Case No: HC/2014/002117

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Neutral Citation Number: [2017] EWHC 3564 (Pat)

The Rolls Building,
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Friday, 16 June 2017

BEFORE:

MR JUSTICE BIRSS

BETWEEN:

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

Claimant

- and -

GATOR SPORTS LTD & ORS

Defendants

MR J HILL appeared on behalf of the Claimant
MR N ZWECK appeared on behalf of the Defendants

Judgment

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1. MR JUSTICE BIRSS: The Claimant is the world governing body for four-wheeled motor sports. It organises various motor sport championships including the World Rally Championship (WRC). The first defendant was its official merchandiser of WRC-branded clothing accessories in 2012 pursuant to a contract which was signed in May 2012 but took effect from 1 January 2012. The first defendant became to official merchandiser after the company that had been the promoter of the WRC collapsed. The contract lasted for one year and came to an end in accordance with its terms on 31 December of that year. The contract included a three-month selloff period following termination, which would finish in early 2013.

2. There was a dispute at one stage about whether sales that had been made in that selloff period were infringing, but the real substance of this claim relates to sales of WRC-branded clothing and accessories over the years since 2012 right up the present. In evidence on printouts from eBay dated 18 June 2017 which show that someone clearly associated with the defendants is still selling WRC-branded clothing and accessories on that site. The contemporary Facebook page from the first defendant, also printed on 8 June 2017, also shows entries for WRC-branded merchandise, although these bear dates up to 2014.

3. The claimant brought proceedings against the defendants for infringement of EU-registered trademarks and international trademarks designated in the United Kingdom and for passing off relating to the use of its trademarks in those goods. In terms of trademarks, the defendant has what it describes as a primary logo and a secondary logo. The primary logo consists of the initials WRC in a fancy script above the words "FIA World Rally" in a shaded background. Underneath that is the word "Championship". The secondary logo is simply the letters WRC in the same fancy script. If I prepare an approved version of this judgment I will insert pictures of the logos.

4. The claimant's trademarks consist of community trademark 002487841, community trademark 002674208, international trademark 12024567 and international trademark 1219009. The 841 CTM is for the secondary logo and the others are for the primary logo. CTM 208 is registered in respect of a number of things including clothing, footwear and headgear in class 25; ITM 456, which designates in the UK, covers goods in class 25 including clothing and other things; and ITM 009, which also designates in the UK, covers goods in class 28 including games, toys and special bags for sports equipment. I do not need to dwell on the specifications for these goods for reasons which will appear below.

5. The claimant's case is that the relevant activities (that is, sales of unlicensed merchandise) were carried out by one or other or all three of the defendant companies at different times, although it is not clear which. As regards the fourth defendant, Mr Roman Dubov, the claimant contends he is jointly liable with the other defendants for the alleged infringements. In early 2012 the role of Mr Dubov relating to the first and second defendants seems to have been that of a major shareholder and investor while those companies were both being managed by a Mr David Marshall. However, in November 2012, around the time when the merchandising agreement with the claimant

was not renewed, Mr Dubov took office as a director of both companies. Mr Marshall was subsequently suspended and dismissed, as I shall address in more detail below. He has since been convicted and jailed for serious criminal offences which I gather are not relevant to this action, but from that period at the end of 2013 when Mr Marshall left, Mr Dubov was the sole director of the companies. As regards the third defendant, Mr Dubov was the only shareholder and director of that company at any relevant time.

6. These proceedings were commenced in October 2015. The defence for all the defendants was filed in November of that year. The defence articulated in the defence was that the first defendant had not used the marks after 2012 or at any rate after the selloff period, whilst the second defendant had been selling WRC merchandise since that time. However, all the sales were of stock originally held by the first defendant and acquired pursuant to the agreement, and the stock had then been sold by the first defendant to the second defendant. The sale was during the term of the agreement and therefore with the claimant's consent and the claimant received an appropriate royalty. The claimant's registered trademark rights had been exhausted because, as a result of the sale from the first to the second defendant, the merchandise was put on the market with the claimant's consent, and therefore all subsequent sales were not infringements not acts of passing off. Personal liability of the fourth defendant for any acts committed by the other defendants was denied. It was said that the day-to-day affairs prior to Mr Marshall's dismissal were conducted entirely by him. The fourth defendant was said not to have exercised day-to-day control of the first or second defendants at any material time. That control had been exercised by two other executives named Mr Tom McKay and Mr Ivan Jordan.

7. The proceedings took their course. There were arguments that that a proper response to requests for further information had not been provided, nor had full disclosure been provided by the defendants. One of the issues relating to disclosure led to an order requiring the defendants to give full disclosure of all financial records and all relevant goods. The claimant's position is that that never happened. One thing which was disclosed in that respect was two spreadsheets dealing with the sales of WRC-branded goods starting on 13 January 2015. The dates of the various sales continued until about 2015, and then the records ceased to be dated, but it is a reasonable inference that they are in chronological order and relate to sales after that date, possibly for the whole of the year 2015 or into 2016.

8. It is not in dispute that the total value of those sales of those relevant goods in that period, whatever exactly it is, is somewhere between a hundred and two hundred thousand pounds' worth. It is not clear exactly which company made those sales. What is common ground is that the relevant stock which had been sold is all stock which was acquired by the first defendant during the time of the agreement and remained in the warehouse afterwards. It is not disputed that all three defendants and Mr Dubov had access to the warehouse and could use it if they wished to.

9. Witness statements in these proceedings were exchanged in early May of this year. The claimant provided witness statements of the marketing and events director for the FIA and a gentleman called Marc de Jong, who acted as a consultant specialising in sports and was involved in the arrangements between the claimant and the first defendant during the time of the agreement. For the defendants, a witness statement of Mr Dubov was provided. In his witness statement he explains what happened from his

point of view. In his statement he explains that he is a British citizen and his business is making investments relating to sports and sports technology. He explains the background to the problems which arose in 2011 which led to the appointment of the first defendant to undertake merchandising contracts for WRC. This related to a company called Convers Sport Initiatives Plc, which is funded by a gentleman called Vladimir Antonov, who built up a large portfolio of sports assets including promotion rights to the World Rally Championships. They were acquired by the purchaser of a company called North One Sport Ltd in February 2011 and other assets including Portsmouth Football Club among others.

10. Mr Dubov explained that he was approached by Mr Marshall in 2009 to invest in the second defendant, which was then named Gator Gold Balls Ltd, and he was issued with 25 out of 100 shares in that company, as was another individual called Anton Borodovsky. At that time the business of the second defendant was to market and sell lake golf balls refurbished at the warehouse in Dartford in the UK. CSI went into administration in November of that year (that is, 2011), and that led to the termination of NOS's position as promoter of the merchandise of WRC. This in turn led to the new company, which was the first defendant, taking over the merchandising contracts as I have described. At that time it was a new company incorporated specifically to undertake that task, and Mr Dubov owned 75 shares in it while Mr Marshall owned 25 and a third investor, Dmitry Kotsyuba, was added later. Mr Dubov maintains that the sales were made by the second defendant in the circumstances I have mentioned as pleaded in the defence. He maintains that he was not involved in an executive role in the companies, although in this respect his statement is focused on the period up to the sacking of David Marshall. For the period after that his evidence is very brief. He denies that the third defendant traded at all.

11. The trial was listed to come on for a three-day trial starting on 4 June 2017. Very shortly before the trial, the defendants' position changed radically. The first defendant admitted that it had carried out the acts complained of and explained that it would consent to judgment for a trademark infringement and passing off. The second defendant dropped its defence of exhaustion and explained that it would also consent to judgment for trademark infringement and passing off relating to the activities in question. As regards the third defendant, the claimant was put to proof on the issue of liability of that company, and it was submitted, given the concessions made by the first and second defendants and the very limited business activity discernible from the latest accounts of the third defendants which were produced, it would be disproportionate and a waste of the court's resources to proceed with the trial relating to the third defendant. As regards the fourth defendant, the claimant was put to proof on the issue of liability of Mr Dubov.

12. When the matter was called on, counsel for the claimant explained that the basis on which the matter was to proceed was as follows. The claimant was not going to call either of its witnesses because their evidence was no longer relevant to any of the issues the court had to decide. That course was not objected to by the defendants. The claimant was going to rely on admissions made in the pleadings and was going to rely on the witness statement of Mr Dubov under CPR Rule 32.5(5), which provides that if a party who has served a witness statement does not call the witness to give evidence at trial, any other party may put the witness statement in as hearsay evidence. This arose because the defendants explained that Mr Dubov was not going to come to court to

give evidence. They did not object to the claimant's reliance on Rule 32.5(5). Finally, it was also common ground that the claimant could rely on the disclosure documents in the two chronological bundles C1 and C2 as evidence.

13. On the basis of this material, the claimant's case was that the court should infer that the third defendant was indeed liable for the acts of trademark infringement and passing off, and should also find that Mr Dubov was personally liable as a joint tortfeasor for the infringements of all three companies. I heard detailed submissions from Mr Hill and Mr Zweck on these issues, and this is my judgment on the matter.

Liability of the third defendant

14. In order to address this issue, it is necessary to deal with the chronology in a little more detail. I will start at the point at which the agreement between the claimant and the first defendant has come to an end. It does not matter for this purpose whether we are considering the selloff period or not. At that point it is clear that the warehouse contained a substantial amount of stock branded as WRC merchandise. Some of that stock may also have been branded with Nokia trademarks because Nokia had been an official sponsor of WRC. The relationship between Nokia and WRC came to an end in May 2012 during the time when the agreement between FIA and the first defendant was in force, and Mr Dubov's witness statement asserts that a significant amount of WRC stock was sold through the second defendant during 2012 and was branded Nokia. Although the claimant does not accept that any stock was sold to the second defendant, and apart from Mr Dubov's assertion, there is no evidence to back that up. Just because the claimant does not accept part of Mr Dubov's statement does not mean the claimant cannot rely on other parts which amount to admissions. Therefore I can properly infer that significant amounts of that stock existed and were branded with WRC insignia and some of it had Nokia branding too.

15. Mr Dubov says that he was in Eastern Europe for large parts of 2013. He explains that he had been the commercial director for Spartak Moscow (the football team) from April 2012, and that contract came to an end in May 2013. He was apparently also a general adviser to the Indian Hockey Club, Ranchi Rhinos, for five months after January 2013, and after that was a board adviser for the well-known football club in the Ukraine, Dynamo Kiev. He also points out that this was a period of revolution in the Ukraine, and he says he spent most of his time at that time in the Ukraine. In any event, Mr Dubov says, he returned to the United Kingdom sometime around the end of 2013, and that coincides with the removal of Mr Marshall, who was first suspended by a letter dated 13 November 2013 and then his directorship came to an end on 30 November of that year. From that time, therefore, Mr Dubov was sole director as I have mentioned of the first and second defendants. He explains that the second defendant's finances were reaching a critical stage at this point, and that led to a creditors' voluntary arrangement taking effect from 9 April 2014 which terminated on 3 June 2015. It is common ground that in that CVA period an insolvency practitioner was running the second defendant's business. That business would have included the golf balls business and may or may not have included sales of WRC merchandise, but it is Mr Dubov's evidence that during the period of the CVA any trade conducted by the second defendant was minimal.

16. Since Mr Dubov says the trade conducted by the second defendant during the CVA was minimal, and since his witness statement also asserts that the first defendant made

no sales, the claimant submits that given that they can establish that substantial sales were indeed made during the CVA period, they must have been made by someone. For that I can refer to the spreadsheet already mentioned. Therefore, submits the claimant, those sales must have been made by the third defendant. Mind you, another realistic inference from what I have explained so far is that Mr Dubov is lying about the first defendant not making sales and in fact the sales were made by the first defendant, Gator Sports.

17. However, there is some other evidence which more directly connects to the third defendant. The claimants draw attention to eBay pages which date from the period in 2014 after the CVA commenced. There is a printout which was sent by Ms Brechtje Lindeboom, who was a senior legal counsel at the FIA, to Mr Marshall at Gator Sports in 2014. The email points out that Gator Sports had not right to use the WRC trademark and points out that there was evidence that they are still selling WRC-branded merchandise through Facebook and eBay. Printouts from eBay are included to make the point. The printout shows a WRC-branded heavyweight black coat, which one can see bears the primary logo and is explained on the eBay page to be a World Rallying Championship official licensed product. On that page the business seller information is given as Green Golf Ltd. That is the third defendant. An email address is also given as ebay@greengolf.online.uk. Mr Hill properly points out that the company registration number given with Green Golf Ltd is in fact the number for the second defendant, but he submits the natural inference is that this is just a slip by the defendants because at that time the second defendant was part of the CVA. Mr Hill submits that what was going on here was the third defendant was being used as a vehicle to sell the stock from the warehouse.

18. Mr Zweck submits that, in relation to the third defendant, for me to find for the claimant the court will need to be satisfied that the evidence relied on is sufficient in order to find that defendant liable. I agree. In my judgment the evidence is sufficient for the court to draw an inference that on the balance of probabilities, at least at the time in 2014 when the first defendant did not wish to be seen to be selling stock given its prior relationship with the FIA and the second defendant was in a creditors' voluntary arrangement, those in control of the stock and the companies decided to use the third defendant as the vehicle to sell the old stock of WRC official merchandise goods. Since there is no dispute that that would be an act of infringement, I find the third defendant has committed acts of infringement and passing off just as the admitted acts of the first and second defendants, and I will give judgment against the third defendant.

19. I now turn to deal with the personal liability of Mr Dubov. The claimant's case is that Mr Dubov is liable as a joint tortfeasor, either for procuring the acts of infringement of the corporate defendants or under the principle of common design. The way the claimant articulated its case in its skeleton argument and the authorities that were relied on were focused on the common design principle rather than on procuring, and in my judgment this is not the place to examine whether there is any difference between these two principles, and I will also focus on common design.

20. The relevant authority is *Fish & Fish Ltd v Sea Shepherd UK* [2015] AC 1229 in the Supreme Court. In that case the Supreme Court justices agreed about the legal principles to be applied, although they did not agree about the outcome of the case on

the facts. Lord Toulson, Lord Sumption and Lord Neuberger each discussed the legal principles, and at paragraph 61 Lord Neuberger explained that he did not detect any significant difference between his analysis and the rather fuller analyses in the judgments of Lords Sumption and Toulson. Mr Zweck submitted that the key principles to be drawn from *Sea Shepherd* are: first, that joint tortfeasance is a question of accessory liability for the tortious acts of the primary tortfeasor and that, second, in order to establish the accessory's liability, the claimant must prove first that the defendant must have assisted in the commission of an act by the primary tortfeasor; and second, that the assistance must have been pursuant to a common design on the part of the defendant and the primary tortfeasor that the act be committed; and third, that the act must constitute a tort against the claimant. This is derived from paragraph 57 of the judgment of Lord Neuberger, and Mr Zweck submits that Lord Sumption formulated the test in substantially identical terms at paragraph 37 and that Lord Toulson at paragraph 21 formulated a nearly identical test albeit he divided the points into two rather than three.

21. I accept Mr Zweck's submission and do not propose to elaborate any further on the test for joint liability itself, but I will highlight the following further points:
    (1) It is important to remember that mere assistance or facilitation of a tort will not do. It is clear that a common design is required as well.
    (2) That assistance must have at least some substance in the sense of not being de minimis or trivial, but assuming something more than truly trivial has taken place, a low degree of assistance is better dealt with in assessing the relative contributions for liability rather than as a justification for escaping liability altogether.
    (3) *MCA Records Inc v Charly Records Ltd* [2002] FSR 26 is an important authority on the position of directors being held jointly liable for torts committed by the company. I refer to paragraphs 49 to 52 of the judgment of Chadwick LJ, and I have them well in mind.

22. The claimant also relied on the judgment of HHJ Hacon in *Grenade (UK) Ltd v Grenade Energy Ltd and another* [2016] EWHC 877 (IPEC) and submitted in their main skeleton that in the context of a company with a single director, an evidential presumption will arise that the company's decisions were taken by that director absent evidence to the contrary, and so the director will bear the evidential burden to disprove joint liability on the *Sea Shepherd* principles for torts committed by the company. So the claimant's case was put on the basis that the fact that Mr Dubov was the sole director for all three companies, always for the third defendant and after Mr Marshall left at the end of 2013 for the first and second defendants, that raised an evidential onus and put the evidential burden on Mr Dubov to prove he was not personally liable for the torts committed by the companies.

23. If *Grenade v Grenade* went as far as the claimant's submission suggested, then I would respectfully disagree with it. The simple fact that a company has a single director, irrespective of what other individuals might be involved in the company, cannot and should not in my judgment be taken to raise an evidential burden on that director to disprove allegations of personal liability. However, it is plain in my judgment that HHJ Hacon's decision in *Grenade* does not go that far at all. It was not concerned simply with whether a company had a sole director. It was a case in which the company had a sole director and sole shareholder, the same person, and was described by the judge as a "one-man company" (paragraph 23), by which I understand him to

mean a company with no employees or any other individuals involved at all. The only human being involved at all seems to have been an individual, Mr Chawla. In that case the judge held that there therefore arose an evidential presumption that all the acts done by the company were done at the instigation of Mr Chawla alone and that he was under an evidential burden to show why, contrary to what one might expect, the acts complained of were not initiated or controlled by him.

24. On the facts of the case before me, it is clear that there is more than one shareholder in relation to the first and second defendants. Moreover, even after the period where Mr Dubov was the sole director for all three companies, it is manifest that other individuals have been involved. The chronological bundles contain references to an individual called Tom, and one can infer that it is the same Tom McKay I have mentioned already, although it is never stated as such. Another individual involved and mentioned in Mr Dubov's evidence is a Ms Ozkutayli. I should say there is no reference to the other individual named in the defence (Ivan Jordan) anywhere in the evidence to which I have had my attention drawn.

25. In my judgment the relevant companies in the case before me are not companies for which the expression "one-man company" used by HHJ Hacon would apply. That means it is not necessary for me to examine whether *Grenade* is right on its own facts. I also note that the copy of the judgment available does not include the particulars of joint tortfeasance which are relied on (see paragraph 15), and so it is not entirely clear what the detailed facts in that case were. However, coming to the case before me, since these companies are not one-man companies, the evidential presumption held to apply by the ratio of *Grenade* does not apply. In my judgment the mere fact that Mr Dubov was the sole director of all three companies for the material period and a major shareholder in two and sole shareholder in the third do not shift on their own the evidential burden to Mr Dubov to prove that he is not liable as a joint tortfeasor. I will approach the remainder of this issue on the basis that the claimant bears the legal and evidential onus of proof.

26. In summary, the claimant relies on the following factors. First, that Mr Dubov was a sole director and therefore had complete executive control over the companies from November 2013. Second, the acts complained of were acts of the first, second and third defendants, and in relation to those companies, the common denominator during the relevant period is and is only Mr Dubov. The only relationship between these companies arises from the fact that Mr Dubov is a director and shareholder of all of them. Third, the claimant relies on postings on the first defendant's Facebook page in which they advertise, among other things, WRC merchandise. In these pages an individual called "Roman DRV" *"liked"* various postings. To *"like"* something on Facebook works in this way. Another user, who must themselves have a Facebook account, sees the posting and has the option to click on an icon to indicate that they *"like"* the posting. The posting keeps a tally of how many *"likes"* it has, and anyone looking at it can see that tally and can see who has *"liked"* it. A familiar pretence occurs in online sales where in truth people involved with the seller purport to *"like"* its posting to pretend that they are real consumers and to try and generate online interest. Whether anyone is really fooled by this is another matter. It is common ground that Roman DRV *"liked"* quite a number of the postings on the Gator Sports Facebook page. Doing my best with the evidence, it appears that this *"liking"* took place in around 2014 and possibly also earlier. The claimant contends that Roman

DRV is Roman Dubov. Fourth, the claimant relies on Mr Dubov's evidence that he was concerned about the problem of the first defendant ending up with substantial quantities of unsellable WRC merchandising stock, a problem which he says did in fact materialise. Fifth, the claimant relies on the reason Mr Dubov joined the boards of the first and second defendants at the end of November 2012, which was at least substantially in order to deal with the problem of leftover WRC stock. In turn, that was because that was the single biggest problem arising at the end of the WRC contract. (I should say at this stage that although the WRC stock was not the only product line the defendants were concerned with, I infer it has always represented a significant part of the business of any of these companies). Sixth, the claimant relies on Mr Dubov's evidence that the inability to sell the WRC stock which was branded with Nokia because Nokia were no longer an official sponsor caused huge problems. He said that these were problems for the second defendant, but whichever corporate entity was involved, the claimant says one can infer by late 2013 Mr Dubov was aware of the problems caused by the unsold stock. Seventh, Mr Dubov explained that he had discussed the financial issues relating to the second defendant with an insolvency expert on the occasion when the CVA was entered into in early 2014. Therefore he must have known about the stock from that discussion and therefore, once the CVA process had started, it is unrealistic to suppose that sales of the stock could have occurred without Mr Dubov's approval. Equally, since the sales of stock now appear to have been carried out by the third defendant during the CVA, since the only link between that third defendant company and the other two companies was Mr Dubov, those sales must have taken place with Mr Dubov's approval. At the same time during this period three letters before action were sent to the first defendant at his registered address. Although Mr Dubov claims not to have received these letters, the claimant contends this is inherently unlikely. One can infer that he must have known about the stock and the problems associated with it. Also the clamant says that there is clear evidence that Mr Dubov got access to all the staff email accounts in early 2014 when he was investigating the financial position as a result of misconduct by Mr Marshall. That means that Mr Dubov by that time must have been well aware of the position of the companies, and we know that the sales of infringing goods continued well after that date. Eighth, the claimant submits that Mr Dubov's witness statement does not support the pleaded defence that Tom McKay and Ivan Jordan exercise day-to-day control of the businesses, because does not mention either of these people in his witness statement. The statement does not squarely address the day-to-day control at all, but of course Mr Dubov does assert that he was not involved and was in Eastern Europe at least at certain times. In any event, the claimants submit that focusing on day-to-day control is not the relevant issue. Ninth, and importantly, the claimant relies on recent postings appearing on eBay selling WRC-branded stock. This stock is still on sale in June of this year. The postings appear to have been placed by the second defendant, but whichever company was responsible, the postings name Mr Dubov personally. For example, in evidence there is an eBay page for new WRC boots. The picture showing the boots shows them branded with the primary logo. The relevant business seller information refers to Green Golf Balls Europe Ltd trading as Lake Golf Balls, and then underneath appears the name Roman Dubov. There is a corresponding advert for a WRC-branded thermos flask, again bearing the primary logo and again naming Green Gold Balls Europe Ltd and Roman Dubov. Also on eBay at the same date is a 13.6 metre hospitality and storage mobile shop and office, which is on sale for £60,000 approximately. Again Green Golf Balls Europe Ltd and Mr Roman Dubov are given as the business seller information. This trailer is branded with the primary logo and a

reference to Nokia and is clearly the mobile shop which was used by the first defendant during the agreement to sell the merchandise at various rallies. Overall, the claimant submits that at least after Mr Marshall left the person with executive authority to make decisions for the companies was Mr Dubov, and he did so. Since he must have been well aware of the very large holding of merchandise, there is a strong inference which should be drawn that Mr Dubov personally decided that the company should continue to sell the stock in order to limit the losses from holding it. On that basis one can infer a common intention by Mr Dubov and the companies to sell the stock, which sales are acts of trademark infringement. The Roman DRV who liked the various postings on Facebook is manifestly Mr Dubov, and the court should so infer. While a Facebook like is a minor thing, in this case it is a tell-tale indication of Mr Dubov's personal involvement and assistance directing the sale and marketing of the goods in question. Finally, the claimant submits the naming of Mr Dubov personally in the recent eBay advertisements is not a minor thing at all. It is a major slip by Mr Dubov which gives away the fact that he is closely involved in assisting in the sales of the goods in question.

27. The defendant's submissions are that the fact that Mr Dubov is a director does not establish executive control, nor that Mr Dubov has assisted any particular defendant in the commission of any particular tortious acts. The likes on Facebook are trivial and do not meet the threshold in *Sea Shepherd*. Relevant assistance must be more than trivial. A knowledge of stock levels is accepted in the sense that it is manifest that Mr Dubov was aware of stock levels, but that does not establish any assistance or anything else by Mr Dubov relating to the activities in question. Whilst it is accepted that Mr Dubov is obviously named on the Facebook page, that does not establish assistance or involvement by Mr Dubov in the acts complained of either.

28. In my judgment I can find the following facts based on the proper inferences to draw on the balance of probabilities from the evidence available. First, at all material times Mr Dubov was well aware that a substantial amount of WRC-branded stock was being held at the relevant warehouse. That amount of stock was large, both in volume and in value. It was a significant asset. Second, Mr Dubov makes all the important decisions relating to the acts of these three companies, at least after November 2013. In any case (and I mean at all material times after the 2012 contract ended), given the scale of the WRC stock, Mr Dubov will have made the decision and directed the sale of that stock. Third, that the stock was put into the warehouse by the first defendant, but that the three defendant companies are under the effective control of Mr Dubov, and he can and does choose to use any of those companies to sell the goods in the warehouse. Mr Dubov does not take care about which company is being used for that purpose. Fourth, Gator Sports Ltd, the first defendant, did not sell the overall stockholding to the second defendant as a whole unit or as a substantial single body at any material time. I infer that the sales to the public of WRC-branded goods took place continuously throughout the period after the contract right up to today. As I have indicated already, I cannot now say on the evidence exactly what went via the first or second or third defendant at any particular time. To the extent that sales were via the second or third defendant, if the matter was accounted for properly at all, which I doubt, the goods were passed on on an ad hoc basis from the first defendant to those other defendants. There is simply no evidence for anything else. I find that the goods were most likely just taken out of the warehouse as and when they were being sold on the internet. Fifth, at least during the CVA, the third defendant was used as the vehicle for selling the stock. Sixth, one

cannot place reliance on the corporate accounts which have been produced for the various companies since they are not audited and their production has been entirely reliant on Mr Dubov. Based on the company accounts, it would appear that the stock levels had not changed between 2014 and 2015, but the evidence of the finances on the spreadsheets show that a substantial number of sales were being made, so for that reason as well I will not rely on the accounts. Seventh, that the Facebook page is a tell-tale sign that Mr Dubov not only takes an overall senior management role in running the activities of these companies but engages in a detailed way in the sale and marketing of the companies' products. Eighth, that the recent eBay pages are another firm indication of Mr Dubov's personal, detailed involvement in the sale and marketing of WRC-branded merchandise by the defendant companies.

29. Based on these findings of fact, I find that the defendant did materially assist in the commission of the acts of primary tortfeasance by the three corporate defendants; that the assistance was pursuant to a common design on the part of Mr Dubov and the companies that the goods would be sold; and third, that the sales were acts of infringement and acts of passing off. Accordingly, for all those reasons, I will find Mr Dubov is jointly liable with the defendants as a joint tortfeasor for the acts of infringement and passing off.

30. Finally, I will mention the following. At the hearing of this trial, it was called on at 2 pm on Wednesday and I indicated at the end that I would give this judgment on Friday afternoon, today. After court yesterday I received an email from the claimant's counsel together with a detailed chronology of the circumstances and a copy of CBS and Amstrad. These matters came too late to be of any assistance. I will give judgment for the claimant against all the defendants.

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