someone to commit a tort, or participating in a common design to do so, were simply another way of committing a tort. But that is not so. Individuals liable as accessories are liable even though they do not satisfy all the elements of the tort [92]–[95]. In other areas the law requires proof of a particular mental state before holding a person liable as an accessory even though the primary liability is strict. Liability for dishonestly assisting in a breach of trust or for inducing a breach of contract are examples [96]–[101]. Liability for inducing a breach of contract is in fact an instance of a more general principle of the common law that a person who knowingly procures another person to commit an actionable wrong will be jointly liable with that other person for the wrong committed [102]–[110], [135].

The correct approach is that a person who causes another person to do a wrongful act will only be jointly liable as an accessory for the wrong done if they have knowledge of the essential facts which make the act done wrongful [107]–[108]. This is so whether the claim is based on procuring the infringement of a trade mark (or other wrong) or on participation in a common design [111]–[137].

Applying this approach to the facts, as neither Mr nor Ms Ahmed was found to possess knowledge of the essential facts which made the acts of Hornby Street in using the ‘SANTA MONICA POLO CLUB’ signs wrongful, they could not be jointly liable for the company’s infringements [138]–[143].

### Account of Profits

The remedy of an account of profits is in principle available against anyone who is liable for the infringement of a trade mark or other intellectual property right, even if the infringement is entirely innocent [145]. A central purpose of intellectual property rights is to encourage and reward creativity and innovation by enabling the owner of the right to enjoy the fruits of its exploitation. Ordering a person who makes profits from using a trade mark without the owner’s consent to pay over those profits to the owner of the trade mark promotes that purpose by redirecting the profits to the person entitled to reap the benefits of exploiting the right. Even if the infringement has occurred innocently, the infringer cannot legitimately object to this remedy, as its effect is simply to put the infringer in the same position financially as if the infringement had not taken place. [155]–[157]

The courts below were right to reject Lifestyle’s argument that, on the footing that the Ahmads were jointly liable with Hornby Street for the infringements, they could properly be ordered to account for the profits made by Hornby Street from the infringements. The only profits which a wrongdoer can be required to pay over to the owner of the right infringed are profits which the wrongdoer has made and not profits which someone else has made from the infringing activity. Such an order would amount to a penalty or fine which is not the purpose of the remedy [158]–[169].

The Court of Appeal was right to hold that the loan made by Hornby Street to Mr Ahmed was not a profit. A person does not make a profit just by borrowing money and there was no evidence that the loan was at an artificially low rate of interest or otherwise gave rise to a profit. Nor did the facts that the administrators of Hornby Street had not pursued Mr

Ahmed to repay the loan and that the company had since been dissolved alter the character of the transaction [171]–[172].

It was wrong to treat any part of the Ahmeds’ salaries as profits. There was no evidence or finding that their salaries were anything but ordinary remuneration for their services. An employee who receives in return for their services a sum no greater than the fair market value of those services does not make a profit [173].

Therefore, even if the Ahmeds had been liable for the infringements of Lifestyle’s trademarks, they had not made any profits from the infringements. For this reason too, the orders for an account of profits were wrongly made [182].

*References in square brackets are to paragraphs in the judgment.*

**NOTE:**

**This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)**