



## Essential facts: state of mind and accessory liability for company directors

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The UK Supreme Court has given important guidance on when the courts will impose liability on directors as accessories to torts committed by a company. In a detailed judgment, **Lifestyle Equities v Ahmed** [2024] UKSC 17 sets out the test to be applied in imposing accessory liability on company directors. The judgment clarifies the state of mind and knowledge required by company directors to become personally liable.

At first instance and before the Court of Appeal, the Claimant, Lifestyle, successfully argued that the defendant company and two of its directors were jointly liable for trade mark infringement, and the directors had been ordered to account for profits made by them in connection with the company's infringements.

The Supreme Court unanimously allowed the appeal of the two directors, finding that the two directors were not liable as accessories to the company's infringement of Lifestyle's trade marks.

### Strict liability torts and accessory liability

Trade mark infringement is an example of a 'strict liability' tort which does not require the person committing the tort to have had any particular state of mind to be found liable. Trade mark infringement can be committed under English law even though the defendant was not at fault and is unaware that their actions constitute trade mark infringement, provided those actions: (i) fall within the scope of the infringing acts listed in the UK Trade Marks Act 1994; and (ii) were carried out without the trade mark owner's consent.

The key question for the Supreme Court was "when are directors of a company liable as accessories for causing the company to commit a tort of strict liability - in this case trade mark infringement? In particular, is such liability also strict or does it depend on knowledge (or some other mental element)?"

### The Supreme Court's decision

The Supreme Court held that "knowledge of the essential features of the tort is necessary to justify imposing joint liability on someone who is not actually committed the tort. This is so even where, as in the case of infringement of intellectual property rights, the tort does not itself require such knowledge."

The directors did not dispute that, as a matter of causation, their conduct in giving instructions to manufacture and offer for sale goods bearing the offending signs induced the company to infringe the claimant's trade marks. The dispute concerned what mental state is required to make directors liable as accessories for those infringements.

The courts below found the directors to be liable, on the basis that, for a tort of strict liability like trade mark infringement, accessory liability does not depend on knowledge that the acts of the primary wrongdoer were or were likely to be infringements. It is enough that the accessory defendant intended that the primary actor should carry out the infringing acts.

The Supreme Court rejected an argument by the directors that company directors are exempted from ordinary principles of tort liability. The Supreme Court also rejected an argument that, because an act done by a director or other individual is

treated as the company's act for which the company can be held liable, the director is immunised from liability. The Supreme Court recognised that although an incorporated company is treated in law as a separate person, that does not in itself justify treating a director whose act is attributed to the company as free from personal liability for that act.

Recognising a company and its directors as separate persons entails that their liabilities are distinct from one another, and therefore a company and a director can each be liable to a claimant injured by a wrongful act.

The Supreme Court went on to consider general principles of common law concerning accessory liability for another person's civil wrongdoing. The first general principle it considered was procurement - where a person who knowingly procures another person to commit an actionable wrong will be jointly liable with that other person for the wrong committed. The liability of the procurer is an accessory liability. Where the primary wrong is a breach of contract, this accessory liability takes the form of a tort committed by the accessory. Where, on the other hand, the primary wrong is a tort, there is no need to claim a separate tort has been committed by the other person. The procurer is made jointly liable for the same tort committed by the primary wrongdoer.

The Supreme Court then considered another general principle of accessory liability, by which a person who assists another to commit a tort is made jointly liable for that tort by common design. The principle is that where a person gives assistance that is more than trivial and pursuant to a common design between the parties, they may also be held liable as an accessory even if their assistance falls short of procuring the primary wrongdoer to commit the tort.

In considering the case law on accessory liability through procuring a tort or assisting another to commit a tort pursuant to a common design, the court came to the conclusion that knowledge of the essential features of the tort is necessary to justify imposing joint liability on someone who has not actually committed the tort. This is so even where, as in the case of infringement of intellectual property rights, the tort itself does not require such knowledge.

There was no finding on the facts in the court below that the directors had the knowledge of the essential features of the tort (in this case trade mark infringement) required to make them jointly liable for the infringements on either principle of accessory liability, procurement or common design. Accordingly, the Supreme Court overturned the decisions of the courts below and found the directors not liable for accessory liability for trade mark infringement.

## Analysis

The Supreme Court's decision is a useful exposition of the law on accessory liability and the knowledge required for it to be imposed. It also provides clarification that those principles apply as equally to company directors as they do to any other person who assists another to commit a tort. What particular "*essential facts*" of the tort in question the director will need to be shown to have knowledge of in order to be found liable will

vary from case to case, and evidence of that knowledge should be considered carefully before bringing a claim against a director alleging accessory liability. Further, it will be interesting to see how the courts of the BVI and other offshore jurisdictions will apply this decision, especially in the case of companies with corporate / professional directors.

Please feel free to contact a member of our Carey Olsen dispute resolution team should you require advice concerning directors' duties and liabilities in the BVI or in any of our other offshore jurisdictions.



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