

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 2 February 2018

Before :

THE HONOURABLE MR JUSTICE NICKLIN

Between :

(1) Al-Ko Kober Limited
(2) Paul Jones

Claimants/
Applicants

- and -

Balvinder Sambhi

Defendant/
Respondent

Gervase de Wilde (instructed by Wright Hassall LLP) for the Claimants
The Defendant was present in court and represented himself

Hearing date: 30 January 2018

**Judgment Approved by the court for handing down
(subject to editorial corrections)**

The Honourable Mr Justice Nicklin :

1. On 14 September 2017, the Claimants commenced these proceedings against the Defendant. The Claim Form sought remedies, including an injunction, against the Defendant for publishing various videos on his YouTube channel.
2. The First Claimant is a UK company and part of the business Al-Ko VT which is a leading brand in the towing and trailer industry. Included within its product range are two stabilisers for use by people towing caravans; the AKS1300 and the AKS3004. The Second Claimant is the Marketing Manager of the First Claimant. The Defendant claims to have developed a product called the 'Torquebar', which would be a competitor product to the stabilisers manufactured by the First Claimant.
3. The Defendant has made various videos which refer to the AKS stabilisers and to the Claimants in various ways which are derogatory of the stabilisers and the Claimants. The videos were published on the Defendant's Torquebar YouTube channel.

Interim Injunction Application

4. By Application Notice dated 18 September 2017, the Claimants sought an interim injunction against the Defendant to restrain him from publishing (or continuing to publish) the videos on the grounds that their continued publication constituted malicious falsehood and/or breach of the Data Protection Act 1998 (“the Injunction Application”).
5. The Injunction Application came before Whipple J on 22 September 2017. The Claimants were represented by Justin Rushbrooke QC (leading Mr de Wilde). The Defendant attended the hearing and represented himself. After she had heard argument, the Judge reserved judgment. Judgment was handed down on 6 October 2017 ([2017] EWHC 2474 (QB)) at Swansea Crown Court (the Judge by that stage having gone out on circuit). Granting an interim injunction, in summary, the Judge found:
 - i) that the videos published by the Defendant bore meanings (1) that the AKS stabilisers are inherently unsafe products which have caused various caravan accidents that were depicted in the videos; (2) that the AKS stabiliser is a ‘killer’ and that the First Claimant is knowingly risking the lives of the public by selling it; (3) that the First Claimant is a fraudulent business and is conning or scamming its customers; and (4) that the Second Claimant has been exposed as having told lies about the stabiliser which the First Claimant had then instructed solicitors to try to ‘hush up’ ([13] and [15]);
 - ii) that these meanings were false ([19]-[20] and [23]-[25]);
 - iii) that, whatever his state of mind in relation to past publications, continued publication of these statements by the Defendant would be malicious ([31]-[32]);
 - iv) that, unless restrained by interim order, the Defendant would continue to publish these false statements ([33]); and
 - v) that, as the Defendant had refused to stop processing the Second Claimant’s data, an interim order was justified pursuant to s.10 Data Protection Act 1998 ([44]).
6. The judgment records ([9]) that the Judge had watched 7 of the videos about which complaint was made by the Claimants. A table summarising their contents is set out in the Annex to the Judgment.

Injunction Order

7. The operative terms of the injunction order granted by the Judge were as follows:
 1. This is an injunction and Order under the Data Protection Act 1998 (“the DPA 1998”), made against the Defendant on 6 October 2017 by the Judge... on the application (“the Application”) of the Claimants by Notice dated 18 September 2017, heard by the Judge on 22 September 2017. The Judge heard leading counsel for the Claimants and the Defendant in person...

Injunction

2. Until the trial of this claim or further Order of the Court, the Defendant must not:

(a) whether by himself, his servants or agents or otherwise howsoever further publish or cause or permit to be published the following statements or any of them:

- (1) the failure of AL-KO's stabiliser product to work properly caused the caravan accident or accidents depicted in the accompanying footage;
- (2) AL-KO is trying to keep hidden the failure of its stabiliser product;
- (3) AL-KO's stabiliser product is liable to cause caravan accidents;
- (4) AL-KO's stabiliser product is liable to kill people who use it;
- (5) AL-KO's stabiliser is an inherently unsafe product;
- (6) AL-KO knows that its stabiliser is an inherently unsafe product;
- (7) AL-KO's and/or Paul Jones' claim that their stabiliser product is guaranteed to prevent snaking is a demonstrable lie;
- (8) AL-KO's and/or Paul Jones' claim that their stabiliser product helps to prevent snaking is a demonstrable lie;
- (9) AL-KO is conning (or scamming) its customers;
- (10) AL-KO is knowingly risking the lives of the public;
- (11) AL-KO and/or Paul Jones are putting their desire for profits above the lives of their customers;
- (12) AL-KO and Paul Jones are guilty of fraud;
- (13) AL-KO and/or Paul Jones are using solicitors to try and hush up the fact that they have been lying to the public;

or any words and/or images or statements to substantially similar effect.

8. As is conventional for interim non-disclosure orders, the Order provided expressly that any party could apply to the Court to vary or discharge the injunction upon giving written notice to the other party. No application to vary or discharge the Order was made and the Defendant has not sought to appeal the Order.

Alleged breach of injunction order

9. The Claimants contend that the Defendant has breached the terms of the Order and is therefore in contempt of court.
10. By Application Notice dated 13 December 2017, the Claimants seek orders against the Defendant in the following terms:
 - “(1) pursuant to CPR r81.4 the Defendant is sanctioned for his contempt of court in breaching the Order dated 6 October 2017 of Mrs Justice Whipple in these proceedings (“the Order”);
 - (2) pursuant to CPR r.81.8 service of the Order required by CPR r81.5 is dispensed with; and
 - (3) that the Defendant do pay the Claimants’ costs of the application to be summarily assessed on the indemnity basis.”

The application is supported by the first affidavit of the Claimants’ solicitor, Daniel Jennings sworn on 11 December 2017.

11. CPR Part 81.10(3) requires that an Application Notice seeking punishment for contempt must set out the grounds upon which the application is based. In compliance with this, the Claimants attached to the Application Notice a “Statement of Grounds upon which Committal Application is made”. The full terms of the Statement of Grounds are set out in the Appendix to this judgment. The “Notice” that appears before the grounds are set out is in the form required by CPR Part 81PD Annex 3.
12. In summary, in their grounds, the Claimants contend that the Defendant has breached the Order by publishing statements prohibited by Paragraph 2(a) of the Order in two ways. First, by publishing (pseudonymously via various YouTube accounts) further videos that contained prohibited statements. Second, at the Motorhome and Caravan Show 2017, which took place on 17 October 2017 (“the Exhibition”), by handing out a leaflet to people at the Exhibition that contained prohibited statements (“the Exhibition Handout”).

Contempt of Court: Substantive requirements

13. In order to establish that someone is in contempt it is necessary to show:
 - i) that the respondent knew of the terms of the order;
 - ii) that s/he acted (or failed to act) in a manner which involved a breach of the order; and
 - iii) that s/he knew of the facts which made his/her conduct a breach.

Masri -v- Consolidated Contractors International Company SAL [2011] EWHC 1024 (Comm) [150].

Contempt of Court: Procedural requirements

Jurisdiction and procedural safeguards

14. CPR Part 81.4(1)(b) provides: “*If a person... (b) disobeys a judgment or order not to do an act, then... the judgment or order may be enforced by an order for committal.*” This can include committal for breach of an interim injunction: ***Attorney-General -v- Punch Ltd [2003] 1 AC 1046*** [32].
15. It is for the Judge, as a matter of case management, to decide whether to determine allegations of contempt at an interim stage or to adjourn the application to a later stage, even after the trial of the action. There is a public interest in ensuring that orders are respected and that may well justify the court hearing an application before the conclusion of the case: ***Ablyazov -v- JSC BTA Bank [2012] 1 WLR 1988*** [33], [41] and [48]. It has not been suggested that I ought to adjourn the Claimants’ application and I can see no reason for doing so. The overriding object underlying the contempt jurisdiction is to secure compliance with orders of the Court: ***Allason -v- Random House (UK) Ltd [2002] EWHC 1030 (Ch)*** [35]. That will generally point towards the Court ruling on an alleged contempt sooner rather than later.
16. The procedural requirements for committing a person for contempt of court for breaching an Order not to do a particular act are found in CPR Part 81. Historically, the Courts insisted upon scrupulous observation of any prescribed procedural step as a condition of the exercise of the contempt jurisdiction. That was because the proceedings were quasi-criminal in nature and the liberty of the subject was potentially at stake. However, as the authors of *Arlidge, Eady & Smith on Contempt* note (§12-38, 5th edn., 2017) (footnotes omitted):

“... this broad principle is still relevant but modern practice is more tolerant of purely technical breaches. It is now provided in the Practice Direction [CPR Part 81 PD §16.2] the court may waive procedural defects is satisfied that no injustice has been caused. That is consistent with the more flexible approach taken in modern cases.”

Personal service of the Order

17. The material part of CPR Part 81.5(1) provides:

“Unless the Court dispenses with service under rule 81.8, a judgment or order may not be enforced under rule 81.4 unless a copy of it has been served on the person required ... not to do the act in question...”

The order must ordinarily be served personally: CPR Part 81.6 (as to which see also CPR Part 6.22).
18. Under CPR Part 81.8, the Court can dispense with service of prohibitory injunctions “*if it is satisfied that the person had notice of it (a) by being present when the judgment or order was given or made; or (b) by being notified of its terms by telephone, email or otherwise.*” The Court’s discretion to dispense with personal service if it is satisfied that the respondent has had notice of it is a wide one: ***Davy International Ltd -v- Tazzyman [1997] 1 WLR 1256***.
19. Mr de Wilde accepts that the Order was not served personally on the Defendant. However, he contends that the Defendant was present at the hearing on 22 September 2017 which then led to the Court handing down the Judgment and making the Order.

In particular, he relies on the first affidavit of Mr Jennings which sets out the correspondence that was exchanged between the parties and the Court.

- i) The draft judgment was provided to the parties on 29 September 2017 and the parties were asked to provide the Judge with submissions as to the form of order consequent on the judgment.
- ii) The Claimants provided a draft Order to the Defendant and the Court that was in the same terms as had been sought at the hearing. In response, the Defendant stated that he did not agree with the terms of paragraph 2(a) of the Order.
- iii) After consideration of the parties' submissions as to the form of order, the Judge made the Order and, at 09.53 on 6 October 2017, the Judge's clerk emailed a copy of the final judgment (as handed down) together with the Order made by the Judge to the Defendant. The email stated:

“The Judge has now made this Order. Please read it carefully. It says that you are not permitted to publish the false statements about Al-Ko or to process the personal data about Mr Jones from now on until the trial of this matter; at trial, the trial judge can continue this order, or make a different order.

The effect of this order is that you must take down the 84 videos from YouTube. You must not publish them or any others to similar effect, while this order remains in place.

If you breach this Order, that is a serious matter. It would be a contempt of court, which could result in you being sent to prison.

You should seek legal advice if you are in any way unclear about what this order means.”

- iv) The Defendant replied to that email at 18.57 on 6 October 2017. He confirmed receipt of the judgment but raised points about which videos he was required to remove. The Claimants' solicitors then replied to the Defendant's email providing a schedule of the videos that would have to be removed to comply with the order prohibiting the publication of the various statements identified in Paragraph 2(a) of the Order.
20. I am quite satisfied that the Defendant was fully aware of the terms of the Order as a result of his being sent the Order by email from the Judge's clerk on 6 October 2017. In fairness, the Defendant accepted at the hearing that he was aware of the terms of the Order. I therefore dispense with the requirement that the Order be personally served on the Defendant under CPR Part 81.8.

Penal Notice

21. CPR Part 81.9(1) provides that an order may not be enforced under CPR Part 81.4 unless there is prominently displayed, on the front of the copy of order, a warning to the person required not do the act in question that disobedience to the order would be a contempt of court punishable by imprisonment, a fine or sequestration of asset.

22. I am satisfied that the Order contains the requisite penal notice. It is in the form found in the model order attached to the Master of the Rolls' *Practice Guidance (Interim Non-Disclosure Orders)* [2012] 1 WLR 1003.

Personal service of the Application Notice

23. CPR Part 81.10(4) provides that the application notice and the evidence in support must be served personally on the respondent. CPR Part 81.10(5)(a) allows the Court to dispense with personal service under paragraph (4) if it "*considers it just to do so*".
24. In *Al-Baker -v- Al-Baker* [2015] EWHC 3229 (Fam), Mostyn J held (in relation to the equivalent provision in the Family Procedure Rules) that the Court would be likely to dispense with personal service if satisfied that service has, in effect, been achieved.
25. Personal service of the Application Notice has not been effected. A second affidavit from Mr Jennings (sworn on 22 January 2018) sets out the efforts that were made by a process server personally to serve the Application Notice on the Defendant. Attempts were made to effect personal service on 16, 18, 19 and 20 December 2017. A separate affidavit has also been provided by Mark Gill, the process server, confirming these attempts to serve the Defendant. The Defendant has challenged some of this evidence. He denies that he left a voicemail with Mr Gill saying that he would not accept service of any documents and that they should be instead sent to his solicitors. Ultimately, whilst this evidence might have been relevant to an application for permission to serve the Application Notice by alternative means, it does not demonstrate that the Application Notice has come to the attention of the Defendant.
26. On 4 January 2018, the Claimants' solicitors served the Application Notice on the Defendant by email, by ordinary first-class post and also by recorded delivery to the Defendant's home address. The letter drew the Defendant's attention to Grounds attached to the Application Notice and also advised him that he could apply for legal aid to be represented at the hearing. I was told by Mr de Wilde at the hearing that the recorded delivery package was not delivered to the Defendant or collected from the local Post Office delivery office. He submits however, that the package sent by ordinary post was not returned and no 'bounce-back' was received in relation to the email. The Defendant has used the same Hotmail email address throughout the proceedings.
27. On 19 January 2018, the Claimants' solicitors sent an email to the Defendant attaching a draft index for the bundles for the hearing that was listed on 30 January 2018. On 22 January 2018, the Defendant sent a letter to the Claimants' solicitors replying to that email (thereby indicating that he had received it). He concluded by stating: "*I will still attend my defence at the High Court on 30 January 2018*". I note (for reasons that I will return to later) that, in this letter, the Defendant addressed Mr Jennings as: "*Dear Baboon Jennings*". That is a style of address that the Defendant has used regularly since the injunction was granted in October 2017. It was noted in Whipple J's judgment ([8]).
28. Finally, on 24 January 2018, the hearing bundles were delivered to the Defendant. Those bundles contained the Application Notice and the evidence upon which the Claimants intended to rely.

29. At the beginning of the hearing, despite having the hearing bundles, it became apparent to me that the Defendant had not read the first affidavit of Mr Jennings, which set out the detail of what was alleged to be the Defendant's breaches of the Order of 6 October 2017. I adjourned to enable him to read the document. A defendant to contempt proceedings must always have a proper opportunity of meeting the charges made against him. When I returned to Court, in response to my questions, the Defendant confirmed that he had read the affidavit and that he understood what was being alleged against him. He told me that he did not need any further time to consider his position and that he was ready to proceed with the hearing.
30. I am quite satisfied that, although not "personally served" under the CPR, the Defendant has been effectively served with the Application Notice. I am sceptical of the Defendant's claim not to have received the letter of 4 January 2018 through the ordinary post. But I do not need to resolve that point as the Defendant confirmed during the hearing that he has received emails sent by the Claimants' solicitors. I am satisfied that he received the email of 4 January 2018 which attached the Application Notice, Statement of Grounds, the first affidavit of Mr Jennings and a draft order. I am satisfied that the Defendant knows what is alleged against him and he told me at the hearing that he was in a position to deal with those allegations. He has not sought representation prior to the hearing (whether under legal aid or otherwise) and nor has he indicated that he would wish to be represented. I consider that it is just to dispense with personal service of the Application Notice.

Safeguards at the hearing

31. The hearing was conducted in open court: *Practice Direction (Committal for Contempt: Open Court)* [2015] 1 WLR 2195.

Evidence

32. The burden of proof is on the Claimants and the standard of proof is proof beyond reasonable doubt: CPR Part 81 PD §9, and *Re Bramblevale Ltd* [1970] Ch 128.
33. Mr Jennings' first affidavit contains most of the evidence upon which the Claimants rely. He gave evidence and was cross-examined by the Defendant.
34. Some of the evidence relied upon by the Claimants has come from Google (the company that operates YouTube). Following an order made by the Court under the *Norwich Pharmacal* jurisdiction, Google provided user information to the Claimants for a number of the YouTube accounts which had been used to post the videos the publication of which the Claimants contend was a breach of the Order of 6 October 2017 ("the YouTube Data").
35. The YouTube Data included, for each account:
- i) the user name;
 - ii) the email address given by the user;
 - iii) the country of residence given by the user;

- iv) the date of birth given by the user; and
 - v) IP address and date/time for each occasion on which the user has accessed the account.
36. As Mr de Wilde conceded at the outset, the Claimants' case against the Defendant is based entirely on circumstantial evidence. However, he submits that, as in criminal trials, circumstantial evidence is capable of providing an evidential foundation upon which the relevant tribunal can be sure of a respondent's guilt: *JSC BTA Bank -v- Ablyazov* [2013] 1 WLR 1331 [51]-[52]. In *Liverpool Victoria Insurance Co Ltd -v- Yavuz* [2017] EWHC 3088 (QB) Warby J directed himself [20]:
- “... [I should] apply the established approach of the criminal law. I should decide which of the strands of evidence relied on I accept as reliable, and which if any I do not. I must then decide what conclusions I can fairly and reasonably draw from any strands of evidence I do accept. I should not engage in any guesswork or speculation. The ultimate question is whether I have been made sure of the defendant's guilt. To reach that point I must be persuaded that, on the view of the evidence that I take, I can reject all realistic possibilities consistent with innocence, and infer guilt: see, for instance, *R -v- G & F* [2012] EWCA Crim 1756 [2013] Crim LR 678 [36]-[37].”
37. This approach is consistent with the direction that is given to juries in criminal trials as to how they should approach circumstantial evidence. The *Crown Court Compendium* (November 2017) contains the following guidance (Chapter 10-1, paragraphs 2-3):
- “A circumstantial case is one which depends for its cogency on the unlikelihood of coincidence: circumstantial evidence ‘works by cumulatively, in geometrical progression, eliminating other possibilities’ (*DPP -v- Kilbourne* [1973] AC 729 at p.758 *per* Lord Simon)... The question for the jury is whether the facts as they find them to be drive them to the conclusion, so that they are sure, that the defendant is guilty (*McGreevy -v- DPP* [1973] 1 WLR 276)”.
38. I will apply this approach to the assessment of the evidence in this case.
39. The Defendant was entitled to give oral evidence at the hearing even though he had filed no written evidence. A defendant who gives evidence is liable to be cross-examined. However, like a defendant in a criminal trial, a defendant to a committal application has the right to remain silent: *Comet Products UK Ltd -v- Hawkex Plastics Ltd* [1971] 2 QB 67. Here, the Defendant chose not to give evidence. A defendant is fully entitled to remain silent and to require the alleged breaches of the order be proved (if they can be) to the criminal standard. Consistent with the right to silence, I will draw no adverse inferences against the Defendant for not having given evidence.

The breaches of the Order alleged against the Defendant

40. I have summarised the grounds upon which the Claimants rely to establish that the Defendant has breached the Order (see paragraph 12). The detail is contained in the Appendix to this judgment.

41. The Defendant's position in relation to Grounds A and B is different, and I am going to deal first with Ground B.

Ground B: publication of the Exhibition Handout on 17 October 2017

42. At the hearing of the application, the Defendant admitted that he had distributed the Exhibition Handout at the Exhibition. He told me that he did so because he believed that CPR Part 32.12(2)(c) allowed him to use the witness statements that had been put in evidence in the hearing of the injunction application on 22 September 2017. As I explained to the Defendant at the hearing, CPR Part 32.12(2)(c) removes the restriction on the use of witness statements that would otherwise be imposed by CPR 32.12(1). If the use that the Defendant made of the relevant witness statement amounted to publishing any of the statements prohibited by Paragraph 2(a) of the injunction order, then that was a breach of the injunction and CPR 32.12(2)(c) had no bearing on that and certainly did not permit it.
43. The Exhibition Handout is a three-page document headed as follows:

**AL-KO KOBER LTD & MR PAUL JONES
HIGH COURT CONTRADICTING STATEMENTS**

JUSTICE.GOV.UK – PART 32 – EVIDENCE

The use of witness statements for other purposes

(2) Paragraph (1) does not apply if and to the extent that:

(c) the witness statement has been put in evidence at a hearing held in public

44. The reference to Part 32 is consistent with what the Defendant told me about his belief that he was permitted to use the witness statements from the injunction application hearing.
45. The body of the Exhibition Handout includes what appear to be quotations from the witness statement of the Second Claimant from the injunction application generally to the effect that the First Claimant's stabiliser product "*doesn't prevent snaking*". The Defendant states after each of the identified remarks "*Al-Ko Kober Paul Jones has made contradicting statements!*". The contradicting statement is identified in the document as the Second Claimant's statement at a trade event in 2013: "*It's a stability device which basically helps with the prevention of snaking*". At the end of the document the following appears, in bold text:

**AL-KO KOBER LTD AND MR PAUL JONES ARE SCARED OF THE REAL
TRUTH**

**THAT IS WHY THEY HAD TO COMMENCE LEGAL ACTION TO THE HIGH
COURT UK ON 22 SEPTEMBER 2017!**

46. Although I have quoted the terms of the injunction Order above (paragraph 7), I will set out again the relevant part relied upon by the Claimants for ease of reference:

"... the Defendant must not whether by himself, his servants or agents or otherwise howsoever further publish or cause or permit to be published the following statements or any of them:

- (2) AL-KO is trying to keep hidden the failure of its stabiliser product; and
- (13) AL-KO and/or Paul Jones are using solicitors to try and hush up the fact that they have been lying to the public;

or any words and/or images or statements to substantially similar effect.”

47. Mr de Wilde contends that the publication of the Exhibition Handout is a breach of paragraphs 2(a)(2) and/or 2(a)(13) of the Order of 6 October 2017 because it amounts to words or a statement to substantially similar effect to the statement that “*AL-KO is trying to keep hidden the failure of its stabiliser product*” and that “*AL-KO and/or Paul Jones are using solicitors to try to hush up the fact that they have been lying to the public*”.
48. In ***McCann & Another -v- Bennett* [2013] EWHC 283 (QB)**, Tugendhat J set out the approach to be adopted when it is alleged that someone has breached an order prohibiting the publication of one or more statements:

[82] In approaching this issue I shall first consider what the publications complained of meant objectively. I shall consider separately what the Defendant claims he intended or thought they meant. In considering the objective meaning I will apply the test which a court is required to apply at the trial of a libel action where there is an issue as to what is the natural and ordinary meaning of words alleged to be defamatory of a claimant. But in applying that test I shall abide by the requirement that I must be satisfied so that I am sure that an alleged breach of an undertaking is indeed a breach.

[83] Guidance on how to determine the meaning of words alleged to be defamatory has been given by the Court of Appeal, and recently summarised by Sir Anthony Clarke MR in ***Jeynes -v- News Magazines Ltd* [2008] EWCA Civ 130** at [14]. It included the following:

‘The governing principles relevant to meaning ... may be summarised in this way:

- (1) The governing principle is reasonableness.
- (2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available.
- (3) Over-elaborate analysis is best avoided.
- (4) The intention of the publisher is irrelevant.
- (5) The article must be read as a whole, and any ‘bane and antidote’ taken together.
- (6) The hypothetical reader is taken to be representative of those who would read the publication in question...’

49. The Court is well used to deciding the issue of meaning in the context of defamation claims. *Jeynes* is a useful summary of applicable the principles. However, and as Tugendhat J makes clear, in the context of allegations of contempt of court, the standard of proof has an important bearing: I must be *sure* that the meaning conveyed is a breach of the order. Necessarily that means, if there is doubt as to whether the relevant statement (in the meaning found by the Court) is a breach of the injunction, then the respondent is entitled to the benefit of that doubt.

Decision

50. It is not easy to follow what the Exhibition Handout is saying. Although I suspect that many recipients of the document may have given up reading it after a few paragraphs, the ordinary reasonable reader is taken to have read the whole document and the meaning of the document is to be ascribed having considered the document as a whole. As with a newspaper, headlines may have an impact on the meaning that the ordinary reasonable reader would understand the document to bear.
51. In my judgment, the meaning conveyed by the Exhibition Handout is that there is a High Court case involving the Claimants. In those proceedings statements have been made as to the effectiveness of the First Claimant's stabiliser product to prevent caravan snaking. Those statements are not true and are contradicted by other statements the Claimants have made. The Claimants are scared that the truth will become known and so have resorted to legal proceedings to try and prevent this.
52. This meaning does not directly contravene either sub-paragraph (2) or (13). The meaning I have found does not have the element of product "failure" in sub-paragraph (2) and it does not convey the element of "lying to the public" in sub-paragraph (13). The issue therefore is whether I am sure that the meaning that I have found the Exhibition Handout to bear is "*substantially to similar effect*" as the statements prohibited by sub-paragraph (2) and/or (13).
53. I am not sure. In my view there is room for reasonable disagreement as to whether the meaning I have found is substantially to similar effect to sub-paragraph (2) and/or (13). The terms of injunctions are to be read strictly with any ambiguity resolved in the favour of the respondent. The doubt I have means that I cannot be sure that publication of the Exhibition Handout, in the meaning I have found it to bear, is a breach of the terms of the Order of 6 October 2017.

Ground A: publication of videos on YouTube from on or around 7 October 2017

54. The Claimants contend that the Defendant breached the Order by publishing a series of videos on YouTube from on or around 7 October 2017. The specific publications which the Claimants allege are in breach of the Order are identified in the first affidavit of Mr Jennings. They are (with references to the grounds in the Appendix):
- (1) the uploading of 36 of the Videos to a YouTube account in the name of "David Johnson" on 7 October 2017 (Grounds §3.3);
 - (2) the uploading of 20 of the Videos to a YouTube account in the name of "Jon Rain" on 8 October 2017 (Grounds §3.5);

- (3) the uploading of 179 of the Videos to a further six YouTube accounts in the names of “Imran Khan”, “Gurdeep Singh”, “Bob Thornton”, “Adam Zibk”, “Tou Fou” and “Wang Chung” which were set up on 15 October 2017 (Grounds §3.7); and
 - (4) the uploading of 45 videos to a YouTube account in the name of “Hans Copperhausen”; and the uploading of a further 45 videos to a YouTube account in the name of “Mark Vonberg”, on 22 November 2017 (Grounds §3.9).
55. On any view, a very substantial number of videos has been uploaded to YouTube since the grant of the injunction. Details of each video and a summary of its contents has been provided by Mr Jennings in a Schedule 1 to his first affidavit (“the Video Schedule”). In just 9 days after Whipple J’s Order, apparently 8 separate individuals each uploaded a large number of very similar videos all attacking the Claimants. The activity by each of these people individually arguably shows a tenacity bordering on obsession.
56. In the interests of proportionality, Mr de Wilde has concentrated on what could be regarded as ‘specimen counts’ in relation to the uploading of particular videos. Paragraph 4 of the Grounds relies upon 13 specific instances of videos which were uploaded to YouTube and for which the Claimants contend the Defendant is responsible. This is a sensible course. 10 of the occasions relied upon are instances where the relevant video was one that had been identified in the Annex to Whipple J’s judgment of 6 October 2017. His reason for concentrating on these is that, if the Defendant is found to be the person who uploaded the relevant videos, then he submits that there is perhaps limited scope for an argument that publishing them was not a breach of the Order.
57. I have watched all the videos that are the subject of the ‘counts’ in §§4.1 to 4.13 in the Grounds.
- i) The videos the subject of Grounds §§4.1, 4.4, 4.5, 4.7, 4.8, 4.12 and 4.13 are the same and they contain the same footage as Video 6 in the Annex to the 6 October 2017 judgment.
 - ii) The videos the subject of Grounds §§4.2 and 4.6 are the same and they contain the same footage as Video 7 in the Annex to the 6 October 2017 judgment. These videos include audio recording of a telephone call between the Defendant and the Second Claimant (referred to in Whipple J’s judgment [8]) (“the Telephone Call”).
 - iii) The video the subject of Ground §4.3 contains the same footage as Video 3 in the Annex to the 6 October 2017 judgment.
 - iv) The videos the subject of Grounds §§4.9 to 4.11 are new. I deal below (paragraph 75) with particular features of these videos.
58. At the hearing, the Defendant denied that he was responsible for the publication of these videos.

Did the Defendant publish the videos?

59. The Claimants rely upon evidence (a) from the publications themselves and their timing; (b) from the evidence of the IP addresses relating to the accessing of the various YouTube accounts; and (c) from the operation of these YouTube accounts. The cumulative effect, it is submitted, is to leave no room for doubt that it was the Defendant who set up these accounts and uploaded (and thereby published) the relevant videos. I will analyse each of the pieces of evidence that are relied upon.
60. The first point relied upon by the Claimants is the timing. David Johnson's account was created on 6 October 2017 at 13.36, only some 4 hours after the Defendant had been sent the Order which effectively required him to remove a large number of videos from his Torquebar YouTube account. The following day, at 13.23 someone logged in to David Johnson's account and uploaded 36 videos relating to the Claimants.
61. David Johnson's YouTube account was accessed on a number of further occasions, including on 11 November 2017 at 16.29.
62. The email address given for David Johnson's account was davidjohnson101101@gmail.com. His country of residence was stated as United Kingdom.
63. On 8 October 2017, Jon Rain's YouTube account was created at 13.28. 20 videos concerning the Claimants were uploaded on that date. Mr Rain's account was accessed on one further occasion on 11 November 2017 at 16.33 (i.e. 4 minutes after someone had accessed David Johnson's account). The email address given for Mr Rain's account was jonrain101101@gmail.com. The numeric element of this email address matched exactly that contained in the email address on David Johnson's account. His country of residence was stated as the Netherlands.
64. On 15 October 2017, six YouTube accounts were created in the following names at the times shown:
 - i) Imran Khan, 13.36;
 - ii) Gurdeep Singh, 13.52;
 - iii) Bob Thornton, 14.02;
 - iv) Adam Zibk, 14.12;
 - v) Tou Fou, 14.31; and
 - vi) Wang Chung, 14.45.
65. In registering the accounts, all gave email addresses hosted by Gmail. All the accounts were accessed only on one occasion. On that occasion, videos concerning the Claimants were uploaded. Four of the individuals gave their country of residence as the Netherlands (as had Jon Rain). The other two gave Afghanistan and Belarus.

66. The person(s) who accessed all 8 accounts, on each occasion, did so via the same proxy server which gave an IP address in the Netherlands. Proxy servers can be used to hide the true IP address of the relevant user. Mr de Wilde accepted that this evidence could be equally consistent with a number of users using the same proxy server, however he submitted that it is beyond coincidence that all of these users should use the same proxy server in the Netherlands including the setting up of all six accounts in a 75-minute period on 15 October 2017. The evidence, he submits, is strengthened by the fact that these 6 users not only used the same proxy server on 15 October 2017, but also had precisely the same IP address.
67. The videos uploaded to the six accounts created on 15 October 2017 had all previously been available on the Defendant's Torquebar YouTube channel. The Defendant had removed these videos shortly after 6 October 2017 when Whipple J granted the injunction order. To be in a position to upload these videos, all six would have had, independently, to download the videos at a time before 6 October 2017 when they were still available on the Defendant's YouTube channel. To do that, each would have had to use third-party software to enable downloading as YouTube does not provide a facility to download videos from its site. Each individual then waited until 15 October 2017 before creating accounts, one after another, in a 75-minute period, to which s/he uploaded the videos that had previously only been available on the Defendant's YouTube channel. Is that remotely credible? The answer is no.
68. One of the videos, entitled "ALKO STABILISER ACCIDENTS PT1." had only been viewed 14 times when it was hosted on the Defendant's YouTube channel. Those views included views by the solicitors and counsel for the Claimants. This video was separately uploaded to all 6 accounts created on 15 October 2017. Mr de Wilde submits that it is incredible to suggest that 6 apparently unconnected individuals were among only 14 people to have viewed the video, who downloaded it and, later uploaded it to their account on the same afternoon.
69. Before turning to consider further videos that were uploaded in November, I can and should state my conclusions on the evidence as to these 8 accounts.
70. The features of the evidence that I have set out above - and their cumulative effect - lead me to the certain conclusion that all of these 8 YouTube accounts were created and operated by a single individual. No other explanation is remotely credible. I am satisfied so that I am sure that the same person uploaded the videos that are the subject of Grounds §§4.1 to 4.8. That individual used false names and a proxy server in an effort to avoid detection.
71. As I have said, further videos were uploaded in November. The Claimants have no IP information relating to these instances. Nevertheless, they rely upon features of these further videos to contend that the same person is also responsible for uploading them. I need to analyse the evidence relating to these further videos carefully.
72. The videos the subject of Grounds §4.9 to 4.11 were uploaded to two existing YouTube accounts that had already been used after 6 October 2017 to host videos concerning the Claimants; two were uploaded to the account of David Johnson and one to the account of Jon Rain. Given that a password would have been required to access each account, this provides very strong evidence that the same person was responsible for uploading these videos as was responsible for Grounds §§4.1 and 4.2.

73. The three videos were ‘new’ in the sense that they had not been the subject of specific consideration by Whipple J. However, in style and content, they are strikingly similar to videos previously published by the Defendant.
- i) The video the subject of Ground §4.9 lasts for 1 minute 26 seconds. It adopts a similar layout as those the subject of Grounds §§4.1 to 4.2. The same logo of the First Claimant appears in the centre of the screen, above it appears the name of Peter Eustace, who is Managing Director of the First Claimant. Below the logo the words “FRAUD FOR PROFIT!” appear. The targeting of an individual at the First Claimant is similar to the targeting previously of the Second Claimant. There then appear a collection of particularly graphic and gruesome photographs showing what appear to be casualties in road traffic accident; at least one of the images shows a decapitated corpse. The images are so shocking that I am confident that they would not be published by any UK media. While these images are shown (together with other pictures of road traffic accidents involving caravans), the audio track consists of edited extracts of the Telephone Call that had previously featured in the video the subject of Ground §4.2. The road traffic accident images are interspersed with what appears to be a social media profile of the Second Claimant, but in at least one instance overlaid with a moving graphic of Mr Eustace’s name. Various speech bubbles are added, attributed to the Second Claimant, with the words “EASY MONEY FOR SELLING AL-KO CRAP!”, “I JUST LIED TO YOU!!” and “MORE LIES, MORE SUCKERS TO SELL CRAP!! EASY MONEY!!”. In conjunction, the audio track and the captions on the screen suggest what the Second Claimant is saying during the Telephone Call is untrue. It is also relevant to note that the audio track in this video is included over different images from the earlier video. It is, of course, technically possible to separate an audio track from an earlier video and then use it to accompany different images, but to do so a person would need a copy of the earlier recording and both the inclination and technical ability to carry out such editing. The video finishes using similar graphics as the opening. The text around the First Claimant’s logo is: “Peter Eustace RISKING LIVES!” and then “STABILISER FRAUD FOR LIFE!”.
 - ii) The video the subject of Ground §4.10 lasts for 1 minute 22 seconds. It starts in a manner very similar to the video in Ground §4.9. Although Mr Eustace’s name continues to appear above the logo, below the text has been changed to “FUCK YOU VERY MUCH!”. The soundtrack consists of Lily Allen’s song “Fuck you” (the lyrics of which include these words) together, again, with edited extracts from the Telephone Call. Similar visual devices are used. The same gruesome road traffic accident pictures are interspersed with the social media profile of the Second Claimant with a speech bubble: “MORE LIES MORE SUCKERS TO SELL CRAP!! EASY MONEY!!”.
 - iii) The final ‘new’ video is the subject of Ground §4.11. I regard this video as highly significant. It runs for 1 minute 56 seconds. The opening graphics are the familiar device of the logo of the First Claimant. Above the logo appears Mr Eustace’s name and below the words “FRAUD FOR LIFE!”. Next is footage of the Second Defendant apparently giving an interview at the NEC Show. On top of the image are superimposed the words: “FAMILY KILLER”.

This interview footage is then interspersed by the same road traffic accident pictures and pictures of the First Claimant's stabiliser product. The device of speech bubbles is again deployed. The words "PROFIT OVER LIVES!!" are attributed to the Second Claimant. The audio track again includes edited extracts from the Telephone Call to accompany various images including video of caravan accidents. Mr Eustace's name appears frequently at the top of the screen and also the words "FAMILY KILLER!". The video then takes a new direction. Footage of what appears to be a baboon is shown together with a speech bubble: "LETS CALL SOME IDIOTS!! LETS CALL WRIGHT HASSAL!!" (sic). Flashed on the screen is then what appears to be a social media profile for Mr Jennings, before the footage returns to the baboon (now holding a very large number of banknotes) with the speech bubble: "AL-KO WANTS THIS HUSHED UP". A picture of Mr Jennings then appears with the caption: "YES I CAN HELP YOU HIDE THE TRUTH!!". The audio track is a song about a baboon. The imagery continues in this vein with the words "FAMILY KILLER" overlaid at various points.

74. Although it is theoretically possible that these three videos were made and uploaded by different people, that possibility is so remote that I am sure it can discount it. All the evidence points to, and I am sure, that they are the work of a single creator. For the reasons I have explained above, I am also sure that that person is also responsible for the operation of the YouTube accounts and the videos that were uploaded to them in Grounds §§4.1 to 4.8.
75. The significance of the video the subject of Ground §4.11 is the personal attack made on Mr Jennings (including calling him a baboon). That is the same term of abuse that the Defendant has used in correspondence in this litigation. It is the unmistakable signature of the Defendant. This video is not the first to include reference to "baboon" or the Claimants' solicitors' firm. As is clear from the Video Schedule, this term (usually accompanied by an attack on Mr Jennings or his firm) appears in videos uploaded to the YouTube accounts of (i) David Johnson on 7 October 2017; (ii) Jon Rain on 8 October 2017; (iii) Gurdeep Singh; (iv) Imran Khan; (v) Bob Thornton; (vi) Wang Chung; (vii) Adam Zibk; and (viii) Tou Fou, the latter six all on 15 October 2017.
76. Is it a coincidence that the same term of abuse – "baboon" appears in the Defendant's correspondence and these videos? The answer is, plainly, no. Is there a conceivable alternative explanation that is remotely credible? The Defendant has not advanced one. Someone who read Whipple J's judgment could have learned about the 'baboon' insult (and that Wright Hassall were acting for the Claimants). Such a person would have had to have been in Swansea Crown Court to receive a physical copy of the judgment or would have had to obtain it via BAILII. But a video featuring the "baboon" reference was uploaded on 7 October 2017. That would require quick work by a person who had previously shown no apparent interest in publishing videos attacking the Claimants.
77. When he was cross-examined by the Defendant, Mr Jennings accepted that he had not sought similar IP information relating to the uploading of the other videos on his YouTube channel. The Defendant submitted that the Claimants had therefore no evidential basis on which to link him to the IP addresses for the newly-created YouTube accounts. The Defendant also relied upon the fact that the Claimants had not

sought to contact any of the account holders via the email addresses that had been provided in the YouTube Data. These two points are simply no answer to the overwhelming evidence that these videos were uploaded by the Defendant.

78. I turn to ask myself essentially the same question that Warby J asked himself in *Liverpool Victoria* [107]. Might these all be coincidences? The answer is, obviously, no. The evidence I have identified above (albeit circumstantial) drives me to the sure conclusion that the videos the subject of Grounds §§4.1-4.11 were all uploaded and thereby published by the Defendant. The preponderance of a substantial number of other videos uploaded to these YouTube accounts (not the subject of Grounds §§4.1-4.11) merely reinforces that conclusion.
79. I turn finally to consider the publication of the videos that are the subject of Grounds §§4.12 and 4.13. Two new YouTube accounts were created on 22 November 2017 in the names of Hans Copperhousen and Mark Vonberg. They came into existence on or around 20 November 2017 after Google had deactivated the 8 accounts created in October to host videos attacking the Claimants. Included amongst the videos uploaded to these accounts was the video that was Video 6 in the Annex to Whipple J's judgment. That was uploaded to the accounts of both Hans Copperhousen and Mark Vonberg on the day that the accounts were created.
80. Had I been considering the video uploaded to these two accounts in isolation, there might have been force in the submission that the circumstantial evidence relating to them was insufficient to make me sure that the Defendant was responsible for them. The uploaded video was one that had been published before on the Defendant's website (and on some of the YouTube accounts created in October) and the Claimants do not have similar technical data about these YouTube accounts from Google. But these incidents do not stand alone. Having been sure that the Defendant was responsible for the operation of the accounts created in October, is it coincidence that, very quickly after those accounts were closed down, one or more different people created two new accounts and immediately uploaded a video previously made and published by the Defendant? Is it a coincidence that the person(s) must have previously downloaded a copy of the video, but not uploaded it to a YouTube account until very shortly after the same video ceased to be available elsewhere on YouTube? In short, is it a coincidence that someone else came along and did precisely what I have found the Defendant did in setting up the YouTube accounts in October. Again, the answer is, obviously, no. I am sure that I can rule out the remote possibility that someone else was responsible for creating these two further accounts and uploading videos to them. I am sure that it was the Defendant.

Is publication of the videos (or any of them) a breach of the injunction order?

81. I have already set out the approach to the determination of meaning in contempt cases (see paragraphs 49-50 above). My task is, applying these rules, to determine whether the videos that were published by the Defendant contain statements that were prohibited by Paragraph 2(a) of the injunction order.

Video the subject of Grounds §§4.1, 4.4, 4.5, 4.7, 4.8, 4.12 and 4.13

- (1) The video is 3 minutes and 4 seconds in duration. In the opening 11 seconds of the video the First Claimant's logo is shown with the words "ALKO MISS-FRAUD SELLING!" above the logo, followed shortly by the words "ALKO AKS KILLER" below the logo. The video then shows footage of various caravan accidents. Graphics are superimposed, on numerous occasions, pointing at what would be understood to be the First Claimant's stabiliser, with the words "ALKO Killer". The closing 11 seconds of the video are the same as the opening 11 seconds.
- (2) The Claimant contends that the video publishes statements which were prohibited by Paragraph 2(a)(6) of the injunction.
- (3) Having watched the video, I am satisfied so that I am sure that it contains statements that were prohibited by the following sub-paragraphs of Paragraph 2(a):
 - (1) the failure of AL-KO's stabiliser product to work properly caused the caravan accident or accidents depicted in the accompanying footage;
 - (3) AL-KO's stabiliser product is liable to cause caravan accidents;
 - (5) AL-KO's stabiliser is an inherently unsafe product;
 - (9) AL-KO is conning (or scamming) its customers; and
 - (12) AL-KO [is] guilty of fraud.

Videos the subject of Grounds §§4.2 and 4.6

- (4) The video is 1 minute 52 seconds in duration. The soundtrack is Carly Simon's song, "You're so vain". In the opening 11 seconds the First Claimant's logo is shown and beneath that appear the words: "PAUL PINOCCHIO JONES". Next what appears to be a social media page for the Second Claimant is shown together with a speech bubble with the words "EASY MONEY FOR SELLING AL-KO CRAP!". This is interspersed with footage from the Disney film "Pinocchio" showing the Pinocchio character with a long nose. A speech bubble is added to Pinocchio with the words: "AL-KO STABILISERS DO NOT WORK". That is followed by audio of the Telephone Call in which the Second Claimant is being challenged by the Defendant about the effectiveness of the stabiliser and the Second Claimant says, "*it does not prevent snaking*". A further speech bubble is shown over the social media picture of the Second Claimant with the words: "FUCK YOU VERY MUCH!! WATCH MY NOSE!!!!!!!!!!!!!!". The audio then includes a section of the Telephone Call in which the Second Claimant says: "*We've never made any statement saying that it will prevent snaking*". The video then cuts to what appears to be the Second Claimant at a trade show introducing the product and saying that "*it's a stability device that basically helps with the prevention of snaking*". Throughout this section a caption is overlaid which says: "DID I JUST SAY AL-KO HAS NEVER MADE ANY STATEMENTS AL-KO STABILISERS DO NOT PREVENT

“SNAKING???” At this point the picture cuts to further images of Pinocchio with the speech bubble: “I LOVE LYING TO YOU ALL”. The video returns to a shot of the Second Claimant’s social media entry with the speech bubble: “I JUST LIED TO YOU” with further audio from the Telephone Call in which the Second Claimant states: “*it won’t prevent snaking*”. A further speech bubble appears: “YES I LIED! FUCK YOU VERY MUCH”. Substantially the same footage is repeated before the final 11 seconds of the video which shows substantially the same images as the first 11 seconds.

- (5) The Claimant contends that the video publishes statements which were prohibited by Paragraph 2(a)(7) of the injunction.
- (6) Having watched the video, I am satisfied so that I am sure that the video makes the statement that the Second Claimant has made false claims regarding the stabiliser product’s effectiveness at preventing snaking. I am also satisfied so that I am sure that this is a statement substantially to the same effect as the statements prohibited by Paragraph 2(a):
 - (7) AL-KO’s and/or Paul Jones’ claim that their stabiliser product is guaranteed to prevent snaking is a demonstrable lie; and/or
 - (8) AL-KO’s and/or Paul Jones’ claim that their stabiliser product helps to prevent snaking is a demonstrable lie.

Video the subject of Ground §4.3

- (7) This video is 6 minutes 55 in duration. It opens with footage of a road traffic accident involving a caravan with the caption: “THE GREAT ALKO STABILISER SCAM”. Whilst visual images and video clips of other caravan road traffic accidents are shown, the audio track consists of edited extracts from the Telephone Call. In this extract, the Defendant is putting to the Second Claimant that in all the accidents, involving different vehicles, the common element is the AL-KO stabiliser. Interspersed with the footage of accidents is what appears to be a page from the First Claimant’s website with words highlighted. A viewer that wanted to read this would have to pause the video. The highlighted words are: “*When used in conjunction with AL-KO ATC Trailer Control [the AKS Stabilisers] offer unbeatable protection against snaking, providing optimum road safety*”. Further footage of accidents is then shown with the caption: “PAUL JONES CONFIRMS ALKO STABILISERS DOES NOT PREVENT SNAKING OR STOP SNAKING!”. The Defendant can then be heard from the Telephone Call putting to the Second Claimant that he believes that the stabilisers may be 10% better than a standard coupling but is thirty times the cost. The Defendant challenges the Second Claimant to a test of the stabiliser. The caption then reads: “TORQUEBARS 100% ANTI SNAKING TOWBAR 100% NO SNAKING AT 100KPH!”. The Second Claimant declines the offer of a test and the Defendant then says to him: “*You won’t risk your life*”. A caption then appears over footage of a caravan road traffic accident: “PAUL JONES AL KO UK WILL NOT RISK HIS LIFE! BUT YOU ARE RISKING YOUR LIVES!”. This caption remains on screen for a significant period. The images suddenly cut out at around 6’ 34”, and then the following words appear together with the Defendant’s website address and YouTube channel: “AL KO

STABILISERS DOES NOT PREVENT SNAKING! SNAKING = ACCIDENTS & CRASHES! CONFIRMATION BY PAUL JONES AL KO KOBER LTD".
These words remain on screen until the end of the video.

- (8) The Claimant contends that the video publishes statements which were prohibited by Paragraph 2(a)(12) of the injunction.
- (9) Having watched the video, I am satisfied so that I am sure that it contains statements that were prohibited by the following sub-paragraphs of Paragraph 2(a):
 - (1) the failure of AL-KO's stabiliser product to work properly caused the caravan accident or accidents depicted in the accompanying footage;
 - (3) AL-KO's stabiliser product is liable to cause caravan accidents;
 - (4) AL-KO's stabiliser product is liable to kill people who use it;
 - (5) AL-KO's stabiliser is an inherently unsafe product; and
 - (10) AL-KO is knowingly risking the lives of the public.

Video the subject of Ground §4.9

- (10) I have described the contents of this video in paragraph 75(i) above.
- (11) The Claimant contends that the video publishes statements which were prohibited by Paragraph 2(a)(4) of the injunction.
- (12) Having watched the video, I am satisfied so that I am sure that it contains statements that were prohibited by the following sub-paragraphs of Paragraph 2(a):
 - (1) the failure of AL-KO's stabiliser product to work properly caused the caravan accident or accidents depicted in the accompanying footage;
 - (3) AL-KO's stabiliser product is liable to cause caravan accidents;
 - (4) AL-KO's stabiliser product is liable to kill people who use it;
 - (5) AL-KO's stabiliser is an inherently unsafe product;
 - (9) AL-KO is conning (or scamming) its customers;
 - (10) AL-KO is knowingly risking the lives of the public;
 - (11) AL-KO and/or Paul Jones are putting their desire for profits above the lives of their customers; and
 - (12) AL-KO and Paul Jones are guilty of fraud.

Video the subject of Ground §4.10

- (13) I have described the contents of this video in paragraph 75(ii) above.
- (14) The Claimant contends that the video publishes statements which were prohibited by Paragraph 2(a)(4) of the injunction.
- (15) Having watched the video, I am satisfied so that I am sure that it contains statements that were prohibited by the following sub-paragraphs of Paragraph 2(a):
- (1) the failure of AL-KO's stabiliser product to work properly caused the caravan accident or accidents depicted in the accompanying footage;
 - (3) AL-KO's stabiliser product is liable to cause caravan accidents;
 - (4) AL-KO's stabiliser product is liable to kill people who use it;
 - (5) AL-KO's stabiliser is an inherently unsafe product; and
 - (9) AL-KO is conning (or scamming) its customers.
- (16) I am also satisfied so that I am sure that the video makes the statement that the Second Claimant has made false claims regarding the stabiliser product's effectiveness at preventing snaking. I am also satisfied so that I am sure that this is a statement substantially to the same effect as the statements prohibited by Paragraph 2(a):
- (7) AL-KO's and/or Paul Jones' claim that their stabiliser product is guaranteed to prevent snaking is a demonstrable lie; and/or
 - (8) AL-KO's and/or Paul Jones' claim that their stabiliser product helps to prevent snaking is a demonstrable lie.

Video the subject of Ground §4.11

- (17) I have described the contents of this video in paragraph 75(iii) above.
- (18) The Claimant contends that the video publishes statements which were prohibited by Paragraph 2(a)(4) of the injunction.
- (19) Having watched the video, I am satisfied so that I am sure that it contains statements that were prohibited by the following sub-paragraphs of Paragraph 2(a):
- (2) AL-KO is trying to keep hidden the failure of its stabiliser product;
 - (3) AL-KO's stabiliser product is liable to cause caravan accidents;
 - (4) AL-KO's stabiliser product is liable to kill people who use it;

- (5) AL-KO's stabiliser is an inherently unsafe product;
- (9) AL-KO is conning (or scamming) its customers;
- (10) AL-KO is knowingly risking the lives of the public;
- (11) AL-KO and/or Paul Jones are putting their desire for profits above the lives of their customers; and
- (13) AL-KO and/or Paul Jones are using solicitors to try and hush up the fact that they have been lying to the public.

Conclusion

82. For the reasons I have given, I am satisfied so that I am sure:
- i) that the Defendant uploaded the videos that are the subject of Grounds §§4.1 to 4.13;
 - ii) that those videos published statements that the Defendant was prohibited from publishing by the injunction Order of 6 October 2017; and
 - iii) that the Defendant knew that publication of those videos was a breach of the injunction Order of 6 October 2017.
83. In consequence, I find the Defendant guilty of contempt of court.
84. I am not satisfied that the publication of the Exhibition Handout was a breach of the injunction Order of 6 October 2017. The Claimants' application in relation to that ground is dismissed.
85. I will hear submissions as to what order ought now to be made consequent upon my findings.

Appendix– Statement of Grounds upon which Committal Application is made

IMPORTANT NOTICE

The Court has power to send you to prison, to fine you or seize your assets if it finds that any of the allegations made against you are true and amount to a contempt of court. You must attend court on the date shown on the front of this form. It is in your own interest to do so. You should bring with you any witnesses and documents which you think will help you put your side of the case. If you consider the allegations are not true you must tell the court why. If it is established that they are true, you must tell the court of any good reason why they do not amount to a contempt of court, or, if they do, why you should not be punished. If you need advice, you should show this document at once to your solicitor or go to a Citizens' Advice Bureau or similar organisation.

Ground

- A. That the Defendant is guilty of breaching paragraph 2.a) of the Order of the High Court dated 6 October 2017 (“the Order”) made pursuant to a judgment of Whipple J in *Al-Ko Kober Ltd & Anor v Sambhi* [2017] EWHC 2474 (QB) (“the Judgment”) on the Application of the Claimants (“the Application”) in these proceedings by publishing a series of videos on YouTube from on or around 7 October 2017.

Particulars of breach

1. Paragraph 2.a) of the Order states that the Defendant must not:
 - a) *whether by himself, his servants or agents or otherwise howsoever further publish or cause or permit to be published the following statements or any of them:*
 1. *The failure of AL-KO's stabiliser product to work properly caused the caravan accident or accidents depicted in the accompanying footage*
 2. *AL-KO is trying to keep hidden the failure of its stabiliser product*
 3. *AL-KO's stabiliser product is liable to cause caravan accidents*
 4. *AL-KO's stabiliser product is liable to kill people who use it*
 5. *AL-KO's stabiliser is an inherently unsafe product*
 6. *AL-KO knows that its stabiliser is an inherently unsafe product*
 7. *AL-KO's and/or Paul Jones' claim that their stabiliser product is guaranteed to prevent snaking is a demonstrable lie*
 8. *AL-KO's and/or Paul Jones' claim that their stabiliser product helps to prevent snaking is a demonstrable lie*
 9. *AL-KO is conning (or scamming) its customers*
 10. *AL-KO is knowingly risking the lives of the public*
 11. *AL-KO and/or Paul Jones are putting their desire for profits above the lives of their customers*
 12. *AL-KO and Paul Jones are guilty of fraud*

13. AL-KO and/or Paul Jones are using solicitors to try to hush up the fact that they have been lying to the public;

or any words and/or images or statements to substantially similar effect.

2. The Order was made in respect of the false statements identified at paragraph 2.a) which were contained in a series of YouTube videos made by the Defendant and published by him on the Torquebars YouTube channel (“the Videos”). The effect of the Order was to prohibit continued publication of all of the Videos and the statements they contained.
3. Following the making of the Order the Defendant republished the Videos on a series of YouTube accounts (“the Accounts”). The Accounts were set up using obviously fictitious account names. Where the Claimants have been able to obtain information about the account holders responsible for the Accounts, they were: set up using pseudonymous email addresses and countries of registration which bore no reasonable relationship to the account names or their content; and set up and operated via the same proxy server which masks the IP address of the person or persons responsible by ensuring that they resolve to an IP address in the Netherlands. The Court will be asked to infer that it is the Defendant who is responsible for the Accounts and the republication of the Videos on the Accounts. The Claimants will rely on the following facts and matters in relation to the Defendant’s responsibility for publication:

- 3.1 On 5 October 2017, after receiving the Draft Judgment of the Court which led to the Order being granted against him, the Defendant: (1) emailed the Judge’s clerk saying that he agreed only with the findings in relation to the breach of the Second Claimant’s rights under the Data Protection Act 1998 and that he did not agree with the remainder of the Judgment; and (2) wrote to the Claimants’ solicitors saying that he would only agree to desist from making any further publications on the Torquebars YouTube channel, and to cease processing the Second Claimant’s personal data, but that he would not agree to any other conditions, and that he expressly did not agree with paragraph 2.a) of the Order.

October publications

- 3.2 On 6 October 2017, less than four hours after the Judge handed down her Judgment and made the Order, the first of the Accounts in the name of “David Johnson” was set up (“the David Johnson Account”). DJ are the initials of the partner at the Claimants’ solicitor’s firm who has had conduct of the claim and who has been the subject of some of the Videos.
- 3.3 On 7 October 2017, 36 of the Videos were uploaded to the David Johnson Account. For the avoidance of doubt the 36 videos uploaded were identical in content and titles to the Videos.

- 3.4 There was only a very limited time of around 24 hours between the public prohibition of the publication of the Videos by the Judgment and Order and their republication on the David Johnson Account.
- 3.5 On 8 October 2017 the second of the Accounts in the name of “Jon Rain” was set up (“the Jon Rain Account”), and 20 of the Videos were uploaded to it. JR are the initials both of the associate at the Claimants’ solicitors firm who has been involved in communicating with the Defendant, and the initials of the Claimants’ leading counsel who appeared on their behalf before the Judge.
- 3.6 On 9 October 2017, the Defendant wrote to the Claimants’ solicitors regarding the removal of the Videos from the Torquebars YouTube channel, confirming their removal but saying that the videos which related to the Claimants’ solicitors would continue to be published and that further videos would be uploaded.
- 3.7 On 15 October 2017 a further six Accounts in the names of “Imran Khan”, “Gurdeep Singh”, “Bob Thornton”, “Adam Zibk”, “Tou Fou” and “Wang Chung” were set up, which republished 179 of the Videos. The said further six Accounts: (1) were logged into and accessed only once in each instance, in order to republish the Videos; and (2) significantly duplicated the Videos published by “David Johnson” and “Jon Rain”.
- 3.8 One of the Videos, entitled “*ALKO STABILISER ACCIDENTS PT1.*” had as of the date of the Application only been viewed 14 times, including views by Solicitors and Counsel for the Claimants. The said Video was separately posted by “Jon Rain”, “Gurdeep Singh”, “Imran Khan”, “Bob Thornton”, “Wang Chung” and “Tou Fou”.

November publications

- 3.9 On 22 November 2017 two further accounts were set up: the first was set up in the name of “Hans Copperhousen”, and 45 videos were uploaded to the account; and the second was set up in the name of “Mark Vonberg”, and a further 45 videos were uploaded to the account (“the November Videos”).
- 3.10 The November Videos included republications of the Videos. Further, a proportion of the November Videos were new versions of the Videos and had features for which only the Defendant could be responsible:
- 3.10.1 The November Videos included videos where the content was unchanged from that of the Videos, except that the title of the video had been amended to include reference to Peter Eustace, the Managing Director of the First Claimant, and where the

content of the video also referred to Mr Eustace. This strategy replicated the Defendant's *modus operandi* in relation to the Videos whereby he personalised and focused his campaign against the First Claimant by means of references in video titles and content to the Second Claimant, an employee of the First Claimant who carried out a public role on its behalf.

3.10.2 The November Videos included videos where the content was unchanged from that of the Videos, except that the title of the video had been amended to include reference to the First Claimant's "Mammut" product. This strategy replicated the Defendant's *modus operandi* in relation to the Videos whereby he focused his campaign against the First Claimant in the Videos on a distinctive product manufactured and sold by the First Claimant, the AKS stabiliser.

3.10.3 The November Videos included Videos where the content was unchanged from that of the Videos, except that graphic and disturbing images of the aftermath of fatal road accidents had been edited into the Videos. This strategy replicated the Defendant's *modus operandi* in relation to the Videos whereby he escalated the seriousness of his campaign and the allegations made within it over time. Further, it is to be inferred that only a person with access to the Videos in their original form would have been capable of producing the edited versions found in the November Videos.

The publications generally

3.11 One person is responsible for all of the Accounts:

3.11.1 the IP addresses for the October publications for which the Claimants have been able to obtain information all resolve to the same proxy server; and

3.11.2 none of the Accounts have any apparent purpose except for republication of the Videos or variants of them;

3.12 The Claimants are not aware of any person in this jurisdiction or elsewhere apart from the Defendant either who has made the same or similar statements about them to those found in the Videos, or who has published any critical statements about them and their products on YouTube.

3.13 The Claimants are not aware of any person apart from the Defendant who has in the past 12 months manufactured or marketed a rival product or

products which seeks to challenge the dominance of its products in the market place.

- 3.14 In all the premises the Court is asked to infer that it can be sure that the Defendant is the person responsible for the operation of the Accounts and the publications they contain.
4. 84 Videos were before the Court at the hearing which led to the Judgment and Order, and 7 of the Videos were annexed to the Judgment in a schedule which set out brief details of their contents (“the Annex Videos 1-7”). The Defendant made the following publications on the Accounts in breach of the Order:
- 4.1 On 7 October 2017 on the David Johnson Account, the Defendant published Annex Video 6. The Video publishes the statement which is prohibited by 2.a) 6. of the Order.
- 4.2 On 8 October 2017 on the Jon Rain Account, the Defendant published Annex Video 7. The Video publishes the statement which is prohibited by 2.a) 7. of the Order.
- 4.3 On 15 October 2017 on a YouTube account in the name of “Gurdeep Singh”, the Defendant published Annex Video 3. The Video publishes the statement which is prohibited by 2.a) 12. of the Order.
- 4.4 On 15 October 2017 on a YouTube account in the name of “Imran Khan” the Defendant published Annex Video 6. The Video publishes the statement which is prohibited by 2.a) 6. of the Order.
- 4.5 On 15 October 2017 on a YouTube account in the name of “Bob Thornton” the Defendant published Annex Video 6. The Video publishes the statement which is prohibited by 2.a) 6. of the Order.
- 4.6 On 15 October 2017 on a YouTube account in the name of “Wang Chung” the Defendant published Annex Video 7. The Video publishes the statement which is prohibited by 2.a) 7. of the Order.
- 4.7 On 15 October 2017 on a YouTube account in the name of “Adam Zibk” the Defendant published Annex Video 6. The Video publishes the statement which is prohibited by 2.a) 6. of the Order.
- 4.8 On 15 October 2017 on a YouTube account in the name of “Tou Fou” the Defendant published Annex Video 6. The Video publishes the statement which is prohibited by 2.a) 6. of the Order.
- 4.9 On 5 November 2017 on the David Johnson Account the Defendant published a video entitled “*ALKO AKS KILLER CARAVAN ACCIDENTS*”

PETER EUSTACE 1". The Video publishes the statement which is prohibited by 2.a) 4. of the Order.

- 4.10 On 12 November 2017 on the Jon Rain Account the Defendant published a video entitled "*ALKO PETER EUSTACE ATC PONZI SCAMMERS*". The Video publishes the statement which is prohibited by 2.a) 4. of the Order.
- 4.11 On 13 November 2017 on the David Johnson Account the Defendant published a video entitled "*ALKO PETER EUSTACE AKS ATC ESC STABILISER KILLER*". The Video publishes the statement which is prohibited by 2.a) 4. of the Order.
- 4.12 On 22 November 2017 on a YouTube account in the name of "Hans Copperhausen" the Defendant published Annex Video 6. The Video publishes the statement which is prohibited by 2.a) 6. of the Order.
- 4.13 On 22 November 2017 on a YouTube account in the name of "Mark Vonberg" the Defendant published Annex Video 6. The Video publishes the statement which is prohibited by 2.a) 6. of the Order.

Evidence of breach

5. The Claimants rely upon the affidavit of Daniel Jennings.

Ground

- B. That the Defendant is guilty of breaching paragraph 2.a) of the Order of the High Court dated 6 October 2017 ("the Order") made pursuant to a judgment of Whipple J in *Al-Ko Kober Ltd & Anor v Sambhi* [2017] EWHC 2474 (QB) ("the Judgment") in these proceedings by publishing at the Motorhome and Caravan Show 2017 ("the Exhibition") a document handed out at the Exhibition on 17 October 2017 ("the Exhibition Handout").

Particulars of Breach

6. Paragraphs 1 and 2 above are repeated.
7. The Exhibition Handout was substantially published to attendees at the Exhibition, by being distributed to them anonymously in person and left around the Exhibition. The Court will be asked to infer that it is the Defendant who is responsible for the publication of the Exhibition Handout in breach of the Order. The Claimants will rely on the following facts and matters in relation to the Defendant's responsibility for publication:

- 7.1 A description of the person who was distributing the Exhibition Handout given to Mr Eustace of the First Claimant is consistent with the description of the Defendant.
- 7.2 The contents of the Exhibition Handout are drawn primarily from the Second Claimant's Witness Statement, which was the evidence relied on by the Claimants on the Application. Notwithstanding the fact that the Application was heard in open court, the only persons beyond the Second Claimant and the Claimants' legal team who were aware of or had access to the detailed contents of the Second Claimant's Witness Statement were: Mr Eustace of the First Claimant; the Judge; and the Defendant. There has to the Claimants' knowledge been no other publication of the Second Claimant's Witness Statement or other contents of the Court File which indicates that it has been accessed by any other person.
- 7.3 The Exhibition Handout bears striking similarities to the documents produced and served on the Claimants by the Defendant in the course of this litigation and to the Videos:
- 7.3.1 The font and layout of the Exhibition Handout are similar to that of documents produced and served on the Claimants by the Defendant.
- 7.3.2 The language of the Exhibition Handout is similar to language used by the Defendant: (1) the title of the document does not contain any verbs in the same way as the titles of the Videos do not contain any verbs; (2) it contains multiple references to "statements", which is a word frequently used by the Defendant in the Videos; and (3) the document uses the expression "the real truth", which is used frequently in the Videos.
- 7.3.3 The Exhibition Handout in substance addresses the central criticism of the Claimants made by the Defendant, recorded by the Judge in the Judgment, that there is some inconsistency between the Claimants' claim that their device helps to prevent "snaking" by caravans and their assertion that it does not prevent snaking in the sense that it does not guarantee that such an event will not happen.
- 7.3.4 The Exhibition Handout says: "*AL-KO KOBER LTD AND MR PAUL JONES ARE SCARED OF THE REAL TRUTH. THAT IS WHY THEY HAD TO COMMENCE LEGAL ACTION TO THE HIGH COURT UK ON 22 SEPTEMBER 2017!*" This statement characterises the proceedings as an attempt to conceal the truth about their products, a characterisation which is unique to the Defendant. The Claimants are not aware of any person other than

the Defendant who has described their attempts to stop the Defendant's campaign in the way that the Exhibition Handout does.

- 7.4 In all the premises the Court is asked to infer that it can be sure that the Defendant is the person responsible for the publication of the Exhibition Handout.
8. The Exhibition Handout was published at the Exhibition in breach of the Order:
- 8.1 The Exhibition Handout contained the following words which were published in breach of paragraphs 2.a) 2., and 2.a)13. of the Order:
- “AL-KO KOBER LTD AND MR PAUL JONES ARE SCARED OF THE REAL TRUTH. THAT IS WHY THEY HAD TO COMMENCE LEGAL ACTION TO THE HIGH COURT UK ON 22 SEPTEMBER 2017!”*
(“the Handout Allegation”)
- 8.2 The publication of the Handout Allegation is a breach of paragraph 2.a) 2., of the Order because it amounts to words or a statement to substantially similar effect to the statement that *“AL-KO is trying to keep hidden the failure of its stabiliser product”*.
- 8.3 The publication of the Handout Allegation is a breach of paragraph 2.a) 13., of the Order because it amounts to words or a statement to substantially similar effect to the statement that *“AL-KO and/or Paul Jones are using solicitors to try to hush up the fact that they have been lying to the public”*.

Evidence of breach

9. The Claimants rely upon the affidavit of Daniel Jennings.

Matters relating to sentence

10. In coming to an appropriate penalty for the Defendant's contempt the Claimants rely upon the matters in the affidavit of Daniel Jennings.

Conclusion

11. The Claimants seek:
- 11.1 An appropriate penalty for the Defendant's contempt including if appropriate a sentence of imprisonment.
- 11.2 Costs, if appropriate, on the indemnity basis.