Neutral Citation Number: [2014] EWHC 3405 (QB)

Case No: HQ14D01075

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 October 2014

Before :

HHJ RICHARD PARKES QC
(Sitting as a Judge of the High Court)

- -

Between :

(1) REACHLOCAL UK LIMITED **(2) REACHLOCAL EUROPE B.V.**	**Claimants**
- and -	
(1) JAMIE BENNETT **(2) CRAIG ANDERSON** **(3) HARDEEP SINGH KHABRA** **(4) TRACEY VENNARD** **(5) YOUR ONLINE DIGITAL AGENCY LIMITED**	**Defendants**

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- -

Nikki Singla (instructed by Norton Rose Fulbright LLP) for the Claimants
The Defendants did not appear and were not represented

Hearing date: 6 October 2014

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

HHJ RICHARD PARKES QC

HHJ Richard Parkes QC :

1. The claimants are two companies in the ReachLocal group, the ultimate parent of which is a US incorporated company, ReachLocal Inc. The second claimant is the main European subsidiary of the ReachLocal group, and the first claimant is the UK subsidiary of the second claimant. The ReachLocal group carries on business in many countries, providing online advertising and marketing services. Their service includes search engine advertising using keywords and boosting the profiles of their customers by raising their rankings on search engines, a process known as search engine optimisation.

2. The fifth defendant, Your Online Digital Agency Ltd, is an English company which describes itself as a boutique online marketing agency providing search engine optimisation, social media media marketing, pay per click, and other marketing services. It has two registered directors, the third defendant and the fourth defendant. The first defendant is not a registered director of the fifth defendant but holds himself out as its 'managing partner' and as being authorised to represent the company. The second defendant has been joined to these proceedings because that is the name of the person who appears to have been directly responsible for the publication of many, if not most, of the words of which the claimants complain. The claimants' position is that the second defendant is no more than an alias used by the first defendant.

3. The application which I have to consider is for final relief, in terms both of damages and injunction, in consequence of judgment in default of defence obtained by the claimants against the first, second, fourth and fifth defendants by order of Nicol J dated 3 July 2014. The third defendant is not a respondent to this application, the claimants having compromised their claim against him. That settlement was recorded in a Tomlin order dated 23 July 2014.

4. The claims made in this action are for defamation (libel and slander), malicious falsehood, breach of confidence and breach of contract. The claim form was issued on 12 March 2014, and on 20 March 2014 the claimants applied for a variety of interim injunctive relief and for an expedited trial of the claim. On 28 March 2014 Sir David Eady granted interim injunctions against each of the defendants, by which they were restrained from any further publication of the defamatory allegations complained of, and they were ordered (inter alia) to hand over all details held by them of the claimants' customers, together with any database or memory stick which stored that information electronically. There was also an order against the fifth defendant which related to solicitation of the claimants' customers and inducement of breach of contract, in breach of an agreement between the first claimant and the fifth defendant dated 13 March 2013.

5. The judge also gave directions for the future conduct of the action, which included an order for expedited trial, and an order for service of defences by 22 April 2014. No defences were served, and the claimants applied for further directions. On 30 April 2014, Tugendhat J ordered the defendants to file and serve their defences by 6 May 2014. Any defendant in default was to be debarred thereafter from serving a defence. Again, no defences were served, and the claimants applied on notice for judgment in default of service of defence. That application came before Sir David Eady on 9 June 2014. On that occasion, the first and third defendants appeared in person and expressed their intention to apply for relief from sanctions. The judge adjourned the

hearing to enable the defendants to make that application. The adjourned hearing came before Nicol J. on 23 June 2014. By order on 3 July 2014, he refused the first defendant relief from sanctions, but granted relief to the third defendant (against whom, as I have already stated, the claim was shortly thereafter compromised). Nicol J granted the claimants judgment in default of defence, and gave directions for the hearing of assessment of damages and other final relief.

6. It may be worth noting that none of the costs orders made by Tugendhat J or Nicol J or by Sir David Eady has been complied with. Nor, I believe, have the defendants complied with the mandatory orders made by Sir David for delivery up of customer details and the provision of affidavits concerning their possession of the claimants' customer information. Moreover, the claimants are concerned that, notwithstanding the terms of the interim injunctions granted, there has been further publication of similarly defamatory material by at least some of the defendants.

7. It is against that background that the present application has come before me. Mr Nikki Singla of counsel has represented the claimants, but the defendants neither appeared nor were represented. As he submits, the position is governed by CPR 12.11(1), by which such judgment shall be given as it appears to the court that the claimants are entitled to on their statement of case.

8. In broad terms, the claimants' case against the defendants in defamation is that the defendants in early 2014 launched a campaign of denigration of the claimants, which was primarily directed at the claimants' own customers. That campaign consisted of emailed material, backed up by telephone calls, and it resulted in substantial losses to the claimants by way of lost business. It is the claimants' case that the defendants' mass dissemination of emails and telephone calls could only have been achieved if they had been in possession of a list of their customers. It is, of course, part of the claimants' pleaded case, for which they now have judgment, that the defendants did indeed obtain their customer database, and used the contact details on the database to contact customers and solicit them away from doing business with the claimants. Indeed, that was admitted by the person calling himself Craig Anderson, the second defendant, in the course of a telephone call with a representative of the claimants.

9. Almost a year before this campaign began, the first claimant and the fifth defendant entered into what was called an 'affiliate agreement' dated 13 March 2013, less than three months after the fifth defendant was incorporated, by which it was agreed that the fifth defendant would refer potential customers to the first claimant. By clause 11 of that agreement, the fifth defendant was required for one year after termination not to take any action to solicit or divert any business referrals or company customers away from the first claimant, and not to induce customers and others to terminate, reduce or alter their involvement, association or business with the first claimant. That period will expire on 13 March 2015. The present claim for breach of contract arises from breach of the non-solicitation clause.

10. The claimants now claim general and special damages for defamation, to be assessed, as well as final injunctive relief. They have abandoned their claim for aggravated damages, and for present purposes do not pursue their claim in malicious falsehood. Nor do they seek damages for breach of contract or breach of confidence, contenting themselves with the protection of injunction.

Libel

11. The claimants' case is that around 13 February 2014, the defendants sent out to their customers an email with an attachment in pdf form. The parts of that attachment of which complaint is made read as follows:

> **Reach Local Exposed: Scamming Since 2008**
>
> It is well know (sic) that Reach Local is one of the UK's largest AdWords' Certified Pay Per Click Agencies, but there is a dark side to the agency that is now starting to emerge.
>
> The company have been offering their services for well over six years and claim to produce success across a number of different industry sectors, but how can a company turn over $455 million and claim to only take 15% management fee?
>
> The answer to the above question is simple: let's say YOU want to spend $15,000 a month on your PPC. Normally an agency will act as third-party management; i.e. you pay Google for your media, and the company will invoice you separately for their time, consultancy and management.
>
> This is where ReachLocal make their extra money: they use their clever dashboard and other tricks to make it look like you're spending the full $15k a month, they ask you to pay them direct, so not only do you pay them the management fee, but also paying them (sic) for ad spend as well.
>
> This is where the scam takes place and the actual amount they spend on the campaign is really unknown. Some clients we have spoken to claim they only spend 50 - 60% of that spend and ReachLocal pocket the rest. It's a clever ploy to trick people into spending more. ReachLocal have many claims to fame; one of which being in partnership with Google - only a small number of UK agencies can claim this digital knighthood. This causes many people trust them (sic) from the outset, but after speaking with a number of different sales representatives (IMC-Internet marketing consultants), they all seem to be glorified car salesmen and there is no real talent and definitely no digital marketing skills.
>
> It (meaning the claimants) inflates click prices and that's what they don't tell you. How much does Reach Local inflate prices by?
>
> ReachLocal is a Google Premier Partner and some of its sales people have said that Google provides ReachLocal with special benefits, such as commissions from Google on AdWords spend this (sic), however, is totally untrue....

> **Other interesting ReachLocal points**: ...
>
> *... this is the loophole that allows companies like ReachLocal to keep accurate and transparent data to themselves, and not have to share accurate statistics with its clients.*
>
> So how does ReachLocal get away with such trickery?
>
> This is a very simple trick.... the 'spends' appear to be within the dashboard; however it seems you can only activate it by mistake..... this is cleverly hidden using JavaScript....
>
> ... Ian Puddick ... one of the first and long-standing ReachLocal UK clients has undertaken his own investigations informing the company of this deception...
>
> **More complaints seen below** ...
>
> http://www.pissedconsumer.com/reviews-by-company/reachlocal/reach-local-rip-off-liars-and-scam-artists...
>
> http://www.ripoffreport.com./r/Reach-Local/Manhattan-New-York-10018-/Reach-Local-Lias(sic)-Cheats-What-a-Nightmare-Save-Your-Money-Manhattan-New-York...
>
> ReachLocal – click fraud
>
> ReachLocal – Scam
>
> Reach Local – Rip Off

12. The pdf attachment contains information about the 'properties' of the document. As Mr Richard Bray explains in his first witness statement, the 'properties' box shows that the author of the pdf was Jamie Bennett, the first defendant. It also shows that the document was created on 12 February 2014.

13. The claimants claim that on about 10 March 2014, the defendants sent out another email, entitled "Have you been Mis-Sold PPC by ReachLocal?", which contained the following passage: "Did you know ReachLocal can take upto (sic) 50% of your Campaign Media Budget as an Optimisation Management Fee. Half of your marketing budget could be wasted by being disguised as an Optimisation Marketing Fee without you even knowing. That is one shocking and expensive marketing service!"

14. The next publication relied on is an email dated around 11 March 2014, headed "Reach Local are in BIG trouble. Thank you for all the responses!" It continued: "For everyone that got in touch with us from our first email; we cannot thank you enough!... Out of 500 emails we sent we had nearly 300 responses, which is way more than we anticipated. Thank you for taking notice and helping us help you! We want to bring this terrible business practice that is affecting businesses all over the world not just the UK to the masses. We have heard some truly disgraceful stories from (sic) the way you have been treated."

15. Although the claimants were informed by their own customers of each of the emails of which they now complain, they are unable to say to how many of their customers the original 13 February document was emailed, but rely on the defendants' own claims as a useful indication that 500 emails were sent out. Mr Bray's evidence was that the defendants' email campaign employed an email bulk delivery service known as 'MailChimp'.

16. The claimants next rely on an email sent out by the defendants on 12 March 2014. They complain of the following passages:

> **IS your ReachLocal IMC Telling You That We Are a Disgruntled Ex-Employee?**
>
> ... A lot of you have been asking for information about how to check your ReachLocal dashboard, to see if your marketing budget is being spent as you originally thought.
>
> Q. Where and how can you find this information?
>
> A. It seems you can only see this information by chance...
>
> This is all cleverly hidden using JavaScript...
>
> Q. What about the remainder of your budget?
>
> A. It seems to vanish into the darkness.

17. The next publication relied upon is a press release of which the claimants became aware on 10 March 2014. The press release, which it is asserted had clearly originated from the defendants as a blog post, and which had been provided by them, appeared on the Reuters and Pressat websites. So far as complained of, it reads as follows:

> **ReachLocal – Corporate agency with a dark secret**
>
> ReachLocal, a PPC (Pay Per Click) NASDAQ company, are finally being exposed for their manipulation of Google AdWords guidelines concerning price transparency towards their clients.
>
> It is well known that ReachLocal is one of the UK's largest AdWords' Certified Pay per Click Agencies, but there is a dark side to the agency that is now starting to emerge....
>
> How ReachLocal use loopholes in Google AdWords guidelines: ...
>
> ... ReachLocal cleverly hide this information on their dashboard...
>
> ReachLocal have many claims to fame; one of which being in partnership with Google - only a small number of UK agencies can claim this digital knighthood.... but after speaking with a

> number of different sales representatives ... they all seem to be glorified car salesmen, and there is no real talent and definitely no digital marketing skills...
>
> The fact that this is not well known to the public is a sign that ReachLocal have hidden their tracks well, but after speaking to a number of ex-clients, the time seems to be up on this clever but clearly unethical and deceitful ploy that's been ongoing for many years.
>
> ... it remains that many ReachLocal customers are still in the dark.

18. The claimants also became aware that the defendants were sending further emails to certain of their customers in similar terms to those used in the bulk email shots and on the Reuters and Pressat websites. They rely on seven separate emails sent to named customers between 14 and 24 February 2014. Five of those emails alleged that ReachLocal were conducting a scam; and two suggested that they were providing their customers with false information.

19. The inference invited by the claimants from (inter alia) the nature of the emails and the similarity of their wording is that they must have been sent out to and read by a very large number of the claimants' actual and potential customers resident in the United Kingdom. The inference is also invited in respect of customers resident in Germany and the USA, but since foreign publication is not pleaded, the claim must be taken to be limited to publication in England and Wales. In addition, of course, the claimants rely on the reference in the email set out at [14] above to the defendants having sent out 500 emails in their first shot.

20. However, that is not an end to the libel claim. The claimants also complain of the defendants' action in posting on the fifth defendants' website in March 2014 emails sent by the first defendant on behalf of the fifth defendant to the claimants' solicitors. They rely in particular on an email of 19 March 2014, which was sent in answer to solicitors' correspondence threatening legal action. For present purposes, given the difficulty of reproducing the passages complained of in a manner which gives their correct sense, it is sufficient to gloss the email as alleging that Richard Bray, the first claimant's then country director, had lied to the fifth defendant, was guilty of an offence under Section 2 of the Fraud Act 2006, had acted dishonestly, had made representations which he knew to be untrue and misleading, that he was an 'evil character' who went about committing fraud, knowingly mis-sold to his clients on a daily basis and encouraged his salesmen to do the same, and had knowingly contravened s.2 of the Fraud Act in a 'downright disgraceful' way. There is no personal claim by Mr Bray, but the claimants rely on the allegations against him, as an employee of the first claimant acting in the course of his employment, as reflecting adversely on the claimants also.

Slander

21. There is also a slander claim, founded on telephone calls made to customers of the claimants.

(a) The claimants rely on a voicemail left by the second defendant on 26 February 2014 on one customer's number, in the course of which the following was said:

> "Good afternoon. My name is Craig Anderson. I'm calling in reference to your reach local campaign. Basically it has come to our attention that the company have misrepresented and mis-sold you the current campaign that you are on. We have had this information passed to us from an ex-employee of ReachLocal and basically they're taking more money out of you guys than they are actually spending on the campaign. If you can give me a call back when you get a chance, my name is Craig Anderson. I am a freelance the PC consultant and I'm just basically making people aware of this for ethical reasons basically."

(b) A voicemail was left with another customer, followed by a telephone call on 13 February 2014. In the course of the voicemail, the second defendant said that the claimants were 'scamming' the customer, and that he had already called fifteen other customers of the claimants to tell them the same thing.

(c) Three other telephone calls are pleaded, but no words complained of are set out, so I shall disregard them.

22. There is no doubt that the two calls specifically pleaded were calculated to disparage the claimants – or at least the first claimant – in their business, and are therefore actionable without proof of special damage within s.2, Defamation Act 1952. In fact, of course, there is a substantial special damage claim.

23. The claimants rely on a telephone call made to the second defendant by one of their own marketing consultants on 21 February 2014, who introduced himself as a client of ReachLocal who wanted to know what the second defendant had to say about the claimants. In the course of that call, the second defendant said that he had an old friend who got wind of fraud at ReachLocal so left the business; that the claimants pocketed 60% of the money which they told their customers was being spent on advertising on Google; that all ReachLocal's marketing consultants were in on it; that he was not trying to make anything out of this information, but he was making an ethical call because people were being scammed; however, he did work with associated agencies who would do a fantastic job for the caller, whereas people like ReachLocal were just 'shitting on the little guys'. In the course of that conversation, the second defendant boasted of having contacted 50 companies.

24. Richard Bray's evidence is that in the course of that conversation, which was recorded by the ReachLocal representative and the transcript of which is exhibited to Mr Bray's first witness statement, the person calling himself Craig Anderson said this: 'So I made about 50 companies aware of ReachLocal so far and out of that 50 at least 40 of those have come back to me via email, text message or a call saying thank you very much Jamie. You know this is the way it works you know, this is the problem. Just said his name there, I'm sorry. So yeah, ignore who I just said there'.

As Mr Bray observes, the person calling himself 'Craig Anderson' admitted – before attempting to dig himself out of the error – that his real name was 'Jamie'. It appears, therefore, that the second and first defendants are probably one and the same person, which is the claimants' pleaded case. It is worth noting that the first defendant attended the hearing of the application for interim relief on 28 March 2014, and produced to the court an email sent to the claimants' solicitors that day saying that he was not Craig Anderson. He told Sir David Eady that he would produce a witness statement confirming the substance of his email and what he told the court by 22 April. In the event, he failed to do so.

25. The inference is invited that very similar words will have been spoken in other conversations which the defendants (primarily, no doubt, the first or second defendant) have had with a very large number of the claimants' actual and potential customers by way of a mass telephone campaign.

26. That is not a difficult inference to draw. The first defendant, in particular, has been brazen about his conduct: in answer to a letter dated 21 March 2014 from the claimants' solicitors serving the application for interim relief, he replied saying '... further Jedi attacks will continue, must rush, have a proposal to do for another ReachLocal client'.

27. In an earlier email dated 11 March 2014, he made clear admissions:

> "... your client has left themselves open for attack and it would be foolish of [ReachLocal] to think that they can openly mis sell services and products without retaliation from competitors as is the case in the United States already. The UK is only just waking up the practices of your client and all we are doing is arming the consumer / companies with the knowledge required for them to make an informed decision. There are only 2 ways that the current series of events can go namely we continue to actively target [ReachLocal] clients from the info we have obtained which is in the public domain and hence no legal action can successfully be taken against us or [ReachLocal] comes to a financial arrangement with us whereby we agree to no longer actively target current or future [ReachLocal] clients in return for financial remuneration within the remit of a legal and valid commercial agreement between the 2 parties. We await to hear from you as to what your clients decision will be. In the meantime we will continue to actively target [ReachLocal] clients with the current campaign of mailshots and press releases. Further Jedi attacks are imminent the Force is Strong with this one..."

28. The first defendant, it will be seen, relishes the Star Wars theme. Apart from his Jedi references and the name formed by the initials of the fifth defendant, some of his emails are illustrated with pictures of Star Wars space ships.

29. The evidence of Mr Bray, to whom some of the emails complained of were forwarded by customers, shows that what seems actually to have happened on at least some occasions was that the person calling himself Craig Anderson would first call the

customer, claiming to be an independent 'pay per click' expert who believed in 'ethical business practices', and would tell the customer how it was being 'scammed' by ReachLocal. That call, it appears, would then be followed by an email attaching the pdf. In other words, the campaign of denigration of which the claimants complain was a mixture of telephone calls and emails.

Meaning

30. One four-part meaning is pleaded for all the various publications relied on, all of which are said to be both defamatory and untrue. The untruth of the words complained of is of course presumed in the claimants' favour. However, I note the very full rebuttal of the defendants' claims in Mr Richard Bray's first witness statement, which no doubt persuaded Sir David Eady to grant interim injunctions. Had the defendants given Sir David reason to believe that they were in a position to defend their allegations as true, it is highly unlikely that interim injunctions would have been granted, given that the primary cause of action is defamation: see eg *Bonnard v Perryman* [1891] 2 Ch 269.

31. The meanings pleaded are that the claimants:

(a) operate a business, the success of which has been due to the fraudulent deception of customers;

(b) are prepared to and do engage in practices which are fraudulent or unethical or contain a level of deception or misrepresentation that amounts to 'trickery';

(c) are prepared to and do actively conceal from their customers the truth as to how much money is being applied towards obtaining Google AdWords;

(d) employ people of no talent who have no digital marketing skills.

32. I do not think that I am required, and Mr Singla does not ask me, to consider whether those meanings are apposite, in the sense of being the correct meanings of the words complained of. It seems to me that the claimants are entitled to rely on the judgment and on the terms of CPR 12.11. That may be just as well, because the task of assessing the meaning of a variety of different publications, some of which may have been read or heard by some publishees and others of which may have been read or heard by other publishees, would be a protracted one. However, the claimants' case is that these publications should be seen primarily as a continuum or series of unsolicited publications, because that was the way in which they were sent out to their customers, the object being that every recipient should receive the same message. That case is, of course, established by the judgment, and it does not seem to me that the meaning or meanings pleaded (and, as I believe, established by the judgment) are over-stated. I draw some comfort from the fact that Sir David Eady was prepared to grant interim injunctions in the terms of the pleaded meanings.

Liability of defendants

33. It is pleaded that the first defendant is responsible for the publication of the defamatory statements referred to, but that he is liable jointly with the fourth and fifth

defendants, who should be regarded as joint authors and/or publishers. That is not an entirely straightforward proposition. The pleaded basis of it is that the fourth defendant has never indicated any dissent from the first defendant's wrongs and has refused to provide undertakings, that she is a director of the fifth defendant and must be taken to know of the publication of the first defendant's correspondence with the claimants' solicitors on the fifth defendant's website, and that the first defendant has stated that he acts with the authority and consent of the owners of the fifth defendant. It certainly does appear that the first defendant acts on behalf of the fifth defendant, even though he is not a registered director, but the grounds advanced as regards the fourth defendant do not appear to me to support the contention that she is liable for the publication of the defamatory material. However, it is pleaded in the alternative that the first, fourth and fifth defendants conspired together to use unlawful means, that is to say the pleaded defamatory words, to harm the claimants. Given that pleaded case of – in effect – joint enterprise, for which the claimants already have judgment, it seems to me that the claimants must in principle be entitled to judgment for damages against the first, fourth and fifth defendants jointly and severally, and against the second defendant, if he exists as a separate person from the first defendant.

Second claimant

34. There is a difficulty, although perhaps only a theoretical one, with the position of the second claimant. It is a Netherlands company, and it is the immediate parent of the first claimant. Unlike the first claimant, it does not trade within the jurisdiction. Indeed, I am not clear that it has a function other than as the headquarters and holding company of the European operations of the ReachLocal group. It seems to me perhaps unlikely that anyone to whom any of the written or oral communications complained of was published will have understood those words to refer to the second claimant. That said, it can of course be argued that any defamatory attacks on the ReachLocal business model are likely to have damaging repercussions beyond the immediate impact on the local trading company. But the obvious object of the references to ReachLocal is the first claimant, the entity that traded under that name in the United Kingdom. By virtue of s.1(1), Defamation Act 2013, a statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant; and by s.1(2), harm to the reputation of a body that trades for profit is not 'serious harm' unless it has caused or is likely to cause the body serious financial loss. There is of course a very substantial special damage claim, but it is a special damage claim which flows from publication of words which in my judgment will have been understood to refer primarily to the first claimant, and will have caused damage to the first claimant, rather than to its Netherlands parent company. In the course of his submissions, Mr Singla made clear, very sensibly, that he limited the claim for special damage to the first claimant. But the second claimant has judgment for damages to be assessed, which means such judgment as it appears to the court to be entitled to on the statement of case (CPR 12.11). What is the consequence of the fact that it has judgment? The judgment includes judgment for damages for defamation. It therefore assumes that the second claimant is entitled to damages for the publication of defamatory words, and therefore – because words are no longer defamatory otherwise - that the s.1 serious harm threshold has been passed. Yet but for that judgment, it seems to me that there might be an uphill argument to persuade a court that the threshold had been crossed. It seems to me that the practical (if not

intellectually compelling) solution to this difficulty is to award the second claimant a nominal sum by way of general damages.

Special damages for defamation

35. The claimants' pleaded case is that they have suffered very substantial loss of business and revenue from customers who, having had notice of the defendants' allegations, no longer wish to make use of the claimants' services. As at the date of service of the particulars of claim, 29 customers had informed the first claimant that they were putting an end to their business relationship with them. That figure is now 71.

36. The first claimant's original position, as pleaded, was that the expected loss of monthly revenue from the 29 customers who terminated their business relationship was £503,525, not including future business. There was also a claim for lost revenue from customers who had been ready, or preparing, to commit themselves to contracts with the first claimant; for the lost potential leads that the first claimant expected would have resulted in signed contracts; and the loss of potential customers who would now not consider the business relationship with the first claimant. In addition there was a claim for lost management time spent in investigating and managing the claim.

37. However, the claim has changed with the passage of time, as the true extent of the claimed loss has become clearer. In his fourth witness statement, Mr Bray relied on an immediate loss of revenue as a result of cancelled campaigns of around £430,705, representing a total loss of profit of some £167,730. However, in his fifth witness statement dated 2 October 2014, and in his oral evidence to me, he explained that the figures claimed for immediate loss of revenue were misconceived, because advertisers paid for each advertising cycle upfront. In fact, the figures which had been stated as representing immediate loss of revenue turned out to be no more than an internal accounting mechanism designed to express the total monthly value, in terms of revenue and profit, of each of the cancelled advertising campaigns. Since the campaigns had been paid for in advance, there was in reality no loss under this head.

38. Mr Bray also relied on loss of future revenue and future profit, based on the number of advertising cycles that the customers in question had signed up to but for which they had not yet paid. Customers complete a form called an Insertion Order, in which they state which services and how many advertising cycles they require. They pay for each cycle before it goes live. Mr Bray's evidence was that the loss of future revenue under this head was around £762,845, and the loss of future profit, net of tax, was about £302,432. That figure excluded the future business that the first claimant expected to win by way of renewals, and by way of further services or campaigns sold to them.

39. A spreadsheet was produced as part of the evidence of Mr Bray, which listed the 71 customers who had decided to do no further business with the first claimant. Of those, some 37 were customers who cancelled not merely their current cycle of advertising but also future cycles to which they had committed but for which they had not yet paid. The breakdown of the loss of future revenue and profit is supplied in detail in that spreadsheet, customer by customer, and produces the total sum of £302,431.78.

40. Mr Bray explained that the spreadsheet had been compiled by two members of his client care team, led by the UK operations manager, Stephanie Ford. Their job was to manage customers who wished to cancel or for some reason needed special care. The customers on the spreadsheet had all indicated that they were not happy with ReachLocal, so Mr Bray was involved in the process of trying to persuade them not to cancel their future cycles. The only customers listed on the spreadsheet were those who had been confirmed as cancelling after contact from the second or fifth defendants.

41. Mr Bray gave a number of examples in his written evidence of the circumstances in which these cancellations took place. For example, West London College terminated its campaigns with ReachLocal in these terms, having received emails from the fifth defendant: 'Following our meeting this morning arising from the shocking revelations about your business model, I regret that I have no alternative but to cancel our contracts with ReachLocal'. Other examples given by Mr Bray, all of which specifically identified the defendants' communications as the deciding factor, related to Travel Centre UK, Essex Bi-Fold Doors, Fight City Gym and Fischer Future Heat UK. All of these customers, on Mr Bray's evidence, had previously been satisfied with the first claimant's service.

42. In his oral evidence, Mr Bray was asked what the reasons were for the spreadsheet customers' decisions to leave. He said, with admirable and unhesitating candour, that there were three reasons. One was that they felt harassed by the second or fifth defendants and wished to cancel to avoid further harassment. Another was that they now doubted the first claimant's credibility and the value of dealing with it. They did not want to be associated with a company of bad reputation which might cheat them, and wanted their advertising handled professionally. A third was that they had learned from the first or second defendant that the defendants had obtained a customer list from an internet marketing consultant who had recently left the first claimant, which led them to re-evaluate their contacts with the first claimant out of concern for the security of their business.

43. In other words, all three reasons flowed from contacts which the defendants had with the first claimant's customers, but only one of the three reasons – the second – was one which was caused by the publication of defamatory material.

44. Mr Bray was asked further about this, in an attempt to identify which had been the dominant reason. He gave examples of four customers whom he had contacted directly. One was We Buy Any Home, who believed what they had been told by the defendants and did not want to be associated with a company which was not of good repute. Polani Travel and the Energy Trust had both been concerned for the second reason (being associated with a company of bad reputation, and having lost faith in the first claimant's credibility), but in Polani's case harassment had also been a factor, and in the case of Energy Trust, a further factor had been the issue of confidentiality. By contrast, the London School of Makeup had been more concerned by the harassment factor.

45. Mr Bray explained that the 71 customers listed on the spreadsheet cancelled their commitment to the first claimant during the period February to September 2014. The first claimant's projected revenue for 2014 was £32.25m, based on actual growth in preceding years, but that forecast has now been degraded to £23.60m, mainly as a

result of the loss of clients. Projected figures for earnings before interest, taxes, depreciation and amortisation fell from £4.347m to £510,000. For the month of March, projected revenue was £2.377m, whereas actual revenue was £2.241m; for the month of April, projected revenue was £2.385m against actual revenue of £1.833m. There was no other substantial cause of the customer loss except the activities of the defendants.

46. I have no doubt whatever that the first claimant has suffered very substantial loss as a direct result of the publication of the various defamatory communications complained of. There has clearly been a calculated and cynical campaign against the first claimant by those who act for the fifth defendant, and its success is hardly surprising. I see no reason of principle why the first claimant should not recover the sums lost by reason of the decision of customers not to proceed with cycles of advertising which had been booked but not paid for. The total sum involved, as I have said, is £302,431.78.

47. However, I must make some discount for Mr Bray's candid acceptance that the impact of defamatory communications was only one of three reasons advanced by customers for resiling from their commitments. I accept that harassment and concerns for confidentiality may have potency as factors in that decision, but it seems to me little more than common sense to suppose that loss of confidence in the honesty and trustworthiness of the first claimant will have been the main factor which led customers to make their decision. In my judgment, it is bound to have been the main factor in the great majority of cases. By contrast, concerns about harassment or about confidentiality seem to me, viewed objectively, to be distinctly less likely to have been causative, and perhaps likely to have been mentioned as a tactful way to explain the decision. It is not possible to be precise. Doing the best I can, I propose to discount the sum claimed by a figure of 20% to allow for those customers who decided not to have further dealings with the first claimant for reasons other than loss of trust in the first claimant by reason of defamatory communications. That produces a discounted figure for future loss of £241,945.42.

48. The first claimant also seeks to recover special damages arising from attempts to mitigate its loss. It is trite law that a claimant must take all reasonable steps to mitigate his loss, and that where he does so, he can recover his loss in doing so, even though the resulting damage might be greater than it would otherwise have been had the mitigating steps not been taken: see for instance McGregor on Damages, 19th ed., para 9-04, 9-05.

49. Mr Bray explained to me the steps which the first claimant has taken in mitigation. Firstly, it offered credits totalling £60,728 to customers who were planning to cancel their campaigns in the light of what they had learned from the defendants, to encourage them to stay. Secondly, it gave refunds to very disgruntled customers who had decided to leave ReachLocal, and whose concerns could not be appeased, to ensure that they left 'happily', as he put it: in other words, the object was to minimise their hostility to the first claimant, in the hope that they could be won back in the future. The cost of those refunds was £146,576. Mr Singla argued that the first claimant had a legitimate interest in keeping customers on good terms with a view to winning them back later, and that for it to do so was no more than reasonable mitigation of its loss. Thirdly, the first claimant employed a public relations consultant to manage the damage to the company's reputation caused by the defendant's activities, at a cost over 12 months of £66,600.

50. The authorities show that the standard of reasonableness to which the victim of loss will be held, in seeking to mitigate, is not a high one. I have in mind the remarks of Lord Macmillan in *Banco de Portugal v Waterlow* [1932] AC 452 at 506 (spoken in the context of contract, but equally applicable to tort):

> "Where the sufferer from a breach of contract finds himself in consequence of that breach placed in a position of embarrassment, the measures which he may be driven to adopt in order to extricate himself ought not to be weighed in nice scales at the instance of the party whose breach of contract has occasioned the difficulty. It is often easy after an emergency has passed to criticise the steps which have been taken to meet it, but such criticism does not come well from those who have themselves created the emergency. The law is satisfied if the party placed in a difficult situation by reason of the breach of the duty owed to him has acted reasonably in the adoption of remedial measures and he will not be held disentitled to recover the cost of such measures merely because the party in breach can suggest that other measures less burdensome to him might have been taken."

51. Of course, whether the claimant has in fact acted reasonably is in every case a question of fact, not of law.

52. I have no difficulty in concluding that the sums paid to customers to encourage them to stay, by way of credits, are recoverable as reasonable mitigation. I take the same view of the cost of employing a public relations consultant to undo some of the reputational damage which the first claimant suffered. I am sceptical, however, that the payment of refunds to customers who had made a firm decision to stop doing business with ReachLocal can be characterised as reasonable mitigation of the damage suffered. These were customers who must have been convinced by what they had heard from the defendants, or at least sufficiently concerned by what they had heard, to be unresponsive to the first claimant's attempts to persuade them that they had been misled. There may well be commercial sense in making refunds to such customers: that is not for me to judge. But in my judgment it cannot be characterised as a reasonable step in mitigating the loss which had been caused. It was going to have no effect whatever in mitigation of the loss suffered, at least for the immediate future, and any effect which it was likely to have in the longer term, in terms of softening hearts towards ReachLocal, was almost entirely speculative. I therefore disallow that head, but allow the sums of £60,728 and £66,600.

General damages

53. The principles for assessment of general damages in defamation are well established. An award of general damages for libel serves three functions: first, to act as a consolation to the claimant for the distress and embarrassment which he has suffered from the publication of defamatory words. That does not apply in this case, where the claimants are corporate bodies. Secondly, to compensate for the injury to the claimant's reputation; and thirdly, to act as vindication for his reputation. I bear in mind the overriding principle that, in order to comply with Article 10 of the European

Convention on Human Rights, an award of damages must be proportionate to the legitimate aim of providing vindication.

54. A company stands in a slightly different position from an individual claimant, for it has no feelings to hurt, and it follows that considerations of aggravation which might be relevant if the claimant is an individual do not apply. However, the entitlement of a company to recover general damages was affirmed by the House of Lords in *Jameel v Wall Street Journal* [2007] 1 AC 359. A company's good name is a thing of value, but it can only be hit in its pocket. That is not to say that it may not merit vindication.

55. The need for damages to provide vindication was explained in the case of *Broome v Cassell* [1972] AC 1027 at p.1071 by Lord Hailsham LC who said: "Not merely can (the libel plaintiff) recover the estimated sum of his past and future losses, but, in case the libel, driven underground, emerges from its lurking place at some future date, he must be able to point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charge." In *McLaughlin v Lambeth BC* [2011] EMLR 8 at [112], Tugendhat J observed: "... the main point of defamation proceedings is vindication. Vindication includes preventing, or reducing the risk of, future publications of the words complained of. The fact that the damage suffered so far may be small (if it is), is no indication of the extent of the damage which is prevented from occurring in the future, when a claimant in a libel action obtains a public retraction or a judgment in his favour from the court."

56. A reasoned judgment may provide some degree of vindication: see *Purnell v Business Magazine Ltd* [2008] 1 WLR 1. Laws LJ, who gave the main judgment, held that a prior narrative judgment rejecting a defence of justification was capable of providing some vindication of a claimant's reputation, but that there were also cases where the judgment would provide no or no significant or reckonable vindication, such as where a defence of justification has been struck out and no consideration has been given to the merits. Here I am assessing damages following a judgment entered in default. Given that this is not a contested decision on the merits, it seems to me that the effect on damages of any vindication in this judgment must be marginal.

57. I bear in mind that the very size of the special damage award in this case is likely to provide some measure of vindication. But the fact remains that any award of general damages should be sufficient to enable the claimants to counter the defendants' campaign and show beyond argument to those who operate in their area of business that the allegations made against them are baseless.

58. Factors which may be relevant to the level of general damages include the gravity of the allegation, especially insofar as it closely touches the claimants' business reputation, and the extent of publication, especially where the publishees are primarily customers of the claimants or at least people professionally interested in the claimants' field of operation (see eg *John v MGN* [1997] QB 586 at 607). In *Jones v Pollard* [1997] EMLR 233, Hirst LJ referred to the objective features of the libel itself, such as its gravity, its prominence, the circulation of the medium in which it was published, and any repetition.

59. In this case, the defendants have orchestrated a sustained campaign of denigration directed at the business of ReachLocal, which in practical terms means the business of the first claimant. That campaign has been directed particularly at the customers of the

first claimant, whose names and addresses and contact details have been obtained from a customer list removed from the first claimant in breach of confidence and passed to the defendants. It is that aspect of publication which has no doubt led to the special damage which has been suffered.

60. However, this campaign has not been limited to the first claimant's customers. It has also involved the use of press releases and the fifth defendant's own website. A further factor in the damage to reputation on which the claimants rely is the dissemination of the material complained of by the use of social media sites. This is not pleaded in the Particulars of Claim, no doubt because it has developed over the months since the pleading was served, but it is clearly set out in the evidence, and I see no reason why I should not take account of it. It is notorious that it is very difficult to take defamatory internet campaigns completely out of the public arena, which was a point which Tugendhat J picked up in *Clarke v Bain* [2008] EWHC 2636 (QB) at [55], referring to a Guardian article which described material which reaches the internet as being as ineradicable as a tattoo. Such campaigns can easily go viral: that also is a legitimate factor to take into account in assessing damages (see *Cairns v Modi* [2013] 1 WLR 1015 at [27]).

61. It is Mr Bray's evidence that the fifth defendant has published a series of tweets on its Twitter page, to the effect that ReachLocal is engaged in dishonest and deceptive practices and is scamming its customers. The audience for these tweets will include all the followers of the fifth defendant's Twitter page, which amounts to 3,780 Twitter users. It seems unlikely, perhaps, that many people would follow the Twitter page of the fifth defendant unless they were professionally engaged in, or interested in, digital marketing. According to Mr Bray, the fifth defendant has also sent tweets about the claimants to other Twitter accounts, including two controlled by ReachLocal (@ReachLocalUK and @ReachLocal), which have some 7,300 followers. One account to which the fifth defendant has sent its tweets is that of one Ian Puddick, who has 90,000 followers. It also 'retweets' and 'favourites' material published on its own Twitter page. Similarly, according to Mr Bray, it has attracted attention to material on its Twitter page by the use of hashtags, and in particular #SearchWars, which is a topic with a very large readership concerned with broader issues of competition between search engines. The use of that hashtag will bring more readers to the fifth defendant's website. Similarly, the fifth defendant has used its Facebook page and its LinkedIn page to publish material identical or similar to that complained of.

62. The gravity of the allegations is of course a matter of the greatest importance in the assessment of general damages. They are without doubt very serious allegations of grave dishonesty which strike at the heart of the first claimant's business credibility. I take into account also the cynical and hypocritical claim that the allegations were being made out of a sense of high ethical purpose, whereas in reality they were plainly designed simply to enable the defendants to steal the claimants' customers. In my judgment the use of that tactic is likely to have made the allegations the more persuasive and convincing.

63. It is relevant also to note that the first claimant is not a long-established business. It was only incorporated in the UK in 2008, and it operates in a very new field. To borrow the words of Andrew Smith J in *Jon Richard Ltd v Gornall* [2013] EWHC 1357 (QB), "It is not a business that has yet had the opportunity to build up for

generations an established standing associated with integrity from which those with whom it is dealing would immediately recognise that any wrongdoing was entirely uncharacteristic of it. In that sense, it was vulnerable, perhaps, to this sort of attack."

64. Ultimately, I have to approach the question of damages in the same way as a jury would, giving a verdict without a reasoned judgment. Doing the best I can, and taking into account all the matters to which I have referred, it seems to me that the right award of general damages in the case of the first claimant is one of £75,000. In the case of the second claimant, which has never traded in this country, I make a nominal award of £100. I stress that the reason for that discrepancy is simply that the words complained of will primarily have damaged the trading reputation of the ReachLocal company which trades in this jurisdiction, namely the first claimant.

65. As I have said, I am asked to assess damages only in relation to the defamation claim. I therefore say nothing of the claim in malicious falsehood, which essentially duplicates the case in defamation.

66. The first claimant is entitled to a final injunction in defamation in the terms sought in the draft order, which replicates the terms of the interim injunctions ordered by Sir David Eady. I wish to hear argument on the position of the second claimant, in the light of my conclusions. As for the claims in breach of contract and in confidence, the first claimant is plainly entitled to final injunctions, although the exact terms will have to be finalised when this judgment is handed down. As for interest, there is of course no interest on general damages for defamation, and as far as the special damages are concerned, Mr Singla sensibly disavows the pleaded claim for interest, because of the difficulty of knowing when the loss will have accrued, a question which depends on the timings of cycles of advertising.

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