



IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (ChD)

BETWEEN :

GETIR UK LIMITED

Claimant

- and -

ENJOY MEDIA LIMITED

Defendant

PARTICULARS OF CLAIM

A. The parties

1. The Claimant ('**Getir**') is a high-speed grocery delivery service, delivering to customers in London and other cities in the United Kingdom. It operates via a smartphone application. It is part of the Getir group, a global grocery delivery group that originated in Turkey and is valued at US\$7.5 billion. The group has approximately 9.5 million customers in Turkey and internationally.
2. The Defendant ('**EML**') is an advertising agency which purchases advertising slots for clients in public locations, on London transport and on broadcast and digital media.

B. The Agreement

3. In early 2021, Getir intended to start an advertising campaign as part of its launch in London and the rest of the UK. It asked various advertising agencies, including EML, for quotations for advertisements on London transport, including on London taxis, buses and the Underground. As part of a presentation given by EML to Getir, EML represented that the advantages of advertising on London taxis, was that:

- (a) 200,000 taxi journeys were made in the UK each day;



- (b) 98% of people saw out-of-home advertisements weekly;
 - (c) 81% of people in the ABC1 social groups recall taxis with advertisements;
 - (d) London taxi advertisements could reach 8.6 million people in the city;
 - (e) 80% of people notice new taxi advertisements;
 - (f) 20% of people have made a purchase after seeing a taxi advertisement;
 - (g) 77% of people described taxi advertisements as impactful; and
 - (h) taxi advertising offered exposure to Getir's services at all hours of the day and all days in the week (collectively '**the Representations**').
4. On 1 March 2021, Getir entered into an agreement with EML for the supply of advertising services in London, to display Getir's advertisements on: (a) London Underground escalator panels, (b) bus shelter panels, (c) the sides of buses (known as 'T' sides), and (d) the sides of taxis (known as 'supersides') ('**the Agreement**').
5. The Agreement comprised EML's Standard Terms and Conditions of Trade ('**the Standard Terms**') and the Order Confirmation attached to it and incorporated into the Agreement ('**the Order Confirmation**').
6. The Agreement contained the following express terms:
- (a) By the recital to the Standard Terms:
 - (i) '*Client*' means Getir; and
 - (ii) '*Company*' means EML.
 - (b) By clause 1 of the Standard Terms:
 - (i) '*c. "Advertising Services" means, the provision by Company of those Services as specified in the Order Confirmation dependent on the type of media required*';
 - (ii) '*d. "Advertising Site(s)" means site(s) where Posters are placed or commercial radio stations, or commercial television stations, or Vehicles*';



- (iii) *'i. "Charges" means the Price and any and all other charges specified in the Order Confirmation payable by Client';*
- (iv) *'l. "In-Charge" means the estimated date from which the advertisement will be displayed or broadcast commences dependent on certain factors';*
- (v) *'n. "Order Confirmation" means the order confirmation form attached to these terms and conditions this Agreement [sic] all of which form part of this Agreement';*
- (vi) *'o. "Posters" means the information and advertising posters intended for the Site(s)';*
- (vii) *'p. "Posting Period" means the period mentioned in the Order Confirmation within which Company will post the advertisement or broadcast(s) prior to the In-Charge Date'; and*
- (viii) *'q. "Price" means the basic price for the Advertising Services as specified in the Order Confirmation'.*

(c) Clause 3 provided:

'3. PROVISION OF GOODS AND SERVICES

3.1 In consideration of the payment by Client of the Price and Charges, Company will supply Client with those Advertising Services specified in the Order Confirmation and in accordance with the Posting Period and subject to the terms and conditions of this Agreement.'

(d) Clause 8 provided:

'8. CHARGES

'8.1 The Client shall pay the Company the Price for the Services specified in the Order Confirmation. [...] Where the Company fails to supply services as instructed by the Client, (all or some of the parts) a refund equivalent to the sum paid by the Client for the proportion of services not delivered shall be provided which shall limit Company's liability to Client.'

(e) Clause 14 provided:



'14. TERMINATION

'14.1 In the event that one of the Parties commits a material breach of any of its obligations under this Agreement (and, where such breach is capable of remedy, has not remedied the same within 7 days of receipt of a notice from the other Party requiring that the same be remedied) then Parties may by notice to the other Party terminate this Agreement; such termination to take effect immediately upon the receipt by the other Party in default of such notice. A material breach constitutes failure to meet any obligations as set out in the Order Confirmation.

'14.2 Where Company exercises a right of termination pursuant to clause 14.1 above, it shall be entitled to retain the whole of the Charge paid by Client in respect of the Services completed up until the date of the termination. Where Company commits a material breach of this Agreement, Client shall be entitled to a return of the Price paid.'

7. Getir will rely on the Agreement at trial for its full terms, meaning and effect. The terms defined in the Agreement are adopted herein.
8. The Advertising Services provided under the Agreement, and the Charges for each (all including VAT) were set out in the Order Confirmation and in clause 8 of the Agreement, as follows:
 - (a) escalator panels: advertising on 400 escalator panels, for a Posting Period of eight weeks from 22 March 2021, for a Price of £52,800;
 - (b) bus shelter panels: 500 bus shelters (with six sheets each) for a Posting Period of eight weeks from 22 March 2021, for a Price of £185,000;
 - (c) bus 'T' sides: 500 buses for a Posting Period of eight weeks, from 22 March 2021, for a Price of £329,500; and
 - (d) taxi supersides: 700 taxis, for a Posting Period of six months, plus an additional three weeks free of charge, from 22 March 2021 (that is, until 12 October 2021) for a Price of £671,328 ('**Taxi Services**').
9. The total price payable under the Agreement was £1,238,628 (including VAT).
10. Further, the Agreement contained an implied term that the intention of the Advertising Services to be provided under the Agreement was (*inter alia*) to assist Getir with its strategy of:



- (a) advertising its services to the public;
- (b) obtaining a greater number of customers; and
- (c) specially, obtaining a greater number of customers than its rivals in the competitive high-speed grocery delivery sector (**‘the Implied Term’**).

This term falls to be implied in light of the Representations; because it is necessary to give business efficacy to the Agreement; because this term is so obvious as to go without saying; and/or because it is inherent in the nature of a contract for advertising services. Further, the matters contained in the Implied Term were in the reasonable contemplation of the parties at the time of contracting. Further or alternatively, the Representations each formed a collateral warranty to the Agreement.

11. As regards the Taxi Services, EML provided Getir with a list of the vehicle registration plates of each of the 700 taxis which would display Getir’s advertisements (**‘Master List’**).
12. EML subsequently informed Getir that certain of the particular taxis which would display Getir’s advertisements would have to change. As a result, the Agreement was varied between the parties in respect of the Taxi Services, so that:
 - (a) EML provided Advertising Sites on an additional 41 taxis, free of charge so that the Agreement provided for Getir’s advertisements on 741 taxis; and
 - (b) EML provided an additional seven weeks free of charge to the Posting Period, so that the total Posting Period in respect of taxi supersides was six months and 10 weeks, that is until 30 November 2021.
13. EML subsequently provided Getir with an amended version of the Master List of the vehicle registration plates of the 741 taxis which would display Getir’s advertisements, although four of the taxis had their registration plates mistakenly repeated in the Master List, so that the actual amended total was 737 taxis.



C. Performance of the Agreement

14. In March and April 2021, Getir paid the total Price due under the Agreement to EML in respect of each of the Advertising Services.
15. EML subcontracted the provision of the Advertising Services under the Agreement to a company called Media Advertising Group Limited ('MAG'), by an agreement entered into between EML and MAG on 1 March 2021, for a total price of £1,111,146.23, comprising: (a) £47,878.50 for escalator panels, (b) £180,000 for bus shelters, (c) £301,870 for bus 'T' sides, (d) £580,440 for taxi supersides (all sums including VAT).
16. Getir's claim concerns the Taxi Services. Getir does not make any claim in respect of the other Advertising Services.

D. Breach of the Agreement by EML

17. In or around July 2021, Getir became aware that the advertisements had been placed on fewer than the 737 taxis agreed in the Agreement as amended, and fewer than the 700 taxis originally agreed in the Agreement.
18. In or around the second week of July 2021, Mr Turancan Salur, the director of Getir, expressed concern to Ms Arzu Küfündür, the director of EML, that EML was not complying with its obligations under the Agreement. Mr Salur informed Ms Küfündür of his information that fewer than the agreed number of taxis were displaying Getir advertisements.
19. By an email dated 26 July 2021, Ms Küfündür informed Mr Salur that she had assembled a team of people to take photographs of taxis in various locations in central London. Her email stated:

'[EML] took more than 1,000 photos of taxis. We checked the licence plates with the list provided MAG. As of today, we calculate that there are 678 taxis with Getir adverts. It is 22 less than the agreed amount. If we include the free of charge taxis, which they [MAG] say they provided, there are 63 taxis which should have Getir adverts that do not. This is a big problem for us because there should be 700 taxis even without the free of charge ads.'



20. Accordingly, EML admitted that it was in breach of the Agreement by failing to provide 737 (alternatively 700) taxis with Getir advertisements.
21. Further, in an email dated 9 July 2021, Ms Küfündür informed MAG that:

'We spoke with a number of taxi drivers who told us that they were paid only for a period of 3 months and that is why they are now removing the Getir ads'.

22. Accordingly, EML admitted that it was in breach of the Agreement by only paying (or arranging for payment to) some or all taxi drivers for a period of three months, instead of the six months plus 10 (alternatively three) weeks provided under the Agreement.
23. Further, Getir has arranged for four of its employees to carry out similar surveys, taking photographs of taxis in various locations in central London at various dates between 28 July and 10 September 2021 (all dates being within the Posting Period for the taxi superside advertisements). Getir's employees took over 2,000 photographs of taxis.
24. These surveys identified the following:
- (a) Overall, the surveys identified 168 individual taxis whose registration plates were on the Master List, and which thus should have been displaying Getir advertisements, but which were not doing so ('**Non-Compliant Taxis**'). That figure is the total of the Non-Compliant Taxis in the four surveys by Getir employees described immediately below.
 - (b) The survey undertaken by Mr Ben Forbes on 28 July 2021 identified 11 Non-Compliant Taxis.
 - (c) The survey undertaken by Mr Moheen Mehmood on 12-13 August 2021 identified 16 Non-Compliant Taxis.
 - (d) The survey undertaken by Mr Laurie Gellhorn on 12 and 18-19 August 2021 identified 56 taxis whose registration plates were on the Master List. Of those, 42 were Non-Compliant Taxis (75%) and 14 were correctly displaying Getir advertisements (25%) ('**Compliant Taxis**'). (In addition, this survey identified one taxi which was not on the Master List, but which nonetheless displayed Getir advertisements.)



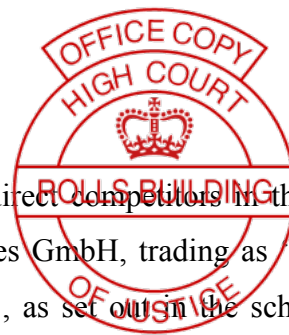
- (e) The survey taken by Mr Dimitrios Ntermani on 20 and 31 August, 1-3, 6-10 and 13-17 September 2021 identified 145 taxis on the Master List, of which 107 were Non-Compliant Taxis (73.79%) and 38 were Compliant Taxis (26.2%). (In addition, this survey identified nine taxis which were not on the Master List, but which nonetheless displayed Getir advertisements.)
- (f) In total, the two surveys in paragraph 24(d) and (e) above (which were carried out between 12 August and 17 September 2021 and used the same methodology), identified 201 taxis on the Master List (27.5% of the total Master List), of which 149 were Non-Compliant Taxis (74.13%) and 52 were Compliant Taxis (25.87%).

Schedules of taxis identified in these surveys are attached hereto.

- 25. Accordingly, EML was and is in breach of the Agreement (in particular, clause 3.1 and the Order Confirmation), in that:

PARTICULARS OF BREACH

- (a) EML failed to provide, or arrange to be provided, 737 (alternatively, 700) taxis displaying Getir advertisements during the Posting Period.
- (b) There were, at the very least, 181 Non-Compliant Taxis which Getir has identified, so that EML failed to provide, or arrange to be provided, those taxis with Getir advertisements, and so EML is in breach of the Agreement in respect of those taxis.
- (c) The best assessment which Getir is able to make on the current evidence (based on the surveys set out in paragraph 24(d)24(e) above and the spreadsheets attached hereto) is that 25.87% of Listed Taxis were Compliant Taxis; and 74.13% were Non-Compliant Taxis. Thus, EML is in breach of the Agreement as to 74.13% of Listed Taxis.
- (d) EML only paid, or arranged for payment to, some or all taxi drivers to display Getir advertisements for a period of three months or fewer, not the period of six months, plus an additional 10 (alternatively three) weeks, provided under the Agreement.
- (e) Four Non-Compliant Taxis which Getir has identified (on dates in July, August and September 2021) not only wrongly failed to display Getir advertisements, but



displayed advertisements to two of Getir's direct competitors in the high-speed grocery delivery sector, Gorillas Technologies GmbH, trading as 'Gorillas' and Quick Commerce Limited, trading as 'Zapp', as set out in the schedule hereto. Accordingly, EML was in breach of the Implied Term and/or the collateral warranty pleaded at paragraph 10 above in that it failed to ensure that the Taxi Services assisted Getir in its strategy of advertising its services to the public, obtaining more customers generally and, specifically, more customers than its competitors. On the contrary, EML directly helped Getir's competitors, Gorillas and Zapp, in advertising their services.

Getir reserves the right to adduce further evidence of EML's breaches of the Agreement which it may obtain in future, whether obtained from additional surveys of taxis or otherwise.

26. As a result of EML's breaches of the Agreement, Getir has suffered loss and damage, and claims as follows.

E. Claim 1: Refund of the Price under clause 14.2

27. Each and any of the above breaches by EML are 'material breaches' within the meaning of clause 14.1 of the Agreement for all or any of the following reasons:
- (a) they each represent a *'failure to meet any obligations as set out in the Order Confirmation'*, namely the obligations to provide 737 (alternatively, 700) taxis with Getir advertisements;
 - (b) they each represent a failure to meet the obligation to provide Getir advertisements on the taxis included in the Master List;
 - (c) 74% of Master List taxis being Non-Compliant Taxis is material in that it entirely (or in very large part) deprived Getir of the benefit of the Agreement, or had a serious effect on Getir's benefit derived from the Agreement;
 - (d) alternatively, (at least) 181 Master List taxis being Non-Compliant Taxis (26% of the total) is material, in that it had a serious effect on Getir's benefit derived from the Agreement; and/or



(e) the Non-Compliant Taxis which displayed advertisements for Getir's competitors, Gorillas and Zapp, had a serious effect on Getir's benefit derived from the Agreement, in particular on the intention of the Agreement as set in the Implied Term, in that it directly assisted Getir's competitors advertise their services instead of Getir.

28. Accordingly, pursuant to clause 14.2 of the Agreement, Getir is entitled to return of the Price which it paid for the Taxi Services, as set out in the Order Confirmation, namely £671,328.

F. Claim 2: Refund/damages under clause 8.1 and/or order for an account

29. Alternatively (and without prejudice to its claim above), Getir claims a sum (or damages) pursuant to clause 8.1 of the Agreement, in the sum equivalent to the proportion of the Advertising Services which were not provided by EML. That sum is to be assessed by the court.

30. At present, the best assessment of that sum which Getir can make on the current evidence is that 74.13% of the taxi Advertising Services were not provided by EML (namely that 74.13% of the Master List of Taxis failed to display the Getir advertisements, as set out in paragraph 24(f) above). That amounts to a refund of £497,655.45.

31. Alternatively, Getir claims an order that:

- (a) EML account for the total number of taxis on the Master List which were Compliant Taxis and Non-Compliant Taxis in the Posting Period; and
- (b) EML pay damages corresponding to the proportion of the Taxi Services which were not provided by EML.

G. Interest

32. Further, Getir claims interest on all such sums found to be due to it, pursuant to s. 35A of the Senior Courts Act 1981, at such rate and for such period as the court thinks fit.



AND THE CLAIMANT CLAIMS:

- (1) The sum of £671,328 pursuant to clause 14.2 of the Agreement
- (2) Alternatively, a sum (or damages) to be assessed by the court pursuant to clause 8.1 of the Agreement (provisionally assessed at £497,655.45).
- (3) Alternatively, orders for an account and payment as aforesaid.
- (4) Such further or other relief as the court may think fit.
- (5) Interest as aforesaid.
- (6) Costs.

ALEXANDER HALBAN

Statement of Truth

The Claimant believes the facts stated in these Particulars of Claim are true. I am duly authorised to sign this Statement on behalf of the Claimant.

The Claimant understands that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed: 
2B84A4ACD1CD402...

Full name: Anna Cosgrave

Position: Head of Legal, UK

Dated: 27.09.2021



SCHEDULE: RESULTS OF TAXI SURVEYS (PARAGRAPHS 24-25)