



## Retailer fails to block law firm acting in restraint case

04 July 2016 5:06pm

Fashion retailer Just Group has failed to restrain its former chief financial officer from engaging lawyers once retained by competitor Cotton On, amid claims its rival is funding her defence to gain access to commercially sensitive material.

Supreme Court Justice John Keogh dismissed Just Group's application, finding the circumstances of the case were unexceptional and that alternative orders could be sought to deal with disclosure issues.

The chief financial officer began working for [Just Group Ltd](#) in January this year, but resigned five months later to take up a role with [Cotton On](#).

The Just Group, which includes Just Jeans, Peter Alexander and Portmans in its portfolio, argued the officer breached restraint of trade and confidential information clauses in her contract of employment when she started working for Cotton On in May.

It sought to restrain her from joining Cotton On for two years and from using any of its confidential or commercially sensitive information.

**Just Group says Cotton On might be financing officer's defence**

Just Group sought to stop the officer's legal representatives – [Ashurst](#) – from acting on her behalf because there was a "real possibility" Cotton On was funding the officer's defence in a potential bid to access sensitive information.

It alleged that it was "not out of the realms of possibility that Cotton On was supporting the litigation" and as a consequence, Ashurst would likely gain access to Just Group's highly commercially-sensitive confidential information.

While Just Group stopped short of claiming Ashurst would "intentionally misuse" the information, it said there was a real risk of "inadvertent disclosure" which would cause the Just Group "great prejudice".

Just Group alleged that if Ashurst had access to the confidential information, it might "colour or influence Ashurst in its likely future role as solicitors for Cotton On."

But the CFO argued there was no restraint of trade clause in her employment contract and that a 24-month restraint was "excessive", "unreasonable" and "unenforceable" at law.

She argued that Ashurst did not currently act for Cotton On, nor was there any existing retainer or costs agreement between them.

The CFO said Just Group's claims Ashurst and Cotton On might share confidential material were unfounded because the information could be protected by specific orders or restrictions on who could access the information, including a confidentiality undertaking.

### Unexceptional case doesn't warrant intervention

Justice Keogh agreed with the CFO's claims and dismissed Just Group's application.

He said that confidential information disclosed during proceedings could be protected by other means, such as orders, and that the CFO had "clearly indicated a willingness to cooperate with the process".

"I do not regard the circumstances of this case as exceptional.

"Nor has there been clearly identified a 'real and sensible' risk arising as a consequence of the circumstances of the case."

Justice Keogh said that the officer would suffer greater prejudice if she were restrained from engaging Ashurst as her legal representative.

This was particularly so given there had been "some delay" by Just Group in lodging its application.

[Just Group Ltd v Peck \[2016\] VSC 375 \(1 July 2016\)](#)

© Copyright 2018 Workplace Express