

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

7 Rolls Building,  
Fetter Lane,  
London,  
EC4A 1NL

Date: 19 May 2023

Start Time: 12.43 Finish Time: 12.59

**Before:**

**MR JUSTICE ADAM JOHNSON**

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**Between:**

**SAMHERJI HF**

**Claimant**

**- and -**

**ODDUR FRIDRIKSSON**

**Defendant**

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**JONATHAN HILL** (instructed by **Wikborg Rein LLP**) for the **Claimant**  
The **Defendant** did not attend and was not represented

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**APPROVED JUDGMENT**  
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**MR JUSTICE ADAM JOHNSON:**

1. This is an application for an interim injunction.
2. The Claimant/Applicant is Samherji HF, which is part of a substantial Iceland-based multinational fishing business and trades under the name and mark “*SAMHERJI*” (I will refer to that as “*the Mark*”). It also has a distinctive blue and white logo (which I will refer to as “*the Logo*”). The Mark and various devices based on the Logo have been registered both in the UK and elsewhere. There are, in fact, three UK registered trademarks.
3. I need not give any details, but part of the background is that allegations have been made in Iceland about Samherji’s involvement in corporate wrongdoing in Namibia.
4. On the other side, the proposed Defendant is an Icelandic artist, Mr Oddur Fridriksson. Mr Fridriksson has been given informal notice of this hearing. In fact, he was notified of the Claimant’s intended application two days ago when the matter first came before me in the Interim Applications List, but I adjourned the application until today in order to allow Mr Fridriksson more time at least to indicate his position. It seems, from the evidence I have available, that he has accessed the application documents. But as at the time of the hearing, no further communication had been received from him.
5. Mr Fridriksson presently has an art installation in Reykjavik. This is critical of Samherji’s alleged activities in Namibia, and includes a mural stating an apology on behalf of Samherji for its behaviour. This is not, of course, endorsed by Samherji, who disclaim it and have an entirely different view of their activities in Namibia.
6. The matters come before the English Court because, alongside his installation in Reykjavik, Mr Fridriksson has also acquired an English website domain name via an entity called Nominet. The domain name he has acquired is “*Samherji.co.uk*”. This is now used as the location for a website. The website uses the Mark and the Logo in its contents, as well as Samherji’s colour scheme and styling. It attaches a link to an official Samherji brochure. It gives an address for communications, but this is not authorised by Samherji. Importantly, it also includes a document (I will call it “*the Press Release*”) which purports to contain an apology by Samherji for its activities in Namibia. Again, however, the Press Release is obviously not a document endorsed by Samherji. It is authored by Mr Fridriksson, and forms part of his art project or installation. It has been picked up by the industry press, and an article referencing it has appeared in a specialist website called The Fishing Daily.
7. Samherji’s inquiries of Nominet identified Mr Fridriksson as the person standing behind the website. He now seems to make no secret of that or of the nature of his project, and indeed has recently appeared in the Icelandic press publicising his installation. The website is, in fact, hosted by a US web hosting business called Bluehost. Samherji have been in contact with them with a view to having the website taken down, but they have not responded, hence Samherji make their application to this Court against Mr Fridriksson.
8. Samherji say they have substantive claims against Mr Fridriksson for trademark infringement, passing off and copyright. They have also now asserted a potential claim

for malicious falsehood. In support of those claims they seek injunctions. The first is an injunction requiring Mr Fridriksson to transfer the website domain name to them pending trial. The second is effectively an application for *Norwich Pharmacal* type disclosure. Since Mr Fridriksson is in Iceland, Samherji must also seek permission to serve him out of the jurisdiction.

9. It is convenient to start, I think, with the merits of Samherji's claims. An initial point raised with counsel when the matter was first before the Court was the possible impact of the right to free speech. In that regard, I have been referred to section 12(3) of the Human Rights Act 1988 and to the decisions in *Cream v Banerjee* [2004] UKHL 44 and *Unilever v Griffin* [2010] EWHC 899 (Ch). I will proceed on the assumption that, before granting the injunction sought, I need to be satisfied that Samherji is probably going to succeed on its claims at trial.
10. That starting point enables me to examine the claims. In describing them in his submissions, Mr Hill emphasised that common to all of them was an intention to target the UK where Samherji has operations and a customer base – *i.e.*, Mr Hill emphasised that that is where the domain name and the website are focused.
11. I agree. That seems to me clear from matters such as the *.co.uk* suffix and the use of English language on the website. The website appears on a Google search in the UK for Samherji. I do not consider it makes any difference to the overall assessment that the website can also be accessed from elsewhere, and that Mr Fridriksson no doubt intends it to be accessed by users in Iceland and no doubt Namibia. That is because a website can be targeted at more than one place at the same time: see the decision of Birss J, as he then was, in the *Omnibill* case [2014] EWHC 3762 (IPEC).
12. Starting with the claims for trademark infringement, these are said to arise under sections 10(1) and (2) of the Trademarks Act 1994. As to these claims, I have reached the view that although they give rise to a serious issue to be tried and so are sufficiently arguable for the purposes of the service out test, I am not presently persuaded that Samherji will probably succeed on them at trial. That is because, leaving aside any other matters, they each depend on showing that the Defendant used the relevant marks in the course of a trade. Here, it seems to me there is a good argument that Mr Fridriksson is not conducting a trade in the relevant sense.
13. In his submissions, Mr Hill disagreed, and said the matter must be viewed objectively from the point of view of the average consumer. He submitted that although the art installation in Reykjavik is no doubt an art project, the domain name and the website are not art. It seems to me, though, that this may be too simplistic a view.
14. At any rate, I take the view that there are arguments of sufficient weight so that I am not presently persuaded that Samherji will probably succeed on its trademark claims at trial. I therefore prefer not to base any decision as to injunctive relief on such claims.
15. I take a different view, though, of the claims for passing off and copyright infringement.
16. I agree there is a strong basis for a passing off claim, because the uses of the Mark on the website are plainly intended to represent that it is Samherji's website, when in fact it is not. It is not a requirement for this tort that the Defendant is involved in carrying

on a business: see *Burge v Haycock* [2001] EWCA Civ. 900, [2002] RPC 28, where the Defendant was an individual running for political office who falsely represented that he was a member of the Countryside Alliance.

17. Likewise, I think there is a strong case for copyright infringement based on the copyright in the Logo and the use of the Samherji brochure. They have been copied and are made available to the public via the website, including to individuals in the UK. I do not see that the defence of parody would be available, because the use complained of is not distinguishable from the original. For the sake of completeness, Mr Hill pointed out that there may also be a public interest defence to the copyright claim, but this appears to be of uncertain ambit and, on any view, is likely to be very narrow. I am not persuaded it makes a difference to the analysis here.
18. Finally, there is the claim for malicious falsehood. I think the same essential logic applies. Having considered Mr Hill's careful submissions, I see the argument that inherent in the website's availability is a basic falsehood, because it claims to be a Samherji sponsored website when in fact it is not. That falsehood must be apparent to Mr Fridriksson and, in fact, appears to be part of his purpose. I see that there is a risk of damage because visitors to the website who see the Press Release are likely to be discouraged from doing business with Samherji in the future.
19. I will mention briefly the claim for *Norwich Pharmacal* relief. This was discussed during submissions. Since Mr Fridriksson is now known as the individual behind the website, it seems to me that this claim should fall away. This has consequences for the form of order which I will need to discuss separately with Mr Hill.
20. Moving on to the question of jurisdiction, it follows from what I have said that I think the claims I have described - aside for the claim for *Norwich Pharmacal* relief - all meet the relevant merits standard for the purposes of service out of the jurisdiction.
21. I further consider that the necessary jurisdictional Gateways are available. In particular, Samherji has relied on CPR Practice Direction 6B paragraph 3.1 Gateway 2 (injunction requiring acts to be taken within the jurisdiction or that the Defendant should refrain from doing acts within the jurisdiction), and Gateway 9 (tort cases where damage is sustained within the jurisdiction or the claims are governed by English law).
22. I consider there to be a good arguable case that both these gateways are available. The fact that the domain name and website are targeted at the UK supports the availability of both Gateway 2 and Gateway 9. Likewise, as regards Gateway 9, I am satisfied there is a good case for saying that the relevant claims are governed by English law (i.e., the Trademarks Act 1994, the Copyright, Designs and Patents Act 1988, and the common law torts of passing off and malicious falsehood.)
23. On the issue of *forum conveniens*, likewise I am satisfied that England is the most appropriate forum for the claims I have described. That is because they are English law claims arising from the targeting of a website in this jurisdiction. I did ask during the course of submissions about the Icelandic Courts possibly being a more suitable forum, given the public interest in Iceland in the activities of Samherji and given the apparent fact that Mr Fridriksson is an Icelandic resident and is available there for service. The Icelandic Courts are likely to be in a better position, it seems to me, to consider any public interest issues or questions of public policy which may arise.

24. On reflection, however, I am not persuaded that such matters are likely to have a material bearing on the issues in play, given the causes of action relied on. The connections with this jurisdiction I have described mean that England is, I think, the natural forum for matters related to a UK targeted website. In any event, I am told that the trademark claims and the copyright claims at least could not be brought in Iceland, and so that is not an available forum in relation to those claims.
25. Turning to the balance of convenience, this seems to me a straightforward matter. The balance of convenience plainly lies in favour of granting the relief sought, given the potential damage which might otherwise be caused if the website remains in place. Its suspension pending trial, on the other hand, will not affect Mr Fridriksson's ability fairly to express his views in other ways if he wishes to do so and will not act as an inhibition on his artistic expression.
26. Finally, during argument, I also expressed some concerns about the utility of any order made, given that Mr Fridriksson is in Iceland and that now, post-Brexit, there is no ready means available of enforcing an injunction against him, at least without new proceedings being initiated in Iceland. I am satisfied, however, that there is practical utility in making an order, because even if Mr Fridriksson chooses not to comply, it may be possible nonetheless for an order to be made for instructions to be given on his behalf to Nominet or to Bluehost. Those entities will likely be served with a copy of the order in any event, and may choose on their own account to comply with its terms.
27. For all those reasons, I propose to accede to the application, but I will now consider briefly with Mr Hill the precise terms of the order proposed.

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**(This Judgment has been approved by Mr Justice Adam Johnson.)**