

UK court throws out refusal to supply lawsuit against Swatch

Alex Bagley
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A UK court has dismissed an attempt from a watch parts wholesaler to revive a refusal to supply claim against Swatch, deeming the lawsuit an attempt to relitigate previous Swiss rulings rejecting the claim.

The court [ruled](#) today there is no reason to relitigate Cousins' claims that Swatch abused its dominant position by refusing to supply the company with spare parts from December 2015.

Mr Justice Michael Green, who also sits as a judge in the UK's Competition Appeal Tribunal, found that the Lugano Convention, which ensures that court decisions are recognised across jurisdictions, applies to previous Swiss court rulings dismissing the case.

The Berne Commercial Court ruled in 2021 that Swatch's refusal to supply was part of a reorganisation of its route to market and was objectively justified without the need to consider the effect on consumers or competition in the UK. The Federal Supreme Court subsequently upheld that decision in 2022.

The UK was forced to leave the Lugano Convention when it departed the EU in 2020. While the convention still applies to the case because it was commenced before that date, a court can disapply the rules if a jurisdiction has manifestly different public policy objectives.

The convention also prevents UK courts from reexamining another jurisdiction's case on the merits.

During a hearing last month, Robert O'Donoghue KC, counsel to Cousins, accepted that this exception must be strictly interpreted and only used in exceptional cases. However, he maintained that the Swiss rulings breach the European Convention on Human Rights because Cousins was denied its right to be heard and the Swiss courts failed to consider the vast amounts of evidence.

But Green J noted that Switzerland is a signatory of the ECHR and it is not obvious that the Swiss judgments are contrary to UK public policy.

He added that the Swiss courts have not committed a "manifest breach" of human rights rules.

While a right to a fair hearing is fundamental to the UK's legal system, courts must be "astute" to recognise when an allegation is "a disguised attack" on the substance of a foreign court's decision, Green J said.

In this case, Cousins is displeased with the outcome in Switzerland and has based its UK claim on allegations that the Swiss Courts did not properly consider the evidence regarding the effect on competition in the UK, he said.

When examining these claims, there is “a great risk of straying into the forbidden arena” of

challenging and scrutinising the merits of the decisions in question, Green J found.

Cousins maintained throughout the case that Swiss courts had failed to consider “voluminous evidence”, including the effect of Swatch’s conduct on UK consumers and evidence it says justified greater disclosure.

However, Green J said that Cousin’s claim is “somewhat outlandish” because the Bern court’s ruling clearly references the evidence.

Swatch counsel Ben Rayment said during the hearing last month that Cousins is trying to appeal against the Swiss decisions “by the back door”.

Earlier that month, the UK’s Competition and Markets Authority indicated that it may be interested in intervening in the case if it proceeds.

“Political tide has turned”

A spokesperson for the claimants said that the ruling has inflicted “enormous damage” on the fundamentals of UK and EU competition law. The effect is that monopolists can remove wholesale markets from the supply chain without any consumer benefit-based justification, they noted.

Anthony Cousins, managing director of Cousins Material House, told GCR that the rules Green J had to apply prevented him from examining how the Swiss courts arrived at the verdicts, “even if it is blatantly obvious that the verdict is wrong”.

During the hearing last month, Green J quizzed Rayment on whether the outcomes of the Swiss rulings would mean consumers would pay 50% more for watch repairs. Rayment said they would “after some stumbling”, Cousins said.

There is now no further route through the UK courts that Cousins can follow, he noted.

However, the “political tide” has turned against repair prevention by restricting the supply of spare parts, he said, noting that the company has held talks with several government departments.

Cousins will continue to fight the “unjust” situation, he said.

Swatch was contacted for comment.

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Documents



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