

THE HIGH COURT

[2022] IEHC 127
[2020 No. 1644P]

BETWEEN

RYANAIR DAC

PLAINTIFF

AND

FLIGHTBOX SP. Z.O.O.

DEFENDANT

AND

[2017 No. 8782P]

BETWEEN

RYANAIR DAC

PLAINTIFF

AND

SC VOLA.RO SRL

AND

YPSILON.NET AG

DEFENDANTS

AND

[2010 No. 8924 P]

BETWEEN

RYANAIR DAC

PLAINTIFF

AND

ON THE BEACH LIMITED

DEFENDANT

EX TEMPORE judgment of Mr. Justice Allen delivered on 3rd March, 2022

1. This is my judgment on three identical case management motions which were listed for hearing together on Tuesday last, 1st March. The motions, which are in more or less precisely the same terms, were brought in three separate actions in which Ryanair is seeking a variety of injunctions restraining the harvesting and use of information from its website. These three actions are three of four actions currently before the High Court and three of a much larger number of actions brought by and against Ryanair in a number of jurisdictions concerning the copying and use of information: loosely referred to as screen scraping.
2. The three motions were issued on 7th December, 2021, returnable for 31st January, 2022. They could not be dealt with in the Monday list and so were listed for last Tuesday.
3. Ryanair asks, in each case for:-
 1. an order pursuant to O. 63C, r 4 of the Rules of the Superior Courts, the inherent jurisdiction or otherwise, for such directions and/or orders regarding the conduct of these screen scraping proceedings, as appears convenient for the determination thereof in a manner which is just, expeditious and/or likely or minimise costs;
 2. an order that such case management as may be ordered occur alongside any case management as may be ordered and/or continue in the other two actions, such

actions being described as other screen scraping proceedings on which similar applications are brought; and

3. further, and in the alternative, a case management order pursuant to O. 63, r.6(1) of the rules subjecting these screen scraping proceedings to case management under rr. 6 to 8 of Order 63C.
4. The notice of motion in one of the cases referred also to two judgments of Mr. Justice Sanfey delivered in that case.
5. Two of the motions were resisted, one had not been effectively served – or at least Ryanair could not prove service – and was the subject of an adjournment application. The two motions which were resisted were stoutly resisted. Counsel for Ryanair could not see on what conceivable basis the defendants might resist the applications. Counsel for the defendants could not see what conceivable basis the orders sought might be made.
6. The hearing took more or less the whole day. The papers in two of the cases nearly filled a banker's box and, in one of the cases, could not be accommodated in one box. There was an enormous overlap as the affidavit in each case explained what had been happening in the other two cases, the fourth Irish case, and some of the cases in other jurisdictions.
7. The solicitors for Ryanair prepared a chronology in tabular form setting out every step taken over a 12-year period in the four Irish cases, one English case, and one Polish case. I hope that the author or authors of this comprehensive and very clear document will not be offended when I say that I do not need to address all the detail in it.
8. Ryanair v. On the Beach Limited, 2010 No. 8924P, is an action which was commenced by plenary summons issued on 27th September, 2010. Following a dispute as to jurisdiction, which was disposed of by the Supreme Court on 19th February, 2015, a statement of claim was delivered on 22nd April, 2015. Following a little toing and froing in 2016 and 2017, the action, as it was put, went into abeyance until 10th June, 2021 when a notice of motion was issued on behalf of the defendant to strike it out for delay. That motion is listed for hearing on Tuesday next, 8th March, 2022 with an estimate of two days. On the Beach's motion to dismiss was more or less ready for hearing at the date of issue of the case management motions.
9. Ryanair v. SC Vola SRL and Ypsilon.net AG, 2017 No. 8782P, is an action which was commenced by plenary summons issued on 5th October 2017 against the first defendant, to which the second Defendant was added pursuant to an order made on 8th March, 2019. The amended summons and statement of claim were delivered on 15th March, 2019. Vola delivered its defence and counterclaim on 7th June, 2019 and Ypsilon its defence on 1st November, 2019.
10. It is in the Vola case that the notice of motion now before the court refers to the two judgments of Mr. Justice Sanfey which were delivered in 2020 and in which two further

judgments have been delivered by Mr. Justice Sanfey in 2021: one on 1st June, 2021 and the other on 15th December, 2021.

11. Without dwelling on the detail, in the course of the hearing of the applications before him, Mr. Justice Sanfey decided that there should be a modular trial, first, effectively, of Ryanair's claim and then of Vola's counterclaim.

Sacrificing accuracy to economy, the first module is described as the "*terms and conditions module*" which encompasses, broadly, Vola's and Ypsilon's entitlement to do what they are alleged to have been doing by reference to the terms and conditions on which Ryanair claims that the information is available on its website; and the second module is described as the "*competition module*" by which, very broadly, Vola counterclaims that any restrictions, if any, which Ryanair would impose on the use of the information would be anti competitive.

12. As far as module 1 is concerned, the parameters of the discovery necessary for the disposal of the issues have been set and a time limit of 12 weeks has been agreed. But – I think it is probably fair to say, consistently with the way the litigation has been conducted generally – the parties' position is that the 12 weeks will not run until the order has been formally perfected.
13. The third action, Ryanair v. Flightbox, 2020 No. 1644P, was commenced by plenary summons issued on 28th February, 2020, which was certified as having been served on Flightbox at its registered office in Poland on 25th September 2020. A previous attempt at service of the summons in that case had failed by reason, it was said, of a change in the address of the defendant's registered office which, it is said, was later changed back.
14. On 12th January, 2022 the case management papers were sent for service to Ireland's designated transmitting agency in accordance with Regulation EC 1393/07 but no certificate of service was available. The papers were also sent, and they were delivered, to Flightbox by e-mail and by courier but Flightbox did not respond or appear at the hearing of the motion.
15. I pause here to say that if Flightbox appears to be insisting on service by the letter of the law, it is not alone. Ryanair's chronology shows that on 20th February, 2020, it received papers from Flightbox in relation to proceedings which Flightbox had instituted in Poland. Ryanair took the position that the attempted service had failed, inter alia, because the documents, in Polish, were not accompanied by an English translation. Those documents were returned under cover of a letter of 27th February, 2020 explaining why they had been returned and, on the following day, Ryanair issued its plenary summons which, it says, has been duly served with a certified translation into Polish in accordance with the regulation.
16. Flightbox has failed to enter an appearance in Ireland. There is a protracted dispute before the courts in Poland as to whether the Polish courts have jurisdiction to entertain the proceedings instituted there, on which judgment is awaited. Intriguingly, the court

was told that Ryanair was confident that it would prevail before the Polish courts because Flightbox's proceedings had not been served in accordance with the EU regulation but also that the Polish court would decide the issue in accordance with Polish law as opposed to EU law.

17. The fourth action to which I need to refer is an action commenced by plenary summons issued on 5th December, 2019 by Ryanair against Skyscanner Limited, 2019 No. 9399P. That action, on Ryanair's motion, was admitted into the commercial list. A statement of claim was delivered on 7th February, 2020; a defence and counterclaim on 21st October, 2020; and a reply and defence to counterclaim was delivered on 19th November, 2021. Following an extensive exchange of affidavits on a motion for interlocutory relief, and a five day hearing in June, 2020, the interlocutory orders sought by Ryanair were refused on 30th July, 2020. On 18th February, 2021, following the perfection of the High Court order, Ryanair filed notice of appeal to the Court of Appeal. The appeal was heard by the Court of Appeal on 28th and 29th October, 2021 and judgment is awaited.
18. By notice of motion issued on 28th January, 2022 Ryanair has applied to have the Skyscanner action transferred back to the chancery list. That application has been listed for hearing on 28th March, 2022 and is opposed.
19. Mr. Hayden, for Ryanair, acknowledged that he could not prove service on Flightbox and asked that that motion be adjourned. He asked that Vola and On the Beach be formally taken into case management to be managed by an assigned judge. He submitted that Ryanair was not asking that the actions should be consolidated and was not, at this stage, asking for any specific direction in either case. The assigned judge, he suggested, would be able to identify any commonality in due course. Mr. Hayden suggested that Vola heretofore has been informally effectively case managed and asked for a formal order.
20. In response to a question from the court as to where the Vola action might go, Mr. Hayden pointed to a letter of 25th February, 2022 from Ryanair's solicitors to Vola's and Ypsilon's solicitors proposing a listing one week after the discovery was due to complete; 14 days prior to which Ryanair would make a proposal for directions as to the exchange of witness statements and expert reports and an agenda for the listing, to which the defendants would reply within seven days.
21. Mr. Hayden acknowledged that there was nothing useful that could be done with On the Beach until the motion to dismiss had been decided and that, if it was decided against Ryanair, there could never be anything done by way of case management.
22. It was acknowledged that the suggestion that one judge might be assigned to hear all four cases presupposed that Skyscanner would be sent back to the chancery list but it was suggested that two assigned judges, one in the commercial list and one in the chancery list, might nevertheless be advantageous. Mr. Hayden suggested that, even if there was only one case, it would be beneficial to assign a judge to deal with it from start to finish.

23. Mr. Howard, for Ypsilon and On the Beach, appealed beyond the interests of his clients to the impact an order in the terms sought would have on other litigants. His clients, said Mr. Howard, had written asking what directions were proposed, but Ryanair would not say. It was accepted in the affidavit grounding the motion, said Mr. Howard, that Vola had been effectively case managed by Mr. Justice Sanfey and that there was no suggestion that the informal case management might in any way have been inadequate.
24. It will be recalled that while Vola has delivered a counterclaim based on competition law, Ypsilon had delivered only a defence but in correspondence since the case management motion issued, Ypsilon has flagged an intention to apply for leave to add a counterclaim. Mr. Howard, by reference to the written submissions filed on behalf of Ryanair, apprehended that part of Ryanair's object in seeking the orders it sought was to make life more difficult for his client. As far as Mr. Howard understood the motions, the proposal was to tie three of the four cases together. If they were all somehow or other related to screen scraping, he submitted that the defendants' businesses were different and so the competition issues that would be thrown up by the counterclaims would be different.
25. Mr. Howard was highly critical of the rate at which the other screen scraping actions had progressed – or not – and said that he did not want his clients' litigation held back. Ypsilon and On The Beach, it was said, would enthusiastically engage with any directions but they objected to uniform case management which would see his clients having to keep under review, or even engage in, the case management of other litigation lest something be done in another case which might impact upon his clients.
26. Mr. Lewis, for Vola, followed in similar vein. Whatever the motions were about, he said, they were not to achieve the management of the Vola case which, on Ryanair's case, was already being effectively case managed by Mr. Justice Sanfey. If it was not that, said Mr. Lewis, it could only be to have the cases consolidated, which Ryanair denied, or to link them, to which Vola absolutely objected.
27. There was, said Mr. Lewis, no commonality in the competition claims. The orders sought would achieve nothing for Vola in terms of expedition, justice or cost saving. Counsel pointed to a letter of 22nd December, 2021 by which Vola sought voluntary discovery of documents in relation to module 2 with which Ryanair, by a letter of 11th January, 2022, refused to engage.
28. While Mr. Hayden, in argument, rather backed away from the proposition, I am satisfied that Mr. Howard and Mr. Lewis, and their solicitors and clients in the affidavits they filed in opposition to the motions, were entirely justified in their apprehension that Ryanair was endeavouring to link the actions. Indeed, I cannot see how the order sought at para. 2 of the notice of motion – that the case management in each action should occur alongside the management which might be ordered in the others – could have been understood otherwise.

29. If the linking of the actions is not what was sought, then truly, as Mr. Howard submitted, Ryanair was asking the court to assign a judge to deal with Ryanair's screen scraping litigation and so for priority over all other litigants.
30. The thrust of the case made by Ryanair in the affidavits and legal submissions, if not in oral argument, was that the case management of the litigation was warranted by commonality. I am not persuaded that there is any commonality in the competition claims which have been made or which might later be made. The defendants at the very least claim to be engaged in different businesses and, as matters stand, it seems to me that linking might save costs for Ryanair but would add to the defendants' costs.
31. When these applications were first proposed, it was suggested by Ryanair that they might be moved on a single motion. As Mr. Hayden recalled in argument on the two motions which were argued, I declined to permit that when it was proposed.
32. From the time I first saw the papers in these cases I could not see how a case in which no appearance had been entered could sensibly be case managed with a case ten years older which was the subject of a motion to dismiss for delay or how either could be sensibly case managed with a case in which the pleadings were closed and the parameters of discovery decided, at least as to one module. Nor could I see, as far as Vola and Ypilson are concerned, what further case management was required or why a formal case management order might be required in respect of the previous case management directions which were informally given.
33. I can see that there might be some commonality in the terms and conditions claims against each of the defendants, but I do not see that the claims are particularly technical or difficult to follow. The claims are that the defendants are either scraping information from Ryanair's website or are using information that has been scraped. The alleged wrongdoing may be either the scraping or the use of the information scraped. There may very well be – and there is no one better than a judge to recognise – a bit of industry jargon that requires some explanation or translation into everyday language, but I see no mystery in it.
34. As to Flightbox, it makes no sense to me to contemplate assigning a judge to hear a motion for judgment in default of appearance, if it ever comes. In my view the appropriate order is to strike out rather than adjourn that motion. If and when any application is made in the Flightbox action, it will be best and most efficiently dealt with by reference to the issues disclosed by the motion and would be confused by the introduction of two lever arch folders of papers in relation to wholly unrelated litigation in which the only common element is the plaintiff.
35. In any event, any chancery judge who might be earmarked now to deal with the litigation might very well have followed Lord Justice Arnold before any motion could have come into the list.

36. As to On The Beach, I have come to the same conclusion. It is likely, I think, that judgment will be reserved on the motion to dismiss. I would not be in the least bit surprised if, whatever the outcome may be, the disappointed party were to appeal. When the fate of On The Beach is known – and if that fate is that the action is to survive – I foresee no reason why the court would not be receptive to a focussed case management application which could plot out a proposed course and a suggested timetable. The three lever arch folders now before the court would not help with that.
37. As far as On The Beach is concerned, there is a motion on behalf of Ryanair to amend the statement of claim, travelling, for the moment, with the motion to dismiss. The inevitable next step, if the action survives, will be to list the motion to amend the statement of claim for hearing.
38. As to Vola and Ypilson, I have reached a different conclusion. When eventually the indignation subsided, it became apparent that there was agreement that the orderly progress of the litigation would be facilitated by further case management.
39. It is not appropriate to assign a judge to deal with the case from where it now stands until it finishes. Case management issues will be dealt with either by the chancery list judge or, in his or her absence, the judge in charge of the chancery list. Any issues which are likely to take significant time to resolve may be assigned by the list judge to any other chancery judge.
40. The case management motion in Vola and Ypilson, I think it is fair to say, has gone at least some of the way to focussing the attention of all the parties on what they wish and hope to do. Ryanair, at least, wants to progress module 1 by an exchange of witness statements and expert reports. I am not at all sure that the proposed exchange of views on this subject within a week is realistic, but it does appear to be in principle a sensible next step. If the defendants believe that there is anything to be done before witness statements are exchanged, they can communicate with each other and with Ryanair and the court will resolve any dispute.
41. Vola, it is now clear, wants to progress discovery in relation to module 2. Whether this is a just, efficient and cost effective way forward remains, perhaps, to be decided, but the admission of the case to case management will allow any such issue and any issues as to the parameters of any discovery to be decided speedily and efficiently.
42. Ypilson, it is now clear, wishes to amend its defence to add a counterclaim: specifically a counterclaim raising competition issues. It was indicated in argument that work on the proposed draft counterclaim had been at least started and Ypilson hopes to have a draft in the hands of Ryanair by the end of this month. Whether, or to what extent, the proposed new counterclaim will have any bearing on the resolution of the issues between Ryanair and Vola as to the discovery necessary for module 2 remains to be seen.
43. I will make a case management order under O. 63C, r. 6 and I will fix a case management conference for a date which I will discuss with counsel.

44. I propose to direct that, within three weeks, Ryanair should apply to Vola's letter dated 22nd December, 2021 seeking discovery in relation to module 2.
45. I propose to direct that Ypilson should, within five weeks, provide to Ryanair a draft of the proposed amended defence and counterclaim.
46. For all that I am inclined to doubt that the timeframe specified in Ryanair's letter of 22nd February, 2022 is realistic, I think that in general the proposal is sufficiently clear as to call for an answer. I propose to direct that each of Vola and Ypsilon reply within three weeks. For the avoidance of doubt, I am not to be taken as giving any direction that what has been proposed by Ryanair is what needs to be done, but, if Vola and Ypsilon disagree, they should say so, and they should say why, and make any contrary proposal that they wish.