



Neutral Citation Number: [2021] EWHC 721 (Ch)

Claim No: IL-2019-000003

**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: 23/03/2021

**Before:**

**THE HONOURABLE MR. JUSTICE MICHAEL GREEN**

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**Between:**

(1) LIFESTYLE EQUITIES C.V.  
(2) LIFESTYLE LICENSING B.V. **Claimants**  
-and -  
(1) AMAZON UK SERVICES LIMITED  
(2) AMAZON EXPORT SALES LLC  
(3) AMAZON.COM INC  
(4) AMAZON EUROPE CORE SARL  
(5) AMAZON EU SARL **Defendants**

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

**MR. DANIEL ALEXANDER QC** and **MR. MAXWELL KEAY** (instructed by **Hogan Lovells International LLP**) appeared for the **Defendants**.

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**Approved Judgment**

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**THE HONOURABLE MR. JUSTICE MICHAEL GREEN:**

1. This is the hearing of certain consequential matters arising out of my judgment handed down on 27th January 2021, following the trial I heard between 8th and 15th December 2020. My judgment has neutral citation number [2021] EWHC 118 (Ch). I will also use the same abbreviations and definitions as in the main judgment.
2. Mr. Thomas St Quintin appeared before me today on behalf of the Claimants and Mr. Daniel Alexander QC appeared with Mr. Maxwell Key for the Defendants on this hearing, as Mr. James Mellor QC, who appeared at the trial for the Defendants, has since been appointed to the High Court bench.
3. The following issues were argued before me today:
  - i) Whether an injunction should be granted against the Defendants.
  - ii) The appropriate order as to costs, including a point on interest.
  - iii) The amount of the interim payment on account of such costs that I should order.
  - iv) The Claimants' application for permission to appeal.
4. I will deal with them in that order.

**Summary of Judgment**

5. Before doing so I should perhaps summarise the findings that I made in the judgment. The Claimants alleged both trade mark infringement and passing off by the Defendants' use in the course of trade of their signs in the EU. Passing off was not really pursued at the trial, nor was trade mark infringement under sections 10(2) and (3) of the Act or Articles 9(2)(b) and (c) of the EUTMR. The case was only concerned with whether there were trade mark infringements under section 10(1) of the Act and/or Article 9(2)(a) of the EUTMR.
6. Very shortly prior to the trial, the Second and Fourth Defendants admitted to trade mark infringements by listing BHPC products on Amazon Global Store up to January 2019 when they were removed. Apart from that admitted infringement on amazon.co.uk which targeted UK consumers, I found against the Claimants on all their other claims of trade mark infringement.
7. The main issue was whether amazon.com, the US website, targeted UK/EU consumers in the listing of BHPC products. The Claimants were trying to prevent all visibility of BHPC products by UK or EU consumers on amazon.com because they said that the mere visibility of the products was destroying their business. I held that both amazon.com and the BHPC listings on it are not targeted at the UK or EU consumer. Accordingly, none of the Defendants were using the Claimants' signs in the course of their trade in the UK or the EU.
8. Because of the restrictions that Amazon had put in place from January 2019 there were no sales of BHPC goods from the US to the UK or EU thereafter. Nevertheless, the Claimants alleged that historical sales up to January 2019 constituted trade mark

infringements. I held, however, that the relevant sales took place in the US and because of my analysis of the case of *Blomqvist* they were not infringements. Also in relation to alleged historical importation by the Defendants, I held that the importation was in fact carried out by the private individual consumers and there was no intention that those goods so imported would be put into free circulation in the UK or EU. Accordingly, there was no infringement established on that ground either.

9. I also rejected the Claimants' case on joint liability whereby they tried to establish that the Third Defendant, as the holding company of the entire Amazon group, should be held liable for the alleged infringements.
10. So apart from the belatedly admitted infringement by the Second and Fourth Defendants by their listings on Amazon Global Store prior to January 2019, the Claimants' claims were dismissed. I rejected the Claimants' request for an inquiry as to damages in respect of the admitted infringements because I considered that those admitted infringements were trivial in comparison to the main case of targeting that I had dismissed and an inquiry would be disproportionate. Also, the historical sales from the US to the UK or EU, which I had found not to be infringements, were tiny and could not justify an inquiry into losses flowing from pre-2019 infringements. I found that Amazon had generally responded reasonably and responsibly after this unusual split trade marks issue had been brought to their attention. The restrictions put in place in January 2019 had been effective to remove any possibility of infringements occurring.

### **The injunction**

11. With that summary I turn to the injunction application. It was only late in the afternoon last Friday, 19th March 2021, that the Claimants for the first time suggested that they should be entitled to an injunction against the Defendants based on the admitted historic infringements that I have just referred to. Actually, the Claimants simply inserted the proposed injunction into the draft order that the Defendants had been trying to agree with the Claimants, and they did so without any explanation or forewarning. The Defendants had provided their suggested draft order over a month before but the Claimants had not responded before last Friday when they inserted their injunction wording. That is an unfortunate way of going about this, particularly as the parties have had my judgment for nearly two months now and the Claimants left it to one working day before this hearing to notify the Defendants that they would be seeking this injunction.
12. The injunction that the Claimants were, until this morning, asking for is as follows:

“The Second and/or Fourth Defendants shall not:

1. In the UK advertise goods under or by reference to the sign BEVERLY HILLS POLO CLUB or the sign shown below (together ‘the Signs’) or any other sign confusingly similar to the Signs or either of them, save where those goods have been put on the market in the UK or the EU under the Signs, or either of them by the Claimants or where the Claimants have consented to those goods being put on the market in the UK or the EU.

2. In the EU advertised goods under or by reference to the Signs or either of them or any other sign confusingly similar to the Signs or either of them, save where those goods have been put on the market in the EU under the Signs or either of them by the Claimants or where the Claimants have consented to those goods being put on the market in the EU.”

13. Having seen the way that the Claimants put their case for an injunction in their skeleton argument, Mr. Alexander prepared a supplementary note in response, which was provided to me this morning, and that had attached to it a suggested form of order and recital to the order. Mr. Alexander submitted that any form of injunction would in the circumstances be inappropriate but he suggested that if the court wished this matter to be addressed in the order it could include additional recitals in the following form:

“AND UPON the court finding that such infringements had been completely prevented from occurring by effective restrictions introduced in 2019

AND UPON the Defendants indicating that they have no intention of removing such restrictions to enable those acts to be repeated.”

14. Mr. St Quintin responded in his oral submissions this morning to say that the Claimants would be happy with the wording in the second recital but only if it were converted into the form of an injunction by the court. In other words, he was asking the court to order the Defendants not to remove the restrictions that they put in place in 2019. Mr. St Quintin said that this would be appropriate because the Defendants have never offered an undertaking to keep the restrictions in place and they only conceded these infringements at the last minute. There is therefore, he says, a continuing threat which should be met by a court order.
15. Because of that stance I do need to decide whether it is appropriate in the circumstances to make such an injunction. As I have said, Mr. St Quintin submitted that it is appropriate and just and convenient to grant an injunction because the admission came very late in the day and prior to it the Defendants had denied liability and had refused to provide any sort of undertaking. They were prepared to provide an undertaking but only as part of an overall settlement of the proceedings. Therefore, based on the principles derived from well-established authorities in this area, he said that an injunction should be granted and there is no reason to depart from the usual practice where an infringement is established. Furthermore, the injunction now sought would only prevent that which the Defendants have said they will not do, namely remove the restrictions.
16. Mr. St Quintin referred to a case of Mr. Alexander’s when he was sitting as a Deputy High Court Judge in *Cantor Gaming Ltd v Gameaccount Global Ltd* [2007] EWHC

1914, in which Mr. Alexander reviewed the cases on final injunctions in intellectual property cases. His conclusions at paragraph [113] were the following:

“Summary of principles.

113. I therefore summarise the applicable principles as follows. First, an injunction may be granted pursuant to s.37(1) of the Supreme Court Act 1981 whenever it is just and convenient to do so. Second, the grant of an injunction involves the exercise of the court’s discretion, and the court should, in so doing, take account of all of the circumstances, one factor of which is the importance or triviality of the breach. Third, there are certain kinds of case, of which intellectual property cases are examples, in which an injunction will normally be granted if a claimant has established infringement of its rights and there is a threat to continue (or at least no clear and unequivocal undertaking not to continue). Fourth, where there is no threat to continue acts which have been held to be unlawful, because the defendant has clearly and unequivocally agreed not to do them before the action was brought, it is not right in principle to grant an injunction. Fifth, there may, however, be situations where, even though a defendant may have agreed not to undertake the acts in question, an injunction may be just and convenient, having regard to all the circumstances. This may be, for example, because of the greater incentive for respect of a claimant’s rights that an injunction would provide, and which, in particular cases, it may appear just to grant. Sixth, the court may, in appropriate cases, take proportionality into account in granting or refusing injunctive relief.”

17. Mr. Alexander’s submissions to me picked up on some of the points he made as a judge.
  - (1) First of all, he said that the historical infringements were trivial in relative terms, as I found, and the Claimants’ main case was clearly directed at amazon.com.
  - (2) Secondly, he said that I decided against an inquiry as to damages on the basis that it would be disproportionate. It would be strange in those circumstances then to grant an injunction in respect of the same admitted infringement.
  - (3) Third, the restrictions put in place since 2019 have been effective and have removed the possibility of infringements occurring. Those restrictions were put in place shortly after the Seattle meeting on 5th December 2018 and were largely in place before the proceedings were served on the Defendants.
  - (4) Fourth, it is clear that even though no undertaking in such respect was formally given, the Defendants had effectively undertaken to remove and keep removed any listings of BHPC products on amazon.co.uk and amazon.de. There was, accordingly, no credible threat of further such infringements.

(5) Fifth, the proposed wording of the original injunction went much wider than the admitted infringement, which was limited to the listings through Amazon Global Store on amazon.co.uk and amazon.de. I do see that there was potentially a much wider reach of the original proposed injunction but that is not now relevant given the much more limited injunction that is sought.

(6) Mr. Alexander's sixth point was that he referred to the leading judgment of Neuberger LJ (as he then was) in *Landor & Hawa International Ltd v Azure Designs Ltd* [2006] EWCA Civ 1285 where Neuberger LJ said:

“It seems to me plainly inappropriate in principle to grant an injunction in favour of the claimant against a defendant who clearly and unequivocally agreed, before the action for the injunction was even started, to refrain from taking that very action which the injunction would have forbidden him from taking.”

18. It seems to me that what Neuberger LJ said is apposite to this case. I held that the Defendants responded reasonably and responsibly after they found out about the difficult issues that the Claimants' split trade mark rights gave rise to. The historic infringements that were finally admitted to came to an end before these proceedings were commenced and as part of the process of the Defendants seeking to accommodate the Claimants' complaints so far as practically possible. The Claimants however wanted there to be a total ban on visibility of BHPC products outside of the US. I have found that they were wrong to have insisted on this.

19. In the circumstances, would it be just and convenient to grant the injunction in respect of one small infringement that clearly will not happen again? The Defendants have suggested a form of wording to go into the recitals to the order that make clear that the restrictions were effective and the Defendants have no intention of removing those restrictions. In my view that is entirely appropriate and reflects the reality of the situation and could not lead to a misinterpretation of the effect of my judgment, which is something I would be concerned about if the injunctions were granted in the terms sought. There is no real threat of any continuing infringement and such an injunction would be wholly disproportionate to the findings that I have made in my judgment and what was really the gravamen of the Claimants' claim. I therefore refuse to grant the injunction sought but will include the recitals suggested by the Defendants.

### **Appropriate Costs Order**

20. I turn to costs. As to the appropriate costs order to make, there is no dispute that the Defendants are the successful party and the Claimants should pay the Defendants' costs. The Claimants say, however, that there should be a 25% reduction in the costs awarded to the Defendants because of the last-minute admission of liability in respect of the listings on Amazon Global Store prior to 2019. The Claimants also rely on the Defendants unnecessarily challenging and requiring the Claimants to prove reputation and goodwill.

21. As is well known, the starting point is that the winner should have their costs. CPR rule 44.2(4) provides for some general rules about the exercise of the court's

discretion in relation to costs and the court is directed to have regard to all the circumstances, including:

“(a) the conduct of all parties;

(b) whether a party has succeeded on part of its case even if that party has not been wholly successful; and

(c) any admissible offer to settle made by a party which is drawn to the court’s attention and which is not an offer to which cost consequences under Part 36 apply.”

22. The Defendants say that they were wholly successful on every issue fought at trial and that I held that they acted reasonably and responsibly. The main issue was visibility of BHPC products on amazon.com, which was the Claimants’ main purpose in pursuing the proceedings at trial. They made, the Defendants say, reasonable offers to settle, first on 9th October 2019 and then on 23rd October 2020, both on an open and without prejudice basis, which involved paying sums of money to the Claimants which they clearly failed to beat. The Defendants also say that they were put to unnecessary cost in having to deal with irrelevant evidence adduced in Mr. Haddad’s second witness statement concerning intra-EU transactions which were never part of the claim.
23. In the Claimants’ solicitor’s letter of 17th March 2021 they suggested a 25% reduction in costs on the basis of the concession before trial in relation to Amazon Global Store and the unnecessary expense of putting in evidence on goodwill and reputation. In his skeleton argument and in his oral submissions Mr. St Quintin maintained that there should be a 25% reduction but he bases it on 15% of the preparation time being spent in relation to Amazon Global Store and that if the right order is that the Defendants should pay the Claimants’ costs in relation to this, there should be 10% added to the 15%, making it overall a 25% reduction in the Defendants’ costs. While he did still rely on the goodwill and reputation evidence, the Claimants have not suggested a specific percentage reduction that should relate to that.
24. The Claimants submitted that in very broad terms Amazon Global Store occupied around 15% of the pleadings and of Mr. Tripathi’s evidence, and it was obviously one of the four sample transactions under consideration. Mr. St Quintin referred to two patents cases in which the principles of issues-based cost orders were discussed and in particular whether it has to be a suitably exceptional case for such an order to be made. The cases were *Hospira UK Ltd v Novartis AG* [2013] EWHC 886, a decision of Arnold J (as he then was), and *Hospira UK Limited -v- Cubist Pharmaceuticals LLC* [2016] EWHC 2661 , a decision of the late Henry Carr J.
25. Mr. Alexander referred to the recent consideration of issue-based costs orders by Mr. Stephen Jourdan QC, sitting as a Deputy High Court Judge in *Pigot v Environmental Agency* [2020] EWHC 1444. In that judgment, an issues-based order was said to be appropriate where there was a discrete or distinct issue, the raising of which caused additional costs to be incurred.

26. I do not believe that the concession just before trial in relation to the listing of BHPC products on Amazon Global Store puts this case into the territory of an issues-based costs order as such. First of all, this was conceded before trial, albeit at the last minute, and so did not occupy any of the trial time. Second, the Defendants did not lose all of the issues on Amazon Global Store. In fact, they won on the contested issues at trial, namely whether there were infringing sales or importation through Amazon Global Store. The costs associated with those aspects of Amazon Global Store were properly incurred and claimable and it would frankly be impossible to disentangle them from any separate costs relating to the listings.
27. The Claimants have not actually provided any cost estimate as to the time they spent on this part of the Amazon Global Store issues. Mr. St Quintin suggested that the briefs to counsel had been delivered by the time the concession came and that, if it had been before, the brief fees might have been less. I think that is unrealistic and elevates the issue into something that it was not. On the evidence there was no dispute that BHPC products were listed through Amazon Global Store on amazon.co.uk and amazon.de and there was only potentially legal argument involved. It must have been fairly obvious, even before the concession, that this was not going to be a major issue at the trial.
28. In my view, rather than this being about an issues-based costs order, it is more about the court reflecting the overall outcome of the proceedings and being encouraged to adopt a broad-brush approach under CPR 44.2(6)(a) in providing for a fair and just costs order in the circumstances of the case and the result. I think that some account should be taken of the Defendants' failure to concede this point until the last moment, but that should not be on the basis of the Claimants' rather crude suggestion of looking at percentage time spent on it. My conclusion was that this was a fairly trivial infringement in the end that did not justify an inquiry as to damages. I think a fair deduction to take account of it is 5% and I therefore order the Claimants to pay 95% of the Defendants' costs of these proceedings.
29. As to the points on goodwill and reputation, in my view this rather cancels itself out. The Claimants did not pursue the alleged infringements where goodwill and reputation were relevant, that is the section 10(3) or Article 9(2)(c) infringements and passing off because they added nothing to their main claim. But as they had pleaded it such evidence had to be adduced. It can fairly be said that the Defendants did not have to put the Claimants to proof on it but the costs on the Defendants' side in dealing with this are minimal and the Claimants appear to have essentially recycled evidence from other cases in respect of this. In all the circumstances, all of this evidence was unnecessary but I do not think it affects my overall conclusion on costs, which is that the Claimants must pay 95% of the Defendants' costs.

### **Interim Payment on Account**

30. I turn now to the interim payment on account. Clearly an interim payment on account under CPR 44.2(8) is appropriate, although the Claimants did not initially accept that. The amount is disputed as was the timing for its payment. The timing is not now disputed and it is agreed that the Claimants should have 28 days from today in which to pay whatever I order.



31. As to amount, it is significant that this was a case where there was an approved costs budget. By CPR 3.18:
- “In any case where a costs management order has been made, when assessing costs on the standard basis the court will
- (a) have regard to the receiving party’s last approved or agreed budgeted costs for each phase of the proceedings;
- (b) not depart from such approved or agreed budgeted costs unless satisfied that there is good reason to do so; and
- (c) take into account any comments made pursuant to rule 3.17(3) and record it on the face of the order.”
32. This issue has been split between the costs that were approved as part of the costs budget and the costs that had been incurred by the Defendants prior to the CCMC and so not part of that costs budget. In relation to the costs budget costs, the Defendants say that they should have 95% of them; the Claimants say they should have 87.5% of them. In relation to the incurred costs, the Defendants say they should have 70%; whereas the Claimants say that they should have 40%.
33. In relation to the principles applicable to interim payments on account, Mr. Alexander referred to *MacInnes v Gross* [2017] 2 Costs LR 243, a decision of Coulson J (as he then was), in which he emphasised the importance of cost budgets as determining the amount of an interim payment. In that case he ordered an interim payment of 90% of the costs budget amount.
34. Mr. St Quintin referred to the case of *Thomas Pink v Victoria’s Secret* [2015] Costs LR 463 in which Birss J (as he then was), concluded at paragraph [60] as follows:
- “It seems to me that the impact of costs budgeting on the determination of a sum for a payment on account of costs is very significant although I am not persuaded that it is so significant that I should simply award the budgeted sum. Bearing in mind that unless there is good reason to depart from the budget, the budget will not be departed from, but also taking into account the vagaries of litigation and things that might occur and the fact that it is, at least, possible that the assessed costs will be less, although no good reason why that is so has been advanced before me, I will make an award of 90% of the sum in the claimants budget (£644,829.10) rounded up to the nearest thousand.”
35. Both those cases that I have referred to the judges awarded 90% of the costs budget, leaving some room to take account of the “vagaries of litigation” and the possibility that some part of the costs may ultimately be found to be unreasonable. I see no reason to depart from that percentage in this case and neither counsel really suggested any reason why I should. I therefore direct that the interim payment on account should be 90% of 95% of the costs budget amount, which is, I think, taking the cost

budget amount of £862,307 and applying those percentages comes out at £737,273, but that figure ought to be checked to make sure that my maths is correct.

36. Turning to the incurred element, the first point to note is that the figure of incurred costs at the time of the CCMC is higher than the Defendants' actual incurred costs, so any percentage reduction has of course to be made to the actual incurred costs of the Defendants. In the order for the CCMC, Deputy Master Lloyd made the following comments in relation to those costs:

“The defendants' incurred costs in respect of these three items are extremely high when compared with the costs which have been incurred by the claimants. In particular, whereas the claimants included a costs budget for the CMC of £15,968, the incurred costs for the CMC by the defendants is £135,098. Having conducted the CMC I am at a loss to understand how that discrepancy can be justified. Therefore, these are items which, in my judgment, should be examined critically on a detailed assessment if it becomes relevant.”

37. Mr. Alexander said that having heard the trial and seen the issues in dispute and the vigour with which the Claimants were pursuing their claims, that I am in a much better position than the Deputy Master was to appreciate the reasonableness and proportionality of those early incurred costs by the Defendants. The case has important significance to the Defendants because the Claimants were seeking to change the law in a radical way, Mr. Alexander says, that would potentially make Amazon's international business on the internet unworkable. The Defendants therefore had no choice but to defend themselves from this all-out attack on their business and the way they did so has been shown to be justified and not disproportionate. Mr. Alexander also submitted that the fact that the Claimants seemed to have spent that much less than the Defendants in the early stages really came home to roost in the judgment because they clearly had not properly prepared the case. They also had to do far less, he says, in terms of providing the evidence of the Defendants' different business models and generally in relation to the evidence.
38. I cannot determine these issues now and they will be subject to detailed assessment in due course if not agreed. In terms of a payment on account, I feel it is necessary to proceed cautiously and while not necessarily ordering the irreducible minimum, it is appropriate to respect the Deputy Master's views and base my decision around a figure that properly reflects what can safely be ordered at this stage.
39. There is a stark difference between the Claimants' incurred costs and the Defendants' and whilst some of that may be explicable for the reasons canvassed by Mr. Alexander, I do consider that the normal discount of 30%, which is what he proposes, is insufficient recognition of that disparity. Having said that, I consider that the 40% that the Claimants suggest is too low. I propose to order the middle of that range, 55%, by way of interim costs order. That will therefore be 55% of 95% of the actual incurred costs by way of interim payment.

### **Interest on costs**

40. Turning to the question of interest, there are two issues that arise. First of all, what is the interest rate payable or what should the interest rate be payable on the Defendants' outstanding costs from the payment of those costs by the Defendants to when the judgment rate is ordered to start. Secondly, the date on which the judgment debt rate should apply to those costs.
41. Mr. St Quintin and Mr. Alexander answer those two questions as follows. In relation to the appropriate interest rate, Mr. St Quintin says it should be the base rate and Mr. Alexander says it should be the base rate plus 1%. As to the second question, Mr. Alexander says that the judgment debt rate should apply from now, the date of the order that I am going to make, whereas Mr. St Quintin says it should click in in four months from now.
42. Mr. St Quintin relied on the decision of Sir Alastair Norris in *Sharp and others v Blank and others* [2020] EWHC 1870, in which the learned judge considered this issue. I should point out, as Mr. Alexander did, that this case was on a different scale to this one with the total costs claim of the defendants being around £30 million. That is relevant, it seems to me, in considering whether the order made in that case is applicable to this one. In paragraph 28 of his judgment Sir Alastair Norris concluded as follows:

“Given (i) the likely size and complexity of the bill to be submitted for assessment; (ii) the complications inherent in triggering the insurance and indemnity arrangements which it was in the interests of both Claimants and Defendants should be put in place (because of the terms of the GLO) and the uncertainties that have since arisen; and (iii) the fact that, pending payment, the Defendants are receiving interest on unpaid costs at a commercial rate, in my judgment a period of about four months from the date of this judgment should elapse before interest at judgment debt rate is payable on unpaid costs.”

43. So in delaying for four months the interest rate changing from what he considered to be a commercial rate, which was agreed in that case between the parties to be base rate *simpliciter*, to the judgment rate, Sir Alastair Norris was waiting until there was much more clarity on the size of those costs bills and for a resolution of the complications of triggering the various insurance and indemnity arrangements. In my view, this case has no such complications and it is reasonably clear what costs are being claimed by the Defendants. Indeed, they are pretty much bound by the costs budget. There is no real reason to delay what I would regard as the normal order in these circumstances, namely that the judgment debt rate should apply to the Defendants' costs from the date of this order. Before then I think the rate should be base rate *simpliciter* rather than plus 1%. The Defendants have not adduced any evidence as to their borrowing costs nor why they should be entitled to a higher rate. That is what I therefore order in relation to interest.

### **Permission to Appeal**

44. That just leaves permission to appeal and, as I indicated during the hearing, I am going to grant permission to appeal to the Claimants on all the grounds they seek to

appeal. While I disagree with the points they make, as one would expect, and while I understand Mr. Alexander's points, in particular about the multifactorial decision that I had to make in relation to targeting, I do think that there are legal points that I decided that should be subject to review by the Court of Appeal and that there is a real prospect of the Claimants succeeding on one or more of those grounds. While their application is weaker in relation to joint and several liability and my refusal to order an inquiry as to damages, I do think it is appropriate that they should have the opportunity of persuading the Court of Appeal that I erred in all those respects. I therefore give permission to appeal on all the grounds put forward.

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