

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

ATTORNEY GENERAL for NORTHERN IRELAND
& BELFAST CITY COUNCIL

Plaintiffs;

-v-

ASHLEY JAMES CAMPBELL, INFERNAL PUBLISHING LIMITED, A PERSON
KNOWN AS AIDEN KERR, IAN BROWN, SUSAN BRADSHAW, SOHO
BOOKSHOP and THE OWNER/OCCUPIER OF, OR ANY PERSON INVOLVED
IN A BUSINESS OR ENTERPRISE AT 31-33 GRESHAM STREET, BELFAST

Defendants.

MR JUSTICE DEENY

[1] This is an application by the Attorney General for Northern Ireland and Belfast City Council for an injunction restraining certain named parties and also two other categories of persons from selling what the plaintiffs contend to be dangerous products.

[2] It is supported by a very thorough and careful affidavit from Valerie Brown, an Environmental Health Manager employed by Belfast City Council. In her lengthy affidavit she describes the actions of herself and her colleagues and subordinates with regard to the sale of novel psychoactive substances in Belfast and in particular at Gresham Street, Belfast at a shop known as Soho Bookshop. It is situated at 31-33 Gresham Street. The matter has been pursued over a long period of time because of concerns emanating from the City Council but also from others, including the Police Service for Northern Ireland, that drugs that were not otherwise prohibited, but were of novel concoction were being sold to people in Belfast, particularly young people, and that they were potentially damaging.

[3] Over the last 14 months officials of the City Council have made repeated visits to these premises and on a number of occasions in the exercise of their statutory powers have searched the premises and have located or otherwise seized sachets of various drugs sold under names like Doob, Magic Dragon, Formula X and etc. In the course of her affidavit she provides evidence of the involvement of Ashley James Campbell and Infernal Publishing Limited, Ian Brown and Susan Bradshaw in this business from which these products were being sold. There was also evidence, albeit hearsay, of the involvement of a Mr Aidan Kerr, the third defendant in the proceedings before me. But there is enough there to suggest an arguable case that he is also an associate based in part on the comments of his co-defendants.

[4] On occasions access was refused but on other occasions it was insisted on and repeatedly these products would have been found i.e. after these people had been warned that they were harmful, warned that in the view of the Environmental Health Officers they were unlawful. They are not unlawful because they have been banned under the Misuse of Drugs Acts. Here the Council is relying on the General Products Safety Regulations 2005 which I will have to turn to in a moment.

[5] The drugs have been sent to appropriate scientists experienced in these fields and their reports have been exhibited to the affidavit of Valerie Brown. In fact she has furnished two reports, the first based on analysis by Tictac Communications Limited, a body dedicated to drug identification and drug information and based at St George's University of London, Cranberry Terrace, London, and it seems a thoroughgoing and scientific examination of the samples obtained at the Soho Bookshop from or connected with one or more of the defendants. It is not necessary for me to read out this report but I think it right to quote from two passages in the reports quoted by the Attorney General so that the potential harm of these drugs is clearly understood. In a report signed by her on 8 September 2014 Ms Mandy McNaul, a Senior Scientific Officer with Forensic Science Northern Ireland, under the heading "Toxicity and Fatalities" says this of the drugs with regard to which an injunction is sought today.

"Although limited information is available, the review of the literature that exists to date suggests that synthetic cannabinoids may have side effects that are more severe than cannabis. In addition to the expected psychoactive effects some compounds have been associated with seizures, tachycardia, kidney damage and death. The cognitive effects have been demonstrated to cause impairment that is not compatible when safely operating a motor vehicle. These substances are also associated with triggering psychotic symptoms in those predisposed to the illness."

[6] Elsewhere in a report signed by her on 10 September 2014 she says the following:

“The psychoactive effects of smoking a synthetic cannabinoid mixture can vary considerably between brands. User reports in some brands include a cannabis-like dreamy euphoria while other brands produce both cannabis-like effect and effects more akin to disassociative or psychedelic drugs. Side effects such as anxiety and panic, disorientation, paranoia and memory loss have been reported. The physical effects of synthetic cannabinoids can include breathing difficulties, tight chest, racing heart, palpitations, shakes and sweats leading to panic, numbness in limbs, nausea or vomiting, red or bloodshot eyes and muscle tremors. Seizures, collapse and unconsciousness have also been reported.”

[7] It is not difficult, therefore, at this stage, to conclude that the plaintiffs have made out an arguable case, indeed a strongly arguable case, that these are dangerous products. They have also made out an arguable case that at least Mr Campbell, his company, Mr Kerr, Mr Brown and Ms Bradshaw have been involved in the distribution of those products. Is that unlawful when they are not prohibited by the Misuse of Drugs Act or a similar statute? The plaintiffs submit it is. They rely first of all on the ancient tort of public nuisance and on foot of that reference is made to the survival of that tort as found by the House of Lords in Regina v Rimmington and Goldstein [2005] UKHL 63, [2006] 1 AC 459. The Attorney General referred in particular to a passage from the judgment of Lord Bingham of Cornhill in that judgment of 27 October and I will read a short passage at paragraph 36:

“I would for my part accept that the offence [that is the offence of public nuisance] as defined by Stephen, as defined in Archbold (save the reference to morals), as enacted in the Commonwealth codes quoted above and as applied in the cases (other than The Queen v Soul 70 CAR 295) referred to in paragraphs [13] to [22] above, is clear, precise, adequately defined and based on a discernible rational principle. A legal advisor asked to give his opinion in advance would ascertain whether the act or omission contemplated was likely to inflict significant injury on a substantial section of the public exercising their ordinary rights as such : if so an obvious risk of causing a public nuisance would be apparent; if not, not.”

[8] Here it is not difficult for the court to conclude that the sale of these products is likely to inflict significant injury on members of the public buying them thinking that they are lawful and not harmful substances.

[9] The plaintiffs however also rely on the General Product Safety Regulations of 2005. They were enacted in the United Kingdom in compliance with the United Kingdom's duty to bring into its domestic legislation EU Directive 2001/95EC. They apply in Northern Ireland. The interpretation section is one I shall return to in a moment. The first key regulation is Regulation 5(1) : General safety requirement. "No producer shall place a product on the market unless the product is a safe product" and it goes in like kind at paragraphs 2, 3 and 4. So that is a clear duty on the producer. Then we come at Regulation 8 to the obligations of distributors:

"8(1) A distributor shall act with due care in order to help ensure compliance with the applicable safety requirements and in particular he -

- (a) shall not expose or possess for supply or offer or agree to supply, or supply, a product to any person which he knows or should have presumed, on the basis of the information in his possession and as a professional, is a dangerous product; and
- (b) shall, within the limits of his activities, participate in monitoring the safety of a product placed in the market, in particular by -
 - (i) passing on information and the risk posed by the product,
 - (ii) keeping the documentation necessary for tracing the origin of the product,
 - (iii) producing the documentation necessary for tracing the origin of the product and co-operating an action taken by a producer or an enforcement authority to avoid the risks."

[10] It is submitted on behalf of the plaintiffs that the defendants or some of them are in breach of the second limb of that inasmuch as Ms Valerie Brown did write to the solicitors acting and acknowledging they were acting in respect of this matter seeking such information and got no reply. But in any event it seems to me that

Regulation 8 (1) (a) applies inasmuch as again at this ex parte and interim stage there is a good case that these are dangerous products. The definition of a distributor in the regulations at first seemed a difficulty to the plaintiffs. Regulation 2 enacts that “‘distributor’ means a professional in a supply chain whose activity does not affect the safety properties of a product.”

[11] The word “professional” would not, I think, be normally used in contemporary English of the three men and one woman involved in these activities. But when you bear in mind the context i.e. that we are dealing with those who distribute products it is more likely that it means somebody who is employed in the supply chain or its distributing products not as an amateur or a lay person or volunteer but for gain. I think that is borne out by the definition of producer to be found in the same regulation which means at (c) “other professionals in the supply chain, insofar as their activities may affect the safety properties of a product”. So a professional in the supply chain who may affect i.e. may alter the properties of a product or may alter by storage correctly or otherwise counts as a producer. The implication of that must be that those who are merely selling the product or facilitating the sale of them are intended by the regulations to be professionals and I find that for the purposes of this hearing.

[12] The position is that the plaintiffs served the proceedings successfully on several of the defendants on Monday, not on Mr Aidan Kerr. Mr Stuart Spence of counsel was instructed on behalf of the first defendant Ashley James Campbell and the fourth defendant Mr Ian Brown, but he was instructed that the papers had only been served on his solicitors Gordon F McIlwrath on Tuesday i.e. two days ago. That seems contrary to the draft affidavit of service of Ms Valerie Brown who at least by implication served them on Monday 10th on the offices of that firm of solicitors in the belief that they were acting for both Ian Brown and Susan Bradshaw. I should say that there are on-going Magistrates’ Courts proceedings for offences under the Regulations which I have cited. But in any event not only did the papers not reach Mr Spence on Tuesday they did not reach him yesterday or Wednesday, nor even, perhaps surprisingly and strangely, even this morning because I agreed to sit this afternoon, Thursday 13 November, in this matter. It would be entirely unfair to Mr Spence therefore to ask him to make submissions on the point. He sought to put the matter back, but it seemed to me the solution to the case was as follows. Counsel or rather the Attorney submitted that the urgency was if anything increased rather than otherwise by the fact relied on by Mr Spence that the Soho Bookshop at 31-33 Gresham Street had been closed up. That meant that these people might be seeking, as is suggested by Ms Brown, to sell these dangerous products from another place. It seemed to me that the solution to that was to proceed as though this were an ex parte application and that is what I have done. I am entirely satisfied that this is a proper case for exercising the court’s discretion to grant an injunction when it is just and convenient to do so. I think the matter has been properly brought before the court and I will grant the injunction in the terms set out ex arguendo.