

ENGLAND AND WALES / JUDGMENT

Entain Operations Limited & Ors v Liquidity Trading Limited & Ors

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Neutral Citation Number: [2026] EWHC 2330 (Ch) IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES INTELLECTUAL PROPERTY LIST (ChD) Case No: IL-2025-000145 Royal Courts of Justice, Rolls Building Fetter Lane, London, EC4A 1NL Date: 10/09/2026 Before: THE HONOURABLE MR JUSTICE CAWSON

- ----- Between:

- (1) ENTAIN OPERATIONS LIMITED (a company incorporated and existing under the laws of Gibraltar)
- (2) LC INTERNATIONAL LIMITED (a company incorporated and existing under the laws of Gibraltar)
- (3) LADBROKES BETTING & GAMING LIMITED
- (4) 365 SCORES UK LIMITED Claimants

- and -

- (1) LIQUIDITY TRADING LIMITED (a company incorporated and existing under the laws of Gibraltar)
- (2) LIQUIDITY PA LIMITED (a company incorporated and existing under the laws of Gibraltar)
- (3) SAMUEL ELLIOT PAUL STOFFEL

- -----

- ----- Defendants Mr Daniel Selmi (instructed by Wiggin LLP) for the Claimants Mr Simon Malynicz KC and Phillip Johnson (instructed by Brandsmiths) for the Defendants Hearing date: 24 July 2026

- ----- Approved Judgment Approved Judgment IL-2025-000145 This judgment was handed down remotely at 10.30am on 10 September 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives. Page 2 Approved Judgment IL-2025-000145 The Hon. Mr Justice Cawson: Contents

Introduction

Background

The dispute Alleged trade mark infringement Copyright infringement claim The Defendants' Application The Defendants' case The Claimants' case in response Determination of the Defendants' Application Overall conclusion in respect of the Defendants' Application The Claimants' Application

Introduction

Paragraphs 2 to 26 – the introductory narrative Paragraphs 62(a), 64(b) and 65 - confusion Paragraphs 91 to 93 – the Newer Marks Conclusion in respect of the Claimants' Application 5 152 12 24 112 152 163 172

Introduction

1. This matter was listed before me on 24 July 2026 for a case management conference. However, before my being able to give case management directions through to trial, it is necessary for me to determine: i) The Claimants' application dated 10 February 2026 ("the Claimants' Application") seeking an order pursuant to CPR 3.4(2)(a), (b) and/or (c) and CPR 16.5 striking out the following paragraphs of the Defendants' Defence and Counterclaim, namely: a) b) c) Paragraphs 2-26 and cross-references thereto in the body of the Defence at paragraphs 58(e), 72, 73(c) and 77, because, so it is alleged, they consist of generalised, irrelevant and/or inadmissible submissions; Paragraph 62(a), the reference to a likelihood of confusion in paragraph 64(b), and the reference to s. 10(2) of the Trade Marks Act 1994 ("TMA 1994") in the preamble to paragraph 65, because, so it is alleged, there is no pleaded allegation of confusion in this case, nor damage to the origin function of the trade marks the subject matter of the present claim; and Paragraphs 91-93, which are conditional pleas that certain trade marks ("the Newer Marks"), which are still within their grace period, will become liable for revocation by the time of the trial of the Counterclaim on the basis that, so it is alleged, there is no procedural or substantive basis for this sort of conditional pleading; Page 3 Approved Judgment IL-2025-000145 ii) The Defendants' application dated 17 February 2026 ("the Defendants' Application") seeking an order pursuant to CPR 3.4(2)(a) and/or (b) striking out those paragraphs of the Particulars of Claim which contain the Claimants' claims of infringement of copyright on the basis that the relevant paragraphs fail to plead the essential ingredients of a cause of action in copyright. 2. The Defendants' Application is supported by the witness statement of Andrew Thomas Lee ("Mr Lee") dated 10 March 2026. In response thereto, the Claimants rely upon the witness statement of Sara Louise Ashby ("Ms Ashby") dated 7 July 2026. 3. For the reasons set out in this judgment, I have concluded that: i) ii) With regard to the Defendants' Application, the copyright infringement claim has not been pleaded with sufficient factual detail to establish a complete cause of action or, in any event to enable the Defendants to understand the case they must answer, and that it

should be struck out unless the Claimants can promptly amend their pleadings to cure the defects that I identify below. With regard to the Claimants' Application, subject to the reference to s. 10(2) TMA 1994 being deleted from paragraph 65 thereof, it is not appropriate to strike out any part of the Defence and Counterclaim. However, had I not acceded to the Defendants' Application relating to the copyright claim, then it is likely that I would have required that paragraphs 14 to 26 be struck out, or at least redrafted and repositioned within the Defence and Counterclaim in order to avoid strike out. 4. Mr Daniel Selmi appeared on behalf of the Claimants, and Mr Simon Malynicz KC and Mr Phillip Johnson appeared on behalf of the Defendants. I am grateful to them for their thorough and helpful written and oral submissions.

Background

The dispute 5. 6. 7. The Claimant companies are each part of the Entain Group of companies, which is one of the world's largest sports betting and gaming groups both online and in the retail sector. As such, the Entain Group owns a portfolio of established brands. Its sports brands include Coral, Ladbrokes, bwin and Sportingbet, and its casino gaming brands include Gala Bingo, Gala Casino, Gala Spins, Foxy Bingo, Foxy Games and Party Casino. These brands were all acquired by the Entain Group over a period of time, and many of them are long established. The present proceedings concern allegations of trade mark infringement relating to some 18 of the Claimants' trade marks. However, in addition, the Claimants allege that the Defendants have infringed the Claimants' copyright in a number of their websites and in the following sports logos ("the Claimants' Sports Logos") and the following casino logos ("the Claimants' Casino Logos"), which such logos (together "the Logos") also form the subject matter of the trade mark infringement claim: Page 4 Approved Judgment IL-2025-000145 The Claimants' Sports Logos The Claimants' Casino Logos 8. 9. 10. The Claimants' claims relate to the operation by the Defendants of their "matched betting" and "casino offer" websites, namely the Outplayed Website, the OddsMonkey Website, the Team Profit Website and the Team Casino Website ("the Defendants' Websites"). Matched betting is a technique used to make a profit from bookmakers' promotional offers, rather than from predicting sporting outcomes. It essentially operates as follows: i) ii) iii) iv) A qualifying bet is placed with a bookmaker to unlock a bonus offer (for example, "Bet £10, get £30 in free bets"). The person placing the bet then lays the same outcome on a betting exchange, thereby effectively betting against the original bet. Because all outcomes are thereby covered, the result of the sporting event has little impact on the overall position. Once the bonus or free bet is awarded, the process is repeated in the expectation of converting most of the bonus value into cash. Between them, the Defendants' Websites offered matched betting services including the provision of advice as to how to benefit therefrom. Part of the process involved the ability to click on links within the Defendants' Websites taking the customer to the particular sports betting company's own website, and specifically to the offer being promoted by the latter. The link on the Defendants' Websites, in order to identify the relevant bonus offer, included the Claimants' Sports Logos. Clicking on the links then takes the customer to the Claimants' own websites. The inclusion of the Claimants' Sports Logos in the links on the Defendants' Websites is alleged by the

Claimants to give rise to the trade mark infringement claims and infringement of copyright claims in Page 5 Approved Judgment IL-2025-000145 relation to the Claimants' Sports Logos. The display of the Claimants' Websites on the Defendants' Websites is said to give rise to an additional infringement of copyright claim in respect of copyright claimed by the Claimants in their websites. 11. Similar allegations are made in relation to services provided by the Defendants to enable customers to benefit from promotions such as free spins or deposit bonuses given to customers to encourage signups, deposits and continued play in relation to the Claimants' bingo and casino gaming businesses. This is said to involve infringement of trade marks and copyright in respect of the Claimants' Casino Logos. Alleged trade mark infringement

12. With regard to the trade mark infringement claim, the Claimants contend that the Defendants are not merely describing bookmakers' offers but that they are actively using the Claimants' brands within their own commercial matched betting service. The Claimants allege that the Defendants' activities have given rise to claims for trade mark infringement under s. 10(1) and s. 10(3) TMA 1994: i) ii) In relation to s. 10(1), the so-called "double identity" provision, the Claimants allege that the Defendants have used signs identical to their registered marks in relation to identical or highly similar services, namely betting and gaming services; In relation to s. 10(3), relating to reputation-based infringement, the Claimants rely upon what they say is the reputation enjoyed by their brands. In short, they contend that their trade marks have substantial goodwill and reputation, that consumers are caused to call those trade marks to mind, that the Defendants have taken unfair advantage of this reputation, and that the Defendants' conduct has caused detriment to distinctive character and reputation. Particular reliance is placed by the Claimants upon *Lidl Great Britain Ltd v Tesco Stores Ltd* [2024] EWCA Civ 262 ("*Lidl v Tesco CA*") at [12]-[13] and [21]-[26], per Arnold LJ. 13. The Defendants deny the allegations of trade mark infringement relying, primarily, upon the referential use defence under s. 11(2)(c) TMA 1994, contending that they merely refer customers to the Claimants' services, honestly and lawfully. The Defendants describe themselves as providers of information, training and educational guidance about matched betting, rather than as providers of gambling services themselves. The Defendants also raise further defences such as honest concurrent use and acquiescence. Further, the Defendants' counterclaim, seeking invalidity declarations for some trade marks, and revocation of others for non-use.
14. Whilst the Defendants, by the Defendants' Application, seek to strike out the Claimants' infringement of copyright claims, they make no such application in respect of the trade mark infringement claims. Whilst the Defendants maintain that such claims are weak, they accept that the claims are sufficiently pleaded and raise issues that have a real prospect of success. 15. However, the Claimants, by the Claimants' Application, do seek to strike out parts of the Defendants' Defence and Counterclaim relating to their defence of the trade mark Page 6 Approved Judgment IL-2025-000145 infringement claim, and so it will be necessary to return to consider the same in a little more detail in due course. Copyright infringement claims 16. It is the Claimants' case that the Claimants' Sports Logos, the Claimants' Casino Logos and the Claimants' websites are original artistic works, being

graphic works, pursuant to s. 1(1) and s. 4(1)(a) of the Copyright, Designs and Patents Act 1988 (“CDPA 1988”), that qualify for UK copyright protection pursuant to s. 154(1) and/or (2) CDPA 1988, further or alternatively, pursuant to s.155(1) and/or (2) CDPA 1988.

17. With regard to originality, the Claimants maintain that originality is a low threshold, and that copyright can subsist in logos even where they consist of relatively simple elements. The Claimants further maintain that it is unnecessary at the pleading stage to set out every historical version of the Logos, which are said to be matters for witness evidence at trial rather than pleading. In advancing this case, the Claimants place considerable reliance upon *Lidl v Tesco CA*, and the decision of Joanna Smith J in that case at first instance ([2023] EWHC 873 (Ch)) (“*Lidl v Tesco HC*”).
18. With regard to ownership, the Claimants’ case is that ownership can reasonably be inferred because: i) ii) iii) iv) The Claimants acquired the relevant businesses and brands through corporate acquisitions; The Claimants own the registered trade marks; The Claimants have used the brands openly for many years; and There is no competing ownership claim. 19. To the extent that ownership cannot presently be established, the Claimants maintain that they are at least exclusive licensees entitled to bring a copyright infringement claim.
20. With regard to infringement itself, the Claimants maintain that establishing infringement is straightforward because the Defendants reproduced the logos and reproduced screenshots of the Claimants’ websites, and the copies are effectively exact reproductions. Accordingly, so it is said, there has been infringement by copying (s.17 CDPA 1988) and communication to the public (s.20) CDPA 1988. 21. In response to the Defendants’ Application, the Claimants have produced draft Amended Particulars of Claim (“the draft APofC”), which the Defendants are content to accept can be treated as the Claimants’ relevant statement of case for the purposes of the Defendants’ Application to strike out the relevant parts of the Particulars of Claim. Paragraph 15 of the draft APofC, which contains the allegations concerning the Claimant’s case as to subsistence and ownership of copyright is set out in full as Appendix A to this judgment. 22. For reasons that I shall expand upon, it is the Defendants’ case that paragraph 15 of the draft APofC fails to disclose a case of subsistence and ownership of copyright in the Claimants’ Sports Logos, the Claimants’ Casino Logos or the Claimants’ websites Page 7 Approved Judgment IL-2025-000145 because it fails to plead sufficient facts to make out a cause of action. However, subject thereto, the Defendants also seek to raise other defences to the copyright claim including defences based on abuse of rights, and freedom of expression. 23. Against this background and bearing in mind not least that a significant part of the Claimants’ Application would become otiose if the Defendants were successful in striking out the copyright claim, I consider it appropriate to deal firstly with the Defendants’ Application, before turning to consider the Claimants’ Application. The Defendants’ Application The Defendants’ case

Introduction

24. 25. The Defendants emphasise the point that copyright is entirely different from the protection of registered trade marks. In particular, the point is made that there is no official register for the purposes of the CDPA 1988, and that a copyright work is in effect, as the Defendants put it, carved out of the air by the pleader. Thus, so it is submitted: (i) the work must first be identified, (ii) the original aspects of the work must be identified and stated (which will be problematic where, as in the present case, the works are iterative over years and decades), (iii) authorship (and first ownership) must be established and the facts pleaded as the author is the creator of an artistic work and all creative choices have to be linked to that individual, and (iv) the chain of title from the author (as presumptive first owner) to the claimant must be analysed and established by reference to material facts stated. 26. The Defendants refer to Bullen & Leake & Jacob's Precedents of Pleadings, 20th Edn, at 75-08 where it is said that particulars of claim in a copyright claim must contain the following allegations: i) ii) iii) iv) The title of the Claimant to sue; The subsistence of copyright in the work, which must be identified with precision; The infringement by the defendant; and The relief claimed. 27. The essence of the Defendants' case is that even in their draft amended form, the Particulars of Claim are entirely inadequate in that: (1) they lack particularity in identifying the works in the Claimants' websites, (2) they provide no details as to which aspects of the logos or websites are not copied from earlier versions, (3) they lack information as to what makes the works "original", and lack particularity as to the creative choices made (and ignore the basic rule that words alone cannot be copyright works), (4) they are incomplete as to the authors of the works or the dates of their publication, (5) they lack any indication of the chain of title to the claimed copyright,
- (6) they rely upon presumptions but without the necessary particulars to support their application, and (7) they seek to overcome their difficulties, in particular in relation to Page 8 Approved Judgment IL-2025-000145 28. 29. (i) 30. ownership, by seeking to rely upon evidential inference based on the use of the works alone. In short, the Defendants maintain that despite the original Particulars of Claim, a Reply, draft APofC, three witness statements, and months of intensive internal investigations, the Claimants still cannot tell the Court what the copyright works are, who made them, when they were made or first published, what about them is original, or how any identified Claimant has title. It is submitted that these are not gaps in the evidence, but are missing elements of the cause of action itself. It is necessary to consider the alleged defects in turn. Lack of particularity regarding the Claimants' websites The Defendants complain that there is no indication as to what is claimed as a copyright work in respect of each of the screenshots relied upon by the Claimants. They argue that a website is not a single artistic work, but instead comprises many separate elements, including text, code, graphics, photographs, databases, layouts and software. They submit that the Claimants have failed to identify which elements are being relied upon, and that it is incumbent upon the Claimants not just to identify such elements, but to identify the individual who created it, how it is original, and how the particular Claimant claiming copyright has title to it.

31. Whilst the Claimants have now listed certain employees said to be designers of some aspects of their websites, the information provided, it is said, raises more questions than it answers. A number of individuals are said to be responsible for the “layout”, but the Defendants say that this merely consists of providing betting information in part and providing different betting information in another box next to it or below it, and that the Claimants have not identified which elements are said to be the original copyright work. Further, only one of the identified employees is employed by a Claimant company, rather than other group companies. In addition, in relation to marketing banners on the websites, the designer of only one of them has been identified, and no potential author has been identified for the “games tiles” that form a significant element of the Claimants’ websites.
32. In answer to the Claimants’ contention that because the Defendants have taken the entirety of the web page in question, that must be sufficient to substantiate an infringement, the Defendants submit that that could only be the case if the Claimants have, which it is said that they have not, identified subject matter, pleaded why that subject matter is original in the copyright sense, identified the authors, and established title from that author to the Claimant alleging infringement in relation to the particular website.
33. Whilst the Claimants have focused their claim on particular screenshots of particular websites, it is submitted that that does not assist in advancing their case in that it represents how the website presented at a particular moment. This is said to be problematic unless the Claimants can establish that any use by the Defendants was after that moment and it is submitted that an entire screenshot cannot be original at a particular moment in time in circumstances where it has been developed over a period of time. The Defendants referred at the hearing to the fact that the screenshots relied upon by the Claimant are from the Defendant's website (and not the Claimants' Page 9 Approved Judgment IL-2025-000145 website). Further, the Defendants submitted that an allegation of copying requires identification of an original and of a copy. They submitted that the Claimants have identified only a copy (the screenshot of the Defendants' Website) and have tried to make it play both roles, which is said to be improper. In addition, the Defendants point to the fact that the Claimants are claiming copyright in “screenshots” of the Defendants Website, and they submit that the work copied has to come first, and so a screenshot of something cannot be a copy of the thing it itself copies. Lack of particularity regarding copying The Defendants rely upon the general principle that an author can only obtain copyright in a work to the extent that the work is not copied from an earlier work – see e.g. *Interlego AG v Tyco Industries Inc* [1989] AC 217, at 262-3, per Lord Oliver. The Defendants refer to the fact that copied elements cannot attract copyright protection has been confirmed by the Court of Justice in *C-580/23 Mio*, EU:C:2025:941, [79]-[80], which, although post-Brexit, is relied upon as being persuasive. Likewise, *C-649/23 Institutul de Istorie și Teorie Literară “G. Călinescu”*, EU:C:2025:488, where the Advocate General noted at [67] – [68] that: (ii) 34. “...Labour and skill, however complex and painstaking, cannot, in themselves, justify protection of such an edition by copyright if they do not express any originality in the choice or arrangement of the information contained in that edition”. ... “it is necessary to examine what intervention

by the author of a critical edition consists of as compared with the original work” 35. The relevant principles are said by the Defendants to have been succinctly explained by Arnold LJ in *Lidl v Tesco CA* at [44]: “...The proposition of law which counsel for Tesco sought to derive from *Dicks v Brooks* [(1880) 15 Ch D 22] is not in dispute, however, and can be simply stated. If A creates a first original work, B copies A’s work but adds sufficiently to it to create a second original work, and C copies from B’s work only the part created by A, then B has no claim for copyright infringement against C because that which has been copied by C is not original to B.” 36. 37. Significantly, in *Lidl v Tesco CA* (see at [188] et seq) a focus of attention in relation to the copyright infringement claim was upon the difference between stage 2 of the development of the particular logo, and stage 3 thereof representing the current version the subject matter of the claim. The Court of Appeal held that there was sufficient originality in relation to the labour and skill involved at stage 3, but that all that was capable of protection was that which was added at stage 3. The Defendants submit that whilst the Claimants allege at paragraph 15(a) of the draft APofC that the Claimants’ logos and websites are not copied from other graphic works and are the expression of their authors’ own intellectual creation, this contradicts the plea in the original (now proposed to be deleted) paragraph 15(b) of the Particulars of Page 10 Approved Judgment IL-2025-000145 Claim that the Claimants’ logos and websites were “originally created by teams of employees of the Claimants and were subsequently added to by other teams of employees of the Claimants over time”. 38. The Defendants submit that the Claimants need to particularise when the particular iteration of the work claimed to have been infringed came into being, given that: i) ii) iii) The Claimants’ logos and websites have been developed over time such that the Claimants’ Sports Logos, the Claimants’ Casino Logos and the Claimants’ websites as set out in the draft APofC are the final works (i.e. with additions), and not the original works. A derivative work can only be original to the extent that the additions from the earlier work satisfy the requirement of originality, and any protection in the derivative work will extend to those original additions (and not the parts copied). In many cases, as the Claimants now accept, logos and websites have been originally created and subsequently developed by individuals not being their employees, or other unconnected entities. Thus, the authors of the original versions will be different from the authors of the final work. 39. The Defendants submit that it is apparent that each of the Claimants’ Sports Logos and Casino Logos are copies of earlier (similar) works. In this respect: i) ii) iii) iv) In relation to the Ladbrokes Logo, it is said that the evidence shows this logo is based on designs involving white lettering and red background which date back to at least the 1970s. It is submitted that the Claimants have failed to particularise the original aspects of the current version of the Ladbrokes Logo compared to the various earlier iterations. In relation to the Sportingbet Logo, the evidence is said to show that various iterations of the logo have been used since 2004. The point is made that copyright in the present iteration only exists to the extent it is not copied from these earlier (or other earlier) iterations. In relation to the Foxy Bingo Logo, it is said that this appears to have originated as the head of a costume, in which case the logo will be copied from that costume and is not therefore original in the sense of not being copied. In relation to the Gala Bingo Logo, the evidence is said to show that the yellow circle with blue

writing dates from at least 2010 and that, again, the current iteration, being an evolution of the 2010 version, is not original to the extent that it was copied from the earlier version. 40. In the circumstances, it is submitted that in the absence of pleading the earlier version of the logo and the changes made in the most recent version, it is impossible for the Defendants to address whether those small changes allow sufficient room for there to be any sufficient creative choices. (iii) Lack of particularity regarding creative choices Page 11 Approved Judgment IL-2025-000145 41. The Defendants submit that the Claimants' Sports Logos and Casino Logos are not original on the basis that they do not represent enough creativity that is the author's own intellectual creation as required by s. 1(1)(a) CDPA 1988. This submission is made on two bases. Firstly, that in the absence of identification of the "non-copied" aspects of the current iteration of the logos, it is impossible for the Defendants to plead to whether the logos are original or not. Secondly, the logos (and each of them) in their entirety lack the necessary originality to be copyright works.

42. With regard to the alleged failure to plead creative choices, the Defendants point to the fact that in paragraph 15(a) of the draft APofC, the Claimants have alleged that the relevant logos and websites are "the expressions of their authors' own intellectual creations, reflecting their personalities, as an expression of their free and creative choices so as to stamp the works with their personal touch." 43. 44. The Defendants refer to the test of originality as having been recently summarised in the persuasive case of C-649/23 Institutul de Istorie și Teorie Literară "G. Călinescu", EU:C:2026:213, at [50], and to it having been highlighted in that case that it is necessary to identify the "intellectual creation reflecting the personality of its author, as an expression of his or her free and creative choices" with "sufficient precision and objectivity". On this basis, it is submitted that the Claimants need to plead as to what elements have been added to the current versions of the relevant logos and websites in respect of which originality is claimed, and to precisely particularise the creative choices made for each of these additions. It is complained that paragraph 15(a) of the draft APofC simply states the legal test, without identifying the facts that give rise to the assertion that is made, which is described as being as vague and formulaic as possible thus allowing the Claimants to keep the Defendants guessing as to which elements are said to be original and therefore which need to be challenged for lack of originality.
45. With regard to individual words, it is submitted that it is trite that a single word cannot be a literary work – see e.g. *R Griggs Group v Evans* [2003] EWHC 2914 (Ch), [2004] FSR 31; [2005] EWCA Civ 11, [2005] FSR 31 ("Dr Martens" is not a copyright work). Accordingly, so it is submitted, only the presentation of the words can attract copyright and the creative choices as to their presentation need to be particularised. It is said that as the marks are so banal, and copied, this is simply impossible. 46. In making these submissions, the Defendants say that they are not engaging with the merits as such, rather that these are the sorts of arguments that could be made if the Claimants had properly pleaded their case. (iv) No identification of first publication or authorship 47. An artistic work can only qualify for copyright protection based on the nationality of the author of the work (s. 154 CDPA 1988) or first publication (s. 155 CDPA 1988). First publication means the first time a work is issued to

the public or made available on an electronic retrieval system but not otherwise communicated to the public (s. 175

- (1) and (4)(a) CDPA 1988). 48. On this basis, the Defendants submit that the Claimants need to, but have failed to identify either the author of each of the works or the first publication of each of the Page 12 Approved Judgment IL-2025-000145 works to qualify for copyright protection.
49. With regard to date of first publication, it is said that it is simply alleged that each of the works qualify for protection by reason of first publication – see paragraph 15(c) of the draft APofC. It is submitted that it is necessary to plead the date and place when it was first published absent which the Defendants are unable to challenge the fact of first publication without any pleading when it is said to have occurred.
50. Whilst the original Particulars of Claim alleged publication in the United Kingdom, this is said to be unlikely for some of the works, given that: i) ii) iii) bwin was started in Austria and so there is no basis for supposing first publication was in the United Kingdom. Foxy Bingo was originally a Caribbean company set up by a U. S. citizen and so there is no basis for saying first publication was in the United Kingdom. The First and Second Claimants are incorporated and operate in Gibraltar, albeit that the Second Claimant has a UK establishment office. First publication may well have been in Gibraltar. 51. Paragraph 15(c) of the draft APofC simply alleges that the logos and websites qualify for copyright by reason of the country of first publication without particularising the country in question. This is said to be wholly inadequate and worse than the original version, and means that any challenge to the first publication is entirely impossible and that the simple existence of a work would be enough for it to qualify on this basis.
52. With regard to authorship, it is complained that there is no attempt by the Claimants to particularise the name or details of the author or authors of the work. At paragraph 15(c) of the original Particulars of Claim, it was alleged not only that the logos and websites were created and subsequently added to by teams of employees of the Claimants, but that the employees were all British citizens or domiciled or resident in the United Kingdom. The draft APofC now simply alleges that the authors were qualifying persons under s. 154 of CDPA 1988, without pleading any employment relationship or any further detail. The Defendants submit that it is necessary to identify the names of the author or authors, and that the generalised plea that is proposed impermissibly negates the need to establish qualification of a work. 53. 54. The Defendants submit that the significance of the fact that it is no longer pleaded that unknown authors were employees of the Claimants is that, absent an employee relationship being established, copyright can only pass by assignment from the original owner (the author) to the Claimants, and no assignments have been pleaded for any of the works (s. 90 CDPA 1988). Thus, so it is submitted, in the absence of any identity of the author or authors of the work it is impossible to establish initial ownership, either based on employment (see s. 11(2) CDPA 1988) or otherwise. Further, even if employment were relied upon then it would be necessary for the terms of that employment to contain no “agreement

to the contrary”. This is said to all further demonstrate the requirement for the author to be identified and details of the contract to be pleaded. Page 13 Approved Judgment IL-2025-000145 55. It is pointed out that the allegation in the original Particulars of Claim that all the authors of the Claimants’ Logos were employees thereof, and that they were British or employed in this jurisdiction would appear to be contrary to the true position notwithstanding that the Particulars of Claim contained a statement of truth. It is said that the proposed amended version is little more than wishful thinking in the light of the following evidence that has emerged: i) ii) iii) iv) v) vi) The Ladbrokes Logo would appear to have been devised at least in part by an agency called “the Joneses”, and not by employees of the Claimants. It is submitted that it is necessary to plead the relevant agreement between the Claimants (or a predecessor) and the Joneses, which has not been done. The Coral logo dates from at least 1991. The trade mark comprising the Coral Logo was assigned from Coral Group Trading to the Third Claimant in 2019. If copyright in the Coral Logo were ever owned by the Coral Group Trading it would have had to have been assigned to one of the Claimants (even if it had been created by employees of a Coral entity). This has not been pleaded. bwin was originally set up in Austria, and in their evidence the Claimants now suggest that the bwin Logo was designed by “Buero X”, which is understood to be a trade name or company rather than the name of an individual, and the individual employee or employees of Buero X who designed the Logo have not been identified. If Buero X was based in Austria, as is it reasonable to infer, then under Austrian law, as understood, the employer does not obtain copyright in any artistic works (it remains with the employee except in relation to software: Urheberrechtsgesetz, art 40a). Further, Austrian copyright itself cannot be assigned (as it is a monist country) and can only be licensed. In any event, any assignment of ownership under UK law would have to be from the relevant employee personally to the relevant Claimant. The Claimants have admitted that they cannot find any assignment from Buero X or, implicitly, any employee thereof. It would appear that the Gala Bingo brand was devised by “the Dairy Agency”. If so, the original author would therefore be someone at the Dairy Agency and not an employee of the Claimants, and there is no pleading of any assignment from the Dairy Agency to the relevant Claimant. The Claimants’ evidence is that the Sportingbet Logo was created by DPZ Comunicacoes LTDA a Brazilian company. Further, being a company and not an individual, the Defendants submit that it is necessary for the Claimants to identify the relevant individual who created the work, their employment relationship with DPZ and, in any event, the necessary assignments, which has not been done. Foxy Bingo was originally a Caribbean company set up by a U. S. citizen. There is no evidence of any assignment from this company to the Claimants or any of them. vii) There is evidence that the PartyCasino brand was devised by an agency called “Behance”. Consequently, the author is likely to have been an employee of this Page 14 Approved Judgment IL-2025-000145 56. 57. (v) 58. agency, and there is no evidence of any assignment from Behance to any one or more of the Claimants. viii) There is no pleading as to the relationship between the Claimants (or any of them) and the costume designer for the Foxy Logo. There is therefore said to be strong evidence, and that there are a number of admissions on the part of the Claimants that the Logos, or at least most of them, were not

devised by employees of the Claimants (as originally pleaded), and the Defendants rely upon the fact that there is no pleading that the relevant rights were assigned from any author (whether identified or otherwise). The Defendants submitted that, this being the case, it is necessary for the Claimants, in order to have standing to bring the claim, to establish a chain of title from the original authors (or their employers) to a particular Claimant, and that in the absence thereof, the plea is simply incomplete. No particularisation of chain of title The Defendants submit that, as a matter of principle, it is important to establish the chain of title for any copyright work. They rely upon Copinger and Skone James on Copyright (19th Ed, 2024) at [4-67]: “...the title to a work has to be proved by establishing a chain of title from its root with the first owner through to the present claimant....there is no short cut if a purchaser requires title to be fully deduced.” 59. The Defendants rely upon what was stated by the Report of the Copyright Committee (1952, Cmnd 8862) (the Gregory Committee) at [286] in support of the contention that the person challenging title has to prove nothing: “The proposals made to us were designed to shift the onus of proof in copyright actions, both in regard to title and subsistence of copyright, so that the onus should lie upon the Defendant to disprove these matters. This would mean placing an obligation on the Defendant which it would be impossible for him to discharge without access to contracts and other documents which passed between the parties probably many years earlier. We have come to the conclusion that any hardship which copyright owners may suffer under the present provisions is a further example of what they must reasonably accept in return for the very considerable benefits of securing copyright protection without formality or fee...” 60. 61. On the basis thereof, it is submitted that the Claimants not only need to identify the date of creation to start the chain of title, but they must then plead and prove each and every link of that chain and any relevant assignment or agreements that is relied upon. Consequently, so it is submitted, if the Claimants’ employees could not have been the authors (as originally pleaded), the Claimants would need to plead title from the actual author/first owner to one or more of the Claimants (including any employee relationship between the author and their employer). Page 15 Approved Judgment IL-2025-000145 62. 63. 64. 65. 66. The Defendants point to the fact that the only “link” in the chains of title to the various Logos pleaded by the Claimants is an inference that copyright would be transferred during an acquisition – see paragraph 15(aa)(i)(A) of the draft APofC. It is said that this, at best, covers one link in each chain, but that chain of title must start from the beginning and end in a specific Claimant, and must be evidenced. The Defendants complain that the Claimants do not plead any reliance upon the relevant acquisition agreements, or set out the clause or clauses therein which it might be suggested had this effect. On this basis, it is submitted that the Claimants’ failure to plead chain of title means that they do not have standing to bring any copyright claim (whether as owner or exclusive licensee). The Defendants rely upon the proposition that any claim for copyright infringement has to be brought by the owner (s. 96(1) CDPA 1988), or the exclusive licensee (s. 101 CDPA 1988), and that relief will only be granted to the legal owner (see *Batjac Productions Inc. v Simitar Entertainment (UK) Ltd* [1996] FSR 139, 151-2), or where the exclusive licensee brings a claim where the legal owner is joined (see s. 102(1) CDPA 1988

and *Flitcraft Ltd v Price* [2024] EWCA Civ 136 at [36]). Consequently, even if the Claimants were able to establish that one of them was the exclusive licensee, they would still need to identify the copyright owner to join them to the claim. Further, even if the copyright works were all owned by one of the Claimants, it would still be necessary for the Claimants to plead which of them owns which Logo. It is submitted that, in the absence of such a pleading, there are practical (as well as procedural) issues, e.g. if an injunction were to be granted, it could only be enforced by the copyright owner or an exclusive licensee and not simply by a member of the same group. This is said by the Defendants to once more demonstrate the perfunctory pleading by the Claimants of their copyright claim, even in the draft amended form, and it is said to be apparent from the purported attempt to rely upon the statutory presumptions that the Claimants are cognoscente of their pleading difficulties. (vi) Non application of the presumptions 67. So far as relevant, s. 104 CDPA 1988 provides as follows: “104 Presumptions relevant to literary, dramatic, musical and artistic works. The following presumptions apply in proceedings brought by virtue (1) of this Chapter with respect to a literary, dramatic, musical or artistic work. ...

- (4) Where no name purporting to be that of the author appeared as mentioned in subsection (2) but— the work qualifies for copyright protection by virtue of section 155 (a) (qualification by reference to country of first publication), and Page 16 Approved Judgment IL-2025-000145 a name purporting to be that of the publisher appeared on copies of (b) the work as first published, the person whose name appeared shall be presumed, until the contrary is proved, to have been the owner of the copyright at the time of publication. ... If the author of the work is dead or the identity of the author cannot (5) be ascertained by reasonable inquiry, it shall be presumed, in the absence of evidence to the contrary—
- (a) that the work is an original work, and
- (b) that the plaintiff’s allegations as to what was the first publication of the work and as to the country of first publication are correct.” 68. 69. As is apparent from paragraph 15 (d) of the draft APofC, the Claimants plead that they will, if necessary, rely upon these statutory presumptions “without prejudice to the foregoing, where the author(s) of the Claimants’ Logos and Claimants’ Websites cannot be ascertained by reasonable enquiry.” The Defendants describe this as an attempt by the Claimants to paper over the cracks, and they submit that the Claimants’ purported reliance thereupon further emphasises the total inadequacy in their copyright pleading.
70. With regard to s 104(4), the Defendants submit that it can have no application for the following reasons: i) ii) iii) iv) There is authority for the proposition that, for the statutory presumptions to apply, it is necessary to identify and thus plead the date of first publication with the name of the publisher – see *Henry Hadaway Organisation Ltd v Pickwick Group Ltd* [2015] EWHC 3407 (IPEC), at [100], per Melissa Clark, sitting as a Deputy High Court Judge, (a s.105 CDPA 1988 case where it was said that in order to raise a valid presumption, the date of issue of the CD to which the statement is applied must be known). The Claimants have not pleaded (and have admitted they do not know) when the works were first published (as to

which see s. 175(1) CDPA 1988). Accordingly, they cannot identify the relevant copy of the work as the basis for the presumption as to first publication to apply. The Claimants have failed to plead the name of the publisher whose name they are seeking to say first appeared on the (unspecified) work, or how that name appeared. Accordingly, there is actually no fact to be presumed correct and so there cannot be a presumption as to ownership. Even if s. 104(4) CDPA 1988 were engaged, the presumption is that the publisher was the “owner of the copyright at the time of publication” and not at the time the action was commenced. Accordingly, if a publisher’s name were on the copy, it would be necessary to establish title from that name to the relevant Claimant (if different). Page 17 Approved Judgment IL-2025-000145 71. The Defendants further submit that s. 104(5) CDPA 1988 also cannot assist the Claimants, for the following reasons: i) It is submitted that the presumption that the work is an “original work” cannot trump the basic rules of originality. As to this, it is said that: a) b) c) The presumption is not an obligation arising from the Berne Convention, article 15. The work has to be something in respect of which it is possible for the author to make “free and creative choices” and which can reflect the “personality of the author” (see paragraph 43 above). Thus, for example, a copy of the alphabet being written out in order does not become an original work simply because the author cannot be identified. In order to rely upon the presumption, it must be a requirement to plead the point in time at which the work was first published. In other words,

- s. 104(5) requires to be read as a single unit, sub-sections (5)(a) and (b) being conjunctive, and thus if there is nothing to support sub-section 5(b), sub-section (5)(a) cannot stand alone. Otherwise, so it is submitted, there would be absurd consequences in that: (i) if it were open to a party to claim that they do not know and cannot ascertain the author of a work having made reasonable enquiries, then anybody could, effectively, assert title in anything, (ii) in responding to the claim, a defendant would have no way, e.g. through disclosure, of identifying earlier possible iterations of the work or of providing “evidence to the contrary” should there be any. ii) Whilst the Claimants have, at paragraph 15(c) of the draft APofC, pleaded that the Claimants’ Sports Logo, Claimants’ Casino Logos and the Claimants’ websites qualify by reason of first publication, they have not identified therein any identified first publication of any of the relevant works. Indeed, paragraph 15(aa)(i) of the draft APofC and paragraph 11(b) of the Reply suggest that the Claimants cannot identify the “date(s) of creation of the said works”, namely the Claimants’ Sports Logos and Casino Logos. Consequently, there is no first date pleaded as the date the works were “first published”. iii) In short, it is said that it cannot be sufficient to plead no more than the work has been first published without any indication of date or place of publication whatsoever to engage the presumption. 72. In conclusion, as it was put by Mr Malynicz KC in the course of submissions: “Authorship-based qualification fails for want of authors, and publication-based qualification fails for want of a publication and a publication date and circumstances. The statutory condition is simply not addressed in a pleading that has already been amended once to deal with precisely this topic.” (vii) Ownership/Exclusive Licence claimed by inference Page 18 Approved Judgment IL-2025-000145 73. The Defendants rely upon the

observations of Nicklin J in *Baroness Lawrence of Clarendon OBE v Associated Newspapers Ltd* [2026] EWHC 1637 (KB), where he said at [64]: “the drawing of inferences is an evaluative exercise, grounded in common sense. But it is not a licence for speculation: it must be anchored in the evidence. As I held in the July Judgment¹ ([46]), “drawing inferences is not a process of optimistic guesswork; it is a process whereby the court concludes that the evidence adduced enables a further inference of fact to be drawn”. Whether (and if so what) evidential significance should be attached to missing evidence or absent witnesses depends on the context and upon the totality of the evidence.” 74. The Defendants submit that in paragraphs 15(aa) and (bb) of the draft APofC, the Claimants are trying to rely on evidential inferences to create copyright ownership or exclusive licences. However, this is said to be insufficient to identify a proper cause of action because this inference is sought based on long undisturbed enjoyment and nothing more, and the Claimants have allowed inference to get ahead of the evidence. 75. As to this, it is submitted that: i) ii) iii) iv) v) The claim is fundamentally flawed because until the creation of the work has been established it is impossible to determine from which point any contrary claim could be asserted as to ownership or the grant of an exclusive licence. The registration of a trade mark incorporating a copyright work does not establish ownership (or an exclusive licence) in the work. At best it establishes there has been no objection to registration. S. 5(4)(b) TMA 1994 allows the owner of earlier rights (e.g. the copyright owner) to object to the registration of a mark, but there is no obligation on the owner of the earlier right to object (i.e. copyright is not lost or abandoned). The Claimants’ plea, if accepted, would negate the need for the statutory presumptions (e.g. under s.104 CDPA 1988) and so undermine the strict statutory balance created thereby. The plea would require no more than there to be long unchallenged use to establish ownership/an exclusive licence being granted (even though, in fact, the Claimants have not even established it being “long” use as they cannot identify dates of creation). Such a plea is also flatly contradictory to the long established rules that the chain of title needs to be firmly established. There is no doctrinal equivalent to adverse possession in intellectual property law which can transfer ownership over long use. Indeed, even an implied licence requires there to be words and/or conduct pleaded to support its grant - see *Redwood Music v Chappell & Co* [1982] RPC 109 at 128. It is also contrary to precedent at the highest level that long undisturbed enjoyment cannot negate an ownership claim from the real owner: *Fisher v Brooker* [2009] UKHL 41 (where the fact a musician waited 38 years before *1 Baroness Lawrence v Associated Newspapers Ltd* [2025] EWHC 1716 (KB) Page 19 Approved Judgment IL-2025-000145 bringing a claim that he jointly owned the copyright in *Whiter Shade of Pale* could not preclude a claim for ownership of intellectual property rights). vi) Further, the plea for an exclusive licence is, it is submitted, bad on its face. This is said to be because a licence can only be given to a single licensee: *Illumina Inc v Premaitha Health plc* [2017] EWHC 2930 (Pat) at [254] and only that licensee has the right under s. 101 CDPA 1988. Accordingly, the plea that the “Claimants” are exclusive licensees in paragraph 15(aa)(ii) of the draft APofC is bad as it suggests a grant to multiple persons (and not a single licensee). Further, any claim based on s. 101 requires the particular exclusive licensee to be identified (as well as the chain of title to that person). The Defendants further

submit that this aspect of the claim is based on the existence of documents and clauses in those documents (whether employment contracts, assignments or licences) that the Claimants have not identified, and in many cases which they may well not be able to find notwithstanding what appear to be the exhaustive enquiries made to date. In response to the Claimants' contention that it is absurd to suggest that the lawyers had not turned their minds to the question of copyright ownership when the various acquisitions of the relevant businesses by the Entain Group occurred, the Defendants point out that whilst there is a presumption that ownership of trade marks will transfer with a business (see s. 24(1A) TMA 1994), there is no such presumption in the case of copyright, and an express assignment is generally required – see s. 90 CDPA 1988. The Defendants say that where there is protection through the registration of trade marks, there is every reason why copyright ownership might not have been expressly given thought to in the relevant corporate transactions. The Defendant suggest that, at best, long unchallenged use, as pleaded by the Claimants supports a claim that the copyright owners (whomever they may be) have acquiesced in the Claimants' use. However, this is said to be irrelevant to the claim in that it supports neither ownership nor an exclusive licence. Finally, the Defendants submit that the case based on inference is entirely contradictory to the purported case built upon the presumptions. This is said to be on the basis that the Claimants can either infer the identity of the author, in which case they do not need to rely on the presumptions, or they cannot identify the author, and they can attempt to rely on the presumptions. It is submitted that is not possible to ride both horses at the same time and that they are inconsistent pleas. 76. 77. 78. 79. The international origins of s. 104(4) CDPA 1988 is said to make this clear. The Berne Convention for the Protection of Literary and Artistic Works, art 15(3) provides: "In the case of anonymous and pseudonymous works, other than those referred to in paragraph (I) above, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be deemed to represent the author, and in this capacity he shall be entitled to protect and enforce the author's rights. The provisions of this paragraph shall cease to apply when the author reveals his identity and establishes his claim to authorship of the work." 80. On this basis, so it is submitted, the Claimants' case must either be that they have adequately pleaded the identity of the author and owner, or they cannot identify the Page 20 Approved Judgment IL-2025-000145 author or owner. It cannot be both. The Claimants' case in response

Introduction

81. 82. I have already outlined the Claimants' case in respect of their claim in paragraph 15 et seq above. In response to the application to strike out the copyright claim, they submit that there are three key elements to a copyright claim, namely the legal existence of the right, ownership and infringement. They submit that their case in relation thereto is sufficiently pleaded in the draft APofC, and that it is incorrect to say that the latter fails properly to disclose a cause of action of copyright infringement. As I have already identified, Mr Selmi, in his submissions, placed considerable reliance upon *Lidl v Tesco HC and CA*. This was

relied upon as being a paradigm and similar example of a claim for infringement of copyright relating to a logo relating to a well- established brand with a long history, in that case Lidl brought proceedings against Tesco in relation to a so-called “Mark with Text” for both trade mark infringement and copyright infringement.

83. Mr Selmi, who appeared as counsel in that case, informed me that Lidl brought its copyright claim in relation to its current logo without pleading any case in relation to the history thereof. However, by the time that the case came to trial, there was evidence from a Mr Unterhalter to the effect that internal enquiries within Lidl had uncovered the following information that was described by Joanna Smith J in *Lidl v Tesco HC* at

[285] as follows: “(i) The stylised Lidl text was designed in around 1972/73; (ii) (iii) Around the beginning of the 1980s a circular logo was created in the form of a yellow circle with a red border, with the Lidl stylised text superimposed on it. In some newspaper adverts of the time (printed in black and white) this was sometimes shown in a grey/black circle instead of yellow/red; In the late 1980s a square version of the Lidl logo was created in the form of a blue square with the circular logo and stylised Lidl text superimposed on it forming the Mark with Text. A German trade mark was applied for on 20 November 1987 in relation to the Mark with Text. The earliest record of the Mark with Text being used is a photograph of a Lidl store in France in the late 1980s or very early 1990s. (iv) It is likely that the Works were created by employees of Lidl Stiftung who would have been German nationals.” 84. As I have identified at paragraphs 35 and 36 above, in the light of this evidence and the principles of law in relation to the correct approach regarding various iterations of an original work considered by Arnold LJ in *Lidl v Tesco* at [44], Lidl, because it was alleging infringement of its current logo, i.e. that developed at stage 3 in the late 1980s, was constrained to limit its copyright claim to the original work representing the Page 21 Approved Judgment IL-2025-000145 difference between stage 2 and stage 3. However, it succeeded in establishing its claim to copyright to this extent. As Joanna Smith J put it [289]: “Someone in the employ of Lidl took the Lidl text and the yellow circle with the red border and superimposed them on a blue background to create the Mark with Text. On balance, this is likely to have involved time, labour and creative freedom (even if the artistic quality involved is not ‘high’)”. 85. This finding was upheld in the Court of Appeal – see per Arnold LJ at [189] – [191]. As Arnold LJ observed at [189]: “the judge was correct to say that simplicity of design does not necessarily preclude originality, nor is artistic merit required.”

86. Where the Court of Appeal differed from Joanna Smith J was in relation to her finding that there had been infringement. The Court of Appeal held that there had been no infringement on the basis that, given that the copyright protection was limited to the originality at stage 3, the proper analysis was that Tesco had not reproduced that copyright work. 87. In *Lidl v Tesco CA* at [103], Arnold LJ observed that “the only work pleaded by Lidl is the Stage 3 Work”. This might suggest that Lidl had specifically pleaded the difference between stage 2 and stage 3. Mr Selmi tells me that that was not the case, and that the history of the logo only

came out through Mr Unterhalter's evidence.

88. Mr Selmi reminded the Court that the purpose of a statement of case is to set out the facts upon which the party's case is based, and not, generally speaking, to plead evidence. In this respect I note that CPR 16.4(1)(a) provides that particulars of claim must include: "a concise statement of the facts on which the claimant relies." 89. 90. (i) 91. Further, Mr Selmi reminds the Court that it ought not to strike out a claim pursuant to CPR 3.4(2)(a) or (b) unless it can be satisfied that the claim is bound to fail, see e.g. *Begum v Maran (UK) Ltd* [2021] EWCA Civ 326, per Coulson LJ at [20]-[22]. However, I understood Mr Selmi to have accepted that there is a distinction between the position where a claim is sought to be struck out on the basis that it is unmeritorious, and where a claim is sought to be struck out because it is alleged that the particulars of claim fail properly to disclose a cause of action, in which case it may be appropriate to strike out the claim subject to possibility of the particulars of claim being amended so as to disclose a cause of action that had some merit. The Claimants' response to the various ways in which the Defendants sought to attack the Claimants' case as now represented by the draft APofC was as follows. Lack of particularity regarding the Claimants' websites The draft APofC limit the "Claimants' Websites" said to be subject to copyright to "the website extracts shown at Annex 3(a)". The extracts in question are images taken from the Defendants' websites of copies thereon of the Claimants' websites. It is the Claimants' case that their websites taken as a whole at any point in time are original artistic works, being graphic works. 92. The Claimants submit that copyright can subsist in something very simple, which might include the layout of a webpage and the content thereof. As Mr Selmi put it: "It is Page 22 Approved Judgment IL-2025-000145 entirely plausible that creative choices have gone into all of this and my client should be allowed in the usual way to demonstrate in witness evidence the creative choices that went into the design of the websites." 93. As to the Defendants' point that there is difficulty in maintaining that an entire screenshot of the website can be original when the website has been developed over a period of up to 36 years, the Claimants submit that: i) ii) Given that the Claimants are claiming copyright in the screenshots of websites, it does not matter that the websites may have been developed over many years. That does not make the current version of the website screenshot unoriginal. It is said that, just as in *Lidl v Tesco*, the Mark with Text was developed over more than a decade but that did not stop the stage 3 work from being original in and of itself. Whether what is represented by a screenshot of an entire website may be an artistic work rather or in addition to the individual components thereof may be open to argument, but this is an issue for trial and not strike out. The draft APofC contains a properly constituted claim to copyright in the websites represented by the extracts that are relied upon, and it cannot be said that a claim based thereupon is bound to fail at trial.
94. With regard to the question of ownership in the websites, Mr Selmi relied upon what was said by Ms Ashby at paragraph 39 of her witness statement, namely that the Claimants, having undertaken the further investigations earlier referred to in her witness statement, and having identified non-Claimant authors of some of the works (intra- group for the Claimants' websites, and third parties for the Claimants' Logos), are in the process of

regularising the chain of title by way of assignments. It was submitted that, this sort of deficiency, which can be remedied, is not a proper ground for striking out the copyright claim. 95. (ii) 96. In these circumstances, the Claimants dispute that they have not sufficiently identified subject matter or why the same is not original in the copyright sense, and that they have gone as far as necessary at this stage to identify authors and establish title. With regard to infringement, the Claimants submit that if their entitlement to copyright is otherwise established, there's been a clear infringement by copying, which does not appear to be in issue. Lack of particularity regarding copying The Claimants maintain that the Defendants' contentions are misplaced for the following reasons: i) It is submitted that there is no requirement for a party to plead every iteration of a work and all the differences relied upon. Mr Selmi emphasises the point already made that in *Lidl v Tesco*, Lidl just pleaded the Mark with Text as an artistic work, and it was only after the enquiries that were subsequently made that the evolution of the Mark with Text became apparent. On this point, Mr Selmi referred to the precedents for copyright in artistic works in *Bullen & Leake & Jacobs* (supra) relating to a sculpture and a dramatic work. He made the point that these would have been created over a period of time, yet the Page 23 Approved Judgment IL-2025-000145 ii) iii) iv) precedents relating thereto contained no detail with regard to the development thereof. Mr Selmi referred to Mr Lee having, at paragraph 11 of his witness statement, referred to the "long and convoluted history" relating to the Logos with, for example, Ladbroke's going back to 1902 and its red-and-white logo being used for many decades. Mr Selmi submitted that this was plainly evidence which the Claimants are not required to plead out. Further, he made the point that it is well settled that the Court should not strike out a pleading where further facts may emerge on discovery or otherwise. Mr Selmi referred to the Defendants having argued that changes from previous iterations to current iterations were minor, and the suggestion that in the absence of pleading the earlier versions the Defendants could not address whether those changes allowed room for originality. However, he submitted that the Defendants would inevitably seek to minimise differences between iterations, and that all this demonstrated was that originality was a live issue for trial, in respect of which the issues would be identified by disclosure and/or the evidence. Mr Selmi pointed again to *Lidl v Tesco*, suggesting that the issues therein were simply whether copyright subsisted in the logos, whether copyright was owned by Lidl, and whether it had been infringed. He submitted that that is all that needs to be got from the pleaded case and that, as he put it, "the rest can be done through the evidence, the submissions and arguments at trial, and cross-examination." Mr Selmi submitted that the Claimants are not unique in having very large brands with convoluted histories. He submitted that the Defendants' approach was one that was simply not mandated by copyright law and court procedure, and that the effect of accepting it would be to accept that large companies should be precluded from asserting copyright infringement unless they had undertaken a full disclosure exercise upfront or had all the evidence that would be available at trial available and ready to go before asserting copyright through proceedings. All that he said that his clients were seeking to do was to assert copyright in the brands that they are known by, the brands that they use day in day out, and which they and only they

have used or laid claim to because exact copies of their logos and websites were appearing on the Defendants' websites. (iii) Lack of particularity regarding creative choices 97. The Claimants' case in relation to this alleged deficiency is essentially the same as that in relation to the Defendants' contention that it is necessary to plead out iterations of a logo where various versions thereof have been produced over time, the ultimate issue being whether the current iteration in itself involves sufficient time, labour and creative freedom, recognising that the artistic quality involved need not be high. Does this all need to be pleaded out, or does one just identify in the pleading the artistic work in question, in the present case the current iteration of the various Claimants' Logos, just as in in *Lidl v Tesco* all that was pleaded was Lidl's current iteration, the Mark with Text? 98. Consequently, what are essentially the same arguments as those set out in paragraph 96 above are relied upon in answering this point. So far as the European authorities relied Page 24 Approved Judgment IL-2025-000145 upon by the Defendants referred to in paragraphs 34 and 43 above are concerned, the Claimants make the point that whilst these cases might provide persuasive authority as to what ultimately needs to be established at trial, they provide no authority as to what is required from a pleading perspective under English law. (iv) No identification of first publication or authorship 99. The Claimants refer to the terms of s. 154 and s. 155 CDPA 1988, and make the point that the qualification provided for thereby, whilst expressed as extending to UK individuals and to publication in the UK, is also expressed as extending to individuals in other countries, and to work published in other countries listed in s. 159 CDPA 1988, i.e. to countries that are signatories to the Berne Convention or that are members of the World Trade Organisation. The practical effect of this is to apply the relevant provisions to as many as 166 countries in the case of the World Trade Organisation and 182 contracting parties in the case of the Berne Convention in circumstances in which there are very few countries that are not signatories to one or both thereof, e.g. Angola, Sierra Leone, Iraq and some smaller islands. 100. The Claimants submit that by paragraph 15(c) of the draft APofC, they plead, factually, all that is required to meet one or both of the qualification tests, and by making reference to "qualifying persons" or to qualifying for UK copyright protection by reference to country of first publication, they are asserting that the qualification tests are met in accordance with the requirements of s. 154(1) or (2), or in accordance with s. 155(1) or (2). 101. The Claimants submit that it is unnecessary to identify the name or names of the authors, or the date and place of first publication, making the point that this was not, they submit, required in *Lidl v Tesco*.

- (v) and (vii) No particularisation of chain of title/ownership/exclusive licence claimed by inference 102. 103. The Claimants submit that the issues of chain of title, and ownership ultimately require to be addressed "compensively". The Claimants accept that the evidence is to the effect that certain Logos were not developed by their own employees, and that the bwin, Ladbrokes and Sportingbet logos were developed by third party agencies, in the case of bwin in Austria, and in the case of Sportingbet in Brazil, rather than employees of the Claimants. Further, it is recognised that, within the Entain Group, ownership of copyright may currently sit with companies other than the relevant Claimant now seeking to assert

copyright through the present proceedings in respect of the respective Logos. However, they say that steps are being taken to regularise matters within the Entain Group so as to ensure that assignments are executed ensuring that title is vested in the appropriate Claimants – see paragraph 39 of Ms Ashby’s witness statement. 104. The Claimants submit that it is unnecessary to plead each and every step in a chain of title, and that, ultimately, the question is whether ownership can be proved at trial. It is said that it was not necessary to plead the full chain of title in *Lidl v Tesco*, and, in that case, Mr Unterhalter’s evidence was that the logos were created by employees of Lidl Page 25 Approved Judgment IL-2025-000145 Stiftung. It is said that the Claimants’ case in the present case is pleaded in much the same way.

105. Mr Selmi referred to the Defendants having identified that the Claimants’ claim to ownership or to an exclusive licence was based upon the fact that the relevant Claimant had enjoyed exclusive use of the work for many years, and that no third-party had asserted a competing claim, and having then gone on to assert that, it was an unsupportable leap of logic to say that these two factors meant the relevant claimant owned the copyright or was an exclusive licensee in respect of the work. However, Mr Selmi identified that the Defendants, at paragraph 14 of their Skeleton Argument, had then said that, at its highest, the inference sought to be drawn by the Claimants was “merely consistent with ownership. However, those facts are also consistent with the opposite conclusion”. Mr Selmi made the point that if, as the Defendants appear to accept, the two factors are at least consistent with ownership, then there is absolutely no basis for striking out the pleading. 106. In response to the Defendants’ suggestion (described by the Claimants as bizarre) that ownership of copyright might still rest with brand agencies or non-claimant companies, and in support of their case that ownership or the benefit of an exclusive licence is to be inferred, the Claimants refer to a passage in *Bullen, Leake and Jacobs (supra)* at 75- 06, where the authors thereof observed that: “There is no express provision vesting the copyright in a commissioned work in the commissioner, although that may be an express or implied term of the contract of commission.” The relevant footnote cites *Robin Ray v Classic FM* [1998] FSR 622 at 640-644, as authority for this proposition, and there is further discussion with regard to the possibility, in appropriate cases, of implying an assignment. It is submitted by Mr Selmi that this is exactly the situation in the present case, and that the pleaded facts are entirely consistent with ownership, alternatively with there being an exclusive licensee. 107. In short, it is the Claimants’ case that ownership is sufficiently pleaded, and not susceptible to strike out. (vi) Non application of the presumptions 108. The Claimants’ primary case is that they do not need to rely upon the presumptions provided for by ss. 104(4) and (5) CDPA 1988.
109. With regard to s. 104(4), the Claimants’ argument is along the following lines. The Logos qualified for copyright protection by reference to country of first publication for the reasons referred to above. No author’s name appears on the Logos, the names that do appear are the names of the brands themselves, e.g. Ladbrokes or Coral. These brands are the publisher, being the person that has made the Logos public by using them. Furthermore, most of the

Logos are also registered trade marks owned in each case by one of the other companies within the Entain Group. The Claimants submit that, in these circumstances, the presumption at under s.104 is operative, absent evidence to rebut it.

110. With regard to s. 104(5), the Claimants' argument is that, following further reasonable enquiry, they intend to adduce evidence at trial along the lines of that of Mr Unterhalter's evidence in *Lidl v Tesco*. However, they cannot undertake that reasonable enquiry if their pleading is struck out. In carrying out this enquiry, the Claimants will Page 26 Approved Judgment IL-2025-000145 endeavour to bottom out the first publication of the logos relied upon and the country of first publication entitling them to the presumption in their favour under s. 104(5). 111. In short, the Claimants submit that, so far as may be necessary contrary to their primary case, they can pray in aid the presumptions in order to save their case.
- Determination of the Defendants' Application Preliminary observations
112. CPR 16.4(1)(a) provides that particulars of claim must contain "a concise statement of the facts on which the claimant relies." The notes in the White Book 2026 at 16.4.1 note that: "the primary function of the particulars of claim is to state concisely the facts on which the claimant relies ... The claimant should state all the facts necessary for the purposes of formulating a complete cause of action." 113. These observations reflect that the ultimate purpose of particulars of claim is to inform the defendant(s) of the case against them. The authorities indicate that the fact that particulars of claim leave the precise ambit or extent of the relief sought to argument does not necessarily justify striking out a statement of case provided that the basic allegations are sufficiently clear – see e.g. *Conticorp SA v Central Bank of Ecuador*
- [2007] UKPC 40. 114. The Chancery Guide (2025 revision) at paragraph 4.7, citing *King v Stiefe* [2021] EWHC 1045 (Comm) at [145] per Cockerill J (as she then was), refers to a statement of case as serving three functions or purposes: i) ii) iii) to enable the other side to know the case that it has to meet; to ensure the parties can properly prepare for trial and that unnecessary costs are not expended, and court time required chasing points which are not in issue or which lead nowhere; and in its preparation, operating as a critical audit for the claimant or defendant and their respective legal teams that they have a complete cause of action or defence. 115. In *Prudential Assurance Co Ltd v HMRC* [2016] EWCA Civ 376 at [20], Lewison LJ, addressing the first two of the above functions, commented that: "the setting out of a party's case in a statement of case enables the other party to know what points are in issue, which documents to disclose, what evidence to call and how to prepare for trial. It is inimical to a fair hearing that a party should not be exposed to issues and arguments of which he has no fair warning."
116. Despite saying that they have made extensive further enquiries that they describe as "reasonable enquiries", the results of which are reflected in the draft APofC, the Reply and Ms Ashby's witness statement, the Claimants say that they propose to fill gaps that the Defendants have identified in the Claimants' case by evidence served in due course. In his Skeleton Argument, Mr Selmi, at paragraph 85(a) says that in relation to copyright

subsistence and ownership: “Cs intend to prove subsistence and ownership of copyright in Cs’ logos and Cs’ websites by way of witness evidence rather than disclosure. Ds do not agree to this, and require Cs to disclose under Model D.” Page 27 Approved Judgment IL-2025-000145

117. Mr Selmi complains that the Defendants’ approach, if correct, means that a big company with a long established brand will typically find it difficult, if not impossible, to pursue a claim in copyright in its logo if required to show a full chain of title etc. going back over many years, and to particularise the full history of the development of the logo. This may be right, but it cannot, as I see it, justify a departure from the general principles regarding the purpose and contents of a statement of case that I have identified, including, in the case of particulars of claim, enabling the defendant to identify and address the case that they are required to meet. Further, it is to be borne in mind that the big company with a long established brand with a logo has other ways of protecting the intellectual property therein through the registration of a trade mark pursuant to the TMA 1994. This ought generally to be an effective way of protecting brands and logos, albeit subject to specific defences provided for by the TMA 1994 such as the referential use defence under s 11(2)(c) thereof that the Defendants seek to rely upon in the present case. 118. Importantly on this question of the difficulties that may be encountered by a large company with a long established logo, it is not being said that the Claimants are unable to come up with further, sufficient detail in respect of their claim. Rather it is being said that this is not the time to provide such detail, the intention being that the detail will be provided in narrative form by way of evidence in due course, without there having been any form of extended disclosure on their part of documentation going to the relevant issues. This is not, I consider, an attractive submission from parties who might reasonably be assumed to have the resources to carry out urgent and detailed further enquiries now to produce the requisite detail to support their case. Ordinarily one might have expected these steps to have been taken before a copyright claim was even commenced.
119. Despite Mr Selmi’s involvement as Counsel in *Lidl v Tesco*, I consider that one needs to be careful before reading across to the present case too much about the way that that case was pleaded, particularly without having seen the statements of case in that case and knowing rather more about the circumstances in which the dispute between the parties in that case arose. The *Lidl v Tesco* case did not involve multiple claimant companies bringing copyright infringement claims in respect of multiple logos, and where the issue was whether the most recent iteration of Lidl’s logo was copied by a sign used by Tesco: 120. Further, although in *Lidl v Tesco* it may only have been confirmed late in the day through Mr Unterhalter’s evidence that Lidl’s logo was likely to have been devised by Page 28 Approved Judgment IL-2025-000145 Lidl Stiftung’s employees, something that was not challenged by Tesco, there is no suggestion that there was, at the case management hearing stage of that claim, evidence available to the effect that any logo had been devised by a third party agency (including one based overseas) or that there was evidence that the claimant plainly did not then own the copyright and that an assignment, at least, would be required to confer title on

Lidl. 121. I accept that there is force in the point made by Mr Selmi that where the copyright infringement complained of is the use by the defendant of a like for like copy of the current iteration of a claimant's logo, then provided that there is at least some originality in the most recent iteration, however minor the latest revision, then infringement ought not to be too difficult to prove in that the copy will inevitably include that revision. 122. Further, I accept that Bullen & Leake & Jacobs (supra) at 75-08 correctly identifies that particulars of claim in a copyright claim must include, amongst other things, the following allegations, namely: i) ii) the title of the claimant to sue, i.e. as owner or exclusive licensee; and the subsistence of copyright in the work, which must be identified with precision. 123. I do not accept the comparison that Mr Selmi seeks to draw between the development of a logo over a period of time through various iterations and a sculpture or a literary or dramatic work. His point was that the latter would have been developed over a period of time, yet the precedents provided in Bullen & Leake and Jacobs do not say anything about the development thereof and simply describe the work as being e.g. "an original artistic work consisting of a sculpture known as ...". However, the development of a sculpture over a period of time or a literary work is, I consider, of a different order and a different process from successive publications of various iterations of a logo where each iteration requires separate consideration with regard to originality etc. This is, as I see it, no proper comparison to a partially completed sculpture, or a partially written book. 124. I am satisfied that if particulars of claim do fail to state all facts necessary for the purposes of founding a complete cause of action, or fail to plead sufficiently to enable the other side to know the case that they have to meet, and to properly prepare for trial, then the Court plainly does have a discretion pursuant to CPR 3.4(2)(a), (b), and/or (c) to strike out the particulars of claim, or to order that the particulars of claim be struck out unless the defect or defects are remedied. 125. I propose to consider the deficiencies complained of by the Defendants by reference to the matters that Bullen & Leake & Jacobs (supra) at 75-08 identify as being required to be included in particulars of claim in a copyright case. Title of the Claimants to sue, i.e. as owner or exclusive licensee 126. This essentially covers the "no particularisation of chain of title", "non-application of presumptions" and "ownership/exclusive licence claimed by inference" heads identified in the Defendants' submissions. Page 29 Approved Judgment IL-2025-000145 127. The relevant plea as to ownership of copyright is contained in paragraph 15(aa) of the draft APofC. The central plea in this paragraph is that it is: "reasonably inferred that the Claimants own the copyright in the said logos for the following reasons ...". To my mind this paragraph is deficient and objectionable as a pleading because it does not seek to address what ought to be pleaded, namely that a particular Claimant, or possibly particular Claimants jointly, own the copyright in particular logos. As pleaded, there is simply a plea that the Claimants between them own all the logos, and that that is to be inferred from the facts that follow. Consequently, even if it were right to infer that which the Claimants invite the Court to infer, that does not serve to demonstrate that any particular Claimant has a good cause of action in relation to any particular logo. I was not referred to any authority to suggest that it might be appropriate to take a collective approach between claimants in advancing an infringement of copyright case without specifying which of them owns the copyright in the artistic work

in question.

128. With regard to the matters alleged in sub-paragraphs 15(aa)(i)(A)-(D) concerning inferring ownership of copyright, there are, as I see it, the following principal difficulties therewith: i) ii) With regard to sub-paragraph (A), it is pleaded that pursuant to the various acquisitions under which the various brands were acquired by the Entain Group, copyright would have been transferred to “the Entain Group and the Claimants”. However, a transfer to “the Entain Group” would not have conferred ownership on any of the Claimants, unless the transfer was to one or more of them, and reference to a transfer to “the Claimants” does not assist with regard to transfer to any particular Claimant of any particular logo. Further, the mere fact that the “Entain Group and/or the Claimants” might have acquired the relevant brands does not necessarily mean that that copyright in any Logo was transferred to any particular Claimant given that a transfer of a business will not, generally speaking, lead to the assignment of copyright owned thereby unless the subject matter of an express assignment – see s. 90 CDPA 1988. There is, I consider, much force in the Defendants’ point that it cannot be assumed that in relation to the various acquisitions, specific thought was given to the assignment of copyright, particularly given the existence of the Trade Marks. In any event, with their resources, it ought not be too difficult for the Claimants to dig out the various acquisition agreements entered into when the seven brands in question were respectively acquired, and check the position. If there was no express assignment, then reference to the acquisitions in question cannot, in itself, be of assistance to the Claimants. However, if there was an express assignment, then that ought to identify who the assignment was to, and the Claimants ought to be able to rely upon it. With regard to sub-paragraph (B), I agree with the Defendants’ contention that ownership of a registered trade mark in a particular logo is of limited value in determining ownership of copyright in the logo bearing in mind that the former is determined by registration and the latter, primarily, by authorship, and also bearing in mind that, unlike the position in relation to registered trade marks, on acquiring a brand, an express assignment of copyright would have been required. Further, the fact that a registered trade mark might belong to “one of the Claimants or another company within the Entain Group” does not assist in Page 30 Approved Judgment IL-2025-000145 showing that any particular Claimant has title to sue for copyright infringement. iii) With regard to sub-paragraph (C), use of the Logos for many years does not, as I see it, add to the case that it is to be inferred that unspecified Claimants or other Entain Group entities own and have title to the copyright in the Logos. Use may be consistent with ownership of copyright, but it is really no more than that and, as the Defendants have pointed out by reference to *Fisher v Brooker* (supra), long user does not defeat the ownership of another. Further, again, the emphasis of the inference that it is alleged is to be drawn is upon “dealings with the works” by the Entain Group and the Claimants rather than the dealings by a particular Claimant with a particular logo or logos, which would be pertinent. iv) With regard to the concluding sub-paragraph (D), I consider that, as matters stand, there are difficulties with the averment that, in the premises, “it is reasonably inferred that the Claimants own the copyright in each of the Logos”. In particular: a) b) c) d) The contention is

that “the Claimants” own the copyright in each of the Logos, rather than that any particular Claimant or Claimants own the copyright in a particular logo. Once the Claimants have accepted, as Ms Ashby has in her witness statement, that assignments are required to be executed by companies within the Entain Group in order to perfect ownership of copyright in one or more of the Claimants, then the averment that “it is reasonably inferred that the Claimants own the copyright in each of the Logos” cannot be right. Sub-paragraph 15(aa)(i) does not engage with the point that certain Logos were devised by third party agencies, in a number of instances based overseas. Whilst it may be that, suitably explained, ownership of a particular Logo by the disposing entity at the time that the relevant brand was acquired by the Entain Group might be capable of being inferred, I consider that it must be incumbent upon the relevant Claimant claiming ownership of copyright in a particular Logo to explain how it is alleged that it became owner of copyright therein consequential thereupon bearing in mind that such information ought to be within the records and knowledge of Entain Group. 129. Sub-paragraph 15(aa)(ii) deals with the position if and to the extent that copyright in one or more Logos is held by another person and is not owned by the Claimants, pleading, essentially, that, in these circumstances, an exclusive licence in favour of “the Claimants” is to be inferred. There are, I consider, a number of difficulties with this, including in particular that: i) The pleading does not, again, identify which of the Claimants is the exclusive licensee in respect of which Logo or Logos. Page 31 Approved Judgment IL-2025-000145 ii) iii) I agree with the Defendants’ submission that a plea as to entitlement to an exclusive licence in circumstances such as the present case requires the identification of, or at least a properly pleaded case as to the ownership of the copyright out of which the exclusive licence is said to have been granted, expressly or by implication. This is, essentially, for two reasons. Firstly, it is unlikely to be possible to properly plead the basis for an exclusive licence without explaining the basis upon which the exclusive licence is said to have been granted. This would almost certainly, as I see it, require an understanding of how the copyright is owned, and by whom. Secondly, because there is authority to the effect that a claim for infringement of copyright by an exclusive licensee requires the joinder of the copyright owner as either claimant or defendant – see the authorities referred to in paragraph 64 above. Sub-paragraphs 15(bb)(i) and (ii) advance similar contentions with regard to inferring ownership or the grant of an exclusive licence in respect of copyright in the Claimants’ websites. Somewhat similar difficulties arise, in a situation where the website layouts appear to have been devised, by and large, by persons other than employees of the Claimant owning copyright in the relevant website. It is plain that, as matters stand, no individual Claimant has sought to articulate a case of ownership of any websites represented by the screenshots that are relied upon by the Claimants, with Ms Ashby explaining that assignments are being obtained from the appropriate parties, without providing any real particulars as to what this involves. Indeed, although the screenshots that are relied upon by the Claimants have been identified, and these identify the particular brands in respect of which it is alleged that there has been infringement of the copyright in the Logo relating thereto, there is a lack of clarity as to which Claimant claims ownership of, or an exclusive licence to which particular website.

130. With regard to sub-paragraph 15(d) of the draft APofC, and the Claimants' reliance upon the statutory presumptions in s. 104(4) and s. 104(5) CDPA 1988, the difficulty with this plea is that it is inconsistent with the plea as to ownership or exclusive licence based upon inference, and, more fundamentally, no particulars are provided as the basis upon which it is said that the statutory presumptions apply. Mr Selmi did, as referred to in paragraphs 109 and 110 above, seek to explain how the presumptions are said to work in the present case, but no particulars are provided in the draft APofC. As to the arguments advanced by Mr Selmi: i) ii) The argument advanced in relation to s. 104(4) cannot, as I see it, really assist the Claimants unless the Claimants can, in respect of the respective Logos, identify when the work that they claim ownership of copyright in respect of was first published. Without that information, one cannot know who the publisher was at the date of first publication even if it can be shown that a name purporting to be that of the publisher appeared on copies of the work as first published. If one does not know who the publisher was at that time, then it cannot be said how the presumption assists the Claimants, or any of them. As to the argument advanced in relation to s. 104(5), it must, I consider, be incumbent upon the Claimants to actually set out in their Particulars of Claim make a properly reasoned case as to when the first publication of the work in respect of which copyright protection is sought occurred. The Claimants Page 32 Approved Judgment IL-2025-000145 complain that if the Particulars of Claim are struck out, then they will not be able to carry out the enquiries required in order to set out their case in support of the presumption. However, I consider that such information is required before the plea can properly be made. 131. 132. In conclusion, in relation to the question of ownership or exclusive licence, and the requirement of a claimant to plead the title to sue, i.e. as owner or exclusive licensee, for infringement of copyright, I consider that, in light of the various difficulties that I have identified, the draft APofC fall well short of pleading a proper case as to title to sue. This is because paragraphs 15(aa), (bb) and (d) thereof do not, I consider, state all the facts necessary for the purposes of formulating a complete cause of action and, in any event, do not plead sufficient facts to enable the Defendants to understand the Claimants' case and respond properly thereto. I do not consider that it can be appropriate for claimants, as late in the day as the case management conference in a case and after the proceedings have been on foot for some 11 months or so, to say that they are in the process of obtaining the requisite assignments without explaining why this could not have been done before now and without providing any real detail as to what is being done. Further, I do not consider it satisfactory to say that further enquiries will be carried out with regard to matters such as first publication etc., without first explaining why this could not have been done before now. 133. In the circumstances, I consider that the only proper course is to strike out the Particulars of Claim on this title/ownership ground alone, subject to giving the Claimants the opportunity to serve revised Particulars of Claim addressing the issues that I have identified if this can be accomplished within a comparatively limited period of time. Pleading of subsistence of copyright, and identification of the work with precision 134. 135. 136. The first issue raised by the Defendants is an alleged lack of clarity regarding the Claimants' websites. Clearly, if copyright is to be considered by reference to its component

parts as contended by the Defendants, then there is an issue in that there is no plea in relation thereto. However, as I have explained, the Claimants' case is that the websites taken as a whole at any point in time are original artistic (graphic) works, and that what copyright is being claimed over is the website as represented by the screenshots shown in Annex 3(a) to the draft APofC. There is, I consider, at least a real prospect of the Claimants establishing at trial that there can be copyright in a website taken as a whole at any point in time, and to this extent there is, I consider, certainty as to what copyright is being claimed over. Further, in the Claimants' favour is the point that given that what is complained of is an exact copy of the websites in which the Claimants claim copyright, there would not need to be a great deal of originality in the latest iteration of the website for the copy to infringe. I have considered the Defendants further points referred to in paragraph 33 above. However, I consider that there is at least a maintainable case that what appears on the relevant Defendant's website is a copy of the relevant Claimant's website and so the screenshot represents how the relevant has infringed by copying. I do not understand Page 33 Approved Judgment IL-2025-000145 the Claimants to be claiming copyright in the screenshots themselves or that the Defendants have copied the latter, but this is something that should be clarified in any amended Particulars of Claim.

137. However, apart from the fact that authorship/ownership of copyright in the Claimants' websites by the relevant Claimant claiming to have copyright therein is yet, for the reasons that I have explained above, to be properly pleaded, I am concerned that there is no proper plea as to what is said to be original in the Claimants' websites. 138. 139. 140. 141. 142. 143. Paragraph 15(a) of the draft APofC pleads in general terms that the Claimants' websites are original works "in that they are not copied from other graphic works and are an expression of their authors' own intellectual creations, reflecting their personalities, as an expression of their free and creative choices so as to stamp the works with their personal touch." However, one would have thought that each refreshed version of the website will substantially be a copy of the last version, albeit with the potential, if nothing more, for some originality in the refreshed version. In circumstances such as the present, I consider that properly pleaded particulars of claim alleging infringement of copyright by the copying of a website not only need to explain how the particular claimant claiming copyright has come to have ownership of the copyright, e.g. because it was created by its employee(s) or it has taken an assignment thereof, but also need to explain the factual basis for the assertion that it is an original artistic (graphic) work other than by recitation of the statutory formula. Otherwise, it is difficult to see that the Particulars of Claim (even in the form of the draft APofC) have, in this respect, fulfilled their necessary function of stating all facts necessary for the purposes of formulating a complete cause of action, and enabling the defendant to know the case that it has to meet. Paragraph 15(a) of the draft APofC fails to do this so far as the Claimants' websites are concerned. This leads on to the Defendants' contentions concerning an alleged lack of particularity regarding copying, and regarding creative choices, which I consider can conveniently be considered together. I take Mr Selmi's point regarding how *Lidl v Tesco* might have been pleaded but, as I have explained, the position in that case was very much

simpler, with only one claimant, one logo under consideration, and no real issue so far as ownership of the copyright. Each case must, as I see it, be considered on its own facts. The position in the present case is that it is pleaded in paragraph 15(a) of the draft APofC that the Logos are all original works on the basis, again, that “they are not copied from other graphic works and are an expression of their authors’ own intellectual creations, reflecting their personalities, as an expression of their free and creative choices so as to stamp the works with their personal touch.”

144. However, it had been pleaded in the original paragraph 15(b) that it is now proposed to delete that the Logos were originally created by teams of employees of the Claimants and were subsequently added to by other teams of employees of the Claimants, in all cases acting in the course of their employment. This was relied upon in support of the averment that the Claimants own copyright in all iterations of the Logos. This pleading Page 34 Approved Judgment IL-2025-000145 no doubt had in mind the point highlighted in *Lidl v Tesco* by Arnold LJ at [44] regarding the development of various versions or iterations of a logo and sought to provide a cogent factual basis for asserting that copyright was owned by the Claimants because they had been created by their employees who brought their labour and creative choices thereto.
145. Notwithstanding that the original Particulars of Claim contained a statement of truth, the Claimants are unable to maintain their claim that all iterations of all the Logos were the product of their employees, hence the amendments made by the introduction of the new sub-paragraphs 15(aa) and (bb), and the amendments to sub-paragraphs 15(c) and (d). The difficulty is that, in a context where it remains wholly unclear from the pleaded case who the authors were of the various iterations of the various logos, it becomes all the more important to know whether and to what extent the current versions of the Logos the subject matter of the present claim are copied from earlier versions. In addition, it becomes difficult in these circumstances to maintain the plea in paragraph 15(a) that the Logos are not copied from other graphic works, i.e. earlier iterations of the Logos.
146. Consequently, in order to fulfil the function of stating all facts necessary for the purposes of formulating a complete cause of action, and in any event for the purpose of enabling the defendant to know the case that it has to meet, I consider that in respect of each of the Logos, and in conjunction with a proper plea as to ownership of copyright or exclusive licence, it needs to be explained what original features in the Logo reflecting the expression of the authors’ own intellectual creations etc. support the claim to the copyright alleged to have been infringed.
147. Given that paragraph 15 of the draft APofC does not do this, this does, I consider, provide a further proper basis for striking out the copyright allegations in the Particulars of Claim pursuant to CPR 3.4(2)(a), (b) or (c). 148. I am not persuaded that the Defendants’ complaints regarding the plea concerning qualification for UK copyright protection under s. 154 and/or s. 155 CDPA 1988 take matters much further. There is a cogent argument that a plea in relation thereto ought at least to specify the date and place of first publication. However,

even if this is right, any deficiencies are liable to be remedied if the other deficiencies in the pleading that I have identified are remedied.

149. On its own, paragraph 15(c) of the draft APofC does plead the essential requirements of s. 154 and s. 155 CDPA 1988, and the reality is that the overwhelming likelihood is that the relevant author was a qualifying person and that the Logos were each first published in the UK or in another qualifying jurisdiction notwithstanding the evidence that a number of the Logos were developed outside the UK. Overall conclusion in respect of the Defendants' Application 150. I consider that the pleaded allegations in respect of copyright contained in paragraph 15 of the draft APofC do, to the extent that I have indicated above, fail to fulfil the function of stating all facts necessary for the purposes of formulating a complete cause of action and, further and in any event, fail to state all facts necessary for the purpose of enabling the Defendants to know the case that they have to meet. Page 35 Approved Judgment IL-2025-000145 151. In the circumstances, I consider that the appropriate course is to accede to the Defendants' application and strike out the infringement of copyright allegations in the Particulars of Claim. However, provided that the defects that I have identified can be remedied within reasonably short order, I would be minded to provide that the strike out of these allegations should only take effect if the Claimants fail to file and serve corrective and compliant amended Particulars of Claim within a prescribed period of time. The Claimants' Application

Introduction

152. The Claimants apply, pursuant to CPR 3.4(a), (b) and/or (c) to strike out the following paragraphs of the Defence and Counterclaim: i) ii) iii) Paragraphs 2 to 26 and cross-references thereto in the body of the Defence at paragraphs 58(e), 72, 73(c) and 77, on the basis that they consist of generalised, irrelevant and/or inadmissible submissions; Paragraph 62(a), the reference to a likelihood of confusion in paragraph 64(b), and the reference to s. 10(2) TMA 1994 in the preamble to paragraph 65, on the basis that there is no pleaded allegation of confusion, nor of damage to the origin function of the trade marks in question; and Paragraphs 91-93, because there is no procedural or substantive basis for the conditional pleading to be found therein in relation to liability for revocation of two trade marks (the Newer Marks) which are still within their grace period, but where the grace period will, subject to use being made of the marks in the meantime, come to an end in February and June next year. 153. I will deal with each of these heads in turn. Paragraphs 2 to 26 – the introductory narrative 154. These paragraphs contain introductory narrative in respect of both the trade mark claim (paragraphs 2-10) and the copyright claim (paragraphs 11-26). The Claimants' essential complaint is that the paragraphs in question consist of generalised, irrelevant and/or inadmissible submission, and are neither required nor appropriate for a pleading. In his submissions, Mr Selmi described the paragraphs in question as reading more like a press release for the Defendants, or the beginning of a skeleton argument, than a pleading, and he submitted that it is objectionable that the paragraphs in question do not engage with the allegations contained in specific paragraphs

of the Particulars of Claim.

155. Given that the Particulars of Claim are, in respect of the copyright claim, liable to be struck out unless a corrective amended version is served, it is plainly necessary to deal with the paragraphs that relate to the trade mark claim separately from the paragraphs that relate to the copyright claim, which can now be dealt with very much more briefly than would otherwise have been the case. 156. So far as paragraphs 2 to 10 of the Defence and Counterclaim dealing with the trade mark claim are concerned, I am not persuaded that the case has been made for striking Page 36 Approved Judgment them out. IL-2025-000145 157. 158. I do not consider that CPR 16.5(1), which requires that a defence “must deal with every allegation in the particulars of claim”, mandates that it should do so exclusively on a paragraph by paragraph basis. In appropriate cases it may be helpful to have an overall summary of a party’s position before the party deals in detail with the other party’s case. I note that the paragraphs dealing with the trade mark claim are relatively short and the Claimants have not sought to suggest that they raise any unsustainable points of law that should be struck out. Mr Selmi correctly identified that there is a danger in the use of introductory paragraphs such as this given the possibility of inconsistency between the same and the way that the case is advanced in the paragraphs specifically responding to the allegations contained in the particulars of claim. However, no case was advanced that there was any such inconsistency concerning the paragraphs in question. 159. In these circumstances, I do not consider it appropriate to exercise my discretion in favour of striking out the relevant paragraphs.
160. With regard to the introductory paragraphs 11 to 26 of the Defence and Counterclaim dealing with the copyright claim, the position is very different.
161. On the basis of my finding above, the copyright claim will be struck out unless the Claimants can provide compliant Particulars of Claim. If compliant Particulars of Claim are served, then the Defendants will have to re-plead to the relevant allegations, and a number of the points advanced in paragraphs 11 et seq of the Defence and Counterclaim will become otiose, in particular, a number of the points made in paragraphs 11 to 13.
162. However, it is fair to say that had I reached a different conclusion in respect of the Defendants’ Application to strike out the Claimants’ copyright claim, then I would have been minded to strike out paragraphs 14 to 26 of the Defence and Counterclaim for the following reasons: i) ii) The fair dealing defence mentioned in paragraph 14 does not provide any particulars with regard to the basis upon which this defence is advanced. In the course of submissions, Mr Johnson mentioned s.30(1Za) CDPA 1988, the defence of fair dealing by quotation. However, if this is to be a defence that is advanced in response to any compliant version of the Particulars of Claim, then I consider that this needs to be properly explained and particularised, and that it is more appropriately dealt with responding to particular allegations contained in any compliant version of the Particulars of Claim rather than within introductory paragraphs. With regard to the defences of abuse of rights (paragraphs 15 to 19), freedom of expression (paragraphs 21 to 23), and the effect of the Retained EU Law

(Revocation and Reform) Act 2023 (paragraphs 24 to 26), the allegations amount to little more than bare assertion unrelated to the particular facts of the present case and which are not developed in specific response to the allegations contained in the relevant paragraphs of the Particulars of Claim. I can see that there may be difficulty with these lines of defence, noting, so far as the abuse of rights defence is concerned, that neither Joanna Smith J or the Court of Appeal Page 37 Approved Judgment IL-2025-000145 in *Lidl v Tesco* expressed any difficulty with concurrent claims of infringement of trade mark and infringement of copyright. However, this would not be the right occasion to go into the merits of these particular lines of defence given that they may be academic, and that I only heard limited argument thereupon. However, if they are to be relied upon in any Defence to corrective Particulars of Claim, then I consider they should be pleaded in specific response to the relevant paragraphs thereof rather than by way of opening introduction. Paragraph 62(a), the reference to a likelihood of confusion in paragraph 64(b), and the reference to s. 10(2) TMA 1994 in the preamble to paragraph 65 163. 164. The basis of the Claimants' complaint in relation to these paragraphs is that they plead to allegations of confusion when there is no pleaded allegation of confusion in the case, nor of damage to the origin function of the Trade Marks. The Defendants accept that the reference to s. 10(2) TMA 1994 in the preamble to paragraph 65 of the Defence and Counterclaim can only be relevant to an allegation of confusion, but they say that this was a mistake, and they readily accept that this reference to s.10(2) should be struck out.

165. However, the Defendants' case is that apart from this reference to s. 10(2), the Defence was not intended to and does not plead to an allegation of confusion. Rather, they submit that confusion can be material in relation to other aspects of infringement and that they plead to the question of confusion for this reason. 166. In relation thereto, they submit as follows: i) ii) iii) It is well-established that a claimant's mark is not infringed where the defendant's mark does not affect the essential function of the mark, namely the origin function, such as through long-standing honest concurrent use – see *Budějovický Budvar v Anheuser-Busch*, EU:C:2011:605. C-482/09 Accordingly, the reference to confusion in paragraph 7 of the Defence is appropriate and proper. The absence of likelihood of confusion goes to whether the Defendants can establish that there is referential use, which does not affect the essential function of the trade mark. Further or in the alternative, the question of whether there is a commercial connection between the parties (i.e. confusion between them) is material to whether the Defendants' use is in accordance with honest practices in industrial and commercial matters – see C-228/03 *Gillette Co v LA Labs* [2005] ECR I-2337, at [42] and [49], and *Samuel Smith Old Brewery (Tadcaster) v Lee*

- [2011] EWHC 1879 (Ch), [2012] FSR 7, at [116]-[118]. Accordingly, the references in paragraphs 9 and 65 (and paragraph 65(e)) of the Defence and Counterclaim are appropriate and proper. iv) Further, confusion is relevant to establishing whether there is a link between the marks for the purposes of section 10(3) TMA 1994 (or their uses in this case) – see C-252/07 *Intel Corp v CPM* [2008] ECR I-8823, [42]. Accordingly, the Page 38 Approved Judgment IL-2025-000145 reference in paragraph 64(b) of the Defence and Counterclaim is

appropriate and proper. 167. I consider that each of these points is well arguable, and therefore that the Defendants should not be prevented from relying on the matters alleged once it is understood that they are not being deployed to meet a case of confusion. Mr Selmi really did not have any answer to this. Paragraphs 91 to 93 – the Newer Marks 168. The Defendants’ counterclaim seeks a declaration of invalidity in respect of, and revocation of “the Old Marks” on the basis of their non-use until at least five years from the date after the registration (i.e. where there has been no use thereof within the grace period, and the latter has expired). The question that arises as to whether, in this context, it is appropriate for the Defendants to also make reference to the two Newer Marks (UK3630915 and UK3772016) in respect of which the five year grace period will not expire until 12 February 2027 and 25 June 2027 respectively. The Defendants plead five years non-use, and, in paragraph 93(c) of the Defence and Counterclaim, that insofar as the trial of the Counterclaim takes place after the relevant expiry dates of either or both of the Newer Marks, it is in accordance with the overriding objective to seek to resolve the validity of those marks at the trial of the present claim rather than by having to commence a later revocation action. 169. The Claimants maintain that it is wholly inappropriate and without precedent to maintain inchoate allegations and claims of this kind.

170. However, I note that no specific relief is claimed in relation to the Newer Marks in that paragraphs 1 and 2 of the Prayer to the Particulars of Claim simply list the Old Marks. Further, as a matter of principle it would have been open to the Defendants to seek a declaration that the Newer Marks would become liable to be revoked absent use thereof prior to the relevant expiry dates, and there are practical case management reasons for dealing with all the relevant trade marks in respect of which revocation might be sought at one time without the need for duplicity of proceedings. 171. In the circumstances, on balance, I am persuaded that it is not appropriate to strike out the relevant paragraphs of the Defence and Counterclaim. In order to seek relief in relation to the Newer Marks, should it become appropriate to do so, then the Defendants will have to apply for permission to amend the Prayer to the Counterclaim to make reference thereto. The Court can, at that stage, consider the appropriateness of dealing with the question of the revocation of these Newer Marks at the trial of the present proceedings. Conclusion in respect of the Claimants’ Application 172. For the reasons set out above, subject to the reference to s. 10(2) TMA 1994 being deleted from paragraph 65 thereof, I am not persuaded that it is appropriate to strike any paragraphs of the Defence and Counterclaim, although if I had not acceded to the Defendants’ Application relating to the copyright claim, then it is likely that I would have required that paragraphs 14 to 26 be struck out, or at least redrafted and repositioned within the Defence and Counterclaim. Page 39 Approved Judgment IL-2025-000145 Page 40 Approved Judgment IL-2025-000145 APPENDIX A COPYRIGHT ALLEGATIONS IN DRAFT AMENDED PARTICULARS OF CLAIM “Copyright

15. Further or alternatively, the Claimants are and have at all material times been the owner of, or exclusive licensee of, UK copyright subsisting in (1) the Claimants' logos shown below (the "Claimants' Sports Logos" and "Claimants' Casino Logos"; hereinafter the " "); and (2) in respect of the Claimants' bwin Website, Coral Website, Ladbrokes Website and Sportingbet Website, the website extracts are 3(a) hereinafter referred to as the "Claimants' Websites)": (together, the website Claimants' Logos at Annex " or the extracts "Logos shown herein relied upon only The Claimants' Sports Logos The Claimants' Casino Logos
- a. The Claimants' Sports Logos, Claimants' Casino Logos and Claimants' Websites are original artistic works, being graphic works, pursuant to Sections 1(1) and 4(1)
- (a) of the Copyright, Designs and Patents Act 1988 (the "CDPA 1988"). The Claimants' Sports Logos, Claimants' Casino Logos and the Claimants' Websites are original works in that they are not copied from other graphic works and are the expression of their authors' own intellectual creations, reflecting their personalities, Page 41 Approved Judgment IL-2025-000145 as an expression of their free and creative choices so as to stamp the works with their personal touch; Claimants' Logos the aa. To best hereunder plead as follows: of the Claimants' knowledge and understanding, the Claimants (i) the made enquiry, Claimants reasonable Having to identify all of the dates of creation of the aforesaid Logos and/or their authors. If and to the extent that the Claimants' Logos or any part of them were not created by employee(s) it is reasonably inferred that the Claimants own the copyright in the said logos for the following reasons: employment, Claimants presently of their course of the in the able not are A. The Entain Group and the Claimants acquired the bwin, Coral, Ladbrokes, Sportingbet, Foxy, Gala and Party Casino brands as pleaded at paragraph 13 herein. It is reasonably inferred that the relevant intellectual property rights, including copyright, would have been transferred to the Entain Group and the Claimants pursuant to those acquisitions; B. Each of the Logos shown below is a registered trade mark in multiple or another Claimants by one owned of the jurisdictions case company within the Entain Group: in each The Claimants' Sports Logos Page 42 Approved Judgment IL-2025-000145 The Claimants' Casino Logos C. The Claimants and other companies within the Entain Group have engaged in a long course of business during which they have used the Logos extensively, works by the Entain Group and the Claimants, specifically, are consistent with the are in the acts not aware of any competing claim to ownership from any third party; of ownership of copyright at paragraph Claimants' as pleaded Claimants 13 herein. dealings Logos. Such with The the D. In the premises, it is reasonably copyright in each of the Logos. inferred that the Claimants own the (ii) exclusive In the alternative, if and to the extent that the copyright in one or more Logos is held by another person and is not owned by the Claimants, the Claimants are the of a copyright owner pursuant to Section 101(1) CDPA 1988. The Claimants hereunder plead as follows: A. The copyright, particulars at (A)-(D) repeated; licensee of such having all the rights above are B. The Logos are, by definition, intended to function as logo devices for the Claimants' business, and it is reasonably inferred that they were designed with the intention that they be used for that purpose exclusively by the Claimants, alternatively such an intention would have been obvious to a reasonable author

or authors; C. In the circumstances, it is reasonably inferred that any Logos that were, in fact, created by a third party and wherein the copyright is not owned by the Claimants, were created pursuant to a contract between the Claimants and the author or authors of the Logos. In the premises, it was an express term, alternatively an implied term, of such contract that the Claimants were to be the exclusive licensee of the copyright in the said logo thereunder; D. If, contrary to the Claimants' primary case, the Claimants are not the owner of the copyright in one or more Logos, it is reasonably inferred that they are exclusive licensees.

- b. The Claimants' Sports Logos, Claimants' Casino Logos and Claimants' Websites were originally created by teams of employees of the Claimants and were subsequently added to by other teams of employees of the Claimants over time, in all cases acting in the course of their employment. The Claimants therefore own copyright in the same, by virtue of Section 11(2) of the CDPA 1988. The Claimants contend that they own copyright in all iterations of the Claimants' Sports Logos, Claimants' Casino Logos and the Claimants' Websites and will rely for the purposes of this claim on any versions of the Claimants' Sports Logos, Claimants' Casino Logos and Claimants' Websites that have been reproduced by the Defendants Page 43 Approved Judgment IL-2025-000145 (see below); Claimants' Websites the bb. To best hereunder plead as follows: of the Claimants' knowledge and understanding, the Claimants (i) (ii) the not Claimants of aspects reasonable dates enquiry, of creation Having made identify all of the their and/or authors. If and to the extent that the Claimants' Websites or any part of them were not created by employee(s) of the Claimants in the course of their in the inferred employment, said works for the following reasons: presently Claimants' able Websites it is reasonably are of the Claimants copyright own that to the the A. The Claimants and other companies within the Entain Group have engaged of in a long the Claimants' Websites extensively, as pleaded at paragraph 13 herein; of business iterations during course earlier which have used they B. Such dealings with the works by the Entain Group and the Claimants, specifically, are consistent with the acts of ownership of copyright in the Claimants' claim are to ownership from any third party; competing Claimants Websites. of any aware The not C. In the premises, that it is reasonably copyright in each of the Claimants' Websites. inferred the Claimants own the In the alternative, if and to the extent that the copyright in one or more aspects of the Claimants' Websites is held by another person and is not owned by the having Claimants, all the rights of a copyright owner pursuant to Section 101(1) CDPA 1988. The Claimants hereunder plead as follows: copyright, Claimants exclusive licensee of such the are the A. The particulars at (A)-(C) above are repeated; B. The Claimants' Websites advertise, promote and offer the Claimants sports betting and gaming services, and are therefore integral to the Claimants' business. It is reasonably inferred that the Claimants' Websites were designed the with the intention that they be used Claimants, alternatively such an intention would have been obvious to a reasonable author or authors; for that purpose exclusively by C. In the circumstances, it is reasonably inferred that any aspects of the Claimants' Websites that were, in fact, created by a third party and wherein Page 44 Approved Judgment IL-2025-000145 the copyright is not

owned by the Claimants, were created pursuant to a authors of the said works. the contract between of such In the term, contract of the copyright in the said works thereunder; the Claimants and an express author or alternatively premises, that term, licensee to be the Claimants an implied exclusive it was were the D. If, contrary to the Claimants' primary case, the Claimants are not the owner of the copyright in one or more aspects of the Claimants' Websites, it is reasonably inferred that they are exclusive licensees.

- c. The Claimants' Sports Logos, Claimants' Casino Logos and Claimants' Websites qualify for UK copyright protection. Insofar as the authors of the said works are known, they The aforesaid employees were at all material times qualifying persons pursuant to Sections 154(1) and/or (2) CDPA 1988, that is to say, British Citizens and/or individuals domiciled or resident in the UK, under Sections 154(1)(a) and/or
 - (b) of the CDPA 1988. Further or alternatively, the said works qualify UK copyright protection by reference to country of first publication pursuant to Sections were first published in the United Kingdom and are 155(1) and/or entitled to UK copyright under Section 155(1)(a) of the CDPA 1988; CDPA 1988 for (2)
 - d. Without prejudice to the foregoing, where Logos and Claimants' Websites cannot be ascertained by reasonable inquiry, the Claimants will, if necessary, rely on the statutory presumptions in Sections 104(4) and (5) of the CDPA 1988." Claimants' author(s) of the the
- Page 45

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