

Claim No: n/a
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

BETWEEN

(1) THE HUT.COM LIMITED
(2) CEND LIMITED

Complainants

-and-

ADAM BRENTON

Publisher

STATEMENT IN OPEN COURT

Solicitor for the Complainants:

1. My Lord, I appear on behalf of the Complainants, The Hut.com Limited and Cend Limited.
2. The Hut.com Limited is a highly successful and profitable trading corporation. It carries on business primarily as an online retailer, marketing and selling premium health and beauty products including sports nutrition supplements directly to customers via the internet. It is a key trading entity within the well-known and highly successful group of companies based in Cheshire known as the Hut Group of companies.
3. Among the products that The Hut.com Limited markets and sells is a range of specialist sports nutrition products branded 'Myprotein'. Myprotein is, and is widely known to be in sales terms in Europe and the world, the Number 1 online sports nutrition brand with a range of over 2,500 products, sold to over 4 million customers worldwide. The Myprotein brand has established a reputation for the highest standards of quality, which has made it one of the most trusted brands in its field worldwide.
4. Cend Limited is a highly successful company which carries on business as the in-house manufacturer and supplier to The Hut.com Limited of the Myprotein range of products. Amongst this range of products are a variety of protein blend powders, sold and shipped to consumers in highly durably, hermetically sealed, tamper proof pouches. The Hut.com Limited use this in-house production process in advertising for Myprotein products.
5. The Publisher, Adam Brenton, has been a customer of The Hut.com Limited for 8 years, buying Myprotein products on a regular basis since approximately 2009. He lives in Manchester. Mr Brenton had been a loyal and satisfied customer prior to the events which I will describe.
6. On 10 April 2017, Mr Brenton contacted The Hut.com Limited's customer services team to report that he had found a mouse carcass inside a packet of Myprotein

Impact Diet Whey protein powder. The product in question was manufactured by Cend Limited and sold and supplied to Mr Brenton by The Hut.com Limited.

7. Shortly after his telephone call to The Hut.com Limited, Mr Brenton posted three tweets, a Facebook post and an Instagram post about the product and the mouse, tagging @myprotein and using the brand hashtag #myprotein. The social media posts were accompanied by photographs of the mouse carcass inside the Myprotein protein powder.
8. Following Mr Brenton's call, the Hut.com Limited's formal quality complaints procedure was put in hand. Mr Brenton was advised that the product and the subject mouse would need to be collected for testing and this would be arranged at Mr Brenton's convenience. The items were collected on 13 April 2017.
9. Despite the agreement to collect the items for testing, Mr Brenton's tweets remained online and criticised The Hut.com Limited's customer service as "awful" and "inept". The Hut.com Limited customer services team responded on Twitter and tried to contact Mr Brenton by telephone again after the social media posts but Mr Brenton did not answer.
10. Meanwhile, on 11 April 2017 Mr Brenton got in touch with the Manchester Evening News. As a result of this approach, the newspaper published on its website an article entitled "*Fitness enthusiast claims he found a mouse in his bag of protein shake powder*" (to which I will refer as the **Article**). The Article made a very serious, false and therefore highly defamatory allegation concerning the Complainants, that a dead mouse was contained inside a packet of Myprotein product sold by them to Mr Brenton.
11. The meaning of the Article was that, as a result of the Complainants' careless and/or negligent conduct of their manufacture, quality control and sales processes, the mouse had entered the powder during the Complainants' production process and ended up in a protein shake powder product purchased and consumed by Mr Brenton, thereby putting his health at risk and for which he was entitled to be compensated by the Complainants. Further, the Article bore the meaning that the Complainants' standards of manufacture and product hygiene and safety were seriously substandard, such that there was a real possibility that other customers' Myprotein products were or could be similarly contaminated and pose a similar risk for their health. These allegations were manifestly false.
12. As was entirely predictable and foreseeable, the contents of the Article as published in the Manchester Evening News, a well-established and reputable local newspaper, were then picked up by and republished in a number of national newspapers, namely the Mail Online, Metro, The Sun, and The Daily Star, as well as on numerous other websites, blogs and social media sites operating from within this jurisdiction, and more widely via the internet throughout Europe and worldwide. Despite the fact that the Article has been formally retracted by the Manchester Evening News and by Mr Brenton, and has also been disavowed and withdrawn by most major publishers, unfortunately the allegations in the Article to some extent remain searchable online to this day.
13. Mr Brenton's and the other publishers' eventual acceptance and acknowledgment that what they had alleged was untrue came about following a sequence of events which I will now proceed to describe.
14. The product and the subject mouse were collected from Mr Brenton as arranged on 13 April and returned to Cend Limited for testing. The batch was identified as having been manufactured on 9 March 2017 and dispatched to Mr Brenton on 13 March

2017. The in-house CCTV from the date and time of production of the entire batch was reviewed but nothing out of the ordinary was observed. Cend Limited also carried out a review of the manufacturing process which confirmed that no item over three millimeters in size could possibly enter a packet of the product. It may further be noted that later on in the production process the product is passed through a filling head involving three processes, each of which would have prevented a foreign body from entering the product intact. It was further confirmed that there were no contemporaneous issues with production at the time of manufacture or packaging of the subject batch.

15. The Complainants instructed Ecolab, leading experts in food safety and hygiene, to test the subject mouse and an Entomologist on the Pest Elimination specializing in pest elimination produced a report. The subject mouse was tested and the report produced within 24 hours of retrieving the mouse.
16. The results of the Ecolab tests were that the subject mouse had been dead for between 7 and 14 days, i.e. a date significantly post-dating the packaging and delivery of the item to Mr Brenton. The subject mouse was identified as being at 'stage 4' of decomposition which occurs at 10 to 20 days after death, using the standard scale of 6 stages of decomposition for a mouse of 'standard' 35 gram weight. The subject mouse was less than a third of the standard size which the report identifies would rapidly speed up the decomposition process. The packet of protein powder in question had been packaged 33 days prior and delivered to Mr Brenton 29 days prior to the discovery of the mouse. Mr Brenton confirmed that he had been using the contents of the bag for 3 weeks, which means that the bag had been opened and unsealed for at least that period of time before the mouse was found.
17. The Complainants commissioned an opinion from the University of Liverpool's Veterinary Laboratory Services department, a world-class centre, to carry out a necropsy report on the subject mouse in order to test the veracity of Ecolab's conclusion. In a report dated 26 April 2017, Dr Richard Blundell, a Specialist in Veterinary Pathology and Senior Lecturer in Veterinary Pathology at the University of Liverpool, verified and endorsed Ecolab's results.
18. The evidence is therefore categorical and unequivocal that the mouse which Mr Brenton found in his packet of protein powder could not have entered the product during the production process, and was not present in the product at the time of delivery. The suggestion that the Complainants were at fault for allowing the mouse to enter the protein powder during the production process, thereby potentially causing harm to Mr Brenton and other customers' health, was false.
19. Mr Brenton has acknowledged his mistake in writing to the Group and would like to retract his false and defamatory allegations. Mr Brenton would like to take this opportunity to apologise publicly to the Complainants. Mr Brenton has also agreed to make a payment to the Complainants in respect of costs and damages.

The Publisher:

20. My Lord, I confirm all that has been said on the Group's behalf. I agree that there was no possible way the mouse could have entered the powder during the production process. I also agree that the customer service provided by The Hut.com Limited in response to my complaint was beyond criticism. I withdraw my allegations suggesting otherwise. I apologise to the Group for my mistakes and agree not to republish any allegations conveying this defamatory meaning or any similar meanings.

Solicitor for the Complainants:

21. My Lord, with that the Complainants are content to let this matter rest.

Carter - Ruck

.....
Carter Ruck
Solicitors for The Hut.com Limited
and Cend Limited

Dated: *5 March 2018*

C. Wilkin Chapman LLP

.....
Wilkin Chapman LLP
Solicitors for Mr Adam Brenton

Dated: *5 March 2018*