IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

Claim no. CL-2018-000631

BETWEEN:

SDI RETAIL SERVICES LIMITED

Claimant

-and-

THE RANGERS FOOTBALL CLUB LIMITED

Defendant

RE-AMENDED REPLY AND AMENDED DEFENCE TO COUNTERCLAIM

RE-AMENDED REPLY

Introduction

1. Unless otherwise stated, in this Re-Amended Reply (the "**Reply**"):

   (1) References to paragraph numbers are references to paragraphs so numbered in the Re-Amended Defence dated ~~2 October 2018~~ ~~25 January 2019~~ 29 November 2019 (the "**Defence**").

   (2) Definitions in the Re-Amended Particulars of Claim (the "**Particulars of Claim**") are adopted and used herein.

2. Save insofar as the same consists of admissions, accurately refers to provisions of the Agreement or any other contract, accurately characterises prior proceedings between the parties, or accurately refers to communications between the parties and/or their solicitors, SDIR joins issue with Rangers on its Defence.

3. In view of the ~~very limited time between~~ length of the Defence ~~and the Reply (both as originally served and amended)~~, this Reply is confined to addressing certain new points

of construction, law or fact alleged in the Defence. No inferences should be drawn where SDIR does not plead herein to a point raised in the Defence.

Construction of the Agreement

3A. ~~Save that~~ As to paragraph 4A, it is admitted that the definition of "Permitted Activities" did not include "manufacturing"~~, paragraph 4A is denied. The intention of the parties is to be determined by construing the written terms of the Agreement. The terms of the Agreement contemplated SDIR carrying out both retail activities and other activities (expressly including "distributing") both during the Term (being the Initial Term and any Renewal period) and under further agreements entered into pursuant to the matching provisions of the Agreement. SDIR will refer to and rely upon the terms of the Agreement for their true meaning and effect.~~

3B. ~~As to paragraph 4B:~~

~~(1) Paragraph 4B.1 is denied. The allegation of knowledge in paragraph 4B.1 is not properly particularised, and is, in any event, inadmissible as an aid to interpretation, being an apparent allegation of the subjective understandings of the parties as to the meaning of the Agreement. The first and second sentences of paragraph 3A above are repeated.~~

~~(2) As to paragraph 4B.2, it is denied that SDIR was or is a discount retailer. At all relevant times, SDIR has been part of the wider Sports Direct group, which includes a range of companies including retailers and sportswear and kit manufacturers (such as, by way of example, Sondico, Slazenger, Lonsdale and Everlast). SDIR's primary activity and purpose is to hold, exercise and perform contractual rights and obligations under the Agreement (and any further agreement entered into in accordance with the terms of the Agreement) including through other members of the Sports Direct group and third parties.~~

~~(3) As to paragraph 4B.3, it is admitted that, pursuant to the Puma Agreement, Puma was, at the time the Agreement was entered into, the exclusive manufacturer of Rangers Replica Kit and certain other products. It is admitted and averred that the Puma Agreement also gave Puma rights to distribute, promote, market, advertise and sell (including in retail stores) the Puma~~

Licensed Products, which included Replica Kit. SDIR will refer to and rely upon the full terms of the Puma Agreement for their true meaning and effect.

(4) The first sentence of paragraph 4B.4 is admitted. The second sentence of paragraph 4B.4 is not properly particularised, however it is admitted that Puma was referred to in clause 5 of the Agreement.

(5) As to paragraph 4B.5:

(a) It is admitted that the Puma Agreement contained a matching right in favour of Puma. As already stated, the Puma Agreement gave Puma rights to distribute, promote, market, advertise and sell (including in retail stores) the Puma Licensed Products, which included Replica Kit. These rights overlapped significantly with the Permitted Activities under the Agreement.

(b) Accordingly, an offer by a third party to carry out such activities (even if only in relation to retail activities as wrongly contended by Rangers) would have engaged the matching right of Puma under the Puma Agreement as well as SDIR's Matching Right.

(c) Further, any extension of the Puma Agreement would have engaged SDIR's Matching Right (even if, as Rangers wrongly contends, SDIR's Permitted Activities had been limited to retail activities).

(d) In the premises, the suggestion implicit in paragraph 4B.5 that there would have been a "clash" between the two agreements on SDIR's case but not on Rangers' case is denied.

(6) As to paragraph 4B.6, it is admitted that there was no separate agreement between the parties as described in paragraph 4B.6. SDIR will rely on the terms of SDIR's Matching Right for their true meaning and effect.

(7) As to paragraph 4B.7 (and the sub-paragraphs thereto) and 4B.8:

(a) The second and third sentences of paragraph 3A above are repeated.

(b) The alleged common understanding and agreement are not properly particularised. It is in any event denied that any such common understanding existed or that any such agreement was entered into.

(c) It is denied that the negotiations, pre-contractual discussions and subjective assumptions or understanding of the parties are relevant or admissible as an aid to the interpretation of the Agreement.

(d) Sub-paragraph 4B.7.2 is not properly particularised as Rangers has failed to identify what aspects of the negotiations are said to "*demonstrate that the parties had a common understanding of the meaning of the words "Permitted Activities"*" and have failed to refer to the individual persons said to have held such understanding, the basis on which such an understanding is said to have come to be held, and any communications by which such understanding is said to have been communicated or shared between the parties. The allegation is in any event denied.

(e) The communications and conduct alleged in sub-paragraph 4B.7.3 are not properly particularised and are in any event denied.

(f) The estoppel by convention alleged in sub-paragraph 4B.7.3 is not properly particularised and is denied.

(g) It is denied in any event that the alleged common assumption would be capable in law of giving rise to an estoppel by convention, in particular it is denied that it would be unconscionable or unjust for SDIR to exercise its Matching Right to match offers relating to Offered Rights or connected commercial arrangements in accordance with the terms of the Agreement.

(h) The implied terms contended for in paragraphs 4B.7.4 and 4B.8 are inadequately particularised, and in any event are denied. Without prejudice to the foregoing, such terms: (a) would not be reasonable or equitable; (b) would not be necessary to give business efficacy to the contract (the contract is effective without it); (c) are not obvious and

did not "go without saying"; (d) are not capable of clear expression; and (e) are inconsistent with the express terms of the contract (as made clear by Rangers' allegation that SDIR's Matching Right must be read down as a result of such implied terms).

(i) SDIR will also rely on Clause 18.1 of the Agreement, which provided that the Agreement constituted the "*entire agreement between the parties*" and that it superseded "*all previous agreements, arrangements, understandings or proposals (whether written or oral) of any nature between the parties relating to the subject matter of this Agreement.*"

(j) It is denied that SDIR has not acted in good faith.

(k) It is admitted that as alleged in paragraph 4B.7.4:

i. the Agreement granted to SDIR "*the licence to distribute and for the supply of branded goods*";

ii. the Agreement was entered into in the context of a settlement agreement (which was entered into at the same time as the Agreement); and that

iii. the settlement agreement sought to avoid future fan boycotts, in particular it is averred that it sought to do so by requiring Rangers and Mr King (Chairman of Rangers International Football Club Plc) not to make any statement which encouraged or supported such a boycott.

(l) As to the penultimate sentence of paragraph 4B.7, the allegation that SDIR's conduct, in seeking to enforce the express terms of the Agreement, is "*calculated to frustrate for the purpose of the contract and/or vex Rangers*" is embarrassing for want of particularity, and should be withdrawn. Such allegation is, in any event, denied.

(m) Save as aforesaid, paragraph 4B.7 is denied.

(8) In the premises, it is denied that any of the circumstances alleged in paragraphs 4B.1 to 4B.7 support or demonstrate the interpretation of the Agreement contended for by Rangers. SDIR will refer to and rely upon the terms of the Agreement for their true meaning and effect.

4. As to paragraph 15:

(1) It is denied that it is "*commercially absurd*" that SDIR, having matched rights within an Offered Right, retains the right to match an offer made to Rangers by a third party in respect of rights falling within the same Offered Right.

(2) If (as Rangers asserts, which is denied) SDIR no longer has a Matching Right in respect of non-exclusive rights within an Offered Right that it has already matched (on a non-exclusive basis), Rangers would be able immediately to undercut the rights granted to SDIR by granting the same non-exclusvie rights to a third party on much more beneficial terms.

(3) This would not make commercial sense, as SDIR's Matching Right would not have value or its value would be substantially diminished in respect of an Offered Right offered on a non-exclusive basis.

(4) As to the last two sentences of paragraph 15, Rangers' argument that a right "*cannot be acquired a second time*" is specious. SDIR's right to match an Offered Right is a right to match an Offered Right on the Material Terms (as defined in paragraphs 5.3.1, 5.3.2 and 5.3.3). Self evidently, those Material Terms may be different even in respect of identical non-exclusive rights.

5. As to paragraph 17:

(1) As to the allegations in paragraphs 17.1 and 17.3 that to acquire "*the same right for a second time*" would be "*commercially meaningless and absurd*" and that the right repeatedly to match offers of third parties to acquire the same non-exclusive right would be "*devoid of content and commercially absurd*", paragraph 4 above is repeated.

(2) As to the second sentence of paragraph 17.2, Rangers' power to grant Offered Rights on a non-exclusive basis, including where SDIR already holds similar

non-exclusive rights to those Offered Rights, is subject to Rangers complying with the provisions of paragraph 5 of Schedule 3.

(3) As to paragraph 17.5, it is admitted that the proposed draft of the further agreement attached to the letter of RPC to Mills & Reeve dated 20 August 2018 included provisions in the same terms as clauses 3.3, 13.2 and the third recital of the Agreement. It is denied, if it be alleged, that any further agreement pursuant to paragraph 5.7 would necessarily include such provisions.

(4) Paragraph 17.7 is denied.

(a) It is averred that it is not a proper pleading to say that the effect of any construction of paragraph 5.8 other than Rangers' construction would mean that paragraph 5.8 would be unenforcable at common law as a restraint of trade. The construction said to have such effect should be specifically identified.

(b) Without prejudice to paragraph 5(4)(a) above, SDIR understands Rangers to make an unparticularised allegation that a grant by Rangers of exclusive rights to perform the Permitted Activities in relation to the Branded Products, Replica Kit and Additional Products would be unenforceable at common law as a restraint of trade. If that be alleged, it is denied:

(i) It is averred that such a grant would not engage the doctrine of restraint of trade;

(ii) Alternatively, if the doctrine of restraint of trade is engaged, such grant would protect a legitimate business interest, would be necessary to protect such an interest and would not be contrary to the public interest.

(5) Paragraph 17.8 is denied.

(a) It is averred that it is not a proper pleading to say that the effect of any construction of paragraph 5.8 other than Rangers' construction would mean that paragraph 5.8 would be void and unenforcable as an anti-

competitive agreement contrary to s 2 of the Competition Act 1998. The construction said to have such effect should be specifically identified.

(b) Without prejudice to paragraph 5(5)(a) above, SDIR understands Rangers to make an unparticularised allegation that a grant by Rangers of exclusive rights to perform the Permitted Activities in relation to the Branded Products, Replica Kit and Additional Products would be void and unenforcable as an anti-competitive agreement contrary to s 2 of the Competition Act 1998. If that be alleged, it is denied:

(i) It is averred that such a grant would not be caught by the prohibition in s 2(1) of the Competition Act 1998;

(ii) Alternatively, to the extent that such a grant would be caught by the prohibition in s 2(1) of the Competition Act 1998, it would benefit from an exemption.

Breach of the Agreement

6. As to paragraph 34:

(1) As to paragraph 34.1, it is admitted that the letter dated 3 August 2018 from Mills & Reeve to RPC enclosed a draft further agreement. It is denied that the draft further agreement complied with the provisions of paragraph 5 of Schedule 3.

(2) As to paragraph 34.2:

(a) It is denied that SDIR's conduct has been unreasonable or dilatory.

(b) It is averred that the draft further agreements put forward by Mills & Reeve in letters dated 3 August 2018 and 23 August 2018 do not comply with paragraph 5.7.

(c) Paragraph 34.2(c) is denied. SDIR reserves the right to plead further should Rangers particularise its case as to the Material Terms allegedly not included in the draft further agreement sent under cover of RPC's letter dated 20 August 2018.

7. As to paragraph 35.1, it is specifically denied that "*Rangers was unable to procure the sale of Rangers merchandise*".

   (1) Had Rangers acknowledged and/or agreed the terms of the further agreement between the parties, Rangers could have procured the sale of Rangers merchandise through SDIR.

   (2) Further, SDIR had repeatedly requested to be supplied with Rangers Replica Kit in a series of emails between RPC and James Blair, Rangers' Group Counsel and Company Secretary, between 17 July 2018 and 7 September 2018. Mr Blair, on behalf of Rangers, repeatedly refused to make Replica Kit available to SDIR.

~~7A. As to the second and third sentences of paragraph 34E, SDIR contends that the rights to manufacture granted to Elite (alternatively Elite and Hummel), and the appointment of Hummel as Technical Brand, constituted "connected commercial arrangements" in that such rights were not themselves Offered Rights or terms specifying the performance of Offered Rights and were granted by Rangers as part of the same overall commercial arrangement by which Rangers granted Offered Rights to Elite/Hummel. SDIR will refer to and rely upon the terms of the Agreement for their true meaning and effect.~~

~~7B. As to the estoppels alleged in paragraphs 34E and 34G:~~

~~(1) The estoppel allegations are not properly particularised and are in any event denied.~~

~~(2) It is further denied that SDIR's allegations are made in bad faith or in breach of the Agreement.~~

~~(3) It is denied that SDIR had neither the intention nor ability to match and then perform the rights to manufacture and supply the Replica Kit or other products. In particular, as a result of Rangers' breach of the Matching Right provisions, SDIR was denied the opportunity to exercise its rights to match. Had a compliant Notice of Offer been served, SDIR would have been interested and able to acquire and perform rights to manufacture and supply the Replica Kit and other products that were the subject of the Elite/Hummel Agreement. SDIR had the ability to do so either through entering into contractual arrangements with other members of the~~

~~Sports Direct group, or with third parties. Paragraph 31B(2) above is repeated. SDIR would have considered the terms of a compliant Notice of Offer, had one been served, and would have exercised its matching rights if it considered the terms acceptable.~~

~~7C.In paragraph 44A, Rangers denies having breached paragraph 5 of Schedule 3 of the Agreement by entering into the Elite Retail Units Agreement. This is inconsistent with the admission in paragraph 41A.1 that the Elite Retail Units Agreement was entered into in breach of paragraph 5 of Schedule 3. SDIR understands Rangers to admit the breach.~~

7ZA. As to paragraph 41ZA.2:

(1) The paragraph misunderstands the pleading in the Particulars of Claim, which does not specify the sub-paragraph of paragraph 5 of Schedule 3 to the Further Agreement that Rangers breached.

(2) For the avoidance of doubt, SDIR alleges that Rangers breached paragraph 5.11 of Schedule 3 to the Further Agreement, on the basis set out in paragraph 41ZA.2(d), save that SDIR does not understand what Rangers means by "*would have breached the Further Agreement*" given the admission of breach at paragraph 41ZA.1.

(3) Further, SDIR alleges that Rangers breached paragraph 5.2 of Schedule 3 to the Further Agreement by failing to provide a Notice of Offer in respect of the Elite Non-Exclusive Rights Agreement. It is denied, if it be alleged, that paragraph 5.2 only applies where the Third Party Offer is made in the period 6 months prior to the expiry of the Initial Term.

Causation, loss and damage

7ZB. As to paragraph 43C:

(1) As to paragraph 43C.1(a), it is specifically denied that success in the kit tender would not influence the likelihood of success in the other.

(2) As to paragraph 43C.1(b), it is admitted that by 23 January 2018 Rangers had contacted 12 potential kit brands as potential manufacturers and suppliers of kit.

(3) As to paragraph 43C.1(d), it is admitted that by 6 March 2018, Mr Steedman considered Dryworld, Macron, Hummel and Fanatics to represent the four best offers.

(4) The first sentence of paragraph 43C.1(e) is admitted. It is denied, if it be alleged, that the Macron offer was discussed by Rangers' board, which was presented with a shortlist of three offers (Dryworld, Hummel and Fanatics). It is admitted that Mr Steedman told Macron that its condition of including retail within its proposal was the main reason for Rangers' deciding on an alternative partner.

(5) Paragraph 43C.1(f) is admitted, save that no admission is made as to Mr Steedman's status as a consultant for Rangers. SDIR understands Mr Steedman to have been, at the relevant time, Rangers' Commercial Director.

(6) Paragraph 43.1(g) is not admitted. Mr Robertson's contemporaneous email says "*It is clear that Fanatics see the profitable deal being the retail deal as opposed to the kit deal.*" It does not say that he was told that by the managing director of Fanatics.

(7) Paragraphs 43.1(h)-(i) are admitted.

(8) As to paragraph 43C.1(j), it is admitted that Rangers announced on 20 April 2018 that Hummel had been appointed as its "*new technical kit supplier*". It is denied that the announcement said that Hummel was the kit manufacturer.

(9) As to paragraph 43C.1(k):

(a) It is admitted that Elite, Fanatics and JD Sports engaged in discussions with Rangers as part of the retail tender exercise.

(b) So far as SDIR is presently aware from the disclosure given by Rangers for the Speedy Trial, neither Fanatics nor JD Sports ever made a confirmed offer in respect of the retail tender, as they required a much lower wholesale price, which Elite/Hummel would not agree.

(c) Elite's proposal was the only confirmed offer in respect of the retail tender. That was directly related to the wholesale price set in the Elite/Hummel Agreement.

(d) In the premises, it is specifically denied that Rangers' selection of Elite's proposal was unrelated to the outcome of the kit tender.

(10) As to paragraph 43C.1(l):

(a) On 29 May 2018, Rangers provided to Elite an offer letter, drafted by Mr Blair for Rangers, in Elite's name.

(b) On 31 May 2018, Elite re-sent that offer letter to Rangers, as a formal offer.

(c) Paragraphs 16 to 20 of the Particulars of Claim are repeated, as to the subsequent Purported Notice of Offer, the July Notice, and SDIR's matching.

Deceit

7ZC. As to paragraph 43F:

(1) As to paragraph 43F.11(d), it is denied that SDIR knew by no later than 20 July 2018 that under the Elite/Hummel Agreement Rangers had granted an exclusive right to wholesale kit. As to the reasons set out in paragraph 43G and its sub-paragraphs, see paragraph 7ZD below.

(2) As to paragraph 43F.12(c), it is denied that SDIR could only have obtained the injunctive relief described in paragraph 31E(8)(b) of the Particulars of Claim after trial. It could have been obtained as interim injunctive relief. In any event, as to Rangers' noting of the time period between the claims brought in respect of the Elite/Hummel Agreement in these proceedings and the Order of 19 July 2019, it is denied that this is a relevant comparator. Had the claims been brought in or around May 2018, they would have been more urgent, as they would have affected the basis for Rangers' retail tender, and thus for SDIR's exercise of its Matching Right or right to renew the Agreement.

(3) As to paragraph 43F.12(i)2, SDIR will say that Rangers is not entitled to rely on its own breach of contract for the purpose of assessing damages, as it does by averring that Elite would have entered into the September 2018 Agreements.

7ZD. As to paragraph 43G:

(1) Paragraphs 43G.5 and 43G.6 implicitly assert that the first supply (or delivery) by a manufacturer must be made pursuant to a right of wholesale supply. That is incorrect.

(2) As to paragraph 43G.10(a):

(a) It is specifically denied that Rangers' letter dated 20 July 2018 made it clear to SDIR that anyone who wished to obtain kit to sell on a retail basis would need to obtain it from the manufacturer:

i. The July Notice (of which the 20 July 2018 letter purportedly provided clarification and further information), provided at paragraph 7 in respect of Offered Right 3 that the third party offeror would ensure that the full range of products made available under the appointment would be made available to all high street retailers in the UK, and that there would be a fair allocation of supply of products between all orders received by the third party offeror from retailers.

ii. It was clear to SDIR that retailers other than the third party offeror (or SDIR, if it matched) would obtain products from the third party offeror (or SDIR, if it matched).

iii. As set out at paragraph 31F(1)(a) of the Particulars of Claim, SDIR's question at paragraph 16 of its letter dated 17 July 2018 made clear that it was asking about the offeror's obligations in relation to wholesale distribution and supply.

(b) In the premises, it is denied that Rangers' 20 July 2018 letter made it clear that an exclusive right to wholesale Replica Kit had been granted to the kit manufacturer.

(c) In the premises, the penultimate sentence and the first four words of the final sentence of paragraph 43G.10(a) are denied.

(3) As to paragraph 43G.12(b):

(a) For the reasons set out in paragraphs 7ZD(1)-(2) above, it is specifically denied that no reasonable person in SDIR's position could have reasonably believed that no exclusive right to wholesale Replica Kit had been granted by Rangers under the Elite/Hummel Agreement. That is what paragraph 16.1 of Rangers' letter dated 20 July 2018 said.

(b) For the reasons set out in paragraphs 7ZD(1)-(2) above, the final sentence of paragraph 43G.12(b) is denied.

Rangers' failures to supply or procure the supply of Replica Kit

7ZE. As to paragraph 43I.2:

(1) Rangers' construction of clause 5.1 of the Agreement at paragraph 42I.2(a) is denied. After the expiry of Rangers' agreement with Puma, Rangers had the ability to manufacture kit itself or to arrange for its manufacture. If Rangers chose to contract with a third party for the manufacture of kit, Rangers could stipulate provisions that would allow it to supply or procure the supply of kit to SDIR. If Rangers chose not to stipulate such provisions, that was at its own risk.

(2) Rangers' alternative implied term at paragraph 42I.2(b) is denied. It is not obvious, including for the reasons set out at paragraph 7ZE(1) above.

(3) Without prejudice to SDIR's denial of Rangers' interpretation of clause 5.1, Rangers is put to strict proof that it did use reasonable endeavours or take reasonable steps to supply or procure the supply of the kit ordered in the 17 July 2018 Order. It is noted that Rangers has not pleaded any reasonable endeavours or reasonable steps that it undertook to supply or procure the supply of the kit ordered in the 17 July 2018 Order.

(4) Rangers suggests at paragraph 43I.2(e) that SDIR was unwilling to pay the actual wholesale price of purchase of the kit ordered in the 17 July 2018 Order. This is not correct. In particular:

(a) SDIR will say that the "*actual wholesale price of purchase of such Replica Kit paid to Puma (and/or Ranger's replacement supplier of the Replica Kit from time to time)*" could not be higher than the actual price paid to Elite by other retailers for stock ordered in comparable quantities for delivery on similar dates. In particular, the actual wholesale price would be expected to decline the later in the season that any such Replica Kit is supplied, because of the expected discounting of the retail price of such kit in the later parts of the season.

(b) SDIR was always willing to pay the actual wholesale price of purchase of Replica Kit paid to Elite, as properly construed in the first sentence of paragraph 7ZE(4)(a) above, while reserving its position with respect to damages against Rangers. In particular:

i. On the basis of SDIR's current knowledge, JD Sports paid £27 for an adult Replica Kit shirt for the 2018/2019 season supplied in time for the retail launch of the 2018/2019 Replica Kit.

ii. While reserving its position with respect to damages against Rangers, SDIR would have been willing to pay £27 for an adult Replica Kit shirt for the 2018/2019 season supplied in time for the retail launch of the 2018/2019 Replica Kit.

(c) If (contrary to SDIR's primary case) the actual wholesale price of purchase of such Replica Kit paid to Elite was the price set out in the Elite/Hummel Agreement (at least in respect of the items for which a price was set out in the Elite Hummel Agreement), SDIR would have been willing to pay those prices for 2018/2019 Replica Kit supplied in time for the retail launch of the 2018/2019 Replica Kit, while reserving its position with respect to damages against Rangers. In particular:

i. While reserving its position with respect to damages against Rangers, SDIR would have been willing to pay £27.50 for a adult's Replica Kit shirt for the 2018/2019 season supplied in time for the retail launch of the 2018/2019 Replica Kit.

ii. While reserving its position with respect to damages against Rangers, SDIR would have been willing to pay £23.50 for a child's Replica Kit shirt for the 2018/2019 season supplied in time for the retail launch of the 2018/2019 Replica Kit.

(d) SDIR was never told when Elite could in fact fulfil the 17 July 2018 Order.

(e) SDIR was never supplied with prices for other items in its 17 July 2018 Order, including socks, Mini Kits and Baby Kits.

7ZF. Paragraph 43J.1 is noted. Following Sir Ross Cranston's judgment, and until 23 May 2019, when Lionel Persey QC, sitting as a Judge of the High Court, issued his Ruling of that date, Rangers' position was that the obligations and rights under the Further Agreement would be effective from the date on which the parties executed the Further Agreement.

7ZG. As to Paragraph 43L:

(1) Rangers pleads a significant amount of correspondence between the parties. SDIR will rely on the full terms of that correspondence.

(2) Paragraph 43L.7 is admitted.

(3) Rangers is put to strict proof that Elite's "*standard terms of supply*", referred to in paragraph 43L.8, were Elite's standard terms, i.e. the terms Elite contracted on with other buyers of replica kit.

7ZH. As to Paragraph 43M:

(1) As to paragraph 43M.1(a), it is denied that SDIR was unwilling to pay the actual wholesale price of purchase of the kit ordered in the 30 April 2019 Order. In particular:

(a) Paragraph 7ZE(4)(a) above is repeated.

(b) SDIR was always willing to pay the actual wholesale price of purchase of Replica Kit paid to Elite, as properly construed in the first sentence of paragraph 7ZE(4)(a) above, while reserving its position with respect to damages against Rangers. In particular:

i. On the basis of SDIR's current knowledge, JD Sports paid £27 for an adult Replica Kit shirt for the 2019/2020 season supplied in time for the retail launch of the 2019/2020 Replica Kit.

ii. While reserving its position with respect to damages against Rangers, SDIR would have been willing to pay £27 for an adult Replica Kit shirt for the 2019/2020 season supplied in time for the retail launch of the 2019/2020 Replica Kit.

(c) If (contrary to SDIR's primary case) the actual wholesale price of purchase of such Replica Kit paid to Elite was the price set out in the Elite/Hummel Agreement (at least in respect of the items for which a price was set out in the Elite Hummel Agreement), SDIR would have been willing to pay those prices for 2019/2020 Replica Kit supplied in time for the retail launch of the 2019/2020 Replica Kit, while reserving its position with respect to damages against Rangers. In particular:

i. While reserving its position with respect to damages against Rangers, SDIR would have been willing to pay £27.50 for an adult's Replica Kit shirt for the 2019/2020 season supplied in time for the retail launch of the 2019/2020 Replica Kit.

ii. While reserving its position with respect to damages against Rangers, SDIR would have been willing to pay £23.50 for a child's Replica Kit shirt for the 2019/2020 season supplied in time for the retail launch of the 2019/2020 Replica Kit.

(d) SDIR was never told when Elite could in fact fulfil the 30 April 2019 Order, or any additional orders that SDIR wanted to make.

(e) SDIR was never supplied with prices for other items in its 30 April 2019 Order, including socks, Mini Kits and Baby Kits.

(2) As to paragraph 43M.1(b), without prejudice to SDIR's denial of Rangers' interpretation of clause 5.1, it is denied that Rangers used reasonable endeavours or took reasonable steps to supply or procure the supply of the kit ordered in the 30 April 2019 Order. SDIR will say that Rangers sought to delay any supply of kit to SDIR, so that SDIR would not have any 2019/2020 Replica Kit to retail at its launch. SDIR will rely on the following, by way of example:

(a) After the 30 April 2019 Order, Rangers failed to supply Elite's purported standard terms of supply until 29 May 2019.

(b) On 30 April 2019, SDIR asked, by RPC's email of that date, for confirmation of the purchase price. Rangers did not confirm the (purported) actual wholesale price until 25 June 2019, when Mr Blair's email of that date stated that the price was as set out in the Elite/Hummel Agreement.

(c) Rangers did not provide prices for any items of Replica Kit other than adult Replica Kit shirts and child Replica Kit shirts, which are the prices set out in the Elite/Hummel Agreement.

(d) Rangers never provided lead times between order and delivery, the launch dates for the Rangers away and third Replica Kits, and never provided the total number of each of the Replica Kit home, away and third kits that had been allocated by Elite to itself. SDIR asked for all of this information (among other information) in RPC's email of 20 June 2019.

(3) As to paragraph 43M.2, it is denied that SDIR caused any loss it suffered as a result of the alleged breaches and/or failed to mitigate such loss. It was not provided with the prices for a number of items of Replica Kit that it wished to order. It would not have been reasonable for SDIR to commit to an unknown price, or to a specific price in the absence of information about when an order would be delivered, which information was never provided.

Loss and damage

7ZI. As to the allegations in paragraphs 43P.1(a) and 43P.2(c) that many Rangers supporters would not have bought products from SDIR, any member of the Sports Direct group or any entity they perceived as being connected to Mike Ashley:

(1) SDIR will say that, in assessing what revenues it would have made, it must be assumed that Rangers would have complied with its obligations at clause 18.8 of the Agreement and clause 18.8 of the Further Agreement, which in each case provides that: "*The parties shall work together to promote the commercial arrangements set out within this Agreement and shall not issue or support any statement or course of action that promotes or encourages (directly or indirectly) a public boycott of the Branded Products and/or Additional Products.*"

(2) Further, SDIR will say that, in assessing what revenues it would have made, it must be assumed that Rangers, its parent company Rangers International Football Club plc ("RIFC"), Dave King and Paul Murray would have complied with their obligations at clause 8 of the Deed of Settlement and Release dated 21 June 2017 (the "Settlement Deed").

(3) Those obligations include:

(a) "*The Parties shall not, and shall procure that their Associates (or any of them) shall not make or cause to be made any statement which directly or indirectly encourages or supports the Supporter Boycott.*" (At clause 8.1.)

(b) "*The Parties agree to work together in good faith and make public statements that support and promote the new commercial arrangements with a view to maximising the commercial success of the new arrangements. This will include taking all reasonable steps to end the Supporter Boycott and to re-engage positively with Rangers Football Club's supporters.*" (At clause 8.5.)

(4) Prior to 21 June 2017, a significant reason why some Rangers supporters did not buy products from SDIR, any member of the Sports Direct group or any entity they perceived as being connected to Mike Ashley, was the support by (among others) Mr King, TRFC and Club 1872 Ltd for the supporter boycott.

(5) Assuming that Rangers, RIFC, Mr King and Mr Murray complied with their obligations, then during the relevant seasons the number of Rangers supporters who would not have bought products from SDIR, any member of the Sports Direct group or any entity they perceived as being connected to Mike Ashley would have been immaterial.

Relief

~~8. As to paragraph 50:~~

(1) ~~As to paragraph 50.1, it is specifically denied that Rangers was entitled to enter into the Elite/Hummel Agreement or the Elite Retail Units Agreement. It is further denied that it is relevant to the grant of the relief sought by SDIR whether or not Rangers entered into those agreements in good faith. In any event, it is denied that Rangers entered into the Elite Retail Units Agreement in good faith. p~~Paragraphs 6 and 7 above are repeated. ~~In the premises, it is denied that SDIR's conduct was unreasonable or dilatory, or that Rangers entered into the Elite Agreement in good faith, in consequence of SDIR's conduct, or that it was necessary or appropriate to do so in order to procure the sale of Rangers merchandise to Rangers' fans.~~

(2) ~~As to paragraph 50.2 and 50.3:~~

~~(a) By letters dated 17 August 2018 and 23 August 2018 RPC put Elite on notice that a grant by Rangers to Elite of rights to distribute, market, advertise, promote, offer for sale and/or sell products bearing Rangers-related brands would be a breach of an agreement between SDIR and Rangers.~~

~~(b) By a letter dated 28 September 2018, Enyo Law LLP on behalf of Elite stated that Rangers (wrongly) confirmed to Elite, prior to entry into the~~

~~Elite Agreement, that the rights granted to Elite would not breach the Agreement.~~

~~(c) In the premises: (i) Elite was aware that SDIR would consider the grant of rights under the Elite Retail Units Agreement to be a breach of the Agreement; (ii) Rangers expressly took on the risk of there being such a breach, vis-à-vis Elite, prior to entry into the Elite Retail Units Agreement.~~

Third Party Rights Claims

8A. As to paragraph 52A.1:

(1) It is denied that, prior to 2 May 2019, the Elite/Hummel Agreement was governed by the law of Scotland. In particular:

(a) It is admitted and averred that the Elite/Hummel Agreement does not fall within just one of the sub-paragraphs to Article 4.1 of the Rome I Regulation. Paragraph 52A.1(a)-(b) are admitted.

(b) The characteristic performance of the contract is the supply of Technical Products by Elite, and so the contract falls to be governed by the law of England, as Elite's habitual residence, under Article 4.2 of the Rome I Regulation.

(c) In any event, it is denied that the contract is manifestly more connected with Scotland than anywhere else. Among other things: (1) the contract appoints Elite as the exclusive worldwide supplier of Technical Products; (2) the contract appoints Hummel as the exclusive worldwide Technical Brand; and (3) the royalty payment under the contract is in respect of Global Sales.

(d) If, contrary to SDIR's primary case, the applicable law cannot be determined under Article 4.2 of the Rome I Regulation, SDIR will contend that the facts and matters set out at paragraphs 8A(1)(b)-(c) above mean that the Elite/Hummel Agreement is most closely connected with England so that English law applies under Article 4.4 of the Rome I Regulation.

(2) Paragraphs 52A.1(f)-(g) are admitted, save that it is not admitted that Pinsent Masons were Hummel's solicitors. It is noted that in Pinsent Masons' letter dated 29 April 2019 Pinsent Masons said only that they acted for Elite.

(3) As to paragraph 52A.1(h):

(a) It is admitted that by the exchange of letters pleaded in paragraphs 52A.1(f)-(g), Rangers and Elite agreed that the Elite/Hummel Agreement was governed by Scots law,

(b) If (which is outside SDIR's knowledge), Hummel also agreed that the Elite/Hummel Agreement was governed by Scots law, then it is admitted that there was an express choice of Scots law by the parties as the governing law of the Elite/Hummel Agreement, which is to be given effect under Article 3.2 of the Rome Regulation.

(c) Pursuant to Article 3.2 of the Rome Regulation, any such change in the governing law from English law to Scots law shall not adversely affect SDIR's rights under the Elite/Hummel Agreement.

8B. If, contrary to SDIR's primary case, the Elite/Hummel Agreement was governed, at the material times, by Scots law, such that the 2017 Act is applicable to it, then Rangers has acted in breach of rights acquired and enforceable by SDIR pursuant to the 2017 Act as a matter of Scots law, as pleaded in paragraphs 8C to 8G below.

8C. Save for the first sentence of paragraph 52B.1, the summary of requirements set out therein for a third party right to arise under the 2017 Act is admitted. SDIR will rely on the full terms of the 2017 Act. In addition to the requirements referred to by Rangers:

(1) By section 2(3) the intention of the contracting parties that a third person should be legally entitled to enforce or otherwise invoke the relevant undertaking may be express or implied.

(2) By section 2(4)(b) "*a person may acquire a third-party right to enforce or otherwise invoke an undertaking despite the fact that – … there has been no delivery, intimation or communication of the undertaking to the person*".

8D. SDIR was identifiable within the meaning of section 1(3) of the 2017 Act. As to paragraphs 52B.2 to 52B.5:

(1) It is admitted that the Elite/Hummel Agreement did not identify SDIR by name.

(2) SDIR was identifiable from the description "*Retail Partner*".

(3) It is denied, as alleged in paragraphs 52B.3 and 52B.5 that SDIR only answered the description of Retail Partner from 25 July 2018. SDIR answered that description and/or was capable of being identified from the description "*Retail Partner*" at all material times including when the Elite/Hummel Agreement was entered into, as pleaded in paragraph 38 of the Particulars of Claim.

8E. The Elite/Hummel Agreement contained undertakings that (insofar as material to the claim against Rangers) Rangers would do certain things for SDIR's benefit, within the meaning of section 1(a) of the 2017 Act. As to the allegations of Scots law in that regard, in paragraphs 52C.3, 52C.4, 52C.5, 52C.6(c) and 52C.7(c):

(1) As to paragraph 52C.3, it is admitted that as a matter of Scots law the mere fact of a benefit to a third party from an undertaking under an agreement does not necessarily mean that a third-party right has been created.

(2) As to paragraphs 52C.4 and 52C.5, it is admitted that the Replica Kit Delivery Obligation was an undertaking partly for the benefit of Rangers. It is denied that it was an undertaking solely for the benefit of Rangers, and it is averred that it was for the benefit of both SDIR, as Retail Partner, and Rangers.

(3) As to paragraphs 52C.6 and 52C.7, it is denied that the Preferred Supplier Notification Obligation or Leisurewear and Accessories Obligations were for the benefit of Rangers, being obligations imposed upon Rangers. Insofar as they were obligations for the benefit of Elite and/or Hummel, they were only partly so, and partly for the benefit of SDIR as Retail Partner.

8F. It was the intention of the parties to the Elite/Hummel Agreement, such intention to be implied, that the Retail Partner should be legally entitled to enforce and invoke the relevant undertakings. As to paragraph 52E, by which Rangers relies on the facts and matters set out in paragraph 52D in denial of such intention in respect of Scots law:

(1) Paragraphs 52D.1 to 52D.3 refer to the Replica Kit Delivery Obligation, which is not alleged by SDIR to be an obligation on Rangers. For the avoidance of doubt, SDIR does not seek to invoke or enforce such obligation against Rangers.

(2) Without prejudice to the foregoing, and in case its construction is material to Rangers' undertakings, SDIR's case is not as asserted in paragraph 52D.1. SDIR admits and avers that Replica Kit would be delivered by Elite to SDIR in return for payment.

(3) As to paragraphs 52D.3 (a) and (b), it is admitted that the references relied upon are indicative of an intention that SDIR would pay for the Replica Kit delivered to it, and that the same was the intention. It is denied that such intention is inconsistent with an intention that SDIR be entitled to enforce or invoke the Replica Kit Delivery Obligation.

(4) Paragraph 52D.3(d) is denied. The parenthetic qualification "*(not the obligation)*" referred to Elite's choice whether to fulfil the orders itself or procure that the orders were fulfilled by other suppliers; it did not entitle Elite to refuse to supply or procure the supply of Replica Kit notified to it by SDIR in accordance with the Replica Kit Delivery Obligation.

(5) As to second paragraph 52D.3 (which ought to be 52D.4), the first sentence is admitted. The rest of the paragraph is denied. In particular, it is denied that the non-provision of the Elite/Hummel Agreement to SDIR is relevant in circumstances where Rangers was wrongly seeking to exclude SDIR as its retail partner (notwithstanding that it remained "*Retail Partner*"), and section 2(4)(b) of the 2017 Act as pleaded in paragraph 8C(2) above.

8G. As to paragraph 52G.3 concerning the Preferred Supplier Notification Obligation, Rangers has not identified the legal relevance of the facts and matters pleaded. The plea that Rangers "*notes*" certain matters in inadequately pleaded. Without prejudice to the foregoing:

(1) Paragraph 52G.3(a) is not admitted. It is denied, if alleged, that any communications by Mr Lovell of Lovell Sports were made on behalf of SDIR or are to be treated as such.

(2) The communications in paragraphs (b)-(l) are all admitted.

(3) As to paragraph 52G.3(e), it is not clear whether Rangers is making a positive assertion that SDIR knew or "*strongly suspect[ed]*" well before 25 October 2018 that Elite was a party to the Elite/Hummel Agreement. If such allegation is made, it is denied. SDIR repeats paragraph 42(4) of the Re-Amended Particulars of Claim.

AMENDED DEFENCE TO COUNTERCLAIM

Introduction

9. Paragraphs 1, 3A and 3B of the Reply are repeated.

Counterclaim under the Agreement

10. Rangers' counterclaim is concerned with statements (Quarterly Statements and an Annual Statement), which SDIR is obliged to provide to Rangers under paragraph 2 of Schedule 3 of the Agreement. These statements set out SDIR's calculation of the Net Profits and the Licence Fee for the periods to which they relate.

11. Rangers' complaints fall into three main categories:

    (1) Rangers complains that SDIR has provided statements late.

    (2) Rangers complains that SDIR has not provided statements for the right periods of time.

    (3) Rangers complains that SDIR has not provided the reasonable supporting information to the Quarterly Statements required by paragraph 2.4 of Schedule 3 of the Agreement.

12. SDIR's detailed responses to those complaints are pleaded below. In summary, SDIR's response is as follows.

    (1) While SDIR did provide statements late, this has caused Rangers no loss. Almost all of the statements showed no Licence Fee due to Rangers. Rangers has failed to raise an invoice in respect of the only two statements showing a Licence Fee due, and it is that failure that has stopped Rangers from being paid.

(2) SDIR does not accept that any of the statements it provided were invalid because they were for the wrong periods of time. However, without prejudice to that position, SDIR has now provided Rangers with alternative statements for the periods of time requested by Rangers.

(3) SDIR provided such reasonable supporting information as is reasonably required to allow Rangers to check the accuracy and material completeness of the Quarterly Statements as notes to the Quarterly Statements. In addition, and without prejudice to that position, SDIR has now provided Rangers with most of the additional information Rangers has sought, or explained to Rangers that it cannot provide particular types of information.

(4) Rangers' counterclaim was brought prematurely, as Rangers refused to engage in the good faith discussions or the without prejudice, good faith negotiations required by paragraphs 2.4, 2.10 and 3.2 of Schedule 3 to the Agreement. Had Rangers done so, it would have been clear that there was no need to bring its counterclaim, and substantial costs would have been saved by both parties.

The Agreement

13. Save for minor typographical errors, SDIR admits paragraphs 54 and 55 as quotations (whole or partial) of terms of the Agreement. SDIR will rely on the Agreement for its full terms and true effect.

13A. Paragraph 55A is denied.

(1) Paragraphs 55A.1 and 55A.2 are denied. The "*relevant*" Branded Products, Replica Kit and Additional Products referred to in paragraphs 1.1.3(ii)-(iii), 1.1.8 and 1.1.9 of Schedule 3 are those sold through the specified sales channel in each paragraph.

(2) Paragraph 55A.3 is denied. The "*cost of goods*" in paragraphs 1.1.3(ii)-(iii), 1.1.8 and 1.1.9 of Schedule 3 are the costs of the Branded Products, Replica Kit and Additional Products that are intended for sale, not only the costs of the goods that have actually been sold.

(3) Paragraph 55A.4 is denied. It made commercial common sense and was the common intention of the parties (ascertained objectively) to calculate net profits by reference to the costs of the Branded Products, Replica Kit and Additional Products that were intended for sale.

13B. Paragraph 55B is denied. Stock provision reflected the costs of the Branded Products, Replica Kit and Additional Products that were intended for sale but which were unsold and which SDIR anticipated would remain unsold. Those costs are included in "*cost of goods*" in paragraphs 1.1.3(ii)-(iii), 1.1.8 and 1.1.9 of Schedule 3.

13C. Paragraph 55C is not understood, and SDIR is therefore unable to admit or deny it.

14. As to paragraph 56:

(1) As to Paragraph 56.1 ~~is denied.~~: Any Quarterly Statement to be provided by SDIR is to be a statement setting out SDIR's calculation of the Net Profits and Licence Fee (less any Kit Royalty Payment made) for that Quarter. If Rangers does not consider a Quarterly Statement accurate or materially complete, Rangers may raise that as a dispute in accordance with paragraph 2.4 of Schedule 3 of the Agreement. It is admitted that, pursuant to clause 10.1.1, SDIR was to prepare any Quarterly Statement with reasonable skill, care and attention. It is denied, if it be alleged, that a Quarterly Statement that was not materially complete (whether due to a breach of clause 10.1.1 or otherwise) was not thereby a Quarterly Statement.

(2) ~~SDIR does not understand what Rangers means by the adjective "*compliant*" in p~~Paragraph 56.2~~, and reserves the right to plead further to this allegation on clarification. Without prejudice to that position, insofar as Rangers means that Rangers' obligation to confirm or provide written notice to dispute a Quarterly Statement was conditional on SDIR providing an accurate and materially complete Quarterly Statement, that~~ is denied. In particular, it does not make sense for the provision of ~~an accurate and~~ a materially complete Quarterly Statement prepared with reasonable care, skill and attention to be a pre-condition to Rangers' checking the Quarterly Statement for accuracy and material completeness.

(3) Paragraph 56.3 is denied. If Rangers considers that SDIR has not provided such reasonable supporting information as is reasonably required to allow Rangers to check the accuracy and material completeness of the Quarterly Statement, Rangers may raise that as a dispute in accordance with paragraph 2.4 of Schedule 3 of the Agreement.

(4) Paragraph 56.4 is denied.

(a) ~~That~~The alleged gloss that the period of "10 days of receipt" did not apply until the alleged pre-conditions were met is not what paragraph 2.4 of Schedule 3 of the Agreement says. The period commences on receipt of a Quarterly Statement.

~~(b)~~ Further or alternatively, paragraph 56.4 is denied for the reasons set out at paragraphs 14(2) and 14(3) above. ~~Rangers' alleged construction is denied inasmuch as the late provision of a Quarterly Statement provides no reason, in principle, why the mechanism for Rangers to dispute the Quarterly Statement consequent on such provision should cease to apply. In particular:~~

~~(i) SDIR is to provide the Quarterly Statement within the contractually-agreed period in order to ensure timeous payment of sums due to Rangers.~~

~~(ii) Rangers is to confirm or provide written notice to dispute the Quarterly Statement within the contractually-agreed period in order to promote certainty (as indicated by the deeming provision in the last sentence of paragraph 2.4 of Schedule 3 of the Agreement).~~

~~(iii) There is no reason why SDIR's provision of a Quarterly Statement outside of the contractually-agreed period should disapply either Rangers' obligation to confirm or provide written notice to dispute the Quarterly Statement within the contractually-agreed period or the deeming provision, and Rangers has not put forward any such reason.~~

(5) As to paragraph 56.5, SDIR notes that Rangers has deleted the paragraph in its Amended Counterclaim. However, Rangers' case is still put on the basis that "*within 10 days of*" means within 10 working days after. SDIR therefore maintains its response to paragraph 56.5:

(a) The part of paragraph 56.5 outside parentheses is denied. The Agreement contains a definition of "Business Day" at paragraph 1.1, and that defined term is used elsewhere in Schedule 3 of the Agreement (for example, paragraph 5.6). Had the parties meant working days, they would have used the defined term Business Day.

(b) Insofar as the alternative case within parentheses in paragraph 56.5 means that the day of receipt is not included in the 10-day period in which Rangers shall confirm or provide written notice to dispute the Quarterly Statement, that is admitted. For the avoidance of doubt, this means that if a Quarterly Statement is received by Rangers on the 10th day of a month, the last day for Rangers to confirm or dispute the Quarterly Statement in accordance with paragraph 2.4 of Schedule 3 is the 20th day of that month.

15. As to paragraph 57:

(1) As to Paragraph 57.1 ~~is denied.~~: Any Annual Statement to be provided by SDIR is to be a reconciliation statement setting out SDIR's calculation of the Net Profits and Licence Fee (and any Kit Royalty Payment) for the relevant period / Quarters. If Rangers does not consider an Annual Statement to be accurate or materially complete, Rangers may raise that as a dispute in accordance with paragraph 2.10 of Schedule 3 of the Agreement. It is admitted that, pursuant to clause 10.1.1, SDIR was to prepare any Annual Statement with reasonable skill, care and attention. It is denied, if it be alleged, that a Annual Statement that was not materially complete (whether due to a breach of clause 10.1.1 or otherwise) was not thereby a Annual Statement.

(2) ~~SDIR does not understand what Rangers means by the adjective "*compliant*" in p~~Paragraph 57.2~~, and reserves the right to plead further to this allegation on clarification. Without prejudice to that position, insofar as Rangers means that~~

~~Rangers' obligation to confirm or provide written notice to dispute an Annual Statement was conditional on SDIR providing an accurate and materially complete Annual Statement, that~~ is denied. In particular, it does not make sense for the provision of ~~an accurate and~~ a materially complete Annual Statement prepared with reasonable care, skill and attention to be a pre-condition to Rangers' checking the Annual Statement for accuracy and material completeness.

(3) Paragraph 57.3 is denied.

(a) ~~That~~ The alleged gloss that the period of "15 days of receipt" did not apply until the alleged pre-conditions were met is not what paragraph 2.10 of Schedule 3 of the Agreement says. The period commences on receipt of an Annual Statement.

~~(b)~~ Further or alternatively, paragraph 57.3 is denied for the reason set out at paragraph 15(2) above. ~~Rangers' alleged construction is denied inasmuch as the late provision of an Annual Statement provides no reason, in principle, why the mechanism for Rangers to dispute the Annual Statement consequent on such provision should cease to apply. In particular:~~

~~(i) SDIR is to provide the Annual Statement within the contractually-agreed period in order to ensure timeous payment of sums due to Rangers.~~

~~(ii) Rangers is to confirm or provide written notice to dispute the Annual Statement within the contractually-agreed period in order to promote certainty (as indicated by the deeming provision in the penultimate sentence of paragraph 2.10 of Schedule 3 of the Agreement).~~

~~(iii) There is no reason why SDIR's provision of an Annual Statement outside of the contractually-agreed period should disapply either Rangers' obligation to confirm or provide written notice to dispute the Annual Statement within the contractually-~~

~~agreed period or the deeming provision, and Rangers has not put forward any such reason.~~

(4) ~~As to paragraph 57.4:~~

~~(a) The part of paragraph 57.4 outside parentheses is denied. The Agreement contains a definition of "Business Day" at paragraph 1.1, and that defined term is used elsewhere in Schedule 3 (for example, paragraph 5.6). Had the parties meant working days, they would have used the defined term Business Day.~~

~~(b) Insofar as the alternative case within parentheses in paragraph 57.4 means that the day of receipt is not included in the 15-day period in which Rangers shall confirm or provide written notice to dispute the Annual Statement, that is admitted. For the avoidance of doubt, this means that if an Annual Statement is received on the 10th day of a month, the last day for Rangers to confirm or provide written notice to dispute the Annual Statement in accordance with paragraph 2.10 of Schedule 3 is the 25th day of that month.~~

16. As to paragraph 58:

(1) Under the contractual scheme set out in paragraph 2 of Schedule 3 of the Agreement, Rangers is obliged to issue SDIR with a valid VAT invoice (an "**Invoice**") for the Licence Fee (less any Kit Royalty Payment made) payable by SDIR to Rangers for the preceding Quarter as specified in the Quarterly Statement, within 10 days of the issue by SDIR of the Quarterly Statement (paragraph 2.5 of Schedule 3 of the Agreement).

(2) For the avoidance of doubt, on a true construction of paragraph 2.5, the amount in the Invoice is to be that specified in the Quarterly Statement regardless of any dispute raised by Rangers (insofar as the parties have not resolved such dispute within 10 days of the issue of the Quarterly Statement, but before the issue of the Invoice).

(3) If Rangers disputes the Quarterly Statement, and the parties agree (subsequent to Rangers' issue of the corresponding invoice) any amount as being underpaid or overpaid by either party, Rangers must issue an invoice or credit note for it: paragraph 2.7 of Schedule 3 of the Agreement.

(4) In the premises, paragraphs 58.1 and 58.3 are denied. The "*relevant payment date*" under paragraph 2.11 of Schedule 3 of the Agreement for a Quarterly Statement is the date of issue of the Quarterly Statement by SDIR (being the date from which Rangers first becomes entitled to issue an invoice under paragraph 2.5 of Schedule 3 of the Agreement). Any amount subsequently agreed as being underpaid or overpaid would be paid under paragraph 2.7 of Schedule 3 of the Agreement, which is expressly excluded from paragraph 2.11 of Schedule 3 of the Agreement.

(5) Paragraph 58.2 is denied. The "*relevant payment date*" under paragraph 2.10 for payment of an amount set out in the Annual Statement is the provision of the Annual Statement by SDIR (being the date from which Rangers first becomes entitled to submit an invoice or claim for such payment).

(6) As to paragraph 58.4:

~~(a)~~ ~~It is admitted that "*such period*" is singular.~~ Paragraph 58.4 is premised on the time periods in paragraph 2.11 only running where a "compliant" Quarterly Statement or Annual Statement is provided. This is denied, for the reasons set out at paragraphs 14(2) and 15(2) above. On that basis, paragraph 58.4 is denied.

~~(b)~~ ~~It is denied that "*such period*" refers only to the obligation to submit any invoice or claim for payment within six months of the expiry of the Term.~~

(c) Any invoice or claim for payment must be submitted for payment within six months of the relevant payment date and in any event within six months of the expiry of the Term.

(d) If an invoice or claim for payment is submitted either more than six months after the relevant payment date, or more than six months after the expiry of the Term, SDIR is not obliged to pay it and Rangers waives all rights to claim such a payment.

(e) ~~For the reasons set out in paragraph 16(6)(b) above, i~~It is denied that any relinquishment of any obligation to make payment or waiver could not have occurred as at the filing and service of the Counterclaim. Such relinquishment or wavier could have occurred if Rangers' invoice or claim for payment had been submitted more than six months after the relevant payment date.

(7) As to paragraph 58.5:

(a) A claim for damages is a claim for payment.

(b) Whether a claim for a declaration is a claim for payment depends on the declaration sought. For example, a claim for a declaration that SDIR is obliged to make a payment is a claim for payment.

~~17. Paragraph 59 is denied.~~

(1) ~~As a matter of law, neither "*reasons of business efficacy*" nor representing the "*common but unexpressed intentions of the parties*" is a sufficient basis to imply a term.~~

(2) ~~In any event, the purported implied term is neither necessary to give business efficacy to the contract, nor so obvious that it goes without saying.~~

18. Paragraph 60 is denied.

(1) ~~As a matter of law, neither "*reasons of business efficacy*" nor representing the "*common but unexpressed intentions of the parties*" is a sufficient basis to imply a term.~~

(2) ~~In any event, t~~The purported implied term is neither necessary to give business efficacy to the contract, nor so obvious that it goes without saying.

(3) Paragraphs 14(4) and 15(3) above are repeated.

19. Paragraph 61 is admitted.

Rangers' allegations of breach

20. Certain of Rangers' allegations of breach lack particularity~~. Each~~, in that the allegation of breach fails to identify the specific terms of the Agreement (express or implied) of which breach is alleged. Instead, Rangers has pleaded ~~each~~ such allegations of breach by repeating formulaic, general allegations. SDIR's approach to responding to these general allegations is set out here.

(1) Where Rangers pleads that SDIR has acted "*in breach of the Agreement*" or "*in further breach of the Agreement*", SDIR has sought to identify the specific term of which breach is alleged, and has responded on that basis where relevant. SDIR reserves the right to plead further if Rangers clarifies that breach of other terms of the Agreement is alleged.

(2) Rangers repeatedly pleads that SDIR "*failed to exercise the requisite skill, care and attention*" or that SDIR "*failed to comply with its obligations*". In no case has Rangers identified the relevant obligations, or identified what is alleged to be the "*requisite*" standard of skill, care and attention, or provided particulars of breach. In those circumstances, Rangers' pleading in that regard does not appear to add anything to its allegation of breach of the Agreement. SDIR has therefore not responded separately to these allegations, but has (as set out in the preceding sub-paragraph) identified the specific term of the Agreement of which breach appears to be alleged, and responded on that basis. SDIR reserves the right to plead further if Rangers clarifies its pleading.

2017 Quarterly Statements

21. As to paragraph 62:

(1) It is admitted that SDIR was in breach of paragraph 2.4 of Schedule 3 of the Agreement in that it failed within 10 days of 30 June 2017, 30 September 2017 and/or 31 December 2017 to provide Rangers with any Quarterly Statement.

(2) ~~Paragraph 20 above is repeated.~~ It is admitted that SDIR was thereby in breach of clause 10.1.1, in that it failed to comply with paragraph 2.4 of Schedule 3 of the Agreement as set out in paragraph 21(1) above.

(3) The last sentence is denied. The relevant obligation of which breach is pleaded is one to provide Quarterly Statements within a specified time period, which is unrelated to the skills of a professionally qualified accountant.

22. Paragraph 63 is admitted, save that it is denied that the emails dated 5 December 2017 and 23 January 2018 or the letters dated 18 December 2017 and 19 January 2018 referred to the reasonable supporting information to be provided with Quarterly Statements under paragraph 2.4 of Schedule 3 of the Agreement.

23. Paragraph 64 is admitted, save that it is denied that the letter dated 19 January 2018 and email dated 23 January 2018 referred to the reasonable supporting information to be provided with Quarterly Statements under paragraph 2.4 of Schedule 3 of the Agreement.

24. Paragraph 65 is admitted. SDIR notes that the quotation is from RPC's covering email.

25. As to paragraph 66:

(1) It is admitted that the statement for the period 21 June 2017 to 30 September 2017 covered a period of more than three months, which did not end on 30 June 2017.

(2) It is denied that the statement was not a Quarterly Statement.

(3) SDIR does not understand what Rangers means by "*in compliance with Agreement*" and reserves the right to plead further to this allegation on clarification.

(4) It is admitted that the Quarterly Statement for the period 21 June 2017 to 30 September 2017 was formally defective in that it did not set out the calculation of the Net Profits and Licence Fee (less any Kit Royalty Payment made) for the Quarter period 21 June 2017 to 30 June 2017 and the Quarter period 1 July 2017 to 30 September 2017 for each Quarter separately.

(5) In any event, and without prejudice to the validity of the Quarterly Statement for the period 21 June 2017 to 30 September 2017, on 23 May 2019 SDIR provided Rangers with a Quarterly Statement for the period 21 June 2017 to 30 June 2017 and a Quarterly Statement for the period 1 July 2017 to 30 September 2017 (together, the "**Alternative Quarterly Statements**").

(6) It is denied that SDIR did not provide the reasonable supporting information reasonably required to allow Rangers to check the accuracy and material completeness of the statement for the period 21 June 2017 to 30 September 2017. SDIR did provide such reasonable supporting information in the 'Notes to the Statement'.

(7) The last sentence of paragraph 66 is denied.

(a) It is averred that, if Rangers wished to dispute the Quarterly Statement for the period 21 June 2017 to 30 September 2017, it was obliged to provide written notice to do so within 10 days of receipt pursuant to paragraph 2.4 of Schedule 3 of the Agreement.

(b) It is averred that the "*relevant payment date*" under paragraph 2.11 of Schedule 3 was 16 February 2018, being the date from which Rangers would have first become entitled to submit an invoice or claim for payment if the Quarterly Statement for the period 21 June 2017 to 30 September 2017 had shown a payment due to Rangers.

(8) ~~Paragraph 20 above is repeated.~~ Save as inconsistent with the aforesaid, paragraph 66 is denied.

(9) ~~It is denied that SDIR failed to act in good faith. Rangers has not pleaded any basis for this allegation.~~

26. As to paragraph 67:

(1) The Quarterly Statement for the period 21 June 2017 to 30 September 2017 and the Quarterly Statement for the period 1 October 2017 to 31 December 2017 were both accurate and materially complete.

(2) SDIR provided such reasonable supporting information as was reasonably required to allow Rangers to check the accuracy and material completeness of the Quarterly Statement for the period 21 June 2017 to 30 September 2017 and the Quarterly Statement for the period 1 October 2017 to 31 December 2017.

(3) SDIR pleads to Rangers' Appendix A at paragraphs 49 to 52A below.

(4) ~~Paragraph 20 above is repeated.~~ Save as inconsistent with the aforesaid, paragraph 67 is denied.

27. As to paragraph 68:

(1) The letter dated 23 February 2018, from Anderson Strathern (for Rangers) to SDIR, is admitted as a document.

(2) It is averred that, if Rangers wished to dispute the Quarterly Statements for the period 21 June 2017 to 30 September 2017 and for the period 1 October 2017 to 31 December 2017, it was obliged to do so within 10 days of receipt pursuant to paragraph 2.4 of Schedule 3.

(3) The summary of the contents of the letter dated 23 February 2018 is admitted as a broadly accurate summary. SDIR will rely on the full terms of the letter.

(4) The last sentence of paragraph 68 is admitted.

(5) Under clause 17.3.1 of the Agreement, any notice delivered by hand is deemed to have been received on signature of a delivery receipt. No delivery receipt has been provided by Rangers.

(6) If Rangers provides SDIR a signed delivery receipt, SDIR will aver that Anderson Strathern's letter dated 23 February 2018 was a Notice provided within 10 days of Rangers' receipt of the Quarterly Statements for the period 21 June 2017 to 30 September 2017 and for the period 1 October 2017 to 31 December 2017, and so effective to raise the disputes set out within.

(7) If Rangers does not provide a delivery receipt, SDIR will aver that:

(a) Rangers did not provide written notice to dispute the Quarterly Statements for the period 21 June 2017 to 30 September 2017 and for the period 1 October 2017 to 31 December 2017 within 10 days of receipt.

(b) Those Quarterly Statements were therefore deemed agreed pursuant to paragraph 2.4 of Schedule 3 of the Agreement.

28. As to paragraph 69:

(1) It is admitted and averred that RPC, by an email dated 27 February 2018, confirmed that SDIR agreed "*that the relevant period to dispute the Quarterly Statement is suspended until further notice to allow for further discussions between the parties.*" ~~For the avoidance of doubt, there was no separate letter from RPC dated 27 February 2018.~~

(2) This agreement was expressly "*without prejudice to the timing/validity of your notice*". Paragraphs 27(5) to 27(7) above are repeated. If the Quarterly Statements for the period 21 June 2017 to 30 September 2017 and for the period 1 October 2017 to 31 December 2017 had been deemed agreed prior to RPC's email dated 27 February 2018, there was no relevant period to dispute the Quarterly Statements that could still be suspended.

(3) In any event, SDIR's agreement to a suspension of the relevant period for Rangers to confirm or dispute the Quarterly Statements was limited to the Quarterly Statement for the period 21 June 2017 to 30 September 2017 and the Quarterly Statement for the period 1 October 2017 to 31 December 2017.

(4) It is denied, if it be alleged, that SDIR agreed to suspend the period for Rangers to confirm or dispute any Quarterly Statements to be provided in the future.

(5) It is denied that SDIR agreed, implicitly or otherwise, to suspend until further notice any relevant period for Rangers to dispute Annual Statements.

(6) It is denied that SDIR agreed, implicitly or otherwise, to suspend until further notice any periods in paragraph 2.11 of Schedule 3 of the Agreement in which

to make claims for payments in relation to Licence Fees. Paragraphs 16(1) to 16(6)~~(b)~~ above are repeated.

(7) In the premises, the second sentence of paragraph 69 is denied.

(8) As to the third sentence of paragraph 69:

(a) It is admitted that SDIR and Rangers have not to date resolved their differences.

(b) If (contrary to SDIR's primary case), the email is to be construed as Rangers says in the second sentence of paragraph 69, SDIR withdrew its agreement by service of the Defence to Counterclaim.

29. The Quarterly Statement for the period 21 June 2017 to 30 September 2017 and the Quarterly Statement for the period 1 October 2017 to 31 December 2017 both showed net losses. The Net Profits, SD Store Net Profits, and SD Online Net Profits were all negative.

2018 Quarterly Statements

30. As to paragraph 70:

(1) It is admitted that SDIR was in breach of paragraph 2.4 of Schedule 3 of the Agreement in that it failed within 10 days of 31 March 2018 to provide Rangers with a Quarterly Statement for the Quarter ending on that date.

(2) It is admitted that SDIR was in breach of paragraph 2.4 of Schedule 3 of the Agreement in that it failed within 10 days of 30 June 2018 to provide Rangers with a Quarterly Statement for the Quarter ending on that date.

(3) It is admitted that SDIR was in breach of paragraph 2.4 of Schedule 3 of the Agreement in that it failed within 10 days of 10 August 2018 to provide Rangers with a Quarterly Statement for the Quarter ending on that date. It is averred that 10 August 2018, not 11 August 2018, was the last day of the Term.

(4) ~~Paragraph 20 above is repeated.~~ It is admitted that SDIR was thereby in breach of clause 10.1.1, in that it failed to comply with paragraph 2.4 of Schedule 3 of the Agreement as set out in paragraphs 30(1) to 30(3) above.

31. Paragraph 71 is admitted, save for the words "*purporting to be*". As expressed in RPC's email dated 1 May 2018, SDIR did "*wish to try and resolve the current disputes and disagreements with [Rangers] and so [was] prepared to provide [Rangers] with additional information, over and above the reasonable supporting information already provided in the Quarterly Statements.*" SDIR will rely on the full text of the email and its attachments.

32. Rangers did not reply to RPC's email dated 1 May 2018, either to raise any concerns about the additional information, or at all.

33. Paragraph 72 is admitted, save for the word "*purported*".

34. Paragraph 73 is admitted, save for the word "*purported*".

35. As to paragraph 74:

(1) It is denied that SDIR did not provide the reasonable supporting information reasonably required to allow Rangers to check the accuracy and material completeness of the statement for the Quarterly Statements for the periods 1 January 2018 to 31 March 2018 and 1 April 2018 to 30 June 2018. SDIR did provide such reasonable supporting information in the 'Notes to the Statement' in each statement.

(2) ~~It is denied that SDIR failed to act in good faith. Rangers has not pleaded any basis for this allegation.~~

(3) ~~Paragraph 20 above is repeated.~~ Paragraph 74 is thereby denied.

36. As to paragraph 75:

(1) The first sentence of paragraph 75 is denied. For the avoidance of doubt, the 10-day period for Rangers to confirm or provide written notice to dispute the Quarterly Statements was not already suspended. Paragraph 28 above is repeated.

(2) It is averred that, if Rangers wished to dispute the Quarterly Statement for the period 1 January 2018 to 31 March 2018, it was obliged to do so within 10 days of receipt pursuant to paragraph 2.4 of Schedule 3 of the Agreement.

(3) Rangers did not provide written notice to dispute the Quarterly Statement for the period 1 January 2018 to 31 March 2018 within 10 days of receipt. It was therefore deemed agreed under paragraph 2.4 of Schedule 3 of the Agreement.

(4) It is averred that, if Rangers wished to dispute the Quarterly Statement for the period 1 April 2018 to 30 June 2018, it was obliged to provide written notice to do so within 10 days of receipt pursuant to paragraph 2.4 of Schedule 3 of the Agreement.

(5) It is admitted that Kingsley Napley (for Rangers) disputed the entirety of the Quarterly Statement for the period 1 April 2018 to 30 June 2018 in a letter addressed to Sean Nevitt at SDIR dated 23 July 2018.

(6) The last sentence of paragraph 75 is admitted.

37. As to paragraph 76:

(1) The Quarterly Statements for the Quarters ending on 31 March 2018 and 30 June 2018 were both accurate and materially complete.

(2) SDIR provided such reasonable supporting information as was reasonably required to allow Rangers to check the accuracy and material completeness of Quarterly Statements for the Quarters ending on 31 March 2018 and 30 June 2018.

(3) SDIR pleads to Rangers' Appendix A at paragraphs 49 to 52A below.

(4) ~~Paragraph 20 above is repeated.~~ Save as inconsistent with the aforesaid, paragraph 76 is denied.

38. The Quarterly Statement for the period 1 January 2018 to 31 March 2018 showed a net loss. The Net Profits, SD Store Net Profits, and SD Online Net Profits were all negative.

39. The Quarterly Statement for the period 1 April 2018 to 30 June 2018 showed £98,166 due from SDIR to Rangers as the Licence Fee for that Quarter. Rangers did not issue an invoice to SDIR for this amount within 10 days of the issue by SDIR of the Quarterly Statement.

Quarterly Statements – Ongoing

~~40. Paragraph 77 is denied. In particular:~~

(1) ~~On 23 May 2019 SDIR provided Rangers with a Quarterly Statement for the period 1 July 2018 to 10 August 2018. It is averred that 10 August 2018, not 11 August 2018, was the last day of the Term.~~

(2) ~~SDIR notes that Rangers has not pleaded any basis for its allegation that SDIR has failed to act in good faith.~~

(3) ~~Paragraph 20 above is repeated.~~

40A. As to paragraph 77A:

(1) It is admitted that on 23 May 2019 SDIR by email from RPC provided Rangers with the Alternative Quarterly Statements, as set out at paragraph 25(5) above.

(2) The Alternative Quarterly Statements were provided without prejudice to the validity of the Quarterly Statement for the period 21 June 2017 to 30 September 2017. It is therefore denied that they were provided "more than a year after when they should have been provided".

(3) It is admitted that the Alternative Quarterly Statements were provided hours before the service of the Defence to Counterclaim. Rangers has not explained the relevance of this allegation.

(4) It is admitted and averred that on 23 May 2019 SDIR by email from RPC provided Rangers with a Quarterly Statement for the period 1 July 2018 to 10 August 2018.

(5) It is admitted that the Quarterly Statement for the period 1 July 2018 to 10 August 2018 was provided months after 20 August 2018, the last date on which

SDIR should have provided it pursuant to paragraph 2.4 of Schedule 3 to the Agreement.

(6) It is admitted that the Quarterly Statement for the period 1 July 2018 to 10 August 2018 was provided hours before the service of the Defence to Counterclaim. Rangers has not explained the relevance of this allegation.

40B. Paragraph 77B is admitted.

40C. As to paragraph 77C:

(1) Paragraph 77C.1 is denied.

(2) Paragraph 77C.2 is denied in respect of the Alternative Quarterly Statements for the reasons set out in paragraph 40A(2) above and admitted in respect of the Quarterly Statement for the period 1 July 2018 to 10 August 2018 for the reasons set out in paragraph 40A(5) above.

(3) Paragraph 77C.3 is denied.

(4) The Alternative Quarterly Statements and the Quarterly Statement for the period 1 July 2018 to 10 August 2018 are accurate and materially complete.

(4) SDIR pleads to Rangers' Appendix A at paragraphs 49 to 52A below.

(5) Save as inconsistent with the aforesaid, paragraph 77C is denied.

41. As to paragraph 78:

(1) ~~SDIR does not understand what Rangers means by the adjective "*proper*", and reserves the right to plead further to this allegation on clarification. Without prejudice to that position, it is averred that~~ SDIR has provided Rangers with Quarterly Statements for the periods 21 June 2017 to 30 September 2017, 1 October 2017 to 31 December 2017, 1 January 2018 to 31 March 2018, 1 April 2018 to 30 June 2018, and 1 July 2018 to 10~~1~~ August 2018, as well as the Alternative Quarterly Statements. Those Quarterly Statements, and the Alternative Quarterly Statements, were materially complete.

(2) It is denied that SDIR has failed to provide such reasonable supporting information as is reasonably required to allow Rangers to check the accuracy and the material completeness of the Quarterly Statements. The remainder of this paragraph is pleaded without prejudice to the generality of that denial.

(3) ~~Paragraph 20 above is repeated.~~

(4) As to paragraph 78(a), it is admitted that SDIR has not provided "*information supporting the stock owned by SDIR on 20 June 2017*". It is denied that this is reasonable supporting information as is reasonably required to allow Rangers to check the accuracy and material completeness of the Quarterly Statements. In particular:

(a) SDIR is only able to determine the stock levels of the relevant products as at month end, not on dates other than the last day of a month.

(b) RPC explained this to Rangers in its email dated 23 May 2019.

(5) As to paragraph 78(b):

(a) SDIR does not understand what is meant by "*information supporting any stock brought in for the purposes of the Agreement on 21 June 2017*" and reserves the right to plead further to this allegation if Rangers clarifies its pleading. If what is meant is stock purchased by SDIR from Rangers Retail Limited ("**RRL**"), no such stock was purchased, as stock for RRL was held (until sale by RRL) by an Associated Company of SDIR (as that term is defined in clause 1.1 of the Agreement). Stock for SDIR to sell under the Agreement continued to be held (until sale by SDIR) by an Associated Company of SDIR.

(b) It is admitted that SDIR has not provided "*details of the ageing of the stock on or before 21 June 2017*". It is denied that this is reasonable supporting information as is reasonably required to allow Rangers to check the accuracy and material completeness of the Quarterly Statements. In particular:

(i) SDIR is not able to determine when a specific stock item was purchased or how long a specific item was held in the Sports Direct warehouse, due to the limitations on Sports Direct's systems.

(ii) RPC explained this to Rangers in its email dated 23 May 2019.

(c) SDIR is uncertain as to what Rangers means by "*the original cost of the stock*" and reserves the right to plead further to this allegation if Rangers clarifies its pleading. Without prejudice to that position, SDIR provided Rangers with a spreadsheet called '*Quarterly Stock Report*' (the "**Quarterly Stock Report**") on 23 May 2019. The Quarterly Stock Report showed the cost of stock held as at 30 June 2017.

(d) On 23 May 2019 SDIR informed Rangers (via RPC's email of that date) that prior to 21 June 2017, a stock provision was made at 15%. For the avoidance of doubt, it is denied that this is reasonable supporting information as is reasonably required to allow Rangers to check the accuracy and material completeness of the Quarterly Statements.

(6) As to paragraph 78(c):

(a) The Quarterly Stock Report showed the stock held on 30 June 2017, 30 September 2017, 31 December 2017, 31 March 2018 and 30 June 2018. SDIR has therefore provided information showing the stock held immediately before the start of each Quarter under the Agreement, other than the Quarter starting on 21 June 2017. As to the Quarter starting on 21 June 2017, paragraph 41(4) above is repeated.

(b) The Quarterly Stock Report includes the quantities and cost of stock for each stock line.

(c) For the avoidance of doubt, it is denied that the information in the Quarterly Stock Report is reasonable supporting information as is reasonably required to allow Rangers to check the accuracy and material completeness of the Quarterly Statements.

(7) It is admitted that SDIR has not provided the ~~information set out~~ floor report referred to in paragraph 78(d). It is denied that this is reasonable supporting information as is reasonably required to allow Rangers to check the accuracy and material completeness of the Quarterly Statements. In particular:

(a) The floor report, which is referred to in the notes to the Quarterly Statement for the period 21 June 2017 to 30 September 2017 and the Quarterly Statement for the period 1 October 2017 to 31 December 2017, is an internal management document with details of all sales across all products and Sports Direct stores.

(b) The floor report is confidential to the Sports Direct group and it would not be reasonable for SDIR to provide it to Rangers.

(c) RPC explained such confidentiality to Rangers (via Anderson Strathern) in its email of 1 May 2018, and confirmed that SIDR's operating costs attributed to the sale of Rangers branded products was the same, as a percentage, as the total operating costs as a percentage of the total sales of all products in Sports Direct stores. In the circumstances, no further information concerning the floor report was required.

(d) The allegation that SDIR has not provided "all other information necessary to support the block operating cost percentage for each Quarter" is vague and unparticularised, and SDIR is unable to respond to it.

(8) As to paragraph 78(e):

(a) On 23 May 2019, SDIR provided Rangers with a spreadsheet called '*Loss Making Items*' (the "**Loss Making Items Spreadsheet**").

(b) The Loss Making Items Spreadsheet showed information relating to products sold at a loss in the Rangers Megastore, the Rangers Webstore, in Sports Direct stores and on Sports Direct's webstore in the period 21 June 2017 to 31 December 2017.

(c) In respect of each stock item included, the spreadsheet showed the number of units sold, the gross sales, the net sales, the cost of sales, the net loss and the date on which a stock item of this type was last acquired by Sportsdirect.com Retail Limited (SDIR's parent company, which acquired the stock).

(d) RPC informed Rangers, in its email dated 23 May 2019, that the information set out in the Loss Making Items Spreadsheet was not available on all stock items, but had been included in respect of all stock items for which it was available.

(e) As to Rangers' reference to "*any provisions previously made against such stock*", paragraph 41(5)(d) above is repeated.

(f) For the avoidance of doubt, it is denied that the information in the Loss Making Items Spreadsheet is reasonable supporting information as is reasonably required to allow Rangers to check the accuracy and material completeness of the Quarterly Statements.

(9) As to paragraph 78(f):

(a) On 3 April 2020, SDIR provided Rangers with a spreadsheet called "*Rangers Sales Annual and Q4*" (the "**Rangers Annual Sales Spreadsheet**") and a spreadsheet called "*RangersSales_Quarters*" (the "**Rangers Quarters Sales Spreadsheet**")

(b) The Rangers Annual Sales Spreadsheet contained information on the quantity of particular stock lines sold, the gross sales values for those stock lines, and the total cost of sales for those stock lines in the periods 21 June 2017 to 30 June 2018 and 1 April 2018 to 30 June 2018.

(c) The Rangers Quarters Sales Spreadsheet contained information on the gross sales values (both inclusive and exclusive of VAT) for particular stock lines sold and the total cost of sales for those stock lines in the periods: 21 June to 30 June 2017, 1 July 2017 to 30 September 2017, 1

October 2017 to 31 December 2017, 1 January 2018 to 31 March 2018, 1 April 2018 to 30 June 2018, and 1 July 2017 to 15 August 2018.

(d) Insofar as Rangers alleges that SDIR has failed to provide other "*information supporting sales*", such an allegation is vague and unparticularised, and SDIR is unable to respond to it.

(e) For the avoidance of doubt, it is denied that information setting out the details of the quantity of each stock line sold, the gross sales values for each stock line sold, and the total cost of sales for each stock line is reasonable supporting information as is reasonably required to allow Rangers to check the accuracy and material completeness of the Quarterly Statements.

(10) As to paragraph 78(g):

(a) On 3 April 2020, SDIR provided Rangers with information setting out the average staff numbers and average staff wages in the Rangers Megastore in the periods: 21 June to 30 September 2017, 1 October 2017 to 31 December 2017, 1 January 2018 to 31 March 2018, and 1 April 2018 to 30 June 2018.

(b) For the avoidance of doubt, it is denied that information setting out the average staff numbers and average staff wages in the Rangers Megastore is reasonable supporting information as is reasonably required to allow Rangers to check the accuracy and material completeness of the Quarterly Statements.

(11) As to paragraph 78(h):

(a) On 3 April 2020 SDIR provided Rangers with the royalty statements from Puma in respect of calendar years 2017 and 2018.

(b) For the avoidance of doubt, it is denied that "*information supporting all the royalty figures in each statement*" is reasonable supporting information as is reasonably required to allow Rangers to check the accuracy and material completeness of the Quarterly Statements. In

particular, paragraph 2.3 of paragraph 5 of the Agreement sets out the process for payment of Kit Royalties. It requires SDIR to provide Rangers with a statement setting out the Kit Royalties received, but does not require SDIR to provide any supporting information with that statement.

Annual Statement

42. As to paragraph 79:

(1) It is admitted that SDIR was in breach of paragraph 2.10 of Schedule 3 of the Agreement in that it failed within 60 days of 20 June 2018 to provide Rangers with an Annual Statement.

(2) It is denied, if it be alleged, that an Annual Statement was required to be for the 12-month period 21 June 2017 to 20 June 2018.

(3) ~~It is denied that SDIR failed to act in good faith. Rangers has not pleaded any basis for this allegation.~~

(4) Paragraph 20 above is repeated.

43. Paragraph 80 is admitted.

44. As to paragraph 81:

(1) It is admitted that the statement for the period 21 June 2017 to 30 June 2018 covered a period of more than 12 months.

(2) It is denied that the statement was not an Annual Statement. It is further denied that SDIR could not reasonably have considered it to be an Annual Statement. It is averred that the statement was an Annual Statement.

(a) Under paragraph 2.10 of Schedule 3 of the Agreement, an Annual Statement may be for the relevant Quarters.

(b) The relevant Quarters were the Quarters ending 30 June 2017, 30 September 2017, 31 December 2017, 31 March 2018 and 30 June 2018.

(c) The Annual Statement was a reconciliation statement setting out the calculation of the Net Profits and Licence Fee (and any Kit Royalty Payments) for the relevant Quarters.

(3) SDIR does not understand what Rangers means by "*in compliance with the Agreement*" and reserves the right to plead further to this allegation on clarification.

(4) The last sentence of paragraph 81 is denied. It is averred that if Rangers wished to dispute the Annual Statement, it was obliged to do so within 15 days of receipt pursuant to paragraph 2.10 of Schedule 3 of the Agreement.

(5) ~~It is denied that SDIR failed to act in good faith. Rangers has not pleaded any basis for this allegation.~~

(6) Paragraph 20 above is repeated.

45. As to paragraph 82:

(1) The Annual Statement was accurate and materially complete.

(2) It is denied, if it be alleged, that paragraph 2.10 of Schedule 3 of the Agreement requires SDIR to provide such reasonable supporting information as was reasonably required to allow Rangers to check the accuracy and material completeness of the Annual Statement.

(3) Without prejudice to that denial, it is averred that SDIR did provide such reasonable supporting information as was reasonably required to allow Rangers to check the accuracy and material completeness of the Annual Statement.

(4) SDIR pleads to Rangers' Appendix A at paragraphs 49 to 52A below.

(5) Paragraph 20 above is repeated.

46. As to paragraph 83:

(1) The letter dated 22 October 2018, from Rangers to SDIR is admitted as a document.

(2) The summary of the contents of the letter dated 23 February 2018 is admitted as a broadly accurate summary, save that it is denied that Rangers gave notice disputing all the numbers set out in the Annual Statement. Rather, Rangers said that "*No vouching has been provided for any of the numbers set out in the Annual Statement.*" SDIR will rely on the full terms of the letter.

(3) The last sentence of paragraph 83 is admitted.

47. In the premises, paragraph 84 is denied. Without prejudice to that denial, and without prejudice to the validity of the Annual Statement for the period 21 June 2017 to 30 June 2018, on 23 May 2019 SDIR provided Rangers with an Annual Statement for the period 21 June 2017 to 20 June 2018 (the "**Alternative Annual Statement**").

47A. As to paragraph 83A:

(1) It is admitted that on 23 May 2019 SDIR provided Rangers with the Alternative Annual Statement, as set out at paragraph 47 above.

(2) The Alternative Annual Statement was provided without prejudice to the validity of the Annual Statement. It is therefore denied that it was provided "months after when it should have been provided" and, further, paragraph 82A.2 is denied.

(3) It is admitted that the Alternative Annual Statement was provided hours before the service of the Defence to Counterclaim. Rangers has not explained the relevance of this allegation.

(4) Paragraph 83A.1 is denied.

(5) The Alternative Annual Statement is materially complete.

(6) SDIR pleads to Rangers' Appendix A at paragraphs 49 to 52A below.

(6) Save as inconsistent with the aforesaid, paragraph 83A is denied.

48. The Annual Statement showed that over the period 21 June 2017 to 30 June 2018 the SD Online Net Profits and SD Store Net Profits were negative numbers (i.e. showed losses). The Retail Operations at the Rangers Megastore and the Rangers Webstore had

also made losses. The only reason that a Licence Fee was due from SDIR to Rangers over the period 21 June 2017 to 30 June 2018 was royalty income. Following a payment in respect of Kit Royalties to Rangers by SDIR of £474,026.87 (plus VAT) on 13 April 2018, the statement for the period 21 June 2017 to 30 June 2018 showed £92,405 due from SDIR to Rangers.

Rangers' allegations of inaccuracy and material incompleteness

49. Rangers claims, in paragraphs 67, 76, 77C, 83A and 82, to have set out the best particulars it can currently provide of why particular Quarterly Statements and the Annual Statement (and the Alternative Quarterly Statements and the Alternative Annual Statement) are not accurate and/or materially complete in Appendix A to its counterclaim. SDIR notes that Rangers has previously claimed (including, by way of example, in its letter before counterclaim) that there are other respects in which the Quarterly Statements and the Annual Statement were not accurate and/or materially complete, which have not been included in Appendix A.

50. As to paragraph 1 of Appendix A:

    (1) It is admitted that in each of the Quarterly Statements and the Annual Statement for the period 21 June 2017 to 30 June 2018, SDIR included carriage takings, VAT and carriage distribution costs in relation to sales on Rangers' website but did not include carriage takings, VAT and carriage distribution costs in relation to sales on Sports Direct's website. SDIR does not understand why Rangers says this is an inaccuracy or an instance of material incompleteness.

    (2) It is averred that the net carriage takings (whether in relation to sales on Rangers' website or sales on Sports Direct's website) do not form part of the Licence Fee. As set out in Note 1 to each Quarterly Statement and the Annual Statement, the net carriage takings in relation to sales on Rangers' website have been included without prejudice to the terms of the Agreement. SDIR has offered to share these net carriage takings as a gesture of goodwill.

    (3) SDIR notes that the counterclaim is the first occasion on which Rangers raised this complaint. Previously, Rangers had averred that the Quarterly Statements,

and the Annual Statement for the period 21 June 2017 to 30 June 2018, should include carriage takings, but not the carriage distribution costs.

50A. As to paragraph 1A of Appendix A:

(1) The first sentence is denied for the reasons set out at paragraphs 13A and 13B above.

(2) The second sentence is admitted, save for the words "*purportedly*" and "*wrongfully*".

51. As to paragraph 2 of Appendix A:

(1) It is admitted that SDIR has not provided the floor report. Paragraph 41(7) is repeated.

(2) It is admitted that SDIR has made a 30% deduction for 'Operating Costs relating the SD Stores' in each of the Quarterly Statements and the Annual Statement. It is admitted and averred that the figure of 20% in the notes to Quarterly Statements for the periods 21 June 2017 to 30 September 2017 and 1 October 2017 to 31 December 2017 was a typographical error.

(3) SDIR does not understand why Rangers says the facts and matters in this paragraph are an inaccuracy or an instance of material incompleteness in the Annual Statement or Quarterly Statements. At most, the typographical error is an (accidental) inaccuracy in the reasonable supporting information included in the notes to the Quarterly Statements for the periods 21 June 2017 to 30 September 2017 and 1 October 2017 to 31 December 2017

52. As to paragraph 3 of Appendix A:

(1) It is admitted and averred that, pursuant to paragraph 1.1.8 of Schedule 3 to the Agreement, SDIR was permitted and obliged to deduct, from the gross revenues received by SDIR (exclusive of tax, duties and returns) on the sale of Branded Products, Replica Kit and Additional Products from stores operated by SDIR and/ or members of SDIR's Group and from any other sale by SDIR of Branded Products, Replica Kit and Additional Products other than via the Rangers

Webstore, Rangers Megastore or Online Stores, the wages, operating costs and professional costs incurred by SDIR in connection with such sales.

(2) When Rangers Branded Products, Replica Kit and Additional Products are sold in Sports Direct stores, they are sold amid a wide range of other products. It is not practically possible to isolate the wages, operating costs and professional costs attributable to any individual sale, of Rangers Branded Products, Replica Kit, Additional Products or otherwise. It is denied, if it be alleged, that paragraph 1.1.8 of Schedule 3 of the Agreement requires such costs to be attributed to any individual sale.

(3) 30% is the percentage of total operating costs shown as a percentage of the total sales of all products in Sports Direct stores. It has therefore been applied to the relevant revenues as the wages, operating costs and professional costs incurred by SDIR in connection with the sales generating those revenues. This was explained by RPC to Rangers (via Anderson Strathern) in its email of 1 May 2018.

(4) In the premises, it is denied that the inference in the ~~last~~ third sentence of paragraph 3 of Appendix A is natural or reasonable. The inference invokes a false dichotomy: the wages, operating costs and professional costs incurred by SDIR in connection with sales of Replica Kit, Branded Products and Additional Products will also be wages, operating costs and professional costs relating to Sports Direct stores, because that is where the relevant sales take place.

(5) In the premises, the final sentence of paragraph 3 of Appendix A is denied.

52A. Paragraphs 4 and 5 of Appendix A are denied for the reasons set out in paragraph 52(2) above.

Discussions

53. SDIR has repeatedly offered to discuss Rangers' concerns about the Quarterly Statements with Rangers, and Rangers has declined to meet (or even respond to some of the offers). By way of example only:

(1) By an email dated 16 February 2018 from RPC to Anderson Strathern, RPC requested that Mr Blair of Anderson Strathern provide proposed dates for a discussion between Sean Nevitt of SDIR and Dave King of Rangers. Mr Blair did not provide any proposed dates.

(2) Kingsley Napley (for Rangers) sent a letter before claim to RPC in respect of Rangers' complaints about the Quarterly Statements for the periods 21 June 2017 to 30 September 2017 and 1 October 2017 to 31 December 2017. RPC responded in a letter dated 9 April 2018 and *inter alia* drew attention to the need for the parties to have without prejudice, good faith negotiations pursuant to paragraph 3.2 of Schedule 3 of the Agreement. RPC reiterated SDIR's willingness to meet Rangers at a face-to-face meeting to resolve all outstanding disputes and disagreements. For the avoidance of doubt, Rangers did not bring any claim prior to this counterclaim.

(3) By RPC's email dated 1 May 2018, RPC informed Mr Blair that RPC and SDIR were still awaiting proposed dates from Rangers regarding Mr King's availability. RPC requested again that Rangers provide proposed dates so that Mr King and Mr Nevitt could speak.

(4) By a letter from RPC to Kingsley Napley dated 26 July 2018, RPC set out SDIR's response to a letter from Kingsley Napley to RPC dated 23 July 2018. In that letter, Kingsley Napley had referred to Rangers' previous complaints about the Quarterly Statements, and had again threatened to institute court proceedings. In RPC's response, RPC explained that SDIR had assumed that Rangers' concerns were resolved, given that it had not responded to the further information provided on 1 May 2018. RPC reiterated that SDIR was happy to discuss Rangers' concerns.

54. As to paragraph 85:

(1) It is admitted that Rangers (including through solicitors) has disputed parts of the Quarterly Statements and the Annual Statement.

(2) It is denied, if it be alleged, that the correspondence between Rangers and SDIR, or between their solicitors, constitutes the without prejudice, good faith negotiations required by paragraph 3.2 of Schedule 3 of the Agreement.

(3) It is denied that the parties have discussed, pursuant to paragraph 2.4 of Schedule 3 of the Agreement, the disputed parts of the Quarterly Statements and/or the Annual Statement.

(4) It is admitted and averred that Rangers has not expressly agreed any part of a Quarterly Statement, or the Annual Statement, which it had previously disputed.

(5) Save as aforesaid, SDIR is unable to plead to paragraph 85 due to its lack of particularity.

55. As to paragraph 86:

(1) SDIR avers that the parties have not had without prejudice, good faith negotiations about the parts of the Quarterly Statements or the Annual Statement for the period 21 June 2017 to 30 June 2018 that Rangers has disputed.

(2) It is admitted that without prejudice meetings took place between Stewart Robertson, the managing director of Rangers, and SDIR on 28 June 2018 and 5 July 2018.

(3) It is denied, if it be alleged, that those meetings were for the purpose of discussing the disagreement between the parties over the content and form of the Quarterly Statements provided prior to 28 June 2018, including (for the avoidance of doubt) the financial information contained in those Quarterly Statements. SDIR reserves the right to plead further to paragraph 86 if Rangers clarifies what is meant by "*for the purpose of discussing the financial information*".

(4) SDIR notes that Rangers makes no allegation as to the content of the without prejudice meetings.

Relief

56. SDIR denies that Rangers is entitled to the interim and/or final mandatory injunctions and/or orders for specific performance sought at paragraph 87, or to any injunction or orders for specific performance (including, for the avoidance of doubt, those set out in Rangers' prayer for relief, which differ from those sought at paragraph 87). Without prejudice to the generality of that denial:

    (1) If (which is denied) SDIR has not provided reasonable supporting information to allow Rangers to check the accuracy and material completeness of the Quarterly Statements, it would be inappropriate for SDIR to be ordered to provide "*reasonable supporting information*", and so be exposed to an application for contempt for failing to provide the same, in circumstances where the parties dispute what supporting information is reasonable.

    (2) ~~For similar reasons, it would be inappropriate for SDIR to be ordered to provide "*proper*" Quarterly Statements, as sought by Rangers in its prayer for relief.~~

    (3) As to paragraphs 87.1 and 87.3:

        (a) Paragraph 40(1) above is repeated. SDIR has provided a Quarterly Statement for the period 1 July 2018 to 10 August 2018.

        (b) Paragraph 25(5) above is repeated. SDIR has provided the Alternative Quarterly Statements.

        (c) Paragraphs 47 and 47A above ~~is~~ are repeated. SDIR has provided the Alternative Annual Statement, which is materially complete.

    (4) Further and in any event, it is inappropriate for Rangers to seek injunctions having delayed in bringing this claim and having refused to engage in the without prejudice, good faith discussions required by paragraph 3.2 of Schedule 3 of the Agreement.

57. SDIR denies that Rangers is entitled to the declarations sought at paragraphs 88 and 89, for the reasons set out at paragraphs 49 to 52 above. SDIR notes that the declarations sought in Rangers' prayer for relief are different than those sought at paragraphs 88 and

89. For the avoidance of doubt, SDIR further denies that Rangers is entitled to the declarations sought in its prayer for relief, for the reasons set out at paragraphs 49 to 52A above

58. SDIR notes paragraph 90 and repeats paragraph 49 above. It is averred that if Rangers wishes to raise any further disputes, it must first engage in good faith discussions with SDIR under paragraphs 2.4 and/or 2.10 of Schedule 3 of the Agreement and have without prejudice, good faith negotiations under paragraph 3.2 of Schedule 3 of the Agreement in respect of any such further disputes. Rangers did not engage in good faith discussions or without prejudice, good faith negotiations with SDIR in respect of any of the further disputes raised by the amendments to its Counterclaim.

59. Paragraph 91 is denied.

(1) Paragraph 48 is repeated.

(2) The Annual Statement showed that the aggregate losses of the SD Store Net Profits, the SD Online Net Profits, and the retail operations at the Rangers Megastore and the Rangers Webstore were £380,297.

(3) The only reason a Licence Fee was due from SDIR to Rangers over the period 21 June 2017 to 30 June 2018 was royalty income. In respect of royalty income:

(a) SDIR made a payment to Rangers £474,026.87 (plus VAT) on 13 April 2018.

(b) The Annual Statement showed a further £92,405 due from SDIR to Rangers.

(4) Rangers has not issued an invoice or claim for payment for £92,405 pursuant to the Annual Statement (save insofar as this sum was included in the purported claim for payment that accompanied Rangers' letter before counterclaim).

(5) Over that period, only one Quarterly Statement, for the period 1 April 2018 to 30 June 2018, showed a Licence Fee due from SDIR to Rangers in respect of SD Store Net Profits, SD Online Net Profits, and/or the Retail Operations at the Rangers Megastore and the Rangers Webstore. As pleaded at paragraph 39

above, the Quarterly Statement for that Quarter showed that £98,166 was due from SDIR to Rangers as the Licence Fee for that Quarter. Rangers did not issue an invoice to SDIR for this amount within 10 days of the issue by SDIR of the Quarterly Statement, and has not done so subsequently (save insofar as this sum was included in the purported claim for payment that accompanied Rangers' letter before counterclaim).

(6) If Rangers had issued an invoice for £98,166 within 10 days of the issue by SDIR of the Quarterly Statement for the period 1 April 2018 to 30 June 2018, SDIR would have paid it. Rangers would then have been obliged to make a balancing payment to SDIR on provision of the Annual Statement.

60. If (which is denied) Rangers has suffered any loss, it has failed to mitigate that loss. In particular:

(1) As aforesaid, Rangers failed to issue an invoice for £98,166 within 10 days of the issue by SDIR of the Quarterly Statement for the period 1 April 2018 to 30 June 2018. Had it done so, SDIR would have paid that invoice.

(2) Rangers has also not issued an invoice or claim for payment for £92,405 pursuant to the Annual Statement.

(3) Rangers has failed to engage in either good faith discussions pursuant to paragraph 2.4 of Schedule 3 of the Agreement or without prejudice, good faith negotiations pursuant to paragraph 3.2 of Schedule 3 of the Agreement in relation to the concerns it raises in its counterclaim, as set out in paragraphs 53 to 55 above. Had Rangers done so, the parties would have reached an agreement.

61. ~~As to p~~Paragraph 92:

(1) ~~Rangers has failed to plead any basis for its claim to compound interest as damages.~~

(2) ~~The remainder of paragraph 92~~ is noted.

Rangers' counterclaim under the Further Agreement

62. Rangers' counterclaim under the Further Agreement is concerned with alleged breaches by SDIR of obligations under Schedule 3 to the Further Agreement to make payments to Rangers and to meet certain costs of refurbishing the Rangers Megastore and Webstore. SDIR's case in respect of those obligations is as follows.

SDIR's case on the true meaning of the Further Agreement

63. As to paragraph 93, in which Rangers sets out express terms of the Further Agreement:

    (1) SDIR admits paragraphs 93.1-93.6 and 93.8-93.10 as quotations (whole or partial) of terms of the Further Agreement. SDIR will rely on the Further Agreement for its full terms and true effect.

    (2) Paragraph 93.7 is admitted.

64. The Further Agreement contained the following further material terms:

    (1) By clause 3.1, Rangers purported to grant certain rights to SDIR, as pleaded in paragraphs 4 and 24ZA of the Particulars of Claim, defined in the Further Agreement as the "Rangers Rights".

    (2) In particular, by clause 3.1.1 Rangers purported to grant SDIR "*the exclusive right to operate and manage the Retail Operations*".

    (3) By clause 3.2, Rangers undertook that it "*shall not operate or manage, nor grant any third party any rights to operate or manage on its behalf, the retail sale of Branded Products and Additional Products, Official Rangers Kit and Replica Kit at bricks and mortar stores or online in the Territory during the Term.*"

    (4) By clause 3.3, Rangers additionally undertook that it "*shall not do, nor grant any rights to any third party to do, anything that would conflict with SDIR's rights to use and exploit the Rangers Rights in accordance with this Agreement"*

    (5) By clause 6.1 the parties agreed that "[i]*n consideration of the rights granted by Rangers to SDIR pursuant to this Agreement, the parties have agreed to the commercial terms set out in Schedule 3 to this Agreement*".

(6) The terms providing for SDIR to have the Matching Right, as pleaded at paragraphs 5 to 15 and 24ZA of the Particulars of Claim.

65. On a true construction of clause 3, the Rangers Rights were granted if, during a given relevant period, SDIR in fact enjoyed:

(1) the exclusive right, through the operation and management of the Retail Operations, to operate and manage the retail sale of Branded Products, Replica Kit and/or Additional Products in Rangers-branded stores whether bricks and mortar stores or online (clauses 3.1.1 and 3.2);

(2) the non-exclusive right to perform the Permitted Activities in relation to the Branded Products and Additional Products, Official Rangers Kit and Replica Kit (clause 3.1.2);

(3) the non-exclusive right to manufacture (and/or have manufactured) the Branded Products (clause 3.1.3);

(4) the Ancillary Rights (clause 3.1.4), namely the designation, branding and advertising rights specified in Schedule 4; and

(5) the non-exclusive right to use the Rangers Brands and the Rangers IPR as may be required in connection with the exercise of its rights under clauses 3.1.1 to 3.1.4 (inclusive) (clause 3.1.5).

66. Further, on a true construction of clause 3.1, insofar as the rights granted concerned the carrying on of any Permitted Activities in relation to Official Rangers Kit or Replica Kit, such purported rights were not granted if they were not in fact exercisable as a result of the non-supply of any relevant kit to SDIR during the relevant Licence Fee period.

67. Further, on a true construction of clause 3.1.2 together with the Matching Right provisions, the rights there referred to were to be exclusive to SDIR at the commencement of the Further Agreement, and to remain exclusive during its term unless, at SDIR's option, it chose not to match an offer of such rights made to a third party in compliance with the Matching Right provisions. In the premises, such rights were not granted if, during the relevant period, a third party enjoyed any right to

perform the Permitted Activities (or any of them) in relation to the Branded Products, Additional Products, Official Rangers Kit and/or Replica Kit in respect of which SDIR had been wrongly deprived of the opportunity to match.

68. If, contrary to SDIR's primary case pleaded in paragraphs 65 to 67 above, the rights in clause 3 were granted even if not in fact exercisable through lack of procurement of stock by Rangers or even if not in fact exclusive because of breach of the Matching Right by Rangers, then SDIR will say that such acts and omissions of Rangers would, in any event, constitute a breach of its negative undertaking in clause 3.3, with the same consequences in respect of SDIR's payment obligations, as further pleaded below.

69. On a true construction of the Further Agreement, in particular clauses 3.1, 3.2, 3.3 and 6.1 and paragraph 2.1 of Schedule 3, it was a condition precedent to SDIR's obligation to pay the Licence Fee (including its obligation to provide a Quarterly Statement), and/or to SDIR's obligation to pay the Offered Right GMPs, that, in respect of each period of the Further Agreement to which the Licence Fee or Offered Right GMPs were referable, Rangers:

    (1) had granted all the rights referred to in clauses 3.1 and 3.2 (as construed in accordance with paragraphs 65 to 67 above, and references below to grant of the rights in clauses 3.1 and 3.2 are made on the same basis); and/or

    (2) had complied with its negative undertakings in respect of the Rangers Rights in clauses 3.2 and/or 3.3.

70. Further, on a true construction of the Further Agreement, in particular clauses 3.1, 3.2, 3.3 and 6.1 and paragraph 2.1 of Schedule 3, it was a condition precedent to SDIR's obligation to meet the costs set out in paragraph 2.11 of Schedule 3 that Rangers:

    (1) had granted all the rights referred to in clause 3.1 and 3.2; and/or

    (2) had complied with its negative undertakings in respect of the Rangers Rights in clauses 3.2 and/or 3.3.

71. In the alternative to paragraphs 69 and 70 above:

(1) It was a condition precedent to the obligation to pay the Licence Fee in paragraph 1.1.1(i) of Schedule 3 (including the obligation to provide a Quarterly Statement), and/or to SDIR's obligation to pay the Offered Right 1 GMP, that SDIR enjoyed the rights in clauses 3.1.1 and 3.2, 3.1.4 and 3.1.5 and/or that Rangers complied with its negative undertakings in clauses 3.2 and 3.3 in respect of such rights.

(2) It was a condition precedent to SDIR's obligation to meet the costs set out in paragraph 2.11 of Schedule 3 that SDIR enjoyed the rights in clauses 3.1.1 and 3.2, 3.1.4 and 3.1.5 and/or that Rangers complied with its negative undertakings in clauses 3.2 and 3.3 in respect of such rights.

(3) It was a condition precedent to the obligation to pay the Licence Fee in paragraphs 1.1.1(ii) and (iii) of Schedule 3 (including the obligation to provide a Quarterly Statement), and/or to SDIR's obligation to pay the Offered Right 2 and 3 GMPs, that SDIR enjoyed the rights in clauses 3.1.2, 3.1.3, 3.1.4 and 3.1.5 and/or that Rangers complied with its negative undertaking in clause 3.3 in respect of such rights.

72. In the further alternative to paragraphs 69 to 71 above, on a true construction of the Further Agreement, in particular clauses 3, 6.1 and paragraph 2.1 of Schedule 3, the rights agreed to be granted by clause 3.1 and 3.2 together with Rangers' negative undertakings in clauses 3.2 and 3.3 and the payment in consideration for them constituted an entire obligation, such that if any of the aforesaid rights were not granted in a relevant period and/or that Rangers complied with its negative undertakings in clauses 3.2 and 3.3 in respect of such rights, then SDIR would not, in respect of such period, be under any obligation to pay the Licence Fee (or provide Rangers with a Quarterly Statement), to pay the Offered Right GMPs, or to meet the costs set out in paragraph 2.11 of Schedule 3.

73. In the alternative to paragraph 72 above, if (contrary to SDIR's case at paragraph 72 above) the rights to be granted under clause 3.1 and clause 3.2 did not constitute an entire obligation but were divisible, then they were divisible into two entire obligations, as follows:

(1) Rangers' obligation to grant the rights in clauses 3.1.1 and 3.1.2, 3.1.4 and 3.1.5 together with its negative undertaking in clauses 3.2 and 3.3 in respect of such rights was entire and was required to be fully (alternatively substantially) performed before the obligation to pay the Licence Fee in paragraph 1.1.1(i) of Schedule 3 (or provide Rangers with a Quarterly Statement) or to pay the Offered Right 1 GMP, or to meet the costs set out in paragraph 2.11 of Schedule 3 arose.

(2) Rangers' obligation to grant the rights in clauses 3.1.2, 3.1.3, 3.1.4 and 3.1.5 together with its negative undertaking in clause 3.3 in respect of such rights was entire and was required to be fully (alternatively substantially) performed before the obligation to pay the Licence Fee in paragraphs 1.1.1(ii) and (iii) of Schedule 3 (or provide Rangers with a Quarterly Statement) or to pay the Offered Right 2 and 3 GMPs arose.

74. Further or alternatively, it was an implied term of the Further Agreement, such term to be implied on the grounds that it is necessary to give business efficacy to the Further Agreement and/or so obvious as to go without saying, that:

(1) No payments under Schedule 3 by SDIR (including, for the avoidance of doubt, payment of the Licence Fee (including provision of a Quarterly Statement) or payment of the Offered Right GMPs, and the meeting of costs set out in paragraph 2.11 of Schedule 3) would be due unless the rights set out in clause 3.1 and 3.2 were granted to SDIR in the period to which payment was referable, or, insofar as granted, unless Rangers also complied with its negative undertakings in clauses 3.2 and 3.3 in respect of such rights.

(2) Alternatively, the obligations categorised in paragraph 73 above would not arise unless the corresponding rights set out in that paragraph were granted to SDIR for the relevant period.

(3) In the further alternative, the Offered Rights GMPs would not be payable and the obligation to meet the costs set out in 2.11 of Schedule 3 would not arise unless Rangers' obligations to grant the following rights were performed:

(a) In respect of Offered Right 1 GMP and the obligation to meet the costs set out in 2.11 of Schedule 3, the rights in clause 3.1.1 and 3.2, 3.1.4 and 3.1.5 or, insofar as granted, unless Rangers also complied with its negative undertakings in clauses 3.2 and 3.3 in respect of such rights.

(b) In respect of the Offered Right 2 GMP and the Offered Right 3 GMP, the rights in clause 3.1.2 to 3.1.5 or, insofar as granted, unless Rangers also complied with its negative undertaking in clause 3.3 in respect of such rights.

(4) In the further alternative the Offered Right 1 GMP shall not be payable, and the obligation to meet the costs set out in 2.11 of Schedule 3 would not arise, in respect of any period in which SDIR has not had the exclusive right to operate and manage the retail sale of Branded Products, Replica Kit and/or Additional Products in Rangers-branded stores whether bricks and mortar stores or online.

75. In breach of clauses 3.1 and 3.2, Rangers did not grant the rights therein, as pleaded in paragraphs 76 to 80 below.

76. SDIR has not enjoyed the exclusive right to operate and manage the retail sale of Branded Products, Replica Kit and/or Additional Products in Rangers-branded stores, whether bricks and mortar stores or online. In particular, pursuant to the September 2018 Agreements:

(1) From about 21 September 2018, Elite has run a Rangers webstore, www.thegersstoreonline.com, presented as the official Rangers webstore. For example (and without limitation):

(a) The webstore is described as "Rangers Football Club | Rangers Direct – Official Online Store".

(b) The webstore's Privacy & Security Policy redirects to the Privacy Policy of Rangers' website.

(2) Elite has run two physical "bricks and mortar" stores, in Glasgow (from about 8 December 2018) and in Belfast (from about 19 April 2019) that are Rangers-branded stores, and thereby presented as official Rangers stores.

(3) As found by the Court, Rangers breached clause 3.2 of the Further Agreement by entering into the Elite Retail Units Agreement. Paragraph 29A of the Particulars of Claim is repeated.

77. No Replica Kit or Official Rangers Kit for the 2019/2020 season has been supplied to SDIR pursuant to the Further Agreement. Paragraphs 31G to 31L of the Particulars of Claim are repeated.

78. For the duration of the Further Agreement (up until the date of this pleading), a third party has enjoyed rights to perform the Permitted Activities in relation to the Branded Products, Additional Products, Official Rangers Kit and/or Replica Kit that should have been the subject of a Notice of Offer provided by Rangers to SDIR under its Matching Right (whether under the Agreement or the Further Agreement), but which were not the subject of such Notice of Offer. In particular:

(1) From 11 August 2018 until the termination of the Elite/Hummel Agreement (which SDIR presently understands to have occurred in or around February or March 2020), Elite and Hummel enjoyed such rights under the Elite/Hummel Agreement. Paragraphs 24C and 24E of the Particulars of Claim are repeated.

(2) From 11 September 2018, Elite enjoyed such rights under the September 2018 Agreements. Paragraphs 27, 29 and 29A of the Particulars of Claim are repeated.

79. Rangers did not grant the rights referred to in clause 3.1.4. Rangers has failed to provide ancillary rights in that, during the term of the Further Agreement, Rangers:

(1) has failed to display the SDIR Brands on interview backdrops at the Ground, as required by 2.1 of Schedule 4;

(2) has failed to provide any branding or advertising in the "Rangers News", on the official Rangers' website or on trackside sites at the Ground, as required by 2.2 of Schedule 4; and

(3) has failed to provide any of the Advertising Rights set out in paragraph 3.2 of Schedule 4.

80. In the premises, Rangers did not grant SDIR the rights set out in clauses 3.1 and 3.2, having regard to the proper construction of those clauses as pleaded at paragraphs 65 to 67 above.

81. Further or alternatively, by reason of the facts and matters pleaded in paragraphs 76 to 80 above, Rangers breached its negative undertaking in clause 3.3, in that each of: (i) the granting of rights to Elite to operate and manage Rangers-branded stores and to perform Permitted Activities in respect of Branded Products, Additional Products, Official Rangers Kit and Replica Kit; (ii) the granting of sponsorship and advertising rights to third parties that SDIR was entitled to enjoy; and (iii) the failure to procure the supply of any Replica Kit to SDIR in the relevant period, constituted the granting of rights to third parties and/or things done by Rangers that conflict with SDIR's rights to use and exploit the Rangers Rights in accordance with the Further Agreement.

82. As to paragraph 94:

    (1) As to paragraph 94.1 paragraph 14 above is repeated, *mutatis mutandis*.

    (2) SDIR understands paragraph 94.2 to be an allegation that the £500,000 of works under paragraph 2.11 of Schedule 3 were to relate only to the new shop fit for the Rangers Megastore and not to the enhancements to the Rangers Webstore. Such an allegation is denied. In particular:

        (a) Paragraph 2.11 is a term of the Further Agreement because it was a Material Term of the Third Party Offer set out in the July Notice.

        (b) Rangers' letter to SDIR dated 20 July 2018, clarifying the terms of the Third Party Offer set out in the July Notice, made it clear that the £500,000 included both the works on the new shop fit for the Rangers Megastore and the enhancements to the Rangers Webstore.

        (c) Thus, the Material Term that SDIR confirmed it was willing to match in its letter to Rangers dated 25 July 2018 was that set out in the July Notice and clarified in Rangers' letter dated 20 July 2018.

        (d) The Further Agreement, which came into existence on SDIR confirming that it was willing to match the Material Terms of the Third Party Offer,

incorporated the relevant Material Term as clarified in Rangers' letter dated 20 July 2018.

(e) Alternatively, Rangers' letter dated 20 July 2018 is part of the factual matrix in which the Further Agreement falls to be construed.

Rangers' allegations of breach

83. As to paragraph 95:

(1) It is admitted that SDIR has not provided Quarterly Statements for the Quarters listed in paragraph 95.1. It is denied that SDIR is thereby in breach of the Further Agreement, for the reasons set out in paragraph 83(2) below.

(2) For each of the Quarters listed in paragraph 95.1, SDIR was not obliged to pay the Licence Fee, and thus not obliged to provide Quarterly Statements. In particular:

(a) Rangers had not granted SDIR the rights set out in clauses 3.1 and 3.2, as pleaded in paragraphs 75 to 80 above. The grant of those rights was a condition precedent to SDIR's obligation to pay the Licence Fee: paragraph 69 (alternatively paragraph 71) above is repeated.

(b) Alternatively, if Rangers did grant SDIR the rights set out in clause 3.1, Rangers has failed to comply with its negative undertakings in clauses 3.2 and 3.3, as pleaded in paragraphs 76(3) and 81 above. Compliance with those negative undertakings was a condition precedent to SDIR's obligation to pay the Licence Fee: paragraph 69 (alternatively paragraph 71) above is repeated.

(c) Alternatively, SDIR was not under an obligation to pay the Licence Fee on the basis set out at paragraph 72, alternatively paragraph 73 above.

(d) Further or alternatively, SDIR was not under an obligation to pay the Licence Fee by reason of the implied term pleaded at paragraph 74(1) above, alternatively by reason of the implied term pleaded at paragraph 74(2) above.

(3) It is admitted that SDIR has not carried out a new shop fit of the Rangers Megastore or developed an enhanced Rangers Webstore or borne the costs of doing so. It is denied that SDIR is thereby in breach of the Further Agreement. In particular:

(a) Rangers had not granted SDIR the rights set out in clauses 3.1 and 3.2, as pleaded in paragraphs 75 to 80 above. The grant of those rights was a condition precedent to SDIR's obligation to meet the costs set out in paragraph 2.11 of Schedule 3: paragraph 70 above is repeated.

(b) Alternatively, the grant of the rights in clauses 3.1.1 and 3.2, 3.1.4 and 3.1.5 was a condition precedent to SDIR's obligation to meet the costs set out in paragraph 2.11 of Schedule 3: paragraph 71(2) above is repeated.

(c) Alternatively, if Rangers did grant SDIR the rights set out in clause 3.1, Rangers has failed to comply with its negative undertakings in clauses 3.2 and 3.3, as pleaded in paragraphs 76(3) and 81 above. Compliance with those negative undertakings was a condition precedent to SDIR's obligation to meet the costs set out in paragraph 2.11 of Schedule 3: paragraph 70 above is repeated.

(d) Alternatively, SDIR was not under an obligation to meet the costs set out in paragraph 2.11 of Schedule 3 on the basis set out at paragraph 72, alternatively paragraph 73(1) above.

(e) Further or alternatively, SDIR was not under an obligation to meet the costs set out in paragraph 2.11 of Schedule 3 by reason of the implied term pleaded at paragraph 74(1) above, alternatively by reason of the implied term pleaded at paragraph 74(2) above, alternatively by reason of the implied term pleaded at paragraph 74(3)(a) above.

(f) Alternatively, SDIR was not under an obligation to meet the costs set out in paragraph 2.11 of Schedule 3 by reason of the implied term pleaded at paragraph 74(4) above. As set out at paragraph 76 above, SDIR has not enjoyed the exclusive right to operate and manage the

retail sale of Branded Products, Replica Kit and/or Additional Products in Rangers-branded stores, whether bricks and mortar stores or online.

Relief

84. As to paragraph 96.1:

(1) In the premises, it is denied that SDIR has breached its obligations under the Further Agreement. The remainder of this paragraph is pleaded without prejudice to that denial.

(2) It is denied, if it be alleged, that paragraph 2.3 of Schedule 3 of the Further Agreement requires the Quarterly Statement to be sent within 10 working days of the end of the relevant quarter, rather than within 10 days of the end of the relevant quarter. Paragraphs 14(5) and 82(1) above are repeated.

(3) As to paragraph 96.1(b):

(a) It is denied that Rangers would have agreed the Quarterly Statements had SDIR provided them. Rangers did not agree any of the Quarterly Statements SDIR provided under the Agreement (save for the Quarterly Statements that were deemed agreed under paragraph 2.4 of Schedule 3 to the Agreement, which Rangers nonetheless challenges in its counterclaim under the Agreement).

(b) Rangers would therefore not have issued valid VAT invoices for the Licence Fee, whether as alleged or at all.

(c) In any event, it is denied that Rangers would have issued valid VAT invoices for the Licence Fee in respect of the Quarters in paragraphs 95.1(a)-(b) immediately after 13 March 2019. Until 23 May 2019, when Lionel Persey QC, sitting as a Judge of the High Court, issued his Ruling of that date, Rangers' position was that the obligations and rights under the Further Agreement would be effective from the date on which the parties executed the Further Agreement.

(d) Further, it is denied, if it be alleged, that paragraph 2.4 of Schedule 3 of the Further Agreement requires Rangers to issue a valid VAT invoice within 10 days of SDIR's issue of the Quarterly Statement, rather than within 10 days of the end of SDIR's issue of the Quarterly Statement. Paragraphs 14(5) and 82(1) above are repeated.

(4) Paragraph 96.1(c) is denied: paragraph 83(2) above is repeated. Further, it is denied, if it be alleged, that paragraph 2.5 of Schedule 3 of the Further Agreement requires SDIR to pay the Licence Fee within 10 working days of SDIR's receipt of the invoice, rather than within 10 days of the end of SDIR's receipt of the invoice. Paragraphs 14(5) and 82(1) above are repeated.

(5) Paragraph 96.1(d) is denied. In particular:

(a) The Licence Fee was not payable for the period 11 August 2018 to 31 December 2018: paragraph 83(2) above is repeated.

(b) Even if (which is denied) the Licence Fee was payable for the period 11 August 2018 to 31 December 2018, the Offered Rights GMPs were not payable. In particular:

(i) Rangers had not granted SDIR the rights set out in clauses 3.1 and 3.2, as pleaded in paragraphs 75 to 80 above.

(ii) The grant of those rights was a condition precedent to SDIR's obligation to pay the Offered Rights GMPs: paragraph 69 (alternatively paragraph 71) above is repeated.

(iii) Further or alternatively, SDIR was not under an obligation to pay the GMPs, by reason of the implied term pleaded at paragraph 74(3) above.

(iv) Alternatively, SDIR was not under an obligation to pay the Offered Right 1 GMP, by reason of the implied term pleaded at paragraph 74(4) above. As set out at paragraph 76 above, SDIR has not enjoyed the exclusive right to operate and manage the retail sale of Branded Products, Replica Kit and/or Additional

Products in Rangers-branded stores, whether bricks and mortar stores or online.

(6) As to paragraph 96.1(e), the calculation of the pro-rated total Offered Rights GMPs for the period 11 August 2018 to 31 December 2018 is admitted.

85. As to paragraph 96.2:

(1) The first sentence is denied. Paragraph 83(3) above is repeated.

(2) In any event, the second sentence is denied, in circumstances where SDIR was not supplied with Replica Kit and, as set out at paragraphs 76(1) and 76(2) above, Elite was operating a webstore and two physical stores presented as Rangers official stores.

86. In the premises, paragraph 97.1 is denied.

87. Paragraph 97.2 is denied. Paragraph 85(2) above is repeated.

88. As to paragraph 98, it is denied that Rangers is entitled to the damages or interest on damages that it seeks.

89. As to paragraph 99:

(1) In the premises, it is denied that Rangers is entitled to the interim and/or final mandatory injunctions and/or orders for specific performance sought at paragraph 99.1 or at (10) of Rangers' prayer for relief. Even if, contrary to SDIR's case, it was obliged to provide Quarterly Statements: (i) damages would be an adequate remedy; and (ii) in light of Rangers' complaints about the Quarterly Statements and Annual Statement provided under the Agreement, it would not be just and equitable to order SDIR to provide Quarterly Statements under the Further Agreement, and so be exposed to an application for contempt for failing to provide the same, in circumstances where the parties dispute the requirements of a Quarterly Statement.

(2) It is denied that Rangers is entitled to the declaration at paragraph 99.2.

(3) It is denied that Rangers would be entitled to final mandatory injunctions and/or orders for specific performance requiring SDIR to carry out or procure the carrying out of a new shop fit for the Rangers Megastore at a cost of £500,000 and development of an enhanced Rangers' webstore, even if (contrary to SDIR's case) SDIR is in breach of its obligation to meet the costs of £500,000 of the works on a new shop fit for the Rangers Megastore and the cost of developing an enhanced Rangers Webstore. In particular:

(a) Damages would be an adequate remedy.

(b) The proposed mandatory injunction is unsatisfactorily vague.

(c) It would not be just and equitable in all the circumstances to compel SDIR to carry out or procure the carrying out of a new shop fit for the Rangers Megastore at a cost of £500,000 and development of an enhanced Rangers' webstore:

(i) where Rangers has had the benefit, in breach of the Agreement and the Further Agreement, of Elite operating a webstore and two physical stores presented as Rangers official stores, as set out at paragraphs 76(1) and 76(2)above; and

(ii) where Rangers refused to perform or recognise its obligations under the Further Agreement between 11 August 2018 and 22 May 2019, constituting 40% of the Initial Term of the Further Agreement. In particular, during that period:

a. Rangers failed to perform its obligations under the Further Agreement, wrongly claiming first that the Further Agreement was not in place (until Sir Ross Cranston's judgment in the Part 8 Proceedings) and then that the parties' obligations were not "live" until the Further Agreement was executed.

b. Following Sir Ross Cranston's judgment, and until 23 May 2019, when Lionel Persey QC, sitting as a Judge of

the High Court, issued his Ruling of that date, Rangers' position was that the obligations and rights under the Further Agreement would be effective from the date on which the parties executed the Further Agreement.

90. In Rangers' prayer for relief, it seeks "the taking of all necessary accounts" in relation to the Agreement and/or the Further Agreement. Rangers has not pleaded any entitlement to an account, and SDIR denies that it is so entitled.

91. Paragraph 100 is noted.

SA'AD HOSSAIN QC

JOYCE ARNOLD

3 October 2018

SA'AD HOSSAIN QC

SAM O'LEARY

1 February 2019

SA'AD HOSSAIN QC

JOYCE ARNOLD

23 May 2019

SA'AD HOSSAIN QC

JOYCE ARNOLD

3 April 2020

STATEMENT OF TRUTH

The Claimant believes that the facts stated in this Re-Amended Reply and Amended Defence to Counterclaim are true. I am duly authorised by the Claimant to sign this statement.

Signed: David Goran Dated: 3 April 2020

Full name: David Michael Cran

Position: Partner, RPC

IN THE HIGH COURT OF JUSTICE
Claim no. CL-2018-000631
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

BETWEEN:

SDI RETAIL SERVICES LIMITED

Claimant

-and-

THE RANGERS FOOTBALL CLUB LIMITED

Defendant

RE-AMENDED REPLY AND AMENDED DEFENCE TO COUNTERCLAIM

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Reference: DMC/SDI2.8

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