



Neutral Citation Number: [2020] EWHC 688 (Ch)

Case No: HC 2016-002285

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST (ChD)
INTELLECTUAL PROPERTY

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: 23 March 2020

Before:

MR. RECORDER DOUGLAS CAMPBELL QC
(Sitting as a Judge of the Chancery Division)

Between:

(1) LIFESTYLE EQUITIES CV
(2) LIFESTYLE LICENSING BV
(each company incorporated under
the laws of the Netherlands

Claimants

- and -

(1) SANTA MONICA POLO CLUB LIMITED
(2) AZIRE GROUP LIMITED
(3) CONTINENTAL SHELF 128 LIMITED
t/a JUICE CORPORATION
(4) MR. ZUBAIR MUKHTAR ALI

Previous
Defendants

(5) MR. KASHIF AHMED
(7) YOURS CLOTHING t/a BAD RHINO
(11) HORNBY STREET LIMITED
t/a JUICE CORPORATION

Defendant

Previous
Defendants

(12) MRS. BUSHRA AHMED

Defendant

(13) MO & A LTD t/a BE JEALOUS
(14) BIGGCLOTHING4U LIMITED
(15) EON CLOTHING LIMITED
(16) SIZE BASE LIMITED

Previous
Defendants

MR. THOMAS ST. QUINTIN (instructed by **Brandsmiths**) for the **Claimants**

The **Fifth and Twelfth Defendants** appeared as litigants in person

Hearing dates: 4-5, 7 February 2020

APPROVED JUDGMENT

I direct that pursuant to CPR PD 39A paragraph 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Mr Recorder Douglas Campbell QC:**Introduction**

1. This is the second trial in these proceedings, according to an order made by Arnold J (as he then was) on 3rd April 2017. I heard the first trial in October 2017 and gave judgment on 21st December 2017: see [2017] EWHC 3313 (Ch). In summary the Claimants own various trade marks for “BEVERLY HILLS POLO CLUB”. D3 owned the word mark “SANTA MONICA POLO CLUB” and permitted D11 to use it. D11 was the only Defendant responsible for designing, manufacturing, importing, and selling Santa Monica Polo Club product.

2. In that first trial, I decided the following issues:

- i) Infringement of the Claimants’ EU trade mark no. 005482484 (“the EU mark”) and UK registered trade mark no. 1259226 (“the UK mark”) pursuant to s 10(2) of the Trade Marks Act 1994 (“the Act”)/Art 5(1)(b) of the Trade Mark Directive, 2008/95/EC (“the Directive”); and Article 9(2)(b) of Regulation 207/2009, as amended by Regulation 2015/2424, which since 1 October 2017 has been codified by Regulation 2017/1001 (“the Regulation”) respectively.
- ii) Infringement of the EU and UK marks pursuant to s 10(3) of the Act/Art 5(2) of the Directive/Art 9(2)(c) of the Regulation.
- iii) Passing off.
- iv) Breach of contract by D3 or D11.
- v) Procuring of that breach of contract by D5.
- vi) The Defendants’ counterclaim for unjustified threats of trade mark infringement.

3. In summary I found that all of the Defendants’ SANTA MONICA POLO CLUB signs infringed the Claimants’ EU and UK marks pursuant to s 10(2)/Art 5(1)(b) TMD/Article 9(2)(b) EUTMR and amounted to passing off, save for a sign referred to as the “three-horse sign”. However all of the Defendants’ signs (ie including the “three-horse sign”) infringed the UK mark pursuant to s 10(3)/Art 5(2) TMD; and all signs first used in 2010 or later also infringed the EU mark pursuant to Art 9(2)(c) EUTMR. I dismissed each of the other claims (ie breach of contract, procuring of breach of contract, and the threats counterclaim). I was not asked to consider the issue of quantum at that trial, in accordance with normal practice in intellectual property actions. I refused permission to appeal and no application for permission to appeal the findings of infringement or passing off was ever made to the Court of Appeal.

4. The claims against most of the other original Defendants (namely, all except D3, D5, D11, and D12) have now settled. D3 and D11 are in administration and the claims against them are stayed pursuant to Schedule B1 of the Insolvency Act 1986. They were placed into administration on 16th January 2018.

5. The Claimants' UK mark has been partially revoked since the first trial, but the Claimants submitted (and I accept) that nothing turns on this. For instance the Claimants' EU mark remains as it was.
6. The remaining issues to be decided at this second trial are as follows:
 - a. Is D5 jointly and severally liable with D3 and/or D11 for acts of infringement?
 - b. If so, what financial remedy should be awarded against D5?
 - c. Is D12 jointly and severally liable with D3 and/or D11 for acts of infringement?
 - d. If so, what financial remedy should be awarded against D12?
7. The Claimants sought an account of profits, not an enquiry as to damages, and so far as quantum is concerned the Claimants focussed on D11's profits rather than those of D3. I will still consider the issue of joint liability with D3 since it was argued and it is possible, in this complicated litigation, that something may turn on it.
8. D5 (or "Mr Ahmed": I will use the terms interchangeably without intending any disrespect) and D12 ("Ms Ahmed") were represented by Pannone Corporate LLP at the first trial. For part of the time leading up to the second trial they were represented by Excello Law, but Excello Law came off the record on or about Friday 12 July 2019. Since then they have largely represented themselves, save for some assistance given from time to time by Dr Timothy Sampson on a direct access basis.
9. This second trial was originally listed to begin on Monday 15 July 2019 before Penelope Reed QC, sitting as a deputy judge of this Court. Not only had the Defendants' solicitors very recently come off the record, but D5 was admitted to the emergency department of Royal Preston Hospital on Sunday 14 July complaining of chest pains. After various investigations D5 was discharged some time on Monday 15 July, having been given a two week course of aspirin. The upshot was that the deputy judge granted an adjournment with "enormous reluctance". The second trial was then relisted before me on Tuesday 4th February 2020.
10. At the outset of the hearing before me, the Defendants (represented by Dr Sampson) applied for a second adjournment of the second trial. I dismissed that application for reasons set out in my judgment in respect thereof: see [2020] EWHC 198 (Ch). The trial continued on the next day, Wednesday 5th February 2020 with the Defendants representing themselves. In the case of Ms Ahmed, I granted permission for her to have a McKenzie friend, Ms Osmat Ahmed.
11. This is therefore yet another case where there is a marked disparity in resources between the parties. In particular the Claimants are professionally represented by specialist solicitors and counsel whereas the Defendants have none. However the fact that one side consists of litigants in person is not of itself a reason to apply different legal procedural rules, let alone some different substantive law: see **Barton v Wright Hassall LLP** [2018] UKSC 12. The substantive law is the same for everyone.

The witnesses

12. On behalf of the Claimants I heard oral evidence from Mr Eli Haddad, the CEO of the Claimants. The main point of his evidence was his expectation that D11, as a wholesaler, would make a gross profit on sales of between 40% to 50%. However whilst Mr Haddad had around 40 years of experience in the manufacture and distribution of fashion clothing generally he did not claim to have any specific experience of Manchester importers such as D11. Mr Haddad also considered that the Defendants were counterfeiters whereas I made no such finding at the trial. Finally there were some errors of detail in his written evidence. Those matters apart, I accept his evidence.

13. On behalf of the Defendants I heard from Mr Ahmed, Ms Ahmed, and Mr David Clegg of the AMS Accountants Corporate Limited (“AMS”). AMS are the former reporting accountants and auditors to D3 and D11, having been appointed some time in 2017. AMS also dealt with the personal tax returns of the directors and shareholders of D3 and D11, which included D5 and D12. Their oral evidence was important to the defence of D5 and D12 and the Claimants made a number of attacks thereon. I will therefore go into some detail about it.

14. As a witness, and as a litigant in person, Mr Ahmed was articulate and intelligent. It is easy to see why he became a successful businessman. However the last few years have plainly been hard both for him and for Ms Ahmed.

15. The Claimants made 2 main criticisms of his evidence. The first was that Mr Ahmed was, they said, dishonest. In support of this they relied on the evidence about his hospital admission, his evidence about certain OHIM proceedings, and his complaint that he was ambushed at the first trial with some earlier judgments which he had been criticised. The second criticism was that, as I had found in the first trial, he was again *“an unhelpful witness who would never volunteer information or correct any misunderstandings if he thought that doing so would adversely affect his interests”*: see my first judgment at [23]. For instance the Claimants put it to him in cross-examination that he had deliberately not asked AMS for any of D11’s internal documentation for D11’s 2016 and 2017 reports, an allegation Mr Ahmed denied.

16. I will take the second point first. In my judgment this criticism is well founded. It is all the more disappointing given that I criticised Mr Ahmed for adopting that very approach in the first trial. This criticism has nothing to do with the fact that Mr Ahmed was a litigant in person since it does not involve any issue of law. The upshot was that in many key areas I had very little evidence on important factual points from the person who was by far the best placed person in this trial to give that fact evidence.

17. Instead Mr Ahmed spent much of his evidence and time on complaints about trial bundles. I find that there is nothing in any of these complaints. For instance the Defendants never gave me an example of a document which they said should have been in the trial bundles (which ran to 4 bankers’ boxes full of lever arch files) but was not. On the contrary the only “missing” documents were those on issues where the Defendants had the burden of proof and which the Defendants themselves had failed to obtain.

18. I also accept the Claimants' submission that Mr Ahmed deliberately chose not to ask AMS for the internal financial records (including management accounts) of D11, and I reject Mr Ahmed's denial thereof. AMS was using these records for an audit which was part completed at the time of the administration, and Mr Ahmed accepted that those records would "*of course*" have been in AMS's hands, both before and after D11's 2016-2017 reports. I find that these records were important to the case and that Mr Ahmed knew that. I can see no reason for his failure to request these records other than a deliberate decision.

19. Another part of Mr Ahmed's evidence was about whether he had repaid a certain loan. I did not believe this part of his evidence either. I return to this below.

20. I reject the other grounds said to establish Mr Ahmed's dishonesty. The evidence relating to the hospital discharge had some puzzling aspects but certainly not enough to show dishonesty. His evidence about being "believed" in the OHIM proceedings was, in my judgment, merely his way of saying that he won them as he in fact did. The evidence about the alleged "ambush" at the first trial did not establish dishonesty either.

21. Ms Ahmed's evidence was more limited in scope than that of Mr Ahmed and focussed largely on her own role within D11 (in particular, as regards her involvement with a "division" of D11 known as House of Brands). The only criticism made by the Claimants was her evidence as regards certain emails which she sent to various customers of D11. Again I will deal with the substance of this below but in my judgment she had simply forgotten about these emails due the passage of time. When they were shown to her, she accepted that they were emails which she had sent. However I find that she was also reluctant to volunteer factual information which she would have known was important: see below. She also spent much of her time on unfounded complaints about trial bundles.

22. Mr Clegg's evidence was opinion evidence, but no objection was taken on that ground. He first became involved with D11 in the first quarter of 2017. He explained that management accounts were created to December 2016 and to June 2017 and that all of this data, along with personal tax returns for Mr and Ms Ahmed "*remains within our business*". He knew of no request to provide this information. He pointed out a number of times that that he, or rather his firm, had done over 600 hours of work on D11's accounts. That suggests to me that such work may not have been straightforward.

23. The Claimants also submitted that whilst Mr Clegg's oral evidence was helpful and honestly given his written evidence was less reliable. For instance it was generally conclusory and unsupported. I agree.

Joint and several liability

Legal context

24. There are 3 issues of law which need to be considered.

- 1) The first is a relatively conventional issue about whether D5 and D12 authorised or procured D11's acts of infringement. In fact the argument was focussed on authorising rather than procuring.
- 2) The second is another conventional issue about whether D5 and D12 acted pursuant to and in furtherance of a common design to secure that such acts took place ("common design").

For both of these issues the law is well settled even if not always easy to apply. If either is established then D5 and D12 are jointly and severally liable with D11 for the infringement.

- 3) The third is a relatively novel point about whether, even if D5 and D12 are jointly and severally liable with D11 for either of these reasons, they are nevertheless not liable for the *profits* made by D11.

Authorising

25. The leading case is **CBS Songs v Amstrad Consumer Electronics** [1988] AC 2013, HL. This was considered more recently by Kitchin J (as he then was) in **Twentieth Century Fox v Newzbin** [2010] FSR 21 at [85]-[95]. Both of these were copyright cases but the reasoning is not so limited. As stated in **Newzbin** at [90], my emphasis:

"In my judgement it is clear from this passage that "authorise" means the grant or purported grant of the right to do the act complained of. It does not extend to mere enablement, assistance or even encouragement. The grant or purported grant to do the relevant act may be express or implied from all the relevant circumstances. In a case which involves an allegation of authorisation by supply, these circumstances may include the nature of the relationship between the alleged authoriser and the primary infringer, whether the equipment or other material supplied constitutes the means used to infringe, whether it is inevitable it will be used to infringe, the degree of control which the supplier retains and whether he has taken any steps to prevent infringement. These are matters to be taken into account and may or may not be determinative depending upon all the other circumstances."

Common design

26. The leading case here is the Supreme Court decision in **Fish & Fish Limited v Sea Shepherd UK** [2015] AC 1229. The Supreme Court was split on the facts, but not on the law: see [61] per Lord Neuberger, and the 3 materially identical formulations of the legal test at [21], [37], 55]. See paragraph [55] as follows:

55. It seems to me that, in order for the defendant to be liable to the claimant in such circumstances, three conditions must be satisfied. First, the defendant must have assisted the commission of an act by the primary tortfeasor; secondly, the assistance must have been pursuant to a common design on the part of the defendant and the primary tortfeasor that the act be committed; and, thirdly, the act must constitute a tort as against the claimant....

27. Lord Neuberger also made the point at [57] that

...once the assistance is shown to be more than trivial, the proper way of reflecting the defendant's relatively unimportant contribution to the tort is through the court's power to apportion liability, and then order contribution, as between the defendant and the primary tortfeasor"

See also Lord Sumption at [49] and Lord Mance at [100] making the same point.

If a party (A) is jointly and severally liable with another party (B), is A liable for profits made by B?

28. This was not an issue in **Sea Shepherd** and there is surprisingly little authority on it.

29. It did arise in **Hotel Cipriani v Cipriani Grosvenor Street** [2010] EWHC 628 (Ch). At [7], Briggs J as he then was, stated as follows, my emphasis:

"I must first deal with the relevant legal principles. By contrast with joint liability as tortfeasors for damages, including damages calculated on a royalty basis, an account of profits operates against each defendant separately, requiring him or it to disgorge such profits as are shown to have been derived by that defendant from the relevant infringements. In that respect, there is no difference between trademark infringement and passing off, even though the basis of liability for one is statutory and, for the other, based on the common law... The measure of liability is the profit derived by the defendant from the infringement."

30. The Claimants point out that this conclusion was uncontested since the Defendants were not represented at that trial, did not make any written or oral submissions, and did not call any evidence; and that no authority was cited. I agree. It also submits that since the hotel did not seek any payment from the director the underlined comments were merely *obiter*. I do not accept this. They were a necessary, albeit uncontested, part of the Judge's reasoning. Finally the Claimants submit that it may have been in the hotel's interests to treat the defendants separately for tactical reasons. This may be true.

31. As against that Briggs J's conclusion is supported by Professor Paul Davies, Professor of Commercial Law in the Faculty of Laws at UCL, in **Accessory Liability** (2015), at pp 264-267. Professor Davies suggests that "... *making the accessor account for profits which he or she never actually made seems very harsh*". He acknowledges that this "very harsh" approach is supported by the Canadian case of **Canada Safeway Ltd v Thompson** [1951] 3 DLR 295 (BCSC) and some first instance English cases (**Ostrich Farming Corp Ltd v Wallstreet LLC** (8 October 1998, unreported) and **Comax Secure Business Services Ltd v Wilson** (HHJ Seymour QC, 21 June 2001, unreported) but draws attention to more recent first instance English cases departing from it (**Ultraframe (UK) Ltd v Fielding** [2005] EWHC 1638 (Ch), Lewison J as he then was, at [1595]-[1600]; **Novoship (UK) Ltd v Mikhaylyuk** [2012] EWHC 3586, Christopher Clarke J, as he then was).

32. **Ultraframe** was a case about fiduciaries and dishonesty. At [1600]-[1601] Lewison J concluded as follows:

1600. I can see that it makes sense for a dishonest assistant to be jointly and severally liable for any *loss* which the beneficiary suffers as a result of a breach of trust. I can see also that it makes sense for a dishonest assistant to be liable to disgorge any profit which he *himself* has made as a result of assisting in the breach. However, I cannot take the next step to the conclusion that a dishonest assistant is also liable to pay to the beneficiary an amount equal to a profit which he did not make and which has produced no corresponding loss to the beneficiary. As James LJ pointed out in *Vyse v. Foster (1872) LR 8 Ch App 309* :

“This Court is not a Court of penal jurisdiction. It compels restitution of property unconscientiously withheld; it gives full compensation for any loss or damage through failure of some equitable duty; but it has no power of punishing any one. In fact, it is not by way of punishment that the Court ever charges a trustee with more than he actually received, or ought to have received, and the appropriate interest thereon. It is simply on the ground that the Court finds that he actually made more, constituting moneys in his hands “had and received to the use” of the *cestui que trust*.”

1601. I was not referred to any authority binding me so to hold; and I decline to do so.

33. The above passage was cited and followed by Christopher Clarke J in **Novoship** as follows, my emphasis:

“99. I prefer the view of Lewison J. The difference between losses suffered and profits made is that wrongdoers responsible for losses should *prima facie* be made to pay for them since the innocent party has suffered the losses and they have caused them. But the disgorgement of profits made which are not the counterpart of losses suffered requires the existence of some equity to require it. If a fiduciary acquires a profit as a result of his breach of fiduciary duty equity will regard the profit thus derived as due to the person to whom the duty was owed, for which the fiduciary must account. The same applies to a profit derived by the dishonest assister from his assistance in a breach of fiduciary duty. But there is no equity to compel someone who has not made a profit from his breach, or dishonest assistance in that of another, to account for a profit which he has not made and which does not represent a loss which the principal has suffered.”

34. This passage was not directly challenged on appeal in **Novoship** [2014] EWCA Civ 908 but if anything the Court of Appeal’s judgment supports it. See the judge of the Court at [77], my emphasis:

77. If the phrase “knowingly took part in” is replaced by “dishonestly assisted in” we cannot see that it undermines the policy as formulated. It is true that in Australia the concept of “knowing participation” does not correspond precisely to our concepts of knowing receipt and dishonest assistance. However, so far as accounting for profits are concerned, even in Australian law a knowing

participant is not generally required to account for profits that he did not make: Grimaldi v Chameleon Mining NL (No 2) [2012] FCAFC 6 at para 536.”

35. I agree that in general the issue of fiduciaries raises different legal considerations to those who are merely jointly and severally liable. However it seems to me that the underlying point of principle is the same as in the situation I am now considering: namely, that there is no equity to compel A to account for B's profit where A has not made that profit and the innocent party has suffered no loss. (The Claimants did not adduce any evidence of their losses, unsurprisingly since this was an account of profits not an enquiry as to damages). I also note that the Claimants did not rely on dishonesty as part of the basis for joint and several liability.

36. As against that, the Claimants relied on the judgment of Costello J of the High Court of Ireland in **House of Spring Gardens v Point Blank (No.2)** [1983] FSR 489. At p 494, Costello J in the High Court of Ireland considered the position and said as follows:

“It has also been submitted on the defendants' behalf that before the court can make an order for the payment of profits it would have to ascertain the person or firm who actually received them and make the order only against the actual recipient. But this submission ignores the nature of the relief now being considered. An order for an account of profits and their payment is an equitable remedy, given in lieu of an order for the payment of damages. Just as an order for the payment of damages can be a joint and several liability imposed on all wrongdoers who have contributed to a wrong so also can an order for the payment of profits be made against all persons who have been involved in the same tortious act of copyright infringement.

37. It will be seen that Costello J rejected the distinction between damages and profits identified by Lewison and Clarke JJ and came to the opposite conclusion as regards profits. It does appear from Costello J's judgment that the point was actually argued, but Costello J does not cite any authority for his conclusion. An appeal against his that decision was dismissed by the Supreme Court of Ireland ([1985] FSR 327) although in the Supreme Court there was no discussion of the principle set out above.

38. The Claimants relied on a number of additional authorities in support of their case but it does not seem to me that any of them take the matter further.

- a) In **My Kinda Town v Soll** [1983] RPC 15, an account of profits made by a company was ordered to be paid by both the company and its director. However the point I have to decide was not argued: see p 43 lines 23-24 and p 56 lines 35-45.
- b) It is not considered in **Attorney-General v Blake** [2001] 1 AC 268 either, although Lord Nicholls provides an interesting account of the historical background to accounts of profits at pp 279-280. In fact Professor Davies uses this case to argue (see **Davies**, p 266) that if the publisher of Blake's memoirs about his career as a spy had been liable as an accessory to Blake's breach of contract, then the publisher's liability

should not have extended to the profit that Blake made since the publisher did not receive that profit. I agree with Professor Davies's logic.

- c) Nor do any of **Fish & Fish v Sea Shepherd** [2015] 1 AC 1229, SC; **OOO Abbott v Design & Display** [2016] FSR 27, CA and **VTB Capital Plc v Nutritek** [2012] 2 C.L.C. 431, CA (a decision upheld by the Supreme Court) consider the point. As Mr Ahmed pointed out, **VTB** was all about piercing the corporate veil and that is a different concept.
- d) I do not consider that the **IP Enforcement Directive** (2004/48/EC) requires me to disregard the distinction drawn in English case law between approaches to an enquiry as to damages and an account of profits, as was suggested. See eg **Hollister v Medik Ostomy** [2013] FAR 24 at [48]-[73].

39. It seems to me that the balance of authority in this jurisdiction is against the Claimants' case. In any event, I agree with the views expressed by each of Briggs J, Lewison J, and Clarke J in the above cases for the reasons they give. I therefore find that A is not liable for profits made by B even if A is jointly and severally liable with B. As Mr Ahmed put it, these profits were never in the hands of D5 or D12.

40. That said, I appreciate that this is an important point of law. I will go on to consider profits made both on basis that I am right (ie D5 and D12 are only liable at most for their own profits, not for those of D3/D11) and also on the basis that I am wrong (ie D5 and D12 are potentially liable for profits made by D3/D11). However before I do that, I need to consider whether D5 and/or D12 are jointly and severally liable on the facts.

Is D5 jointly and severally liable with D3 and/or D11 for acts of infringement?

41. The Claimants relied on the following evidence. Some of this came from Mr Ahmed's 3rd witness statement herein dated 25th September 2017 ("Ahmed 3"), some from his 7th witness statement herein dated 7 March 2019 ("Ahmed 7") and some of it came from cross-examination either in this trial or in the first trial.

- 1) That Mr Ahmed was Managing Director of both D3 and D11 and company secretary of D11: see Ahmed 3 at [1], [7].
- 2) That D11 was a family owned SME, meaning in particular Mr Ahmed's family: see Ahmed 3 at [18] and the exhibit; Ahmed 7 at [7]-[8], [14]; Ms Ahmed at D2/239-243. Mr and Ms Ahmed were both shareholders in D11.
- 3) That Mr Ahmed was one of only 2 directors of D11, the other being Ms Ahmed. Mr Ahmed had been a director since 1999 and Ms Ahmed since 2004. Mr Ahmed had also been D11's secretary since 2000.
- 4) That in early June 2006 Mr Ahmed asked D11's group accountant, Mr Tariq, to enquire of WP Thompson, trade mark agents, about registering SANTA MONICA POLO CLUB: see Ahmed 3 at [33].
- 5) That Mr Ahmed would have instructed D11's design director, Brian Robinson, to oversee designing a logo for the SANTA MONICA POLO CLUB brand: see Ahmed 3 at [39].

- 6) In cross-examination at this trial Mr Ahmed did not dispute that whilst he would discuss the allocation of resources in the design team with Mr Robinson, it was ultimately Mr Ahmed's decision as managing director that won the day: see D2/132₂₄-133₁₆. I so find.
- 7) That part of Mr Ahmed's role in manufacture of SANTA MONICA POLO CLUB polo shirts was to agree prices with the factory and to select the factory with which to place order. See Ahmed 3 at [48]; see also Ahmed 7 at [11] more generally.
- 8) That any complaints about confusion with the Claimants' goods would be brought to Mr Ahmed's attention. See Ahmed 3 at [111].
- 9) In cross-examination at the first trial Mr Ahmed repeatedly referred to "me", "I" and "our" when talking about D11's sales, offices, showrooms, etc. See the examples given in Haddad 3 at paragraphs [74]-[76].
- 10) That Mr Ahmed was "*involved in managing a substantial intellectual property portfolio*" for D3 and D11: see Ahmed 7 at [8], [10].

42. It is important to note that this evidence was not disputed at the trial. Indeed much of it came from Mr Ahmed himself in his own witness statements. Mr Ahmed did not identify anyone else as the ultimate decision maker for anything done by either D3 or D11 and I find that he was that ultimate decision maker.

43. Mr Ahmed's defences were instead that he had no improper motive, that he acted on advice, and that he delegated design of the logos to a professional design team: see eg Ahmed 9 at [33]-[51]. He did not draw any distinction between D3 and D11 for these purposes. He also made the point, which I accept, that D11 was not a "one-man company": see eg **Grenade (UK) v Grenade Energy** [2016] EWHC 877 (IPEC). Finally in Mr Ahmed's post-trial submissions he suggested (for the first time, and without giving any specifics) that other shareholders of D11 "*all ... took an active interest in the running of the company*". However none of these purported defences amounts to a defence in law.

44. I am in no doubt that Mr Ahmed is jointly and severally liable with both D3 and D11 in relation to the infringing acts. It is not necessary to distinguish between authorising and common design because the same facts establish liability on both bases.

Is D12 jointly and severally liable with D3 and/or D11 for acts of infringement?

45. There was much less evidence about Ms Ahmed's involvement with either D3 or D11. The evidence established as follows:

- 1) She was not a director of D3, although as noted above she was a director of D11. See eg Ms Ahmed's 4th witness statement dated 2 May 2019 ("MsAhmed 4") at [8], [11].
- 2) She signed a document required for some Santa Monica Polo Club branded goods to be cleared through customs into Jordan. The document is dated 25th October 2016 and she signed it as an "authorised officer" of D3. Ms Ahmed explained that this was a one-off example signed in Mr Ahmed's absence because he was not available and the matter was urgent. I accept that evidence, hence I place little weight on it.

- 3) The above evidence is consistent with Ms Ahmed's written evidence that she did not make any decision or get involved in designs for any products for Santa Monica Polo Club goods although she would sign off D11's documents from time to time. See Ms Ahmed 4 at [8]-[15]. This was not challenged.
- 4) Ms Ahmed was however head of sales of House of Brands, which she described as a "division" of D11 located in a separate building. She employed 2 members of staff, a salesman and a warehouse assistant. She agreed that her role was a very hands-on one managing the day to day running of this business. She had a showroom on the ground floor which stocked Santa Monica Polo Club goods; it was her decision to display those goods; and she sold them to customers.

46. Ms Ahmed was also shown a number of emails in her cross-examination which showed her sending various Santa Monica Polo Club marketing materials. Her email signature identified her as eg "Bushra Ahmed, PR/Marketing Director, The Juice Corporation" although the precise job title changed slightly from time to time to include eg a reference to Sales Director. The email signature appeared above a range of logos including a Kangol logo and a Santa Monica Polo Club logo.

47. It was put to her that she sent these emails on behalf of D11 (an allegation which, to be fair, was consistent with Mr Ahmed's evidence) but she denied it. She agreed that she described herself in these emails as the PR/Marketing Director, or PR, Sales, and Marketing Director, of "The Juice Corporation" but said that she only ever sent marketing materials to "my" House of Brands customers and that she had been at House of Brands for 10 years. I accept Ms Ahmed's evidence on this point; and to the extent it is inconsistent with that of Mr Ahmed, I prefer hers.

48. Ms Ahmed also ran defences that her dealings in relation to Santa Monica Polo Club goods were without improper motive or intention to infringe. As with Mr Ahmed, these do not amount to a defence in law.

49. I find that on these facts Ms Ahmed is jointly and severally liable with D11 but only insofar as D11's House of Brands "division" is concerned. Again it is not necessary to distinguish between authorising and common design because the same facts establish liability on both bases. I am not convinced the evidence establishes any wider liability than that and I decline to so find. For instance her signature on the Jordanian customs form for D3 was an isolated example and I consider it to be trivial in the circumstances.

50. Although Ms Ahmed went to all this effort to explain that her own role was restricted to House of Brands, she failed to give any evidence about how much of D11's trade in the infringing goods was actually conducted, and/or how much of D11's profit on the infringing goods was made, via House of Brands rather than via the rest of D11's business. Ms Ahmed would have known that the information she failed to provide was at least as important to the case as the information which she did choose to volunteer and I find that this failure was deliberate. She did say that House of Brands dealt with smaller customers than the rest of D11 but did not go in details beyond that.

51. The closest she came to giving any such information in any of her evidence was when Mr Ahmed re-examined her. He asked the leading question "*So the majority of*

those sales that have been declared in the first trial would have not been done by yourself?” and Ms Ahmed gave the one-word answer “no”. I cannot place any weight on this answer given (a) the leading nature of the question (b) its ambiguity as to what is meant by “yourself”. It was never suggested that Ms Ahmed made any sales herself, only that she authorised D3 or D11 and/or was party to a common design with D3 or D11. In any event the answer still does not rule out a possibility where, eg House of Brands sold 49% of the infringing goods with the rest of D11 selling the balance thereof. Nor does the answer deal with profits at all.

What financial remedy should be awarded against D5 and D12?

52. First I will assume, contrary to my conclusion on the law, that both Mr Ahmed and Ms Ahmed can be liable for profits made by D11 to the extent that they are jointly and severally liable with D11, even if they did not themselves make these profits.

Relative contributions between D5, D12, and D11 on the assumption that D5 and D12 can be liable for D11’s profits

53. It seems to me that on this basis Mr Ahmed is jointly and severally liable with D11 for 100% of D11’s profits. The Claimants could recover such profits in full from either of them. It would then be open to D11 and/or Mr Ahmed to have the Court apportion that liability between them by way of contribution notice, as suggested in **Fish & Fish**.

54. In Mr Ahmed’s written closing submissions served (with my permission) a week after trial he submitted for the first time that if I was going to make a finding of joint tortfeasance between various joint liability defendants then I “*must*” go on to apportion the liability between them since as a matter of law the Civil Liability (Contribution) Act 1978 did not apply to profits. This submission of law is wrong: see eg **Charter v City Index** [2007] EWCA Civ 1382, CA. I would have done such an apportionment if the issue had been raised at trial, but it was not. Mr Ahmed’s written submissions did not address what he said the apportionment should actually be, either.

55. I also reject the idea that the Claimants should have anything to do with inter-tortfeasor claims for contribution: see **Sivanandan v Hackney LBC** [2013] EWCA Civ 22, CA at [82], [102]-[103]. Any such claims would have been between the defendants.

56. Similarly Ms Ahmed would be jointly and severally liable with D11 (and for that matter with Mr Ahmed, who would not be excluded for this purpose) for whatever part of D11’s profits were attributable to House of Brands. Again it would be open to D11, Mr Ahmed, and Ms Ahmed to seek apportionment of the House of Brands proportion of D11’s profits between themselves by way of contribution notice.

57. The Claimants submitted that House of Brands accounted for 10% of D11’s business, relying partly on its headcount (3 people) compared to that of D11 as a whole (roughly 50 a year) and the fact that House of Brands was taking advantage of the general facilities of D11’s business. In the absence of any counter figure or relevant evidence from either Mr Ahmed or Ms Ahmed, I accept this submission and

so find. If anything this seems charitable to Ms Ahmed since her salary was about a quarter to a third of Mr Ahmed's salary, which might have suggested that House of Brands accounted for an equivalent proportion of D11's turnover.

58. There will be no double recovery. All I mean is that all 3 of the relevant Defendants would be liable in relation to 10% of D11's profits, whereas 2 of them would also be liable in relation to the remaining 90% thereof, and that it is a matter for the defendants to seek contributions from each other.

What were D11's profits?

Legal context

59. The approach to determining the amount of profits is in principle straightforward. The court must determine the sums received from infringing acts, and deduct from those sums any allowable expenses.

60. In this, as in most cases, the dispute is about allowable expenses. HHJ Hacon summarised the relevant principles in **OOO Abbott v Design and Display Ltd** [2017] EWHC 932 (IPEC) at [57]:

“(1) Costs that were associated solely with the defendant's acts of infringement are to be distinguished from general overheads which supported both the infringing business and the defendant's other, non-infringing, businesses.

(2) The defendant is entitled to deduct the former costs from gross relevant profits.

(3) A proportion of the infringer's general overheads may be deducted from gross relevant profits unless

(a) the overheads would have been incurred anyway even if the infringement had not occurred, and

(b) the sale of infringing products would not have been replaced by the sale of non-infringing products.

(4) The evidential burden rests on the defendant to support a claim that costs specific to the infringement and/or a proportion of general overheads are to be deducted from profits due to the claimant.”

61. The last point was also emphasised by Briggs J in **Hotel Cipriani** (cited above) at [11] and [13].

62. In some cases it is appropriate to award 100% of the relevant profits made by selling the infringing goods whereas in other cases it is appropriate to make an apportionment thereof. For instance in the case of a restaurant (as in **My Kinda Town v Soll**) some customers may not have been deceived by the name under which the services were supplied, but simply wanted a meal. It was not argued at the trial that there was any reason for apportionment in the present case, nor was any evidence directed to it. Hence I will proceed on the basis that D11 should account for 100% of the relevant profits.

Sums received by D11 from infringing acts

Mr Ahmed's original figures

63. In his 3rd witness statement Mr Ahmed gave annual figures for D11's sales of Santa Monica Polo Club branded goods between 9 February 2009 and 30 June 2017. These figures were prepared by Philip Chadwick, a management accountant who was then head of D11's payroll, from a 99-page table of sales which had been redacted to exclude customer information. At this time Mr Ahmed and Mr Chadwick had full access to the underlying information and Mr Ahmed accepted that these figures would have been correct at the time.

64. I did not grant my injunction until 21 December 2017, ie almost 6 months later, so the information does not cover the entire period of infringement. In addition I granted a stay of the injunction in relation to goods bearing the three-horse sign, the then current product, pending a final decision by the Court of Appeal on any application for permission and gave the Defendants until 24 January 2018 in which to make any such application. However D11 was placed into administration on 16 January 2018 as stated above. Hence there was a period between 30 June 2017 and 16 January 2018 when sales of infringing goods were still being made.

65. The Claimants relied on Mr Ahmed's figures for turnover from 4 August 2010 (being 6 years prior to the issue of the claim form) to 30 June 2017, which they calculated to give a total of £7 050 392. It also estimated turnover between 1 July 2017 until 16 January 2018 on a pro rata basis at £774 412, giving a total of £7 824 804. The arithmetic was not disputed.

The effect of D11 going into administration

66. I have no doubt that the entry into administration of D11 has had a profound effect on both Mr and Ms Ahmed personally. It is not the purpose of the judgment to go into the details of that dispute and I shall not do so. Mr Ahmed told me the administrators sold the relevant assets to his biggest trade rival within days and at an undervalue. The relevance for present purposes is that Mr and Ms Ahmed relied upon it as a reason for not giving any documentary evidence about D11's internal finances.

67. I accept that Mr Ahmed repeatedly asked the administrators of D11 (and of D3) for disclosure of these Defendants' internal financial records and was repeatedly refused. However he never applied to Court for an order that the administrators provide this information. There was no reason in theory why this could not be done. For instance, my attention was drawn to a consent order made by Master Teverson against the administrators on 21 February 2018 whereby the automatic stay was lifted for purposes of delivery up.

68. It is not as if Mr Ahmed was reluctant to make applications to Court or to produce evidence. For instance he made 2 applications to adjourn, the first of which was successful. Mr Ahmed also produced 7 witness statements (with some lengthy exhibits) in this second trial alone. Furthermore it must have been obvious after the administrator's first refusal that further refusals would follow, so making multiple further requests made no difference.

69. In addition, I have already found as a fact that Mr Ahmed made a deliberate decision not to ask AMS for D11's internal financial records covering the period for which AMS held such records. The evidence was not clear as the precise period that was, but it must have included at least part of the financial year 2017 and more likely all of that financial year plus part of 2016 as well. Hence it seems to me likely that the reason why Mr Ahmed never made an application to Court to require the administrators of D11 to provide internal financial records was because he did not want to do that either. Ms Ahmed must at least have been content to go along with these decisions of Mr Ahmed, since otherwise she would have taken the relevant steps herself.

70. I also note that even if the Ahmeds were unable to provide any documentary evidence about D11's internal finances, it does not follow that they were both unable to provide any evidence at all. For instance Mr Ahmed claimed that without documents the Claimants would not have believed him. In fact this is not correct - Mr Haddad said in cross-examination it would have depended on what the evidence was - but whether the *Claimants* believed him is not the point. It is the Court's assessment which matters.

71. It is true that the Claimants never asked the administrators of D11 or D3 for these documents either. However these documents all related to matters on which the Defendants had the burden of proof and as such the Claimants were not required to obtain them.

72. For all these reasons I do not accept that D11's entry into administration means it is impossible to carry out this account, or that this event made it impossible for the Defendants to provide any information about D11's internal finances.

The Defendants' challenges to Mr Ahmed's original turnover figures

73. In Mr Ahmed's 3rd statement, he originally said that approximately 90% of the sales had taken place in the UK or the EU. He did not say where the other 10% had been sold or whether that 10% had been imported into the EU and then re-exported. The latter point is important now, although it was not important to the first trial, since if so they would still be infringing goods. Mr Ahmed did not address it in any detail, far less put a figure on it: see eg Ahmed 7 at [34], Ahmed 9 at [67]. Nor did Mr Clegg: see Clegg 2 at [42(d)].

74. In his 2nd witness statement Mr Clegg tried to cast some doubt on Mr Ahmed's original figures. He said "*taking into account the higher overseas [sic] sales from late 2016 onwards when UK customers were reluctant to place orders given the dispute raised by the Claimants and the threats made to all known customers of the Santa Monica Polo club brand, we would suggest that a discount of 20% would be fair and reasonable*". On its face this cannot justify a discount of 20% for the period prior to "late 2016" but any facts prior to the first quarter of 2017 would not have been within Mr Clegg's own knowledge and they were not established in any other evidence either. This evidence was not investigated in his cross-examination because by that point in the trial Mr Ahmed had already conceded that the original figures in his 3rd witness statement were correct at the time they were put forward.

75. Mr Clegg proposed a number of other deductions, all of which were either unexplained, based on alleged facts which he could not personally have known and which were not otherwise established, or based on incorrect arguments of law. I reject that evidence.

76. Mr Ahmed also disputed the figures from 1st July 2017, mainly on the grounds of the effect of the threats but partly because of the Brexit vote in 2016. However he also accepted that the relevant letters started long before June 2017, had ceased by April 2017, and that D11 still made over £1.4m of sales in the year ending 30th June 2017. There was no evidence of any tail-off over this period.

77. The Defendant's evidence about the Brexit vote was, as the Claimants submitted, complete confusion. Mr Clegg's written evidence referred to a loss on "*currency held in June 2016 due [to] the Brexit vote*". However in his oral evidence he said that by "*currency held*" he actually meant an overdraft, ie the opposite. Mr Ahmed also gave 3 successive explanations about currency losses due to Brexit in his oral evidence, each of which explanations contradicted the last. I had no confidence in this evidence.

78. I will therefore work on the basis of the Claimants' turnover figures, which are themselves based on Mr Ahmed's own figures from the first trial. The Defendants would have had to do a better job than they did in order to persuade me to do anything else on the evidence available.

Costs exclusively associated with D11's turnover in infringing goods

79. Both Mr and Ms Ahmed must have known the level of costs associated with D11's turnover in the relevant goods, in particular the overall gross profit margin. This is especially so given their long and deep involvement in their family business. Neither chose to give any evidence about it.

80. In his cross-examination of Mr Haddad, Mr Ahmed asserted that companies he identified as Boi Trading, SRG, and Wilson Imports each operated on a margin of about 20%. However I was not shown any documentation to support any of these assertions or given any explanation as to how these figures had been calculated. In his second witness statement Mr Clegg gave an estimate of 25% (see Clegg 2 at [45]) but he did not explain how that was arrived at, nor did he give any documentation in support. It was only in re-examination, under prompting from Mr Ahmed, that he started to elaborate. That was far too late and even then it was unclear what legal approach to overheads he was applying.

81. The best, indeed only, documentary evidence I have is the information from D11's published accounts from 2008 to 2015, which Mr Clegg exhibited. These showed a gross profit averaging about 40% each year across the whole of its business.

82. It seems to me that if anything the Santa Monica Polo Club goods might well have a higher gross margin than that average, since that brand had been developed in-house and D11 did not need to pay any royalty fees to third parties. Much of D11's business otherwise consisted of selling third party brands for which a royalty would have had to be paid and which may have been less profitable for D11 for this reason.

Internal documents, even from 2017, would have given me more information about these possibilities had they been produced.

83. I have already mentioned Mr Haddad's estimate of 40-50%. I accept that he had no experience of D11's business but he did at least have an experience of the industry and his figure is consistent with the 40% shown by D11's accounts.

84. Based on the evidence which I do have, as well as the evidence which I do not have but which the Defendants could have given, I find that D11's gross margin on the infringing goods was 40%.

Overheads

85. I will deal with this briefly. The Defendants' evidence did not address the correct legal test, which I have set out above. Indeed Mr Ahmed gave positive evidence that Santa Monica Polo Club goods filled a gap in the market, and that these goods could not be (and were not in fact) simply interchanged with others in D11's portfolio. On this basis the sales of infringing goods would not have been replaced by the sale of non-infringing products from the rest of D11's range, which goes against allowing any deduction for general overheads.

86. I cannot simply make assumptions without evidence in the Defendants' favour that there "must" be something I can deduct, and it "must" be X%, because that would be contrary to both the law (see **OOO Abbott** and **Hotel Cipriani**) and principle. No deduction should be made.

Conclusion

87. The profits made by D11 from its infringing trade are 40% of £7 824 804, ie £3 129 921.60. If I am wrong on the point of law, then

- a) D5 and D11 are jointly and severally liable to the Claimants for this sum; and
- b) Furthermore for 10% of this sum, ie £312 992.16, D12 is also jointly liable along with D5 and D11.

Since I have no contribution notices, the split between these Defendants in relation to these sums is a matter for these Defendants, but that would not prevent the Claimants recovering in full from any of those held liable to the extent of such liability.

Sums received by D11 from infringing acts

88. I now consider profits made by D5 and D12 on which I consider to be the correct legal basis, ie as regards the profits they personally made from the infringing acts. Much less of the evidence and argument was directed to this part of the case.

89. The law as to how such profits are determined is the same as above but the factual arguments were different. There were no issues about deductible costs or overheads and instead the issues were as follows.

Sums received by the Defendants as directors of D11

90. The Claimants ran a similar case with respect to each of D5 and D12, who relied on similar defences. For instance the case against D5 was pleaded in some detail at paragraphs 21A, 21B(a) of the Points of Claim.

91. The Claimants' argument was that D5 had received the following sums, each of which was less than the amount of profit made by D11 from its infringement and were caused, enabled, or facilitated by the profits derived from that infringement:

- a) A loan of £635, 789 made by D11 to D5 with no fixed repayment terms and no interest. The Claimants submitted that if the administrators did not recover that loan from D5, then he would have been unjustly enriched by the amount of that loan. The Claimants also relied on **OOO Abbott v Design & Display** [2017] EWHC 932 (IPEC) at [72]-[76] as supporting the proposition that in some situations, such as small companies, payments like this which were made to directors should be scrutinised carefully to see if they were genuine overheads or otherwise reasonably justified in the context of the business. I accept this principle.
- b) Remuneration paid to D5 for services, which was not fixed but changed every year and which (with some extrapolation) amounted to £1 451 006: see Points of Claim at 21B(a)(ii).

As I understood the Claimants' pleading, these claims (including the loan) only arose as part of its alternative case, not on its primary case.

92. D5 pleaded a number of arguments, of which the most important appear to me as follows:

- a) D5 denied that D11 made any profit at all: see Points of Defence at 24B. This is not credible and I have already rejected this.
- b) D5 pleaded that the sums received were paid out of D11's general resources and they were caused, enabled, or facilitated by revenues received from both non-infringing and infringing activities: see Points of Defence at 24B. I accept that D11 carried on non-infringing activities.
- c) Consistently with this, D5's closing submission stated as follows at [41]:

"On the contrary D5 and D12 can only be made liable to account for profits (arising for acts of infringement) that can be directly traced into their hands and such 'profits' will not include any salary paid to those individuals that cannot be directly linked or apportioned to the acts of infringement."

I agree with both this, and with the converse, ie that D5 can be made liable to account for any salary paid to him which can be directly linked or apportioned to the acts of infringement.

- d) D5 went on to submit that it was not possible to disentangle the role of revenues from D11's infringing sales in remunerating D5: see Points of Defence at 24D. I disagree that the difficulties of working out a figure are such that I should give up the effort entirely. Instead it seems to me that I should try to apportion a figure from the evidence available.
- e) D5 argued that that salary payments were for work done, not dividends. This seems to be true but I was given no reason as to why this of itself meant the

sums were still not recoverable as D5's profits from the acts of infringement. For instance it was not suggested that any costs were incurred by D5 in doing the relevant work.

- f) In relation to the loan, D5's main pleaded point was that it could not constitute a profit since D5 was not entitled to the money: see Points of Claim 24B. It seems to me that this point depends on whether D5 actually retained the money. Hence D5's backup argument, which is that all loans from D11 to D5 (and D12) were paid back: see Points of Claim 24C. This is an issue of fact.

D5's remuneration

93. Mr Ahmed was cross-examined by the Claimants on the sums shown in D11's annual accounts to have been paid to him. This was a reasonable approach by the Claimants. However in his reply speech Mr Ahmed drew attention to a document which sought to clarify the actual payments made including benefits in kind, and he supplied a further copy thereof after trial. Because the document assumed importance at such a late stage, it was never properly explored in cross-examination. It is not easy to understand, but the key point is Mr Ahmed's claim that the figures for payments made to him as set out in D11's annual accounts were overstated and that the correct total figure was £1 441, 922. (The main difference related to the period ending Jan 2018). This is not too far away from the pleaded figure and I accept it.

94. There was a dispute about whether the figure for Mr Ahmed's remuneration varied from year to year. The picture was not clear but the numbers varied, as shown in Mr Ahmed's document. For instance there was no constant figure up to 30 June 2015, but £169 020 thereafter. I do not consider that anything turns on this.

95. The issue then is how much, if anything, of D5's remuneration to apportion to D11's infringing activities. This is not necessarily a simple matter of assessing how much of D11's turnover was due to infringing activities. For instance it may have been that D11 made a loss on everything except Santa Monica Polo Club branded goods, but substantial profits thereon. Then it would be fair to conclude that a substantial part of D5's salary was attributable to the infringement. I have already pointed out that D11's profits may have been higher on the Santa Monica Polo Club branded goods because it was an in-house brand.

96. The figures were, once again, incomplete. However Mr Ahmed accepted that D11's turnover was around £10 million throughout the early 2010s and this is consistent with Mr Clegg's exhibit DC-2, p 1022, showing figures for 2010-2015. The turnover in Santa Monica Polo Club branded goods was about £400k per year in the years 2011-2013 but about £1.4 million per year from 2014-2017, or about £1m per year on average. Hence the infringing goods accounted for about 10% of D11's turnover on average for these years. Mr Ahmed gave a similar figure in closing at D3/445.

97. Absent anything which provides a clearer and more justifiable basis, I apportion 10% of Mr Ahmed's overall remuneration to profits made from infringement. This means he has to account to the Claimants for £144 192.20 under this head.

D5's loan

98. Mr Ahmed claimed to have repaid the loan but there was no evidence to support this. As the Claimants submitted, if he really had done so then Mr Ahmed would have had personal records (eg from his own bank) to show the transfer of funds from him to D11. These personal records would still be available to him even if D11's records were not.

99. Mr Ahmed also claimed that if he still owed D11 money then D11's administrators would have been pursuing him for it. For all I know, they may be doing exactly that. For instance Mr Clegg referred to a letter of claim he had seen but it was not shown to me. Conversely Ms Ahmed was able to show me an email from D11's administrators dated 8 May 2018 stating that no further action was being taken against her in relation to a similar loan to her: see below.

100. I regret to say I do not believe Mr Ahmed has repaid that money. If he had done so, it would have been an easy thing for prove using his own personal records, but he has not done so. Nor has he even explained what the loan was for, if not for something to do with the infringement. The burden of proof was upon him since all the Claimants knew was that he had received the loan in the first place, which was not disputed.

101. In those circumstances I find for the Claimants. Mr Ahmed is therefore liable to account for the £635 789.

D12's remuneration and loan

102. Ms Ahmed's arguments mirrored Mr Ahmed's but the facts were different.

- a) Her total salary since 2011 came to £570 076 according to Mr Ahmed's document, not £592 372.60 as the Claimants had pleaded. It varied each year up to June 2016, when it settled down to £84 146.
- b) The only pleaded loan to her was for £13 217. The email I mention above was part of a chain which referred to "*an outstanding balance of £9 375 on the management accounts as at 31st December 2018*", but neither side relied on the discrepancy and as stated D11's administrators indicated they would take no further action. I therefore disregard this.

103. Whilst it is possible that Santa Monica Polo Club goods accounted for a different proportion of the profits attributable to the House of Brand division of D11 than they did for the rest of D11, there was no evidence of this. I apportion 10% of Mr Ahmed's overall remuneration to profits made from infringement. This means she has to account to the Claimants for £57 007.60 under this head.

Conclusion

104. In short I find that:

- a. D5 is jointly and severally liable with D3 and D11 for the acts of infringement.
- b. On my view of the law, D5 is liable to account for (£144 192.20 + £635 789 =) £779 981.20. If I am wrong on the law, D5 is jointly and severally liable with D11 to account for £3 129 921.60.

- c. D12 is jointly and severally liable with D11 for acts of infringement in so far as D11's House of Brands division is concerned and I find this was 10% of D11's business.
- d. On my view of the law, D12 is liable to account for £57 007.60. If I am wrong on the law, D12 is jointly and severally liable with D5 and D11 to account for £312 992.16.