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No: IP-2024-000026

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

Rolls Building
New Fetter Lane
London

Date: 22 July 2026

Before :

HER HONOUR JUDGE MELISSA CLARKE
sitting as a Judge of the High Court

B E T W E E N :

MR ANDREW TIPPING

Claimant

- and -

MR MARK SMITH

Defendant

Mr Nicholas Harris (instructed by Harper James Ltd) for the **Claimant**
Mr Michael Dickin (instructed on a direct access basis) for the **Defendant**

Judgment (Quantum)(Reasons)

Her Honour Judge Melissa Clarke:**A. INTRODUCTION**

1. This is judgment on quantum of damages payable following the Defendant's infringement of the Claimant's copyright in certain photographs which were originally produced for, and published in, a number of hard-copy issues of the automotive magazine Max Power dating from the 1990s to the early 2010s (the "**Photographs**"). This was a monthly car magazine dedicated to performance tuned and modified car published by EMAP and later Bauer Media.
2. The Claimant is the photographer of the Photographs and was the co-creator of Max Power magazine which was published between 1991 and 2011. He retained all rights of copyright in the Photographs, licensing them to EMAP/Bauer Media for the purpose only of publication in the magazine. The Defendant's infringing conduct comprised the use of the Photographs in 1432 social media posts (being 716 identical posts posted on each of Facebook and Instagram) between 2018 and 2021 ("**the Posts**") on accounts set up by the Defendant under accounts using the name "maxpowerreunion".
3. The posts themselves comprised digital photographs crudely taken by the Defendant on his mobile phone of pages of back copies of Max Power magazine in his possession, plus some text. I say 'crudely' because those were amateur snapshots of back issues of Max Power magazine lying open at his house on his sofa or carpet. Many of the Posts contained digital images of multiple pages from an issue of Max Power magazine, each with between two and 10 Photographs on it, as the Defendant often photographed and posted full features and double-page spreads, each containing multiple photographs.
4. The Defendant filed a defence in which he admitted copyright infringement and I gave summary judgment to the Claimant at the CMC on 22 February 2025 and made directions for this quantum trial. The Claimant estimates that 31,000 of his Photographs were reproduced in the Posts on each of Facebook and Instagram and has disclosed a document calculating how this estimate

was reached, based on screenshots he kept of the Posts. Although the Defendant disputes this figure, he has not provided any alternative estimate and maintains that he kept no record of the Posts he made and later deleted. I am satisfied that the Claimant's estimate is the best evidence the Court has of the scale of the Defendant's infringement. In my summary judgment, given *ex tempore*, I mistakenly referred several times to 716 Photographs in 1432 Posts but it is clear from the pleaded case and the submissions before me that there were very many more Photographs than Posts, and my reference should have been to 716 Posts on each of Facebook and Instagram, being 1432 Posts in total. I am satisfied that the reference to 716 Photographs was an accidental slip made in the pressure of giving an *ex tempore* judgment. Although the exact image count is not critical because damages were sought by the Claimant per Post rather than per Photograph, it provides useful context as to the scale of infringement.

5. As set out in the CMC Order of 22 February 2025, there was a single issue for me to determine on quantum of damages – Had the parties been a willing licensor and willing licensee, what reasonable royalty / notional licence fee would the parties have agreed in a hypothetical negotiation for the Defendant's use of the Photographs, taking account of their respective bargaining positions? The parties had not dispute on the law which both set out in their skeleton arguments. The applicable law to the assessment of damages in intellectual property cases was summarised by David Stone sitting as a Deputy High Court Judge in *Original Beauty Technology et Ors v G4k Fashion Limited et Ors* [2022] F.S.R. at [71] which I will not set out in full here. I have all the principles in mind, but of particular relevance in this case are principle (i) that damages are compensatory. The general rule is that the measure of damages is to be, as far as possible, that sum of money that will put the claimant in the same position as he would have been in if he had not sustained the wrong; and principle (iii) that the burden of proof rests on the claimant. Damages are to be assessed liberally, but the object is to compensate the claimant and not to punish the defendant.

6. The parties agree that principles relating to the quantification of damages in intellectual property cases on the user principle were helpfully summarised by HHJ Hacon in *Henderson v All Around the World Recordings Ltd* [2014] EWHC 3087 (IPEC) at [18]-[19], with reference to *Force India Formula One Team Limited v I Malaysia Racing Team Sdn Bhd* [2012] EWHC 616 (Ch); [2012] RPC 29 (Arnold J as he then was) at [386]. Again, I will not set these out here but I have them before me, and well in mind, as I write this judgment.
7. At the hearing, at which the Claimant was represented by Mr Nicholas Harris of Counsel and the Defendant was represented by Mr Michael Dickin of counsel, I gave judgment for the sums sought by the Claimant namely £56,850 plus interest and said I would provide my reasons and deal with costs and consequential in writing. This judgment contains my reasons and determines those matters.
8. It is the Claimant's case that the Defendant's use of the Photographs in the Posts from 2018 allowed him to amass tens of thousands of followers on social media and gave him the momentum to promote and then launch "The Reunion Show" in 2021, which was an unofficial Max Power reunion event. This was followed by "The Reunion Show" events in 2022, 2023 and 2024. The evidence before the court is that each of the Defendant's Reunion Show events attracted around 3,000 to 4,000 attendees.
9. Even after the issue of the Claim, the Defendant continued to infringe the Claimant's copyright in the Photographs over a period of two months in 2023, using the Photographs without consent to promote his Reunion Show 2024, by that time being run through his company.
10. The Defendant admits in the Defence that he was involved in organising "The Reunion Show 2021" which took place at Towcester Racecourse on 5 September 2021 (being the first of an annual event that was repeated in 2022, 2023 and 2024), that it was a meetup-style event for fans of the Max Power magazine, and that the Posts were used in connection with promoting The Reunion Show which provided him with a modest profit of £4961 from ticket

- sales and merchandise sales in the first year. Despite that, he denies profiting from the Posts.
11. The Claimant seeks damages in the sum of £56,850 (being £37.50 per Post on each of Instagram and Facebook x 1432 Posts) plus interest and costs. The Claimant's pleaded case is that £37.50 is a fee which the Claimant charges for use of his copyright protected photographs by third parties being 1/8th of his daily feature rate of £300. I ordered that this calculation and explanation should stand as his Points of Claim, and ordered that the Defendant file and serve Points of Defence "*which shall not go beyond his pleaded case*", to which the Claimant would be permitted to file and serve Points of Reply.
12. The Defendant's pleaded case in quantum can be summarised as follows:
- i) The sum sought by the Claimant is extraordinarily high;
 - ii) The fee of £37.50 per post is arbitrary and unparticularised;
 - iii) The willing licensor and willing licensee in a hypothetical negotiation would not have agreed a licence fee of £37.50 per Post which is merely the Claimant's own subjective view of the worth of each Photograph;
 - iv) Other photographers who had photographs published in Max Power gave the Defendant permission to use their photographs for free; and
 - v) The Defendant denies making any profit from his use of the Photographs.
13. In his Points of Defence the Defendant sought to argue that the Claimant's lifestyle is not consistent with someone that would command a daily feature rate of £300, with reference to, inter alia, the company accounts of a company owned by the Claimant and the value of the Claimant's house but I have not permitted him to expand his defence in this way. The Defendant's position is that a willing licensor and willing licensee would have agreed that no fee was payable, and so damages should be assessed at zero.

B. WITNESSES

14. As is usual in IPEC, the pleadings stand as evidence. Each of the Claimant and Defendant also filed a witness statement, attended Court and was cross-examined.
15. I found the Claimant to be a straightforward, apparently credible and reliable witness who came to court to assist it to the best of his ability. His evidence was that he has had a successful professional career as a photographer spanning four decades and requiring him to travel around the world, that he co-created the magazine Max Power, that at the height of its popularity (2000 to 2006) Max Power was Europe's largest motoring magazine with sales reaching over 230,000 copies a month, that he was the source of 90% of the images and feature articles in it, and that he collected technical information about the cars featured, and directed work of commissioned writers to produce those articles he did not write himself. None of this was really challenged in cross-examination and I accept it.
16. The Claimant was also not challenged on the daily feature rate that he used as a basis for calculating the notional licence fee of £37.50 per Post, which is supported by invoices showing that he charged from £300 to up to £1000 as a daily feature rate. Although the Defendant put in a CPR 32.19 notice questioning the authenticity of the invoices, they did not pursue this at the hearing, Mr Dickin for the Defendant confirming that he does not put any case that the invoices were forged. Instead he sought to argue that there was no evidence that the invoices relied on were paid, but there is such evidence in the Claimant's witness statement that he was "*generally paid between £300 - £1000 per feature*". I am satisfied that the daily feature rate of £300 is at the low end of feature rates the Claimant achieved as a photographer.
17. The Claimant has disclosed his original agreement with EMAP, at that time publisher of Max Power, which provided that he retained copyright in the Photographs, licensed them for single use within Max Power magazine for which they were commissioned, and that if the publishers wished to re-use any of them, or license them to sister titles (which included Max Power US), he charged an additional licence fee. When Bauer took over as publisher, he continued to work on renegotiated terms which included his rate per feature

being £350, and continued to retain copyright in his Photographs. Once again, none of this is challenged, it is supported by disclosed documents, and I accept it.

18. The Claimant told the Court that the Photographs were mostly shot on film, although some later images were shot on digital cameras, and that he has never made them available for licensing via any photo agency or online in a digital format. He says he only licensed full features (i.e. text and photographs together) for republication outside the UK through his agency. That evidence was not challenged and I accept it.
19. The Claimant's evidence that Max Power magazine's audience were buying it because they were car enthusiasts who were excited to see its content, including the photographs it contained, was accepted by the Defendant in cross-examination.
20. It was put to the Claimant by Mr Dickin that his evidence that he had a distinguished reputation in the photography industry was merely self-serving, but I accept that evidence which is supported by the documentary evidence of the photography commissions that he has carried out, both at the time that he was working for Max Power up to very recently for large global companies such as Lego, and also documentary evidence of the licensing and publication of his work in magazines all around the world over very many years.
21. The Claimant's evidence is that after he became aware of the Defendant's infringing actions, in 2021, he sought advice from a number of sources, including informal advice from solicitors, and from the National Union of Journalists ("NUJ"). He carried out some licence fee calculations to seek to assess his losses arising from the Defendant's infringement with assistance of David Ayrton of the NUJ. David Ayrton also corresponded with the Defendant to seek to reach an agreed licence fee to avoid the Claimant having to bring infringement proceedings. Mr Ayrton initially used a different methodology to calculate the appropriate fee, which resulted in the Claimant sending the Defendant an invoice for a sum of over £100,000. However on

further discussion between Mr Ayrton and the Claimant the methodology now relied on was used, based on a charge per Post, not per image (which would have produced a substantially higher sum as many Posts had 6 or 10 images). Mr Dickin for the Defendant did not challenge the NUJ's methodology now relied on in cross-examination.

22. The Defendant attended court and was cross-examined. I found him a less than satisfactory witness. In his witness statement and oral evidence he sought to make points not made in his points of defence, and gave evidence, which was either not relevant, not credible or not reliable.

23. These included:

- i) Since the Claimant shot the Photographs on film there has been a switch to digital cameras which significantly reduced the time required for photographers to capture and process images. Accordingly (i) the Claimant's use of a daily feature rate is misleading as it is possible to shoot a feature in a fraction of a day, or shoot multiple cars in one day; (ii) the Claimant has failed to account for the time saved in his claim value. In cross-examination the Defendant agreed he was not and never was a professional photographer, that his evidence about photography was not his own, and that although he had not said so in his points of defence he had obtained that evidence "*in conversations with my son who is a professional photographer and also friends who are*". I prefer Mr Tipping's evidence in cross-examination that taking digital photos was different work to taking film photos, having considerably more time spent on it in post-processing so both were time consuming. He said the cost was comparable, requiring the use of expensive laptops and software to process and the same sums spent in flights, hotels and other expenses when carrying out a shoot whether film or digital. I accept that evidence;
- ii) The Defendant's use was non-commercial, as his Facebook and Instagram accounts were personal accounts and not monetised consistent with non-commercial use, but the Claimant has priced his claim value

on alleged commercial use. I do not consider this to be credible, given that (a) the Facebook and Instagram accounts on which the Posts were made had handles incorporating “maxpowerreunion” and not his personal name; (b) the documentary evidence that he contacted Bauer Media in January 2021 seeking a licence of the Max Power logo saying “*I’m running an [Instagram] page called Max Power Reunion based on you[r] highly successful magazine*” and asking for a licence to use the Max Power logo. Bauer responded seeking a fee of £2,500 plus royalties and made clear that it considered the use of the Max Power trade mark by the Defendant was potentially infringing, and in reaching this conclusion Bauer Media must have considered his use was in the course of trade; (c) the Defendant’s admission in cross-examination that by the time he wrote to Bauer Media he was already selling merchandise and planning and promoting the first Reunion show “*Celebrating the Max Power Automotive Era*” under the ‘Max Power’ brand; and (d) the Defendant’s admissions in cross-examination that: he made a profit from the first Reunion show, he would not have been able to run that show if he had not been able to build up a following on social media, and his Posts incorporating the Photographs built up that following. Even if the Defendant’s social media accounts were not directly monetised, then, the Posts were used to build an audience which subsequently promoted revenue-generating events and merchandise and would therefore be regarded by reasonable parties to a licence negotiation as commercial exploitation;

- iii) The Claimant’s photographs were not used to advertise the Reunion Show on flyers and the Reunion Show did not use or exhibit any of the Claimant’s photographs. This is not relevant to the question of damages for his copyright infringement of the Photographs by the Posts in my judgment;
- iv) That from his own research on Glassdoor, a job search website, salaries for automotive photographers suggest a day rate range of £100 to £150 and the ONS reported in 2024 that the average full-time gross annual

pay for a photographer is £29,046 approximating to a day rate of £125, and the Claimant does not have any special skills which would justify anyone contracting him on a daily feature rate that is more than double the going daily rate of a photographer nationwide. I am satisfied that these are also not relevant. I have considered the evidence put forward by the Claimant as to his actual day rate for feature work relevant to the Photographs infringed and it is clear that those who commissioned and paid the Claimant, including EMAP, Bauer and Lego, consider he does have special skills which justify paying him considerably more than the average.

- v) Other photographers from Max Power gave the Defendant royalty-free licences to use their images. The Defendant has not disclosed messages or documentation entered into with these photographs and so I accept the Claimant's submission that the terms of those royalty-free licences is not known, save in respect of one photographer, Mr Dimbleby, who stated in an email before the Court that he made it clear there would be *"no charge for the image if it is not for commercial purposes"*. As I have found, the reasonable parties to a licence negotiation would consider the use of photographs on the Defendant's social media channels as commercial use. In light of that email and in the absence of disclosure about the agreements reached with the photographers said to have provided a royalty-free licence the Defendant has not satisfied me that such licences entitled him to the use of those images for the commercial use to which he put the Photographs. In addition, the Defendant accepted in cross-examination that whether or not a photographer gives a royalty-free licence is a matter for their discretion, and Mr Tipping's evidence, which I accept, is that that he has not licensed and would not license the Photographs for anything other than a fair market rate;
- vi) The value of the Claimant's photographs has diminished considerably over time consistent with the plummeting sales figures for the magazine, Bauer Media did not take the opportunity to sub-license or republish the photographs, and the current demand to buy them is zero. This argument

is unsustainable in my judgment given: (a) the Claimant's evidence that he syndicated photographs through Fox, a specialist agency which by representing his work must consider it as having value; and (b) the Defendant's admissions in cross-examination that he would not be able to run the Reunion shows if he had not been able to build a following on social media and he needed to use photographs from the Max Power magazine to generate nostalgia for the magazine, build that following and drive interest in ticket sales and merchandise for his Reunion shows;

- vii) Licences offered by stock image libraries for low resolution digital images are typically half the price of high resolution images. Mr Tipping denies that they are low resolution digital images and I accept his evidence;
- viii) The Defendant's insistence in cross-examination that he had not started a Max Power Reunion show, saying it was "*about the modified car scene*" or "*about cars of the Max Power Era*" was both argumentative and inconsistent with his points of dispute at para 4 that he accepted that he was involved in organising car meetings for fans of Max Power, his email to Bauer in April 2021 set out at paragraph (ii) above and the admissions he made set out at paragraph 23 (ii)(d) above.

C. SUBMISSIONS AND REASONS FOR DETERMINATION OF QUANTUM OF DAMAGES

24. The Claimant submits that the Court should determine quantum as sought by him, based as it is on a clear rationale for the claimed sum worked out with Mr Ayrton of the NUJ, which is a body which is used to negotiating on behalf of photographers and accordingly has a developed understanding of the market. The fact that Mr Ayrton has changed his method of valuation over the course of the dispute is, the Claimant submits, evidence of his careful consideration to ensure that the total sum is compensatory not punitive, as an appropriate licence fee per Post agreed between a notional willing licensor and willing licensee, as is now sought, produces a substantially lower figure

than an appropriate licence fee per Photograph between those notional parties.

25. The Defendant submits that the Claimant in setting the proposed licence fee did not consider the Defendant's bargaining position: that he could have taken photographs himself of relevant cars by attending car shows; that he had obtained royalty-free licences from three Max Power photographers and could have obtained photographs from friends. I do not consider that this represents much of a bargaining position given I have found that the Defendant has not satisfied me that his royalty-free licences allowed him to put those photographs to the commercial use that he put the Photographs to. In addition, in light of his admission that he needed photographs from Max Power to inspire nostalgia and build a social media following and interest in his Reunion events, the suggestion that he could achieve the same effect by trailing around car shows taking amateur snapshots of cars which were featured in the professional photoshoots for Max Power magazine is simply not realistic or credible. Accordingly I do not consider that the Defendant had available to him a non-infringing course of action other than to negotiate commercial licences with other photographers for Max Power (as to which I have no evidence as to what rate that would likely have arrived at), to be taken into account by the notional parties.
26. The Defendant further submits that the Claimant, in seeking the licence rate that he is, seeks to punish the Defendant in damages. I do not accept this submission. I am satisfied that the Claimant seeks fair compensation and has worked hard with Mr Aylard of the NUJ to formulate a basis for calculating an appropriate fee for what was copyright infringement on a very significant scale over a period of three years, with both parties accepting an average period of infringement per Photograph of 1.5 years.
27. The Defendant finally submits that there is no reasonable basis to charge double for two social media sites, but I do not accept this submission. As the Defendant found value in maintaining two social media sites to achieve his stated aims I consider that the notional parties in negotiating a licence fee would consider that all the Posts should be subject to the notional licence fee.

28. Having taken all of this into account, and the fact that the Defendant has not sought to counter the Claimant's calculation by the provision of any alternative licence fee than zero, I am satisfied that a willing licensee and licensor in the positions of the Claimant and Defendant would have arrived at an agreed licence fee calculated at £37.50 per Post for 1432 Posts. That is because I consider that a feature rate is an appropriate benchmark given that the Photographs contained in the Posts were, on the Claimant's evidence, mostly taken from features commissioned and paid for at a feature rate. I also consider that a 1/8th rate is a reasonable value for a Post which could contain an excerpt from a feature containing a single photograph but could also contain up to 10 Photographs and amount to use of the whole feature. There is difficulty in setting a fair rate that covers all these possibilities, but the assistance of the NUJ which is a body which is used to negotiating on behalf of photographers and accordingly has a developed understanding of the market and pricing within the market gives me some reassurance of its reasonableness. In my judgment, a fee of £37.50 per Post is a reasonable market proxy for the licence which would have been negotiated, being derived from the Claimant's actual charging structure and representing a modest proportion of his established feature rate.
29. I further consider that the notional Defendant had little to no bargaining position to make reasonable use of, save that he would be seeking an extensive licence for commercial use of his photographs on a significant number of Posts on social media over a significant period of time, which would be a transaction of material value to the notional Claimant, who would be incentivised to conclude it. Conversely the Claimant, as photographer of 90% of the photographs in Max Power magazine, was in a strong bargaining power to sell a licence to someone in the position of the Defendant who needed the Max Power photographs to inspire nostalgia and drive social media followers and interest in his commercial events.
30. To the extent that the Defendant maintains an argument that the notional parties would have agreed a discount for the volume of Posts, I accept the Claimant's argument that a discount has already been built in by constructing

the licence fee on the basis that it is chargeable per Post and not per Photograph infringed, which I am satisfied would give a much higher figure. Given that many Posts reproduced multiple photographs, often comprising substantial portions of a feature, a notional licence fee of £37.50 per Post represents a substantial discount from a per-photograph valuation and is consistent with the parties agreeing a volume licence for extensive use.

31. I consider that the total of £56,850 is compensatory not punitive, and accept the Claimant's submissions about the robustness of the underlying rationale for the claimed sum worked out with Mr Ayrton of the NUJ. Those are my reasons for awarding £56,850 in damages.

D. SUBMISSIONS AND REASONS FOR DETERMINATION OF INTEREST ON DAMAGES

32. In terms of interest, the Claimant relies on the cases of *Challinor v Juliette Bellis & Company* [2013] EWHC 620 (Ch) (Hildyard J), *Carrasco v Johnson* [2018] EWCA Civ 87 (Hamblen LJ, with whom Kitchen LJ agreed) and *Geofabrics Ltd v Fiberweb Geosynthetics Ltd* [2022] EWHC 2363 (Patents) in which Charlotte May KC (sitting as a Deputy High Court Judge) summarised, inter alia, the law and the previous two-mentioned authorities in the following terms at [78]:

“Pursuant to s.35A Senior Courts Act 1981, the court has a discretion to award simple interest for such period and at such rate as it thinks fit. Both parties referred me to the approach to determining the amount to award as was summarised by Hamblen J in *Carrasco v Johnson* [2018] EWCA Civ 87 at [87]:

“17. The guidance to be derived from these cases includes the following:

(1) Interest is awarded to compensate claimants for being kept out of money which ought to have been paid to them rather than as compensation for damage done or to deprive defendants of profit they may have made from the use of the money.

(2) This is a question to be approached broadly. The court will consider the position of persons with the claimants' general

attributes, but will not have regard to claimants' particular attributes or any special position in which they may have been.

(3) In relation to commercial claimants the general presumption will be that they would have borrowed less and so the court will have regard to the rate at which persons with the general attributes of the claimant could have borrowed. This is likely to be a percentage over base rate and may be higher for small businesses than for first class borrowers.

(4) In relation to personal injury claimants the general presumption will be that the appropriate rate of interest is the investment rate.

(5) Many claimants will not fall clearly into a category of those who would have borrowed or those who would have put money on deposit and a fair rate for them may often fall somewhere between those two rates.

18. Challinor and Reinhard are examples of cases which were held to fall within that mid-category, justifying a blending between rates, and in both cases interest was awarded at 3% over base rate."

33. The Claimant submits that the Claimant too falls into the middle category, being both a small business and semi-retired and so not falling clearly into a category of those who would have borrowed or those who would have money put on deposit. He contends for a rate of 3% over base rate, with a starting point being the date of the Defendant's incorporation of the Reunion Show Limited as it is accepted that none of the causes of action arise later than that date.
34. The Defendant correctly noted in submissions on this point that the parties agreed in cross-examination that the average duration of infringement of each Photograph in the Posts was 1.5 years, and so he submits that interest should be awarded from a date 18 months after the pleaded first Post of 19 April 2018, namely 19 November 2019.
35. The Defendant seeks as low a rate as possible as he submits he was not using the Photographs commercially but "*posting for fun*", but I have rejected that the notional users would make that finding.

36. This is a matter for my discretion, judicially exercised. Considering a person with the general attributes of the Claimant, namely that he runs a small business from semi-retirement, i.e. part-time, I think that the 3% contended for is a little high, and more appropriate for person running a small business without part-time or semi-retired status. A claimant with the general attributes of a part-time self-employed photographer would likely have a lower borrowing requirement than an actively trading small business and for that reason I consider 2.5% above base rate more appropriate. I accept the Defendant's submission that should run from 19 November 2019 for the reasons he gave. That provides a figure for interest on damages of £19,741.67.

E. COSTS

37. Pursuant to CPR 44.2(2) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party, but the court may make a different order, taking into account all the circumstances (as required by 44.2(4) including (a) the conduct of all the parties; (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and (c) any admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences under Part 36 apply.
38. The Claimant submits that following the general rule, he is entitled to his costs paid by the Defendant as the successful party. The Defendant seeks an order that each side pays their own costs, because it made an offer which the Claimant did not accept, although Mr Dickin accepted for his client that is a difficult submission. I agree that is a difficult submission given that the last offer made through the Defendant's previously instructed solicitors Michelmores on 9 January 2025 (which was without prejudice save as to costs) was to settle upon payment of damages of £10,010 including interest, which the Claimant has beaten significantly. I do not see any reason to depart from the general rule and order the unsuccessful Defendant to pay the Claimant's costs.

39. In IPEC, specific costs rules apply, including CPR 46.22 which provides that the court will not order costs of more than £60,000 on the final determination of a claim in relation to liability, and £30,000 on an inquiry as to damages. These must be summarily assessed with a scale cap on each stage of proceedings as set out in PD46 para 11.1.
40. As I set out in *Link Up Mitaka Ltd (t/a Thebigword) v Language Empire Ltd* (No 2) [2019] F.S.R 9 at [13], the court retains an overall discretion as to costs under CPR 44.2 which includes a discretion to lift the phase caps and overall costs caps in IPEC, but this should only be exercised in “truly exceptional” cases as to do otherwise would undermine the point of the costs capping system. This arises from a line of authorities including *Westwood v Knight* [2011] EWPC 11, *Henderson v All Around the World Recordings Ltd* [2013] EWPC 19 and *FH Brundle v Richard Perry and Others* [2014] EWHC 979 (IPEC).
41. The Claimant seeks that I exercise my discretion to lift the cap on the costs of the damages inquiry, because, he submits:
- i) he had beaten that last offer of the Defendant considerably;
 - ii) he had also beaten his own open offer made to the Defendant after the CMC which was to settle for £45,000 in damages plus £35,000 in court fees and legal fees, which would have been reasonable for him to accept. The Claimant notes that this offer was not even acknowledged let alone rejected, and submits that was unreasonable behaviour;
 - iii) the Defendant was also unreasonable: to maintain that damages would be zero; to advance a host of hopeless arguments without addressing the clear evidence from the Claimant’s invoices; and to make personal allegations about the Claimant’s personal circumstances and personal criticism of him;
 - iv) the Defendant’s filing of a CPR 32.9 notice meant that the Claimant has had to defend against a potential attack on authenticity of his invoices

which, in the end, was not pursued at the quantum trial, incurring additional costs, wasted effort and stress.

42. The Claimant submits that although the Defendant's conduct does not amount to abuse of process (and so does not make this application under CPR 45.30(2)), it is exceptional and unreasonable and justifies lifting the overall IPEC costs cap, alternatively the individual stage caps, or that an additional award should be made to the Claimant in the same vein as the award made in *Brundle v Perry*.
43. The Defendant submits that there is no justification for lifting the costs cap. I am with the Defendant. The test is whether this case is "truly exceptional" to justify lifting the costs caps which are key features and benefits of litigation in IPEC in order to facilitate access to justice in intellectual property claims, and although the Defendant would have been advised, in hindsight, to accept the Claimant's offer and can be criticised for the matters set out in paragraph 39 above I do not consider that any of those matters, taken either alone or together, get this case near the threshold of exceptionality required.
44. Turning then to the summary assessment of costs, the Claimant submits that the claim in relation to liability was finally determined at the case management conference when I gave summary judgment on liability and so I must assess both liability and quantum under the respective costs caps. The Defendant disputes that, submitting that the CMC should be assessed in the quantum cap because the Claimant's solicitors Harper James wrote a letter to the Defendant in January 2025 before the CMC expressing that on a thorough review of the pleadings liability did not appear to be in dispute and the only issue related to quantum. I do not accept the Defendant's submission. The question of summary judgment was hard fought at the CMC and so liability was determined at the CMC as the Claimant submits.
45. The Claimant further submits:
 - i) *Westwood v Knight* is authority for there being a degree of flexibility in where some of the costs can be claimed, including pre-action costs;

- ii) the early advice obtained by the Claimant from Harper James when he ceased being a litigant in person in late 2024 related to his response to the defence and so can be attributed to the defence stage; and
 - iii) points of reply are recoverable as costs of responding to points of defence.
46. The Defendant disputes that, saying that there is no preliminary stage in the stages set out in the CPR, and describing these submissions as an attempt by the Claimant to overcome the stage caps, but the Claimant's submissions are in accordance with the authority of *Westwood v Knight*, in my judgment and so I accept them.
47. I will not repeat the detail of all the submissions made by the Defendant in relation to the costs sought, which included criticism of the hours spent by the Claimant's solicitors, the speed at which they worked on documents, the fact that multiple fee earners worked on the same documents, that the rates charged for work in 2024 were above the guideline rates then in force, that the solicitors' accommodation travel and subsistence were not recoverable, that counsels' fees for the CMC (Ms Watkinson) and inquiry (Mr Harris) were excessive, and that the NUJ wrote the Claimant's points of claim.
48. On the last three points, the accommodation travel etc costs appear in the costs schedule but the overall amount is so much above the cap that the fact they are claimed is moot; I do not disturb counsels' fees which I do not consider excessive; I reject the suggestion that the NUJ wrote the Claimant's points of claim. The Claimant has set out clearly in his litigant in person schedule exactly how and how much time he spent dealing with the NUJ and this did not include delegating the points of claim to it.
49. Summary assessment is below:

LIABILITY Stage	Costs incurred	Total costs incurred	Costs cap	Sought by C (plus VAT)	Awarded

Particulars of Claim	Court fees £2,850.50 LiP time @ £19 per hour x 48.5hrs £921.50	£3,772	£9,000	£3,772	£3,772. I am satisfied that the time was spent and is reasonably incurred
Defence	Solicitors' fees £4,872 Counsels fees £5,575	£10,447	£8,000	£8,000	£8,000. I note the D's submissions on rate, time taken and duplication but even allowing for an appropriate deduction it does not get me below the phase cap.
CMC	Solicitors' fees £4,915.50 Counsel fees £5,000	£9,915.50	£6,000	£6,000	£6,000. Same reasoning as for Defence above.
C's Application to strike out/summary judgment	Solicitors' fees £4719.75 Counsel fees £1,650 Court fees £303	£6,672.75	£4,000	£4000 plus court fee £303	£4,303. Same reasoning as for Defence above.

Defendant's application to amend defence	Solicitors' fees £3,124.75 Counsel fees £1,650	£4,774.75	£4,000	£4,000	£4,000. Same reasoning as for Defence above.
QUANTUM Stage	Costs incurred	Total costs incurred	Costs cap	Sought by C (plus VAT as applicable)	Awarded
Points of Defence/Reply	Solicitors' fees £1,363 (PoD) £1116.50 (PoR) Counsels fees £1925	£4,404.50	£4,000	£4,000	£4,000 Same reasoning as for Defence above.
Providing or inspecting disclosure	Solicitors' fees £4,292 Counsels fees £2,500	£6,792	£3,000	£3,000	£3,000 Same reasoning as for Defence above.
Preparing witness statements	Solicitors' fees £5,379.50 Counsel fees £2,200 LESS £565.50 + £58 relating to Tipping 2	£6,956.50	£6,000	£6,000	£6,000 Same reasoning as for Defence above.

	WS not permitted				
Trial	Solicitors' fees £17,586.75 Counsel fees £8,400 Expenses £519.33	£26,506.08	£10,000	£10,000	£10,000 Same reasoning as for Defence above.
				Total 20% VAT on £45,000 (subtracting court fees and LiP costs) Grand total payable by the Defendant to the Claimant in costs	£49,075 £9,000 <u>£58,075</u>

50. In summary, the Defendant shall pay the Claimant the sum of £134,666.67 being £56,850 as damages for copyright infringement, £19,741.67 as interest on the damages and £58,075 in respect of the Claimant's costs summarily assessed.