

Neutral Citation Number: [2025] EWHC 221 (Ch)

Case No: IL-2024-000032

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

7 Rolls Buildings
Fetter Lane, London,
EC4A 1NL

Date: 10 February 2025

Before:

THE HONOURABLE MR JUSTICE THOMPSELL

GLADNESS (ALSO KNOWN AS TUMI) JUKIC

Claimant

and

(1) BRITISH BROADCASTING CORPORATION
(2) WALL TO WALL MEDIA LIMITED

Defendants

The Claimant did not appear and was not represented
Ms Ashton Chantrielle, instructed by Allen Overy Shearman Sterling LLP for the **Defendants**

Hearing date: 17 December 2024

JUDGMENT

Mr Justice Thompsell:

1. INTRODUCTION

1. Gladness Jukic (also known as Tumi Jukic) (“**Ms Jukic**”) considers that she has been robbed by the First Defendant, the British Broadcasting Corporation (the “**BBC**”) and the Second Defendant, Wall to Wall Media Limited (“**W2W**”), a production company, independent of the BBC. She considers that they copied, without permission and without paying her, her intellectual property in a concept and format for a reality TV series and turned this into a successful series (which I shall refer to as the “**Glow Up Show**”) that has been running for six seasons on BBC3 under the title “Glow Up: Britain’s Next Make-Up Star”. She complains further that the BBC has tried to cover up its wrongdoing with further wrongful acts, including destroying evidence and hacking her computer, giving rise (she argues) to claims for breach of the Protection from Harassment Act 1997 (“**PHA 1997**”) and the Computer Misuse Act 1990 (“**CMA 1990**”).
2. The BBC and W2W strongly deny these claims.
3. These proceedings, and related trademark cancellation proceedings between Ms Jukic and W2W’s related company, Warner Bros Entertainment, Inc. (“**Warner Bros.**”), have had a long procedural history, but it is not necessary to cite all of this. However, it is relevant to mention that Warner Bros. has been successful against Ms Jukic in relation to two cancellation actions which were the subject of a statutory appeal under the Trade Marks Act 1994 (the “**TMA 1994**”). Warner Bros., as the owner of the registered trademark relating to the words “Glow-up” successfully challenged later trademarks registered by Ms Jukic relating to the words “glowup: britain’s [sic] next make-up star” leading to the cancellation of those trademarks. These trademarks had been registered at a time after the BBC has launched its series of programmes with that name. Ms Jukic appealed against the order of the Registrar of Trade Marks at the Intellectual Property Office (“**IPO**”) upholding this challenge and her appeal was dismissed. This had the effect that her registered trademarks were void *ab initio* (that is with effect from the date on which they were purportedly registered). Accordingly it is now settled as a matter of judicial finding that Ms Jukic cannot base any action against the BBC or W2W based on breach of trademarks.
4. The matters which were before me relate to applications made by the parties as follows:
5. The first is an application made by Ms Jukic dated 24 May 2024 asking for summary judgment pursuant to CPR rule 24.3 (the “**Claimant’s Summary Judgment Application**”).
6. The second is an application made on behalf of the Defendants dated 28 June 2024 asking for the Claimant’s Particulars of Claim to be struck out as against each Defendant pursuant to CPR rule 3.4(2)(a),(b) and/or (c) (the “**Defendants’ Strike-Out Application**”) and/or that the claim is summarily dismissed and summary judgment is entered for the Defendants pursuant to CPR rule 24.3 because the Claimant has no real prospect of succeeding on the Particulars of Claim and there is no other reason for the case to be disposed of at trial (the

“**Defendants’ Summary Judgment Application**”) and seeking an award of costs of the claim and of the application (the “**Defendants’ Costs Application**”).

7. As all these applications, and the defences to each of them, turn on essentially the same facts and evidential basis, it was appropriate that they be heard together.

2. THE CIRCUMSTANCES OF THE HEARING

8. Despite strenuous efforts being made by both the Defendants and the court to contact Ms Jukic, and including a warning made by the Defendants that they would seek to go ahead with the hearing if she did not attend, she did not reply to any of the communications made to her relating to the hearing to say whether she would attend, and if not, giving any reason why she would not attend. She has not asked for any adjournment of the hearing, since the hearing date was fixed on 10 October 2024.
9. Her behaviour in this regard echoes that relating to the appeal in relation to the trademark matter discussed above, where again she did not attend the hearing. In that case she did give reasons, but these reasons were adjudged by Jonathan Richards J not to amount to adequate reasons to delay the hearing. At [31] of his judgment he explained that he had been persuaded to hear the appeal even though Ms Jukic was not in attendance. He referred to *Leave.EU Group Limited & another v Information Commissioner* [2022] EWCA Civ 109, [2022] 1 WLR 1909, as indicating that the court had an inherent jurisdiction to hear the appeal in the absence of Ms Jukic.
10. Ms Jukic’s failure to engage with this hearing, having set matters in motion both by her original claim and by her Summary Judgment Application appears at present to amount to a gross discourtesy both to the Defendants and to the court.
11. It appears that she may have moved house. It is doubtful that this has led to her not receiving papers from the court or from the Defendants since attempts were made to contact her also using the email and telephone details she had left with the court. If she has also changed her email address and telephone and has not updated the details filed with the court, this also appears at present to be a gross discourtesy and she has only herself to blame if she is not receiving communications relating to the case which she commenced.
12. It is possible that there may be an innocent explanation for what appears to be an egregious failure to act properly in her dealings with the court, for example if she has suffered an accident which has made it impossible for her to communicate. In the absence of any such explanation, however, I have considered that I should proceed with this hearing in the absence of Ms Jukic.
13. This is a matter within the court's discretion under its general powers of management in CPR rule 3.1, and specifically under CPR rule 23.11. Like all discretions this must be used in pursuit of the overriding objective (to deal with a case justly and at a proportionate cost). In this case, in the absence of any excuse, or application for adjournment from Ms Jukic, and considering both the

interests in bringing these applications to a conclusion and the substantial waste of costs and of court time that would ensue from an adjournment, that balance points firmly towards proceeding with the hearing.

14. However, I consider that I should act as if CPR rule 39.3 applies – that is I would proceed with the hearing in the absence of the party but if I were to find against Ms Jukic as a party who is not represented and not present, I would make specific provision for her to be able to apply to set aside any order I make against them, but on the basis that the court may grant the application only if it considers that Ms Jukic:
 - i) has acted promptly when she found out that the court had made an order against her (which to be clear will run from the date that she receives this judgment in draft or the order resulting from this judgment, whichever is earlier);
 - ii) had a good reason for not attending the hearing; and
 - iii) had a reasonable prospect of success at the hearing in relation to any finding of the court that she seeks to set aside.
15. This would be in addition to any ability of Ms Jukic to ask for permission to appeal.
16. It is doubtful whether CPR rule 39.3 (which applies in the case of a trial) strictly applies in this case. As I found in *Gupta v Shah* [2023] EWHC 540 (Ch), [2023] 3 WLUK 310 (and referred to in the White Book in the commentary to CPR rule 39.3), in view of the decision in *Howard v Stanton* [2011] EWCA Civ 1481, CPR rule 39.3 probably does not strictly apply to the matters to be considered at the hearing. Nevertheless, I considered then, and I consider now, that I should apply the principle embodied in CPR rule 39.3 in this case.
17. The principle in CPR rule 39.3 is that where there is a trial where a person is not present or represented, that person should have a special ability to challenge a judgment made against that person. In my view this principle is one for the court to consider also when it is exercising its discretion in other circumstances where the court's judgment might have a very substantial effect in bringing an action to a conclusion against an absent party, such as a hearing where it is proposed that summary judgment is given or in proceedings to debar that person from continuing with its defence or claim.
18. It may be noted that a similar principle applies under CPR rule 3.3(5) where a court makes an order of its own initiative without hearing the parties or giving them an opportunity to make representations. Under Practice Direction 20 3A, paragraph 11.2, where a court deals with an application without a hearing (in accordance with CPR rule 23.8) the rule in CPR rule 3.3(5) is to be applied there also.
19. In *Levy v Ellis-Carr and others* [2012] EWHC 63 (Ch) it was noted that the availability of a remedy under CPR rule 39.3 provides an answer to any objection against proceeding in the absence of a defendant based on Article 6

of the European Convention on Human Rights. This appears to me to provide another good reason for making similar provision in this case.

20. Turning to the substantive matters involved, I will outline first in more detail the case that the Claimant is making before turning to the relevant law and to the applications made by each party.

2. THE CLAIM AND THE PLEADINGS

The Claim

21. The Claimant provided brief particulars of her claim on her Claim Form in the following terms (although I have corrected a few misspellings in the Claim Form):

“The Claimant makes a claim of 10 million pounds possibly more between BBC and Wall to Wall Media Ltd for using her trademark, 'Glow-Up: Britain's Next Make-Up Star' and airing as well as producing her show without her consent.

The Claimant sent a treatment to BBC3 in May 2018 when they were looking for talent. She sent it through the right channels and it was received and used. Carl Callam the BBC worker who was a Commissioner, the person receiving new ideas and/or new content from talent on behalf of BBC at a time, received the Claimant's treatment and passed it to Wall to Wall production company to produce it.

Carl Callam accessed the Claimant's computer without her consent and carried out a malicious attack on her data. He did this to try and conceal the fact that he received the Claimant's treatment and passed it to Wall to Wall.

BBC started airing the Claimant's show in March 2019 without the Claimant's consent and the Claimant was never given a credit for her work. From March 2018 [sic] when the Claimant's show was aired and produced without her consent, she never received any payment from BBC or Wall to Wall. BBC and Wall to Wall Media Ltd also used and continue to use the Claimant's trademark to this day without her consent.

The Claimant's show has been airing from March 2019 to this day and her trademark has been used by both BBC and Wall to Wall from March 2018 [sic] to this day but the Claimant received no payment from both BBC and Wall to wall Media Ltd. It is the Claimant's case that BBC and Wall to Wall Media Ltd owe her £10,000,000,00 (10 million pounds), possibly more depending on how much they profited from her show because the Defendants have also licensed the Claimant's show to Netflix as well as released it internationally without the Claimant's consent.”

The Original Particulars of Claim

22. The Claimant expanded on these claims in her original Particulars of Claim. I will not seek to set out the entirety of the matters dealt with in the Particulars of Claim (or the responses to this given within the Defence) but I will set out certain key matters in each document.
23. The Particulars of Claim included the following assertions providing more detail about her alleged provision of her work to the BBC:
- i) She corresponded with Carl Callam (a commissioning editor for the BBC) through his LinkedIn account in November 2017. He responded and she told him that she wanted to send a show to the BBC for commissioning and told him that her show was “Glow-Up: Britain’s Next Make-Up Star”.
 - ii) Mr Callam asked her to consider an alternative title as that title was not appealing.
 - iii) She contacted another BBC commissioner, Laura Marks, on 16 May 2018 but received an automated message saying that Ms Marks was on vacation and giving alternative contacts (Navi Lamba and Carl Callam).
 - iv) She sent a copy of her show treatment (the “**Treatment**”) to Navi Lamba and Carl Callum and Laura Marks. This was received successfully by the latter two recipients but not the first. This now had the title “Bossie: 10 Minutes Makeover” as a result of Mr Callam’s comment about the previous title.
24. Other matters averred in the original Particulars of Claim included:
- i) a series of allegations against “the Respondent” (presumably Warner Bros.) relating to what she says to be false evidence to the IPO;
 - ii) allegations against IPO staff members and the hearing officer at the IPO including that IPO staff members subjected the Claimant to “the most disgusting intolerant behaviour” (although this behaviour is not further specified) and ignored her questions.

These allegations are extremely poorly specified and, as they relate to parties who are not parties to this action, have little relevance to this action.

25. The Particulars of Claim also includes an averment that:
- “BBC through, their worker Carl Callam have engaged in cybercrime, they have violated the. Claimant's rights by accessing her computer-without her consent and carried out-the malicious attack on her data - subject to Computer Misuse Act 1990.”
26. It is averred that W2W lied about the commissioning date of the Glow Up Show.

27. It is claimed that as a result of matters complained of Ms Jukic suffered injured feelings, financial loss and mental torture.

The Defence

28. The Defendants provided a formal Defence. One of the chief matters averred in the Defence was that:

“The Particulars of Claim do not identify any legally recognised cause of action and thereby disclose no reasonable grounds for bringing or defending the claim and/or are an abuse of the Court’s process or otherwise likely to obstruct the just disposal of the proceedings. The Particulars of Claim lack proper particularity and specificity in numerous respects, including but without limitation, proper particulars identifying the intellectual property rights upon which the Claimant relies.”

29. The Defendants went on however to “address the Claimant’s case ... insofar as it is presently understood”, reserving a right to make an application for summary judgment and/or the striking out of the claim.

30. The Defendants denied or put Ms Jukic to proof in relation to various matters including:

- i) averring that Carl Callam had no recollection of corresponding with the Claimant in November 2017 via LinkedIn or at all and was unable to locate any correspondence on his LinkedIn account;
- ii) pointing out that the allegation of correspondence with Carl Callam in November 2017 was at odds with her statement in the IPO proceedings that she came up with the show on 15 December 2017;
- iii) denying that Carl Callum deleted his LinkedIn account or took any steps to conceal any alleged correspondence via LinkedIn;
- iv) denying that Carl Callum had any access to the Claimant’s computer and pointing out that this was a serious allegation which must be properly pleaded and substantiated;
- v) denying that the Treatment had been received by Carl Callam (as well as by Navi Lamba) on the basis that it appeared it failed to deliver because it exceeded the maximum file size, and inferring that this email also failed to deliver to Laura Marks all for the same reason;
- vi) averring that the Glow Up Show was produced by the Defendants without reference to the Claimant and/or the Claimant’s Treatment; and including substantial detail about how the show developed, including that the show was first conceived before June 2017 by way of an iterative process, the original concept being adapted between June 2017 and 17 February 2018; the formal pitch for the Glow Up Show was submitted by W2W to the BBC on 16 February 2018, at that time under the title “Face Off: Britain’s Next Make-Up Star” and there was an informal

commissioning for production in May 2018 with final approvals following on 26 June 2018;

- vii) denying that W2W had lied about the commissioning date for the “Glow Up Show; and
- viii) denying that Warner Bros, or any of its witnesses, had provided any false evidence to the IPO and pointing out that the allegations of false evidence had not been, and must be, properly pleaded and substantiated.

Putative Amendments to the Particulars of Claim

31. It appears that in response to criticisms made within the Defence, Ms Jukic saw a need to amend her Particulars of Claim, I consider that she was not successful in doing so. She did not seek or obtain the Court’s permission to amend her Particulars of Claim. She did not, in the conventional manner, produce a mark-up of the original Particulars of Claim showing amendments. Instead she produced two documents.
32. The first was entitled “AMENDMENT OF PARTICULARS OF CLAIM WITNESS STATEMENT OF GLADNESS JUKIC”. I will call this the “**APOC Witness Statement**”. The second document was entitled “RESPONSE TO DEFENCE (AMENDMENT OF PARTICULARS OF CLAIM)”. I will call this the “**APOC Response**”.
33. In a letter dated 25 June 2024, the Claimant explained that the APOC Witness Statement is an amended “Particulars of Claim” and that the APOC Response is in substance a Reply.
34. The Defendants argue that the APOC Witness Statement does not amend the original Particulars of Claim. Instead, it appears to be a witness statement restating the Claimant’s allegations. The Defendants have therefore not consented to these amendments and will require the Claimant to make an application for permission to the Court if she wants to rely on this document as the Particulars of Claim.
35. The Defendants accept that the APOC Response does shed some light on the claims but argue that the pleadings remain defective.
36. The APOC Witness Statement begins by referring to statements in the Defence threatening to strike out her claim and says:

“I have now made amendments of my particulars of claim as a response to their defence.”
37. This document is not signed and does not include a statement of truth as one would expect in an Amended Particulars of Claim.
38. In my view, it is this document that probably is best seen as a Response to the Defence and/or as a witness statement providing more background in relation to her claim. It includes averments and arguments in relation to the receipt by

the BBC of the emails and in relation to the alleged attack on her computer and the alleged deletion by Carl Callam of his LinkedIn account.

39. The APOC Response refers to statements in the Defence claiming a lack of specificity. It contains a statement of truth but is not signed. It attempts to clarify the claim and sets out that her claims are pursuant to:

- “a. Trade Marks Act 1994
- b. Intellectual Property Act 2014, No 18 (As Amended)
- c. Section 7(3) PHA 1997 - Harassment Act
- d. Computer misuse [sic] Act 1990”.

40. I will pass over the explanation she gives of her claim under the Trade Marks Act 1994 since it is now established that she does not have any relevant valid trade marks. Clearly insofar as her claim is based on a trademark, it must fail.

41. As regards the claim under the IPA 2014, this repeats the claim concerning the circumstances in which she says she conveyed the Claimant’s Treatment, and states that:

“This is intellectual property infringement. They copied everything in my treatment and my banner, and their banner are similar. On my treatment that I sent to BBC3 I used a picture of Kim Kardashian’s face, two hands with two makeup brushes on one side of the face as a banner. On the show on BBC3 season one, they used the picture of Stacey Dooley’s face, four hands with four makeup brushes on both sides of the face as their banner. They copied the whole of my treatment and made small changes.”

42. As regards the claim under IPA 2014, she particularises this claim, as I analyse in detail further below.

43. As regards the claim under PHA 1997, she particularises this claim by referring to the alleged attack on her computer made by Carl Callam, which she says to have been a cross-site scripting attack.

44. She also particularises her damage as being loss of earnings from what she describes as “my show that I wrote”; her being blacklisted and failing to obtain employment in film and audio production because of her claim; and her suffering from panic attacks.

4. THE DEFENDANTS’ STRIKE-OUT APPLICATION

45. In considering the applications it is appropriate to begin with the Defendants’ Strike-Out Application as the success or otherwise of this will be relevant to the applications for summary judgment.

(a) *Legal principles applicable to Strike-Out*

46. Before turning to the detail of the Defendants' Strike-Out Applications, it is useful to set out some comments in relation to the law relating to an application to strike out a claim.
47. CPR Rule 3.4(2) gives the Court an unqualified discretion to strike out a claim where it appears to the Court that (a) the statement of case discloses no reasonable grounds for bringing or defending the claim, (b) the statement of case is an abuse of the Court's process or is otherwise likely to obstruct the just disposal of the proceedings or (c) there has been a failure to comply with a rule, practice direction or court order.
48. Paragraphs 1.4 and 1.5 of Practice Direction 3A provide further guidance on how particulars of claim could fall within 3.4(2)(a) and (b), namely, claims that: (1) set out no facts indicating what the claim is about; (2) are incoherent and make no sense; or (3) that contain a coherent set of facts, but those facts, even if true, do not disclose any legally recognisable claim.
49. Statements of case which are suitable for striking out include those which raise an unwinnable case where continuance of the proceedings is without any possible benefit to the respondent and would waste resources on both sides. The same goes for an unreasonably vague and incoherent statement of case which is likely to obstruct the just disposal of the case (White Book, para 3.4.2, page 93).
50. The Defendants have referred me to the decision in *Yu Ting Cleaves v Chancellor, Masters and Scholars of the University of Oxford* [2017] EWHC 702 (QB), where Whipple J (as she then was) summarised the earlier relevant authorities concluding that the litigant in person's claim in that case could not proceed because it was abusive in nature and/or otherwise likely to obstruct the just disposal of the proceedings. She stated at [34] to [35]:
- i) A pleading which is unreasonably vague or incoherent is abusive and likely to obstruct the just disposal of the case. (*Towler*, [16])
 - ii) One factor for the Court to consider is whether there is a real risk that unnecessary expense will be incurred by the Defendant in preparing to defend allegations which are not pursued, or will be impeded in its defence of allegations which are pursued, or that the Court will not be sure of the case which it must decide. (*Towler*, [19]).
 - iii) Another factor for the Court to consider is whether the Defendant will be able to recover its costs, if successful at the end of the day; and if not, whether it may well feel constrained to make some sort of payment into Court, not because the case merits it, but simply as the lesser of two evils and for the avoidance of costs (*Cohort Construction* [20]).
 - iv) A claim can still be struck out even if it discloses a reasonable prospect of success (*Cohort Construction* [18], [22], [23]).

51. The Defendants acknowledge that strike-out is seen as a draconian measure and the court does need to consider whether allowing an amendment is more appropriate. However they argue that that is not always the case and have referred me to *Al-Hasani v Nettler & Ors* [2019] EWHC 640 (Ch), where the Master stated (at [99]-[100]):

“99. On the other hand, strike out may be appropriate where the court is satisfied that the claimant has no intention of trying to put forward a coherently pleaded and intelligible claim or where, following amendment, the claim remains vague and incoherent. Amended claims should only be permitted where the claims have a real prospect of success. Further, it is relatively rare for permission to be given to amend a statement of case otherwise than by way of specified amendments, typically shown in a draft amended statement setting out the desired amended form of the statement of case. That is because without such a specification it would be unclear what amendments might be effected and, in a matter such as the present, whether they would comply with the requirements of CPR 16.4 and not themselves be susceptible to strike out under CPR 3.4. This is a consideration which mitigates against option (2) and, to a significant extent, against option (5).

100. Proceedings can be an abuse of process where it can be demonstrated that the benefit to the claimant in the action is of such limited value that the costs of the litigation will be out of all proportion to the benefit to be achieved. The mere fact a claim is small should not automatically refuse to hear it at all, but if there is no relevant proportionate procedure for judicially determining a very small claim, it might be struck out. It would therefore be necessary to weigh the potential benefit to the Claimant of his infringement claim against the court resources that would have to be devoted to his pursuit of that claim.”

(b) *The different bases claimed by the Defendants for Strike-Out*

52. The Defendants argue that strike-out is appropriate as:
- i) each of the paragraphs of the Particulars of Claim disclose no reasonable grounds for bringing the claim; and/or
 - ii) are unreasonably vague or incoherent, make no sense; and/or
 - iii) even if the Particulars of Claim did disclose some legally recognisable claim, the Particulars of Claim are abusive and likely to obstruct the just disposal of the case.
53. They argue further that the Claimant should not be allowed any further opportunity to amend her case given the fact that she has had ample opportunity to do so, that it is not likely to make matters any clearer and given her conduct in these proceedings which has caused the Defendants and the Court to waste significant time (and expense).

54. In considering these arguments, I have to decide whether there has been any valid amendment to the original Particulars of Claim. In my view there has not been any such valid amendment since no permission was given for an amendment and the document said to be an amendment to the Particulars of Claim did not take the form of an amendment and did not include a statement of truth.
55. However, it is clear that Ms Jukic was intending to particularise her claim better. She appears to think that she had done so by means of the APOC Witness Statement, although it seems to me that she made a better attempt at doing so by means of the APOC Reply.
56. Given the drastic nature of a strike-out order and taking account of the fact that Ms Jukic has not had the benefit of legal advice, I consider that I should approach the Strike-Out Application on the basis that if any defects in the original Particulars of Claim would be corrected by anything in the APOC Witness Statement or in the APOC Reply, the court would give an opportunity for such an amendment to be made to the Particulars of Claim rather than striking out the claim or any part of it. However, if the Particulars of Claim taken with these documents still disclose no legally recognisable claim or are abusive and likely to obstruct the just disposal of the case, then, as Ms Jukic has been given ample opportunity to amend her claim, no further opportunity should be given to her to amend her claim with anything that is not already present within these documents taken together.
57. With these general points in mind I turn to consider the Strike-Out Application in relation to each of the different causes of action pleaded.

(c) *The Trademark Claim*

58. The Defendants' case as regards breach of trademarks is simple and irrefutable. As it has now been established that Ms Jukic does not have a valid trademark on which to base her trademark claim, there are no reasonable grounds for her to prosecute claim for an infringement of a trademark. Insofar as her claim is based on infringement of her trademark, it should be struck out. I agree that this must be the case.

(d) *The case based on CMA 1990*

59. The Defendants' case as regards breach of CMA 1990 is equally simple. The CMA 1990 is a criminal statute. It criminalises unauthorised access to computer systems and data, and the damaging or destroying of these. There is no provision in CMA 1990 allowing a civil claim to be brought under its provisions. Insofar as Ms Jukic is purporting to make a claim under this Act, therefore, her case discloses no reasonable grounds for bringing or defending the claim and is therefore liable to be struck out. Again, I agree that this must be the case.

(d) *The case based on PHA 1997*

60. The Defendants' case as regards harassment raises more complex issues.

61. In this case the Act does provide a civil remedy. S.3 PHA 1997 provides as follows:

“3. Civil Remedy

1) An actual or apprehended breach of section 1(1) may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question.

(2) On such a claim, damages may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment.”

62. The section cross-refers to s.1(1), which is in the following terms:

“1. Prohibition of harassment.

(1) A person must not pursue a course of conduct—

(a) which amounts to harassment of another, and

(b) which he knows or ought to know amounts to harassment of the other.”

63. Also relevant are ss.1(2) and 1(3) as they assist in the interpretation of s.1(1). They are in the following terms:

“(2) For the purposes of this section or section 2A(2)(c), the person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.

(3) Subsection (1) or (1A) does not apply to a course of conduct if the person who pursued it shows—

(a) that it was pursued for the purpose of preventing or detecting crime,

(b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or

(c) that in the particular circumstances the pursuit of the course of conduct was reasonable.”

64. Other interpretive provisions are contained within s.7 and relevantly include the following:

“(2) References to harassing a person include alarming the person or causing the person distress.

(3) A “course of conduct” must involve—

(a) in the case of conduct in relation to a single person (see section 1(1)), conduct on at least two occasions in relation to that person, or

(b) ...

(3A) A person's conduct on any occasion shall be taken, if aided, abetted, counselled or procured by another—

(a) to be conduct on that occasion of the other (as well as conduct of the person whose conduct it is); and

(b) to be conduct in relation to which the other's knowledge and purpose, and what he ought to have known, are the same as they were in relation to what was contemplated or reasonably foreseeable at the time of the aiding, abetting, counselling or procuring.

(4) "Conduct" includes speech."

65. In *Thomas v News Group Newspapers Ltd* [2001] EWCA Civ 1233 ("**Thomas**") the court held at [30] to [31] that "harassment" is generally understood to mean conduct targeted at an individual which is calculated to produce the consequences described in s.7 and which is oppressive and unreasonable.

66. The Defendants argue that for a plea to be viable, a claimant must plead facts which are capable of amounting to harassment. This must be correct. Lord Phillips stated at [34] that:

"A pleading, which does no more than allege that the defendant has published a series of articles that have reasonably caused distress to an individual, will be susceptible to a strike-out on the ground that it discloses no arguable case of harassment."

67. Not all distressing behaviour amounts to harassment. In *Majrowski v Guy's and St Thomas' NHS Trust* [2006] UKHL 34, [2007] 1 AC 224 ("**Majrowski**") the Court said (at [30]) that to cross the boundary from the regrettable to the unacceptable, the gravity of the misconduct must be of an order which would sustain criminal liability under s.2.

68. In *Sube v News Group Newspapers Ltd* [2020] EWHC 1125 (QB); [2020] EMLR 25, the Court stated at [68] that

"The court's assessment of the harmful tendency of [conduct] complained of must always be objective, and not swayed by the subjective feelings of the claimant."

69. The Defendants have a number of points as to how the harassment claim is pleaded.

70. First they note that the Claimant does not rely on any section of PHA 1997 in her Particulars of Claim. Neither does she mention PHA 1997 in the APOC

Witness Statement. In the APOC Response she relies on section 7(3) of the PHA 1997. As will be apparent from the above, section 7(3) is a definition of the term a “course of conduct” and does not identify or create a remedy. There is therefore nothing in the claim (even read expansively to include the APOC Witness Statement and the APOC Response) expressly claiming a civil remedy under s.3 PHA 1997.

71. I am not minded to place very much reliance on this point by itself, given that Ms Jukic is a litigant in person and she has at least referred the Defendants to the Act she is relying on, and it is no great leap for them to understand that this must be pointing to the civil remedy under s. 3 PHA 1997.
72. However, where I have greater sympathy with the Defendants is where they make the point that there has been no pleading that there has been a course of conduct (one of the essential elements for a claim under s.3 PHA 1997) and that it has not been clearly identified which elements of the Defendants’ behaviour might amount to a course of conduct that would breach s.1(1) PHA 1997. Neither is there any pleading that any person pursuing a course of action knew or ought to have known that this amounts to harassment of the other. Neither does the pleading take any account of the fact that under s.1(3)(c) there is a defence if the course of conduct was reasonable. As was found by Lord Phillips MR in *Thomas* at [31]:

“The fact that conduct that is reasonable will not constitute harassment is clear from section 1(3)(c) of the Act. While that subsection places the burden of proof on the defendant, that does not absolve the claimant from pleading facts which are capable of amounting to harassment. Unless the claimant’s pleading alleges conduct by the defendant which is, at least, arguably unreasonable, it is unlikely to set out a viable plea of harassment.”

73. The most detailed explanation of why Ms Jukic considers she has a remedy under PHA 1997 is given at paragraphs 8 to 18 in the APOC Response. I summarise these points below. I have taken these out of order in order to deal with similar complaints together.
74. First there are some complaints relating to the use of what she describes as “her” trademark. These include:
- i) her complaint about the continued use of “her trademark”;
 - ii) her complaint that Warner Bros. was proceeding with its trademark challenge;
 - iii) W2W’s “failure to prove ownership of the trademark of the show” and its contention (which was later accepted at the IPO Tribunal and in the appeal) that there was a similarity between the trademark “Glow Up” and her trademarks. This averment seems to confuse the question of ownership and validity of trademarks with ownership of the show, as well as confusing actions of W2W with those of its parent company

(without pleading any aiding, abetting, counselling or procuring, so as to bring the conduct of Warner Bros. within the scope of s.7(3A) as reproduced above).

75. None of these points can be considered to be part of a course of conduct amounting to harassment. First, as it has been established that her trademark was not valid, use of this alleged trademark could not amount to harassment, even if it could have done otherwise (which I strongly doubt in this context). Secondly, Warner Bros. defending its trademark and challenging her alleged trademark cannot be regarded as part of a course of conduct for the purposes of s.1(1) as it is obvious that it would fall within s.1(3)(c) as conduct that was reasonable. It is obviously reasonable for a party to take proper steps to defend itself in an action, or to resist the trademark that infringes on its own trademark.
76. Thirdly, she complains that the Defendants are continuing not to pay her for her work. This allegation gets nowhere near amounting to harassment. It is obvious that it cannot amount to harassment for the parties to fail to pay her for using her work when they consider that they have not used her work and are not doing so.
77. Fourthly, she alleges some points relating to the Defendants' conduct of the case. These include:
- i) her complaint that one of the solicitors representing the BBC had made an intimidating and bullying offer;
 - ii) that the Defendants' legal team informed her that she did not include a statement of truth in her particulars of claim and when she corrected this, complained that this was still in the wrong form; and
 - iii) complaining that the BBC had quibbled about the way she had listed the defendants to the claim.
78. Again, these points amount to no more than what might be expected in the normal case of litigation within our adversarial system and it is obvious that it would fall within s.1(3)(c) as conduct that was reasonable as the sort of proper and usual steps a party might make to defend itself against an action.
79. Fifthly, she alleges that the Defendants or those representing them made certain false statements. These include her allegations that:
- i) W2W made a false statement as to the date that the Glow Up Show was commissioned;
 - ii) the Defendants' current legal team made a false statement in saying that the BBC had responded to her complaint in February 2024 because they had not responded to the last complaint that she had made to them; and
 - iii) the Defendants making a false statement that the email to Carl Callam had bounced back as it was too big.

80. There is no indication given that these statements were known by the Defendants to be false, and indeed there is no reason to believe that the Defendants did make these statements knowing them to be false. In absence of any knowledge on the part of the Defendants that these statements are false, it is obvious (especially having regard to the definition given in *Thomas*) that making these statements in the belief that the statements were true (even if this were to prove incorrect) would not fall within the definition of harassment. Also, making such statements would fall within s.1(3)(c) as conduct that was reasonable as the sort of proper and usual steps a party might make to defend itself against an action.
81. Finally, she alleges a series of points alleging dishonesty or underhand dealing on the part of various parties. These include her allegations that:
- i) she had been misled by one of the solicitors representing the BBC by providing a wrong email address for her to respond to in an attempt to stop her defending her trademark;
 - ii) Carl Callam deleted his LinkedIn account in order to conceal his conversation with her on that platform;
 - iii) her complaint that the Defendants used their “fame and big money” (in some unspecified manner) to interfere with proceedings at the IPO Tribunal resulting in IPO staff discriminating, bullying, ignoring her emails and favouring W2W; and
 - iv) her complaint that W2W had presented false evidence to the IPO (but without clearly explaining what that false evidence was, other than a vague reference to copied and pasted emails).
82. The last two of these points are inadequately pleaded. A pleading of fraud or dishonesty must be specific (see for example *Paragon Finance plc v DB Thakerar & Co* [1999] 1 All ER 400 and *Belmont Finance Corporation Ltd v Williams Furniture Ltd.* [1979] Ch. 250). However, even to the extent that any of the points enumerated in the previous paragraph can be considered to have been specifically pleaded, they do not meet the threshold of amounting to a course of conduct which amounts to harassment within the meaning given in *Thomas*. There is no pleading (and no evidence) that the BBC or W2W, if they did undertake any of the dishonest actions of which they stand accused (which they deny), did so calculating that this would produce the consequences described in s.7 or with an intent to oppress Ms Jukic. I consider that, even if such dishonest conduct were proved, it gets nowhere near the boundary mentioned in *Majrowski* so as to sustain criminal liability under section 2.
83. Taking all the matters discussed above together, I must agree with the Defendants’ contention that Ms Jukic’s Particulars of Claim, even if amended to include points made in the APOC Response and the APOC Witness Statement, do not identify a legally recognised cause of action for harassment. They do not contain all the requisite elements. For the most part they describe conduct that is clearly reasonable in the context. Only the elements where dishonesty is claimed could be regarded as unreasonable conduct. If one takes

out the accusations that are too unspecified to be taken seriously, one is left with only two accusations, which taken individually or together do not meet the standard needed to show harassment as explained in *Thomas* and *Majrowski*. Thus, even if we assume that the Claimant can establish the facts on which she bases her claims (and even if we include the more specific matters identified in the APOC Response) and ignore the fact that little of this has been properly pleaded, she still would not have established a case of harassment.

84. The claim in this respect also should therefore be struck out.

4. THE CLAIMANT'S IP CLAIM

85. I turn finally, as regards the Defendants' Strike-Out Application, to their case for striking out the Claimant's claim as regards the infringement of her intellectual property.

86. As is discussed further below, the Defendants argue that the Claimant has not identified a recognised basis of claim for infringement of intellectual property, and even if this point is passed over and one concentrates on breach of copyright as being the only recognisable basis of claim that the facts she alleges as regards the "theft" of her IP might support, the requisite elements for copyright infringement are missing. For example, although the Claimant has identified the Treatment, she has failed to identify what type of work it is (such as whether it is contended to be a literary work, an artistic work or a dramatic work). The type of work needs to be identified to enable a defendant to understand not only the work that he is being accused of having infringed, but to identify if there are any issues of subsistence or ownership.

87. The Defendants refer me to *Bullen & Leake & Jacob's Precedents of Pleadings* 19th Ed.-. This (at 75-08) identifies what must be pleaded. Infringement is dealt with at 75-09. It states that although it is not strictly necessary to give particulars of those parts of the defendant's work which are alleged to infringe, it is highly desirable and is probably essential where it is alleged that the defendant has taken only a (substantial) part of the claimant's work. It states that the usual course is to give particulars of the similarities.

88. The Defendants argue that the Particulars of Claim contain none of the requisite elements for infringement – and certainly not against each of the Defendants. It is necessary for the Defendants to understand the case which is being brought against them so that they may plead to it in response, disclose/request disclosure of documents which are relevant to that case and prepare witness statements which support their defence. As the case that has been pleaded is vague and incoherent the Defendants are not able to do any of those things. This has caused, and if the case is continued, would continue to cause the Defendants to waste time and costs. Further, it is also necessary for the Court to understand the case which is brought so that it may fairly and expeditiously decide the case and in a manner which saves unnecessary expense. For these reasons it is necessary that a party's pleaded case is a concise and clear statement of the facts on which he relies. As it stands, it is not. The claim for copyright infringement, insofar as it is alleged, should therefore be struck out.

89. I agree that the basis of Ms Jukic’s claim here is extremely unclear. In her claim form it is described as “airing as well as producing her show without her consent”. In the Particulars of Claim, more information is given about the circumstances in which she says she provided her Treatment to the BBC and again she complains that “her show” was airing without her consent and that her trademark was being used without her consent.
90. In the APOC Witness Statement, she does not identify what type of intellectual property is being claimed, but does say:
- “I did not send an idea; I sent a whole complete treatment that enabled them to shoot the show in a shorter period of time”.
91. In the APOC Response, she identifies that (as well as making claims under the Trade Marks Act 1994, which, as we have seen, may no longer be pursued) she is claiming under the “Intellectual Property Act 2014, No 18 (As Amended)”.
92. If this is her pleading, then it is a defective pleading. IPA 2014 is not an act that creates any civil right of action. Its purpose is to amend the Copyright, Designs and Patents Act 1988 in relation to unregistered designs, registered Community designs, and the Registered Designs Act 1949 in relation to registered designs, and the Patents Act 1966 in relation to patents. None of this has any application to the facts alleged by Ms Jukic. Therefore, if Ms Jukic seeks to press on with her reliance on the IP Act 2014, then the claim clearly ought to be struck out as disclosing no recognisable basis for a claim.
93. To summarise on this point, Ms Jukic has not particularised her intellectual property claim in any coherent manner. The court should therefore accede to the Defendants’ application for this claim to be struck out.
94. I turn next to the summary judgment applications, dealing first with the legal test for summary judgment.

4. THE LEGAL TEST FOR SUMMARY JUDGMENT

95. Pursuant to CPR rule 24.2, a court may give summary judgment on the whole of a claim or on a particular issue if it considers that (i) the claimant has no real prospect of succeeding on the claim or issue; and (ii) there is no other compelling reason why the case or issue should be disposed of at a trial.
96. Claims for striking out and for summary judgment are typically brought together as claims in the alternative. Where an application is being made for a summary judgment it is common for the parties and the judge to make reference to the principles summarised by Lewison J (as he then was) in *Easyair Limited (trading as Openair) v Opal Telecom Limited* [2009] EWHC 339 (Ch) [at 15]. These principles have been followed on many occasions and were specifically approved by the Court of Appeal in *AC Ward & Sons Ltd v Catlin (Five) Ltd* [2009] EWCA Civ 1098 (at [24]). As Ms Jukic in her application has demonstrated some misunderstanding of the test, I will set out a summary of the principles involved:

- i) The court must consider whether the respondent to the application has a “realistic” as opposed to a “fanciful” prospect of success i.e. one that carries some degree of conviction - a claim that is more than merely arguable.
 - ii) The court must not conduct a “mini-trial”. This does not mean that the court must take at face value and without analysis everything that a respondent to the application says in his statements before the court.
 - iii) The court must take into account not only the evidence actually placed before it upon the application, but also the evidence that can be reasonably expected to be available at trial.
 - iv) Although a case may turn out at trial not to be complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus, the Court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case.
 - v) On the other hand, it is not uncommon for an application under CPR Part 24 to give rise to a short point of law or construction and, if the Court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should “grasp the nettle” and decide it. If the respondent’s case is bad in law, he or she will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be.
 - vi) The court should be especially cautious of giving summary judgment in an area of developing jurisprudence, because in such areas decisions on novel points of law should be decided on real rather than assumed facts.
97. As summary judgment and striking out applications overlap, are routinely made together, and routinely turn on the same alleged facts, courts will often not seek to point out differences between these two heads of claim – see for example *The High Commissioner for Pakistan in the United Kingdom v National Westminster Bank Plc and Others* [2016] EWHC 1465 (Ch); [2016] 6 WLUK 486 where Henderson J noted at [17], apparently with approval, that:

“nobody submitted to me that there is any material difference between the test of “no real prospect” of success in Part 24 and “discloses no reasonable grounds for bringing or defending the claim” in rule 3.4(2)(a)”

(although the learned judge did go on to consider the important distinction that the power to strike out under CPR rule 3.4 also extends to cases of abuse of process, as set out in ground (b) thereof).

98. However, there are distinctions between the two tests, as was pointed out by Master Marsh (sitting in retirement) in *MF TEL SARL v Visa Europe Limited* [2023]1336 (Ch) he pointed out at [34(3)] that:
- “The test for striking out as it has been interpreted leaves no scope for the statement of case showing a claim that has some prospect of success. The claim must be unwinnable or bound to fail. Under CPR rule 24.2 it is not good enough for a point to be merely arguable, it must have a real prospect of success. An application to strike out might fail whereas the same application for summary judgment might succeed.”
99. A further difference (noted at [10(1)] in the same judgment) is that for the purposes of the application under CPR rule 3.4(2)(a) the court will usually proceed on the basis that the pleaded facts are true, whereas evidence, and in particular, witness statements, may have a greater bearing on an application under CPR rule 24.2 as on such applications the court may be required to exercise a judgment about the quality of the evidence.
100. The evidential burden is on the applicant to establish that there are grounds to believe that the respondent has no real prospect of success and that there is no other compelling reason for a trial (see para.2(3) of Practice Direction 24 and para 24.3.3 of the White Book, page 674). That standard of proof is high. If credible evidence is adduced in support of the application, then the respondent assumes an evidential burden of proving some real prospect of success or some other compelling reason for a trial.
101. The Defendants have referred me to some cases where summary judgment was considered specifically in relation to claims for copyright infringement.
102. *Meakin v BBC* [2010] EWHC 2065 (Ch) (“*Meakin*”) was a case in which the claimant alleged that the BBC had infringed his copyright in proposals for a game show. Arnold J (as he then was) summarily dismissed the claim on the grounds that the alleged similarities were repetitive, recycled, commonplace and at a high level of abstraction ([44] to [45]); and the claimant’s case on access was speculative and amounted to a series of conspiracy theories as to how the defendants might have had access to the claimant’s work (see at [48]).
103. In *Banner Universal Motion Pictures Ltd v Endemol Shine Group Ltd & Anor* [2017] EWHC 2600 (Ch); [2018] ECC 4 (“*Banner*”), Snowden J (as he then was) summarily dismissed a claim relating to TV formats. The case was about a TV format called “Minute Winner”. Snowden J held that a TV format can benefit from copyright protection as a dramatic work only if it has clearly identified features which distinguish the programme in question from others of a similar type; and these distinguishing features are connected with one another in a coherent framework which can be repeatedly applied so as to enable the television programme to be reproduced in a recognisable form. On the facts, it was held that *Minute Winner* did not satisfy this test and could not be viewed as resembling a coherent framework as the format description was both unclear and lacking in specifics. Snowden J went on to consider the similarities between the works, finding that in all of the features that, individually or separately,

might conceivably be said to be distinctive or which might serve to differentiate the show envisaged by the copyright work from the commonplace, the defendant's *Minute to Win It* show was materially different.

104. More recently in *Molavi v Gilbert* [2023] EWHC 646 (Ch) ("**Molavi**"), a claimant alleged that the BBC infringed her copyright and misused her confidential information in a two-part storyline in the forensic pathology series, *Silent Witness*. Marcus Smith J summarily dismissed the claim on the ground that there was no arguable basis for the contention that it was to be inferred from the materials relied on by the claimant that the BBC copied any part of the claimant's works [33]. In doing so, the Judge considered the question of whether the alleged similarities were capable of giving rise to an arguable inference of copying.
105. In *Becker-Douglas v Bonnier Books UK Group Holdings Ltd and others* [2024] EWHC 77 (Ch) ("**Bonnier**") a claimant alleged that, *inter alia*, the publishers and writers of the "Flying Fergus" series of books infringed her copyright and breached confidence in relation to her "Jimmy Whizz" works. HHJ Cadwallader (sitting as a judge of the High Court) summarily dismissed the claim on the basis that the claimant's case lacked sufficient evidence of access or copying to support a claim for copyright infringement. When considering the question of copying, the Judge determined the question of similarity, and in particular whether the similarities between the works were capable of founding an inference of access and copying. He found that the similarities were very far from being capable of founding such an inference.
106. It has been emphasised by the courts, time and time again, that the hearing of a summary judgment application is not a summary trial. The court should therefore only consider the merits of the respondent's case to the extent that it is necessary to determine whether it has sufficient merit to proceed to trial. However, the court can evaluate the evidence before it in making that determination as well as evidence it might expect to be available at trial (see for example *Bonnier* at [13]-[15]).
107. The other limb is that there is "no other compelling reason [for] a trial". The overriding objective has a role to play if the court concludes there is no realistic prospect of a successful defence, and the question arises whether there is 'some other compelling reason' for a trial. At that point, the court would be bound to have regard to considerations such as saving expense, proportionality, and the competing demands on the scarce resources (CPR r. 1.1(2)(b), (c) and (e)). It is rare for the court to find a compelling reason for a trial when it has concluded there is only one realistic outcome (see para 24.3.2.3 of the White Book, page 673).

THE DEFENDANTS' SUMMARY JUDGMENT APPLICATION

108. Bearing in mind the nature of a summary judgment application, I turn to the summary judgment application made by the Defendants.
109. Having found for the reasons given above that the Defendants will have been successful in relation to their application for a strike-out, I could stop there in

saying that they are also entitled to the alternative remedy of summary judgment, and indeed that is what I will do in relation to the claims under TMA 1994, PHA 1997 and CMA 1990.

110. However, as regards the element of the claim relating to infringement of intellectual property, as well as pointing out that the pleading of this claim is totally inadequate, the Defendants have also advanced a positive case as to why, even if Claimant had framed her claim in the best possible way, there would be no reasonable prospect of it succeeding on the basis of the facts she alleges and the content and nature of the Treatment compared with that of the Glow Up Show.
111. I agree with them that, the trademark claim having been disposed of, Ms Jukic's claim as regards "breach of her intellectual property" only makes sense when viewed as a claim for breach of copyright under the Copyright Designs and Patents Act 1988 ("**CDPA 1988**"). Certainly, there is no basis for a claim based on registered designs, unregistered designs or patents.
112. In earlier correspondence, when Ms Jukic was represented by solicitors, the solicitors suggested that her claim in relation to her Treatment was based on copyright. In later correspondence, when Ms Jukic was not represented, she denied this point.
113. Despite this denial, the Defendants have considered in depth what would be the merits of a copyright claim based on the facts that Ms Jukic alleges and argue, as I discuss below, that such a claim has no reasonable prospect of success.

The elements of a copyright claim

114. The nature of copyright is explained in s.(1) CDPA 1988:

"1 Copyright and copyright works.

(1) Copyright is a property right which subsists in accordance with this Part in the following descriptions of work—

(a) original literary, dramatic, musical or artistic works,

(b) sound recordings, films or broadcasts, and

(c) of the typographical arrangement of published editions."

115. Under s.(2)(1) CDPA 1988:

"The owner of the copyright in a work of any description has the exclusive right to do the acts specified in Chapter II as the acts restricted by the copyright in a work of that description."

116. Chapter II (at s.16) itemises the various things that the owner of the copyright has an exclusive right to do. These include to copy the work; to issue copies of the work to the public; to rent or lend the work to the public; to perform, show or play the work in public (see section 19); to communicate the work to the

- public; to make an adaptation of the work or do any of the above in relation to an adaptation.
117. What is meant by each of these things is further explained later in Chapter II. These acts are referred to as the “acts restricted by the copyright”. Copyright in a work is infringed by a person who without the licence of the copyright owner does, or authorises another to do, any of the acts restricted by the copyright. By s.16(3), references to the doing of an act restricted by the copyright in a work are extended so that they apply in relation to the work as a whole or any substantial part of it, and either directly or indirectly.
118. CDPA 1988 distinguishes between different types of copyright works. The potentially important definitions for the Claimant’s case include:
- i) “literary work” defined in s.3(1) as “any work, other than a dramatic or musical work, which is written, spoken or sung...”;
 - ii) “artistic works” defined in s.4 to include photographs, and
 - iii) “dramatic work” which is not comprehensively defined but is defined to include a work of dance or mime.
119. Under s.3(2) copyright does not subsist in a literary, dramatic or musical work unless and until it is recorded, in writing or otherwise.
120. Excluding the Claimant’s alleged trademark, the only work which the Claimant claims has been infringed by the Defendants is that included in the Treatment, which the Claimant sometimes refers to as a “blueprint”. In doing so, I think she is drawing attention to the idea that this is meant to be a template for the design of the format of a show for broadcast. As did the judge in *Meakin*, I will proceed on the assumption (which in my view is an assumption that is favourable to the Claimant) that the Claimant intends to claim copyright as a dramatic work and/or as a literary work.
121. Television formats are not specifically protected under the CDPA 1988 as a separate legal right. They could, in principle, enjoy protection as a dramatic work. This was considered in the context of a summary judgment application in *Banner* where Snowden J stated at [44]:
- “I do not need to decide on this interim application the precise conditions that must be satisfied before a television format can be protected as a dramatic work. What I think is apparent from the authorities, however, is that copyright protection will not subsist unless, as a minimum, (i) there are a number of clearly identified features which, taken together, distinguish the show in question from others of a similar type; and (ii) that those distinguishing features are connected with each other in a coherent framework which can be repeatedly applied so as to enable the show to be reproduced in recognisable form.”
122. The three elements to be considered in a copyright case may be summarised as follows:

- i) whether the work that the copyright owner alleges to have been copied is original - this follows from s.1(1)(a) CDPA 1988;
- ii) whether the work has been copied by the defendant – this follows from s.17 CDPA 1988 - or whether the defendant has undertaken any other of the acts restricted by the copyright; and
- iii) whether what has been copied is the whole or ‘*a substantial part*’ of the original features of the Claimant’s work which are subject to copyright protection (s.16(3)(a) CDPA 1988).

The requirement for originality

123. Originality is important for two reasons, first that copyright will only protect an original work, and secondly to the extent that an element of work is unoriginal and commonplace, the fact that the same feature is found in a later work is far less likely to be proof of copying.
124. Even where the work contains the expression of an “idea”, that expression, as contained in the work, may not be protected because it is not original or so commonplace as not to form a substantial part of the work. This was found to be the case in *Designers Guild Ltd. v Russell Williams (Textiles) Ltd. (Trading As Washington D.C.)* [2000] 1 W.L.R. 2416 at [2423]). In *Meakin* [44]-[45] and [48], *Bonnier* [49]-[50] and *Banner* at [59], summary judgment was granted partially due to the fact that the alleged similarities were commonplace or unoriginal.

The requirement for copying

125. The second element of whether a defendant copied a claimant’s work is a question of fact.
126. There are two elements to this. Initially the burden of proof (to the ordinary civil standard) lies with the claimant to prove:
 - i) that the defendant had the opportunity to copy (this is referred to as access); and
 - ii) sufficient similarity between the claimant’s work and the defendant’s work to raise a *prima facie* inference of copying.

If this is shown, the burden then shifts to the defendant to prove independent creation (see *Bonnier* at [26]).

127. This point is of particular importance in the current case. The Claimant has concentrated her efforts on point (i) in the previous paragraph, i.e. on establishing that the BBC and/or W2W received the Treatment. Whilst this point is not yet proved, it is appropriate, in the context of an application for summary judgment to be given against her, that I assume that she may be able to prove this. But this is not enough. The Claimant has not in her pleadings or evidence explained why the court should consider that there is sufficient similarity between her Treatment and the Glow Up Show.

128. The extent and nature of similarities between two works can give rise to a presumption of copying but as is often said, what must be copied is the “expression of an idea” rather than an “idea”. Ms Jukic had the idea for a show involving a competition involving MUAs. That by itself is merely an idea. To establish her case she needs to show copying of her expression of that idea, or of a substantial part of her expression of that idea.
129. In the context of literary works, a work can be infringed by the copying of the words themselves. In the current case there is no suggestion that the Defendants have copied the words, or a substantial part of the words in the Treatment. This is not fatal to a copyright case: as I have already indicated, it is possible, in theory, for the “selection, arrangement and development of ideas, theories, information, facts, incidents, characters, narratives and so on” to be protectable. However, this argument cannot be used to extend the protection of the structure or form of the work to the *individual* elements of the work and it depends on the relevant form of expression.
130. The approach to determining allegations of copying is set out in *Meakin* at [33], referring to the judgment of Mummery LJ in *Baigent v. Random House Group Ltd.* [2007] EWCA Civ 247, [2007] FSR 24. This states (at [122] in the latter judgment):

“122. In particular, in cases in which the issue of copying has to be decided on disputed evidence the court should be guided by the sound legal principle that proof of similarity between the alleged infringing work and the original copyright work, coupled with proof of direct or indirect access to the original, is prima facie evidence of copying for the Defendant to answer:”

and goes on at [124] to set out questions for the court to consider, as follows:

“124. The following issues frequently arise for decision in proceedings for infringement of literary copyright under the 1988 Act. Although this is not an exhaustive check list, the following are worth bearing in mind as issues that will usually need to be considered, preferably in a chronological setting or, in more complicated cases, of sub-sets of chronologies.

(1) What are the similarities between the alleged infringing work and the original copyright work? Unless similarities exist, there is no arguable case of copying and an allegation of infringement should never get as far as legal proceedings, let alone a trial. The 1988 Act confers on the owner the exclusive right “to copy the work” either directly or indirectly (s.16). This is not an exclusive right to prevent the publication of a work on a similar subject or a work which happens to contain similar material, thematic or otherwise.

(2) What access, direct or indirect, did the author of the alleged infringing work have to the original copyright work? Unless there was some evidence from which access can be directly

proved or properly inferred, it will not be possible to establish a causal connection between the two works, which is essential if the Claimants are to prove that the Defendant's work is a copy.

(3) Did the author of the alleged infringing work make some use in his work of material derived by him, directly or indirectly, from the original work?

(4) If the Defendant contends that no such use was made, what is his explanation for the similarities between the alleged infringing work and the original copyright work? Are they, for example, coincidental? Or are they explained by the use of similar sources? If the latter, what are the common sources which explain the similarities? How were the sources used by the authors of the respective works?

(5) If, however, use was made of the original copyright work in producing the alleged infringing work, did it amount, in all the circumstances, to "a substantial part" of the original work? The acts restricted by the copyright in a literary work are to the doing of them "in relation to the work as a whole or any substantial part of it". See s.16(3)(b) of the 1988 Act.

(6) What are the circumstances or factors which justify evaluating the part copied in the alleged infringing work as "a substantial part" of the original copyright work?"

131. *Michael Mitchell v BBC* [2011] EWPC 42 ("**Mitchell**") provides an example of the emphasis that is placed on identifying similarities. In that case the claimant had drawn a group of characters which he intended to be used in an animated television programme for children. He alleged that these characters had been copied by a programme produced by the BBC. As with the current case there was a debate about access – i.e. whether the BBC had seen his characters before developing their own. He argued that the similarities could only have arisen as a result of copying (conscious or sub-conscious) by the artists working on the project for or on behalf of the BBC. He said that the artists had access to his work and so the similarities coupled with access to the work raised a strong case of copyright infringement.
132. It is important to note that similarities do not *necessarily* indicate copying. The authors of two works could have arrived at the same result by coincidence, particularly if the works are in the same milieu and have the same cultural points of reference. This point was made in *IPC Media Ltd v Highbury-Leisure Publishing Ltd* [2004] EWHC 2985 (Ch) at [10] (referred to in *Michael Mitchell v BBC* [2011] EWPC 42 at [26]-[27]). Also it is important not to lose sight of the differences as they may be just as important in deciding whether copying has taken place. This was noted in *Mitchell* at [27], referring again to *IPC Media*, this time at [11].

The requirement to copy the whole or a substantial part

133. As to the third element, the test for whether the defendant's work reproduces a substantial part is a qualitative test and is to be judged considering the cumulative effect of the features of the two works (see *Designers Guild* at [2422]).

4. THE CONTENTS OF THE TREATMENT AND OF THE GLOW-UP SHOW

134. I turn then to the contents of the Treatment. This took the form of a presentation using PowerPoint or some similar software.

135. The title page appeared memorably in lurid pink, with three identical pink sets of lips, apparently dripping with some form of pink goo, in front of what appeared to be steel teeth and giving the title

“Television Show Pitch

BOSSIIE: 10 Minute Makeover”

136. The same lips appear elsewhere in the Treatment but redder and with the goo appearing in white. It may be noted that neither the lips image nor the title were used in the Glow Up Show.

137. The next page gave the basic premise of the proposed television show as follows:

“The competing teams of artist will be given a **minimal time** to complete the makeover, and that will put them in a state of keen excitement as well as intrigue the viewers.

The audience will wonder if the competing teams of artist will indeed finish the makeover within the time limit.

The show will prove that the themes can be achievable within the time limit and with all the evolution and technology used in makeup these days.

"BOSSIIE: 10 Minute Makeover"

To support this, we would like to make a Reality/Competition format that seems impossible for the team of Artists made out of **Makeup Artist, Hairstylist & Fashion Stylist** to finish the makeover within the time limit. In fact it should be possible for these teams to finish their task as expected. The show could run 1-29 minutes on Snapchat/Instagram/Facebook on Timeline, on Youtube it could be similar to a Tai Lopez video before watching content and as a show it could play for 19:30 pm.”

(Note the emphasis above reproduces that given within the Treatment.)

138. The next page (and some other pages) included a number of photographs, including one of Kim Kardashian being made up with the two hands of the make-up artist in frame. The Defendants speculate that that photograph, and possibly others were taken from the Internet. It included text as follows:

“The Show

We’d like to create a Reality/Competition series that will intrigue our targeted audience. Taking each element of makeover and exaggerating each aspect for entertainment.

With the success and interest of Makeup companies, Reality shows and YouTube Makeup artists, we’d like to tap into that audience and make a television series with high production value and innovative artists.

Outlined below is an approach to embody the ‘BOSSIIE: 10 Minute Makeover’ concept.”

139. The pages following outline aspects of the show including:

- i) The following:

“Partnering with existing brands such as **Superdrug, Kylie Cosmetics, Fenty Beauty, Boohoo/Man, Pretty Little Things, Primark, Top Shop, Morphe** would instantly give profile to the format and would spread the word of the series to a wide audience. People who are interested in **Makeup, Hair/Fashion Styling, Social Media, Beauty Blogging and Makeovers** would be drawn to the content after hearing about it and fans of the brands above will queue to watch the Series without being persuaded.

Lately the beauty of using makeup and creating outstanding themes by using makeup, creating bespoke wigs and the competition in high street shopping has changed the industry drastically.”

- ii) Speculation that the show could take place in a fashion capital such as London or alternatively in an international capital (various capital cities and one non-capital city, Los Angeles being mentioned).

- iii) The proposal that:

“There will be 4 groups of 3 paired artists, consisting of a Makeup Artist, a Hairstylist and a Fashion Stylist. Each artist in the group will have 10 minutes to execute a theme/mood for the challenge. Each group will have a model to work on, and be given the same brand of makeup, same hair bundles/wigs and the same brand of clothes and an iPhone to capture the look later; The best interpretation of the theme, presentation of team work,

done in the limited time with the a good picture wins the challenge”.

iv) The proposal that:

“As soon as the Photoshoot is done a panel of judges will collaborate and discuss the strongest team. The verdict will be made on the basis of good communication, timing, team work, the interpretation of the theme, and picture content”.

v) The last substantive slide explained the message of the series.

“The motive behind this unique Series is to showcase innovation, creativity and talent in beauty. The moment our viewers realise how achievable the themes can be in a shorter period of time, they will be blown away. The general public will then take interest in the beauty of using makeup and the creativity thereof through “BOSSIIIE: 10 Minute Makeover”. “BOSSIIIE: 10 Minute Makeover” can break the wall and talk directly to the audience. We can talk about the Beauty Artists’ talent and encourage the youngsters who are interested in makeup, hairstyling and fashion careers. The youngsters will then see that what is thought to be impossible can be executed, so long as there is good communication, collaboration and team spirit. Team spirit can achieve what is thought to be unachievable.”

140. The similarities and differences between the Treatment and the Glow Up Show are dealt with in more detail below. But the main features of the Glow Up Show, according to the witness evidence of Melissa Brown, the Executive Producer of all six seasons of the show, may be summarised as follows:

i) Like other reality shows such as The Great British Bake Off, The Great British Sewing Bee (a competition to find "Britain's most sensational seamster"); Hair (a competition to find Britain best amateur hair stylist); and Interior Design Masters with Alan Carr (an interior design competition), each season of the Glow Up Show sees aspiring make-up artists (“MUAs”) compete for the title of Britain’s Next Best Make-Up Artist. 10 contestants (8 for the sixth season) were tested in the types of high-pressure environments that real MUAs might find themselves working in such as the red carpet at The Brit Awards, behind the scenes at television dramas like The Crown, Bridgerton and Peaky Blinders, and working for major retailers such as ASOS and H&M. Each MUA works independently, and the season culminates in the winner being crowned and landing their dream contract to work alongside some of the MUAs. There are hosts such as Stacey Dooley who, rather than acting as a classic presenter, acts as confidant to the cast, tapping into their personal back stories to help drive narratives. Each show involves three main challenges with half set in the real world and half in the studio. These include:

- a) A professional assignment on location where the MUAs each put make-up on their own model or sometimes themselves for a client, brand or on a film/TV set. Locations have included West End musicals and television series, as well as work for brands such as JD Sports. The chief make-up artist at the particular venue often is then co-opted to assist with judging, and the best MUA is given an assignment at that venue. The two candidates who do least well are assigned a “Red Chair” at the next stage which means that they are given 15 minutes less for the next stage and will be in the face of elimination in the last stage unless they impress in the creative brief stage.
 - b) A creative brief, taking place within the studio, involving transformative make up within a time limit, carefully designed to allow viewers to explore the contestants’ personal back stories exploring subjects such as sexual assault, mental health and neurodiversity.
 - c) A face-off elimination where the two weakest candidates are asked to perform a particular make-up scale on identical twins within a time limit of between five and 15 minutes.”
141. Other than the bald assertion that that the Defendants have copied “my show” the Claimant has not particularised within her Particulars of Claim, or within her APOC Witness Statement or her APOC Response what she asserts are the original features of her show that she considers that the Defendants have copied.
142. The Defendants have asked her to specify this but she has not replied. In the absence of any further reply, the Defendants suggest that the court should take a schedule originally prepared by the Claimants’ solicitors, when she was legally represented setting out alleged similarities between the Glow Up Show and the Treatment. I agree that this is appropriate and provides a good way to allow the court to consider whether there are any similarities. I reproduce the schedule below together with my comments.

“My Treatment” – the features of the Treatment alleged to have been copied	“Their Show” – the features said to be in the Glow Up Show	My Comments
<i>Likened to America’s Next Top Model (“ANTM”) or but focused on the make-up.</i>	<i>Likened to America’s Next Top Model but focused on the make-up and titled as Britain’s Next Make-Up Star.</i>	I agree with the Defendants’ comments that this is not a feature of the Treatment. It may be that it is the Claimant’s opinion that the Treatment and the Glow Up Show are both similar to ANTM. In any case to the extent that a feature of the Treatment is also a feature of ANTM, it is not original. Importantly, the Glow Up Show focuses on make-up. The Treatment does not focus

<p>“My Treatment” – the features of the Treatment alleged to have been copied</p>	<p>“Their Show” – the features said to be in the Glow Up Show</p>	<p>My Comments</p>
		<p>on make-up – it focusses on a full makeover by a team of people (a make-up artist, hair stylist and fashion stylist) co-operating together to transform the model’s whole look.</p>
<p><i>Professional makeup artists as judges</i></p>	<p><i>Professional makeup artists as judges</i></p>	<p>I agree with the Defendants’ comments that the Treatment does not state that the judges are professional make-up artists and that in any event, having an industry professional judge a related competition is not original.</p>
<p><i>Reality Show format</i></p>	<p><i>Reality Show format</i></p>	<p>I agree with the Defendants’ comments that a reality show format is a high-level idea which copyright cannot protect.</p>
<p><i>Competition</i></p>	<p><i>Competition</i></p>	<p>I agree with the Defendants’ comments that a competition is a high-level idea which copyright cannot protect.</p>
<p><i>Similarity in the title written form. Bossiie: 10 Minute Makeover</i></p>	<p><i>Similarity in the title written form. Glow Up: Britain’s Next Make-up Star</i></p>	<p>There is no similarity between the title of the Treatment (Bossiie: 10 Minute Makeover) and the title of the Glow Up Show (Glow Up: Britain’s Next Make-Up Star).</p>
<p><i>More than one judge</i></p>	<p><i>More than one judge</i></p>	<p>I agree with the Defendants’ comments. The Treatment talks about a “panel of judges” which is a high-level idea that copyright cannot protect. Having judges is commonplace in competitions, including reality show competitions.</p>
<p><i>YouTubers as contestants</i></p>	<p><i>Amateur & YouTube contestants</i></p>	<p>The Treatment does not mention that contestants would be YouTubers (though it cites that there has been success and interest in YouTube Make-up artists). The Glow Up Show is not a show about YouTuber contestants.</p>
<p><i>Be given the same makeup brand</i></p>	<p><i>Contestants were given the same makeup kit</i></p>	<p>The Treatment refers to contestants being given “<i>the same brand of make-up, same hair bundles/wigs and the same brand of clothes</i>”. The emphasis there is on partnering to promote the brand. In the Glow Up Show, the MUAs are given the same make-up kit but the kit comprises items from multiple different brands. Hairpieces, wigs and clothes are not given</p>

<p>“My Treatment” – the features of the Treatment alleged to have been copied</p>	<p>“Their Show” – the features said to be in the Glow Up Show</p>	<p>My Comments</p>
		<p>out. Whilst wigs are sometimes used, they are not part of the competition.</p>
<p><i>There will be a theme for a makeup challenge</i></p>	<p><i>There is a theme for makeup challenge</i></p>	<p>The Treatment does not mention a theme for a make-up challenge – it talks about a theme/mood for “<i>the challenge</i>” (meaning the full makeover involving make-up, hair and clothing). I agree with the Defendants that having a theme for a challenge is a high-level idea that copyright cannot protect.</p>
<p><i>Focusing on Makeup</i></p>	<p><i>Focusing on Makeup</i></p>	<p>The Glow Up Show focuses on make-up. The Treatment does not focus on make-up but a full makeover including hair and clothes. If anything this is a point of difference between the Treatment and the Glow Up Show. Also I agree with the Defendants that a focus on make-up is a high-level idea that copyright cannot protect.</p>
<p><i>Contestants to be given limited time to finish a look</i></p>	<p><i>Contestants were given limited time to finish a look</i></p>	<p>The Treatment describes 4 teams each of 3 contestants racing against the clock. This feature is not in the Glow Up Show. In any event, having time constraints in a competition is a high-level idea that copyright cannot protect and is commonplace.</p>
<p><i>A picture of Kim Kardashian getting her makeup done with the makeup artists hands and brushes</i></p>	<p><i>Picture of Stacey Dooley getting her makeup done with makeup artists hands and brushes</i></p>	<p>It is not claimed that, and it seems unlikely that, the Claimant owns any rights in the picture of Kim Kardashian. This picture is not used in the Glow Up Show. The idea of showing make-up by showing a person’s face with hands showing a make-up artist is a high-level idea that copyright cannot protect and is commonplace.</p>
<p><i>Picture judgement - Winners are chosen by the execution of the makeup look and how it looks in the picture.</i></p>	<p><i>Picture judgement - Winners are chosen by the execution of the makeup look and how it looks in the picture.</i></p>	<p>This is not an accurate description of the Treatment – the Treatment states that winners are chosen on the basis of “<i>good communication, timing, team work, the interpretation of the theme, and picture content.</i>” This is different to the Glow Up Show, which is limited to make-up execution only.</p>

<p>“My Treatment” – the features of the Treatment alleged to have been copied</p>	<p>“Their Show” – the features said to be in the Glow Up Show</p>	<p>My Comments</p>
		<p>This is also not a fair assessment of the Glow Up Show – whilst some judging is done by reviewing still images, not all of it is. In any event, judging by way of photos is a high-level idea that copyright cannot protect and is commonplace.</p>
<p><i>A show for Youtuber’s who are self-taught Makeup Artists</i></p>	<p><i>Mention of Youtuber Make up style</i></p>	<p>This is a repeat of a point already made above – see comments about YouTubers above.</p>
<p><i>Group assigned a model</i></p>	<p><i>Contestants assigned a model</i></p>	<p>The Treatment focusses on group work for 4 teams, each with 3 contestants: the Glow Up Show participants are not judged in teams. The contestants in the Glow Up Show work on models and themselves. In any event, this is a high-level idea that copyright cannot protect and is commonplace.</p>
<p><i>The time limit is 10 minutes</i></p>	<p><i>Later on in the show the contestants are given 10 minutes for the faceoff segment</i></p>	<p>It is commonplace in gameshows that tasks are time limited. The very strict time limit was a central feature, perhaps the central feature in the Treatment, but is not at all central to the Glow Up Show, where the first two acts of each show have much longer time limits (between 1 ½ and 2 ½ hours). In the Face-Off Elimination, the Contestants are given a challenge which needs to be completed in a certain time which ranges from 5 to 15 minutes depending on the challenge, but this is qualitatively different to the premise in the Treatment, as the Face-Off Elimination concentrates on perfecting one single make-up skill, whereas the Treatment envisaged a full makeover involving make-up, hair and clothes.</p>
<p><i>Close up pictures of dramatic makeup</i></p>	<p><i>Cutaways of the amateur models showcasing their dramatic make up</i></p>	<p>The Treatment includes third party photographs of hair, makeup and fashion, including some close-up pictures of dramatic makeup but does not specify this as a feature of the show, although it does talk about “exaggerating each aspect for entertainment”. I agree with the Defendants that a segment showing the</p>

“My Treatment” – the features of the Treatment alleged to have been copied	“Their Show” – the features said to be in the Glow Up Show	My Comments
		results of the challenge is a high-level idea that copyright cannot protect and is commonplace.
<i>Location of the Show is London, UK</i>	<i>Location of the Show is London, UK</i>	Slide 5 of the Treatment says “ <i>Our show could take place in a fashion capital e.g. London.</i> ” The Treatment does not say that the location of the show is London, but provides London as one example of a fashion capital in which the show could take place – this is not original. It is a high-level idea that copyright cannot protect and is commonplace.
<i>A photo-shoot to capture the theme</i>	<i>A photo-shoot to capture the theme</i>	This is a repeat of a point made above. The Treatment suggests that the results are captured by the teams themselves on an iPhone. The Glow Up Show does use photographs, but not for every challenge. Where a photo-shoot takes place in the Glow Up Show, the photos are captured by the on-set photographer. I agree with the Defendants. In any event, this is a high-level idea that copyright cannot protect and is commonplace.
<i>Exaggerated look</i>	<i>The description states dramatic look</i>	The Treatment (on slide 4) mentions “ <i>Taking each element of makeover and exaggerating each aspect for entertainment</i> ” – this refers to make-up, hairstyling and clothes. It is unclear what “the description” means. In any event, this is a high-level idea that copyright cannot protect and is commonplace.

143. It will be apparent from the table above that, taken individually, while there are some similarities between the description of a show in the Treatment and the Glow Up Show, those similarities are generally ideas that have been present in many other shows and as such are not original features that copyright will protect.
144. It is necessary, however, to stand back and look at the aggregation of the points as a whole in order to see whether there is any overall similarity. This involves looking holistically and considering both similarities and differences. In my view, when one does this, the differences are far greater than the similarities, and the shows have very different intentions. In particular:

- i) The clear emphasis of the Treatment was the concept of a 10 minute makeover. The emphasis was on the very strict time limit, and the idea of “proving that the themes can be achievable within the time limit and with all the revolution in technology used to make up these days”. Importantly the Treatment assumed teams comprising a make-up artist, a hairstylist and a clothes stylist and cooperation and communication were an important element of what was to be marked. By contrast, the Glow Up Show has placed little emphasis on the strictness of the time limit, focuses entirely on make-up and the notion of teamwork is completely absent – the contestants compete as individuals.
 - ii) The Glow Up Show has a complex three-act structure designed to show over an hour and highlighting different tasks and the different environments that MUAs may find themselves in, whereas the Treatment involved one particular type of competition (albeit possibly one repeated with different themes).
 - iii) The Glow Up Show placed an emphasis on the back story of the individual MUAs, which was not a feature of the Treatment. Neither was it a feature of the Treatment to include a presenter who would engage to draw out these back-stories.
 - iv) A major feature of the Treatment was a brand approach aimed at highlighting different brands of cosmetics and clothing through partnerships with established firms. Whilst the Glow Up Show did involve various partnerships such as with West End musicals and some fashion retailers, these were in the context of those parties as the *users* of the services of MUAs, and not in their roles of *suppliers of* makeup or clothing.
145. To be as fair as possible to the Claimant I have considered the similarities in considerable detail, but, neither considering the individual details of the Treatment, nor the looking at the Treatment and the Glow Up Show as a whole, can I see any significant similarities that are not explicable as commonplace features of this type of reality show. It follows, therefore, that even if the Claimant could establish that the BBC received the Treatment, she will not be able to establish that it, or a substantial part of it were copied in the format of the Glow Up Show.
146. This being the case, even ignoring the difficulties with her pleadings which have caused me to strike out her claim in this regard, it is clear that the court should give summary judgment against her on this point.

6. THE CLAIMANT’S SUMMARY JUDGMENT APPLICATION

147. Again, bearing in mind the nature of a summary judgment application, I turn to the summary judgment application made by Ms Jukic.
148. Of course, given that I have determined above to strike out each element of her case for the reasons given above, there is nothing left of her claim on which summary judgment may be given. However, for the purposes of completeness,

and to demonstrate to her that the merits of her application were considered, I will consider her application on the assumption (albeit an unwarranted assumption) that her claim has not been struck out.

149. Ms Jukic's reasons that summary judgment in her favour was appropriate were summarised in her application as follows:

“because the defendants have no real prospect of successfully defending the claim. They have failed to prove ownership of the show they claim to belong to them after stealing it from me. They are malicious to an extent (sic) that they hacked my computer to try and get rid of the evidence that they received my treatment and used it. They presented false evidence to IPO”.

150. This application was accompanied by a longer explanation of these reasons and by exhibits and documents said to establish the points made.

151. As to the explanation, this was largely a restatement of her case and it did not explain why the defence did not have a realistic prospect of success. The only points that were made that were not a restatement of her case were that:

- i) “When a complaint was made to the BBC regarding the fact that BBC hacked her email they did not deny that.” They did not respond to the claim. She argues that the failure to answer connotes acceptance. In fact it is very clear that the BBC does not accept her claim. The fact that they did not do so immediately does not prove her case. There are other explanations why they may not have replied.
- ii) “The BBC failed to prove ownership of the show they claimed belong to them after stealing it from me.” This point displays a misunderstanding of how a copyright action works: it is for Ms Jukic to demonstrate that the Glow Up Show has resulted from an infringement of her copyright, not for the Defendants to prove that it did not. Also it is premature - the question of proof of contested evidence is to be determined at trial. The Defendants have put forward a case that they did not use the Treatment and have produced witness evidence and other evidence to back this up. Before this evidence is tested, it is impossible to say that the Defendants have no realistic chance of demonstrating this point. Also the Defendants have some very good arguments, considered further below, that even if the Treatment had been received somewhere within the BBC there has been no copying of any original work (or of any substantial portion of any original work), and these arguments do have a reasonable prospect of success.
- iii) When W2W wrote to her to say that the similarities were a coincidence, they were acknowledging similarities and this meant that they have “referred” (I think she means accepted) that her Treatment was passed to them by a BBC worker, Carl Callam. In fact that letter did not admit similarities. It said that “any similarities” must be a coincidence. This does not constitute an admission that there were similarities. It is a

denial. It merely states that if there are similarities they do not result from copying.

152. Turning to the evidence relied upon, this comprises:

i) A screenshot purporting to show a message from LinkedIn stating that:

“An exact match for carl-callam could not be found. The LinkedIn profile you’re looking for isn’t public or doesn’t exist.”

The screenshot is not dated but it bears a copyright notice “©2022”. This provides some support for the Claimant’s contention that Mr Callam deleted his LinkedIn account, but as evidence it needs to be balanced against the fact that his account is still live today and apparently shows posts dating back five years, so this remains evidence that needs to be tested.

ii) A letter that Ms Jukic claims that she wrote to herself, her mother and two family friends. This bears two dates. Under the date “10 January 2018” she says she is writing a show which she will pitch to BBC3, and explains some of the details that later appeared in the Treatment, although there were some differences, since this states that it will be

“make-up focused, but to make it interesting there will be a point where they will be judged on hairstyling and fashion ability”

and explaining how she came up with the title “Glow up: Britain’s next make-up star”. Under the date “13 January 2018” she recounts that she contacted Mr Callam on LinkedIn who told her to pitch it, but that he did not like the title, so that she changed it, and she states that she will carry on and was admitted to BBC3.

If this letter is a contemporaneous note, it goes towards supporting her case concerning her dealings with Carl Callam. However, particularly as this carries two dates there remains a question on what date it was produced and it cannot be accepted as a contemporaneous note without the accompanying metadata or other external evidence that it was written in January 2018 and without that evidence being tested.

iii) A screenshot of the automated reply from Laura Marks stating that she is on leave. As it is not denied that Laura Marks was approached, this does not advance the case.

iv) A screenshot of a page from YouTube which appears to include a link to a video with the title “Make up Draft – BOSSIE 10 minute makeover: glow up-Britain’s next make-up star”. This again will only support a case if evidence is given as to the date on which this video was posted, and that date was before the date on which the Glow Up Show was first aired.

v) A letter dated 9 March 2019 to W2W complaining of the theft of her work. This has no probative value in relation to her case.

- vi) A response dated 20 March 2019 stating that “Glow Up is an original Wall to Wall format, created in-house and in development with BBC since 23 February 2018” and stating that:

“any similarities to our format are coincidental”.

I understand that this is the letter that is relied upon as an admission that there were similarities, but as mentioned above this really does not follow, and in any case there can be similarities without there being a breach of copyright, as will be apparent from the discussion above.

- vii) An email response by BBC Complaints to a phone call made by the Claimant’s mother. This response is not obviously probative of any part of the claim.
- viii) A screenshot of an email from the Claimant to Carl Callam and Navi Lamba. Laura Marks is greeted in the email but it is unclear from the email header whether this was sent to her also – her name does not appear in the “Sent To” box, but it is possible that it was on another hidden line. The email apparently attaches the Treatment. The screenshot is accompanied by a computer-generated report sent by “MAILER-DAEMON@mailin0telhc.bbc.co.uk”.

The report appears to suggest that the message was received from “mail6.bemta5.message-labs.com” but there were fatal errors in the delivery to Carl Callam and Navi Lamba on the basis that the message size exceeds the fixed maximum message size. It is not denied by the Defendants that the Claimant may have attempted to send the Treatment to them, but it is their case that it was not received by them because the file size was too large. The Claimant alleges this is not so, and the Treatment was received by Laura Marks. This document requires explanation by a technical expert to resolve this dispute.

The Claimant suggests that this document “is the result of hacking by Carl Callam”, but it is by no means obvious that it is; and this also is a matter that would need to be tested by evidence, probably including expert witness evidence. The Claimant does not in the context of this application expressly seek to put any reliance on a purported expert report provided by her, but even if she did, that report would not prove her point such that summary judgment may be given. That report is not currently admissible as evidence as there has been no permission to provide it and it does not meet the usual requirements for an expert report. Furthermore the Defendants have raised issues about the qualifications and independence of the purported expert which would require testing at trial.

- ix) Other documents attached as evidence include emails and attachments provided by W2W documenting, what they say are the early origins of the Glow Up Show. The Claimant says that these are false evidence but there is nothing beyond her assertion to indicate that they are false and this again would be a matter for trial.

- x) Finally there are documents relating to the trademark action. Again these do nothing to advance the Claimant's case, particularly as it is now established that her trademarks were invalid. The exhibits include a polite response by the IPO responding to an accusation by the Claimant of bias and assuring her that after an investigation no bias has been found. Again it is difficult to see how this advances any aspect of her case.
153. I have dealt with this application in some detail because I wanted to be clear that it has been considered properly. However, I think it should be amply clear from the above analysis that the Claimant's Summary Judgment Application is totally without merit.
154. As was held in *Sartipy v Tigris Industries Inc* [2019] EWCA Civ 225 ("*Sartipy*") at [27]
- "A claim or application is totally without merit if it is bound to fail in the sense that there is no rational basis on which it could succeed: *R (Grace) v SSHD* [2014] EWCA Civ 1091, [2014] 1 WLR 3432 and *R (Wasif) v SSHD* [2016] EWCA Civ 82, [2016] 1 WLR 2793."
155. The arguments and evidence relied on do not get anywhere near to establishing that the Defendants have no realistic prospect of establishing a defence, even if one assumes (as one should not) that a case has been properly particularised against them.

7. CONCLUSION, COSTS AND CONSIDERATION OF A CRO

Conclusions reached

156. It will be apparent from the discussion above that:
- i) I have accepted the Defendants' application to strike out Ms Jukic's claim and/or to give summary judgment against her;
 - ii) I have refused Ms Jukic's application to strike out the Claimants' claim and have declared that this application is totally without merit.
157. I will make an order accordingly.
158. However, in making such an order I will include the two caveats that I have already mentioned. First, as Ms Jukic has not been present at this hearing, I will offer her the same accommodation that would be afforded to a defendant who was not present at a trial where the trial resulted in an order being made against him or her. In other words, I will act as if CPR rule 39.5 applied to this ruling (whether or not it strictly does). Accordingly, I will make provision for Ms Jukic to be able to apply to set aside the order I propose making against her, but on the basis that the court may grant the application only if it considers that:
- i) she has acted promptly when she found out that the court had made an order against her;

- ii) she had a good reason for not attending the hearing; and
- iii) she had a reasonable prospect of success at the hearing.

159. To be clear about what is meant in the previous paragraph about acting promptly, it is expected that the Claimant will respond within 28 days from the date that she becomes aware of this judgment in its final form or if earlier the date that she becomes aware of the order made pursuant to this judgment. In a draft of this judgement made available to the parties for corrections I stated that the 28 days should start to run from the date she becomes aware of this judgment in its draft form, but as since then I have made some significant additions dealing with the question whether the claim is totally without merit and considering the question of a civil restraint order, I consider it is appropriate instead to make awareness of the finalised judgment (or order) the appropriate start point.
160. Any such application made in accordance with [158] above should be a full response setting out her reasons. However if there is any good reason why she needs more time she may within the time constraint set out above) apply to the court for more time, explaining her reasons why more time is needed.

Costs

161. The Defendants have asked for their costs in relation to these applications and in relation to the claim. They have asked for costs to be granted on an indemnity basis, drawing attention to elements of Ms Jukic's conduct which they say take this case out of the norm. The indemnity basis of costs is more generous to the party that is receiving costs. The court orders costs on an indemnity basis where it considers that the other side has been acting out of the norm.
162. The points that the Defendants have raised which take this matter out of the norm are the broadly the following:
- i) failing to particularise her claim sufficiently so that it can be understood, notwithstanding being asked to do so;
 - ii) making unfair and ungrounded (and generally unspecified) allegations of dishonest conduct against staff of the Defendants and their lawyers, and allegations of bias against staff of the IPO and the staff of the court; and
 - iii) failing to appear at the hearing and giving no excuse for doing so.
163. It seems to me that the Defendants have made a good case in this regard. The usual rule is that the loser pays the winner's costs, and I am not aware of any consideration in this case that should displace that rule.
164. I am minded to order costs on an indemnity basis for the reasons given by the Defendants, particularly those given at (i) and (iii) in the preceding paragraph. Whilst I have no evidence before me to determine whether the allegations referred to at (ii) in the preceding paragraph had any proper basis, it appears that for the most part they were never properly specified and left those being accused

of dishonest conduct facing serious accusations made in such a general way that it was difficult to defend themselves against them. This, I consider to be another example of conduct out of the norm.

165. I will order costs to be assessed on a summary basis and on the papers (i.e. without a further hearing) in order to save what are likely to be the substantial costs of a detailed assessment (which would also fall to the Claimant to pay). However, before making such an order, I will give the Claimant an opportunity to make representations, if she so wishes, in response to:
- i) whether she should pay costs;
 - ii) whether the costs should be on an indemnity basis;
 - iii) the detail of the Defendants' schedule of costs;
 - iv) whether costs should be assessed a summary basis and on the papers.
166. Again these representations should be made promptly, by which in this case I mean that it is expected that the Claimant will respond within 28 days from the date that she becomes aware of this finalised judgment. However, if there is any good reason why she needs more time she may apply to the court before the expiry of that period for more time, explaining her reasons why more time is needed.

Consideration whether the claim is totally without merit

167. Finally I have been reminded by the Defendants that I am obliged to consider whether the Claimant's claim itself is one that is totally without merit and what should be the consequences of this.
168. I find that two distinct elements of her claim are very clearly totally without merit. These are her claims based on CMA1997 and PHA 1997.
169. As regards her claim insofar as it is based on the TMA1994, at the time that she made the claim, she had reason to bring this, however, it became unreasonable for her to continue with this claim once her trademarks were cancelled.
170. As regards her broader IP claim, I accept that it was made in good faith, because the Claimant she had an idea for a show that she believes she shared with the BBC and she considers that the Glow Up Show resulted from this. However, this claim was hopelessly badly particularised. It was based on a statute that was not relevant. It was also so lacking in merit that even if had been better particularised, and even if one accepts the facts alleged by the Claimant supporting it, it could never have succeeded as there was simply not a sufficient similarity between the Treatment and the Glow Up Show to support a copyright claim.
171. Whilst it is perhaps understandable given the Claimant's lack of sophistication in legal matters that she might bring such a claim, that does not save this element of the claim being certified as being totally without merit. It is clear from case-

law and in particular, *Sartipy* (again at [27]) that for a claim to be judged totally without merit:

“It need not be abusive, made in bad faith, or supported by false evidence or documents in order to be totally without merit, but if it is, that will reinforce the case for a civil restraint order.”

172. Taking all these points into account I find that taken as a whole her claim, as well as her Summary Judgment Application, were both totally without merit.
173. Having found this, it is incumbent upon the court to whether it should make any form of a civil restraint order (“**CRO**”).
174. The practice direction relating to CROs is Practice Direction 3C. This provides for three kinds of CRO: a limited CRO; an extended CRO (an “**ECRO**”); and a general CRO (a “**GCRO**”).
175. A limited CRO imposes certain restraints (which I summarise more fully below) on the person in respect of whom the order is made in relation to the proceedings in which the limited CRO is made. A limited CRO may be made where a party has made two or more applications which are totally without merit.
176. An ECRO, (where it is made by the judge of the High Court) applies restrictions to in relation to any claim or application in the High Court or in the County Court involving or relating to or touching upon or leading to the proceedings in which the order is made. An ECRO may be made:

"where a party has persistently issued claims or made applications which are totally without merit".
177. A GCRO (where it is made by the judge in the High Court) applies restrictions to any claim or application in the High Court or in the County Court. A GCRO may be made:

"where the party against whom the order is made persists in issuing claims or making applications which are totally without merit, in circumstances where an extended civil restraint order would not be sufficient or appropriate".
178. It is generally accepted that an ECRO (and still less a GCRO) cannot be made unless the party has made at least three claims that are totally without merit.
179. As far as I am aware, no other orders have been made against the Claimant which have been certified in the order as being totally without merit.
180. However, I note that there was an order made by Master Armstrong on 23 January 2025 against the Claimant in relation to a separate claim for defamation and data misuse that she is making against Telegraph Media Group Holdings and the BBC. In that order, the Master set out very substantial reasons why the claim made in that case should be stayed forthwith. It appeared to him that the claim form and accompanying documents disclosed no reasonable grounds for bringing the claim and/or were an abuse of process, or were otherwise likely to

obstruct the just disposal of proceedings. He identified substantial failures in the way the case was pleaded. He found that Ms Jukic had failed to set out the facts and matters relied upon to meet the requirements relating to the claim or claims being made and found the particulars of claim submitted to be “vague and scurrilous”.

181. Whilst the Master did not certify the claim as being totally without merit, there was no reason for him to do so as the requirements in the CPRs for a judge to consider this apply only where a statement of case is struck out or is dismissed, and in this case the Master was only ordering a stay. Nevertheless, it is clear from the description given by the Master of his reasons for staying the action that there were strong grounds for considering the claim to be totally without merit. I note further from *Sartipy* (at [37]) that:

“when considering whether to make a restraint order, the court is entitled to take into account any previous claims or applications which it concludes were totally without merit, and is not limited to claims or applications so certified at the time, albeit that in such cases the court will need to ensure that it knows sufficient about the previous claim or application in question: *R (Kumar) v Secretary of State for Constitutional Affairs (Practice Note)* [2006] EWCA Civ 990, [2007] 1 WLR 536 at [67] and [68].”

182. I note, however, that this order was made by the court acting on its own initiative pursuant to CPR rule 3.4(2) without a hearing; that it provided for a stay rather than dismissing the action; and that the Claimant was provided a right to apply to have the order set aside, varied or stayed within seven days of service of the order. I do not know whether the Claimant has made any such application. In all the circumstances, I consider I should proceed cautiously.
183. Accordingly, I will not, at this stage, take this order into account as going towards satisfying the requirement to show that there have been at least three claims or applications that are totally without merit in order to find the necessary persistence to justify an ECRO or a GCRO. In doing so, however, it should be understood that I am not making any determination that would prevent a future judge from taking Master Armstrong’s order into account in any future determination of whether the Ms Jukic has persistently issued claims made applications which are totally without merit.
184. On this basis I will not order an ECRO or a GCRO, but I am sure that Ms Jukic will understand that if she makes any further claims or applications that are totally without merit, there is a strong likelihood that she may face an ECRO or a GCRO in the future.
185. However, having found that both the Claimant’s Application for Summary Judgment, and her underlying claim were both totally without merit, the conditions are met for me to make a limited CRO. I consider that I should do so.

186. In doing so, I am having regard in particular to the fact that there were many aspects of the claim which each individually were totally without merit, and to the fact that the Claimant appears to have a propensity to make unspecified or poorly specified allegations of dishonest conduct against staff of the Defendants and their lawyers, and of bias against staff of the IPO and the staff of the court.
187. The main effects of my making a limited CRO are that Ms Jukic:
- i) will be restrained from making any further applications in the current proceedings without first obtaining the permission of a judge identified in the order;
 - ii) may apply for amendment or discharge of the order, provided she has first obtained the permission of a judge identified in the order; and
 - iii) may apply for permission to appeal the order and if permission is granted, they appeal the order.
188. Further consequences of there being in place a limited CRO are set out in paragraph 2 of Practice Direction 3C, and, for brevity, I will not reproduce all of them in this judgment.