APPROVED **[2026] IEHC 547**

THE HIGH COURT

2020 264 COS

IN THE MATTER OF DERMOSCIENCES LIMITED AND IN THE MATTER OF SECTION 212 OF THE COMPANIES ACT 2014

BETWEEN

PURE SUISSE HOLDINGS SARL

APPLICANT

-AND-

SOCGEN INVEST LIMITED and NICOLA FAGIUOLI and DERMOSCIENCES LIMITED

RESPONDENTS

JUDGMENT of Mr. Justice Nolan delivered on the 31st day of July 2026

Introduction

1. This is a motion seeking discovery in respect of two distinct groups of discovery categories relating to alleged oppression against the Applicant and the valuation of Dermosciences Limited ("the Company"), pursuant to Order 31, rule 12 of the Rules of the Superior Courts ("the Rules").

Background

2. Pure Suisse Holdings SARL ("Pure Suisse"), the Applicant, is the holder of 30% of the shares in the Company. Pure Suisse is owned and controlled by Mr. Lucas Dikkers. The

Respondents are Socgen Invest Limited ("Socgen"), which holds the remaining 70% of the Company, and Mr. Nicola Fagiuoli, who controls Socgen. The Applicant alleges that the Company was operated as a quasi-partnership**,** based on mutual trust and an understanding that Mr. Dikkers and Mr. Fagiuoli would participate jointly in its management and development.

3. The Applicant says that the relationship deteriorated in 2019, after Mr. Dikkers discovered alleged regulatory, product-safety, customs, accounting and tax irregularities. It alleges that certain products contained undeclared or unauthorised substances, were misleadingly labelled, or were distributed in breach of applicable requirements. Mr. Dikkers claims that he raised these matters with Mr. Fagiuoli and subsequently reported them to various authorities in several jurisdictions. It is alleged that these matters damaged the Company's business and reputation and materially impaired the value and marketability of Pure Suisse's shareholding in the Company.

4. The Applicant alleges that following a meeting on 30 April 2019, Mr. Fagiuoli embarked upon a course of retaliation designed to exclude Mr. Dikkers from the Company. The alleged conduct included removing him from his position as director and general manager, blocking his access to the Company's premises, email, accounts and financial information, withholding his remuneration and dividends, terminating the Swiss distribution arrangements, interfering with the business of Pure Suisse, copying proprietary product formulations, diverting customers, and making damaging statements about Mr. Dikkers.

5. A central complaint concerns the issuing of new shares in June 2020. The Applicant contends that the share issue was unnecessary and was carried out at an artificially low valuation, thereby diluting and undervaluing Pure Suisse's interest. It alleges that group transfers and other transactions were used to present a false deterioration in the Company's financial position and that the Respondents failed to explain certain accounting provisions or establish the need for additional capital. It also complains that the Respondents refused to permit an external audit of the 2018 and 2019 accounts and failed to provide adequate information concerning the Company's finances, regulatory investigations and dealings with relevant authorities.

6. Taken together, the Applicant says that these matters constitute acts which are oppressive to Pure Suisse and in disregard of its interests as a member. It seeks declarations under section 212 of the Companies Act 2014 to that effect and, principally, an order requiring the Respondents—or alternatively the Company—to purchase Pure Suisse's shareholding on terms fixed by the Court. Initially Mr Dikkers was a party to the proceedings, but is no longer.

7. The Respondents deny that the Company was operated as a quasi-partnership. They say that the parties' relationship was governed exclusively by written consultancy, share-subscription and distribution agreements, several of which expressly excluded the creation of any partnership, joint venture or agency. They maintain that Mr. Dikkers was initially a non-executive director providing services through corporate arrangements and that there was no agreement giving him an enduring right to participate in management. They further contend that the Swiss distribution agreement was lawfully terminated because Pure Suisse failed to pay sums due and meet applicable sales quotas—not because of any attempt to oppress or exclude Pure Suisse.

8. The Defence alleges that the breakdown in relations resulted from a campaign conducted by Mr. Dikkers after an unsuccessful attempt to procure the sale of Pure Suisse's shares for €18 million**.** According to the Respondents, at the meeting on 30 April 2019, Mr. Dikkers demanded that Mr. Fagiuoli either leave the Company or purchase the shares, failing which there would be "*war*". They allege that Mr. Dikkers then circulated damaging and defamatory allegations to employees, distributors, suppliers and regulators; attempted to interfere with contractual relationships; and acted with his partner to take control of the Company. The Respondents say these actions justified restricting his systems access, ceasing payments following his removal and ultimately removing him as a director. They also allege that he subsequently established and operated a competing business with a similar product portfolio. This allegation which has not been refuted is central to their objection for the discovery sought.

9. The Respondents reject the allegations of product illegality, fraud, tax misconduct, financial mismanagement and regulatory non-compliance. They rely on the asserted outcomes of proceedings and investigations in France, Switzerland and Ireland, contending that the material complaints were dismissed, closed, not substantiated or resulted only in limited regulatory findings that were remedied. They also rely on foreign court decisions and a French criminal defamation conviction said to have been upheld following appeals. On that basis, they reserve the right to argue that parts of the claim are barred by *res judicata*, issue estoppel or abuse of process. They additionally deny that Pure Suisse owns the product formulations claimed or that intellectual property and commercial arrangements involving other entities improperly diverted assets or opportunities from the Company.

10. Finally, the Respondents deny that the share allotments in June 2020 and August 2022 were oppressive or designed to dilute Pure Suisse's shareholding unfairly. They say the capital raised was a lawful commercial response to Covid-19, supply-chain disruption, inflation and post-pandemic financial pressures, and that Pure Suisse was offered the same opportunity to subscribe but declined to do so. They maintain that the Company's other corporate, distribution, trademark and market-development arrangements—including those in France and China—were undertaken for legitimate commercial purposes and on ordinary or arm's-length terms. Overall, they deny any oppression or disregard of Pure Suisse's interests and contend that it is not entitled to a share purchase order, compensation, restoration of management rights or any other relief claimed.

The Discovery Legal Principles

11. The starting point of the law regarding discovery must now be the Supreme Court's decision in *Tobin v Minister for Defence* [2019] IESC 57. Much has been written about the case but suffice to say that it reiterated the fundamental principles that discovery must centre on relevance and necessity.

12. A party seeking discovery must still establish that the documents sought are relevant to the issues in the proceedings and necessary for the fair disposal of the case or for saving costs. However, necessity is not to be assumed simply because documents are relevant. When considering necessity proportionality is an important aspect since modern discovery can be extremely costly and burdensome. Courts must therefore consider whether the burden and expense of discovery are proportionate to its likely value in resolving the issues in dispute.

13. Clarke C.J. emphasised that discovery assists the court in determining disputed facts and "*improves the chances of the court being able to get at the truth*". The Court should therefore be slow to restrict discovery where it is genuinely necessary for a fair hearing.

14. But once a party establishes that categories of documents are relevant, the party resisting discovery on proportionality grounds must provide evidence showing that compliance would be unduly burdensome or that alternative measures would adequately achieve justice. In this case it has been hinted that security for costs maybe sought since the discovery sought is so wide, expensive and burdensome.

15. In regard to the issue of confidentiality, Collins J. in *Ryan v Dengrove* [2022] IECA 155, provided a detailed judgment which set out how confidentiality can be relevant in the context of a discovery application. In that case, the *dictum* from *Tobin* was cited where Clarke C.J. held: "*...the court should only order discovery [of confidential documentation] in circumstances where it becomes clear that the interests of justice in bringing about a fair result of the proceedings require such an order to be made.*"

16. Collins J went on to say that: -

"*In that context, a balance has to be struck between the likely materiality of any given document to the issues likely to arise in the proceedings and the degree of confidentiality attaching to it. A confidential document (and particularly one that is highly confidential) should not be directed to be discovered unless the court is satisfied that there is a real basis on which it is likely to be relevant at the hearing.*"

17. The principles applicable to any discovery application, however, are not possible to apply in the abstract and can only be applied on a case-by-case basis.

<u>The Issues</u>

18. The Court was assisted greatly by the submissions of Mr. Howard SC with Mr. Toomey BL, on behalf of the Applicant and Mr. Geoghegan BL on behalf of the Respondent. For the purposes of this exercise, it seems to me to be important to consider the pleadings and in particular the amended Statement of Claim and the amended Defence. The key elements of the amended Statement of Claim are found from paras. 35 to 40.

19. The claim which I have set out in detail above, can be summarised as follows: the Applicant claims that the Respondents have diverted assets, profits, and business opportunities away from the Company and into companies that they own or control. The allegation is that this has unfairly benefited the Respondents while reducing the value and profitability of the Company.

20. The first major complaint concerns intellectual property ("IP"). The Applicant alleges that Mr. Fagiuoli agreed in 2016 that valuable trademarks and related IP, which he held, would be transferred to the Company, but that transfer never occurred. Instead, some of the trademarks were allegedly retained personally or transferred to an associated company, Rainbow Traderm Limited.

21. The second allegation is that Rainbow Traderm subsequently registered a number of new brands used in the Company's business. The Applicant contends that licensing arrangements and royalty payments connected with these trademarks may have been structured in such a way so as to divert profits and margins from the Company to entities controlled by the Respondents.

22. The Applicant further claims that the Company's website is now operated by Lumiderme, a French company owned by the First Named Respondent, and that this arrangement generates profits outside the Company. The Applicant alleges that this has reduced the income and value of the Company to its detriment.

23. Finally, the Applicant alleges that other related entities are competing with the Company or diverting business away from it. These allegations include the promotion of a competing brand called Eneomy, by companies connected to the Respondents, the activities of the French distributor SARL Centrale des Peelings, and the establishment of a cosmetics business in China, Dai Mei Xi Enterprise Management (Shanghai) Co., Ltd ("Dai Mei Xi"), which is also allegedly competing directly with the Company and diverting trade from it.

24. To prove that case it seems to me that the necessary and relevant documents would be any related-party transactions which may exist, in order to show that they were improper and not at arm's-length**.** The documents most relevant to that end would be such documents which go to show ownership, control and pricing, and the commercial justification for the arrangements.

25. However, the question to be asked is whether these documents have in fact already been given in the 650 odd documents which have already been provided. This is important because the Court, not only has to consider relevance and necessity, but also proportionality.

26. There is much in what Mr. Geoghegan says in regard to the role of Mr. Guthrie in that he is not employed to carry out an audit. His job is to value the company. But the Applicant is, in essence claiming fraud, so the work of Mr. Guthrie has to be seen in that light. The Court must consider if what is being sought is proportionate.

27. So, while the Respondent says that the IP was always in the name of Mr. Fagiuoli, it is the case of the Applicant that there was an agreement that it would be transferred to the company, but that never happened.

28. I am struck by the significant increase in various charges including licence fees and service charges which are found in the accounts already furnished. I am also surprised that there seems to be little or no evidence of commercial arrangements between the Company and its various clients in recent times, yet its products are found for sale on those clients' websites.

29. There seems to be little or no financial documentation between the Company and Lumiderme, and the Company and Rainbow Traderm Limited, which is also surprising. I am also concerned about the significant drop in the EBITA (earnings before interest, taxes and amortisation), a financial metric used to evaluate a company's core operational profitability, over the relevant period of time.

30. Licence fees have been imposed in relation to the IP of various products, which were not imposed before the breakdown of the relationship between the two main protagonists in April of 2019. Service charges seem to have been imposed by companies, who in a general sense, could be a said to be associated with Mr. Fagiuoli and/or his wife. Discovery of documents which do not go to the core of these issues, seem to me, not to be relevant. Therefore, in fashioning any order the Court should have the key issues, as set out in the pleadings, to the fore.

31. Mr. Geoghegan's concern is, to a significant degree, based upon the commercially sensitivity, or confidentiality of some of the documents sought. As I noted above, he emphasised that Mr. Dikkers operates a competing dermatology business and is actively targeting the same distributors as the Company. Consequently, disclosure of distributor agreements, pricing arrangements, and commercial contracts would provide a substantial competitive advantage to the Applicant.

32. On the substantive allegations, Mr. Geoghegan argues that Mr. Guthrie's concerns about licence fees, service charges and diversion of trade were based on misunderstandings of the material already disclosed. He submits that Mr. Guthrie already possesses the licence agreements, the trademark transfer documents, and the financial accounts showing the amounts paid under those agreements. In relation to service charges, he contended that Mr. Guthrie incorrectly assumed millions of euros were being paid to non-group entities when, in fact, the accounts already show that these were inter-company charges between the Company and its associated company, Dermosciences France. He maintains that seeking every underlying document relating to those charges would amount to a full audit of a multinational business operating in 82 markets rather than a legitimate exercise in discovery.

33. He identifies the key pleaded allegations as relating to (i) profits allegedly diverted through Rainbow Traderm via licence fees, (ii) profits allegedly diverted through Lumiderme, (iii) profits allegedly retained by related distributors, and (iv) Dai Mei Xi, the Chinese entity allegedly competing with the Company. He submits that extensive discovery has already been made in relation to those issues and that the Applicant was now seeking documents far beyond what the pleadings justified. He further opposes the Applicant's challenges concerning privilege, maintaining that the proposed privilege schedule was appropriate and that a French lawyer's advice had been disclosed accidentally and therefore remained privileged.

The Discovery Sought

34. There are six different categories of discovery sought, four under the headings of "Oppression" and two under the heading of "Valuation". For sake of comprehension, I shall set out each category under a separate heading.

The First Category

35. Category 8(iv) seeks: -

'Contracts and commercial agreements signed by Dermosciences Limited and Group companies and branches from April 2019 including with Skincity and Chinese distributors, as well as all new business contracts, any and all updates to distribution contracts and terms, as well as supply agreements.'

36. Under the first category Mr. Howard seeks discovery of all the commercial arrangements put in place since Mr. Dikkers was excluded from the company in April 2019. He says these are relevant because the Applicant suspects that after April 2019, Companies's business was restructured so that sales and profits were diverted to other entities associated with Mr. Fagiuoli, particularly Lumiderme and Rainbow.

37. The concern is that customers who previously bought directly from the Company stopped or reduced purchasing from it but continued selling its products. The Applicant says this suggests those customers may now be buying through Lumiderme or another related entity, since Lumiderme has been identified online as operating, selling, the Company's brands to customers such as Luxoro and SkinCity and others, but are no longer buying directly from it, yet there is no agreement between the Company and Lumiderme discovered.

38. In response Mr. Geoghegan argues that this category was hopelessly overbroad because it seeks every contract and commercial agreement entered into by the Company over a seven-year period. In his submission, the category would capture countless irrelevant agreements, including ordinary operational contracts wholly unrelated to the oppression claim. He further argues that the Applicant's own affidavit narrowed the stated purpose of the request to distribution agreements and related-party arrangements, demonstrating that the category as drafted was too wide. He also stresses that distributor agreements are among the most commercially sensitive documents in the business and disclosure would confer a competitive advantage on a shareholder who operates a rival company.

My Decision on the First Category

39. The Applicant's concern relates to what it believes is the diversion of contractual agreements relating to its products to associated companies of the Respondents. The category sought however relates to all contracts and commercial agreements entered into by the Company and Group companies from April 2019 onwards, with everyone.

40. That clearly is far too broad. It does not easily fit with the pleadings. What is pleaded is set out in para. 35(d) which pleads that the Respondents has diverted assets and turnover from the Company to related companies of the Respondents including SARL Centrale des Peelings, Lumiderme, Rainbow Traderm Ltd, Dermosciences Corp. in the United States and Dai Mei Xi. While the discovery request includes Skincity and all new business contracts, that seems to me to be disproportionate and onerous.

41. I do agree with Mr. Geoghegan that sufficient discovery has already been made. On that basis it seems to me that the Applicant already has most of the documents sought. But the very essence of a fraud is that certain things are hidden. That, of course, is not to say that fraud has been committed, but it is what is claimed. The significant drop in the EBITA requires an explanation at trial or by an analysis of the trading accounts between the Company and its associated companies, in other jurisdictions, as Mr. Geoghegan showed with the French company.

42. However, it seems to that the following discovery in this category it is relevant and necessary to meet the pleaded concerns of the Applicant. To that end I shall make an order in the following terms: -

"All Contracts and commercial agreements entered into between Dermosciences Limited and SARL Centrale des Peelings, Lumiderme, Rainbow Traderm Ltd, Dermosciences Corp. in the United States and the Chinese company Dai Mei Xi Enterprise Management (Shanghai) Co., Ltd. from April 2019 to date of this order to include any updates to distribution contracts and supply agreements".

The Second Category

43. ***Category 9(ii): all bank statements of the Company and its subsidiaries and branches;***

44. Under the second category the Applicant seeks discovery of all relevant bank statements from April 2019 to date. Mr. Howard says the bank statements are necessary because they show the actual movement of money in and out of the Company.

45. He relies on Mr. Guthrie, the Applicant's financial valuer, who points to a nominal ledger which only shows what the Company records internally, whereas bank statements show the actual inflows and outflows. The bank statements are sought to investigate licence fee payments; service charge payments; inter-company payments; possible circular transactions; whether company money was used indirectly to finance share dilution and whether value was being extracted from the Company after Mr. Dikkers' exclusion.

46. The licence fees are particularly relevant since while Mr. Dikkers was participating in the Company, there were no such charges in the form of a licence fee to another entity or in any other manner.

47. The same goes for the service charges. In the past there were no such charges yet after the fallout, service charges are now applied and paid to other entities, which may be linked to companies controlled by Mr. Fagiuoli and/or his wife.

48. Mr. Howard accepts that the original request may have appeared broad but says electronic bank statements should not be burdensome to produce.

49. In response Mr. Geoghegan describes this as an extremely oppressive request. He submits that such an exercise was not valuation but auditing, involving examination of thousands of ordinary commercial transactions. He maintains that discovery had already been provided of the relevant financial records and that Mr. Guthrie's desire to inspect every bank transaction exceeded what the law permits.

<u>My Decision on the Second Category</u>

50. In the world of e-banking it seems to me that so long as this request is amended somewhat, it should not be an onerous exercise. Indeed, it would seem that a significant amount of similar documentation may already have been furnished. This should not involve every bank statement from multiple companies, across several jurisdictions, over many years. It should only involve the Company, and the associated companies referred to above namely SARL Centrale des Peelings, Lumiderme, Rainbow Traderm Ltd, Dermosciences Corp. in the United States and Dai Mei Xi. I believe that such documents fit the pleadings and are relevant and necessary, but not burdensome.

51. Therefore, I shall order discovery in the following terms: -

> *"all bank statements of the Company SARL Centrale des Peelings, Lumiderme, Rainbow Traderm Ltd, Dermosciences Corp. in the United States and the Chinese company Dai Mei Xi Enterprise Management (Shanghai) Co., Ltd from April 2019 to date".*

<u>The Third Category</u>

52. ***9(vii): any contracts, agreements and payments between the Group and the Respondents and/or companies related to the Respondents, including offices and***

warehouses in France and worldwide, distribution companies, licence payments, and any and all relations with a value of more than €10,000.

53. While this category, on face may seem very broad, it is directed at discovering the arrangements, if any, between the Company and entities associated with the Respondents, especially relating to licence fee arrangements; service charge arrangements; payments to related companies; any commercial arrangements with companies owned or controlled by Mr. Fagiuoli; possible extraction of value from the Company, for similar reasons as set out above.

54. Mr. Howard says this category is central because the Company's EBITDA fell from approximately 29% of turnover from to minus 1%, while turnover remained broadly stable at around €10 million over the same time period. He says that again on the face of it, this decline seems to be largely explained by licence fees and service charges.

55. He says that the service charges alone rose to very substantial levels, but no adequate discovery has been provided explaining what the service charges were for; who charged them; what services were provided; why the amounts varied year to year and whether the charges were commercially justified.

56. In response Mr. Geoghegan's first response is that discovery has already been made of this category. He points the Court to the affidavit of discovery and accompanying schedules showing disclosure of licence agreements, trademark transfer documents, office rental arrangements, Lumiderme accounting entries and other related-party documents. In his submission, the Applicant is treating this as though it were a fresh request when, in fact, the relevant discovery had already been provided.

My Decision on the Third Category

57. This category, while drafted in broad terms, seeks the payment details of licence fees and service charges to the associated companies. I am not convinced that this is a request which has not been made before and to which discovery has already been made. However, to be on the safe side, I shall make an order that all invoices raised by the associated companies, together with payments made by the Company to them from April 2019 to the making of the order, be made, on the basis that it may shine further light the fall in the Company's EBITDA and other matters.

58. The order will be: -

> "*any contracts, agreements and payments between the company, SARL Centrale des Peelings, Lumiderme, Rainbow Traderm Ltd, Dermosciences Corp. in the United States and Dai Mei Xi and relating to licence fees payments, service charges and offices and warehouses expenses in the jurisdictions of those companies with a value of more than €10,000 from April 2019 to the making of the order".*

<u>The Fourth Category</u>

59. ***Category 10 (ii), Documents recording or evidencing all interactions of the Respondents and/or companies related to the Respondents, and any of the Group companies, pertaining to trademarks, including distribution arrangements and invoices related to Dermaceutic Laboratoire and any and all logos, trademarks and brand executions, including Mene Moy, Eneomy, D+, Dermaceutic new logo renderings, and all new names, including all trademarks currently licensed to the Company, including their pre-registration development, design, review, update, registration and all associated invoices.***

60. Under the fourth category the Applicant seeks discovery relating to the intellectual property of the Company, including trademarks, marks, logos, licence arrangements and dealings with IP.

61. This category concerns whether the Company was being charged licence fees for intellectual property that it already owned or was entitled to own.

62. Mr. Howard relies on trademark documents showing applications in the name of the Company before Mr. Dikkers' exclusion. He says these documents raise a serious question as to why the Company later paid licence fees to entities associated with Mr. Fagiuoli.

63. The purposes of the discovery is to establish who owned the relevant trademarks and IP, whether the Company was wrongly charged for its own IP, whether Mr. Fagiuoli or related entities created or registered marks after April 2019, whether those marks should have belonged to the Company, whether licence fees of approximately 10% of turnover were commercially justified, whether the IP was licensed or supplied to third parties and whether third parties paid for use of the Company IP.

64. In response Mr. Geoghegan argues that this category is impermissibly vague because it seeks documents evidencing "*all interactions*" relating to trademarks. He submitted that "*interaction"* was undefined and potentially limitless. In addition, he argues that virtually all other intellectual property discovery sought under Category 10 had already been provided, including licence agreements, trademark documents, and transfer records. He therefore submitted that Category 10(ii) should be refused.

My Decision on the Fourth Category

65. The Documents sought relate to whether the Company was wrongly charged for its own IP. But the category, as drafted, is so broad as to be nearly impossible to define or limit. The other categories of discovery granted up until now, both before this application and as set out herein, seem to me to be of such a nature that the issue as to whether the Company was charged for its own IP should be readily ascertainable. Therefore, I shall refuse discovery under this category.

The Fifth Category

66. ***"Management accounts for 2024 and for periods since the last set of financial statements was prepared."***

67. Mr. Howard says the Respondents produced only single-page profit and loss documents marked "*Draft*" and described as "*Abridge Version"*. He says the word "*Abridge"* strongly suggests that the documents are shortened versions of more detailed reports.

68. He also points to a balance sheet report and profit and loss report previously provided by the Respondents' expert to Mr. Guthrie, which appear to contain more detail than the documents produced on discovery.

69. In response Mr. Geoghegan states that the dispute is straightforward: the Applicant claims additional management accounts existed, while Mr. Fagiuoli swore on affidavit that everything in his possession had already been disclosed. He accepts that if new management accounts come into existence, they must be disclosed immediately as part of the continuing obligation of discovery. However, he argues that the law does not require a party to create documents which do not already exist merely because the Applicant or Mr. Guthrie would like them to exist.

My Decision on the Fifth Category

70. While Mr. Geoghan says that these accounts will be furnished when they are finalised, they have not been furnished to date, which is a concern, since we are in the middle of 2026. On that basis the Respondents can hardly complain if the Court orders the accounts to be discovered now. The relevance of the documents sought is that it may well undermine the Respondent's claim that the accounting system can only generate the limited documentation already discovered. The purpose is to enable Mr. Guthrie to produce a valuation report without significant caveats. Therefore, I shall make an order for discovery in the terms sought, since they are clearly necessary and relevant.

<u>The Sixth Category</u>

71. ***"Nominal transaction ledger in respect of related party transactions with Rainbow Traderm Limited, goods sold to Mr. Fagiuoli's wife, and rent paid to a company owned by Mr. Fagiuoli's wife."***

72. Under the sixth category the Applicant seeks discovery concerning particular account codes, which Mr. Guthrie says are relevant in regard to the valuation of the Company, including accounts apparently relating to inter-company loan accounts; reconciliations; reclassifications from debtors and possible transfers of value between companies.

73. Mr. Howard says the account codes may show ways in which value was transferred between the Company and other companies. The Respondents say the accounts are irrelevant and have offered explanations, but Mr. Howard says no supporting documents have been provided. He says the documents are needed because inter-company accounts can be a mechanism for moving value from one entity to another.

74. In response Mr. Geoghegan submits that the additional ledger codes identified by the Applicant were not caught by the category made, because they did not concern transactions with the related parties, specified in the original discovery order. Regarding the ledger already disclosed, he accepts that certain references had been redacted but maintains that the redactions were justified on commercial sensitivity grounds. He submits that the Applicant was effectively seeking further information about transaction counterparties rather than documents falling within the original category and that the discovery already provided complied with the order.

My Decision on the Sixth Category

75. The real issue here relates to the redactions in the ledger accounts furnished. That is the concern of Mr. Guthrie. In my view redactions should play no part of a discovery process, unless the matter has been aired in court. The documents are meaningless with the redactions, which may well be the intention, however that will be a matter for the trial of the action. The justice of the case, considering the pleadings, is meet by directing the redactions in the ledgers already discovered be removed.

76. Therefore, I shall order discovery of the: **-**

> ***"Nominal transaction ledger in respect of related party transactions with Rainbow Traderm Limited, goods sold to Mr. Fagiuoli's wife, and rent paid to a company owned by Mr. Fagiuoli's wife, in an unredacted form."***

Confidentiality

77. At the hearing of this matter Mr. Geoghegan raised serious concerns regarding the discovery of confidential material which could give the Applicant an unfair advantage over the Respondents, particularly in terms of promoting its competing products in the various markets in which they both sell and distribute.

78. I said at the hearing and I repeat, that if there is any evidence that the Applicant uses information gathered in these proceedings, for any purpose outside the parameters of the case in this jurisdiction, here or in any other jurisdiction, I would take an extremely dim view of the matter, such that it would be open to the Respondents to bring the matter to the Court's attention, in order to sanction the Applicant. Such sanctions could include an application, if necessary, to dismiss the proceedings as an abuse of process. The Court is particularly conscious of the wards of Collins J. in *Ryan.*

79. In every discovery application there is an implied obligation that the documents in question will not be used for any other purpose other than the purpose of the litigation. In this case I am satisfied that the documents, which are confidential, relating to commercial activities of the Company and the associated companies, are necessary to do justice to the case as pleaded by the Applicant. That means that the Applicant simply has the information for the case and cannot use it for any other purpose, including using the information in another jurisdiction to either damage the Respondents or promote its own product which it markets and sells in competition to the products of the Respondents or their associated companies or their distributors or any or potential customer. The warning is clear if the evidence is compelling, the Court will have no hesitation in striking out the proceedings on the grounds that they are an abuse of process.

<u>Costs</u>

80. My initial view is that costs should be reserved, however, if parties take a different view I would permit them to re-enter the matter in the knowledge that if the order as indicated above is not altered, there may be cost implications.