



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD516/2016

**DOMINO'S PIZZA ENTERPRISES LTD**

Applicant

**PRECISION TRACKING PTY LTD** and another/others named in the schedule

Respondent

### **ORDER**

**JUDGE:** JUSTICE ROBERTSON

**DATE OF ORDER:** 16 August 2017

**WHERE MADE:** Sydney

#### **THE COURT ORDERS THAT:**

1. Pursuant to rule 20.21, within fourteen days, Domino's give discovery, in relation to the following documents:
  - (a) the USB referred to in paragraph 34 of the affidavit of Stephen Reardon affirmed 19 April 2017 (Reardon affidavit);
  - (b) Stephen Reardon's laptop referred to in paragraphs 35-38 of the Reardon affidavit;
  - (c) the following emails:
    - (i) the email from Daron Brinsdon to Phill Harrys of 2 March 2015 discovered by Navman;
    - (ii) the email from Daron Brinsdon to recipients including Phill Harrys and Wayne McMahon of 27 August 2014, 8.21 pm, and all emails in that chain;
    - (iii) the email from Daron Brinsdon to Wayne McMahon of 29 August 2014, 7.49 am, and all emails in that chain;
    - (iv) the email from Daron Brinsdon to Wayne McMahon of 29 August 2014, 4.22 pm, and all emails in that chain; and



- (v) the email from Wayne McMahon to Daron Brinsdon and others cc Phill Harrys of 1 September 2014, 5.13 pm, and all emails in that chain.
2. As soon as practicable and in no event later than within 14 days, Domino's provide further and better discovery by providing an updated verified and certified list of documents which includes documents returned as a result of the search referred to in paragraph 11 of the letter from DLA to Corrs dated 3 August 2017 relating to Domino's discovery against all discovery categories of the orders for discovery made on 7 February 2017 (February Discovery Orders).
3. Within 14 days, Domino's is to produce to Precision Tracking the following documents:
- (a) the "script which launches online AVL" as referred to in the email from Daron Brinsdon to Stephen Reardon of 22 October 2014.
  - (b) the source code for the "Domino's GPS Launcher" referred to in paragraph 49 of the affidavit of Stephen Reardon.
  - (c) the version of the GPS Delivery Screen built by Stephen Reardon as referred to in the email from Phill Harrys to Nick Knight of 29 October 2014, including screen layout shots, any underlying scripts, and source code.
  - (d) source code for an "Angular GPS Map" written by Stephen Reardon as referred to in the email from Stephen Reardon to Daron Brinsdon and Andrew Franchuk of 18 November 2014.
  - (e) any other scripts, source code, XML code or other code not the subject of categories 1 to 4 above written by Stephen Reardon in the period 1 September to 30 December 2014 relating to the "GPS solution" the subject of his Facebook post, dated 30 December 2014.
4. Pursuant to rule 20.13, within 14 days Domino's give discovery of:
- (a) Domino's own accounting records for the revenue, expenses and profits from GPS Driver Tracker loans.
  - (b) information on the number of franchisees that took up the offer of finance.
  - (c) repayment schedules showing timing of loan repayments and balances.



- (d) information on the costs associated with providing the finance.
  - (e) contract/agreement/terms and conditions including all price schedules/price agreements and variations/amendments in addition to the Master Subscription Service Global Agreement.
  - (f) Where business revenue (of Domino's or its franchisees) was increased by use of the Domino's GPS Driver Tracker (e.g. additional pizza sales revenue), any document recording a calculation or assessment of that increase, and in the case of the franchisees, any calculation of the extent to which that increase benefited Domino's.
  - (g) Where expenses were saved or reduced (by Domino's or its franchisees) by use of the Domino's GPS Driver Tracker (e.g. insurance, driving fines, penalties and driver incidents), any document recording a calculation or assessment of those savings and in the case of the franchisees, any calculation of the extent to which that saving benefited Domino's.
5. Within 14 days Domino's is to prepare and provide to Precision Tracking a document setting out its forecasts or plans for the number of stores in which the Domino's GPS Driver Tracker is to be installed in each country for each month (or other convenient periods) on and from 1 July 2017.
6. As soon as practicable, but within 21 days, if a reasonable search identifies a document which is or contains:
- (a) a detailed description of the Qube device and its constituent parts;
  - (b) a detailed description of the elements of the GPSDT which receive, process and transfer to other system elements the vehicle's location information; and the way in which that information is processed and used by those system elements;
  - (c) a detailed description of the nature of the countdown timer icon, the information displayed by the icon, or how this information is determined;
  - (d) a detailed description of the mobile application used by the customer to order a pizza;



- (e) a detailed description of the order processing system to which ordering information is transferred by the mobile application;
- (f) a design specification and implementation description for the driver behaviour metrics reported by the BI System;
- (g) a design specification and implementation description for the data collected and/or stored as a result of the operation of the GPSDT;
- (h) a design specification and implementation description for the format and contents of reports generated by the BI system;
- (i) a design specification and implementation description for the GPSDT network architecture and communications protocols and associated application programming interfaces;
- (j) a design specification and implementation description for the GPSDT reporting functions, reports and report contents;
- (k) a design specification and implementation description for the information reported by the BI system;
- (l) a design specification and implementation description for the store-related information collected and/or stored as a result of the GPSDT the operation,

Domino's is to provide that document to Precision Tracking.

7. Domino's produce for inspection documents included in any affidavit or list made pursuant to any of the orders above, that are presently within its control, within two days of the date of the affidavit or verified list of discovery documents, subject to any claim of privilege and pursuant to any confidentiality regime.
8. Domino's make available for inspection to Precision's technical expert, Mr Geoffrey Sizer, an unredacted copy of the Master Subscription Services Agreement dated 11 March 2015 on the terms of the confidentiality undertaking previously given by him.

### **Navman**

9. Pursuant to rule 20.21, within fourteen days, by way of further and better discovery pursuant to the February Discovery Orders, Navman give particular discovery by filing



and serving an affidavit which complies with rules 20.21 and 20.22, in relation to the following documents:

- (a) subject to the tier 2 confidentiality regime, variations of the Master Subscription Service Global Agreement.
10. Within 14 days, Navman will conduct a reasonable search for and produce any documents in the following categories:
- (a) forecasts or plans for the number of stores in which the Domino's GPS Driver Tracker is to be installed in each country for each month (or other convenient period) on and from 1 July 2017; and
  - (b) forecasts or plans by Navman relating to all periods on and from 1 July 2017 for the revenue and profit it would derive pursuant to the Master Subscription Services Global Agreement or otherwise from its involvement with the Domino's GPS Driver Tracker.
11. Precision Tracking's application for the orders set out in paragraph 5(a) and (b) of Precision Tracking's Amended Interlocutory Application dated 2 August 2017 as against Navman be deferred until after the service by Navman on 11 September 2017 of Navman's evidence in answer, namely Precision Tracking's Application for Orders that Navman give particular discovery, in accordance with Rules 20.21 and 20.22, in relation to:
- (a) the documents set out in Annexure A to Precision Tracking's Amended Interlocutory Application relating to the Product Disclosure Statement; and
  - (b) the documents set out in paragraphs 9 to 11 of Annexure B to Precision Tracking's Amended Interlocutory Application relating to category 11 (financial documents) of the February Discovery Orders.

### **Inspection**

12. Pursuant to rule 14.01(1) or otherwise, and by no later than 18 September 2017, Domino's and Navman make available for inspection by Precision's independent expert, Mr Geoffrey Sizer, its solicitors, Corrs Chambers Westgarth, and its counsel, the Domino's GPS Driver Tracker (as referred to in paragraph 25 of the Amended



Statement of Claim) pursuant to the terms of the Domino's/Navman GPS Driver Tracker System Inspection Protocol annexed and marked Annexure A.

**Domino's interlocutory application**

13. Within 14 days, Precision Tracking is to give discovery of, and produce for inspection, the following documents where I order that access be granted:
  - (a) Schedule 2 – request 5: Refused (but without prejudice to any application by Domino's to be provided with a comparable presentation or demonstration or to have access to the relevant software).
  - (b) Schedule 2 – request 10: Refused (but without prejudice to any application by Domino's in relation to the Park & Fly system referred to as Precision's GPS tracking software in [23] of the affidavit of Nathan Parrott affirmed 21 April 2017).
  - (c) Schedule 2 – request 14: Refused (but without prejudice to an application by Domino's to be provided by Precision Tracking with a copy of a representative example of such a report available to customers of Precision Tracking).
  - (d) Schedule 2 – request 20: Granted.
  - (e) Schedule 2 – request 31: Granted.
  - (f) Schedule 3 – request 51: Granted.
  - (g) Schedule 3 – request 59: Granted.
  - (h) Schedule 3 – request 70: Granted.
  - (i) Schedule 3 – request 75: Granted.
  - (j) Schedule 3 – request 95: Granted.
14. Where a document is produced by Precision Tracking on Domino's application, Navman be given access to that document.

**Costs**

15. Costs be reserved.

**Future listing**

16. The matter be listed at 9.15 am on Friday 22 September 2017 for case management.



Date that entry is stamped: 16 August 2017

*Wamid Soden*  
Registrar



**Schedule**

No: NSD516/2016

Federal Court of Australia  
District Registry: New South Wales  
Division: General

Second Respondent      VLADIMIR LASKY  
Third Respondent        NATHAN PARROTT  
Fourth Respondent      ALEXANDER GREEN

**CROSS CLAIM**

Cross-Claimant         PRECISION TRACKING PTY LTD  
Cross Respondent        DOMINO'S PIZZA ENTERPRISES LTD  
Second Cross  
Respondent                NAVMAN WIRELESS AUSTRALIA PTY LTD ACN 123 981  
457

**CROSS CLAIM**

Cross-Claimant         NAVMAN WIRELESS AUSTRALIA PTY LTD ACN 123 981  
457  
Cross Respondent        PRECISION TRACKING PTY LTD





## ANNEXURE A

No. NSD 516 of 2016

Federal Court of Australia  
District Registry: New South Wales  
Division: General

### **Precision Tracking Pty Ltd ACN 133 616 369**

Cross-Claimant / First Respondent

### **Domino's Pizza Enterprises Limited ACN 010 489 326**

First Cross-Respondent / Applicant

### **Navman Wireless Australia Pty Ltd ACN 123 981 457**

Second Cross-Respondent

## **SYSTEM INSPECTION PROTOCOL: DOMINO'S/NAVMAN GPS DRIVER TRACKER**

1. This document sets out the conditions under which the Domino's/Navman GPS Driver Tracker system (the **System**) may be inspected by the Respondent.

### **Persons who may inspect**

2. The **Inspection** of the System may only be carried out only by Precision Tracking's external solicitors, counsel and independent expert that have signed the annexed confidentiality undertaking (**Precision Inspectors**).
3. Precision Tracking, including its directors, officers, employees and agents, may not inspect the System.

### **Access to Domino's store**

4. Domino's will make available for inspection the most recent version of the System in a Domino's store (**Store**) within the greater Sydney region during the Store's regular business hours at a day and time mutually agreeable to Domino's and Precision Tracking.
5. At least 24 hours prior to the Inspection; Precision Tracking will advise Domino's of the names of the Precision Inspectors attending the inspection. The Inspection will be attended by such Domino's representatives as Domino's sees fit.



6. Domino's will make the System available for a further inspection in the Store, if requested by Precision Tracking.
7. The Precision Inspectors may, at any time during the Inspection, request that any Domino's representative answer any question in relation to the System. The Domino's representative will engage with any Domino's employee or Store staff as considered reasonably necessary in order to answer such questions.

#### **Records produced during inspection**

8. Precision Inspectors may, at any time during the course of the inspection, make written notes, audio recordings, video recordings and photographs (**Records**) of any aspect of or in relation to the System. Domino's will not prevent or hinder the Precision Inspectors from making the Records.
9. The Precision Inspectors will, within a reasonable time after the Inspection, provide to Domino's copies of the Records. The Precision Inspectors will not use the Records for any purpose other than the proceedings.
10. The Precision Inspectors will ensure that the Records will be treated in accordance with the existing confidentiality regime annexed.

#### **Aspects of System for Inspection**

11. The Domino's store nominated for the System Inspection must make available the aspects of the System described below.
12. A step by step demonstration of the driver clock-in/login process, identification process, collection and scanning of the RFID tag, and vehicle assignment up to the point the customer begins operating the vehicle. This includes a demonstration of the login and assignment process of each of the following types of vehicles:
  - (a) vehicles using a car topper;
  - (b) scooters and electric bikes;
  - (c) portable units for cars that cannot use car toppers; and
  - (d) cars owned by Domino's (if not already covered by the above).
13. A step by step demonstration of the real time tracking functionality of the store manager's screen, including a demonstration of every aspect of the store manager's screen viewable by the store manager.



14. A demonstration of the reporting functionality available to the manager and/or senior management.
15. Provision of each type of car topper and Qube used as part of the System, for examination and non-destructive disassembly, as well as provision of adequate space and a table to complete this examination and non-destructive disassembly. The Precision Inspectors will return the examined car toppers and Qubes in the same manner in which they were provided.
16. Provision of at least one of each type of vehicle described in subclauses 12(a), (b), (c) and (d) above for examination of components in those vehicles forming part of the System, including:
  - (a) wiring connecting any part of the vehicle to Qubes or car toppers; and
  - (b) positioning and securing of Qubes or car toppers in vehicles.
17. Any other aspect of the System viewable by an in-store user or Domino's delivery driver as requested by a Precision Inspector.



### CONFIDENTIALITY UNDERTAKING

I ....., of ....., undertake to Domino's Pizza Enterprises Limited, and to the Federal Court of Australia (the **Court**) as a condition of inspecting the System:

- 1 I will adhere to the system inspection protocol (**Protocol**) attached to this undertaking (unless otherwise defined in this undertaking, capitalised terms are defined in the Protocol).
- 2 I acknowledge and agree that to the extent of any inconsistency between the Protocol and this undertaking, the Protocol prevails.
- 3 I will not disclose, discuss or enable access to any aspect of the System revealed over the course of the Inspection that is not public knowledge by:
  - (a) Precision Tracking, including its officers, employees and agents; and
  - (b) any person other than the Precision Inspectors.
- 4 I will take proper and effective precautions to prevent disclosure, direct or indirect, of the Records to any person other than the Precision Inspectors.
- 5 I will use the Records and information gained over the course of the Inspection only for the purposes of these Proceedings.
- 6 In relation to the Records and any copy of it in whole or part which I make or cause to be made arising from the Inspection:
  - (a) I will store the Records and any reproduced portion of it as is in my possession in such a way that any person other than the Precision Inspectors cannot obtain access to them; and
  - (b) I will retain the Records and any reproduced portion of it until requested by the solicitors for the other Parties to destroy or deliver them up, and upon such a request being made, I will either destroy or at once deliver up the Records and any reproduced portion of it, to the solicitors for the other Parties and will not retain any copies of the Records.
- 7 This undertaking does not apply to documents or information given to me by a third party:
  - (a) being an officer, magistrate or acting judicial officer of the court;
  - (b) as required by law;



- (c) as ordered by the Court; and
- (d) which is already in the public domain except as a result of any breach of any obligation of confidence or other duty, a breach of this undertaking or as a result of a breach of any other undertaking given to any of the Parties or otherwise for the purposes of the Proceedings.

Dated:

Signature:

Print name