Neutral Citation Number: [2026] EWHC 2840 (BP)

Case No: IL-2024-000151

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY DIVISION
INTELLECTUAL PROPERTY LIST

Rolls Building
Fetter Lane
London, EC4A 1NL

6 November 2026

Before :

MR JUSTICE TAPPIN

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Between :

1. AVIATOR LLC
(a company incorporated in Georgia under no. 404612610)

2. AVIATOR STUDIO LIMITED (formerly AVIGROUP LIMITED)
(a company incorporated in Malta)

3. AVIATOR STUDIO HOLDING LIMITED
(a company incorporated in Malta) **Claimants**

- and –

SPRIBE OÜ
(a company incorporated in Estonia) **Defendant**

-and-

5. AVIATOR LLC
(a company incorporated in Georgia under no. 404552177)

6. MR TEIMURAZ UGULAVA **Fifth and Sixth Parties**

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Philip Roberts KC, Tom Alkin and Sam O'Leary (instructed by **Allen Overy Shearman Sterling LLP**) for the **Claimants / Fifth Party**
Hugo Cuddigan KC, Christopher Hall and Henry Edwards (instructed by **Bird & Bird LLP**) for the **Defendant**

Hearing dates: 15-16 & 19-20 October 2026

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Approved Judgment

(material designated EEO confidential redacted)

I direct that no official shorthand note shall be taken of this judgment and that copies of the version as handed down may be treated as authentic.

This judgment was handed down at 10.30 am on 6 November 2026 by circulation to the parties' representatives by email and release to The National Archives.

Mr Justice Tappin:

1. On 5-6 May 2026 I heard a CMC in these proceedings. At that CMC the principal application was for a determination of the following question: "Whether the Court's determination of the preclusive effect, if any, of the Georgian Judgments, in relation to those claims in these proceedings which are governed by foreign law, is governed by English law as the *lex fori* or by the relevant foreign law." In my judgment of 22 May 2026: [2026] EWHC 1216 (Ch), I held that the answer was that preclusive effect was governed by the relevant foreign law. That decision was reversed by the Court of Appeal in a judgment of 2 October 2026: [2026] EWCA Civ 1224.

2. My previous judgment contains, at [1], the parties' agreed case summary. I will not repeat that here but instead take it as read.

3. For reasons explained in my previous judgment at [41] the question of whether there should be a trial of preliminary issues designed to establish whether issue estoppels arose from the Georgian Judgments was adjourned pending resolution of the question of applicable law. That question now arises for determination, along with numerous other matters, some of which were disposed of during the course of the hearing. This judgment addresses the principal matters which arose for determination. In summary, they are as follows:

   (1) Should the Defendant ("Spribe") have permission to amend its Re-Re-Re-Amended Defence and Counterclaim in various ways, but principally to introduce further claims against the Claimants and the Fifth and Sixth Parties (collectively "the Aviator Parties" where it is not necessary to distinguish between them), namely of copyright infringement and passing off / unfair competition by acts done in numerous foreign countries?

   (2) Should the trial be expedited and/or should there be a trial of preliminary issues?

   (3) Should there be an interim injunction in respect of certain foreign countries pending trial?

4. I outlined my decisions on most of the proposed amendments during the course of the hearing and indicated my decision on expedition and the trial of preliminary issues by email to the parties on 23 October 2026. This judgment sets out my decisions on the remaining issues, and the reasons for my decisions on all of the matters set out above.

5. At the hearing, submissions were made by each of Mr Roberts KC, Mr Alkin and Mr O'Leary for the Claimants and the Fifth Party and by each of Mr Cuddigan KC, Mr Hall and Mr Edwards for Spribe. I thank them all and do not intend any disrespect to any of them by referring to them collectively as counsel for the Aviator Parties and counsel for Spribe respectively.

Amendments to Spribe's pleading

The law

6. It was common ground that Spribe's proposed amendments must:

   (i) raise a case that has a real prospect of success; it is not enough that the claim is merely arguable – instead it must carry some degree of conviction;

   (ii) be coherent and properly particularised;

   (iii) be supported by evidence which establishes a factual basis which meets the merits test.

   See *Kawasaki Kisen v James Kemball* [2021] EWCA Civ 33 at [16]-[18].

7. Further, it was common ground that the court has a discretion to allow amendments. In particular, the Aviator Parties referred me to Coulson J's statement of the approach to the exercise of the discretion in *CIP Properties v Galliford Try* [2015] EWHC 1345 (TCC) at [19]. That requires consideration of the lateness of the amendment, the reason for the delay, the particularity and clarity of the amendment and the prejudice to each party from allowing the amendment or not.

8. The dispute between the parties on the law related to whether considerations of *forum conveniens* (or *forum non conveniens*) were relevant to the exercise of discretion. It was common ground that where permission is required to serve a foreign defendant out of the jurisdiction, the claimant must show that England & Wales is clearly or distinctly the appropriate forum for the trial of the dispute in order for the court to exercise its discretion in the claimant's favour. It was also common ground that the same test applies when it is sought to amend a claim against a foreign defendant for which permission to serve the claim out of the jurisdiction was required. For that reason, Spribe accepted that it needed to satisfy the *forum conveniens* test in respect of its proposed amended claims against the Fifth and Sixth Parties.

9. Spribe also accepted that where a claim has been properly served within the jurisdiction, the court may decline to exercise such jurisdiction and stay the proceedings on the ground of *forum non conveniens* (with the burden lying on the party seeking the stay).

10. However, Spribe said that considerations of *forum (non) conveniens* were not engaged if the claim was sought to be introduced as part of a counterclaim against a foreign claimant who had invoked the court's jurisdiction, and therefore were not relevant when considering its proposed amended claims against the Claimants.

11. In support of that, Spribe relied on what Rix LJ said in *Glencore International v Exter Shipping* [2002] EWCA Civ 528 at [45]:

> "In my judgment a distinction has to be made between the case of a foreign party who invokes the jurisdiction of the English court by claiming here,

> and the case of a foreign party who is brought to this jurisdiction by answering a claim within England's long-arm statute…. In the first case the foreign claimant submits himself willingly to the jurisdiction. He does so, and in my judgment must do so, without reservation and is subject, so far as territorial jurisdiction is concerned, to all the incidents of litigation in this country, including, for instance, his amenability to a counterclaim. He cannot say: 'I came here only for the purpose of my claim. I am not willing to accept this jurisdiction for the purpose of my defendant's counterclaim.'"

12. However, *Glencore* was concerned with the question of whether the court had jurisdiction over a party for the purpose of granting an anti-suit injunction against it. I can see nothing in *Glencore* to suggest that counterclaims brought against foreign claimants are somehow exempt from considerations of *forum (non) conveniens* when deciding whether to exercise discretion to allow amendments to an existing claim. Indeed, in the very next sentence in [45], Rix LJ added:

> "Discretion, of course, is another matter, and it is open, as a matter of discretion for the foreign claimant to point to his foreignness and to argue that it enters as an element into the court's procedural decision."

13. In my judgment, therefore, considerations of *forum (non) conveniens* are relevant to the question of whether to allow Spribe to bring further claims against the Claimants, as well as against the Fifth and Sixth Parties. The Aviator Parties submitted that, given that Spribe was applying to amend, the onus was on Spribe to show that England & Wales was clearly or distinctly the appropriate forum. Spribe did not dispute that, so I shall assume (without deciding) that it is correct.

14. It was, of course, common ground that when considering whether England & Wales is the appropriate forum I should have regard to the connecting factors identified by Lord Goff in *Spiliada v Cansulex* [1987] AC 460 at 477-478, including factors affecting convenience or expense (including availability of witnesses), the relevant law, and the places where the parties reside or carry on business.

15. Counsel for the Aviator Parties also relied on what Lord Mance said in *VTB Capital v Nutritek International* [2013] UKSC 5 at [18] about it being a useful rule of thumb or *prima facie* starting point that, where an alleged tort is committed within a particular jurisdiction, that jurisdiction is the natural forum for the dispute, while recognising that all the circumstances of the particular case need to be considered. As illustrations of that they relied on *Vedanta Resources v Lungowe* [2019] UKSC 20 and on *Lyle & Scott v American Eagle* [2021] EWHC 90 (Ch), in which it was held that England & Wales was the appropriate forum for a claim for passing off within the jurisdiction, notwithstanding the fact that there were issues relating to a Pennsylvania law contract.

16. Counsel for Spribe relied on cases in which England & Wales was held to be the appropriate forum for trial of a dispute which included a claim for which England & Wales would not be the natural forum if it stood alone.

17. In *Innovia Films v Frito-Lay* [2012] EWHC 790 (Pat) Arnold J held that the English court had exclusive jurisdiction over a claim for entitlement to certain

European patent applications. There were also claims, over which the English court had jurisdiction, for entitlement to certain foreign non-European patent applications and for breach of confidence. Arnold J said at [134] that if the breach of confidence claim stood alone, he would not have held that England & Wales was the natural or appropriate forum for that claim, but in the circumstances the interests of justice were best served by trying as many of the claims as possible in the same court at the same time and that the English court was best placed to do that.

18. In *Conductive Inkjet Technology v Uni-Pixel Displays* [2013] EWHC 2968 (Ch) there was again a claim to entitlement to a European patent application over which the English court had exclusive jurisdiction and again there was a further claim for breach of confidence. Roth J held (see [130]) that there were common elements to both claims and it would involve great inconvenience and expense if those issues had to be litigated twice in different fora. It was, he said, strongly in the interests of justice that both claims should be heard together.

19. In *Public Institution for Social Security v Ruimy* [2023] EWHC 177 (Comm) at [66]-[70] Jacobs J explained, by reference to various authorities, that the avoidance of fragmentation of disputes and the avoidance of inconsistent decisions is often a significant factor in the *forum (non) conveniens* analysis.

20. In the light of these authorities, counsel for the Aviator Parties accepted (while reserving their position on appeal) that it was permissible to look at the matter holistically and consider whether England & Wales would be the appropriate forum for deciding all the disputes between the parties.

<u>The proposed amendments in outline</u>

21. Spribe has an existing pleaded case of passing off in relation to the Aviator Parties' activities in the UK (the Aviator Parties are currently subject to an interim injunction contained in the order of Sir Anthony Mann dated 26 September 2025). Spribe pleads that it is the owner of UK goodwill associated with (i) the word AVIATOR (ii) the Spribe Aeroplane Device (iii) the Spribe Aviator Logo (which combines the device and a stylised version of the word AVIATOR) and (iv) certain features of the gaming experience of the Spribe game. It is said that the Aviator Parties' use of the word AVIATOR, their aeroplane image and logo, and the gaming experience of their game would amount to misrepresentations causing damage to Spribe's goodwill.

22. Spribe now seeks permission to bring claims against the Aviator Parties for passing off or unfair competition in Canada, Colombia, Ghana, Italy, Kenya, Mexico, Romania, Serbia and South Africa ("the Combined Territories") and in 28 other countries, including countries in Europe, Africa and Central and South America ("the Further Territories"). In each case, Spribe again relies on goodwill associated with the same indicia as it does for its UK passing off claim, and the complaint is again of misrepresentation arising out of the use of the word AVIATOR, the Aviator Parties' aeroplane image and logo and the gaming experience of their game.

23. Spribe also has an existing pleaded case of copyright infringement in respect of the Aviator Parties' threatened activities in the UK. The copyright works are said to be (i) aspects of the game graphics ("the Game Graphics") and (ii) certain text and graphics known as the Provably Fair Text and Graphics. Substantial parts of each of the copyright works relied on are said to be reproduced in the Aviator Parties' game. Spribe now seeks to bring claims on the same basis in respect of all Berne Convention territories in which the Aviator Parties' game is said to be (or to be threatened to be) available, including each of the Combined Territories and the Further Territories.

24. Spribe's proposed expansion of its case to territories outside the UK is resisted by the Aviator Parties on several grounds, relating to (i) Spribe's pleading as to the applicable law, (ii) Spribe's pleading as to the Further Territories, (iii) *forum (non) conveniens* and (iv) various other matters going to the exercise of discretion. The Aviator Parties' objections to the proposed amendments are advanced more forcefully against the passing off / unfair competition amendments than against the copyright infringement amendments.

25. Finally, there is a separate category of proposed amendments, relating to Spribe's plea of special circumstances for the purpose of issue estoppel. Those are said by the Aviator Parties to be bad in law.

26. I should also record that Spribe conceded that its pleaded case against the Sixth Party should be amended to be limited to acts committed before his unfortunate death on 22 June 2026 and said that no injunction would be sought against him. By consent, I made an order that his son Mr Nodo Ugulava be appointed to represent his estate in these proceedings.

Applicable law

27. The parties have agreed that for the purpose of the Aviator Parties' foreign copyright claims (and for the purpose of Spribe's foreign copyright claims if they are allowed into the proceedings) foreign copyright law should be presumed to be the same as English law. In its draft amended pleading, Spribe contends, in effect, that that amounts to an agreement that foreign law should be taken to be the same as English law in relation to all foreign claims in these proceedings regardless of their nature. I regard that as hopeless, and to be fair Spribe did not press that aspect of its draft amended pleading at the hearing.

28. Spribe also relies on the presumption that foreign law is the same as English law in respect of its foreign claims of passing off or unfair competition. It says such a presumption is appropriate in the light of Article 10*bis* of the Paris Convention and/or Article 2(1) of TRIPS. As Serbia is not a signatory to TRIPS, attention was focussed on Article 10*bis* of the Paris Convention, paragraph 3.1 of which requires signatory states to provide effective protection against "all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor".

29. The Aviator Parties said that reliance on the presumption was not appropriate in the present circumstances due to the differences between the UK law of passing off and the relevant law of the foreign territories in question, and that therefore

there was no pleaded basis on which the claims could succeed, there being no pleading of the content of foreign law. The Aviator Parties relied on evidence from their solicitor, Mr Cordell, on instructions from lawyers from each of the Combined Territories, and Spribe responded with evidence from Prof. Senftleben, a Dutch lawyer responsible for compiling WIPO's 2022 Status Report on Protection Against Unfair Competition in WIPO Member States.

30. This objection requires consideration of the judgment of Lord Leggatt in *Brownlie v FS Cairo* [2021] UKSC 45. At [112] Lord Leggatt identified the distinction between the default rule and the presumption of similarity. As he went on to explain, the default rule treats English law as applicable in its own right in circumstances where neither party asserts that the issue is governed by foreign law. By contrast, where one party asserts that the issue is governed by foreign law, but the content of foreign law has not been proved, English law can only be applied if it is justified to apply the presumption of similarity. Having considered academic criticisms of the presumption of similarity, Lord Leggatt said this:

> "122. These arguments, in my view, would have force if the presumption were inflexible and applied in circumstances where there is good reason to think that the applicable foreign law is different in a material respect from English law. However, that is not and has never been the effect of the presumption. The common law has never required unrealistic or unreasonable assumptions to be made about the content of foreign law. Where it applies, the presumption of similarity is justified by a combination of three factors.
>
> 123. First, while there are of course many differences between the laws of different countries, there are also often similarities. That is most obviously true where the laws have a common origin, as in the case of countries which apply the common law. While there is a natural tendency for the laws of such countries to diverge over time, that tendency is reduced by the respect which courts in common law jurisdictions afford to decisions of the courts of other common law countries as persuasive authority on the content of their own law. Even where the foreign system of law is a civil law system with its historical roots in Roman law, there is often good reason to expect that the foreign law will provide the same answer to a legal question, even if the result is reached by a different legal route. Such parallels have been enhanced where international conventions aimed at harmonisation of laws have been adopted, mainly in areas of commercial law. In *Muduroglu Ltd v TC Ziraat Bankasi* [1986] QB 1225, 1246, Mustill LJ observed that "in so many practical respects there is insufficient difference between the commercial laws of one trading nation and another to make it worthwhile asserting and proving a difference". This same insufficiency of difference will often make it reasonable to start from an assumption that the applicable foreign law is likely to be materially similar to English law.
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> 124. The requirement of materiality is the second factor which it is important to keep in mind. Unless there is a real likelihood that any differences between the applicable foreign law and English law on a particular issue may lead to a different outcome, there is no good reason to put a party to the trouble and expense of adducing evidence of foreign law.

> The object of adjudication is not to achieve a goal of abstract legal purity but to do practical justice between the parties. Moreover, unlike decisions applying English law which may be relied on as precedents in later cases, where foreign law applies there is no larger purpose to be served beyond reaching the correct result in the instant case.
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> 125. A third important factor is that the presumption of similarity does not itself determine any legal issue. It only ever operates unless and until evidence of foreign law is adduced. Nor does the presumption alter the legal burden of proof. Where the presumption applies, it merely places the burden of adducing evidence on a party who wishes to displace it. It is always open to a party to adduce evidence of the applicable foreign law showing that it is in fact materially different from English law on the point in issue.
>
> *The limits of the presumption*
>
> 126. These factors provide good pragmatic reasons for applying the presumption in a range of cases, but they also determine its proper limits. There is no warrant for applying the presumption of similarity unless it is a fair and reasonable assumption to make in the particular case. The question is one of fact: in the circumstances is it reasonable to expect that the applicable foreign law is likely to be materially similar to English law on the matter in issue (meaning that any differences between the two systems are unlikely to lead to a different substantive outcome)?"

31. At [143]-[149], having considered cases in which the presumption of similarity had been addressed, Lord Leggatt gave some general guidance about the application of the presumption, including at [147] the observation that "there is more scope for relying on the presumption of similarity at an early stage of proceedings when all that a party needs to show in order to pursue a claim or defence is that it has a real prospect of success."

32. Lord Leggatt then went on, at [154]-[160], to consider the application of the presumption in the case before him. He held at [156] that in the absence of any evidence of Egyptian law there was no basis for challenging the judge's conclusion that reliance on the presumption was sufficient to show that the pleaded claims had a real prospect of success. He then considered whether the judge should have reached a different conclusion based on the evidence of Egyptian law that had been served and concluded at [160] that the judge could not be faulted for holding, on that evidence, that the pleaded claims were reasonably arguable.

33. Finally, Lord Leggatt considered whether the Court of Appeal had been right to order the claimant to serve revised particulars of claim pleading the content of Egyptian law on which she relied (see [161]-[166]). He rejected a submission that such an order was wrong in principle in the absence of a pleading from the defendant relying on particular rules of Egyptian law, holding that in the circumstances of the case such an order was well within the ambit of the court's case management powers and thoroughly desirable for the orderly progression of the proceedings.

34. Ultimately (subject to questions of *forum conveniens* and discretion generally) the question is whether the case sought to be introduced by amendment has a real prospect of success (and otherwise satisfies the *Kawasaki* test). My understanding from *Brownlie* is that it is appropriate to consider first whether the pleaded case has a real prospect of success relying on the presumption, and then to consider whether a different conclusion should be reached given the evidence of foreign law that has been adduced. That is distinct from looking at the evidence of foreign law to see whether the presumption is justified, but for reasons which will appear I do not think that it makes a difference in this case.

35. As Lord Leggatt emphasised in *Brownlie*, the applicability of the presumption depends on whether there is "a real likelihood that any differences between the applicable foreign law and English law on a particular issue may lead to a different outcome"; whether "in the circumstances it is reasonable to expect that the applicable foreign law is likely to be materially similar to English law on the matter in issue (meaning that any differences between the two systems are unlikely to lead to a different substantive outcome)".

36. In the present case, the presumption is said to be justified by the fact that all the Combined Territories (and the Further Territories) are signatories to the Paris Convention, which requires them to provide effective protection against acts of the type specified in Article 10*bis*, quoted above. It was common ground that the UK law of passing off represents what might be called a minimalist implementation of Article 10*bis*, in that it requires misrepresentation causing damage to goodwill, whereas Article 10*bis* only requires confusion with the goods or commercial activities of a competitor. In those circumstances in my judgment it is reasonable to assume that any differences between English law and the applicable foreign law are unlikely to lead to Spribe failing under the foreign law if it succeeds under English law. The fact that the claims as currently proposed to be pleaded rely on the presumption does not, in my judgment, mean that they do not have a real prospect of success.

37. As I have said, there was evidence of the relevant foreign laws. I asked counsel for the Aviator Parties which aspects of those laws they relied on as being materially different from English law, such that they could lead to the Aviator Parties succeeding under foreign law when they would not under English law. Counsel for the Aviator Parties relied on aspects of the law related to illegality. The evidence was that in Serbia it would be difficult for a claimant to rely on reputation that has been built up through unlawful activity (e.g. copyright infringement or operation in contravention of gambling regulations); that in Colombia obtaining a significant competitive advantage through infringement of a legal right constitutes an act of unfair competition and so there may be grounds to challenge reputation on the basis that it was founded on illegal activity, which in principle would include copyright infringement; that in South Africa a goodwill acquired through illegality or the conscious infringement of an existing right such as a copyright is not protectable; that in Kenya goodwill acquired through unlawful activity such as copyright infringement may not be enforceable; that in Italy a claimant may not be able to rely on reputation that has been built up based on copyright infringement or illegal gambling; that the Ghanaian courts are unlikely to recognise a reputation gained through use that infringes copyright;

and that in Ghana and Canada the defence of *ex turpi causa non oritur actio* can be used as a defence against a claim founded on illegal acts.

38. I am not persuaded that the evidence before me shows that there is a material distinction between these foreign laws and the UK law of illegality (see *Patel v Mirza* [2016] UKSC 42) on which the Aviator Parties rely (they allege that Spribe's UK passing off action should fail because any goodwill was generated by use which amounted to flagrant copyright infringement and/or was in breach of gambling regulations). Certainly I am not persuaded that this evidence establishes that Spribe's claims do not have a real prospect of success.

39. However, in circumstances where the Aviator Parties have indicated their intention to plead and prove foreign law, Spribe should now plead the principles and sources of foreign law on which it relies. The Aviator Parties should then respond to that pleading and plead any principles and sources of foreign law on which they rely (to which Spribe can respond). As I indicated at the hearing, those pleadings should be stand-alone ones, in order to make it easier to identify and digest the parties' respective positions on foreign law.

40. The Aviator Parties took a further point about Spribe's pleading of joint liability (both in the context of passing off / unfair competition and copyright infringement). They pointed out that the pleading of joint liability (which is in the existing pleading but if the amendments are introduced would apply to the foreign claims as well) is framed in English law terms of procurement or common design and that there is no pleading of foreign law of joint liability. It is unclear whether Spribe intended to rely on the default rule (in which case it can no longer do so, as the Aviator Parties have indicated their intention to rely on foreign law, pointing out that Article 15(g) of Rome II states that the relevant foreign law governs liability for the acts of another person) or on the presumption of similarity, for which it had pleaded no basis. However, given that there is an existing pleading of joint liability (and indeed primary liability) I do not regard this as a reason to refuse permission to amend to introduce claims of foreign passing off / unfair competition and copyright infringement. Instead, Spribe should include, in its pleading of foreign law, any foreign law of joint liability it wishes to rely on (or plead reliance on the presumption of similarity and a basis for doing so) and the Aviator Parties should respond to that in their pleading of foreign law.

<u>The particularisation of the claims</u>

Passing off / unfair competition

41. The Aviator Parties do not accept that the claim of passing off / unfair competition in respect of the Further Territories is adequately particularised. I agree.

42. Paragraph 66G of Spribe's draft amended pleading alleges goodwill in "at least" the Combined Territories "in the premises of paragraphs 63A to 63D above". Paragraphs 63A-63D contain no particulars of the extent of use of any of the allegedly distinctive indicia in any of the Further Territories. Paragraph 63C does contain particulars of marketing and advertising by reference to the name AVIATOR, the Spribe Aeroplane Device and the Spribe Aviator Logo. However,

the particulars given do not support the allegation of goodwill in each (or any) of the Further Territories. Reliance is placed on sponsorship of UFC and WWE, of AC Milan and of a Legends charity football match, but no particulars of exposure to such sponsorship in any of the Further Territories are given. Reliance is also placed on attendance at trade shows, but the only ones specified are in Italy and Brazil (neither of which are Further Territories), and on awards won by Spribe's crash game, mainly at events in Europe and the Americas, but without any indication of how such awards are said to translate into public awareness in the Further Territories.

43. I do not accept that this amounts to a properly particularised pleading of goodwill in respect of any of the Further Territories. Nor do I accept that the evidence before me establishes that Spribe has claims with a real prospect of success in any of the Further Territories. Mr Chomakhidze's evidence in support of Spribe's applications focusses on the Combined Territories and also addresses Brazil and the United States (neither of which are Further Territories). My attention was not drawn to any evidence which properly supported Spribe's claims in the Further Territories.

44. Further, I do not regard the pleading in paragraph 66G(d) of goodwill associated with "the distinctive gaming experience" of the Spribe crash game as being properly particularised, whether for the Further Territories or the Combined Territories. That pleading refers back to paragraph 65(c) which alleges the distinctive features of the gaming experience as including "the in-game design and visuals". That is far too vague and uncertain. I recognise that this forms part of the pleading in respect of the UK passing off action and that the Aviator Parties have not sought further particularisation of that pleading, but that is not a reason to allow an amendment which is not clear and properly particularised.

Copyright infringement

45. The Aviator Parties contended that Spribe's pleading of the copyright works being relied on in support of the foreign copyright infringement claims under the heading of the Game Graphics was unacceptably unclear and that it did not matter that the works were pleaded by reference to a part of the existing pleading, namely paragraph 72. That paragraph is pleaded by reference to certain screenshots and alleges that the Game Graphics "comprise the screenshots in their entirety, and each of the specific graphical features of the graphical user interface (including the choice of colours, the layout and dimensions) depicted therein. Such graphic features include but are not limited to [eight listed features]". The Aviator Parties contended that this left it unclear quite what alleged works were being relied on – what features and in what combinations. Further, the Aviator Parties pointed out that two of the features relied on (the image of a flying red plane and the stylised representation of the word AVIATOR) could not have been copied by them (because it was common ground that those two aspects of their game preceded the Spribe game). They said that the statement in paragraph 97 that Spribe did not allege that the Aviator Parties' Aviator Image and Aeroplane Device were not, "in themselves and in isolation, copies" did not clarify the nature of Spribe's claim.

46. I indicated at the hearing that I agreed with the Aviator Parties that the claim was not sufficiently clearly pleaded and invited Spribe to submit a revised draft pleading on which the Aviator Parties could comment. Spribe duly did so. The Aviator Parties raised a number of objections to the revised draft and I indicated that I agreed with some of them. Spribe responded with a draft which was satisfactory to the Aviator Parties save in one respect, concerning paragraph 83(i). The revised pleading alleges a copyright work consisting of the combination of seven specific graphic features as shown in a particular screenshot. Paragraph 83 refers to an implementation of the Aviator Parties' game and indicates that Spribe intends to rely on similarities with respect to comparable graphic features as shown in a particular screenshot from that desktop version. Paragraph 83(i) then says that Spribe's case extends to versions of the Aviator Parties' game available in other formats which, pending disclosure and evidence, Spribe understands to include a mobile format. It then refers to an example of the mobile version set out in a schedule which is said to exhibit all the same similarities as relied on for the desktop version. The Aviator Parties indicated some alterations to the language of the pleading which they would regard as acceptable. I remain of the view that given the nature of the work relied on, Spribe needs to identify any other formats that are alleged to reproduce a substantial part of the work relied on rather than rely on disclosure in the liability phase. Spribe says that it is entitled to seek an injunction in general terms, not limited to specific formats. That is correct (and the same point would apply to an inquiry as to damages or account of profits), but its pleading seeks such relief and the Aviator Parties do not object to that. I will therefore not allow Spribe to introduce its draft paragraph 83(i) but would allow an amendment in the form acceptable to the Aviator Parties.

47. Spribe's proposed amendments also sought to introduce a claim of infringement of foreign copyright in respect of the Provably Fair Text and Graphics. The allegation is of infringement by the inclusion in the Aviator Parties' game of graphics and text which are said to reproduce a substantial part of the Provably Fair Text and Graphics. One aspect of the graphics complained of is a shield device containing a tick – this is said to reproduce a substantial part of an artistic work which also contains a shield and a tick but differs from the alleged infringement in certain respects. The evidence of the Aviator Parties was that the relevant text and graphics have not been used in their game since April 2025, which was before the launch of the game in any of the Combined Territories. Counsel for Spribe sought to rebut that by pointing to the use of a small version of the shield device on web pages dated September 2026 from Romania and South Africa.

48. I am not prepared to allow the amendment to plead a case of infringement of copyright in the Provably Fair Text and Graphics in the Combined Territories or the Further Territories. First, the only evidence relates to use of one aspect of the graphics complained of and none of the text complained of, and in only two territories. Further, I regard the use shown in the evidence as trivial and not justifying the use of the Court's resources or the costs that would be involved (counsel for Spribe made it clear that it would be seeking disclosure) – cf. *Dow Jones v Jameel* [2005] EWCA Civ 75.

Threat

49. In addition, there are problems with Spribe's pleading of a threat to carry out acts in the Further Territories.

50. Paragraph 84C says that it is to be inferred from the launches by the Aviator Parties so far that the Claimants will continue to target markets in which the Spribe game has a substantial number of users and so there is a threat of launches in further territories. It is said that that threat extends to at least Canada, Colombia, Serbia, Italy and Romania (none of which are Further Territories). The inference is said to be supported by the territories in a schedule to an agreement between the First Claimant and Flutter in respect of which the First Claimant is entitled to give notice to launch, which include Canada, Colombia, Serbia, Italy and Romania.

51. I do not regard this as a proper pleading of a threat to launch in each or indeed any of the Further Territories. Even taking account of the fact that the schedule to the Flutter agreement includes at least some of the Further Territories, the pleading relies on an assertion that there is a threat to launch in markets in which the Spribe game has a substantial number of users. However, as indicated above, there is no pleading or evidence of the number of users that the Spribe game has in any of the Further Territories.

52. Further, when the draft pleading turns specifically to the allegation of threat in the context of the foreign claims for passing off / unfair competition (in paragraph 95B), it merely restates the allegation that a launch of the Aviator Parties' game is threatened in territories in which the Spribe game has a substantial number of users. In the context of foreign copyright infringement the allegation (in paragraph 99A) is that the Aviator Parties' game is available in Ghana, Kenya, Mexico and South Africa "and in a number of additional Berne Convention countries" and that it is to be inferred that in such territories the relevant works will be reproduced and/or communicated to the public. That is only an allegation of threatened infringement in territories in which the Aviator Parties' game is on the market, not of a threat to launch in the Further Territories.

53. I indicated to the parties at the hearing that I would need to consider the position of Canada separately. That was because the Aviator Parties' evidence was that they did not intend to launch their game in Canada at least until the ongoing trade mark registration proceedings in Canada had been finally resolved and that it would then be necessary to undertake a separate regulatory process before launch. I wished to consider cases on when *quia timet* claims could be brought, which had not been cited. Having considered the judgment of HHJ Birss in *MSD v Teva* [2012] EWHC 627 (Pat) I am satisfied that the evidence provides sufficient basis for a claim to be brought on a *quia timet* basis.

54. I should add that the relief sought in Spribe's draft amended pleading is in any event far too broadly drawn. A declaration is sought that the Aviator Parties have, by launching and by threatening to launch their crash game "outside the UK" committed passing off or acts of unfair competition. Similarly, an injunction is sought against launching the Aviator Parties' game in any territory in which that would infringe Spribe's unregistered trade mark rights or contravene unfair

competition law, and against "passing off or unfair competition", without qualification. All of these extend to territories beyond the Combined Territories and the Further Territories, and so invite the court to make a declaration or grant an injunction without having determined what, if anything, would amount to an infringement of Spribe's rights in such territories. Indeed they extend even beyond that indicated in paragraph 84D (which is itself too broad), which says that relief will be sought worldwide save in Brazil and the United States.

Conclusion

55. For these reasons, I will not allow the amendments in so far as they seek to introduce claims of passing off / unfair competition or copyright infringement in the Further Territories (or indeed in any territories beyond the Combined Territories). Nor will I allow the amendments to introduce paragraphs 66G(d) or 83(i) (in Spribe's current draft form) or to plead allegations of infringement of copyright in respect of the Provably Fair Text and Graphics outside the UK.

Forum conveniens

56. The Aviator Parties submitted that England & Wales was not (still less clearly) the most appropriate forum for determining the passing off / unfair competition claims in respect of the Combined Territories. They relied on the fact that the Combined Territories are the places of commission of the alleged torts and resulting damage, the location and language of witnesses and documents, the governing laws, the existence of national registered rights and proceedings concerning them, and local regulatory issues.

57. While counsel for the Aviator Parties did not formally concede the point in respect of the copyright claims, their skeleton argument recognised that the forum objection had much less force in respect of those claims, as it was common ground that the law was the same in each territory and that the questions of subsistence, ownership and copying were the same in each territory and are already raised by Spribe's existing UK counterclaim. The objection to the copyright claims was not pressed at all in their oral submissions. I shall therefore focus on the passing off / unfair competition claims.

58. Spribe submitted that England & Wales was clearly the most appropriate forum for the resolution of the dispute between the parties. It pointed out that not only is there an existing claim by Spribe for passing off against the Aviator Parties in the UK, there is also a claim by the Claimants for infringement of copyright by the Spribe Aeroplane Device and the Spribe Aviator Logo, and that is relied upon by the Aviator Parties as a basis of their illegality defence in the UK and will be relied upon by the Aviator Parties as a basis of illegality defences in respect of the Combined Territories. Accordingly, Spribe submitted, it would avoid expensive duplication if the claims in respect of the Combined Territories were determined alongside the existing issues in the UK proceedings rather than the dispute being determined in ten different sets of proceedings. Moreover, they submitted that the factors relied on by the Aviator Parties were, on analysis, not as weighty as they were suggested to be.

59. The Aviator Parties are of course correct that the Combined Territories are the places in which the alleged torts are being or will be committed and the damage suffered, and that the alleged torts are territorial ones. However, the reason that the *prima facie* starting point is that the natural forum for such a dispute is the territory in which the tort is committed is because the tort will be governed by the local law and the inquiry will be into circumstances pertaining in that territory. It is always necessary to consider the particular circumstances of each case.

60. The fact that the English court will have to apply foreign laws of passing off / unfair competition, whereas courts in each of the Combined Territories would be applying their own law, is a factor against England & Wales being the appropriate forum.

61. In the present case I do not regard the location and language of witnesses and documents as having significant weight as a factor against England & Wales as a forum. This is unlikely to be a case in which the parties seek to call members of the public as witnesses on the issue of deception or confusion. The identities of end users of Spribe's game and the Aviator Parties' game are likely to be unknown to the parties; still less is it likely to be known whether they have useful evidence to give. As will be seen below when considering the interim injunction application, the evidence relied on by Spribe comes from aggregators or operators distributing the parties' games or from journalists in the field. Spribe intends to use such evidence to support its position that there will be deception and confusion in every jurisdiction in which its game has had exposure, because there is no material difference between the presentation of Spribe's game, or that of the Aviator Parties' game, in different jurisdictions. It may decide to do so by relying on the documentary materials it has, but to the extent that it decides that witness evidence is required the choice is between asking those witnesses to appear in one set of proceedings or ten.

62. Further, there is no reason to think that documents showing the nature and extent of the use of Spribe's allegedly distinctive indicia will be located in the local territories. They are likely either to be held by Spribe or by aggregators and operators, many of whom operate on a multi-national basis. Nor is there any particular reason to think that they will be in languages of the Combined Territories rather than in English. Similarly, there is no particular reason to think that any relevant documents held by the Aviator Parties will be in any of the languages of the Combined Territories (if that is not English).

63. Further, while it is correct to say that none of the parties is domiciled in England, nor are any of them domiciled in any of the Combined Territories. Nor was there any evidence that any of them had a place of business there, at least one through which any relevant business was conducted; the parties' business model is a business-to-business (B2B) one, in which their games reach consumers through aggregators or operators rather than a business-to-consumer one.

64. The Aviator Parties relied on the existence of trade mark registrations (or applications) for the word AVIATOR and/or one of the parties' aeroplane logos, and proceedings relating to those registrations and applications in trade mark registries in the Combined Territories. They contended that those proceedings will involve considering similar issues to those raised by the proposed passing off

/ unfair competition counterclaims and that if the English court were to consider those issues in parallel there is a risk of inconsistent decisions. However, the same issue would arise if proceedings for passing off or unfair competition were to be brought in the courts of the relevant territory.

65. The Aviator Parties also relied in particular on the circumstances in Kenya and Serbia. In Kenya the High Court has granted an injunction restraining Spribe from using the word mark AVIATOR on the basis of a registered mark owned by the Third Claimant. It is said that if the English court were to restrain the Aviator Parties from using AVIATOR in Kenya on the basis of passing off that would be an inconsistent decision. I do not see why that follows, not least because the Kenyan injunction appears to have been granted on an interim basis. In any event the English court will be applying Kenyan law to the dispute and if that prevents a claim of passing off succeeding in the face of a registered mark then that will have consequences for Spribe's claim.

66. In Serbia the First Claimant holds a registration for the AVIATOR word mark. Spribe's opposition to that registration based on the Serbian implementation of Article 6*bis* of the Paris Convention (well-known mark) failed. It is said that an injunction granted by the English court against the use of AVIATOR in Serbia would restrain use of a mark which has been upheld by the Serbian trade mark registry. That is correct, but that does not mean that such a decision is inconsistent with that of the Serbian trade mark registry, which only considered Article 6*bis*. In any event, the same issue would arise if the claim were to be brought in Serbia. It is also said that in cases like Serbia, an injunction would render the Aviator Parties' marks subject to revocation for non-use. That may be so (and the same would arise if the Serbian court were to issue such an injunction) but that does not involve the English court deciding issues of validity of foreign trade marks – that would remain the exclusive right of the Serbian trade mark registry or court.

67. The Aviator Parties also suggested that there might be issues of local regulatory law. They suggested that whether Spribe's trade in each territory complied with local gambling, tax and consumer law was a question best decided by the courts of that territory. As I have accepted, the fact that foreign law is applicable is a factor against England & Wales as the appropriate forum, but I am not persuaded that this particular point adds to that factor. The only territories in which the Aviator Parties were able to suggest that such issues might arise were the UK, Brazil and Sweden, none of which are Combined Territories.

68. Accordingly, in my judgment the only factor of any weight against England & Wales as the appropriate forum is the fact that it will have to apply foreign law to the claims of passing off / unfair competition. Against that is the fact that trying the claims of passing off / unfair competition in the Combined Territories in England & Wales (alongside the UK passing off claim) will avoid fragmentation of the dispute and allow it to be determined in a single forum with the reduced inconvenience and expense that will follow. It is true that Spribe has excluded from the Combined Territories the United States and Brazil, in which the Aviator Parties' game is available and in which there are existing proceedings brought by Spribe. But that is not a reason for continued proliferation of proceedings. Further, the English courts are already going to determine the Aviator Parties' claim of copyright infringement in respect of each of the Combined Territories

(and beyond), and that claim forms a significant part of the Aviator Parties' defence to Spribe's passing off / unfair competition claims. In those circumstances, in my judgment it is clearly more appropriate for Spribe's passing off / unfair competition claims to be tried in England & Wales than in ten different jurisdictions.

Discretion generally

69. The Aviator Parties submitted that the court should not exercise its discretion to allow Spribe's proposed amended claims (again, however, their focus was on the passing off / unfair competition claims rather than the copyright claims) on the grounds of delay without good reason and prejudice to the Aviator Parties.

70. The Aviator Parties provided evidence of the value of bets made on their game in the Combined Territories. The numbers are confidential, but they show that the first bets were placed in Colombia, Ghana, Kenya, Mexico, Serbia and South Africa in mid 2025 and in Romania in October 2025 (the game has not been launched in Canada, and only a demo version has been available in Italy). However, the volumes of bets placed were small, and very small by comparison to the volumes of bets placed on the Spribe game. By the start of 2026 only in Mexico did the volumes of bets on the Aviator Parties' game start to represent any significant percentage of those on Spribe's game.

71. Further, it is common ground that it is not easy for game developers and suppliers such as Spribe and the Aviator Parties to know exactly how and where even their own games are being offered to consumers. They often contract with aggregators, who do not inform them which downstream operators have elected to offer the game. Even if they contract with an operator, they may not be informed which websites, apps or other platforms the game is being offered on. Further, both aggregators and operators may cover multiple territories, and so the game developer and supplier may not know which territories the game is being offered in.

72. In those circumstances, it is plainly difficult for a party to be able to identify which territories a rival's game is being offered in. There are many potential websites, apps and other platforms, in many potential territories, on which the game could be being offered. It would not be surprising if it took some time for the presence of a rival game to be noticed in a given territory, especially if the level of trade conducted with that game was relatively small, suggesting that it may only be available on a limited number of platforms.

73. Spribe's evidence served with its application in mid July 2026 was that to the best of its knowledge the Aviator Parties' game was not on the market in Canada, Colombia, Italy, Romania and Serbia. In fact by that point the game was on the market in Colombia, Romania and Serbia (and a demo version was available in Italy). That, it said, illustrates the difficulty of detecting the game in a particular territory.

74. Against that, the Aviator Parties relied on two matters. First, they pointed out that in August 2025, in the context of a debate about the form of order to be made by Sir Anthony Mann, the Aviator Parties' solicitors wrote to Spribe's solicitors to

say that the Third Claimant was preparing to launch the Aviator Parties' game in Serbia. They suggested that should have alerted Spribe to an imminent launch in Serbia. However, the volumes of bets on the Aviator Parties' game in Serbia in August 2025 – January 2026 were very low indeed, and even if they increased in the period February – July 2026 they were still very low relative to those on Spribe's game in Serbia. Secondly, the Aviator Parties pointed out that in December 2025 Spribe pleaded, in a paragraph in its Defence and Counterclaim reserving its position, that the Aviator Parties' game was available in Colombia (which in fact it was, albeit at a very low level of activity). Spribe's response to that was that it had subsequently formed the view that it had been wrong about that, though it did not explain the evolution of its understanding in any detail. The Aviator Parties have not disclosed the platforms on which their game was available in Serbia or Colombia (or indeed Romania) in the period leading up to July 2026 so it is not possible to know whether it should have been easy to detect its existence in those territories.

75. Spribe's evidence acknowledged that, by mid July 2026, it knew that the Aviator Parties' game was on the market in Ghana, Kenya, Mexico and South Africa. However, it did not explain when it became aware that the game was on the market in those territories. That is surprising and unsatisfactory given that a point on delay was being taken by the Aviator Parties. Nevertheless, as I have said, the figures provided by the Aviator Parties show that by January 2026 the volume of bets on their game remained very low, with the possible exception of Mexico.

76. Assessing matters as best I can, there can at most have been a delay of a few months in respect of any of the Combined Territories before making the application. I am not persuaded that such delay as there was has led to any significant prejudice to the Aviator Parties. No trial date had been fixed and, as will appear below, the parties are agreed that the trial of the proceedings (including the claims in respect of the Combined Territories) can be brought to trial on an expedited basis by October 2027. It is true that introducing the claims in respect of the Combined Territories will expand the proceedings, but that would also have been the case if Spribe had launched its application in time for it to be listed to be heard at the CMC in early May 2026. Even if it had done so, that would not have advanced matters, because in the event the process of giving directions for trial was held up while the issue of the law applicable to the issue estoppel case was resolved.

77. For these reasons, having considered the factors identified in *CIP v Galliford Try*, I will exercise my discretion to allow the amendments to introduce claims in respect of the Combined Territories, to the extent indicated above.

The issue estoppel amendments

78. By the end of the hearing, the dispute between the parties had reduced to whether paragraph 46(e)(x) of the draft pleading, and the relevant parts of the paragraphs referred to in it, raised a case which stood a real prospect of success.

79. Paragraph 46(e) is Spribe's pleading of special circumstances which are said to mean that any issue estoppel should not operate. Draft amended sub-paragraph (x) is as follows:

> "By application of the English law doctrine of issue estoppel, the Claimants seek: (i) to obtain relief from this court in respect of copyrights allegedly subsisting in the Overseas Jurisdictions, on the basis of Georgian Judgments which the courts of the Overseas Jurisdictions themselves would not recognise (as to which, the facts and matters in paragraph 43I(b)(iv) above are repeated herein); and/or (ii) to afford to the Georgian Judgments a status and precedent value which the Georgian court would not (as to which, the facts and matters in paragraph 46(e)(iv) above are repeated herein)."

80. This pleading is in two parts. Part (i) refers back to paragraph 43I(b)(iv). That paragraph of the existing pleading alleges that many of the jurisdictions covered by the Claimants' claim of copyright infringement do not have a counterpart to issue estoppel, and gives the example of Czech law. By amendment, Spribe seeks to add particulars of Belgian, French, German, Spanish and Serbian law. It was common ground that if Spribe is refused permission to add paragraph 46(e)(x), then paragraph 43I(b)(iv) should also be deleted, including the text in the existing pleading.

81. While paragraph 46(e)(x) refers to the courts of foreign jurisdictions not recognising the Georgian Judgments, counsel for Spribe explained that what was meant was that those courts would not give preclusive effect to the Georgian Judgments. Counsel for Spribe also said that the pleading did not seek to raise a point which had been decided against it by the Court of Appeal in its judgment of 2 October 2026. Spribe accepted that the English court had to apply the English law of issue estoppel to the claims in respect of foreign jurisdictions. Its case was that it was part of the English law of issue estoppel that the fact that a foreign jurisdiction did not have a law of issue preclusion amounted to a special circumstance, such that no effect would be given to an issue estoppel in relation to a claim in respect of such a jurisdiction.

82. Counsel for Spribe were unable to point to any authority which established such a proposition. Instead they relied on the dictum of Lord Upjohn in *Carl Zeiss* [1967] 1 AC 853 at 947 that: "All estoppels are not odious but must be applied to work justice and not injustice and I think the principle of issue estoppel must be applied to the circumstances of the subsequent case with this overriding consideration in mind." Further, they referred to the judgment of Males LJ in *Hulley Enterprises v Russia* [2025] EWCA Civ 108, for the quote at [38] from *The Good Challenger* that "the application of the principles of issue estoppel is subject to the overriding consideration that it must work justice and not injustice" and for the observation at [41] that the special circumstances exception "may simply be another way of saying that issue estoppel must work justice and not injustice".

83. As counsel for the Aviator Parties pointed out, it can be seen from the speech of Lord Keith in *Arnold v NatWest Bank* [1991] 2 AC 93 at 109 that Lord Upjohn's dictum does indeed underlie the special circumstances exception:

> "In my opinion your Lordships should affirm it to be the law that there may be an exception to issue estoppel in the special circumstance that there has become available to a party further material relevant to the correct

> determination of a point involved in the earlier proceedings, whether or not that point was specifically raised and decided, being material which could not by reasonable diligence have been adduced in those proceedings. One of the purposes of estoppel being to work justice between the parties, it is open to courts to recognise that in special circumstances inflexible application of it may have the opposite result, as was observed by Lord Upjohn [in *Carl Zeiss* at 947]."

84. In *PJSC National Bank Trust v Mints* [2022] EWHC 871 (Comm) at [59] Foxton J accepted both that there was no closed list of special circumstances and that the exception "should be kept within narrow limits to avoid undermining the general rule and provoking increased litigation and uncertainty".

85. Counsel for the Aviator Parties also stressed, by reference to the judgments of the Court of Appeal in *London Steam-Ship v Spain* [2024] EWCA Civ 1536 at [161] and [244]-[255], that the rules of *res judicata* are regarded as essential in the English legal order as longstanding and significant matters of public policy and submitted that it would be inconsistent with that public policy to, in effect, displace them in favour of foreign law where that is different.

86. I do not accept that where the English court has to apply its law of issue estoppel to a case where the substance of the dispute is governed by foreign law (as the Court of Appeal has held it must) it amounts to a special circumstance for the purpose of the English law of issue estoppel that the foreign law does not contain a comparable procedural or adjectival law. First, that would amount to a significant expansion in the special circumstances exception for which there is no basis in the existing case law and which would be inconsistent with the public policy on which the law of issue estoppel is based.

87. Secondly, in my judgment Spribe's submission ignores an important point. If the criteria for an issue estoppel apply then (in the absence of special circumstances) English law regards the issue as having been determined. The issue may be (and is said to be in this case) one that arises both in the context of a claim under substantive English law and in the context of a claim under substantive foreign law. But what has been determined, as a result of the issue estoppel, is the issue. It makes no sense to say that the issue has been determined, as a matter of English procedural law, only for the purpose of the claim under substantive English law and not for the purpose of the claim under substantive foreign law. Further, it would be inconsistent to say that it would be both just and unjust to apply the law of issue estoppel to determination of the same issue.

88. Part (ii) of paragraph 46(e)(x) refers back to paragraph 46(e)(iv) and it was common ground that the relevant parts of those paragraphs stand or fall together. The relevant part of paragraph 46(e)(iv) is as follows:

> "Alternatively, if it be the case that the First Claimant could not have brought its claim for copyright infringement in Georgia because the Tbilisi City Court would not have recognised its own judgment as having the status of an instrument of international effect and/or have recognised its jurisdiction as extending to the UK and to the Overseas Jurisdictions, then the Claimants in these proceedings wrongly seek by their plea of estoppel

> to invite the English court to attach to the Georgian Judgments a status and precedent value which the Georgian courts themselves would not."

89. The argument, as I understand it, is that if the Aviator Parties could not have sued Spribe in Georgia for acts done in the UK or third countries because the Georgian court would not have regarded itself as having jurisdiction to determine issues of copyright infringement in those countries, then it would be wrong to apply the law of issue estoppel based on the Georgian Judgments. That argument must be wrong in the light of *Carl Zeiss* and the cases that follow it. The requirement for an issue estoppel to arise from a judgment of a foreign court is that the foreign court is one of competent jurisdiction and that its decision is final and conclusive and on the merits. There is no requirement that the foreign court would have regarded itself as having jurisdiction to determine the relevant issues in the UK (or a third state). For example, in *Carl Zeiss*, there was no suggestion that the German court had regarded itself as having jurisdiction to determine any issue in the UK, nor was it suggested that that was relevant.

90. In my judgment neither of the cases advanced by Spribe in paragraph 46(e)(x) has a real prospect of success. I will refuse permission to amend to include that sub-paragraph and the part of paragraph 46(e)(iv) which I have quoted and will strike out paragraph 43I(b)(iv).

Expedition and preliminary issues

91. By the end of the hearing, the Aviator Parties' position was that they were content with expedition of the trial so long as that did not prejudice their ability to have a trial of preliminary issues relating to issue estoppel, while Spribe's position was that it was content to have such a trial of preliminary issues if that did not prejudice its ability to have an expedited trial. Having considered the joint proposal for an expedited trial and a trial of preliminary issues provided by the parties at the close of the hearing, on 23 October 2026 I indicated that I would order an expedited trial and a trial of preliminary issues and on 26 October 2026 I made an order to that effect. My reasons for doing so are as follows.

92. Without expedition, the trial would be listed to be heard in early 2028 – possibly in February or March but in any event no later than April. Spribe seeks expedition to the Michaelmas term in 2027 – my understanding is that, given listing constraints, that would in reality be October 2027.

93. As is well known, when considering an application for expedition there are four factors to take into account: (i) whether a good reason for expedition has been shown, (ii) whether expedition would interfere with the good administration of justice, (iii) whether expedition would cause prejudice to the other party, (iv) whether there are any other special factors – see *Gore v Geox* [2008] EWCA Civ 622 at [25]. Expedition will only be justified if there is real, objectively viewed, urgency – see *Petter v EMC Europe* [2015] EWCA Civ 480 at [17].

94. In this case an interim injunction is sought in respect of Colombia, Romania and Serbia. As will be seen below, I formed the view that if no injunction is granted Spribe would suffer harm for which it could not be adequately compensated if it wins at trial, and that if an injunction is granted the Aviator Parties will suffer

harm for which they could not be adequately compensated if they win at trial. Further, for similar reasons, pending trial Spribe will be suffering harm as a result of the presence of the Aviator Parties' game in Ghana, Kenya, Mexico and South Africa for which, if it prevails at trial, it will not be adequately compensated by an award of damages. There is also already an interim injunction preventing the Aviator Parties from launching their game in the UK. In my judgment those are good reasons for determining Spribe's claims (and the Aviator Parties' claims that are said to provide a defence to those claims) sooner rather than later. I do not regard such delay as there has been in bringing the claims in respect of the Combined Territories as undermining the need for a resolution of this dispute as speedily as possible given court resources and the interests of other litigants. I therefore regard there as being a good reason for expedition and a real urgency.

95. As I have said, this trial can be accommodated in October 2027. I bear in mind, of course, that allocating that slot to these proceedings means that it will not be available to other litigants who may come along with a trial that needs expedition. However, I do not regard that possibility as meaning that expedition would interfere with the good administration of justice. In the end, the Aviator Parties did not suggest that they would be prejudiced by expedition to October 2027 so long as that did not exclude a trial of preliminary issues. For reasons that will appear below, I believe that a trial of preliminary issues should be ordered and can be accommodated alongside expedition of the main trial. Neither party identified any other special factors of significance. I therefore conclude that the main trial should be expedited to be heard in October 2027.

96. The matters which the court should consider when deciding whether to order a trial of preliminary issues (the *Steele* factors) were summarised in *Wentworth v Lomas* [2017] EWHC 3158 (Ch) as follows:

> "(1) First, would the determination of the preliminary issue dispose of the case or at least one aspect of it?
>
> (2) Second, would the determination of the preliminary issue significantly cut down the cost and time involved in pre-trial preparation or in connection with the trial itself?
>
> (3) Third, where as here the preliminary issue was one of law the Court should ask itself how much effort would be involved in identifying the relevant facts.
>
> (4) Fourth, if the preliminary issue was one of law to what extent was it to be determined on agreed facts?
>
> (5) Fifth, where the facts were not agreed the Court should ask itself to what extent that impinged on the value of a preliminary issue?
>
> (6) Sixth, would determination of the preliminary issue unreasonably fetter the parties or the Court in reaching a just result?
>
> (7) Seventh, was there a risk of the determination of the preliminary issue increasing costs and/or delaying the trial?

> (8) Eighth, the Court should ask itself to what extent the determination of the preliminary issue may turn out to be irrelevant.
>
> (9) Ninth, was there a risk that the determination of the preliminary issue could lead to an application for the pleadings to be amended to avoid the consequences of the determination?
>
> (10) Tenth, taking into account the previous points, was it just to order a preliminary issue?"

97. There have been a number of cases in which issues of *res judicata* have been dealt with as a preliminary issue – see e.g. *Hulley v Russia*, *Resolution Chemicals v Lundbeck* [2013] EWHC 739 (Pat), *Eli Lilly v Genentech* [2020] EWHC 261 (Pat) and *Neurim v Generics* [2021] EWHC 2198 (Pat) and [2022] EWHC 109 (Pat).

98. There is a reason why issue estoppel is particularly suitable to be determined as a preliminary issue. Issue estoppel is an enforceable substantive private law right – see *Hulley v Russia* at [34] and the Court of Appeal in the present case at [23]. If it applies, then the issue has been determined and evidence on the issue is irrelevant. The party with the benefit of the issue estoppel has a right to recognition of that right, and to a trial of the dispute without evidence directed to the issue on which the estoppel arises.

99. Further, if the court were to determine whether there was an issue estoppel at a trial at which there was also evidence on the issue said to be the subject of the estoppel, then the court would be placed in an invidious position if the evidence indicated that the original decision was wrong. In *Transworld Payment v Hunt* [2025] EWHC 2480 (Ch), Leech J was asked both to decide whether there was an issue estoppel and to decide the issue on the evidence. He indicated at [741] that, had he otherwise regarded the issue estoppel argument as being correct, he would have regarded the fact that he had tried the issue on the evidence as a special circumstance making it inappropriate to give effect to the issue estoppel, saying it would be odious to apply an issue estoppel when he had reached the opposite conclusion on the evidence. Spribe originally sought to introduce an amendment to its pleading to rely on concurrent determination of the merits as a special circumstance for the purpose of issue estoppel. It then abandoned that amendment and said it would not take the *Transworld* point, but nevertheless *Transworld* illustrates the problem of leaving issue estoppel to the trial.

100. At the CMC in May 2026, both parties advocated a trial of preliminary issues relating to issue estoppel. In the end I did not direct one because it appeared to me that the decision on the question of applicable law could affect the desirability of such a trial (see [41] of my judgment). However, now that the Court of Appeal has held that English law is to be applied to the issue of preclusive effect regardless of the substantive law to be applied, that concern has disappeared.

101. At the present hearing, Spribe initially took the position that a trial of preliminary issues was not appropriate. It said that a close analysis of the pleadings revealed that there would be issues to which questions of copying would still be relevant. In particular it relied on the Aviator Parties' pleading of flagrant copyright infringement in support of its illegality defence and of bad faith. However, the

Aviator Parties made it clear that if their plea of issue estoppel succeeded, they would not rely on any further facts, other than those pleaded to be the subject of an issue estoppel, in support of the copyright aspects of their flagrancy and bad faith allegations. In the light of that, Spribe's point fell away.

102. With those observations in mind, I can turn to consider the *Steele* factors:

(1), (2) & (7): Determining issue estoppel as a preliminary issue would dispose of one aspect of the case if it is determined in the Aviator Parties' favour. In those circumstances there would be no evidence at trial on the issues on which an estoppel arises. However, given that the main trial will be in October 2027, it is likely that it will be necessary for there to be disclosure on those issues (to the extent it has not already been given) before the preliminary issues trial. It may also be that evidence on those issues may need to be prepared, especially given that it is likely that there will be an appeal from the decision on the preliminary issues trial. The effect of that can be mitigated to some extent, however, by expediting the preliminary issues trial, which would normally be listed for May 2027, to April 2027 when I understand that time can be made available, with the hope that any appeal and judgment thereon could be given in time before the trial (though of course ultimately that will be a matter for the Court of Appeal).

(3)-(5): The issue is one of law, though determination of that issue will require evidence of Georgian law, which is treated by the court as a question of fact. However, there is no particular reason to think that there will be significant disputes as to Georgian law – the question for the court will be how that law should be applied in the present case. Further, while the parties have been in dispute about the translations of the Georgian Judgments, there is no reason to think that it will not prove possible to arrive at agreed translations.

(6), (8) & (9): There is no reason to think that determination of the preliminary issue will fetter the achievement of a just result. Indeed for the reasons explained above, leaving issue estoppel until trial will place the Aviator Parties (if they are right) and the court in an invidious position. There is no reason to think that the determination of issue estoppel will be irrelevant, nor that determining issue estoppel as a preliminary issue will lead to an application for amendment of the pleadings to avoid the consequences of the determination (indeed, as mentioned above, Spribe had sought an amendment designed to avoid those consequences if issue estoppel was heard at trial, though that was abandoned).

103. Taking all of those factors into account, in my judgment it is just to order a trial of issue estoppel as a preliminary issue with, as I have said, a slight degree of expedition to April 2027.

Interim injunction

104. Spribe's application notice seeks an interim injunction preventing the Aviator Parties from doing, or encouraging or assisting any third party to do, certain acts targeted at any of Canada, Colombia, Romania, Serbia or Italy. The acts in question are (i) launching or otherwise offering for use by members of the public a crash game under or by reference to the name AVIATOR or any device colourably similar to those shown in Annex 1 (which contains variants of the

Aviator Parties' aeroplane logo) and (ii) using any of the images and/or text in Annex 2 (which contains various screenshots) on any crash game.

105. Further, Spribe seeks an order requiring the Aviator Parties to provide at least two weeks' notice of the launch of any crash game which features (i) the name AVIATOR and/or similar devices to those shown in Annex 1 and/or (ii) any of the images and text in Annex 2, in any country other than the UK and the Combined Territories in which the Aviator Parties have not already launched such a crash game.

106. Part (ii) of each of the draft orders is far too vague – it is not at all clear what it would prevent the Aviator Parties from doing or require them to give notice of. On one view it covers any use of the word "bet" or a multiplier of (for example) 1.30. It is plainly inappropriate and I shall not consider it further.

107. I have explained the position in Canada above. The position in Italy is that a demo version of the game was available, but that is no longer the case as a result of an interim injunction granted by the Maltese court on the strength of an EU trade mark registration owned by Spribe. The Aviator Parties offered undertakings to provide 28 days' written notice of any launch of their game by themselves or their affiliates in Canada or Italy or any marketing of their game targeting Canada or Italy. Those undertakings were acceptable to Spribe and I will accept them.

108. The issues are therefore (a) whether there should be an interim injunction in respect of Colombia, Romania and Serbia and (b) whether there should be a notification order.

Applicable law

109. The Aviator Parties submitted that the question of whether an interim injunction should be granted had to be determined according to the laws of Colombia, Romania and Serbia respectively, rather than the law of England & Wales. In other words, rather than applying the *American Cyanamid* approach, the court should apply whatever approach to interim relief is applied in Colombia, Romania and Serbia respectively. They then said that, because there was no basis for applying the presumption of similarity and there was no evidence of the relevant foreign laws, the interim injunction sought could not be granted.

110. The Aviator Parties said that that conclusion flowed from Article 15 of Rome II, which provides that:

> "The law applicable to non-contractual obligations under this Regulation shall govern in particular: …
>
> (d) within the limits of powers conferred on this court by its procedural law, the measures which a court may take to prevent or terminate injury or damage or to ensure the provision of compensation; …"

111. Spribe said that the effect of Article 15(d) was that the question of what remedies were available was a matter for the *lex causae* (so long as such a remedy was available under the *lex fori*) but the procedure associated with the award of those

remedies remained a matter for the *lex fori*, in accordance with Article 1(3) which provides that the Regulation shall not apply to evidence and procedure.

112. I was referred to Torremans, *Intellectual Property and Private International Law*, 3rd Ed. (2024), at paragraph 15.34 (footnotes omitted):

> "That brings us to more procedural issues or in the wording of the Regulation: 'within the limits of powers conferred on this court by its procedural law, the measures which a court may take to prevent or terminate injury or damage or to ensure the provision of compensation'. It is important to distinguish here between purely procedural issues to which the *lex fori* applies and infringement issues to which the law of the country for which protection is sought applies. Issues relating to enforcement are in intellectual property considered as substantive in nature and fall on the infringement side. One thinks here of the scope and the remedies. That also includes the content and limitations of the *ius prohibendi* (the right to prohibit) and the availability of injunctions and damages to restrain the infringement. It is therefore for each of the *lex loci protectionis* to decide whether damages (monetary compensation) and injunctions are available in a certain case. Procedural issues are left to the national law, and in practice most countries such as the UK then apply the law of the forum. This covers issues such as the rule of evidence but also, it is submitted, in general the procedures that are available to the claimant to request the remedies that are available under the law of the country for which protection is sought. This may, especially in the area of interim injunctive relief, give rise to a certain amount of forum shopping, because while it will always be the law of the country for which protection is sought that determines whether a certain remedy is available, it will be up to the *lex fori* to determine whether shortened or accelerated procedures to obtain those remedies will be available, and hence certain fora may offer more attractive outcomes."

113. *Dicey, Morris & Collins on the Conflict of Laws*, 16th Ed. (2022), says this at paragraph 32-191 (footnotes omitted):

> "Interim remedies raise different issues. On one hand an interim injunction may respond to a breach of contract and either prevent the occurrence of further damage or require the party in breach to undo the damage already done. However, such measures are intended to preserve or re-establish the status quo pending a trial of the action and the taking of this step is essentially procedural in nature. The limits of the English court's powers, and the discretionary aspects of the exercise of its powers, to grant interim relief are defined by the law of the forum. But the English court may have regard to the content of the applicable foreign law in determining whether the threshold merits conditions have been satisfied (e.g. as to the existence of a sufficiently arguable case on the merits for the final relief claimed) and it is possible that in the exercise of its discretionary powers the court might take into account what remedy might be appropriate under the applicable law."

As will be apparent, this is in the context of Rome I, but recital (7) of Rome II says that its substantive scope and provisions should be consistent with the instruments dealing with the law of contractual obligations.

114. At paragraph 34-059 *Dicey, Morris & Collins* considers Article 15(d) of Rome II. It refers to the Commission's Explanatory Memorandum which said that what became Article 15(d):

> "refers to forms of compensation, such as the question whether the damage can be repaired by payment of damages, and ways of preventing or halting the damage, such as an interlocutory injunction, though without actually obliging the court to order measures that are unknown in the procedural law of the forum."

115. *Dicey, Morris & Collins* continues (footnotes omitted):

> "…Finally, the reference in the Commission's Explanatory Memorandum to "interlocutory injunction" should be approached with some caution. Art.15(d) is not concerned with interim relief whose purpose is not "to prevent or terminate injury or damage or to ensure the provision of compensation". It does not extend to a measure (for example, a search order) whose purpose is to gather evidence for use at trial. Nor should it control the measures that a court may take (including, for example, a freezing injunction) the predominant purpose of which is to ensure that its judgment and orders are effective. Greater difficulty is presented by orders (such as an interim payment order or an interim injunction restraining the defendant from committing an alleged tort) which are founded on the court's provisional findings as to the existence and violation of a non-contractual obligation. On one view the availability of such relief is a procedural matter, falling outside the Rome II Regulation, being intended to preserve, or re-establish, the status quo pending the trial of the action. The other view is that the awarding of such measures, which provisionally vindicate the defendant's obligation, should be considered to fall within the scope of the Regulation, under Art.15(d), provided always that the English court is able to act within the limits of its procedural powers. On either view, the law applicable to the defendant's putative non-contractual obligation will probably be relevant to the extent that the conditions for the grant of such relief involve an assessment of the strength of the claim."

116. I was also referred to *Actavis v Eli Lilly* [2015] EWCA Civ 555, in which Floyd LJ considered (obiter) whether the conditions for obtaining declarations of non-infringement in patent cases fell within Article 15 of Rome II or were matters of procedure within Article 1(3). At [135] he pointed out that the conditions in question were ones of admissibility of actions – they were all concerned with whether the court should hear a dispute about substance, rather than with the substance itself. At [143] he said that negative declarations were not within Article 15(d); moreover that provision was concerned with the availability of such remedies, not the conditions which must be satisfied for their admissibility.

117. The issue being addressed in *Actavis v Eli Lilly* is not the same as in the present case. There the question was whether the conditions which needed to be satisfied

in order to seek a declaration of non-infringement (i.e. of admissibility of such a claim) were procedural or within Article 15. Here the focus is not on rules determining whether a claimant can seek an interim injunction, but on the approach to be applied to deciding whether one should be granted.

118. Nevertheless, in my view it is clear that Spribe is right on this issue. Article 15(d) is concerned with the availability of remedies, including injunctions. The Commission's Explanatory Memorandum indicates that that includes the availability of interim injunctions. So if an interim injunction is not available in the relevant foreign state, the English court should not order one. But the approach which the court takes to deciding whether to grant an interim injunction is properly characterised as procedural. That is consistent with the distinction drawn by Torremans between the availability of an interim injunction as being a matter for the *lex loci protectionis* and the procedures available to seek such remedies, and with the view expressed by *Dicey, Morris & Collins* in its commentary on Rome I that discretionary aspects of the exercise of powers to grant interim relief are defined by the law of the forum. *Dicey, Morris & Collins*' commentary on Article 15(d) is about the availability of interim injunctive relief, not the approach taken to deciding whether to grant such relief (though it is unclear why the authors suggest that the availability of such relief may fall outside Article 15(d), given the contents of the Explanatory Memorandum).

119. Further, in my view the logic behind the Court of Appeal's decision in the present case regarding the applicable law of issue estoppel applies here as well. The issue here concerns the approach to the grant of an interim injunction. That, like the law of issue estoppel, is general in nature and not limited to cases of non-contractual obligations within the scope of Rome II (see [37]). Also, it can be said, as it was of the law of issue estoppel, that the approach to the grant of an interim injunction is "not concerned with the parties' substantive rights and obligations, but with the process of adjudication upon those rights and obligations" (see [54]).

120. I should add that I asked counsel for the Aviator Parties what approach was adopted in other jurisdictions subject to Rome II (for example whether a Dutch court would apply Dutch law to the question of whether to grant a cross-border interim injunction or would apply the laws of the territories for which the injunction was sought). Although counsel said that they would look for cases, none were forthcoming. However, I am aware that in its judgment of 25 September 2025 (7 O 9383/25) the Munich I court applied German law when considering issues of urgency and balance of interests in the context of a claim for an interim injunction in 22 other states, regarding the reason for an injunction as a procedural rule (see paragraphs 61-66 of the judgment). One should of course aim for a consistent interpretation of Rome II across the states that are subject to it.

121. I would add one caveat. *Dicey, Morris & Collins* say at the end of paragraph 32-191 that "it is possible that in the exercise of its discretionary powers the court might take into account what remedy might be appropriate under the applicable law". In my view a court asked to grant an interim injunction extending to a foreign state should, even assuming such a remedy is available, consider whether a court in that foreign state would regard such a remedy as an appropriate one. In

particular, a court should be very cautious before granting an interim injunction which affects the public interest in the foreign state, such as one that affects critical infrastructure in that state. Similarly, if a court is aware of a practice in foreign courts of imposing conditions on the grant of interim injunctions to protect third parties, and in particular third parties who represent the public interest, then it would normally be appropriate to make the interim injunction subject to such conditions.

122. For example, in the UK it is standard practice, when an application is made for an interim injunction to restrain marketing of a generic or biosimilar drug, to require a cross-undertaking in damages to be made in favour of the entities that make up the NHS (assuming such a cross-undertaking is requested once the NHS is given notice of the application). That is an important protection for the public interest. Further, if such a cross-undertaking is not given then a patentee who is granted an interim injunction will be able to retain the difference between its profits and the generic or biosimilar supplier's profits even if it loses at trial. It would be wrong to incentivise patentees to forum shop for interim injunctions extending to the UK by failing to ensure that they give a cross-undertaking to the NHS as a price for obtaining such an injunction.

123. Returning to this case, the consequence of my conclusion above is that Colombian, Romanian and Serbian law apply to the question of whether an interim injunction is an available remedy in those territories, but I should apply English law to the question of whether to grant such an injunction, subject to the caveat expressed above. In my judgment it is appropriate to apply the presumption of similarity to the question of whether an interim injunction is available in those territories – it is fair and reasonable to expect that they will have such a remedy available. In any event, Colombia and Romania are signatories to TRIPS, Article 50 of which requires their judicial authorities to be able to order prompt and effective provisional measures to prevent infringements of intellectual property rights. In addition Romania is subject to the EU Enforcement Directive, Article 9 of which requires member states to ensure that the judicial authorities may issue an interlocutory injunction to prevent imminent infringements of an intellectual property right. Finally, it is plain from the evidence served on behalf of the Aviator Parties (paragraph 217 of Mr Cordell's fourth statement) that an interim injunction is an available remedy in Serbia.

<u>The approach to the grant of an interim injunction</u>

124. The well-known *American Cyanamid* approach was recently summarised by Arnold LJ in *AstraZeneca v Glenmark Pharmaceuticals* [2025] EWCA Civ 480 at [18] as follows:

> "(1) Is there a serious question to be tried (or, in current terminology, does the claimant have a real prospect of success)? If not, no injunction should be granted.
>
> (2) Would damages be an adequate remedy for the claimant for the loss sustained pending trial as a result of the defendant continuing the acts complained of if the claimant were to succeed at trial in establishing its right to a permanent injunction? If they would, and the defendant would be in a

> financial position to pay those damages, then no injunction should normally be granted.
>
> (3) If not, would damages on the claimant's cross-undertaking be an adequate remedy for the defendant if the defendant were to succeed at trial in establishing its right to do acts which had been enjoined? If they would, and the claimant would be in a financial position to pay those damages, then an injunction should normally be granted.
>
> (4) Where there is doubt as to whether damages would be an adequate remedy for either side or both, where does the balance of convenience lie? This depends on all the circumstances of the case. Where other factors appear to be evenly balanced, it is a counsel of prudence to preserve the *status quo*. There may be special factors which need to be taken into account."

125. As Floyd LJ observed in *Neurim v Mylan* [2020] EWCA Civ 793 at [16], the court has to assess whether damages are an adequate remedy, not a perfect remedy. On the other hand, the fact that a court can conduct a damages inquiry and arrive at a figure that it regards as just does not mean that damages are an adequate remedy if the uncertainties are very significant – see Birss LJ in *Neurim v Mylan* [2022] EWCA Civ 699 at [37].

126. Unusually, in the present case both sides urged me to take account of the strength of the merits. Spribe referred me to a number of cases which make the point that in passing off cases it is often necessary to have regard to the merits of the claim in order to assess the likelihood of unquantifiable harm – see e.g. *Novartis v Hospira* [2013] EWCA Civ 583 at [37] and *Interflora v Marks & Spencer* [2014] EWHC 4168 (Ch) at [38].

127. The Aviator Parties, by contrast, said that the injunctions sought were in effect mandatory, requiring them to take positive steps because their game was (and had been when the application was made in July) on the market in Colombia, Romania and Serbia. They said that therefore a "high degree of assurance" that Spribe will succeed at trial was needed, citing *Nottingham BS v Eurodynamics* [1993] FSR 468 at 474. (They also relied on s.12(3) of the Human Rights Act 1998 to similar effect, but did not develop that submission.)

128. Given those submissions, it is important to bear in mind what Lord Hoffmann said in *National Commercial Bank Jamaica v Olint* [2009] UKPC 16. At [16] he emphasised that:

> "The purpose of [an interim] injunction is to improve the chances of the court being able to do justice after a determination of the merits at trial. At the interlocutory stage, the court must therefore assess whether granting or withholding an injunction is more likely to produce a just result."

Likewise, at [17] he said:

> "…the court has to engage in trying to predict whether granting or withholding an injunction is more or less likely to cause irremediable

> prejudice (and to what extent) if it turns out that the injunction should not have been granted or withheld, as the case may be. The basic principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other."

129. He continued (citations omitted):

> "18. Among the matters which a court may take into account are the prejudice which the plaintiff may suffer if no injunction is granted or the defendant may suffer if it is; the likelihood of such prejudice actually occurring; the extent to which it may be compensated by an award of damages or enforcement of the cross-undertaking; the likelihood of either party being able to satisfy such an award; and the likelihood that the injunction will turn out to have been wrongly granted or withheld, that is to say, the court's opinion of the relative strength of the parties' cases.
>
> 19. There is no reason to suppose that, in stating these principles, Lord Diplock was intending to confine them to injunctions which could be described as prohibitory rather than mandatory. In both cases, the underlying principle is the same, namely, that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other…. What is true is that the features which ordinarily justify describing an injunction as mandatory are often more likely to cause irremediable prejudice than in cases in which a defendant is merely prevented from taking or continuing with some course of action… But this is no more than a generalisation. What is required in each case is to examine what on the particular facts of each case the consequences of granting or withholding the injunction is likely to be. If it appears that the injunction is likely to cause irremediable prejudice to the defendant, a court may be reluctant to grant it unless satisfied that the chances that it will turn out to have been wrongly granted are low; that is to say, that the court will feel… "a high degree of assurance that at the trial it will appear that the injunction was wrongly granted".
>
> 20. For these reasons, arguments about whether the injunction should be classified as prohibitive or mandatory are barren… What matters is what the practical consequences of the actual injunction are likely to be…."

<u>The merits of the case</u>

The relevant law

130. For the reasons explained above, I shall not confine myself to considering whether there is a serious issue to be tried, as would normally be the case applying *American Cyanamid*.

131. I bear in mind that the merits of the case have to be assessed applying the law of Colombia, Romania and Serbia. I have considered the evidence of Mr Cordell (on information from local lawyers) for the Aviator Parties, and Prof. Senftleben for Spribe (though he does not address illegality defences). The position appears to be as follows.

132. Colombia's unfair competition regime is governed by Article 10-15 of Law 256 of 1996 and by Articles 258-259 of ANDEAN Decision 486. In particular, Article 10 of Law 256 of 1996 deems unfair any conduct which has as its object or effect the creation of confusion with another party's business activity, commercial services or establishment (in accordance with Article 10*bis* of the Paris Convention). Article 259(a) of ANDEAN Decision 486 is to the same effect. Article 15 of Law 256 of 1996 deems it unfair to exploit, for one's own benefit, the advantages of the industrial, commercial or professional reputation acquired by another in the market. It appears that that requires the exploitation to be contrary to honest commercial practices (consistent with Article 258 of ANDEAN Decision 486). Mr Cordell adds that Article 18, which says that it is unfair to gain a significant competitive advantage over competitors through the breach of a legal regulation, "may apply" where copyright infringement results in a significant competitive advantage, and the Aviator Parties "may therefore have grounds to challenge Spribe's alleged reputation under Colombian law on the basis that it was founded upon illegal activity".

133. Romania's unfair competition law is to be found in Law No. 11/1991 on Combating Acts of Unfair Competition, as amended by Ordinance No. 12 of 31 July 2014. Article 2(1)(d) states that any commercial practices that contravene honest practices and the general principle of good faith and that cause or may cause damage to competitors constitute unfair competition and are prohibited. Mr Cordell explains that to establish such a claim a claimant would normally need to show (i) a competitive relationship between the claimant and the defendant, (ii) existence of an illicit deed that contravenes honest commercial practices and the general principle of good faith and causes or has the potential to cause harm to a competitor, (iii) existence of guilt, at least in its mildest form, (iv) the existence of damage, and (v) a causal link between the deed and the damage. Further, as I understand his evidence, where unregistered rights (including copyright) conflict, the courts will assess the nature and scope of the conflicting rights and their respective priority, and will consider whether the conduct complained of is likely to cause confusion with another trader, its business, goods or services or otherwise contravenes honest commercial practices.

134. Serbia's Law on Trade provides protection against unfair competition. That is defined in Article 41 as an act directed against another trader, contrary to business ethics and fair business practices, which causes or may cause damage to the other trader. That includes, in particular, selling goods with designations that create confusion among consumers as to the source of the goods. Mr Cordell explains that in order to establish a claim for unfair competition, a claimant generally must show (i) the existence of a protectable commercial interest, (ii) an act by the defendant that is objectively contrary to honest market practice, and (iii) actual or likely damage; he adds that bad faith is not a strict requirement but is highly relevant evidentially. He also says that general legal principles would treat an interest tainted by illegality as falling outside the category of interests the law will protect and therefore it would be difficult for a claimant to rely on reputation that has been built up through unlawful activity such as copyright infringement.

The facts

135. Spribe's game was first launched in Colombia in June 2020, in Romania in December 2020 and in Serbia in December 2019. Since then the game has grown and, while the figures are confidential, from 2023 onwards the sums wagered on the game in each country have been in the hundreds of millions of euros annually, yielding gross gaming revenue (GGR) in each country in the millions of euros annually. Spribe receives a high single digit percentage of GGR.

136. Spribe relied on various statements by the trade and trade press about the popularity of its game. In particular it relied on an article on the blask.com website which referred to its game as "Aviator: the undisputed leader of the Crash genre" and said "If there's one game that reshaped the iGaming landscape in the first half of 2025, it's Aviator. This title, developed by Spribe, doesn't just lead the Crash genre – it dominates it. … At Blask, we've seen Aviator claim the #1 position in nearly every Crash ranking worldwide in June." A Serbian gambling review website recently described the Spribe game as "one of the most popular crash games currently available at various betting shops in Serbia". Various review websites also record its popularity in Romania.

137. Spribe's game uses the logo on the left below, or minor variants of it:



138. The logo on the right above (or minor variants of it) is that being used for the Aviator Parties' game. Spribe asserts that it is inevitable that the Aviator Parties' name and logo will cause confusion between the two games. There is no evidence from consumers of such confusion, but I agree with Spribe that it is unlikely that such evidence would come to Spribe's attention given that the identities of consumers are unknown to Spribe and there is no reason to think that consumers who unwittingly play the Aviator Parties' game rather than that of Spribe will (even if they realise they are doing so) complain to Spribe.

139. Instead, Spribe relied on a number of instances which it said showed confusion in the trade and trade press. For example, it relied on the website of a South East Asian aggregator which in early 2026 advertised the Aviator Parties' game using the Spribe aeroplane logo and describing it as the #1 crash game with 66M+ monthly active players (which could only be a reference to the Spribe game). There were several other examples of the trade and trade press using the Spribe aeroplane logo when referring to the Aviator Parties or their game. Further, Spribe pointed out that in some cases gambling websites have used the Spribe aeroplane logo on the tile for the Aviator Parties' game, sometimes appearing on the same page as the tile for the Spribe game bearing the same logo.

140. There is no evidence that the Aviator Parties encouraged those gambling websites to do that, or encouraged the trade or trade press to use the Spribe aeroplane logo when referring to the Aviator Parties or their game. Nevertheless, in my view these incidents reflect what one would expect, namely that if there are two crash games both called Aviator and using very similar logos as shown above, it is very likely that there will be confusion between the two. Such confusion will cause damage to Spribe, not least in the form of diversion of business from consumers who would otherwise have played its game. The relevant local laws require the acts in question to be contrary to honest commercial practices. In my view it is unlikely to be in accordance with honest commercial practices to promote one's game by reference to a name and logo which is confusingly similar to those of a competitor in a territory in which the competitor has built up a substantial business and reputation by reference to their name and logo.

141. For these reasons, while of course any view expressed at this stage must be provisional, in my judgment there is a high probability that, at trial, Spribe will establish the facts necessary to succeed in a claim for unfair competition under the laws of Colombia, Romania and Serbia, subject to what may be called the illegality defence. I only have a sketchy outline of the scope of such defences in the three countries (see the final sentences of paragraphs 132-134 above) and it is not clear to me that, if Spribe's aeroplane logo is held to be an infringement of the Aviator Parties' copyright, that would defeat its unfair competition claim in any or all of the three countries; in particular whether that would operate to defeat its claim based on use of the name Aviator as opposed to the copyright works relied on by the Aviator Parties. Nevertheless, I cannot at this stage conclude that that is not a realistic outcome. I bear that in mind when assessing where the balance of risk of irremediable prejudice lies.

Risk of irremediable prejudice to Spribe

Would damages be an adequate remedy for Spribe?

142. I agree with Spribe that the availability of the Aviator Parties' game by reference to the name Aviator and the Aviator Parties' aeroplane logo, in a country where Spribe's game has an established presence and reputation, is likely to lead to diversion of custom from Spribe's game. If a consumer searches a platform for crash games and is presented with both Spribe's game and the Aviator Parties' game, it will be hard to distinguish them and they may well select the Aviator Parties' game rather than Spribe's game. Even if the platform only offers the Aviator Parties' game, the consumer may well select it thinking it is the Aviator game that he knows or has heard about (i.e. Spribe's game). Further, the extent of such diversion of sales will be hard to quantify. It will be difficult to know the extent to which consumers who play the Aviator Parties' game did so because they were confused.

143. However, it is also necessary to consider the magnitude of the loss of this type which Spribe may suffer pending trial if no injunction is granted. At the moment the GGR of the Aviator Parties' game in Colombia, Romania and Serbia is low – only in August 2026 did monthly GGR reach €[redacted] in the three territories combined, and the game developer's share of that is only a high single figure percentage. Mr Gogilidze's evidence on behalf of the Aviator Parties was that

they expected revenues from their game to increase by approximately 300% by the end of 2028 (meaning that by the end of 2028 it will be four times higher than now). That was not supported by any detailed analysis from anyone responsible for commercial or financial matters in the Aviator Parties, nor was there any focus on the likely growth in Colombia, Romania or Serbia. Nevertheless, it tends to suggest that by the time of trial in a year's time the GGR in those territories may be of the order of €[redacted] a month. Even if one assumes a GGR of €[redacted] in the next year and applies a generous 10% to that figure for the game supplier, that only amounts to €[redacted] as the maximum damage that could be caused to Spribe by way of diversion of business at the customer level. There are of course many uncertainties, but I regard Spribe's suggestion that its loss through diversion of customers could be several million euros as overblown. Further, there can be no suggestion that this level of damage to Spribe will be an existential threat – the sums being wagered on its game in Colombia, Romania and Serbia are orders of magnitude higher than those being wagered on the Aviator Parties' game.

144. Spribe also relies on erosion of its pricing power. Mr Chomakhidze said that from his discussions with Spribe's B2B customers, he understood that the Aviator Parties were seeking to undercut Spribe by offering lower prices and in some cases offering the game for free. He pointed to a specific instance in which the Aviator Parties had offered their game at a lower proportion of GGR than Spribe charged. He said that once customers became accustomed to lower prices, it would be hard for Spribe to restore pricing levels. Mr Gogilidze for the Aviator Parties said that it was not true that their game had been offered for free. He said that the game was offered on standard commercial terms with pricing consistent with, and often slightly higher than, prevailing market rates for comparable crash games. However, he did not directly compare the prices for the two games in issue and did not deny the specific instance relied on by Spribe. He also pointed out that the two games had been in competition for over a year in numerous territories and that Mr Chomakhidze had not provided any evidence of the type of loss he suggested would happen.

145. I am not persuaded that as things stand there is a substantial risk of Spribe having to lower its prices in the period before trial. If Spribe had been coming under pressure from its B2B customers to reduce its prices in the face of competition from the Aviator Parties, I would have expected Mr Chomakhidze to say so. Further, Mr Chomakhidze does not say that Spribe would succumb to such pressure, and one can understand that, given its dominance in the crash game field illustrated by the Blask article (see paragraph 136 above) it may well not need to. However, I recognise that the risk of such an impact is increased if the Aviator Parties are free to negotiate agreements with further aggregators and operators pending trial.

146. Further, there is a risk that some aggregators or operators will start to distribute the Aviator Parties' game instead of the Spribe game. The incident of undercutting to which Mr Chomakhidze refers was in an agreement with an operator in Brazil (owned by Flutter) with which Spribe also does business. That agreement requires the operator to provide exclusivity for the Aviator Parties' game by the start of December 2026. Further, Mr Chomakhidze explains that in

about early September 2026 Superbet stopped offering Spribe's game in Romania and started offering the Aviator Parties' game instead. These incidents indicate that the Aviator Parties are having some success in persuading B2B customers that their game can be substituted for Spribe's game notwithstanding the market leading position of Spribe's game, which must at least in part be due to the similar name and logo under which the game is promoted to customers. If operators with a presence in Colombia, Romania and Serbia decide to offer the Aviator Parties' game in place of Spribe's game, then that puts at risk much more of Spribe's existing business than would be at risk from diversion of business at the customer level. Mr Pruidze's evidence referred to in paragraph 164 below indicates that the availability of the Aviator Parties' game in Colombia, Romania and Serbia is likely to assist them to persuade multi-national aggregators and operators to replace Spribe's game with the Aviator Parties' game. That would cause very substantial unquantifiable damage to Spribe extending beyond the three countries.

147. Spribe also relies on the need for increased marketing and promotion for the Spribe game to counter the competition posed by the Aviator Parties' game. It points in particular to the fact that there is confusion in the trade, as illustrated by the incidents referred to in paragraph 139 above, and that it will be necessary to counter that. I agree that it is likely that Spribe will have to increase the amount it spends on promotion and marketing to counter confusion, but I do not regard that as being likely to be particularly difficult to quantify.

148. Spribe also says that there is a risk of reputational harm from the presence of the Aviator Game on the market. For example, it says that there is a risk of any regulatory non-compliance by the Aviator Parties being misattributed to Spribe, damaging its reputation. That is a possibility, and if it happened it would be hard to assess the reputational damage, but there is nothing to suggest that there is a regulatory non-compliance issue in Colombia, Romania or Serbia.

149. In conclusion, in my judgment if there is no interim injunction Spribe is likely to suffer unquantifiable damage, the magnitude of which will be greater if the Aviator Parties are free to displace Spribe's game at the aggregator or operator level.

Would the Aviator Parties be able to compensate Spribe?

150. The Aviator Parties' evidence as to the ability of the Claimants or the Fifth Party to pay damages to Spribe was very unsatisfactory and by the end of the hearing they did not seriously rely on it. Instead they relied on an undertaking from Mr Nodo Ugulava on behalf of himself and the other six heirs and temporary administrators of his father's estate (i) that the estate will accept joint and several liability for any sums payable to Spribe by the Claimants and/or the Fifth Party on an inquiry or account arising from provision of the Aviator Parties' game in Colombia, Romania or Serbia after 13 July 2026, (ii) that the estate will retain net assets of at least $15M pending such inquiry or account, and (iii) that in the event the estate is or will be unable to comply with (ii) above, he will as soon as practicable provide notice to the Court and to Spribe supported by evidence and seek further directions.

151. That led to a flurry of evidence about Georgian intestacy and inheritance law and the ability of Mr Nodo Ugulava to give an enforceable undertaking on behalf of the other heirs and temporary administrators. I do not propose to get into the details. Suffice it to say that I do not regard there as being any real prospect of further potential heirs emerging before 22 December 2026 (the sixth month period prescribed under Georgian law), at least not to an extent that would lead to a significant dilution of the estate as far as the existing heirs are concerned. However, there is a substantial dispute on the evidence about whether Mr Nodo Ugulava was able to give an enforceable undertaking on behalf of all the other heirs and temporary administrators, three of whom are minors. I am not confident that he is. In particular, I am concerned about whether, even with the agreement of the existing heirs, Georgian law permits him to create a liability for the estate which it might not already bear (at present the estate would only be liable for damages to Spribe if Mr Teimuraz Ugulava was jointly liable with the other Aviator Parties), at least without court approval on behalf of the minors.

152. The letter containing Mr Ugulava's undertaking says that the value of the assets in the estate exceed $107.5M. It was clarified that that was intended to be the net value of the estate, and that was confirmed in evidence from the Aviator Parties' lawyer Mr Beradze on instructions from the finance team responsible for the management and financial assessment of the estate. However, there was limited evidence about the assets held by the estate.

153. It appears from the evidence that Mr Teimuraz Ugulava owned 40% of the shares of the First Claimant, 100% of the shares of the Third Claimant (which in turn owns 100% of the shares of the Second Claimant) and, indirectly, 100% of the shares of the Fifth Party. It is not possible to know what proportion of the stated $107.5M value of the estate is attributed to the value of those shareholdings. The Aviator Parties' evidence is that their "business rests on a single game" and that granting even an interim injunction would be "in all likelihood terminal". I regard that latter assertion as hyperbole in respect of an interim injunction in Colombia, Romania and Serbia, given the volume of business in other Combined Territories. However, this evidence indicates that if ultimately the result of this litigation prevents the Aviator Parties from marketing their game in the Combined Territories, their shares may be of little value.

154. The other assets of Mr Teimuraz Ugulava to which my attention was drawn were shareholdings in various companies. However, the evidence contained accounts only for Eurasian Broadcasting Enterprises Ltd (in which he held >75% of the shares). Its accounts for 2024 show it to be loss-making and with net liabilities of $30M. He also owned 247 Hancock RE Holding Corp, which is said to own a property worth in excess of $7M, but no accounts are provided for that company. The result is that it is not possible to assess the value of the assets of the estate which do not consist of shares in the Aviator Parties or their affiliates, nor to know how liquid those assets are.

155. The result is that I can have no confidence that, after trial, the estate will have a net value in excess of $107.5M or even $15M. Further, the undertaking to notify the court and the parties if the value of the estate will drop below $15M will not assist if the bulk of the value of the estate consists of shares in companies in the Aviator Parties' group and the Aviator Parties lose this litigation – by the time it

becomes clear after trial that those shares have lost much of their value it will be too late.

156. It is notable that, despite the issue of the Aviator Parties' ability to satisfy an award of damages having been live since this application was launched in July 2026, no bank guarantee has been provided. If it were clear that the Aviator Parties would have the funds needed, one would have expected a bank to provide a guarantee, as is often done in cases such as these. I can see no reason why Spribe should be expected to be exposed to a risk which it appears no bank is prepared to take. So while I will accept Mr Nodo Ugulava's undertaking, I am not persuaded that it offers satisfactory protection for Spribe even if it turns out to be enforceable.

157. For these reasons, in my judgment there is a real risk that Spribe will not be compensated for the damage it will suffer in the absence of an interim injunction.

Risk of irremediable prejudice to the Aviator Parties

Would damages be an adequate remedy for the Aviator Parties?

158. The Aviator Parties submitted that if an interim injunction were granted they would suffer unquantifiable and irreparable harm under a number of heads, which I consider below. This submission was supported by evidence from Mr Gogilidze. Spribe pointed out that he is an external lawyer involved in managing the First Claimant's intellectual property portfolio, rather than someone employed by the Aviator Parties in a commercial or financial role. I have taken that into account in assessing his evidence, together with the fact that much of it is very generic and non-specific.

159. First, the Aviator Parties said that if their game was to be taken off the market, it would be very hard to assess their lost income from the game. It would not be known what income would have been generated from the game in the period until trial, and it would be hard accurately to establish the counter-factual, not least because the market was a rapidly developing one. I accept that it will be difficult to make an assessment of lost income from the game, though some guidance will be available from the performance of the game in territories in which there will be no injunction.

160. Secondly, they said that an injunction would deprive them of opportunities to expand the reach of their game in the three territories and that if they are prevented from proceeding with contracts they have been negotiating the operators are likely to take their business elsewhere. However, there was no evidence that negotiations were actually under way for expansion to B2B customers operating in Colombia, Romania or Serbia.

161. Thirdly, they said that the effect of depriving them of game revenue would limit their ability to invest in advertising and expansion into new markets. There is something in this, but Colombia, Romania and Serbia are relatively small markets for the Aviator Parties, compared to Kenya, Mexico and South Africa (let alone Brazil and the United States) and I doubt that this will be significant. Similarly, I do not accept that an injunction in Colombia, Romania and Serbia will strip the

Aviator Parties' investment of $15M into their game of much of its value, as was claimed.

162. Fourthly, it was said that many operators and aggregators operate on a cross-border basis and, if an injunction was granted in respect of Colombia, Romania and Serbia, operators and aggregators active in those territories would be likely to remove the game not only from those territories but also from other markets in which they operate. That would lead to loss to the Aviator Parties outside the three territories and be hard to quantify. In particular, the example was given of Superbet, which had indicated that if it had to remove the Aviator Parties' game from Romania, it would be removed from its platforms globally, including in South Africa and Brazil. In response, Spribe noted that it is common in this business to use geoblocking to restrict access to platforms on a geographical basis. However, there was also evidence that geoblocking is not always completely effective. I accept that the Aviator Parties may suffer irreparable harm of this type, but apart from Superbet, no aggregator or operator active in the three countries has been identified by the Aviator Parties and I have no information about how many of them operate on a cross-border basis. Nor is there any information about the extent of the business that the Aviator Parties' game attracts either on Superbet platforms in other territories or on platforms of any other cross-border operator or aggregator. It is therefore hard to assess the magnitude of the damage of this type which would be suffered by the Aviator Parties.

163. Fifthly, it was said that an injunction would undermine the basis on which the Aviator Parties' trade mark applications in territories outside the three territories were filed. I did not understand this point and it was not pressed. Nor did I understand the suggestion that an injunction would allow Spribe to begin to acquire unregistered trade mark rights in the three territories – Spribe already has such rights.

164. At the hearing, I asked whether it might be possible to devise a scheme which allowed the Aviator Parties' game to remain on the platforms which it was on as at July 2026, but not be extended to other platforms. That led not only to a proposal from the Aviator Parties which I discuss below, but also to further evidence from the Aviator Parties on the impact of an injunction on existing contractual relationships. This evidence came from Mr Pruidze, the Corporate Secretary of the Third Claimant and the CEO of the Fifth Party. He made the following points, in summary:

    (a) If the Aviator Parties were required to notify an existing operator that their game was subject to restrictions they may instead decide to promote a game that was not subject to those restrictions and may indeed decide to stop offering the game altogether. In particular operators present in multiple territories may not be willing to manage the game differently in different territories (as with Superbet).

    (b) Aggregators distribute games across networks of territories and operators. If an existing aggregator is required to impose restrictions on which operators could offer the game or the territories in which they could offer it, the aggregator may decide that continuing to distribute the game is no longer commercially worthwhile. If the court were to prevent new

downstream operators from taking the game from an existing aggregator the only solution might be to remove the game at aggregator level.

(c) Operators and aggregators may come to regard the game as commercially 'tainted', making them less willing to promote it, or Spribe could seek to encourage such a view.

(d) Therefore, any restriction on the Aviator Parties performing their existing contracts with aggregators and operators would have a substantial effect on trade in the three territories and beyond. It would be difficult to know why a particular aggregator or operator had acted as it did, or to what extent restrictions had affected the development of the game elsewhere in the world.

165. I agree that in principle the Aviator Parties could suffer unquantifiable loss in these ways. But the Aviator Parties have taken the decision not to reveal the identities (or even the number) of aggregators and operators through which their game is currently available in those three territories, or of the entities with whom they have existing contractual relationships which would allow launch of the game in those countries. Nor have they provided any detail of their relationships with those entities, or the nature of those entities' businesses, which would allow an assessment of the likelihood and magnitude of losses of these types.

166. For these reasons, in my judgment if an interim injunction is granted it is likely that the Aviator Parties will suffer unquantifiable damage, but it is hard to assess the likely magnitude of that damage.

167. The Aviator Parties said that Spribe's accounts did not provide confidence in its ability to meet a cross-undertaking in damages. However, its accounts for 2025 show current assets exceeding liabilities by approaching €40M. Questions were raised about the liquidity of some of the current assets, in response to which Mr Chomakhidze gave evidence about the recent sale of certain investments and clearance of certain receivables. The Aviator Parties noted that Mr Chomakhidze had not expressly stated that the sums had been retained by Spribe, but I regard the suggestion that they may not have been as unrealistic. In the absence of more detailed evidence from the Aviator Parties about the extent to which an injunction would be likely to affect the reach of their game in and beyond Colombia, Romania and Serbia, I am not persuaded that Spribe will be unable to satisfy any award of damages on a cross-undertaking.

Balance of risk of injustice

168. For the reasons I have explained, in my judgment both Spribe and the Aviator Parties are likely to suffer unquantifiable damage if the injunction is refused or granted, as the case may be, though it is hard to assess the likely magnitude of such damage that will be caused to each party. Further, there is a real risk that the Aviator Parties will not be able to compensate Spribe for the damage it suffers.

169. On the other hand, the object of the injunction sought is not only to prevent the Aviator Parties from encouraging or assisting third parties from starting to offer their game in Colombia, Romania or Serbia, but also to prevent them from

encouraging or assisting them to continue to do so. As Mr Pruidze's evidence recognises, that would require the Aviator Parties to take positive steps to require their existing aggregators and operators to discontinue offering their game and would have a greater impact on the Aviator Parties. I would therefore need a higher degree of assurance that it was right to grant an injunction which had that effect. I also bear in mind that the magnitude of the likely damage to Spribe is reduced, and the ability of the Aviator Parties to compensate Spribe for such damage is increased, if the reach of the Aviator Parties' game is constrained.

170. In order to try to reduce the risk of irremediable prejudice to both parties, I suggested that it might be possible to devise a scheme which restricted the reach of the Aviator Parties' game in Colombia, Romania and Serbia to what it was in July 2026, with a view to maintaining the *status quo ante*, protecting Spribe against the damage that would be caused by an expansion of the Aviator Parties' game, while protecting the Aviator Parties against the loss that would be caused by a removal of their game in those territories. Originally I suggested the date of 14 July 2026, which was when Spribe's application was launched. Spribe contended that the relevant date was 3 July 2026, being the date of its solicitors' letter threatening the application if undertakings were not given, citing *Frank Industries v Nike* [2018] EWCA Civ 497. In my view that is the right date, having regard to the fact that the Aviator Parties were already on notice of Spribe's complaints about their game, not least through the application before Sir Anthony Mann as well as other proceedings elsewhere in the world including in Brazil and the United States.

171. The Aviator Parties initially expressed the view that there was no workable middle ground and that the choice was between the injunction sought by Spribe and no injunction. Later in the hearing they indicated that there might be a possible way forward along the lines I had suggested. I therefore gave them time after the hearing to come up with a proposal and Spribe time to respond to that.

172. The Aviator Parties' proposal was set out in a witness statement from Mr Pruidze. He explained that it was not possible for the Aviator Parties to identify every platform on which their game was offered in any territory, because that was in the hands of the operators, or even to identify all the operators offering the game, if the Aviator Parties' contract was with an aggregator. He also explained that it was practically impossible to put any limit on the volume of bets placed on the game in any territory. He therefore proposed (without prejudice to the Aviator Parties' position that no injunctive relief should be granted) an undertaking not to enter into any further agreements with any aggregator or operator with which the Aviator Parties did not have an existing agreement under which their game could be made available in Colombia, Romania or Serbia. The aggregators and operators who had such an existing agreement were listed in an exhibit to his statement which was not provided to Spribe, its solicitors or me – the proposal was that if the undertakings were accepted the list would be provided 14 days thereafter to Bird & Bird on an external eyes only basis to allow policing of the undertakings.

173. In response, Mr Sherrell for Spribe pointed out that without the list of existing aggregators and operators it was impossible to assess what, if any, protection the proposed undertakings would provide for Spribe. He also pointed out that the

undertakings would not preserve the *status quo ante*, because they would allow the Aviator Parties' game to be put on the market in the three countries by further operators who either had an existing contract with the Aviator Parties which allowed them to do so, or who subsequently entered into an agreement with an aggregator who had an existing contract with the Aviator Parties. He said that, for example, the undertakings would allow launches of the game in Colombia, Romania and Serbia under the Flutter agreement. Further, he pointed out, such launches could be accompanied by operators ceasing to offer Spribe's game, as indeed had happened in Romania with Superbet in early September.

174. Mr Sherrell made a counter-proposal under which the Aviator Parties would undertake to provide Mr Chomakhidze and Bird & Bird (on suitable terms as to confidentiality) with a witness statement identifying all platforms on which the Aviator Parties' game was available as of 3 July 2026, including a list of the relevant URLs; to geo-block all access to the game in Colombia, Romania and Serbia, save that the relevant URLs would be white-listed; and to the extent permitted by their existing contracts, to give notice to existing aggregators and operators that they must not promote the Aviator Parties' game in Colombia, Romania and Serbia.

175. I agree with Spribe's criticisms of the undertakings offered by the Aviator Parties. However, there are also defects in Spribe's proposal. In particular, I see no need for Mr Chomakhidze to be provided with the list of platforms and URLs, nor do I regard it as necessary or proportionate to restrict promotion of the Aviator Parties' game on platforms on which it was already available. Further, the Aviator Parties said that the proposal to geo-block, save for specified URLs, was not technically possible, though Spribe disputed that.

176. The parties continued to make proposals and counter-proposals of increasing complexity, but ultimately were unable to reach agreement.

177. I therefore intend to make the following order, which in my judgment strikes the best balance between the irremediable prejudice which may be suffered by both parties and best maintains the *status quo ante* (I have based it on the language of the injunction sought by Spribe in its application notice, as it would not be right to amend that language to provide any greater protection than Spribe sought):

> The Aviator Parties shall not, until further order of the Court, do, or encourage or assist any third party to do, any of the following acts targeted at any of Colombia, Romania or Serbia, namely: launch or otherwise offer for use by members of the public a crash game under or by reference to the name AVIATOR or any device colourably similar to those shown in Annex 1 hereto.
>
> PROVIDED THAT nothing in this order shall prevent third parties from continuing to offer such a crash game on any website, app or other platform on which they were offering such a crash game on or before 3 July 2026, or prevent the Aviator Parties or any other person from supplying such a crash game to any such third party for the purpose of offering it on any such platform.

178. I agree with the Aviator Parties that Spribe's cross-undertaking should extend to third parties who may be affected by that order (including affiliates of the Aviator Parties).

179. I should add that, in line with what I have said in paragraph 121 above, I have considered whether such an order would be regarded as inappropriate by courts in Colombia, Romania or Serbia. This is not a case which engages the public interest in those countries. The only relevant material I have is the evidence of Mr Cordell, on instructions from Serbian lawyers, that the Aviator Parties' trade mark registration(s) would "weigh heavily" against an application for an interim injunction restraining the use of such mark(s) before a Serbian court. He does not say that such an injunction could not be granted. I would wish to have more information about the approach that a Serbian court would adopt before deciding to take a different approach for Serbia than for Colombia and Romania. For that reason I will give the Aviator Parties liberty to apply to vary the order in respect of Serbia, though I note that the Aviator Parties do not have a registration in Serbia for the logo shown on the right in paragraph 137 above or for a variant on it with the word "Studio" omitted, which appears in Annex 1 to the order sought by Spribe.

180. I also regard it as necessary, in order to promote compliance with the order I intend to make, for the Aviator Parties to provide Bird & Bird with a list of the platforms on which their game was available in Colombia, Romania or Serbia as of 3 July 2026. The information in that list should be provided to the best of the Aviator Parties' knowledge or belief, and to that end they should be required to make enquiries of the aggregators or operators with which they have contractual relationships which allow release of the game in those countries. The information should be provided on the existing external eyes only basis; if Bird & Bird regard that as insufficient once they have seen the list, they will be able to make an application to the court. I shall leave it to the parties to draft an order to that effect.

181. I should add that while I have set out in paragraph 177 above the order I intend to make, I will consider any proposal by either party for improved language to achieve the same object (rather than to change the substance of the order).

The notification order

182. As mentioned above, Spribe also sought an order requiring the Aviator Parties, in summary, to provide at least two weeks' notice of the launch of their crash game in any territory (other than the UK and the Combined Territories) in which they had not already released it. In oral submissions, counsel for Spribe limited the order sought to the Further Territories. Spribe said that such an order should be made so that it could bring any further application for interim injunctive relief before the court in an orderly fashion.

183. The Aviator Parties had two substantive objections to such an order. First, they said that the restriction of the claims in these proceedings to the Combined Territories meant that such an order should not be made. If that was a submission that the court has no jurisdiction to make such an order, then I reject it. The court plainly has a discretion to make such an order and in my view such an order is highly desirable for the reason explained by Spribe, particularly in circumstances

where it is not easy for Spribe to detect the launch, let alone preparations for launch, of the Aviator Parties' game.

184. Secondly, the Aviator Parties said that (for the reasons I have explained above) they would not necessarily know whether their game was due to be released in any territory. For that reason, in my judgment they should be required to give at least two weeks' notice when, to the best of their knowledge and belief, their game is due to be launched in any of the Further Territories. To that end they should be required to require such notice from aggregators and operators with whom they have (now or in the future) contractual relationships in respect of their game which allow release in any of the Further Territories. Again, I shall leave it to the parties to draft an order to reflect that.