

ROYAL COURT
(Samedi Division) 51.

15th March, 1995

Before: The Bailiff, and
Jurats Hamon and Potter

<u>Between:</u>	Michael Weber	<u>Plaintiff</u>
<u>And:</u>	Gunter Endriss	<u>First Defendant</u>
<u>And:</u>	Wilhelm Brech	<u>Second Defendant</u>
<u>And:</u>	I.P.U. Limited	<u>Party Cited</u>

Application by the Defendants to lift or vary the
injunctions set out in the Plaintiff's Order of Justice.

Advocate D.C. Sowden for the Plaintiff.
Advocate S.J. Willing for the Defendants.
The Party Cited did not appear and was not
represented.

JUDGMENT

5 THE BAILIFF: An Extraordinary General Meeting of a company called I.P.U. Limited was convened for twelve noon today, 15th March. On 10th March, sitting in Chambers, I granted an *ex parte* injunction, at the instance of the plaintiff, restraining I.P.U. Limited from holding the Extraordinary General Meeting.

10 Mr. Willing, on behalf of the defendants in this case, now moves to discharge the injunction. As only some six minutes remain before twelve noon, this Judgment will be fairly short and to the point.

15 The principal ground upon which the defendants seek to set aside the injunction is that damages would be an adequate remedy for the plaintiff, were he to be successful in his action.

The Court was referred to the case of American Cyanamid -v- Ethicon, Ltd [1975] 1 All ER 504 HL, at p.510, where Lord Diplock said:

5 *"As to that, the governing principle is that the court should first consider whether, if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have*
10 *sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be an adequate remedy and the defendant would be in a financial position*
15 *to pay them, no interlocutory injunction should normally be granted...."*

That Judgment was cited with approval in Walters -v- Bingham (1985-86) JLR 439 and, indeed, in other cases before this Court.

20 The evidence before us is that the plaintiff invented what was called a 'locatable golfball'; that is a golfball which emits some electronic sound or indication which would enable it easily to be found. All the members of the Court, as presently
25 constituted, can imagine that, if successfully developed and marketed, the profits from such an invention could be immense.

30 We were told that proceedings are in train in Germany between the same parties where the defendants are seeking to remove the plaintiff from the partnership entered into by the three protagonists in order to develop this invention. We were informed that a definitive hearing will take place before the German Court on 29th March, 1995.

35 We consider that applying the balance of convenience test the prejudice to the plaintiff of discharging the injunction at this stage outweighs the possible prejudice to the defendants in keeping it in place until the German Court has given its decision.

Our decision therefore is that the application to discharge the injunction is refused, but the secondary application to vary the injunction is granted.

5 We therefore vary the injunction so as to permit the
Extraordinary General Meeting to be held at twelve noon today, but
only for the purpose of adjourning the meeting until after 22nd
10 April, 1995, when the interlocutory injunction granted in Chambers
will (in default of a further order) expire. We give liberty to
either party to apply again to the Court following the decision of
10 the German Court on 29th March, 1995.

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Authorities

American Cyanamid -v- Ethicon, Ltd [1975] 1 All ER 504 HL.

Walters -v- Bingham (1985-86) JLR 439.

Allen & Ors. -v- Jambo Holdings, Ltd (1980) 1 WLR 1252 CA.

RSC (1995 Ed'n): O.29 r. 1/8: pp.517-8.