IN THE HIGH COURT OF JUSTICE **Claim No. CL-2018-000631**

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

COMMERCIAL COURT (QBD)

B E T W E E N

SDI RETAIL SERVICES LIMITED

Claimant

-and-

(1) THE RANGERS FOOTBALL CLUB LIMITED

(2) LBJ SPORTS APPAREL LIMITED

Defendants

RE- AMENDED DEFENCE AND COUNTERCLAIM

Served pursuant to the order of Lionel Persey QC sitting as a Judge of the High Court dated 2 October 2019

RE-AMENDED DEFENCE

Introduction

1. In this Re-Amended Defence:

   1.1. Save where the contrary is indicated, references to paragraph numbers are to paragraph numbers in the Re-Amended Particulars of Claim served on ~~27 September 2018~~ 4 October 2019.

   1.2. Where an allegation is not admitted the Defendant ("Rangers") requires the Claimant ("SDIR") to prove the same.

   1.3. Abbreviations used in the Re-Amended Particulars of Claim are used for convenience. No admission is made thereby.

1.4. As appears from the context, deletions to the Amended Defence have been made as a consequence of the judgments of Mr Justice Teare dated 24 October 2018, and Lionel Persey QC dated 19 July 2019, as well as judgments of Sir Ross Cranston dated 13 March 2019 and Mr Lionel Persey QC dated 6 June 2019 in the proceedings Claim No CL-2018-000726.

Parties

2. Paragraphs 1, 2 and 2A are admitted.

The Agreement

3. Paragraph 3 is admitted. At trial Rangers will refer to the Agreement in full for its true meaning and effect.

4. As to paragraph 4:

4.1. Subparagraph 4(1) is admitted.

4.2. Subparagraph 4(2) is admitted. The rights granted to SDIR by Rangers pursuant to clause 3.1 were by way of licence and no proprietary rights were granted to SDIR. The rights granted to SDIR under clause 3.1 by Rangers were collectively referred to in the Agreement as the "*Rangers Rights*".

4.2A Subparagraph (2A) is admitted.

4.2B Subparagraphs (2B) and (2C) are admitted. Rangers pleads to the proper interpretation of clauses 5.1 and 5.2 of the Agreement in more detail later in this Re-Amended Defence (and in particular in paragraph 43I below).

4.3. Subparagraph 4(3) is admitted.

4A. Further~~, on its true construction,~~ the definition of "Permitted Activities" did not include ~~either (1)~~ manufacturing~~, or (2) wholesale supply. The definition of "Permitted Activities" included "*distributing, marketing, advertising, promoting, offering for sale and/or selling*" only in the retail context and did not include the undertaking of such activities in the manufacture or wholesale context. It is averred that at all material times the parties understood and intended the Agreement to~~

primarily govern retail activities. It was not intended that manufacture or wholesale activities would be considered to be "Permitted Activities" under the Agreement.

4B. The foregoing construction of the definition of "Permitted Activities" is apparent from the wording of the Agreement read as a whole. In addition, in support of this construction Rangers will rely, *inter alia*, upon the following circumstances which pertained at the time of the execution of the Agreement and other matters:

4B.1 To the knowledge of both parties the Agreement governed only one part of the supply chain of Rangers Replica Kit, namely retail. It did not relate to the supply chain with respect to manufacture and wholesale supply.

4B.2 The business of SDIR, as known to both parties and generally in the sports retail market, was that of a discount retailer. SDIR had no business in manufacture or wholesale and did not have any or any adequate capability or expertise in this area to take on the manufacture and supply activities of the supply chain. SDIR is put to proof that it was capable of or did perform these activities.

4B.3 To the knowledge of both parties, at the time of the execution of the Agreement, the manufacturer and wholesaler of Rangers Replica Kit and other products was Puma United Kingdom Limited ("Puma") which exercised exclusive rights of manufacture and supply pursuant to an agreement with Rangers Retail Limited ("the Puma Agreement").

4B.4 When the Agreement was executed, the Puma Agreement was novated by Puma, SDIR and Rangers, to Rangers. The continuing role of Puma as manufacturer and wholesaler was acknowledged in the Agreement at clause 5 and elsewhere.

4B.5 To the knowledge of both parties, the Puma Agreement contained a matching right in favour of Puma which enabled Puma to extend the duration of the Puma Agreement beyond its term. Accordingly, had the definition of "Permitted Activities" included manufacturing and wholesale supply then there would have been a clash between the renewal and matching rights contained in the Puma Agreement and the renewal and matching rights

contained in the Agreement. The parties cannot have intended such an outcome.

4B.6 There was no agreement between the parties as to SDIR exercising the right to manufacture or wholesale supply Rangers Replica Kit or replacing Puma as the manufacturer and wholesaler and further there was no due diligence undertaken as to SDIR's suitability for such a role.

4B.7 Further or in the alternative, the parties had a common understanding that the Agreement was to cover retail operations only and that the words used to define "Permitted Activities" had a meaning confined to retail operations. This was agreed in the context discussions and agreements arising from the termination of an existing commercial relationship and the boycott of Rangers' football kit by its fans. It will be contended at trial that this common understanding has four consequences:

4B.7.1 It forms part of the admissible factual background relevant to the interpretation of the phrase "Permitted Activities". This factual background supports the interpretation of the Agreement that Rangers contends for.

4B.7.2 The negotiations that occurred between the parties and that led to the formation of the Agreement demonstrate that the parties had a common understanding of the meaning of the words "Permitted Activities" and attached a special meaning to those words such that "Permitted Activities" were understood to be restricted to retail only activities.

4B.7.3 The parties formed the said common understanding and relied on the same when entering into the Agreement and in the way that they conducted their commercial relationship thereafter. Both Rangers and SDIR communicated this understanding and assumed that: a. "Permitted Activities" under the Agreement would be restricted to retail only activities; and b. SDIR would only sell Replica Kit on a retail basis, and would not manufacture or wholesale the same. Both parties conducted themselves in negotiations of the Agreement and

~~after the formation of the Agreement on the basis of this assumption. In the circumstances SDIR is estopped by convention from contending for an interpretation contrary to that contended for by Rangers, as it does now. Further, the alleged right to exercise matching rights under the Schedule 3 of the Agreement in the fashion now alleged in the Amended Particulars of Claim would be inconsistent with the said common assumption and SDIR should or would be estopped from doing so.~~

~~4B.7.4 In the alternative, there was an implied term that the parties would act in good faith and in particular honour the said understanding. It is necessary and/or reasonable to imply such a term as the Agreement is a relational contract between two parties governing, amongst other things, the licence to distribute and for the supply of branded goods in the context of a settlement arising from a previous dispute and in an effort to avoid future fan boycotts. In the circumstances the interpretation contended for by SDIR represents a breach of the said implied term and/or is inconsistent with the interpretation contended for by SDIR. The interpretation and remedies contended for by SDIR represent conduct that is calculated to frustrate the purpose of the contract and/or vex Rangers. Further, the alleged right to exercise matching rights under Schedule 3 of the Agreement in the fashion now alleged in the Amended Particulars of Claim would be inconsistent with the said implied term.~~

~~4B.8 In the alternative, it is necessary and/or reasonable for the Court to imply terms to the effect of restricting the definition of "Permitted Activities" to regulating retail only activities as opposed to wholesale or manufacturing activities. It will be contended at trial the phrase "retail activities including" should be implied between the words "means" and "distributing" in the first line of the definition of the phrase "Permitted Activities".~~

5. The Agreement contained, *inter alia*, the following further terms:

5.1. At clause 2.2: "*Upon expiry of the Initial Term or the then current Renewal Period, this Agreement shall renew in accordance with paragraph 5.10 of*

Schedule 3 (if and to the extent it applies) (any such renewal being a ***Renewal Period****); and, if paragraph 5.10 of Schedule 3 does not apply, this Agreement shall terminate at the end of the Initial Term or then current Renewal Period (as applicable).*"

5.2. At clause 3.3: "*Rangers 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. For the avoidance of doubt, the granting of non-exclusive rights to third parties to carry out activities in areas where SDIR's rights are non-exclusive (and the exercise of these rights) shall not be deemed to conflict with SDIR's rights to use and exploit the Rangers Rights in accordance with this Agreement."*

5.3. At clause 13.2. and 13.2.2: "*During the Term, Rangers may not, without the prior written consent of SDIR, which consent may not be unreasonably withheld or delayed: […] part with any of the Rangers Rights (other than to licence to third parties on a non-exclusive basis only those Rangers Rights which are granted to SDIR on a non-exclusive basis pursuant to clause 3.1)".*

6. In addition, the third recital of the Agreement provided as follows: "*Subject in each case to the terms and conditions of this Agreement, Rangers wishes to appoint SDIR to operate and manage the Retail Operations on an exclusive basis and SDIR wishes to accept such appointment. In relation to such appointment, Rangers also wishes to grant and SDIR wishes to receive: (a) the non-exclusive right to perform the Permitted Activities in relation to the Branded Products, Replica Kit and Additional Products; and (b) the non-exclusive right to manufacture (and/or have manufactured) the Branded Products. Rangers and SDIR shall co-operate with each other in relation to the Retail Operations on the terms of this Agreement."*

~~Rangers' case~~

7. ~~As acknowledged by SDIR in the Particulars of Claim, there is~~ There was previously a dispute between the parties as to the true construction of paragraph 5 of Schedule 3 of the Agreement and its application to the grant of non-exclusive Offered Rights, which was resolved by Teare J in his judgment of 24 October 2018. ~~In this section, Rangers~~

~~sets out its case as to the true meaning and effect of the provisions of paragraph 5 of Schedule 3 which are in issue.~~

8. The purpose of the Agreement is recorded in the third recital, namely for Rangers (i) to grant a licence to SDIR, on an exclusive basis, to operate and manage the Retail Operations and (ii) to grant a licence to SDIR, on a non-exclusive basis, to exercise the right to perform the Permitted Activities in relation to the Branded Products, Replica Kit and Additional Products and to manufacture and/or have manufactured the Branded Products.

9. The grant of rights to SDIR is recorded, primarily, at clause 3.1 of the Agreement.

10. The Agreement provided at clause 3.3 that the grant by Rangers to third parties of non-exclusive rights to carry out activities in areas where SDIR's rights are non-exclusive was not to be deemed to conflict with SDIR's rights. This was further confirmed by the terms of clause 13.2.2. ~~Accordingly, the Agreement preserved to Rangers the power at any time to grant to third parties non-exclusive rights to carry out activities in areas where SDIR's rights are non-exclusive.~~

11. In consideration of the rights granted by Rangers to SDIR the parties agreed to the commercial terms set out in Schedule 3.

12. Pursuant to clause 2.2 of the Agreement, the Agreement was intended to operate for an Initial Term from 21 June 2017 until 31 July 2018 (subsequently extended to 10 August 2018) and at the end of the Initial Term, the Agreement was to terminate save to the extent that the provisions of paragraph 5 of Schedule 3 of the Agreement operated, as follows:

    12.1. Pursuant to paragraph 5.10 of Schedule 3, the Agreement could be renewed in accordance with the terms of that provision.

    12.2. Alternatively, pursuant to paragraphs 5.2 to 5.7 of Schedule 3, SDIR could exercise its "*Matching Right*" and a further agreement would be executed between the parties on the same terms as the Agreement with certain variations, as specified in paragraph 5.7 of Schedule 3.

13. Accordingly, the purpose of paragraph 5 of Schedule 3 of the Agreement was to determine the future rights and obligations of the parties once the Initial Term of the Agreement expired.

14. The Matching Right provisions of Schedule 3 of the Agreement provided as follows:

    14.1. The categories of right which could be the subject of the Matching Right provisions were set out at paragraph 1.1.4 of Schedule 3 and each was referred to as an Offered Right. In particular, the Offered Rights covered (i) the right to operate and manage the Retail Operations; and (ii) the right to perform the Permitted Activities in relation to the Branded Products, the Additional Products, the Official Kit and/or Replica Kit.

    14.2. Pursuant to paragraph 5.1, from a date falling 6 months prior to the expiry of the Initial Term, Rangers was entitled to explore with a third party the possibility of that third party acquiring (following expiry of the Initial Term) some or all of the Offered Rights.

    14.3. Pursuant to paragraph 5.2, if Rangers received an offer from such a third party for some or all of the Offered Rights, it was obliged, within 5 days of receipt, to give SDIR written notice of the offer.

    14.4. Pursuant to paragraph 5.6, if SDIR received written notice of the third party's offer, it was obliged (subject to its rights to seek further information or clarification of the third party offer pursuant to paragraph 5.4), within 10 Business Days, to provide written notice to Rangers "*as to whether it was willing to match the Material Terms of the Third Party Offer in all material respects in relation to any of the Offered Rights or in relation to all or any combination of the Offered Rights*".

    14.5. Pursuant to paragraph 5.7, in the event that ~~Rangers~~ SDIR exercised the right to match the terms of the third party's offer, Rangers and SDIR were obliged to enter into a further agreement on the same terms as the Agreement, save only as to any variation required to effect the Material Terms of the third party's offer in all material respects.

14.6. ~~Accordingly, in the event that SDIR successfully exercised its Matching Right, it was entitled to the grant of a licence to exercise for a term those of the Offered Rights in respect of which the third party made an offer on the same terms as the Agreement, save as varied by paragraph 5.7~~.

15. ~~Once an Offered Right is acquired by this matching process, the Matching Right provisions have been performed and cease to have effect in respect of that Offered Right. Paragraph 5 of Schedule 3 does not anticipate the acquisition by SDIR of the same right more than once and it would be commercially absurd if it did. Once a right has been acquired, it has been acquired. It cannot be acquired a second time~~.

16. ~~Paragraph 5.8 of Schedule 3 is consistent with the analysis set out above at paragraphs 7 to 15 of this Defence~~. Should SDIR exercise its Matching Right and thereby engage the matching process contained in paragraphs 5.2 to 5.7 of Schedule 3, then under paragraph 5.8 of Schedule 3 (in summary) Rangers may not approach, solicit, tender for, negotiate with or enter into an agreement with a third party in respect of the third party offer or the right in respect of which the Matching Right has been exercised.

17. ~~In the event that SDIR exercises its matching right in respect of a non-exclusive right by agreeing to match the Material Terms of the third party offer in all material respects, paragraph 5.8 of Schedule 3 does not prohibit Rangers from entering into an agreement with a third party so as to grant to the third party a licence to exercise such a right on a non-exclusive basis. In this respect, SDIR relies upon the following:~~

17.1. ~~Upon exercising its Matching Right, SDIR acquires for a term and on a non-exclusive basis the Offered Right in respect of which it exercised the Matching Right. (Such acquisition being contingent upon the execution of a further agreement pursuant to paragraph 5.7 of Schedule 3 of the Agreement.) To acquire the same right for a second time also on a non-exclusive basis would be commercially meaningless and absurd.~~

17.2. ~~The acquisition of a non-exclusive right by a third party would not conflict with SDIR's right because SDIR's right is similarly non-exclusive. As stated at paragraph 10 above, Rangers has always had the power to grant to third parties non-exclusive rights to carry out activities in areas where SDIR's rights are non-exclusive.~~

17.3. ~~Once SDIR has acquired an Offered Right by matching, the Matching Right provisions have been performed in respect of that Offered Right and those provisions cease to have effect with regard to that Offered Right. SDIR does not have a right repeatedly to match offers of third parties to acquire the same non-exclusive right. There is no provision for this in paragraph 5 of Schedule 3, or anywhere else in the Agreement. Such a right on the part of SDIR would be devoid of content and commercially absurd.~~

17.4. ~~If paragraph 5.8 of Schedule 3 were to be interpreted otherwise, its effect would be to turn rights granted under the Agreement on a non-exclusive basis into exclusive rights. Whereas, under the Agreement, SDIR has non-exclusive rights within the categories at clause 3.1.2 and 3.1.3, through the repeated matching process now suggested by SDIR, SDIR would gain exclusive rights. This was clearly not the intention of the parties nor the commercial purpose of the Agreement as reflected in its terms and would be contrary to the express terms of the Agreement at the third recital and clauses 3.1, 3.3 and 13.2.~~

17.5. ~~Pursuant to paragraph 5.7 of Schedule 3 of the Agreement, the acquisition by SDIR of an Offered Right in respect of which the Matching Right is exercised is to be on the same terms as the Agreement, save only as to any variation required to effect the Material Terms in all material respects. Accordingly, any further agreement executed by the parties following SDIR's exercise of its Matching Right would incorporate the non-exclusive provisions contained at clauses 3.3, 13.2 and the third recital of the Agreement. This has been acknowledged by SDIR and SDIR has incorporated these provisions into its proposed draft of the further agreement to be executed between Rangers and SDIR which was attached to the letter of RPC to Mills & Reeve dated 20 August 2018. The purported effect of paragraph 5.8 of Schedule 3 so as to prevent the grant to third parties of non-exclusive rights would thus also be inconsistent with the terms of the further agreement asserted by SDIR.~~

17.6. ~~If paragraph 5.8 of Schedule 3 were to be interpreted otherwise, SDIR would be in a better position if Rangers received a third party offer than it would be in if no third party offer were received by Rangers.~~

17.7. ~~If paragraph 5.8 of Schedule 3 were to be interpreted otherwise, it would amount to a restraint of trade by preventing Rangers from granting to third parties non-exclusive rights to perform the Permitted Activities in relation to the Branded Products, Replica Kit and Additional Products. Such a restraint of trade would not protect a legitimate business interest; and/or would not be necessary to protect such an interest; and/or would not be in the public interest. Paragraph 5.8 of Schedule 3 would thus be unenforceable at common law as a restraint of trade. The parties cannot have intended this result.~~

17.8. ~~If paragraph 5.8 of Schedule 3 were to be interpreted otherwise, the Matching Right provisions and in particular paragraph 5.8 would amount to an anti-competitive agreement contrary to section 2 of the Competition Act 1998 because those provisions would allow SDIR to eliminate any competition in the marketing and sale of Rangers merchandise by exercising exclusive rights to perform the Permitted Activities in relation to the Branded Products, Replica Kit and Additional Products. Paragraph 5.8 of Schedule 3 would thus be void and unenforceable. The parties cannot have intended this result.~~

18. ~~The above construction and analysis is also consistent with the provision of paragraphs 5.9 and 5.11 of Schedule 3. Those paragraphs are subject to the other provisions of paragraph 5 and its overall purpose and structure, which has been set out above~~.

Matching Right under the Agreement

19. As to paragraph 5, it is admitted that under paragraph 5 of Schedule 3 of the Agreement (which Rangers will refer to in full as necessary) a Matching Right was granted to SDIR. As aforesaid, the purpose of paragraph 5 of Schedule 3 is to determine the future rights and obligations of the parties once the Term of the Agreement expires. Save as aforesaid, paragraph 5 is denied.

20. As to paragraph 6, it is admitted that paragraph 5.11 of Schedule 3 reads "*Save as expressly permitted in this paragraph, Rangers shall not approach, solicit, tender for or enter into negotiations or any agreement with any third party in relation to any of the Offered Rights.*"

21. Paragraph 7 is admitted.

22. Paragraph 8 is admitted, save that the opening words are not accurate. The opening words of paragraph 1.1.4 read as follows: "*Offered Right means each of the following rights (in whole or in part)*".

23. ~~As to paragraphs~~ Paragraphs 9 to 13~~, the purpose, structure and effect of the Matching Right provisions contained at paragraphs 5.2 to 5.8 of Schedule 3 have been set out above at paragraphs 12 to 18 of this Defence. Save as is~~ are admitted as a broad summary of the paragraphs of Schedule 3 referred to in those paragraphs ~~or averred in those paragraphs of this Defence, paragraphs 9 to 13 of the Particulars of Claim are denied~~.

24. As to paragraph 14:

    24.1. Paragraph 5.8 of Schedule 3 provides as follows: "*Should SDIR exercise its matching right in accordance with this paragraph, Rangers shall not approach, solicit, tender for, negotiate with or enter into any agreement with that third party or any other third party in respect of the Third Party Offer and/or any of the Offered Rights (and, in each case, any connected commercial arrangements if applicable) in respect of which the matching right is exercised. Should SDIR exercise its matching right in respect of some but not all of the Offered Rights, Rangers may enter into an agreement with that third party on the Material Terms set out in the Notice of Offer only in respect of the Offered Rights over which SDIR has not exercised its matching right only. Should SDIR not exercise its matching right over any of the Offered Rights, Rangers may enter into an agreement with that third party on the Material Terms set out in the Notice of Offer.*"

    24.2. ~~Paragraphs 16 and 17 of this Defence are herein repeated. Save as is expressly admitted or averred in those paragraphs of this Defence, paragraph 14 of the Particulars of Claim is denied~~.

24A. Paragraph 14A is admitted.

24B. Paragraph 14B is admitted.

24C. It is admitted that paragraph 5.13 of Schedule 3 contained the words quoted at paragraph 14C of the Amended Particulars of Claim.

25. As to paragraph 15:

25.1. It is admitted that paragraph 5.14 of Schedule 3 and the order of Phillips J dated 30 July 2018 contain the quoted provisions.

25.2. The meaning and effect of paragraph 5.14 is that SDIR is entitled to exercise its Matching Right so as to acquire some or all of the Offered Rights in the period of 2 years after 31 July 2018. ~~For the reasons aforesaid at paragraphs 12 to 18 of this Defence, SDIR is not entitled repeatedly to exercise matching rights in respect of Offered Rights which it has already acquired (whether actually or contingently) so as to exercise exclusivity over the Rangers Rights at clause 3.1.2 and 3.1.3~~.

SDIR's exercise of the Matching Right

26. Paragraph 16 is admitted. The letter of 4 June 2018 was sent in good faith by Rangers and in the belief, albeit mistaken, that such letter complied with the requirements of paragraph 5 of Schedule 3 of the Retail Agreement.

27. Paragraph 17 is admitted. The July Notice complied with the provisions of paragraph 5.2 to 5.4 inclusive of Schedule 3.

28. As to paragraph 18, it is admitted that on 17 July 2018 SDIR wrote to Rangers requesting further information and clarification concerning the July Notice. The July Notice related to a genuine third party offer. No further admission is made.

29. Paragraph 19 is admitted. Rangers' letter of 20 July 2018 complied with paragraph 5.4 of Schedule 3.

30. As to paragraph 20, it is admitted that by letter dated 25 July 2018 from SDIR to Rangers, SDIR confirmed that it was willing to match the Material Terms of the third party offer to which the July Notice related in all material respects in relation to "Offered Right 1", "Offered Right 2" and "Offered Right 3" in accordance with paragraph 5.6 of Schedule 3 to the Agreement. It is also admitted that SDIR purported to reserve its rights. It is denied that the purported reservation of rights had any effect.

31. As to paragraph 21, it is admitted that by letter dated 26 July 2018 from Rangers to SDIR, Rangers confirmed that, following SDIR's letter of 25 July referred to in the previous paragraph of this Re-Amended Defence, Rangers and SDIR would now enter into a further agreement on the same terms as the Agreement save only as to any variation required to effect the Material Terms. By this letter Rangers also confirmed that, in accordance with paragraph 5.8 of Schedule 3, Rangers would not now enter into an agreement with the third party that made the Third Party Offer in respect of the arrangements set out in the Third Party Offer notified to SDIR on 12 July 2018.

32. In the premises set out at paragraphs 30 and 31 of this Re-Amended Defence, SDIR has successfully exercised its Matching Right in respect of those of the Offered Rights in respect of which the third party made an offer and paragraphs 5.2 to 5.7 of Schedule 3 have been performed with the result that (pursuant to paragraph 5.7) Rangers ~~is~~ became contractually obliged to enter into an agreement with SDIR in respect of those of the Offered Rights in respect of which the third party made an offer (as it ultimately did). SDIR ~~has~~ thus ~~contingently~~ acquired "Offered Right 1", "Offered Right 2" and "Offered Right 3" ~~(pending execution of the further agreement between the parties)~~.

33. Pursuant to paragraph 5.8 of Schedule 3 of the Agreement, Rangers rejected the third party offer which was the subject of the July Notice.

34. As to paragraphs 22 to 24~~, it is admitted that:~~ (1) there is a disagreement between SDIR and Rangers as to the scope of the Material Terms of the third party offer which was the subject of the July Notice and it is admitted that this disagreement ~~is now~~ became the subject of Part 8 proceedings, the outcome of which is addressed below, as alleged; (2) it is admitted that Mills & Reeve and RPC sent the letters referred to in paragraphs 22 and 23; (3) so far as necessary Rangers will refer to the pleaded letters, which are admitted, for their full terms, meaning and effect; and (4) save as aforesaid no admissions are made. ~~Further, Rangers reserves its right to amend and/or plead further on these issues pending the decision of the Court in the Part 8 proceedings as to whether there was in fact an effective. It is noted that SDIR is not seeking that disagreement to be resolved in these proceedings. It is denied that SDIR is able to reserve any right to itself to amend the Particulars of Claim as claimed. Notwithstanding that the disagreement concerning Material Terms is not the subject of these proceedings, Rangers avers as follows:~~

34.1. The letter dated 3 August 2018 from Mills & Reeve to RPC enclosed a draft further agreement which complied with the provisions of paragraph 5 of Schedule 3.

34.2. Since that time, Rangers, through Mills & Reeve, has repeatedly sought to engage with SDIR, through RPC, to conclude the terms of the further agreement. As a result of the unreasonable and dilatory conduct of SDIR and its refusal to engage in good faith negotiations with Rangers, a further agreement has not yet been concluded. In particular:

(a) Rangers has made concessions to SDIR in an attempt to move matters forward.

(b) In contrast, the position adopted by SDIR has been to refuse to consider or discuss anything other than the draft further agreement which RPC presented to Mills & Reeve for execution and return under cover of RPC's letter dated 20 August 2018.

(c) The draft further agreement put forward by RPC does not comply with paragraph 5.7 of Schedule 3 of the Agreement in that it fails to give effect to several of the Material Terms of the third party offer in all material respects which was the subject of the July Notice.

(d) Further, SDIR has asserted that the draft further agreement put forward by RPC in fact took effect on 11 August 2018. That position is untenable, contrary to the express wording of paragraph 5.7 of Schedule 3 and contrary to the position as stated by Phillips J at the hearing of 30 July 2018 that, given SDIR had succeeded in exercising its Matching Right the parties were "*now proceeding to negotiate a contract.*"[1]

(e) By letters dated 24 August 2018, 6 September 2018, 14 September 2018 and 21 September 2018, Mills & Reeve sought to engage RPC in good faith negotiations on behalf of each firm's respective client. On 25 September 2018 RPC wrote to Mills & Reeve stating that it was now willing to meet to discuss the terms of the further agreement in good faith

[1] Page 20, line 15 of the Transcript of the hearing of 30 July 2018.

~~but sought to attach conditions to such a meeting taking place. No such meeting has yet occurred.~~

34.3. ~~No further admission is made~~.

34ZA. Paragraph 24ZA is admitted.

~~Alleged b~~Breach of the Matching Right

34A. As to paragraph 24A, it is admitted that by a letter dated 30 March 2018 from Rangers to Elite and Hummel A/S ("Hummel"), Rangers, Elite and Hummel entered into an agreement ("the Elite/Hummel Agreement"). By this agreement (which Rangers will refer to as necessary at trial for its full terms, meaning and effect):

34A.1 Rangers appointed Elite as the exclusive worldwide supplier of Technical Products for the Term as defined.

34A.2 Rangers appointed Hummel as the Technical Brand to Rangers.

34A.3 Elite and Hummel were granted the following rights:

(a) The right to manufacture Technical Products (which included the Rangers Official Kit and Rangers Replica Kit) and Rangers Leisurewear, Clothing and Accessories;

(b) The right to wholesale supply Technical Products and Rangers Leisurewear, Clothing and Accessories; and

(c) The right to enjoy certain sponsorship opportunities as defined at page 5 of the Elite/Hummel Agreement.

34A.4 At page 2, terms were set out concerning the delivery of Technical Products to Rangers' Retail Partner (as to the proper interpretation of which, see paragraph 52A.2 below: briefly, Rangers contends that this term referred to Rangers' retail partner for the 2018/2019 season and thereafter its retail partner from time to time). SDIR was Rangers' ~~Retail Partner~~ retail partner under the Agreement until the expiry of the Agreement on 11 August 2018, and as set out more fully below later became Rangers' Retail Partner for the purposes of the Elite / Hummel Agreement because of the commencement of the Further

Agreement, though Rangers did not become aware of that and/or believe it until Sir Ross Cranston gave his judgment in the Part 8 Proceedings confirming that the Further Agreement was in place. Elite was granted rights to retail Rangers Replica Kit and other products by the Elite Non-Exclusive Rights Agreement executed on 11 September 2018, as is more particularly set out below. Until the Elite Non-Exclusive Rights Agreement was entered into Elite had no such rights. These rights are not included in the rights granted in the Elite/ Hummel Agreement.

34A.5 At page 3, Elite agreed to pay Rangers a minimum Annual Fee. Additional fees were to be payable if certain conditions were met. Further royalty payments were to be made with respect to Elite/Hummel's wholesale of Rangers Replica Kit and other products.

34.6 At page 6, Hummel agreed that in the event of Elite's insolvency, Hummel would undertake Elite's obligations and undertakings.

34.7 Save as aforesaid, no admission is made.

34B. No rights were granted pursuant to the Elite/Hummel Agreement to perform any retail activities. In particular, no rights were granted to Elite or Hummel to distribute, market, advertise, promote, offer for sale or sell Rangers Replica Kit or any other products on a retail basis.

34C. As to paragraph 24B:

34C.1 It is admitted that Rangers did not notify SDIR of the Elite/Hummel Agreement prior to its execution. ~~As set out more particularly below, Rangers was under no obligation to do so~~.

34C.2 Subparagraphs 24(B)(1) and 24(B)(2) are not admitted.

34D. Paragraph 24C is admitted. ~~denied:~~

~~34D.1 The rights granted to Elite/Hummel pursuant to the Elite/Hummel Agreement were not Offered Rights within the meaning of paragraph 1.1.4 of Schedule 3 of the Agreement.~~

34D.2 As aforesaid at paragraphs 4A and 4B above, the definition of "Permitted Activities" did not include either (1) manufacturing or (2) wholesale supply and further the Permitted Activities were applicable only in the retail context and not in the wholesale or manufacture context.

34D.3 Accordingly, none of the rights granted to Elite/Hummel (being a right to manufacture, a right to wholesale supply and associated sponsorship rights) fell within the definition of "Permitted Activities" and therefore none of the rights granted to Elite/Hummel pursuant to the Elite/Hummel Agreement constituted Offered Rights within the meaning of paragraph 1.1.4 of Schedule 3 of the Agreement.

34E. Paragraph 24D is admitted denied. The right to manufacture and the appointment as Technical Brand did not constitute a "connected commercial arrangement" within the meaning of paragraph 5.3 of Schedule 3 of the Agreement. SDIR has provided no particulars of its case in this respect. It will be contended at trial by Rangers that the apparent contention by SDIR that "connected commercial arrangements" covered the right to manufacture is inconsistent with the words of the Agreement and the matters pleaded at Paragraph 4A and 4B above. Further, it is averred that SDIR should be estopped from pursuing the new allegations as to construction of the Agreement and the remedies it seeks. Alternatively, to permit it to do so would represent a breach of the implied duty of good faith as its case is advanced either to frustrate the purpose of the contract and/or vex Rangers. It is averred that at all material times SDIR neither had the intention nor ability to match and then perform the alleged rights to manufacture or supply wholesale.

34F. Paragraph 24E is admitted denied.

34F.1 Rangers has not acted in breach of paragraph 5.2 or 5.11 as alleged because the Elite/Hummel Agreement did not grant any Offered Rights to Elite/Hummel and neither did the said agreement constitute or contain any connected commercial arrangements within the meaning of paragraph 5.3 of Schedule 3 of the Agreement.

34F.2 The further alleged breach of paragraph 5.13 of Schedule 3 is also denied. SDIR has provided no particulars of its case in this regard. Rangers did not

~~enter into the Elite/Hummel Agreement with any intention or purpose of avoiding or limiting the application of paragraph 5 of Schedule 3.~~

~~34G. Further, it is averred that Rangers relies on the matters set out at Paragraph 4A and 4B above to deny the allegations made at Paragraphs 24A to 24E of the Amended Particulars of Claim. In particular, it is averred that SDIR should be estopped from pursuing the new allegations as to construction of the Agreement and the remedies it seeks. Alternatively, to permit it to do so would represent a breach of the implied duty of good faith as its case is advanced either to frustrate the purpose of the contract and/or vex Rangers. It is averred that at all material times SDIR neither had the intention nor ability to match and then perform the alleged rights to manufacture or supply wholesale.~~

35. As to paragraph 25 and subparagraphs 25(A) to 25(D):

35.1. ~~As set out in paragraph 35 of this Defence, as a result of SDIR's unreasonable and dilatory conduct with respect to the further agreement between the parties and SDIR's failure to engage in good faith negotiations with Rangers in respect thereof, by~~ As at September 2018 Rangers considered that there ~~remained~~ was no further agreement in place between the parties. Rangers was unable to procure the sale of Rangers merchandise to the frustration of its supporters and the commercial detriment of Rangers. In view of the fact that the Scottish football season had started in August 2018 and the fact that Rangers fans wished to purchase Rangers merchandise, as set out more fully below Rangers decided (after, among other things, taking legal advice from leading counsel) to enter into a non-exclusive agreement with a third party for the sale of Rangers Replica Kit and Branded Products.

35.2. On 11 September 2018, Rangers and ~~LBJ Sports Apparel Limited t/a The Elite Group ("~~Elite~~")~~ entered into an agreement ("the Elite Non-Exclusive Rights Agreement") which Rangers will refer to as necessary at trial for its full terms, meaning and effect and which granted to Elite the following non-exclusive rights:

(a) The non-exclusive right to distribute, market, advertise, promote, offer for sale and/ or sell products bearing any Rangers brands or Rangers

related brands, replica kit of the official Rangers Football Club kit and Rangers branded product or products dealing with Rangers content.

(b) The non-exclusive right to manufacture and/ or have manufactured products bearing any Rangers brands or Rangers related brands.

(c) The non-exclusive right to use the Rangers brands and Rangers intellectual property rights in connection with the exercise of the rights granted.

35.3 Subparagraph 25(B) is admitted.

35.4 ~~As to subparagraph~~ Subparagraph 25(D)~~, the first sentence~~ is admitted~~. As to the second sentence, the redactions to the Elite Agreement are required by Elite, which has not consented to the lifting of these redactions~~.

35.5 Also on 11 September 2018, Rangers sent to Elite a letter subsidiary to the Elite Non-Exclusive Rights Agreement which SDIR has termed "*the Elite Retail Units Agreement*".

35.4 No further admission is made.

35A. As to subparagraphs 25(E) to 25(H):

35A.1 Subparagraphs 25(E) and 25(F) are admitted ~~save that there is a typographical error in the first quotation by the duplication of the words "*and such other locations*".~~

35A.2 As to subparagraph 25(G):

(a) As to the particulars at (a), Rangers believes that Elite has entered into a lease of a store at Argyle Street and that Elite ~~intends to~~ acquired a lease of a store in Belfast.

(b) The particulars at (b) are admitted.

(c) The particulars at (c) are denied. Rangers has granted no rights to Elite to operate or manage Rangers branded stores on its behalf. Elite operates and manages any such stores on its own behalf as principal.

(d) The particulars at (d) are denied. Elite's rights to distribute, sell and offer for sale Replica Kit and other products (as defined in the Agreement) are governed by the Elite Non-Exclusive Rights Agreement.

(e) As to the particulars at (e) to (f), the rights granted to Elite pursuant to the Elite Retail Unit Agreement are as set out in the terms of that agreement and in the text quoted at paragraph 25(E) of the Amended Particulars of Claim.

(f) The particulars at (g) are denied. Rangers has no such ability to determine price.

(g) Save as aforesaid, no admission is made.

25A.3 As to subparagraph 25(H), the Elite Retail Units Agreement was a letter subsidiary to the Elite Non-Exclusive Rights Agreement.

35B. As to the first sentence of subparagraph 25(1), retail sales of Replica Kit and Branded products were commenced by Elite pursuant to the Elite Non-Exclusive Rights Agreement, not the Elite Retail Units Agreement. Save as aforesaid, ~~S~~subparagraphs 25(1) and 25(2) are admitted**.**

36. As to paragraph 26, Rangers understands that Elite has entered into an agreement or arrangement with JD Sports which grants JD Sports non-exclusive rights to sell certain Rangers merchandise. Rangers has not seen a copy of any agreement between Elite and JD Sports. No further admission is made.

37. Paragraph 27 is admitted. ~~As to paragraph 27:~~

37.1. ~~By the Elite Agreement, Rangers granted to Elite non-exclusive rights, as detailed at subparagraph 35.2 of this Defence. Rangers was entitled to do so because at all material times Rangers has had and continues to have the power to grant such non-exclusive rights to third parties. Further or alternatively, Rangers had power to grant such rights pursuant to clauses 3.1, 3.3 and 13.2 and the third recital of the Agreement or any further agreement between Rangers and SDIR.~~

37.2. ~~It is admitted that the content of the non-exclusive rights granted to Elite set out at paragraph 35.1(a), above, was similar to the content of Offered Rights (ii) and (iii).~~

37.3. ~~Save as aforesaid, paragraph 27 is denied.~~

38. As to paragraph 28, it is admitted that Rangers has not provided SDIR with any Notice of Offer under paragraph 5.2 of Schedule 3 of the Agreement since the July Notice.

39. ~~Save for Paragraph 29(5),~~ Paragraph 29 is admitted. ~~Paragraph 29(5) is denied in so far as it relates to the alleged Further Agreement (the existence of which is an issue in dispute between the parties in the said Part 8 Action).~~ ~~As to paragraph 29, it is denied that Rangers is in breach of paragraph 5 of Schedule 3 of the Agreement whether as alleged or at all.~~

40. ~~As to paragraph 29(1):~~

40.1. ~~The first sentence is denied. The full wording of paragraph 5.8 of Schedule 3 is set out above at paragraph 24.1 of this Defence. As is expressly provided therein, paragraph 5.8 only applies to Third Party Offers and/or Offered Rights "*in respect of which the matching right is exercised*".~~

40.2. ~~SDIR having successfully exercised its Matching Right in respect of those of the Offered Rights in respect of which the third party made an offer, Rangers duly rejected the Third Party Offer which was the subject of the July Notice.~~

40.3. ~~For the reasons aforesaid at paragraphs 15 to 17 of this Defence, once the matching process has taken place such that SDIR has successfully exercised its Matching Right so as to acquire (whether contingently or actually) those of the Offered Rights in respect of which the third party made an offer, paragraph 5.8 does not operate to prevent Rangers from granting to third parties further non-exclusive rights.~~

40.4. ~~Accordingly, it is denied as alleged at the second sentence that Rangers has breached paragraph 5.8 of Schedule 3 in negotiating or entering the Elite Agreement.~~

41. ~~As to paragraph 29(2):~~

41.1. ~~It is admitted that paragraph 5 of Schedule 3 to the Agreement continues in force pursuant to paragraph 5.14 of Schedule 3 for two years from 31 July 2018.~~

41.2. ~~As aforesaid, clauses 5.2 to 5.7 of Schedule 2 to the Agreement have been performed and SDIR has already successfully exercised its Matching Right and acquired (whether contingently or actually) those of the Offered Rights in respect of which the third party made an offer. In the foregoing premises and for the reasons aforesaid at paragraphs 15 to 17 of this Defence, SDIR has no entitlement under paragraph 5 of Schedule 3 of the Agreement to seek to repeatedly exercise its Matching Right in relation to the further grant of non-exclusive rights to third parties so as to seek to acquire the same right multiple times.~~

41.3. ~~Accordingly, it is denied that Rangers was under any obligation under paragraph 5.2 to provide SDIR with further Notices of Offer and the alleged breach of the Agreement at the second sentence is denied.~~

41ZA As to paragraph 29ZA:

41ZA.1 It is admitted that Rangers is in breach of paragraph 5 of Schedule 3 to the Further Agreement in relation to the Elite Non-Exclusive Rights Agreement.

41ZA.2 The basis for that liability is not as alleged.

(a) Sub-paragraphs 29ZA(1) - (3) are admitted.

(b) As set out in paragraph 29 the Court declared that Rangers breached paragraphs 5.8 and 5.2 of Schedule 3 to the Agreement in entering the Elite Non-Exclusive Rights Agreement because SDIR had previously exercised its matching right under the Agreement in respect of the Offered Rights granted under the Elite Non-Exclusive Rights Agreement and Rangers had not provided SDIR with a Notice of Offer.

(c) SDIR had not, however, exercised its matching rights under paragraph 5 of Schedule 3 to the Further Agreement. Therefore,

Rangers could not have breached the Further Agreement in the same manner by entering the Elite Non-Exclusive Rights Agreement (without providing SDIR with a Notice of Offer). Among other things, the prohibition in paragraph 5.8 to Schedule 3 of the Further Agreement did not become engaged.

(d) Instead, Rangers would have breached the Further Agreement by approaching and/or soliciting and/or tendering and/or negotiating with Elite in relation to the Offered Rights to be conferred under the Elite Non-Exclusive Rights Agreement more than 6 months before the expiry of the Initial Term of the Further Agreement, contrary to paragraph 5.11 of the Further Agreement. As set out more fully below, at the time it entered the Elite Non-Exclusive Rights Agreement Rangers did not believe that the Further Agreement was in place.

41A. ~~As to paragraph~~ Paragraph 29A is admitted:

~~41A.1 Following the judgment of Teare J dated 24 October 2018, it is admitted that the letter referred to as the Elite Retail Units Agreement (which was subsidiary to the Elite Agreement) was in breach of paragraph 5 of Schedule 3 of the Agreement.~~

~~41A.2 It is denied that the Elite Retail Units Agreement was executed in breach of clause 3.2 of the Further Agreement (the existence of which is an issue in dispute between the parties in the said Part 8 Action).~~

42. As to paragraph 30:

42.1. ~~For the reasons aforesaid it is denied that the negotiation and execution of the Elite Agreement constituted a breach of paragraph 5 of Schedule 3 of the Agreement.~~

42.2. As to paragraph 30(1), the reference to the announcement on the Rangers website to "*further retail partners*" was a reference to SDIR and to Rangers' desire to conclude the terms of the further agreement between SDIR and Rangers as soon as possible.

42.3. As to paragraph 30(2) and 30(3):

(a) ~~For the reasons aforesaid in this Defence,~~ Rangers ~~maintains~~ considered that it ~~is~~ was entitled pursuant to the Agreement and/or ~~any~~ ~~f~~Further ~~a~~Agreement between the parties to grant non-exclusive rights for the sale of Replica Kit or Branded Products to third parties.

(b) Notwithstanding the foregoing, as at the date of this Re-Amended Defence, Rangers has no intention of entering into any further agreements with third parties for the grant of non-exclusive rights for the sale of Replica Kit and/or Branded Products. SDIR was informed of the same by a letter dated 27 September 2018 from Mills & Reeve to RPC.

(c) Rangers has previously refused to give a set of undertakings requested by SDIR because, amongst other reasons, the terms of such undertakings required Rangers to "*cease or procure the cessation of any distribution, marketing, advertising, promotion, offering for sale and/or selling of any Replica Kit … and/or Rangers branded products, whether via the webstore, www.thegersstoreonline.com, through Elite Group, JD Sports or by any other means*". Such undertaking would require Rangers to act in repudiatory breach of the Elite Non-Exclusive Rights Agreement, which agreement it entered into in good faith.

42.4. By letter dated 27 September 2018 from Mills & Reeve to RPC, Rangers offered to provide an undertaking that it would not grant any further non-exclusive rights to third parties pending ~~the determination of this dispute at~~ an expedited trial. This was clarified by letter dated 30 September 2018.

42.5. Save as aforesaid, no admission is made.

42A. Paragraph 30A is admitted.

42B Paragraph 30B is admitted.

Causation, loss and damage

43. As to ~~paragraphs 31 and 32~~ paragraph 31:~~:~~

43.1. ~~It is denied that SDIR has suffered any loss or damage whether as alleged or at all.~~ the pleaded breaches of paragraph 5 of Schedule 3 to the Agreement and Further Agreement are addressed above;

43.2. ~~SDIR has failed to plead any case on causation of loss or provide any proper particulars of its losses and accordingly these matters are entirely denied. Rangers reserves the right to plead further upon a pleaded case being entered by SDIR in these respects~~. it is denied that SDIR has a right to further amend its Re-Amended Particulars, as opposed to a right to seek permission to amend or Rangers' consent to amendments to the Re-Amended Particulars; and

43.3. save as aforesaid no admissions are made.

43A. With respect to any claim to damages, Rangers will rely upon clause 16.2 of the Agreement and the identical provision in the Further Agreement which excludes liability for any indirect or consequential loss or damage (whether or not reasonably foreseeable) and upon clause 16.3 of the Agreement and the Further Agreement each of which limits its total liability to SDIR in the aggregate to £1,000,000.

43B Save that no admissions are made as to the precise terms of the E/H Further Agreement that would have been made, paragraph 31A is admitted.

43C. As to paragraph 31B:

43C.1 Sub paragraph (1) is denied. Without prejudice to the generality of the foregoing, Elite and others were interested in and enthusiastic about becoming Rangers' retail partner and/or acquiring rights to retail in relation to Rangers products whether or not they: (i) acquired manufacturing rights and/or; (ii) became a or the manufacturer of technical products; and/or (iii) became a or the technical brand; and/or (iv) acquired the rights or the type of rights granted under the Elite / Hummel Agreement. In such circumstances Elite would have made the offer set out in the 4 June 2018 Purported Notice of Offer, or it or another third party (such as Fanatics or JD Sports) would have made an offer to be Rangers' retail partner even if Rangers entered into the E/H Further Agreement with SDIR. Among other things:

(a) Rangers ran two separate tender processes: one in relation to the manufacture and supply of kit ('**the kit tender**'); and one in relation to the position of retail partner ('**the retail tender**'). Success in one tender process was not conditional on succeeding in the other, and equally would not influence the likelihood of, or in any event necessarily lead to, success in the other. Further, Rangers did not allow tenderers to make their proposals in the kit tender conditional on being awarded the retail tender or vice versa.

(b) In relation to the kit tender, by mid-January 2018 Rangers was in contact with 12 potential manufacturers and suppliers of kit.

(c) By 26 January 2018, Rangers had received 10 proposals in the kit tender, from, among others, Dryworld, Hummel, Kappa, Macron, Admiral, and Joma. As at that date, Macron and Hummel were the frontrunners in the kit tender.

(d) By 6 March 2018, the field in the kit tender had narrowed to four potential manufacturers / suppliers: Dryworld, Macron, Hummel and Fanatics.

(e) On 10 March 2018, Rangers' board decided to proceed with Fanatics' proposal in the kit tender, rather than Hummel's (or indeed Macron's or Dryworld's). One of the reasons for the rejection of Macron's proposal was that it sought to make it acting as manufacturer and supplier of kit conditional on acquiring rights in relation to retail of kit.

(f) On 22 March 2018, Fanatics indicated to Mr. Scott Steedman (a consultant for Rangers) that they would only proceed as manufacturer and supplier of kit if they could be Rangers' retail partner for the following season. Rangers rejected that proposal. It ultimately chose to proceed with an improved version of Hummel's proposal, resulting in the conclusion of the Elite / Hummel Agreement.

(g) Subsequently, on 29 March 2018 the managing director of Fanatics told Mr. Stewart Robertson of Rangers that Fanatics saw the profitable agreement with Rangers being the agreement to be retail partner, rather than any agreement to be manufacturer and supplier of kit.

(h) In early April, Mr. Scott Steedman of Rangers began sending emails to potential retailers regarding the retail tender. By way of example, he emailed JD Sports on 13 April 2018, asking them to provide an invitation to treat for Rangers' consideration.

(i) By 18 April 2018, Rangers had sent invitations to participate in the retail tender to Fanatics, JD Sports, DW Sports and Elite.

(j) On 20 April 2018 Rangers announced that it had appointed Hummel as Rangers' kit manufacturer and supplier.

(k) Between 27 April 2018 and 22 May 2018, Elite, Fanatics and JD Sports made proposals as part of the retail tender exercise. Rangers selected Elite's revised proposal, submitted on 4 May 2018. Rangers' selection of that proposal was unrelated to the outcome of the kit tender.

(l) Thereafter, on 31 May 2018 Elite made its formal offer in relation to becoming Rangers' retail partner, which Rangers notified to SDIR and SDIR matched.

(m) That Macron and Fanatics tried to make acting as kit manufacturer and supplier contingent on being Rangers' retail partner, and that some parties (Fanatics, JD Sports) made proposals in the retail tender after the result of the kit tender (which, for them, was unsuccessful) was known is consistent with acting as Rangers' retail partner being considered attractive (especially to those parties) even if it did not entail acquiring rights in relation to the branding, manufacture or supply of kit, or the rights eventually granted under the Elite / Hummel Agreement. So are Fanatics' comments, set out above, regarding the relative value of acting as retail partner and as kit manufacturer.

43C.2 As to sub-paragraph (2):

(a) It is admitted that SDIR matched the July Notice.

(b) Save as aforesaid no admissions are made.

42C.3 Save as aforesaid no admissions are made.

43D As to paragraph 31C:

43D.1 It is admitted that SDIR would have had rights under the E/H Further Agreement (though no admissions are made as to the precise terms of such agreement).

43D.2 For the reasons set out in paragraph 43C above Elite or another third party would have sought to be Rangers' retail partner for the 2018/2019 and 2019/2020 football seasons, and it is accordingly denied (if it is alleged) that SDIR would have been Rangers' only retail partner for those seasons because neither Elite nor any other third party would have sought to be Rangers' retail partner for them.

43D.3 As set out in paragraph 43C above, no admissions are made to whether SDIR would have matched an offer from such party to be Rangers' retail partner.

43E Paragraph 31D is noted.

Alleged Deceit

43F As to paragraph 31E:

43F.1 At all material times Mr. Blair was acting on behalf of Rangers and insofar as he made statements to SDIR he made them on behalf of Rangers.

43F.2 It is admitted that Mr. Cran of RPC sent the email pleaded in sub-paragraph (1). Rangers will refer to it for its full terms, meaning and content as necessary.

43F.3 Mr. Blair replied to that email on 14 May 2018. In his email he stated, among other things, that:

"…I am not sure why you suggest that what you describe as the "Hummel agreement" includes Permitted Activities in respect of Official Kit or Replica Kit. Pursuant to clause 5.1 of Schedule 3 to the Retail Operations, Distribution and IP Licence Agreement (the Agreement), Rangers are in discussions with parties who may offer for some or all of the Offered Rights but that is entirely separate from the "Hummel agreement". Hummel has simply contracted in respect of rights previously granted to PUMA…" .

43F.4 On 15 May 2018:

(a) Mr. Cran replied to Mr. Blair's email of the previous day. In his email, Mr. Cran stated, among other things, that:

"The definition of Permitted Activities includes "distributing, marketing, advertising, promoting, offering for sale and/or selling…" and the matching rights expressly apply to Permitted Activities in relation to the Official Kit and/or Replica Kit.

You also state that "Hummel has simply contracted in respect of rights previously granted to PUMA" – but the PUMA agreement also included Permitted Activities in relation to the Official Kit and/or Replica Kit. See clause 7.1 of the PUMA agreement which granted PUMA the rights to "…development, manufacture, distribution, promotion, marketing, advertising and sale…".

Given your confirmation, it is clear that the Hummel agreement is indeed covered by the matching right. Please now provide a copy of the Hummel agreement as requested."

(b) Mr. Blair replied on the same day, stating, among other things:

"…You misinterpret my previous email. It did not say that the "Hummel agreement", as you refer to it, covered all of the rights granted to PUMA.

Both I and my client are well aware of the rights in respect of which the right to match has been granted to your client…"

(c) Mr. Cran then replied on the same day stating, among other things, "*Thank you for your email. To avoid any misinterpretation, please confirm that Hummel has not been granted any of the following rights (in whole or in part): distributing, marketing, advertising, promoting, offering for sale and/or selling the Official Kit and/or Replica Kit.*"

43F.5 As to sub-paragraph (2):

(a) The "*exchange of emails*" referred to is pleaded above.

(b) It is admitted that Mr. Cran sent the email of 18 May 2018 pleaded in the sub-paragraph. Rangers will refer to that email as necessary for its full terms, meaning and effect.

43F.6 Sub-paragraph (3) is admitted. Rangers will refer to that email as necessary for its full terms, meaning and effect.

43F.7 Mr. Cran replied to the email pleaded in sub-paragraph (3) on the same day, stating "*I disagree with your comments re Hummel*".

43F.8 As to sub-paragraph (4):

(a) It is admitted that paragraphs 24 and 87 of the Speedy Trial Judgment contain the pleaded findings.

(b) Those findings are necessarily premised on the statement pleaded in sub-paragraph (3) carrying the objective meaning that Hummel had not been granted rights to distribute, market, advertise, promote, offer for sale or sell the Official Kit and/or Replica Kit.

(c) Objectively interpreted in that manner, the statement pleaded in sub-paragraph (3) was untrue.

43F.9 As to sub-paragraph (5):

(a) Mr. Blair believed the statement pleaded in sub-paragraph (3) to be a statement, that or intended that statement to be understood as one that, Rangers had not, under the Elite / Hummel Agreement, granted rights to distribute, market, advertise, promote, offer for sale or sell the Official Kit and/or Replica kit as a retailer (i.e. to carry out what it then saw as Permitted Activities in relation to the Official and/or Replica Kit, which it then believed to be restricted to distributing, marketing, advertising, promoting, offering for sale or selling the Official and/or Replica Kit as a retailer, as opposed to the wholesale context).

(b) Mr. Blair genuinely believed that the statement which he understood himself to be making and/or the statement pleaded in sub-paragraph (3), understood as he intended it to be understood, was true.

(c) Accordingly, it is denied, if it is alleged, that Mr. Blair knew that the statement he thought or considered himself to be making, or the statement pleaded in sub-paragraph (3), understood as he intended it to be understood, or any statement he had made, was untrue.

(d) It is admitted that Mr. Blair knew when he made the statement pleaded in sub-paragraph (3) that Hummel had in fact been granted rights to distribute, market, advertise, promote, offer for sale and/or sell the Official Kit and/or Replica Kit. However, as set out above, he did not believe that Hummel had been granted rights to carry out those activities as a retailer,

and he did not believe himself to be saying or intend his statement to be understood as saying anything more than that Hummel had not been granted rights to distribute, market, advertise, promote, offer for sale and/or sell the Official Kit and/or Replica Kit as a retailer.

(e) Mr. Blair was involved in drafting the Elite / Hummel Agreement. Save as aforesaid, sub-sub-paragraph (5)(a) is denied.

(f) It is admitted that Mr. Blair's Seventh Witness Statement contains the text quoted in sub-sub-paragraphs (5)(b) and (c). Rangers will refer to that witness statement so far as necessary for its full terms, meaning and context.

(g) Further, in relation to sub-sub-paragraph (5)(b), no admissions are made as to what Mr. Cran was trying to ascertain by his question, but Rangers notes and will rely on the fact that SDIR's Leading Counsel, during the course of the Speedy Trial, described Mr. Cran's question to Mr. Blair as "*a direct question about whether permitted activities had been granted to Hummel*".

43F.10 Sub-paragraph (6) is denied for the reasons set out in paragraph 43F.9 of this Re-Amended Defence, above.

43F.11 Save that it is admitted that SDIR did not bring proceedings against Rangers for breach of the Matching Right in relation to the Elite / Hummel Agreement until after it was provided with a copy of that agreement (which, on its case, occurred on 25 October 2018, per paragraph 24B(2) of the Re-Amended Particulars of Claim), sub-paragraph (7) is denied. Without prejudice to the generality of the foregoing, and pending further disclosure and further investigation:

(a) As set out in paragraph 43F(7) of this Re-Amended Defence above, Mr. Cran's reaction to the statement pleaded in sub-paragraph (3) was to say that he did not agree with it.

(b) SDIR wrote to Rangers by letter dated 15 June 2018. In paragraphs 3.3 – 3.5 of that letter, it asserted that Rangers had, by appointing Hummel as technical brand (under what is now referred to as the Elite / Hummel Agreement) granted Hummel rights to carry out Permitted Activities in relation to the Official and/or Replica Kit, and suggested (by the use of the

words "your agreement with Hummel (or the relevant third party)" that it knew or suspected that Hummel was not Rangers' only counterparty under what is now known as the Elite / Hummel Agreement:

> *"…Hummel announced on Twitter that on 1 June 2018 it became the official Technical Sponsor to Rangers. This social media interaction constitutes marketing, advertising or promoting the Official Kit and/or the Replica Kit, which fall within the scope of Permitted Activities….*
>
> *…In addition, your Supporter Liaison Officer has stated on social media that Hummel will be distributing the Official Kit to Rangers so that the first team will have the kit in time for the UEFA Europa League Preliminary Qualifying Rounds, ahead of the public sale. This distribution of Official Kit also falls within the scope of Permitted Activities — both on the basis of distribution and marketing, advertising or promoting of the Official Kit and/or Replica Kit….*
>
> *…In the circumstances, it is clear that your agreement with Hummel (or the relevant third party entity) concerns one or more of the Offered Rights and paragraph 5 of Schedule 3 applies. We would also remind you that, in accordance with paragraph 5.13 of Schedule 3, you acknowledged and agreed that you shall not approach, solicit, tender for or enter into negotiations or agreements, or make any other arrangements for any of the Offered Rights, nor arrange, structure or procure any Third Party Offer, Notice of Offer, third party agreement or other arrangements where the intention or purpose of you or the relevant third party includes the avoidance or limitation of paragraph 5 of Schedule 3…"*

(c) Further, RPC, on behalf of SDIR wrote to Rangers by letter dated 27 June 2018. Again, that letter made it clear that SDIR believed that under what is now known as the Elite / Hummel Agreement, Hummel had been granted rights to carry out Permitted Activities regarding the Official and/or Replica Kit. In the letter of 27 June 2018, RPC stated, among other things, that:

> *"The letter from SDIR dated 15 June 2018 made it clear that your agreement with Hummel (or the relevant third party entity) (Hummel Agreement) concerns one or more of the Offered Rights and that paragraph 5 of Schedule 3 applies (the Matching Right). That letter also reminded you that, in accordance with paragraph 5.13 of Schedule 3, you acknowledged and agreed that you shall not approach,*

solicit, tender for or enter into negotiations or agreements, or make any other arrangements for any of the Offered Rights, nor arrange, structure or procure any Third Party Offer, Notice of Offer, third party agreement or other arrangements whether the intention or purpose of you or the relevant third party includes the avoidance or limitation of the Matching Right….

… Whilst your letters of 20 and 21 June 2018 baldly assert that none of the Offered Rights has been granted to any third party, they fail to clarify the scope of the Hummel Agreement or otherwise explain why the Hummel Agreement is not covered by the Offered Rights, when the actions of you and Hummel demonstrate otherwise….

… As SDIR has previously explained, it seems clear from your and Hummel's activities that rights which fall within the scope of the Matching Right have been engaged [examples of the matters relied upon in support of that follow]…

… On SDIR's case, you have contracted with Hummel and granted them rights which formed part of the Offered Rights in Schedule 3 to the Retail Agreement. In particular (without limitation), you appear to have granted Hummel inter alia the right to one or more of the rights to: distribute, market, advertise, promote, offer for sale and/or sell the Official Kit and/or Replica Kit. These activities are Permitted Activities, as defined in the Retail Agreement, and are in relation to the Official Kit and/or Replica Kit. They are therefore an Offered Right under paragraph 1.1.4(iii) of Schedule 3 and fall within the scope of the Matching Right. The failure to notify SDIR of Hummel's offer that must have preceded the Hummel Agreement is a breach of paragraph 5.2 of Schedule 3…."

(d) For the reasons set out in paragraph 43G and its sub-paragraphs below, SDIR knew by no later than 20 July 2018 that under what is now known as the Elite / Hummel Agreement, Rangers had granted an exclusive right to wholesale kit, and on SDIR's case if and when it had such knowledge it would have sought injunctive relief regarding the Elite / Hummel Agreement.

(e) SDIR sought disclosure of the Elite / Hummel Agreement from Phillips J, under CPR r.31.14. On 30 July 2018 Phillips J dismissed that application, not on the basis of the statement in sub-paragraph (3) (which Phillips J did not refer to in his judgment) but on the basis that at that point there were

no longer any live issues before him. Further, in paragraph 5 of his judgment Phillips J stated that "*The determination with which the claimant has pursued this point gives me all the more reason to believe that they are seeking this document for a collateral purpose. I am not saying that is an improper purpose they may have a very good reason for wanting to see it, but it is a document which they must seek a production of by other means, if they consider they are entitled to it and need to see it*". SDIR did have the collateral purpose which Phillips J referred to: it believed that the Elite / Hummel Agreement had conferred rights to distribute, market, advertise, promote, offer for sale and/or sell the Official Kit and/or Replica Kit, and sought a copy of the Elite / Hummel Agreement to pursue proceedings based on that.

(f) On 10 August 2018, Mr. Paul Joseph of RPC sent an email to Hummel on behalf of SDIR. In that email he expressly asserted that the statement pleaded in sub-paragraph (3) was untrue:

> *"…As previously stated, we understand that Hummel has been appointed as Rangers' technical kit manufacturer for the Official Rangers FC kit for the 2018/19 season (Official Kit) and the Replica kit of the Official Kit (Hummel Kit)….*
>
> *Please note that Rangers have notified us that none of the above rights have been granted to Hummel although the very fact Hummel has been undertaking marketing, promotional and sales activities demonstrates this to be untrue. Hummel's exercise of "rights" to carry out those activities runs directly counter to SDIR's own rights under its existing and forthcoming arrangement with Rangers and SDIR fully reserves its legal rights in this regard…."*

(g) On 17 August 2018 RPC wrote to Elite stating:

> "*We understand that the Rangers Football Club Limited (Rangers) has granted you rights to distribute, market, advertise, promote, offer for sale and/or sell certain products bearing Rangers-related brands.*
>
> *As you should be aware, such a grant of rights by Rangers is a breach of an agreement between SDIR and Rangers. Please confirm the position as soon as possible by return.*"

(h) RPC wrote to Hummel by a letter dated 20 August 2018 regarding the Elite / Hummel Agreement stating, among other things, that:

"*We understand that The Rangers Football Club Limited (Rangers) has granted you rights to distribute, market, advertise, promote, offer for sale and/or sell the Official Rangers Kit and the replica kit of the Official Rangers Kit. …As you are aware, such a grant of rights by Rangers is a breach of an agreement between SDIR and Rangers and SDIR is taking this matter extremely seriously. Please confirm the position as soon as possible by return.*"

(i) RPC wrote to Elite by letter dated 23 August 2018, also regarding the Elite / Hummel Agreement and stated, among other things, that:

"*As stated in our previous letter, the basis of our assertions is that we understand that Rangers has granted you certain rights in respect of Rangers branded products. Such a grant of rights is a breach of an agreement between SDIR and Rangers. Such issues involve both Rangers and Elite Group as parties to the arrangements in breach.*"

(j) RPC wrote to Mills & Reeve by a letter dated 24 August 2018, again regarding the Elite / Hummel Agreement, sought disclosure of that agreement, and stated, among other things, that:

"…For the reasons set out previously, SDIR believes that TRFC has granted certain rights to Hummel in respect of the Official Kit and/or Replica Kit in breach of paragraph 5 of Schedule 3 of the Retail Agreement (the "Matching Right"). Subsequent statements by TRFC and Hummel's own activities appear to reinforce that such rights have indeed been granted…

…In addition to the matters set out in previous correspondence, we note that:

2.1.1 The Rangers FC first team have been playing in the new Hummel kit. Therefore, Hummel must have been granted the right to distribute the Official Kit.

2.1.2 Both TRFC and Hummel have made a number of press releases and/or social media posts which amount to marketing, advertising and/or promoting the Official Kit and/or Replica Kit. We enclose extracts of such marketing and advertising material by way of example.

2.1.3 At paragraph 17 of the Second Witness Statement of Mr Blair dated 4 July 2018, Mr Blair confirms that Hummel agreed to pay TRFC a minimum annual fee of £2m with top-ups if replica shirt sales

exceed certain numbers. Mr Blair also states at paragraph 18 of his statement that: "Rangers also receive a royalty payment related to global sales". Both statements suggest that Hummel has been granted rights to distribute and/or sell Replica Kit.

2.1.4 In TRFC's letter to SDIR dated 20 July 2018, TRFC expressly confirmed that: "Replica Kit will be bought from the Kit manufacturer" (ie Hummel). The Replica Kit can only be bought from Hummel if Hummel has been granted rights to sell the Replica Kit.

2.1.5 In the same letter, TRFC also stated that: "there is therefore no need for you [SDIR] to know what other rights might have been granted" in relation to the distribution of Official Kit and Replica Kit. But TRFC is not in fact permitted to grant any such rights without following the Matching Right process…."

(k) Mills & Reeve responded to RPC by a letter dated 13 August 2018, stating, among other things:

"…We have further reviewed the Hummel Agreement and can confirm that the rights granted to Hummel by Rangers pursuant to the Hummel Agreement are clearly defined as follows:

> *"the right to manufacture and supply Technical Products and Leisure wear and Accessories and to enjoy the sponsorship opportunities provided to the Technical Brand."*

This is a direct quote of the rights granted within the Hummel Agreement…

…

…In support of your client's claims you cite a number of points at paragraphs 2.1.1 to 2.1.5. We deal with each in turn below:

• 2.1.1 — Rangers first team playing in the Hummel Kit
This is accepted. It is however denied that Hummel "must" have been granted the right to distribute the official kit. We can confirm that pursuant to the Hummel Agreement, Hummel are obligated to "gift" official kit to Rangers for use by players and staff.

• 2.1.2 — Press Releases and Social Media Posts
Whilst we are not in receipt of extracts of marketing and advertising materials that you state were included with your letter dated 24 August 2018, and therefore cannot comment on the specifics of this, it is accepted that press releases and social media posts have been made by

Rangers and Hummel as its kit supplier. Hummel is entitled to enjoy promotional opportunities further to its sponsorship of Rangers and Rangers is entitled to promote its team and sponsors. It is however denied that either party has marketed the official kit or replica kit for sale. Neither has been or is available for sale.

• 2.1.3 — Rangers Royalty Payment and related Global Sales
It is accepted that paragraph 17 of the Second Witness Statement of Mr Blair dated 4 July 2018 confirms that Rangers had an entitlement to royalty payments related to global sales. Hummel are Rangers kit supplier and are entitled to manufacture and supply kits wholesale to Rangers' retail partners globally. It is denied that Hummel have been granted rights to make retail sales in the UK or were granted rights in breach of paragraph 5 of Schedule 3 of the Retail Agreement

• 2.1.4 — Replica Kit will be bought from the Kit manufacturer
The letter of Rangers to SDIR dated 20 July 2018 refers to wholesale purchase by Rangers' retail partner from Hummel. The Hummel Agreement does not confer a right to distribute to a non-retail partner."

43F.12 As to sub-paragraph (8):

(a) SDIR did not bring proceedings against Rangers for breach of the Matching Right in relation to the Elite / Hummel Agreement between May and December 2018.

(b) Sub-sub-paragraph (a) is not admitted.

(c) As to sub-sub-paragraph (b) it is admitted that if SDIR brought proceedings against Rangers for breach of the Matching Right in relation to the Elite / Hummel Agreement as alleged it would have been granted injunctive relief in broadly similar terms to the Order of 19 July 2019, and such relief would have had the effect pleaded in the second sentence. Save as aforesaid no admissions are made. Among other things, SDIR could only have obtained the injunctive relief described in sub-sub-paragraph (b) after trial, and no admissions are made as to when a trial of a claim for such relief would have taken place, or whether one would have taken place in time for such relief to be granted by June 2018. Rangers notes that it took several months for the claim that was eventually pursued regarding the Elite / Hummel

Agreement (introduced by way of amendments allowed in January 2019) to progress to trial (in April 2019), and then until July 2019 for judgment to be given and the injunctive relief that was granted to be ordered.

(d) As to sub-sub-paragraph 8(c), Rangers has pleaded to SDIR's case that it could have enforced the Replica Kit Delivery Obligation in paragraphs 52A – E below. Save as aforesaid, no admissions are made.

(e) As to sub-sub-paragraph 8(d), Rangers would have been willing to enter into an agreement on the same terms as the Elite / Hummel Agreement with necessary modifications. Save as aforesaid no admissions are made.

(f) Sub-sub-paragraph (e) is denied for the reasons in paragraph 43C above.

(g) Save that it is admitted that SDIR matched the July Notice, sub-sub-paragraph (f) is not admitted.

(h) Sub-sub-paragraph (g) is denied for the reasons in paragraph 43C above.

(i) As to sub-sub-sub-paragraphs (h)(i) – (ii), in the circumstances set out above:

1. no admissions are made as to whether Elite would have supplied SDIR with kit during the 2018/2019 football season;

2. it is denied (if it alleged) that SDIR would have been Rangers' only retail partner for the 2018/2019 football season because neither Elite nor anyone else would have been interested in being Rangers' retail partner. Elite and/or other third parties would have sought to be Rangers' retail partner and/or Elite would have entered into the September 2018 Agreements even if Rangers was injuncted from performing or assisting Elite and Hummel in performing the Elite / Hummel Agreement;

3. insofar as the E/H-Similar Agreement is relied on in sub-sub-sub-paragraph (h)(ii), sub-sub-paragraph (e) above is repeated;

4. save as aforesaid, no admissions are made.

(j) Sub-sub-sub-paragraph (h)(iii) is noted.

43G As to paragraph 31F:

43G.1 It is admitted that SDIR sent the letter pleaded in sub-paragraph (1). Rangers will refer to it as necessary for its full terms, meaning and context.

43G.2 Sub-sub-paragraph (1)(a) is admitted, as is the first sentence of sub-sub-paragraph (1)(b).

43G.3 As to the second sentence of sub-sub-paragraph (1)(b):

(a) No admissions are made as to what SDIR subjectively intended its query to cover.

(b) It is, however, denied that the query could only have been reasonably understood by Rangers as a query in respect of wholesale rights of supply and distribution.

43G.4 Sub-paragraph (2) incompletely quotes Rangers' response 16.1 and omits a number of relevant passages of Rangers' letter dated 20 July 2018, falling before and after the quoted text. Rangers' letter in fact stated, among other things, that:

"*…16. We have already appointed an exclusive manufacturer of Replica Kit. Given that the sole supplier of Replica Kit to any holder of Offered Right 3 would be the manufacturer, the obligations quoted are subject to availability of stock from the manufacturer.*

16.1 No exclusive rights to supply or distribute Replica Kit have been granted, but Offered Right 3 is not an exclusive right. There is therefore no need for you to know what other rights might have been granted to understand how you would meet the quoted obligations.

16.2 Adult Replica shirts will be available at £27.50 and children's Replica shirts will be available at £23.50. It will be for the holder of Offered Right 3 to negotiate terms of supply with the manufacturer.

16.3 Replica kit will be bought from the Kit manufacturer."

43G.5 Rangers' response 16, its response 16.2, and its response 16.3 all made it clear that Rangers had appointed an exclusive manufacturer of kit, and that anyone (including SDIR) who wished to obtain kit to sell on a retail basis would need to obtain it from the manufacturer (who was described as the "*sole supplier*" of Replica Kit). Further it followed from that that the words "[n]*o exclusive rights to supply or distribute Replica Kit have been granted, but offered Right 3 is not an exclusive right"* concerned rights to supply or distribute kit as a retailer, rather than rights to carry out wholesale supply or distribution.

43G.6 The first sentence of sub-paragraph (3) is denied. It is premised on the words pleaded in sub-paragraph (2) amounting to a statement that no exclusive rights to supply or distribute Replica Kit on a wholesale basis had been granted. For the reasons set out above, however, the words pleaded in sub-paragraph (2) did not constitute a statement that no exclusive rights to supply or distribute Replica Kit on a wholesale basis had been granted, and no reasonable person reading them in context would understand them that way.

43G.7 The second sentence of sub-paragraph (3) is admitted. The relevance of that is denied in the circumstances set out in paragraphs 43G.5 - 43G.6 above.

43G.8 As to sub-paragraph (4), it is admitted that Mr. Blair's knowledge was attributable to Rangers and that he knew the statement pleaded in sub-paragraph (2) had been made. Since that statement was not false, the relevance of that is denied. As to sub-sub-paragraphs (a) and (b):

(a) sub-sub-paragraph (a) and the inference in the second sentence of sub-sub-paragraph (b) is admitted; and

(b) Mr. Blair drafted the 4 June 2018 Purported Notice of Offer, and was involved in the drafting of the July Notice.

43G.9 Save that it is admitted that Mr. Blair was aware of the terms of the Elite / Hummel Agreement and was involved in its drafting, sub-paragraph (5) is denied for the reasons set out above. Mr. Blair did not know the statement to be untrue because, read in its proper context, and interpreted properly, it was not untrue. Further and in any event, Mr. Blair genuinely believed that the statement, in the sense he intended it and/or intended it to be understood (that

is, as a statement concerning rights granted as a retailer, was true, and did not intend to deceive SDIR.

43G.10 As to sub-paragraph (6):

(a) The main part of sub-paragraph (6) is denied. Without prejudice to the generality of the foregoing, as set out above, Rangers' letter of 20 July 2018 made it clear to SDIR that Rangers had appointed an exclusive manufacturer of kit, and that anyone (including SDIR) who wished to obtain kit to sell on a retail basis would need to obtain it from the manufacturer – i.e. that an exclusive right to wholesale Replica Kit had been granted to the manufacturer. It did so because Mr. Blair was not trying to prevent SDIR from finding out that the Elite / Hummel Agreement contained an exclusive right to wholesale Replica Kit. Had Mr. Blair been attempting to prevent SDIR from finding out such information, Rangers' letter of 20 July 2018 would not have included the text referred to above in Rangers' responses 16, 16.2 and 16.3 and divulged precisely that information. Further, in such circumstances, it is denied that after receipt of the 20 July 2018 letter SDIR did not know (and thus could later "come to know") that the Elite / Hummel Agreement contained an exclusive right to wholesale Replica Kit, and accordingly that if SDIR "came to know" that it would bring proceedings. It did know that, and it did not immediately bring proceedings in relation to the Elite / Hummel Agreement.

(b) As to sub-sub-paragraph (a), Rangers has pleaded to paragraphs 31E(1) – (6) above.

(c) As to sub-sub-paragraphs (b)(i) – (iii) it is admitted that Mr. Blair's second witness statement dated 4 July 2018 (i.e. over 2 weeks before the letter of 20 July 2018) did not state in terms that the Elite / Hummel Agreement contained an exclusive wholesale right, described the Elite / Hummel Agreement (accurately) in the manner set out in sub-sub-paragraph (b)(ii), and did not identify Elite as party to the Elite / Hummel Agreement. This was not for the reasons alleged. There was no reason to explain that the Elite / Hummel Agreement contained an exclusive wholesale right, or that

Elite was party to it, as the Elite / Hummel Agreement was not in issue in the proceedings then. Further the description of the Elite / Hummel Agreement in the terms set out in sub-sub-paragraph (b)(ii) was accurate.

(d) As to sub-sub-paragraph (b)(iv) it is denied that Mr. Blair's witness statement suggested at paragraph 34 that the right to wholesale Replica Kit would fall under the July Notice and not the Elite / Hummel Agreement (then known as the TKMS Agreement). In any event, if, contrary to Rangers' primary case, that paragraph of Mr. Blair's witness statement did suggest that, or could be read as suggesting that, it was unintentional, and not a deliberate attempt to tailor Mr. Blair's witness statement to conceal the fact that the Elite / Hummel Agreement conferred an exclusive right to wholesale Replica Kit.

43G.11 Sub-paragraph (7) is denied. Mr. Blair did not hold the pleaded intention.

43G.12 Save that it is admitted that SDIR did not bring proceedings against Rangers for breach of the Matching Right in relation to the Elite / Hummel Agreement until after it had obtained a copy of it, sub-paragraph (8) is denied. Without prejudice to the generality of the foregoing:

(a) For the reasons set out in paragraphs 43G.4 - 43G.6 above, the statement pleaded in sub-paragraph (2) was not false.

(b) For the reasons set out in those paragraphs, no reasonable person in SDIR's position reading Rangers' letter of 20 July 2018 could have believed or reasonably believed, and SDIR did not believe, that no exclusive right to wholesale Replica Kit had been granted by Rangers under what is now known as the Elite / Hummel Agreement. As set out above, the letter in fact made it clear that an exclusive manufacturer of kit had been appointed and that they would be the sole supplier of Replica Kit to anyone who wished to retail kit.

(c) Further, Rangers will rely on the matters set out in paragraph 43F.11 above as demonstrating that both before and after 20 July 2018 SDIR believed that Rangers had breached the Matching Right by entering the Elite / Hummel Agreement.

43G.13 As to sub-paragraph (9):

(a) It is admitted that SDIR did not bring proceedings against Rangers for breach of the Matching Right in relation to the Elite / Hummel Agreement between July and December 2018.

(b) Insofar as paragraphs 31E(8)(a) – (b) are repeated, Rangers' response to them in paragraphs 43F.12(b) – (c) above is repeated, with necessary modifications.

(c) Insofar as paragraphs 31E(8)(c) – (h) are repeated, Rangers' response to them in paragraph 43F.12(d) – (j) above is repeated.

(d) Save that it is admitted that SDIR matched the July Notice, sub-sub-paragraph (c) is not admitted.

Supply of Replica Kit

43H. As to paragraph 31G:

43H.1 On 17 July 2018 RPC sent an email to Mr. Blair, which included an order for 53,450 items of Replica Kit (with no indication as to, among other things, the size of items sought, or whether items of away kit were to be items of Rangers' second or third kit). RPC, on SDIR's behalf, requested that 50% of the order (i.e. 26,725 items of kit) be delivered immediately. They also said that SDIR would revert separately regarding the remaining 50%.

43H.2 Save as aforesaid, paragraph 31G is denied.

43I As to paragraph 31H:

43I.1. Rangers did not supply or successfully procure the supply of the kit ordered in RPC's email of 17 July 2018 or any Replica Kit for the 2018/2019 season.

43I.2 In relation to the order contained in RPC's email of 17 July 2018, it is denied that Rangers breached clause 5.1 of the Agreement by failing to supply or successfully procure the supply of the kit ordered in that email.

(a) On the proper interpretation of clause 5.1 of the Agreement, Rangers' obligation to supply or procure the supply of kit to SDIR in such quantities as may be ordered by it from time to time was not absolute, but an obligation to use reasonable endeavours or take reasonable steps to supply kit, alternatively to supply or procure the supply of kit if reasonably possible. No reasonable person would understand clause 5.1 as imposing

an obligation on Rangers to meet or procure the meeting of orders for kit if doing so was not achievable by taking reasonable steps and/or through exercising reasonable endeavours and/or at all.

(b) Alternatively, a term falls to be implied into the Agreement providing that Rangers shall not be liable to SDIR for breach of clause 5.1 if and to the extent that meeting any order from SDIR or procuring the meeting of such order is or was not possible even if Rangers took reasonable steps and/or used reasonable endeavours to meet such order or procure that it was met, or meeting such order or successfully procuring that it be met was not reasonably possible. Such a term is to be implied into the Agreement on the grounds of obviousness.

(c) Further, under clause 5.2 of the Agreement:

> *"Such supply and purchase of any Replica Kit shall in relation to price be equal to the actual wholesale price of purchase of such Replica Kit paid to Puma (and/or Ranger's* [sic] *replacement supplier of the Replica Kit from time to time)…"*

(d) Accordingly, on the proper interpretation of the Agreement, Rangers was not obliged to supply or procure the supply of kit at less than the actual wholesale price of purchase of such kit paid to the supplier of such kit.

(e) There was no period of time when both: (i) it was possible or reasonably possible to meet or procure the meeting of SDIR's order of 17 July 2018, or Rangers could by taking reasonable steps or using reasonable endeavours meet that order or procure it was met; and (ii) SDIR was willing to pay the actual wholesale price of purchase of the ordered kit.

(f) Meeting SDIR's order of 17 July 2018 in time, or procuring that Elite did so, was not possible, or not reasonably possible, and in any event, Rangers was or would have been unable to meet the order or procure it was met even taking reasonable steps and/or using reasonable endeavours to try and meet the order or procure it was met. That order demanded delivery of 26,725 items of kit immediately. Further, by an email of 6 August 2018, sent to Mr. Blair, RPC indicated that it would also require the remaining 50% of the order (i.e. the remaining 26,725 items) to be delivered "*as soon*

as possible". However, as at 17 July 2018 no kit was available, and as at 6 August 2018, the same was true.

(g) SDIR did not confirm that it was willing to pay the wholesale price for the kit it ordered, instead asking for confirmation of what the purchase price was.

(h) By an email of 10 August 2018, sent to Hummel, RPC indicated that SDIR would not pay the actual wholesale price of the Replica Kit, but only the cost of manufacture to Hummel:

> " *Given SDIR's right to control the sale of any Official and Replica Kit manufactured, you will appreciate that SDIR should have been able to buy products at a price equivalent to your manufacturing costs, not the marked up "wholesale" price that Rangers has notified to our client. Please provide this number*."

43J. As to paragraph 31I:

43J.1 From August 2018 (until 13 March 2019, following Sir Ross Cranston's judgment in the Part 8 Proceedings) Rangers' position was that the Further Agreement was not in place, and the Agreement had expired, and that Rangers accordingly had no obligation to supply or procure the supply of Replica Kit to SDIR. That position was mistaken.

43J.2 The correspondence pleaded in sub-paragraphs (1) – (3) is admitted. Rangers will refer to it as necessary for its full terms, meaning and effect.

43J.3 Rangers notes that SDIR does not allege that it placed any orders for kit between August 2018 (or in any event 21 August 2018) and 30 April 2019.

43K. As to paragraph 31J:

43K.1 It is admitted that between 21 August 2018 and 21 March 2019 Rangers refused to supply or procure the supply of kit for the 2018/2019 football season, and that on 21 March 2019, Mr. Blair acknowledged that the Further Agreement was in place.

43K.2 It is denied that Rangers was in breach of clause 5.1 of the Further Agreement as a result. For the reasons set out in paragraph 43I.2(c) – (d) above Rangers

was not obliged to supply or procure the supply of kit at less than its actual wholesale price, and SDIR was not willing to pay that price.

43L. As to paragraph 31K:

43L.1 RPC sent Rangers an email on 30 April 2019 requesting kit for the 2019/2020 season. RPC did not confirm that SDIR would pay the actual wholesale purchase price for the kit, but instead asked for confirmation of the purchase price

43L.2 Mr. Blair replied by an email sent on 1 May 2019, and, among other things, set out (in summary) various matters concerning the request for kit which it believed would need to be agreed with Elite and/or Hummel for the requests to be fulfilled.

43L.3 RPC replied to Mr. Blair's email on the same day. Again, they did not confirm that SDIR would pay the actual wholesale purchase price for the kit, but instead asked for confirmation of the purchase price of the kit. They also did not provide proposals regarding any of the matters which Mr. Blair had said he expected that Elite and Hummel would wish to be agreed before kit could be supplied. Rangers will refer to that email as necessary for its full terms, meaning and effect. Further, they stated that SDIR confirmed it required Rangers to supply all Replica Kit in all shipments or deliveries of Replica Kit from Elite and/or Hummel, to SDIR on arrival of such shipment or delivery.

43L.4 Mr. Blair notified Elite of SDIR's request for kit on 1 May 2019**.** He sent RPC an email referring to that on 3 May 2019. In that email he also said that he would seek to establish whether there was sufficient stock already manufactured to meet SDIR's request or when what was available could be delivered and would revert when he had done so, and reiterated that there were various matters which he believed Elite would say needed to be agreed before any kit could be supplied.

43L.5 RPC sent Mr. Blair an email later on 3 May 2019 in which they (among other things, and in summary):

(a) refused to supply any proposals regarding the matters which Mr. Blair had indicated that he believed that Elite and Hummel would expect to be

agreed before kit could be supplied on the basis that SDIR did not consider that any of these matters needed be agreed before Rangers became obliged to supply or procure the supply of kit under clause 5.1 of the Further Agreement;

(b) did not confirm that SDIR would pay the actual wholesale price of the kit it had requested but instead sought confirmation of the purchase price.

43L.6 RPC sent Mr. Blair an email on 4 May 2019 in which they again (among other things and in summary):

(a) refused to supply any proposals regarding the matters which Mr. Blair had indicated that he believed that Elite and Hummel would expect to be agreed before kit could be supplied on the basis that SDIR did not consider that any of these matters needed be agreed before Rangers became obliged to supply or procure the supply of kit under clause 5.1 of the Further Agreement ;

(b) did not confirm that SDIR would pay the actual wholesale price of the kit it had requested but instead sought confirmation of the purchase price.

43L.6 Mr. Blair sent an email to RPC on the same day indicating (among other things) that he believed that the wholesale price of the kit ordered would be as set out in the Elite / Hummel Agreement, and that he had asked Elite and Hummel to revert to him regarding a proposed delivery date.

43L.7 During a telephone conference on 7 May 2019, Mr. Cran of RPC told Mr. Blair that SDIR wanted all of the further Replica Kit that Elite could supply.

43L.8 By 29 May 2019, Mr. Blair had ascertained from Elite that it had allocated 100% of its Replica Kit then in manufacture to parties other than SDIR, that it could manufacture additional stock to satisfy SDIR's requests, and that to do so it would require numbers of each kit item that SDIR required and the size curves for each of those items. He had also obtained a copy of Elite's standard terms of supply.

43L.9 On 29 May 2019 Mr. Blair sent an email to Mr. Cran referring to the matters in paragraphs 43L.7 and 8 above, attaching a copy of Elite's terms of supply, and stating:

"…We can confirm that Rangers will do all it can to seek to have SDIR's order fulfilled and, to the extent it is helpful to SDIR, are happy to continue to act as liaison between SDIR and Elite. If, however, SDIR would prefer to deal with Elite direct, please let me know with the details of the SDIR Executive who will deal with matters and I shall pass those details onto Elite and ask them to make contact with him / her…"

43L.10 After 29 May 2019 (on 11 June 2019), representatives of Rangers (Mr. Blair, Mr. Robertson, Mr. Andrew Dickson, and Mr. James Bisgrove) met with representatives of Elite (Mr. Underwood, Mr. Carl Taylor, and an external solicitor from Pinsent Masons) at Ibrox and Elite indicated that it would be willing to supply SDIR once the detailed terms and conditions for such supply were agreed.

43L.11 On 6 June 2019, Mr. Blair sent a further email to RPC seeking a response to his email of 29 May 2019.

43L.12 Mr. Cran replied to Mr. Blair's emails on 20 June 2019. In his email:

(a) He indicated that even if Elite had allocated all of its currently in manufacture stock to parties other than SDIR, Rangers would still be under an obligation supply however much kit SDIR happened to demand, stating that even if Elite had so allocated its stock "*…this would not qualify or limit Rangers' obligation to supply or procure the supply of Replica Kit pursuant to clause 5.1 of the Further Agreement*".

(b) He alleged that the true position was that Elite had decided to retain Replica Kits for itself, and that it had not proposed to supply any of such kits to SDIR.

(c) He did not say that SDIR would pay the wholesale purchase price for the kit, instead asking what the price for each item of such kit was.

43L.13 Mr. Blair replied by email on 25 June 2019, explaining the matters in paragraph 43L.10 above, and noting that:

(a) SDIR had not indicated what price it was willing to pay for the kit it had requested, or promised to pay the actual wholesale price for such kit.

(b) SDIR had not agreed Elite's terms of supply.

(c) Rangers could not take kit from Elite which Elite had already agreed to supply to others and provide it to SDIR.

(d) Rangers had, by then, also asked Elite to supply some of its own stock to SDIR to tide SDIR over until further stock could be manufactured, but Elite had declined to do that because no detailed terms for supplying goods to SDIR had been agreed.

(e) The actual wholesale price for the relevant kit was as set out in the Elite / Hummel Agreement.

43I.14 Mr. Cran responded to Mr. Blair's email on 2 July 2019. He did not confirm that SDIR would agree to Elite's terms, or that SDIR would pay the actual wholesale price for the kit it had requested.

43I.15 Mr. Blair replied to Mr. Cran's email on 5 July 2019, noting that, among other things, SDIR had refused to confirm the terms on which it was willing to acquire the kit it had requested.

43M. As to paragraph 31L*:*

43M.1 It is denied that Rangers breached clause 5.1 of the Further Agreement as alleged. Without prejudice to the generality of the foregoing, in the circumstances set out in paragraph 43L above:

(a) SDIR was not willing to and did not undertake or promise to pay the actual wholesale purchase price for the kit it requested for the 2019/2020 season and accordingly Rangers was under no obligation to supply or procure the supply of such kit.

(b) Rangers took reasonable steps and/or used reasonable endeavours to procure the supply of the kit for the 2019/2020 season which SDIR had requested. It was simply unable to do so. Further or alternatively, in such circumstances supplying or procuring the supply of such kit was not possible or not reasonably possible.

43M.2 Further or alternatively, SDIR caused any loss it suffered as a result of the alleged breaches and/or failed to mitigate such loss. In the circumstances set out in paragraph 43L above:

(a) SDIR could have promised or undertaken to pay the wholesale purchase price of the kit, and agreed to Elite's and/or Hummel's terms of supply or negotiated other terms of supply with Elite

and/or Hummel, in which case Elite and/or Hummel would have supplied the kit requested by SDIR or some of it.

(b) SDIR chose not to do that.

43M.3 In the further alternative, the effective cause of any loss said to have been suffered by SDIR was Elite's and/or Hummel's decision not to supply kit to SDIR unless it agreed to Elite's and/or Hummel's terms and/or to retain kit for itself and/or other customers, and not any breach of contract on Rangers' part.

43N. As to paragraph 31M:

43N.1 Rangers' response to the allegations of breach of contract pleaded in paragraphs 31H, J and L is set out above.

43N.2 Rangers pleads to paragraphs 31(1) – (3), 32A and 32B below.

43N.3 Save as aforesaid no admissions are made.

Alleged loss and damage

43O. The existence and extent of the losses alleged in paragraph 32 is not admitted.

43P. As to paragraph 32A:

43P.1 Sub-paragraph (1) is denied. Without prejudice to the generality of the foregoing, there is no reason why SDIR's revenues would at least have matched those of Elite or why it must be assumed they would have done so. Further:

(a) Elite benefitted from not being SDIR or part of the Sports Direct group or otherwise connected to Mike Ashley. Many Rangers supporters disapprove or during the relevant seasons disapproved of SDIR and/or the Sports Direct group and/or Mike Ashley. They bought products from Elite but 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.

(b) In assessing the sums which SDIR would have made, it would be more appropriate to consider prior years during which it, or Rangers Retail

Limited, had control of the retail of Rangers-related products, including kit, and the revenue generated during those years.

(c) Additionally, and in any event, Rangers notes that SDIR's apparent assertion that it lost substantial profits is inconsistent with SDIR's stated position regarding its historic performance in selling Rangers kit and/or branded merchandise so far. By way of example, certain purported quarterly statements supplied by SDIR (e.g. the purported statements it originally supplied for the period 21 June 2017 to 30 September 2017, and 1 October 2017 to 31 December 2017) state that SDIR made a net loss on sales of Rangers kit and merchandise through the Rangers Megastore, webstore, and SDIR's own website and stores. Similarly, other purported quarterly and annual statements supplied by SDIR state that SDIR had operating costs as high as 30% in relation to certain sales.

43P.2 As to sub-paragraph (2):

(a) It is admitted that the Sports Direct group is a large retailer, and SDIR had access to its resources and knowledge. But it is denied that it follows that would or would necessarily have translated into SDIR achieving greater revenues than Elite.

(b) No admissions are made as to how many shops SDIR could or would have stocked Replica Kit and Branded Products in, or the reach of the Sports Direct webstore.

(c) It is denied in any event that the matters in the first sentence of sub-sub-paragraph (b) would have led to an overall increase in sales as alleged in the second sentence of sub-sub-paragraph (b). The antipathy of many Rangers supporters for SDIR and/or the Sports Direct group and/or Mike Ashley, referred to above, would have negatively impacted sales. There is or at the relevant time would have been a contingent of Rangers supporters who would not have bought items from SDIR and/or Sports Direct no matter how many stores SDIR could stock Replica Kit or Branded Products in, or how great the reach of Sports Direct's webstore was, precisely

because it was SDIR and/or the Sports Direct group selling the items. Further and in any event, Rangers believes that most sales of its Replica Kit and/or Branded Products would be to supporters based in and around the West of Scotland, and so the extent to which a larger network of stores outside of areas with large numbers of Rangers supporters would result in an increase in sales or revenues (rather than simply increasing costs) is limited.

(d) The final sentence of sub-sub-paragraph (b) is not admitted.

43P.3 Sub-paragraph (3) is noted.

43Q. Paragraph 32B is denied. For the reasons given in paragraph 43P.1 above, Elite's revenues are irrelevant to SDIR's alleged losses.

~~**Dispute as to construction of the Agreement**~~

44. ~~As to paragraphs 33A, it is admitted that there is a dispute between SDIR and Rangers as to the construction of paragraph 5 of Schedule 3 and whether by entering the Elite/Hummel Agreement Rangers breached paragraph 5 of Schedule 3 of the Agreement. It is denied that Rangers has so breached paragraph 5 of Schedule 3 for the reasons set out in this Amended Defence. However, the issue of construction is incorrectly stated. The issue of construction is: what is the true meaning and effect of paragraph 5.8 of schedule 3 of the Agreement in the context of the whole Retail Agreement and especially Clauses 3 and 13.2.2 and does the negotiation and execution of the Elite Agreement by Rangers infringe that provision? The true meaning and effect of paragraph 5.8 of Schedule 3 is as set out above at paragraphs 15 to 17 of this Defence.~~

44A. ~~As to paragraph 33B, it is admitted that there is a dispute as to whether by entering into the Elite Retail Units Agreement Rangers has breached paragraph 5 of Schedule 3 to the Agreement. It is denied that Rangers has so breached paragraph 5 of Schedule 3 for the reasons set out in this Amended Defence.~~

Relief Sought

45. It is denied that SDIR is entitled to the declaratory relief sought at subparagraphs 34(5A) to 34(5C) and 34(5F) to 34(5H)34(1) and 34(2). The declaratory relief sought fails to address the instant dispute between the parties, which is set out at paragraph 44 of this Defence.

46. It is denied that SDIR is entitled to the injunctive relief sought at subparagraphs 34(5D), 34(5E) and 34(5I)34(3). Paragraphs 23 to 24 and 40 of this Defence are repeated.

47. It is denied that SDIR is entitled to the relief sought at subparagraph 34(4). Paragraph 41 of this Defence is repeated.

48. It is denied that SDIR is entitled to the relief sought at subparagraph 34(5). Paragraph 40 of this Defence is repeated.

49. Further and without prejudice to the foregoing, injunctive relief would not be appropriate as damages would be an adequate remedy.

50. Further and without prejudice to the foregoing, it would in any event be unjust and inequitable to grant the injunctive relief now sought by SDIR at paragraphs 34(3) to 34(5) of the Defence because:

    50.1. Rangers entered into the Elite/Hummel Agreement and the Elite Retail Units Agreement in good faith, as it was entitled to do, as a consequence of the unreasonable and dilatory conduct of SDIR in relation to the negotiation of the further agreement between SDIR and Rangers and because it wished to procure the sale of Rangers merchandise to Rangers' fans.

    50.2. The injunctive relief now sought would require Rangers to act in repudiatory breach of the Elite Agreement.

    50.3. The rights of Elite and Hummel, a bona fide third party parties, would be infringed by the terms of the injunctive relief.

51. It is denied that SDIR is entitled to damages as claimed in paragraph 35 for the reasons set out in this Defence Rangers has pleaded above to the claims said to give rise to SDIR's entitlement to damages pleaded in paragraph 35.

52. The claim to interest at paragraph 36 is noted and denied.

Alleged Third Party Rights Claim

52A. As to paragraph 37:

52A.1 It is admitted that Rangers, Elite and Hummel entered the Elite / Hummel Agreement on 30 March 2018. That agreement was governed by the law of Scotland. Without prejudice to the generality of the foregoing:

(a) The Elite / Hummel Agreement did not contain an express choice of law clause.

(b) It does not fall within just one of the sub-paragraphs to Article 4.1 of the Rome I Regulation.

(c) Therefore, Articles 4.2 and/or 4.3 and/or 4.4 of the Rome I Regulation apply.

(d) The characteristic performance of the contract was the grant of rights by Rangers to Elite and Hummel, and so the contract falls to be governed by the law of Scotland, as Rangers' habitual residence, under Article 4.2 of the Rome I Regulation.

(e) If, contrary to the foregoing, the characteristic performance was that of Elite or Hummel rather than Rangers, then Rangers will contend the contract is manifestly more connected with Scotland than with anywhere else, so that Scots law applies under Article 4.3 of the Rome I Regulation. Among other things: (i) the Elite / Hummel Agreement concerned a Scottish club granting rights to produce its kit and use its branding; (ii) those rights were granted in return for payments to be made in Scotland, the gifting of kit in Scotland, the funding of a Hummel-branded area in the Rangers Megastore in Scotland, and sponsoring and naming Rangers' training centre and academy, located in Scotland; (iii) temporally, the agreement was structured around Scottish football seasons and cup finals fixtures; and (iv) under the agreement Rangers gave Elite / Hummel various advertising opportunities in Scotland. Equally, if, contrary to Rangers' primary case, the applicable law cannot be determined under Article 4.2 (or indeed 4.1) of the Rome I Regulation, Rangers will contend that the same facts and matters mean that the Elite/

Hummel Agreement is most closely connected with Scotland so that Scots law applies under Article 4.4 of the Rome I Regulation.

(f) Further, Elite and Hummel's then solicitors wrote to Rangers by letter dated 29 April 2019 and said that (among other things) the Elite / Hummel Agreement was governed by Scots law and subject to the jurisdiction of the Scottish Courts.

(g) Rangers wrote back to Elite and Hummel's then solicitors by letter dated 2 May 2019 agreeing that the Elite / Hummel Agreement was governed by Scots law and subject to the jurisdiction of the Scottish Courts.

(h) In the premises, whatever law governed the Elite / Hummel Agreement before 2 May 2019 (and as set out above Rangers' primary case is that Scots law did), the exchange of letters referred to above constituted an express or clearly demonstrated choice of Scots law as the governing law of the Elite / Hummel Agreement, which is to be given effect to under Articles 3.1 and/or 3.2 of the Rome I Regulation.

52A.2 Sub-paragraph (1) is admitted. The second paragraph under the heading "*Delivery of Technical Products*" also contained additional wording, addressed in paragraph 52D below, making it clear Elite was entitled to refuse orders for kit and referring to Elite's standard payment terms. Further, on the proper interpretation of the Elite / Hummel Agreement, references to Rangers' retail partner and the Retail Partner are to Rangers' retail partner for the 2018/2019 Scottish football season (and thereafter to Rangers' retail partner from time to time).

52A.3 Sub-paragraph (2) is denied. Implying a term to the effect set out in that sub-paragraph is neither necessary nor obvious. The provision pleaded in sub-paragraph (1) does not and/or does not purport to address the quantity of kit to be supplied. It is a provision concerning the timing of the supply of kit in response to orders from Rangers' retail partner.

52A.4 The first sentence of sub-paragraph (3) is admitted. The second and third sentences are denied. A reasonable person reading the Elite / Hummel Agreement would:

(i) Note the fact that in the third paragraph under "*Delivery of Technical Products*", the parties had used the following words "*Rangers shall advise the Retail Partner that Elite is its Preferred Supplier…*".

(ii) Note the fact that in the second paragraph under "*Delivery of Technical Products*", the parties had not used that wording, but instead used the passive voice, stating "*The Retail Partner shall be informed that Elite are the exclusive manufacturer and supplier of such Technical Products…*".

(iii) Conclude that: (i) had the parties intended to place Rangers under an obligation to notify the Retail Partner (as defined: as to the proper interpretation of that phrase see the final sentence of sub-paragraph 52A.2 above) that Elite was the exclusive manufacturer and supplier of such Technical Products and also, on a non-exclusive basis, Leisurewear and Accessories and that all orders must be placed with Elite they would have used the same "*Rangers shall advise the Retail Partner*" wording they used in the third paragraph under "*Delivery of Technical Products*"; (ii) the choice to not use that wording was deliberate; and (iii) the parties did not intend to place an obligation on Rangers to inform the Retail Partner that Elite was the exclusive manufacturer and supplier of such Technical Products and also, on a non-exclusive basis, Leisurewear and Accessories and that all orders must be placed with Elite.

52A.5 Sub-paragraph (4) is admitted. In relation to the proper interpretation of Retail Partner, the final sentence of sub-paragraph 52A.2 above is repeated.

52A.6 As to sub-paragraph (5):

(a) The Elite / Hummel Agreement contained an implied term that once Rangers' retail partner for the forthcoming (i.e. 2018/2019) Scottish football season was established, Rangers would notify that retail partner, within reasonable time before 25 July 2019, that Elite was the exclusive manufacturer and supplier of Technical Products and on a non-exclusive basis of Leisurewear and Accessories, and that Elite was the Preferred Supplier.

(b) Save as aforesaid, sub-paragraph (5) is denied.

52A.7 Sub-paragraph (6) is admitted. In relation to the proper interpretation of Retail Partner, the final sentence of sub-paragraph 52A.2 above is repeated.

52B. As to paragraph 38:

52B.1 As set out above, the Elite / Hummel Agreement is governed by Scots rather than English law and so the 1999 Act is irrelevant. Under Scots law, and in particular s.1(1) of the Contract (Third Party Rights) (Scotland) Act 2017 ("the 2017 Act"), a third party acquires third-party rights under a contract only if the contract contains an undertaking that one or more of the contracting parties will do, or not do, something for the person's benefit, and at the relevant time it was the intention of the contracting parties that the person should be legally entitled to enforce or otherwise invoke the undertaking. Further, under s.1(3) of the 2017 Act the person who is to acquire a third-party right under a contract must be identifiable from the contract by being either named or described in it. The following sub-paragraphs are pleaded without prejudice to the foregoing.

52B.2 The Elite / Hummel Agreement did not refer to or identify SDIR by name at all.

52B.3 The Elite / Hummel Agreement did refer to Rangers' retail partner for the forthcoming 2018/2019 Scottish football season (and thereafter Rangers' retail partner from time to time), using the defined term "the Retail Partner".

52B.4 Sub-paragraphs (1) – (3) are admitted.

52B.5 SDIR answered the description of Retail Partner (as properly interpreted: see paragraph 52A.2 above) from 25 July 2018 when it matched the offer in the July Notice.

52C. Paragraph 39 is denied. Without prejudice to the generality of the foregoing:

52C.1 As set out above, the Elite / Hummel Agreement is governed by Scots law rather than English law and so the 1999 Act is irrelevant. The following sub-paragraphs are pleaded without prejudice to that.

52C.2 As a matter of English law, the mere fact that a third party (such as SDIR) would benefit from the performance by Elite (or Hummel) or Rangers of any obligation arising under a term under the Elite / Hummel Agreement does not mean that term purports to confer a benefit on that third party. That performance of the obligations arising under the term has the effect of benefitting the third party is necessary, but not sufficient. It must, as a matter of interpretation of the contract, be at least a purpose of the parties (i.e. Rangers, Elite and Hummel) to confer a benefit on the third party in question by way of the term said to purport to confer a benefit on the third party.

52C.3 Further, Rangers will contend that as a matter of Scots law the mere fact that a third party (such as SDIR) would benefit from the performance by Elite (or Hummel) or Rangers of any obligation arising under a term under the Elite / Hummel Agreement does not mean that the contract contains an undertaking that one or more of the contracting parties will do, or not do, something for the person's benefit, or that at the relevant time it was the intention of the contracting parties that the person should be legally entitled to enforce or otherwise invoke the undertaking.

52C.4 The Replica Kit Delivery Obligation imposes an obligation on Elite to deliver Replica Kit to the Retail Partner by 25 July 2018 in respect of the 2018/2019 season and by 7 days before the date of the Scottish Cup Final (or as otherwise agreed in writing) in respect of the next two seasons. The objective purpose of the term giving rise to the Replica Kit Delivery Obligation is not to benefit the Retail Partner, but to benefit Rangers. That the Retail Partner might benefit by having kit by a certain timeframe is an effect of the clause, but not the purpose, or a purpose of setting the deadline of 25 July 2018 (or 7 days before the Scottish Cup Final for later seasons). Further, Rangers will contend that as a matter of Scots law, the Replica Kit Delivery Obligation was not an undertaking that anything would be done for the benefit of the Retail Partner or that it was, at the relevant time, the intention of Rangers and Elite and Hummel that the Retail Partner should be legally entitled to enforce or otherwise invoke such undertaking.

52C.5 In those circumstances, the contingent obligation on Hummel referred to in sub-paragraph (2) is not for the benefit of SDIR, but for the benefit of Rangers. Hummel performing Elite's obligations may or may not benefit SDIR, but that is insufficient to establish that any term of the Elite / Hummel Agreement purports to confer a benefit on SDIR. Further, Rangers will contend that as a matter of Scots law, such contingent obligation did not give rise to an undertaking that anything would be done for the benefit of the Retail Partner or that it was at the relevant time the intention of Rangers and Elite and Hummel that the Retail Partner should be legally entitled to enforce or otherwise invoke the Replica Kit Delivery Obligation (or the contingent obligation referred to).

52C.6 As to sub-paragraph (3):

(a) Rangers has pleaded to the Preferred Supplier Notification Obligation and Supplier Information Obligation above.

(b) It is denied that those obligations exist "*so that SDIR knows who to place orders of stock with…"* or that the terms giving rise to those obligations purport to confer a benefit on SDIR. Conferring a benefit on SDIR is not, on the proper interpretation of the terms giving rise to those obligations, a purpose of the parties in including those terms. Their purpose, as a matter of the objective interpretation of the Elite / Hummel Agreement and its terms, is to confer a benefit on Rangers and/or Elite and/or Hummel; not SDIR. Any benefit to SDIR is an incidental effect of performance of the terms, not part of their purpose.

(c) Further, Rangers will contend that as a matter of Scots law, such obligations did not give rise to an undertaking that anything would be done for the benefit of the Retail Partner or that it was at the relevant time the intention of Rangers and Elite that the Retail Partner should be legally entitled to enforce or otherwise invoke them.

52C.7 As to sub-paragraph (4):

(a) Rangers has pleaded to the Leisurewear and Accessories Obligation above.

(b) It is denied that obligation and/or the term giving rise to it exists "*so that SDIR would benefit from an agreement that would enable it to sell such*

products". That was not, as a matter of interpretation of the Elite / Hummel Agreement, a purpose of the term giving rise to the Leisurewear and Accessories Obligation. As a matter of interpretation, the purpose of the relevant term was to benefit Elite and/or Hummel, and, less directly, Rangers.

(c) Further, Rangers will contend that as a matter of Scots law, such obligation did not give rise to an undertaking that anything would be done for the benefit of the Retail Partner or that it was, at the relevant time, the intention of Rangers and Elite that the Retail Partner should be legally entitled to enforce or otherwise invoke it.

52D. If, contrary to Rangers' primary case, English law applies to the Elite / Hummel Agreement and any of the terms referred to in paragraph 37 did purport to confer a benefit on SDIR then Rangers will contend that on the proper interpretation of the Elite / Hummel Agreement the parties did not (objectively) intend such terms to be enforceable by SDIR (or the Retail Partner), so that s.1(2) of the 1999 Act applies with the consequence that SDIR cannot enforce the obligations pleaded in paragraph 39. Without prejudice to the generality of the foregoing:

52D.1 In relation to the Replica Kit Delivery Obligation, on SDIR's pleaded case:

(a) Elite was obliged, on SDIR informing it of "*the reasonable quantity of stock for the launch of each new season kit as advised*" by it, to supply that amount of kit to the locations advised by SDIR, by 25 July 2018 for the 2018/2019 season or by 7 days before the Scottish Cup Final (or otherwise as agreed in writing) for the next two seasons thereafter.

(b) That obligation was not conditional on SDIR paying for, or indeed paying any particular price for such kit, or even agreeing to do so, and did not give rise to any obligation on SDIR's part to do so. The obligation to deliver kit would simply arise on SDIR demanding stock.

Any reasonable person reading the Elite / Hummel Agreement would consider it unlikely that Rangers, Elite and Hummel intended that.

52D.2 Further, and again in relation to the Replica Kit Delivery Obligation, the final two sentences of the second paragraph under "Delivery of Technical Products" provide as follows:

> "*The Retail Partner shall be informed that Elite are the exclusive manufacturer and supplier of such Technical Products and also on a non-exclusive basis Leisurewear and Accessories and all orders must be placed with Elite and that Elite's payment terms are strictly 30 days or such other period as is normal market practice. Elite has the right (but not the obligation) to accept all such orders or to outsource them to other agreed suppliers".*

52D.3 The following matters arising from that text are, as a matter of interpretation, inconsistent with SDIR being intended to be able to enforce the Replica Kit Delivery Obligation:

(a) The reference to "*orders*" is consistent with SDIR having to place one or more orders for a particular amount of kit with Elite, at a particular purchase price, rather than SDIR simply being able to advise how much kit it wanted, and where to deliver it to, and Elite being obliged to, without more, deliver the kit.

(b) The reference to "*Elite's payment terms*" is also consistent with that.

(c) That the Retail Partner was to be informed that "*Elite's payment terms are strictly 30 days or such other period as is normal practice*" is consistent with Elite being entitled to refuse to supply kit to the Retail Partner if they did not agree to Elite's payment terms, or negotiate different terms.

(d) The express statement that Elite is not obliged ("*but not the obligation*") to accept orders is inconsistent with SDIR's case that Elite was obliged to deliver such kit as SDIR requested.

52D.3 More generally, the Elite / Hummel Agreement must be interpreted against all of the admissible and relevant background at the time it was concluded. That background includes the fact that Rangers, Elite and Hummel did not provide SDIR or indeed any potential retail partner

with a copy of the Elite / Hummel Agreement before or on its execution. That is inconsistent with them intending (objectively) that SDIR or any potential retail partner be able to enforce the terms of the Elite / Hummel Agreement, or make a claim for breach of it, and consistent with them intending otherwise, and viewing it as being enforceable solely by Rangers, Elite and Hummel.

52E. For the reasons set out above paragraph 40 is denied. Further, if and to the extent that, as Rangers contends, Scots law governs the Elite / Hummel Agreement then it will also rely on the matters set out in paragraph 52D above as demonstrating that at the relevant time it was not the intention of the contracting parties that the Retail Partner should be legally entitled to enforce or otherwise invoke any undertaking in the Elite / Hummel Agreement.

52F. Paragraph 41 is admitted. The efficacy of the letters referred to there is denied: as set out above SDIR is not and was not entitled to enforce any of the terms of the Elite / Hummel Agreement or the obligations pleaded in paragraph 39 and so its purported assent to anything in that agreement or any obligations arising under it is irrelevant.

52G. As to paragraph 42:

52G.1 It is denied that Rangers breached the Preferred Supplier Notification Obligation and Supplier Information Obligation as against SDIR. For the reasons given above, it did not owe them either obligation. Further, for the reasons set out above any breach of either obligation was not actionable by SDIR.

52G.2 Without prejudice to the foregoing, Rangers pleads to the sub-paragraphs of paragraph 42 below.

52G.3 As to sub-paragraph (1), save that the first sentence and the fact that Elite provided SDIR with a copy of the Elite / Hummel Agreement on 25 October 2018 are admitted, no admissions are made. In relation to the second sentence Rangers notes, however, that:

(a) Ben Lovell of Lovell Sports (part of the Sports Direct group) contacted Mr. Mark Underwood of Elite by telephone on 20 April 2018 to congratulate Elite on entering the Elite / Hummel Agreement, and asked whether SDIR could purchase Replica Kit from Elite.

(b) On 16 August 2018 Mr. Lovell sent an email to Mr. Underwood at his Elite email account (ending "@elitegroup-uk.com"), copying in Michelle Shaw, a buyer of kit for the Sports Direct group, stating:

> "*...Linking you in with Michelle who is cc'd in above. Michelle looks after Replica for Sports Direct.*
>
> *Will let you pick this up from here*"

(c) Thereafter Ms. Shaw sent Mr. Underwood a series of emails regarding the purchase of kit.

(d) As set out in paragraph 43F.11(g) above, on 17 August 2018 RPC wrote to Elite stating:

> "*We understand that the Rangers Football Club Limited (Rangers) has granted you rights to distribute, market, advertise, promote, offer for sale and/or sell certain products bearing Rangers-related brands.*
>
> *As you should be aware, such a grant of rights by Rangers is a breach of an agreement between SDIR and Rangers. Please confirm the position as soon as possible by return.*"

(l) As set out in paragraph 43F.11(i) above, RPC wrote to Elite by letter dated 23 August 2018, also regarding the Elite / Hummel Agreement, and stated, among other things, that:

> "*As stated in our previous letter, the basis of our assertions is that we understand that Rangers has granted you certain rights in respect of Rangers branded products. Such a grant of rights is a breach of an agreement between SDIR and Rangers. Such issues involve both Rangers and Elite Group as parties to the arrangements in breach.*"

(e) The above communications are all consistent with SDIR knowing, alternatively strongly suspecting, well before 25 October 2018, that Elite was party to what is now known as the Elite / Hummel Agreement.

52G.4 As to sub-paragraph (2), the first sentence is admitted, but in relation to the second sentence:

(a) Rangers notes that it is not alleged that SDIR asked whether the agreement was with Hummel alone.

(b) It is admitted that Rangers did not refer to Elite as the supplier of kit under the Elite / Hummel Agreement.

(c) It is denied, if it is alleged (there is no properly pleaded allegation to that effect in sub-paragraph (2)) that Rangers did so in order to mislead SDIR.

(d) Rangers considered that it was not obliged to tell SDIR that Elite was party to the agreement, and that putting SDIR and RPC in contact with Elite would potentially damage its relationship with Elite.

(e) No admissions are made as to what SDIR believed or whether SDIR was misled and paragraph 52G.3 above is repeated.

52G.5 As to sub-paragraph (3):

(a) It is denied that on 27 July 2018 SDIR, through RPC, asked Rangers to provide contact details for anyone at Hummel. RPC sent Rangers' solicitors a letter bearing that date, but it did not contain a request for anyone at Hummel's contact details.

(b) Save as aforesaid, RPC sent Rangers (either directly or via its solicitors) letters or emails on the other dates pleaded in the first sentence, requesting contact details for someone at Hummel to speak to.

(c) It is admitted that Rangers did not notify SDIR that Elite was the supplier of kit under the Elite / Hummel Agreement.

(d) Rangers considered that it was not obliged to tell SDIR that Elite was party to the agreement, and that putting SDIR and RPC in contact with Elite would potentially damage its relationship with Elite.

(e) No admissions are made as to what SDIR believed or whether SDIR was misled and paragraph 52G.3 above is repeated.

52G.6 As to sub-paragraph (4):

(a) SDIR wrote to Elite during August 2018 alleging that it had entered an agreement with Rangers, the entry into which constituted a breach of the Matching Right. See paragraph 43F.11(g) and (i) above. Save as aforesaid, the first sentence is not admitted. In particular no admissions are made as to what enquiries SDIR undertook, or what SDIR knew or believed by or before mid-August 2018.

(b) The second sentence is not properly particularised insofar as it does not identify what letter to Elite is being referred to or what precisely Rangers is said to have told Elite. Rangers assumes that SDIR has in mind a letter written to Elite on 17 August 2018, referred to above. In relation to that letter Rangers did not advise SDIR to feign ignorance as to why Elite was being contacted. It suggested that Elite ask SDIR what its assertion that rights had been granted to Elite, and that this had resulted in breach of an agreement between Rangers and SDIR, was based on, and why SDIR was taking the matter up with Elite rather than Rangers directly.

(c) It is admitted that Rangers did not during August 2018 inform SDIR that Elite had been appointed as exclusive supplier of technical products or preferred supplier of Leisurewear and Accessories. The relevance of that is denied. As set out above, it did not owe SDIR any obligation under the Elite / Hummel Agreement to do so. Further, at that time Rangers' view was that: (i) the Agreement had expired; (ii) the Further Agreement was not in place, (iii) accordingly SDIR was not Rangers' retail partner; and (iv) it was not obliged to notify SDIR that Elite was party to the Elite / Hummel Agreement and doing so risked damaging its relationship with Elite.

52H. Paragraph 43 pleads allegations against Elite rather than Rangers and Rangers does not plead to it, save that the inference in the final sentence of sub-paragraph (3) is admitted: Rangers notified Elite of the purported orders on 1 May 2019.

52I. As to paragraph 44, for the reasons set out above, it is denied that Rangers has breached any obligation owed to SDIR or breach of which is actionable by SDIR by not approaching SDIR with a view to it and Elite concluding an agreement in respect of Leisurewear and Accessories.

52J. As to paragraph 45:

(1) Sub-paragraph (1) is repetitive of sub-paragraphs 31E(8)(a) – (h) and 32(1) – (3), 32A and 32B above and Rangers' response to those sub-paragraphs, above, is repeated with necessary modifications.

(2) Sub-paragraph (2) concerns Elite and Rangers does not plead to it.

(3) Sub-paragraph (3) is noted.

Alleged inducement of breach of contract by Elite

52K. Paragraphs 46 and 47 plead allegations against Elite and are not repeated as part of any claim pleaded against Rangers (paragraph 46) or pleaded only in support of an allegation regarding Elite's knowledge in the unlawful means conspiracy claim (paragraph 47, which is repeated in paragraph 74(1)) and so Rangers does not plead to them.

52L. As to paragraph 48:

52L.1 Rangers' understanding at all material times was that Carl Taylor was financial controller rather than director of finance.

52L.2 Rangers did not have any understanding regarding Mr. Fawke's role.

52L.3 Otherwise, Rangers understands that the named persons held the roles they are alleged to have held at the times they are alleged to have held them.

52L.4 Save as aforesaid, no admissions are made.

52M. Paragraphs 49 and 50 are noted.

52N. Paragraph 51 pleads allegations only in support of a claim for inducement of breach of contract against Elite, and is repeated in the context of the unlawful means conspiracy claim pleaded against Rangers and Elite in support of an inference regarding Elite's knowledge (in paragraph 74(1)). Accordingly, Rangers does not plead to it.

52O. As to paragraph 52:

52O.1 The first sentence is not properly pleaded or particularised, insofar as no particulars are given as to how or in precise terms when Elite is said to have expressed an interest in becoming Rangers' retail partner. It is not admitted.

52O.2 Rangers believes that Elite was interested in becoming its retail partner. Among other things, Elite did participate in (and ultimately win) the retail tender.

52O.3 The second sentence is denied. Without prejudice to the generality of the foregoing:

(a) Elite's wholesale pricing was not unusually high.

(b) The allegation that Elite's wholesale pricing deterred all other potential retail partners from contracting with Rangers is wrong. As set out in paragraph 43C.1(k) above other parties (Fanatics, JD Sports) made offers in the retail tender after the conclusion of the Elite / Hummel Agreement and the announcement of Hummel as technical brand. They did not withdraw from the retail tender.

52P. As to paragraph 53:

52P.1 Sub-paragraphs (2) – (4) are admitted.

52P.2 The remainder of the paragraph does not plead any allegations against Rangers and it does not plead to it.

52Q. As to paragraph 54:

52Q.1 No admissions are made regarding Elite's knowledge.

52Q.2 No admissions are made regarding what Elite's "plan" was, but Rangers has pleaded to the allegations regarding that alleged "plan" which involve Rangers (set out in paragraphs 53(2) and (3)) above.

52Q.3 Rangers wished to achieve the best terms it could regarding its merchandising. It also wished to remove SDIR from its merchandising if it lawfully and properly could do so. However, it did not believe it would need to take any steps to do so, as until the point when SDIR sought to exercise its matching rights, Rangers considered it was unlikely that SDIR would decide to do so or seek to extend the Agreement. Without prejudice to the generality of the foregoing, and among other things: (i) on 5 May 2018 Mr. Sean Nevitt, for SDIR, sent an email to Rangers' chairman, Dave King, stating: "*Congratulations on your new manager, a super signing. Shall we get together to smoothly transition things over probably better you and I having a go*" (Rangers will contend that the reference to a transition was to bringing the Agreement to an end at the expiry of its Initial Term); and (ii) on 29 June 2018 Ms. Natalie Nairn of Rangers was informed by employees at the Rangers Megastore that the store would be run by others from 1 August 2018, and that the current staff members (who were employed by one or more entities in the Sports Direct group) would be transferred to another Sports Direct store. Save

as aforesaid, the allegations in the main part of paragraph 54 regarding Rangers' aims and intentions and sub-paragraph (1) are denied.

52Q.4 Sub-paragraph (1)(a) is admitted, but its relevance is denied.

(a) Mr. King's comment recognised SDIR's matching rights. He did not, for example, suggest disregarding them.

(b) Mr. King's comment reflected a wish to achieve the best available financial package, which SDIR would find difficult to match.

(c) In any event, Rangers was not obliged to only obtain offers for rights which SDIR would find easy to match, or not to obtain offers for rights which SDIR would find difficult to match. Rangers was entitled to act lawfully in its own best commercial interests.

52Q.5 Sub-paragraph (1)(b) is admitted, but its relevance is denied. The step referred to reflected the fact that the Agreement was due to expire at the end of July 2018 (and Rangers was, from January 2018, permitted to solicit offers from third parties regarding Offered Rights from 31 January 2018).

52Q.6 As to sub-paragraph (2):

(a) Rangers has pleaded to its alleged aims and intentions above.

(b) Save as aforesaid, no admissions are made. The relevant individual who would have communicated (including orally) with Elite at the relevant time has since left Rangers.

52Q.7 Sub-paragraph (3) is admitted, but its relevance is denied. Rangers saw no need to debate Elite's plans for SDIR with Elite in circumstances where:

(a) The Agreement was due to expire shortly.

(b) Rangers did not believe that it was likely that SDIR would seek to continue to be involved in Rangers' merchandising.

52R. As to paragraph 55:

52R.1 As set out in paragraphs 43C.1(h) – (l) above Rangers invited Elite to join the retail tender in early April 2018 and Elite took part in the process before making its final offer as part of it on 31 May 2018, which resulted in the 4

June 2018 Purported Notice of Offer sent by Rangers to SDIR. Save as aforesaid the first sentence is denied.

52R.2 The second sentence is admitted.

52R.3 Sub-paragraphs (1) and (3) are admitted.

52R.4 Sub-paragraph (2) is not admitted.

52S. Paragraph 56 pleads allegations only in support of a claim for inducement of breach of contract against Elite, and is repeated in the context of the unlawful means conspiracy claim pleaded against Rangers and Elite only in support of an inference regarding Elite's knowledge (in paragraph 74(1)). Accordingly, Rangers does not plead to it.

52T. As to paragraph 57:

52T.1 Sub-paragraph (1) is admitted.

52T.2 The main part of sub-paragraph (2) is admitted. The letter correctly set out Elite's position. In the premises it is unnecessary to plead to sub-sub-paragraphs (a) – (c), save that in relation to the content of Rangers' submissions at the return date for the injunction granted by Bryan J on 2 July 2018, Rangers will refer to them rather than SDIR's paraphrase of them for their full terms, meaning and context.

52T.3 Save that in relation to what Rangers' submissions were paragraph 52T.2 above is repeated, sub-paragraph (3) is admitted.

52T.4 Sub-paragraph (4) is denied. Without prejudice to the generality of the foregoing:

(a) The email correspondence in sub-sub-paragraphs (a) – (d) is admitted. Rangers will refer to the full emails sent and received for their full terms, meaning and context.

(b) It was not possible, alternatively it was difficult, to arrive at a reasoned or principled split of financial terms between the Offered Rights, beyond allocating the largest amount of the financial benefits and/or guaranteed minimum payments to be conferred to Offered Right 1. Mr. Blair suggested that type of allocation (allocating around two thirds of the total

sums offered to Offered Right 1) as Rangers' "best guess" in paragraph 10 of his second witness statement, if, as it ultimately proved to be the case, SDIR's hypothesis that there were only three Offered Rights and the sums offered had to be split between them was correct.

(c) The fact that Elite then, in the face of the Court's decision as to what would and would not constitute a compliant third party offer under the Agreement, arrived at a split of financial terms (including a £350,000 per annum minimum guaranteed payment plus meeting the £500,000 cost of fitting out the Rangers Megastore and enhancing the webstore in respect of Offered Right 1, and £75,000 per annum guaranteed minimum payments in respect of each of Offered Rights 2 and 3) does not establish that the statements at paragraph 57(1) were untrue (or were untrue when they were made). Instead, it establishes that Elite, when faced with the choice of not making an offer at all, or doing its best to split the financial terms between the three Offered Rights, even if that split may be in part unprincipled or arbitrary, decided on the latter course of action, rather than withdrawing from making an offer altogether (as it had indicated it would have to "consider" doing – it went no further - if it did have to split the financial terms it was willing to offer between the three Offered Rights).

52T.5 The first two sentences of sub-paragraph (5) plead allegations against Elite regarding its subjective state of mind, and Rangers does not plead to them, save to note that Mr. Underwood did not state in his email that Elite planned to withdraw if a deal on the basis of the 4 June 2018 Purported Notice of Offer could not be concluded "imminently" but instead stated that Elite would have to "consider withdrawing".

52T.6 As to the third and fourth sentences of sub-paragraph (5) and sub-sub-paragraphs (a) – (c):

(a) Sub-sub-paragraph (a) is admitted.

(b) Sub-sub-paragraph (b) is not admitted.

(c) Rangers pleads to paragraph 61, which sub-sub-paragraph (c) repeats, below.

(d) Save as aforesaid no admissions are made.

52T.7 Save as aforesaid paragraph 57 is denied.

52U. Paragraph 58 pleads allegations only in support of a claim for inducement of breach of contract against Elite, and is repeated in the context of the unlawful means conspiracy claim pleaded against Rangers and Elite in support of an inference regarding Elite's knowledge (in paragraph 74(1)). Accordingly, Rangers does not plead to it, save to deny the allegation in paragraph 58(1)(c)(iii). Without prejudice to the generality of the foregoing:

52U.1 The July Notice was a version of the 4 June 2018 Purported Notice of Offer, splitting the terms offered by Elite between Offered Rights 1, 2 and 3 as SDIR demanded and as the Court ultimately held had to be done for the offer to be compliant with the terms of the Agreement.

52U.2 The 4 June 2018 Purported Notice of Offer was a notice of the offer made by Elite on 31 May 2018, as part of the retail tender process, which was an arms-length tender process.

52U.3 Accordingly, the July Notice was a notice of Elite's offer of 31 May 2018, made as part of arm's length tender process, constructed so as to meet SDIR's demands regarding the form of the notice of the offer.

52U.4 In the premises it is denied that Rangers was "*seeking to set up a clean paper trail*" (whatever that may mean: the language used by SDIR is impermissibly vague and tendentious) to present an offer which was not the product of an arm's length negotiation as something which was. Rangers was not doing so.

52V. Paragraph 59 pleads allegations only in support of a claim for inducement of breach of contract against Elite, and is repeated in the context of the unlawful means conspiracy claim pleaded against Rangers and Elite in support of an inference regarding Elite's knowledge (in paragraph 74(1)). Accordingly, Rangers does not plead to it.

52W. As to paragraph 60:

52W.1. The first and second sentences are admitted.

52W.2 Sub-paragraph 1(b) is admitted. The rest of the paragraph concerns Elite and/or its employees' knowledge and understanding and Rangers does not plead to it.

52W.3 Sub-paragraph (2) is admitted.

52W.4 On 17 August 2018, Stephen Hofmeyr QC advised Rangers, initially by telephone and later in the day in writing, that (in summary and among other things):

(a) It could advise Elite that the terms of its contract with SDIR required it to reject Elite's previous offer, but that it was nonetheless willing to enter fresh negotiations for the conclusion of an agreement for the grant of the non-exclusive rights set out in clauses 3.1.2 and 3.1.3 of the Agreement (namely, the non-exclusive right to perform the Permitted Activities in relation to the Branded Products, Replica Kit and Additional Products and the non-exclusive right to manufacture (and/or have manufactured) the Branded Products).

(b) Paragraph 5.8 of Schedule 3 to the Agreement was not intended to prevent Rangers from negotiating the grant of non-exclusive rights to third parties. That would conflict with clause 3.3 of the Agreement and/or its general scheme, and with paragraph 5.7 of Schedule 3 to the Agreement.

(c) The purpose of Rangers' conduct in such circumstances would not be to avoid its obligations under paragraph 5.7 of Schedule 3 to the Agreement, as the Agreement contemplated Rangers having separate contracts with SDIR and the third party in respect of non-exclusive rights.

(d) The same arguments would meet any objection under paragraph 5.11 of Schedule 3.

(e) Clause 3.2 of the Agreement could not have been intended to operate as a prohibition on the grant of non-exclusive rights to third parties.

(f) Provided that he and Rangers were satisfied that the grant of non-exclusive rights addressed above could be done contractually, he did not consider it was necessary or advisable to notify SDIR of Rangers' intentions (at least not at the moment) as clauses 13.2 and 18.4 contemplated the grant of non-exclusive rights to third parties without SDIR's prior consent.

(g) The Agreement had come to an end, and it was not altogether clear to which obligations Rangers was said to remain subject.

52W.5 Sub-paragraph (3) is admitted. Rangers will refer to the full email for its terms, meaning and effect.

52W.6 Sub-paragraph (4) is admitted. Rangers will refer to the full email for its terms, meaning and effect. The end of the email stated:

> "*The rights include the non-exclusive right to manufacture products bearing Rangers related brands.*
>
> *The rights will be supported with the non-exclusive right to use the Rangers brands and the Rangers IP in connection with their exercise.*
>
> *If you can confirm that your company would be interested in entering into a contract in respect of those rights, I shall prepare a draft for your review."*

52W.7 Sub-paragraph (5) is admitted. Mr. Blair was seeking to ensure that the steps which Mr. Hofmeyr QC's advice indicated needed to be taken to conclude a new agreement without engaging the Matching Right provisions were undertaken and properly documented.

52W.8 On 24 August 2018 Mr. Blair sent Mr. Underwood a draft agreement under cover of an email.

(a) Clause 11 of the draft agreement stated "*Rangers warrants and undertakes to you that it has all necessary rights to grant to you the rights set out in this Agreement and is not subject to any restrictions that would prevent such grant*".

(b) In the covering email, Mr. Blair stated "*The draft includes, at 11, a warranty that Rangers has all necessary rights to grant to you the rights set out in the Agreement and is not subject to any restrictions that would prevent such grant. I can confirm that Rangers has taken advice from a senior QC on this point and he has confirmed the position to allow Rangers to grant this warranty. SDIR may disagree but Rangers does not believe it has a valid basis to do so*".

52W.9 By an email of 25 August 2018, sent by Neil Friar to Mr. Blair, Elite sought an indemnity from Rangers. In the email, Mr. Friar stated: "*I need to ensure that we are indemnified if SDI come after us once this is officially launched*

even if we are granted a non-exclusive licence". Mr. Phair reiterated that desire for an indemnity in a further email to Mr. Blair on 28 August 2018.

52W.10 On 29 August 2018, Mr. Paul Edwards of Elite's solicitors Smyth Barkham LLP sent an email to Mr. Blair asking if he was able to share the Matching Right provisions in the Agreement with him. Mr. Blair replied on the following day:

> "*The contract between Rangers and SDIR contains a stringent confidentiality provision that precludes Rangers disclosing its terms to any third party. This obligation survives the termination of the contract. SDIR has pursued proceedings previously alleging breach of this provision by Rangers and two of its directors and therefore I would be apprehensive about sharing this information.*
>
> *We do, however, have our QC's opinion on the terms of the contract which identifies the route that we are now suggesting and confirms that this is in accordance with the terms of the agreement between Rangers and SDIR. I could share this with you on a strictly privileged and confidential basis if that would assist.*"

52W.11 Later on 30 August 2018, Mr. Blair shared Mr. Hofmeyr QC's written advice with Elite's solicitors, sending it to Mr. Edwards under cover of an email. Mr. Blair and Mr. Edwards had a further email exchange later on the same day:

(a) Mr. Edwards stated "*I suppose to make some sense of this I would need to know what the definition is of the 2 non exclusive rights in clause 3.1.2 and 3.1.3 to ensure that the rights Rangers are granting to my clients are indeed those exact rights.*"

(b) Mr. Blair replied:

> *"I can't disclose the terms of the SDIR agreement but we have based the rights to be granted to your client on:*
>
> 1. *The non-exclusive right to perform the Permitted Activities in relation the Branded Products, Replica Kit and Additional Products*

2. *The non-exclusive right to manufacture (and/ or have manufactured) the Branded Products*

In this context:

Permitted Activities means distributing, marketing, advertising, promoting, offering for sale, and/ or selling all products which are or could be sold in a retail outlet or online or via any other medium together with the right to retail (whether in bricks or mortar, online or via any other medium).”

52W.12 Thereafter, Elite and Rangers negotiated various changes, proposed by Elite, to the draft agreement sent by Mr. Blair and exchanged revised drafts of the proposed agreement.

52W.13 In the circumstances sub-paragraph (6) is denied. Without prejudice to the generality of the foregoing:

(a) The agreement being discussed was ultimately the product of an arm’s length tender process which led to the July Notice, subsequent legal advice and, later, further negotiation. As set out above, the retail tender process resulted in Elite making an offer on 31 May 2018, then Rangers serving the 4 June Purported Notice on SDIR and later the July Notice, and SDIR matching the offer set out in the July Notice. Faced with SDIR matching the offer set out in the July Notice, Rangers and Elite sought to ascertain whether and to what extent they could still enter into an agreement, and, later, to enter into such agreement as they believed they legally and properly could without engaging the Matching Right provisions. Once a draft agreement was produced by Rangers, further negotiation of its terms ensued before it (i.e. the Elite Non-Exclusive Rights Agreement) was executed.

(b) From 17 August 2018 Rangers reasonably and genuinely believed based on Mr. Hofmeyr QC’s advice that it and Elite could lawfully enter into an agreement conferring non-exclusive rights to perform the Permitted Activities in relation the Branded Products, Replica Kit and Additional Products and the non-exclusive right to manufacture (and/ or have manufactured) the Branded Products without engaging or breaching the

Matching Right provisions, or informing SLDR that they were going to do so.

(c) Rangers' emails of 20 and 21 August 2018 referred to in sub-paragraphs (3) – (5) were sent in line with Mr. Hofmeyr QC's advice that Rangers could lawfully enter into an agreement conferring non-exclusive rights to perform the Permitted Activities in relation the Branded Products, Replica Kit and Additional Products and the non-exclusive right to manufacture (and/ or have manufactured) the Branded Products without engaging or breaching the Matching Right provisions if it formally rejected Elite's previous offer.

52X. As to paragraph 61:

52X.1 As set out above, from 17 August 2018 Rangers genuinely and reasonably believed, based on Mr. Hofmeyr QC's advice, that it could enter into what became the Elite Non-Exclusive Rights Agreement without engaging the Matching Rights provisions, and shortly after that it sought to do so.

52X.2 Rangers and Elite exchanged drafts of what ultimately became the Elite Non-Exclusive Rights Agreement from 24 August 2018.

52X.3 Any retail stores would be Elite's stores, using Rangers branding.

52X.4 No admissions are made as to what Elite decided when.

52X.5 Sub-paragraph (1) is not admitted.

52X.6 Sub-paragraph (2) is admitted.

52X.7 Sub-paragraphs (3) and (4) are not admitted.

52X.8 Save as aforesaid, paragraph 61 is denied.

52Y. Paragraph 62 pleads allegations only in support of a claim for inducement of breach of contract against Elite, and is repeated in the context of the unlawful means conspiracy claim pleaded against Rangers and Elite only in support of an inference regarding Elite's knowledge (in paragraph 74(1)), and Rangers does not plead to it, save to note that it is denied, if it is alleged that the correspondence referred to in sub-paragraphs (1) – (6) concerned the September 2018 Agreements: it concerned the Elite / Hummel Agreement.

52Z. As to paragraph 63:

52Z.1 It is denied that Rangers had the alleged strategy of obfuscation and delay.

52Z.2 As to sub-paragraph (1):

(a) Insofar as paragraph 42(3) is repeated, Rangers' response to it is repeated.

(b) Rangers did not provide SDIR with contact details for any personnel at Hummel. Pending further investigations no admissions are made as to whether Rangers did have contact details for specific personnel at Hummel responsible for stock and payment (as opposed to details for personnel at Elite).

(c) The inference in the final sentence is denied. Rangers did not give SDIR contact details for personnel at Hummel because it was concerned that SDIR and RPC's behaviour would damage Rangers' relationship with Hummel. In relation to Elite, Rangers did not believe that it was obliged to reveal to SDIR, who had already litigated against it, and with whom it had a poor relationship, that Elite was party to the Elite / Hummel Agreement, and it did believe that doing so would risk damaging its relationship with Elite.

52Z.3. Sub-paragraph (2) concerns Elite only, and Rangers does not plead to it.

52Z.4 As to sub-paragraph (3):

(a) As set out in paragraph 52G.3(b) above, on 16 August 2018 Ben Lovell of Lovell Sports (part of the Sports Direct group) sent an email to Mr. Underwood at his Elite email account (ending "@elitegroup-uk.com"), copying in Michelle Shaw (whose role was as alleged), and stating:

> "*...Linking you in with Michelle who is cc'd in above. Michelle looks after Replica for Sports Direct.*
>
> *Will let you pick this up from here*"

(b) It is admitted that between then and 21 August 2018, Ms. Shaw sent Mr. Underwood a series of emails, and that on 21 August 2018 Mr. Underwood forwarded them to Mr. Blair and Mr. Steedman.

(c) Mr. Blair replied to Mr. Underwood on the same day, stating:

"*That is interesting Mark.*

We have been told by RPC that Sean Nevitt would be the SD contact for all matters relating to the ordering of Replica Kit.

Doesn't quite connect but suspect they are up to something and continuing to lead them a dance is the right course…"

(d) Mr. Blair's email, read in context and in full does not reflect a strategy of obfuscation and delay but a suggestion not to engage with Ms. Shaw in circumstances where the fact that it was Ms. Shaw (whom SDIR had not put forward as an authorised point of contact) attempting to contact Elite, rather than Mr. Nevitt (whom RPC had told Rangers to deal with regarding the supply of kit), led Mr. Blair to believe that SDIR was seeking, through having Ms. Shaw try to contact Elite, to create legal and/or commercial problems for Rangers and/or Elite. Further, he believed that if SDIR wished Ms. Shaw to become involved in the process of obtaining kit he would hear from SDIR or RPC to that effect, and that until then it was best to avoid contact with her.

52ZA. Paragraphs 64 – 66 plead allegations only in the claim against Elite for inducing breach of contract, and are repeated in the claim against Rangers and Elite for unlawful means conspiracy only in support of an allegation regarding Elite's knowledge (paragraph 71(4)), and so Rangers does not plead to them, save that:

52ZA.1 Rangers has set out why it did not explain that Elite was party to the Elite / Hummel Agreement above.

52ZA.2 Paragraph 64(1), read with the main part of paragraph 64 does not make any sense. It appears to allege that Rangers was concerned that giving information regarding the Elite / Hummel Agreement (which the correspondence referred to in paragraphs 62 and 63 concerned) would somehow reveal the existence of or provoke a debate regarding whether the Matching Right applied to the September 2018 Agreements, which at the time of the relevant correspondence did not exist (and insofar as the correspondence pre-dated the period shortly after 17 August 2018 were not even being negotiated).

52ZA.3 Paragraph 64(2) is denied in relation to Rangers. Without prejudice to the generality of the foregoing:

(a) There was nothing in the Elite / Hummel Agreement which would have prevented Elite or Hummel from supplying 2018/2019 kit to SDIR, or SDIR selling such kit.

(b) SDIR could always seek to obtain 2018/2019 Replica Kit from Hummel, and in any event by 20 April 2018 and/or 16 August 2018 it had already contacted Elite to try and obtain such kit.

(c) Accordingly, attempting to prevent SDIR from obtaining the 2018/2019 kit for its launch by not mentioning that Elite was party to the Elite / Hummel Agreement does not make sense, and it is not what Rangers sought to do.

52ZA.4 Paragraph 64(3) is denied in relation to Rangers. Without prejudice to the generality of the foregoing:

(a) SDIR had consistently asserted, from long before the correspondence referred to in paragraphs 62 and 63, that what is now known as the Elite / Hummel Agreement had been entered into in breach of the Agreement and in breach of the Matching Right. Paragraph 43F.2, 4, 7 and 11 above are repeated.

(b) Rangers had already made it clear, again long before the correspondence referred to in paragraphs 62 and 63, that it had granted an exclusive right to distribute Replica Kit on a wholesale basis. Paragraph 43G.4, 5, 6, 8 and 10 above are repeated.

52ZB. As to paragraph 67:

52ZB.1 The reference to "the inferences pleaded immediately above" is understood to be a reference to the inferences referred to in paragraphs 64 - 66 which, save as set out above Rangers does not plead to for the reasons set out above.

52ZB.2 No admissions are made regarding Elite's belief, state of mind or the inference pleaded in the second sentence of paragraph 67.

52ZB.3 Sub-paragraph (1) concerns only what Elite was "on notice" of and so Rangers does not plead to it.

52ZB.4 Sub-paragraph (2) again concerns Elite's state of mind and decision-making process and Rangers does not plead to it.

52ZC. Paragraphs 68 and 69 concern Elite only and Rangers does not plead to them.

52ZC. As to paragraph 70:

52ZC.1 In relation to sub-paragraph (1), it is admitted that SDIR would have been Rangers' only retail partner (on the terms of the Further Agreement), but no admissions are made otherwise.

52ZC.2 As to sub-paragraph (2), Rangers repeats its response to paragraphs 32(1) - (3) and 32A – B set out above.

52ZC.3 Save as aforesaid no admissions are made.

Alleged unlawful means conspiracy

52ZD. In relation to paragraph 71, Rangers repeats its response to paragraphs 48 – 50.

52ZE. As to paragraph 72:

52ZE.1 The main part of paragraph 72 is impermissibly vague insofar as it does not plead how or when the alleged combination was formed.

52ZE.2 Rangers intended to enter into a profitable - and indeed the best possible - agreement it could regarding its Replica Kit and branded products. It would have preferred to, so far as it was lawfully able to do so, cease doing business with SDIR or the Sports Direct group in relation to its Replica Kit and branded products (in part because it did not consider that an agreement with them regarding its Replica Kit and branded products would be the best possible agreement, or even a desirable one). No admissions are made as to what Elite wanted. But in any event it is denied that the mere fact that Rangers wished to cease and Elite wished to avoid doing business with SDIR or Sports Direct so far as lawfully possible (if, in relation to Elite, that was the case) means that they combined with the common aim alleged. SDIR's position wrongly conflates a coincidence or overlap of views or wishes

with a combination or common design. Accordingly, it is denied that Rangers and Elite so combined. Further and in any event, if contrary to Rangers' primary case there was any combination then, injuring SDIR was not the purpose or predominant purpose of such combination, and as set out more fully below Rangers did not know that injury to SDIR was likely to result.

52ZE.3 As to sub-paragraph (1):

(a) Rangers has pleaded to paragraph 52, in paragraph 52O above.

(b) It is admitted that Elite wanted to be Rangers' retail partner.

(c) From the date Elite entered the retail tender, Rangers knew that.

(d) Save as aforesaid, the sub-paragraph is denied.

52ZE.4 As to sub-paragraph (2):

(a) Rangers has pleaded to paragraphs 53 and 54, in paragraphs 52P and 52Q above.

(b) As set out there: (i) during the course of the kit tender, Rangers received from Elite a forecast of its royalty payments, which was based on zero sales to the Sports Direct group, and during the course of the retail tender Rangers was informed that Elite intended to distribute to JD Sports and some independent retailers; (ii) no admissions are made regarding what Elite in fact ultimately intended, or what its "plan" (if indeed it had one) was. Further, Rangers knew that Elite wished to avoid dealing with SDIR and the wider Sports Direct group if it could lawfully avoid doing so, and (in general terms) that Elite or the individuals behind it had some sort of previous negative experience with the Sports Direct group. That was the extent of Rangers' knowledge regarding Elite's proposed business with Sports Direct (or lack thereof).

(c) Save as aforesaid the sub-paragraph is denied.

52ZE.5 As to sub-paragraph 72(3):

(a) Rangers has pleaded to paragraphs 42 – 44 above.

(b) It is denied, if it is alleged, that Rangers or Elite breached the Elite / Hummel Agreement in order to harm SDIR or avoid

conferring a benefit on SDIR. Without prejudice to the generality of the foregoing, in relation to Rangers the reason for non-compliance with that agreement was that until Sir Ross Cranston's judgment in the Part 8 Proceedings in March 2019, Rangers did not believe that SDIR was its Retail Partner for the purposes of the Elite / Hummel Agreement, while until September 2018 Elite did not have any 2018/2019 kit to deliver to anyone, and thereafter Rangers unsuccessfully sought to negotiate the supply of kit for SDIR.

1. Rangers' view was (and is) that the Retail Partner under the Elite / Hummel Agreement was (and is) its retail partner for the 2018/2019 season and then its retail partner from time to time.
2. Between 30 March and 31 May 2018, the retail tender had not completed and so Rangers did not know who might be its retail partner for the forthcoming season. It believed, at that point, that it was unlikely that it would be SDIR, because it believed SDIR was unlikely to seek to exercise its Matching Right or renew the Agreement when it expired.
3. Between June and early July 2018, Rangers was engaged in a debate with SDIR concerning the form of its notice of Elite's third party offer (made on 31 May 2018 in the retail tender).
4. SDIR matched the July offer on 25 July 2018, but the Agreement expired at the end of July 2018, and until Sir Ross Cranston's judgment of 13 March 2019, Rangers did not believe that the Further Agreement had been concluded.
5. For the reasons set out in 1 – 4 above, Rangers only became aware and considered that SDIR was the Retail Partner under the Elite / Hummel Agreement once Sir Ross Cranston gave his judgment in the Part 8 Proceedings in March 2019. Before that it did not consider that it was obliged to inform SDIR of Elite's role under the Elite /

Hummel Agreement, and considered that doing so risked damaging its relationship with Elite.

6. Elite was unable to supply any kit until September 2018 in any event, and insofar as SDIR sought kit in April and May 2019, as set out above, Rangers took steps to ensure that kit was supplied to SDIR, but was unable to secure such supply of kit, due to or in part due to SDIR's refusal to commit: (i) to paying the wholesale price for such kit; and / or (ii) to agreeing Elite and/or Hummel's terms of supply.

(c) Save as aforesaid, the sub-paragraph is denied.

52ZE.6 As to sub-paragraph (4):

(a) Rangers has pleaded to paragraph 57 above.

(b) As set out there, Elite supplied a letter to Rangers which Rangers relied on the text of in seeking to discharge an interim injunction obtained by SDIR.

(c) Save as aforesaid, the sub-paragraph is denied.

52ZE.7 As to subparagraph (5):

(a) Rangers has pleaded to paragraphs 60 and 61 above.

(b) As set out there, faced with SDIR matching the offer set out in the July Notice, Rangers and Elite sought to ascertain whether and if so to what extent they could still enter into an agreement, and, later, to enter into such agreement as they believed they legally and properly could without engaging the Matching Right provisions. Once a draft agreement was produced by Rangers, further negotiation of its terms ensued before it (i.e. the Elite Non-Exclusive Rights Agreement) was executed.

(c) Save as aforesaid, the sub-paragraph is denied.

52ZE.8 As to sub-paragraph (6):

(a) Rangers' response to paragraphs 31G – J, 43(2) and 62 - 63 above is repeated.

(b) It is denied that Rangers had the strategy of obfuscation and delay alleged.

(c) The second sentence of sub-paragraph (5) is not admitted.

(d) Sub-paragraph (c) is not admitted.

(e) Save as aforesaid the sub-paragraph is denied.

52ZE.9 As to sub-paragraph (7):

(a) It is admitted that the meeting took place.

(b) At the meeting, Elite sought an extension of the term of the Elite / Hummel Agreement.

(c) Rangers informed Elite that was out of the question in relation to Rangers itself, and that the furthest its parent company could go was to commit to looking at an extension of the term of the Elite / Hummel Agreement if and when it and Rangers were allowed to do so.

(d) The only assurances which Rangers gave Elite were that it would fight and/or continue to fight litigation brought by SDIR, and that Rangers believed that it was right in relation to its dispute with SDIR.

52ZE.10 Save as aforesaid paragraph 72 is denied.

52ZF. As to paragraph 73:

52ZF.1 The allegation regarding Rangers' intention is not properly pleaded insofar as no particulars are given as to when Rangers is said to have held the relevant intention.

52ZF.2 Rangers did not intend to injure SDIR. It intended to achieve the best possible terms regarding the manufacture and supply of kit, and the retail of such kit and Rangers-branded products, as it could, and protect its own commercial interest, so far as it lawfully could. As pleaded above, at all material times Rangers believed that it was acting lawfully, namely in accordance with its legal rights.

52ZF.3 It is denied that removing SDIR from any part of the business of Rangers' Replica Kit and Rangers-branded products would inevitably injure SDIR or that Rangers knew or believed the same.

(a) Whether or not removing SDIR from such business would injure it would depend on whether in the event it was not so removed such business would ultimately be profitable for it and/or more profitable than deploying the resources committed to such business elsewhere.

(b) As set out more fully above, Rangers' understanding, based on SDIR's conduct until it sought to exercise its Matching Right under the Agreement, was that SDIR was unlikely to exercise its Matching Right or to seek to extend the Agreement.

(c) SDIR has previously indicated that the Agreement was not profitable for it. By way of example, see the facts and matters referred to in paragraph 43P.1(c) above.

52ZF.4 No admissions are made as to Elite's intention.

52ZF.5 As to sub-paragraph (1), Rangers repeats its response to paragraph 63 above.

52ZF.6 As to sub-paragraph (2), Rangers repeats its response to paragraph 67 above.

52ZF.7 Sub-paragraph (3) appears to concern correspondence internal to Elite and Rangers does not plead to it.

52ZF.8 Save as aforesaid, paragraph 73 is denied.

52ZG. As to paragraph 74:

52ZG.1 As to sub-paragraph (1),

(a) It is admitted that Rangers' entry into the September 2018 Agreements was in breach of the Matching Right in the Agreement and the Further Agreement but denied that Rangers knew the same, or that such act was carried out as a means of furthering the common aim alleged in paragraph 72 and/or injuring SDIR as alleged in paragraph 73. The September 2018 Agreements were not entered into pursuant to a plan to remove SDIR from the business of Rangers kit or branded products, not least because they would be inapposite as a means of doing so. The Elite Non-Exclusive Rights

Agreement conferred non-exclusive rights on Elite and had no impact on SDIR's rights to obtain, market, distribute or sell Rangers kit or branded products. Similarly, the Elite Retail Units Agreement did not confer any exclusive rights on Elite or have any impact on SDIR's rights to obtain, market, distribute or sell Rangers kit or branded products. The apparent allegation that Rangers entered into two agreements which on their face had no impact on SDIR's rights to obtain, market, distribute or sell Rangers kit or branded products in order to remove SDIR from the business of such kit and products does not make sense. Further, Rangers genuinely, albeit incorrectly, believed:

1. based on Mr. Hofmeyr QC's advice, pleaded above, that it was entitled to enter the September 2018 Agreements and that doing so would not engage the Matching Right in any agreement; and
2. that, as at the time the September 2018 Agreements were executed, the Agreement had ceased and the Further Agreement was not in place.

(b) No admissions are made regarding Elite's knowledge.

52ZG.2 As to sub-paragraph (2):

(a) Rangers has pleaded to paragraphs 42 – 44 above.

(b) For the reasons set out above, the obligations said to be for the benefit of SDIR were not for the benefit of SDIR.

(c) SDIR had no rights and was not entitled to enforce the Elite / Hummel Agreement. In any event, Rangers did not believe at any time that any breach of that agreement was actionable by SDIR or that any duties were owed to SDIR under it.

(d) Rangers will contend in any event that breach of a contractual duty to an alleged co-conspirator cannot constitute, or on the facts of this case does not constitute, unlawful means for the purposes of unlawful means conspiracy, alternatively that it could only constitute unlawful means if it was the means by which the claimant was harmed, and not merely incidental, and here that test is not met.

(e) If and to the extent Rangers or Elite breached the Elite / Hummel Agreement it is denied that such breaches were carried out as a means of furthering the common aim alleged in paragraph 72 or injuring SDIR. As set out above, if and to the extent that Rangers breached the Elite / Hummel Agreement in the manner alleged, it did so for the reasons set out in paragraph 52ZE.5 above, and not pursuant to the common aim alleged in paragraph 72 or to injure SDIR as alleged in paragraph 73.

(f) Sub-sub-paragraph (a) is impermissibly vague insofar as it does not make clear whether it is alleged that Rangers (or indeed Elite) knew that the pleaded breaches of the Elite / Hummel Agreement were breaches of that agreement or were breaches of duties said to be owed to and/or enforceable by SDIR. In any event it is denied that Rangers knew the pleaded breaches of duty were unlawful in relation to SDIR (if, contrary to Rangers' primary case, they were).

(g) It is denied that Rangers adopted a strategy of obfuscation and delay as alleged in sub-sub-sub-paragraph 74(2)(a)1, or (if it is alleged) that it deliberately sought to lead SDIR to believe that Elite was not party to the Elite / Hummel Agreement as alleged in sub-sub-sub-paragraph 74(2)(a)2. In any event, no admissions are made as to what SDIR believed about who the parties to the Elite / Hummel Agreement were.

(h) It is admitted that Rangers repeatedly refused to provide SDIR with a copy of the Elite / Hummel Agreement. It considered it was entitled to do so.

(i) As to sub-sub-sub-paragraph 74(2)(b):

1. No admissions are made regarding Elite's knowledge.
2. It is admitted that Rangers knew the terms of the Elite / Hummel Agreement, and that Elite had not complied with the Replica Kit Delivery Obligation. Rangers' understanding at the time for performance of that obligation was that Elite did not have kit to deliver in order to perform it.
3. For the reasons set out above, Rangers did not know and/or believe that SDIR was its Retail Partner as defined in the Elite /

Hummel Agreement until Sir Ross Cranston handed down his judgment in the Part 8 Proceedings on 13 March 2019.

4. In any event, Rangers does not and did not believe that SDIR has or had rights under the Elite / Hummel Agreement or is or was entitled to bring proceedings for breach of it.

52ZG.3 Save as aforesaid paragraph 74 is denied.

52ZH. Further and in any event if, contrary to Rangers' primary case, it did combine with Elite as alleged and/or to use unlawful means then in the circumstances set out above there was just cause or excuse for doing so, such that it is not liable to SDIR.

Alleged loss and damage

52ZH. As to paragraph 75, Rangers repeats its response to paragraphs 45 and 70.

52ZI. Paragraph 76 is noted. Paragraph 43A above is repeated.

52ZJ. Paragraphs 77 and 78 are noted.

COUNTERCLAIM

53. Paragraphs 2-12 of the Defence are repeated.

54. Further, the Agreement contained, *inter alia*, the following definitions:

54.1. At schedule 3, paragraph 1.1.1, "**Licence Fee**" was defined to mean "*the aggregate of (i) 75% of the Net Profits; (ii) 50% of the SD Store Net Profits; and (iii) 50% of the SD Online Net Profits"*

54.2. At schedule 3, paragraph 1.1.3, "**Net Profits**" was defined to mean "*the aggregate of (i) the royalties and payments received by SDIR (exclusive of tax, duties and returns) from Rangers' then appointed supplier of the Replica Kit.... ("Kit Royalties") and the suppliers/licensees of Branded Products and Additional Products"; and (ii) the gross revenues received by SDIR (exclusive of tax, duties and returns) on the sale of Branded Products, Replica Kit and Additional Products from the Rangers Megastore, less i) the cost of goods for the relevant Branded Products, Replica Kit and Additional Products plus 10%,*

and ii) wages, operating costs and professional costs incurred by SDIR in connection with such sales; and (iii) the gross revenues received by SDIR (and/or a wholly owned subsidiary within SDIR's Group) (exclusive of tax, duties and returns) on the sale of Branded Products, Replica Kit and Additional Products from the Rangers Webstore, less the cost of goods for the relevant Branded Products, Replica Kit and/or Additional Products plus 25%; and (iv) Rangers Receipts received by SDIR.

54.3. At schedule 3, paragraph 1.1.8, "**SD Store Net Profits**" was defined to mean "*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, less i) the cost of goods for the relevant Branded Products, Replica Kit and Additional Products plus 10%, and ii) wages, operating costs and professional costs incurred by SDIR in connection with such sales.*"

54.4. At schedule 3, paragraph 1.1.9, "**SD Online Net Profits**" was defined to mean "*the gross revenues received by SDIR (exclusive of tax, duties and returns) on the sale of Branded Products, Replica Kit and Additional Products from any Online Stores, in each case operated by SDIR and/or members of SDIR's Group, less i) the cost of goods for the relevant Branded Products, Replica Kit and Additional Products plus 25%*"

54.5. At schedule 3, paragraph 1.1.5, "**Online Stores"** was defined to mean "*any online channels, digital channels, online stores and/or other websites (other than the Rangers Webstore).*"

54.6. At schedule 3, paragraph 1.1.6: "***Quarter***" means "*the period beginning on the Effective Date and ending on 30 June and thereafter shall mean each successive period of three months during this Agreement save for the period immediately prior to the date of termination of this Agreement which may be shorter than three months, and Quarterly shall be construed accordingly.*"

55. Further, the Agreement contained, *inter alia*, the following further terms:

55.1. At clause 6: "*In consideration of the rights granted by Rangers to SDIR pursuant to this Agreement, the parties have agreed to commercial terms set out in Schedule 3 to this Agreement.*"

55.2. At schedule 3, paragraph 2.1: "*In consideration of the rights granted by Rangers to SDIR pursuant to this Agreement, SDIR shall pay Rangers the Licence Fee in accordance with the terms set out in this Schedule.*"

55.3. At schedule 3, paragraph 2.4: "*Within 10 days of the end of the Quarter, SDIR shall provide Rangers with a statement (Quarterly Statement) setting out the calculation of the Net Profits and Licence Fee (less any Kit Royalty Payment made) for that Quarter (together with such reasonable supporting information as is reasonably required to allow Rangers to check the accuracy and material completeness of the Quarterly Statement). Within 10 days of receipt, Rangers shall confirm its agreement to the Quarterly Statement or, if Rangers disputes the Quarterly Statement, it shall provide written notice to SDIR (Notice) of those parts of the Quarterly Statement that are disputed and details of why those parts are disputed. The parties shall discuss any disputed parts of the Quarterly Statement detailed in the Notice in good faith and shall seek to resolve any differences between them so that the Quarterly Statement may be agreed. If the parties subsequently resolve any disputed parts detailed in the Notice, or Rangers does not provide Notice within 10 days of receipt of the Quarterly Statement, the Quarterly Statement shall be deemed agreed".*

55.4. At schedule 3, paragraph 2.5, "*Within 10 days of the issue by SDIR of the Quarterly Statement, Rangers shall issue SDIR with a valid VAT invoice (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.*"

55.5. At schedule 3, paragraph 2.6, "*the Licence Fee (less any Kit Royalty Payment made) shall be paid by SDIR to Rangers in full without deduction or set off within 10 days of receipt of the invoice by SDIR*"

55.6. At schedule 3, paragraph 2.10: "*Within 60 days of the end of each 12 month period from the Effective Date, SDIR shall provide Rangers with a reconciliation statement (Annual Statement) setting out the calculation of the Net Profits and Licence Fee (less any Kit Royalty Payment made) for the relevant period/Quarters. Within 15 days of receipt, Rangers shall confirm its*

agreement to the Annual Statement or, if Rangers disputes the Annual Statement, it shall provide written notice to SDIR (Notice) of those parts of the Annual Statement that are disputed and details of why those parts are disputed. The parties shall discuss any disputed parts of the Annual Statement detailed in the Notice in good faith and shall seek to resolve any differences between them so that the Annual Statement may be agreed. If the parties subsequently resolve any disputed parts detailed in the Notice, or Rangers does not provide Notice within 15 days of receipt of the Annual Statement, the Annual Statement shall be deemed agreed. Any payments to be made to SDIR or to Rangers set out in the Annual Statement shall be made within 30 days of provision of the Annual Statement in the amount set out therein".

55.7. At schedule 3, paragraph 2.11: *Subject only to any amounts payable pursuant to paragraph 2.7, and notwithstanding any other provision of this Agreement, the parties acknowledge and agree that all invoices or claims for payments in relation to any Licence Fee (and any Kit Royalty Payment) must be submitted for payment within six (6) months of the relevant payment date set out in this Agreement (or such other date from which Rangers first became entitled to submit an invoice or claim for such payment) and in any event within six (6) months of the expiry of the Term. SDIR shall not be obliged to make payment of any invoice or claim for any payment submitted outside such period and Rangers hereby waives all rights to claim any such payments.*

55.8. At clause 10.1.1: "*SDIR undertakes and agrees during the Term to carry out its obligations under this Agreement with reasonable skill, care and attention and in accordance with the terms of this Agreement."*

55.9. At clause 14.2: *"…. the parties acknowledge and agree that their sole and exclusive remedies for any breach of this Agreement whatsoever (including repudiatory breach or material breach) shall be: the right to sue for payment of any sums due and payable under this Agreement; the right to seek injunctive relief and/or specific performance; the right to claim damages;….."*

55.10. At clause 17: *"Any notice given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand ……"* and "*Notices shall be marked for the attention of …. For SDIR: Sean Nevitt*" …… "*Any notice shall be deemed to have been received …. if delivered by hand, on signature of a delivery receipt.*"

56. On a true construction of paragraph 2.4 of schedule 3:

56.1. any Quarterly Statement to be provided by SDIR was to be accurate and materially complete;

56.2. the provision by SDIR to Rangers of a compliant Quarterly Statement was a pre-condition of any obligation on Rangers to confirm or dispute;

56.3. the provision by SDIR to Rangers of such reasonable supporting information as was reasonably required to allow Rangers to check the accuracy and material completeness of the Quarterly Statement was a pre-condition of any obligation on Rangers to confirm or dispute;

56.4. "*Within 10 days of receipt*" for confirmation or dispute by Rangers did not apply where a Quarterly Statement was not provided within the contractually agreed period, namely within 10 days of the end of the relevant Quarter;

56.5. "*within 10 days of*" means within 10 working days after (alternatively within 10 days after).

57. On a true construction of paragraph 2.10 of schedule 3:

57.1. any Annual Statement to be provided by SDIR was to be accurate and materially complete;

57.2. the provision by SDIR to Rangers of a compliant Annual Statement was a pre-condition of any obligation on Rangers to confirm or dispute;

57.3. the period of "*Within 15 days of receipt*" for confirmation or dispute by Rangers did not apply where an Annual Statement was not provided within the contractually agreed period, namely within 60 days of the end of the relevant 12 month period;

57.4. "*within 15 days of*" means within 15 working days after (alternatively within 15 days after).

58. On a true construction of paragraph 2.11 of schedule 3:

58.1. the provision by SDIR to Rangers of a compliant Quarterly Statement and/or such reasonable supporting information as was reasonably required to allow Rangers to check the accuracy and material completeness of the Quarterly Statement were pre-conditions for any "relevant payment date";

58.2. the provision by SDIR to Rangers of a compliant Annual Statement was a pre-conditions for any "relevant payment date";

58.3. further or alternatively, where Rangers disputed a Quarterly Statement (or the obligation to dispute was suspended) there was no "relevant payment date";

58.4. "such period" in the final sentence is singular and means within six months of the expiry of the Term such that any relinquishment of any obligation to make payment or waiver

58.5. the final sentence is limited to claims for payment and/or does not cover other claims such as claims for declarations and/or damages.

59. It was an implied term of the Agreement (implied for reasons of business efficacy and/or because the same represented the common but unexpressed intentions of the parties) that SDIR would act in good faith, would act honestly and with fidelity to the bargain, would act reasonably with fair dealing (having regard to the interests of the parties and the provision, aim and purposes of the contract) and would not act to undermine the bargain entered into or the substance of the contractual benefit bargained for.

60. It was a further implied term of the Agreement (implied for reasons of business efficacy and/or because the same represented the common but unexpressed intentions of the parties) that where a Quarterly Statement or Annual Statement was not provided within the contractually agreed period, Rangers was not obliged to confirm or dispute the same within those periods set out in paragraphs 2.4 and 2.10 of schedule 3, respectively, or make claims for payment within periods set out in paragraph 2.11.

61. The "Effective Date" was the date of the Agreement, namely 21 June 2017.

2017 Quarterly Statements

62. In breach of the Agreement SDIR failed to exercise the requisite skill, care and attention and failed to comply with its obligations 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 (together with reasonable supporting information necessary to allow Rangers to check the accuracy and material completeness of that Quarterly Statement) for the Quarters ending on those dates.

63. Including by email sent on 5 December 2017, letters dated 18 December 2017 and 19 January 2018, email sent on 23 January 2018, Rangers (through Anderson Strathern solicitors) requested SDIR (through RPC solicitors) to provide Quarterly Statements and supporting information for the quarters ending 30 June 2017 and 30 September 2017.

64. Including by letter dated 19 January 2018 and email sent on 23 January 2018, Rangers (through Anderson Strathern solicitors) requested SDIR (through RPC solicitors) to provide Quarterly Statements and supporting information for the quarters ending 31 December 2017.

65. On Friday 16 February 2018, RPC sent to Anderson Strathern "*copies of the Quarterly Statements for the quarters 21 June 2017 to 30 September 2017 and from 1 October 2017 to 31 December 2017*".

66. By reason of SDIR failing to exercise the requisite skill, care and attention and/or in failing to act in good faith and/or in further breach of of the Agreement:

66.1. the statement for the period 21 June 2017 to 30 September 2017 was not a Quarterly Statement for the purposes of and/or in compliance with Agreement because it did not end on 30 June and/or because it covered a period of more than 3 months and/or;

66.2. SDIR (through RPC) did not send together with those copy statements for either period reasonable supporting information necessary to allow Rangers to check the accuracy and material completeness of each and every copy statement; in so far as SDIR contends that the "Notes to the Statement" provided sufficient supporting information, the same will be denied.

In the circumstances, any 10-day period for Rangers to confirm or dispute Quarterly Statements was not triggered by the provision of those figures and/or no relevant payment date for the purposes of paragraph 2.11 arose.

67. Further, SDIR failed to exercise the requisite skill, care and attention when compiling and/or preparing those statements and/or in further breach of the Agreement did not provide Quarterly Statements which were accurate and materially complete. Prior to SDIR providing reasonable supporting information necessary to allow Rangers to check the accuracy and material completeness of those statements, the best particulars Rangers can presently provide of why those statements were not accurate and/or materially complete are set out in Appendix A.

68. By letter dated 23 February 2018 (the full terms of which are relied upon), Rangers requested SDIR to comply with the terms of the Agreement and to provide Quarterly Statements and reasonable supporting information for the three quarters ending 30 June 2017, 30 September 2017 and 31 December 2017. If Rangers was obliged pursuant to paragraph 2.4 of schedule 3 to dispute any of the statements provided (which is denied), then, by the same letter, Rangers gave notice disputing (1) stock provision costs (2) carriage distribution costs and (3) PUMA royalties as well as (4) stock costs of sale (5) stock take shrinkage and (6) operating costs of SD Stores (including how they were calculated) together with (7) retail sales and (8) staff costs (staff numbers and average wages). On 26 February 2018, that letter, addressed to Mr Nevitt, was delivered by hand to SDIR at its registered office.

69. By letter dated 27 February 2018, SDIR (through RPC) stated that it agreed to suspend any relevant period for Rangers to dispute Quarterly Statements until further notice and/or implicitly agreed to suspend until further notice any relevant period for Rangers to dispute Annual Statements and/or any periods in paragraph 2.11 in which to make claims for payments in relation to Licence Fees.

2018 Quarterly Statements

70. Further or alternatively, SDIR failed to exercise the requisite skill, care and attention and/or in further breach of the Agreement failed within 10 days of 31 March 2018, 30 June 2018 and/or 11 August 2018 to provide Rangers with a Quarterly Statement (together with reasonable supporting information necessary to allow Rangers to check the accuracy and material completeness of that Quarterly Statement) for the Quarters ending on those dates.

71. By email sent on 1 May 2018, SDIR (through RPC) sent further information to Rangers purporting to be further supporting information to allow Rangers to check the accuracy and material completeness of the statements which had by then been provided. In the email it was stated that "*SDIR can confirm that the operating costs attributed to the sale of Rangers branded products is the same as the total operating costs shown as a percentage of the total sales of all products in SD Stores*".

72. On 2 May 2018, RPC sent by email to Anderson Strathern a copy of a purported Quarterly Statement for the quarter ending 31 March 2018.

73. On 13 July 2018, RPC sent by email to Anderson Strathern a copy of a purported Quarterly Statement for the quarter ending 30 June 2018.

74. By reason of SDIR failing to exercise the requisite skill, care and attention and/or in failing to act in good faith and/or in further breach of the Agreement, RPC did not send together with the statement for either period reasonable supporting information necessary to allow Rangers to check the accuracy and material completeness of each and every statement. If and in so far as SDIR contends that the "Notes to the Statement" provided sufficient supporting information, the same will be denied.

75. Further, in the circumstances, had any 10-day period for Rangers to confirm or dispute Quarterly Statements not already been suspended, it would not have been triggered by the provision of those statements. If Rangers was obliged pursuant to paragraph 2.4 of schedule 3 to dispute any of those statements (which is denied), then, by letter dated 23 July 2018 addressed to Sean Nevitt, Rangers (through Kingsley Napley) gave notice disputing the entirety of the Quarterly Statement for the period ending 30 June 2018. That letter was delivered by hand to SDIR at its registered office.

76. Further, SDIR failed to exercise the requisite skill, care and attention when compiling and/or preparing those statements and/or in further breach of the Agreement did not provide Quarterly Statements which were accurate and materially complete. Prior to SDIR providing reasonable supporting information necessary to allow Rangers to check the accuracy and material completeness of the statements, the best particulars Rangers can currently provide of why the statements were not accurate and/or materially complete are set out in Appendix A.

Quarterly Statements - Ongoing

77. Further or alternatively, by reason of SDIR continuing to fail to exercise the requisite skill, care and attention and/or in failing to act in good faith and/or in further breach of the Agreement, SDIR continues to fail to provide Rangers with any Quarterly Statement for the Quarter ending 11 August 2018 and/or any reasonable supporting information.

78. Further or alternatively, in breach of the Agreement SDIR continues to fail and refuses to exercise the requisite skill, care and attention and continues to fail and/or refuse to comply with its obligations in that it continues to fail to provide Rangers with proper Quarterly Statements and/or with reasonable supporting information necessary to allow Rangers to check the accuracy and material completeness of each Quarterly Statement for the quarters ending 30 June 2017, 30 September 2017, 31 December 2017, 31 March 2018, 30 June 2018. Without prejudice to the generality of the foregoing, SDIR continues to fail to provide:

(a) information supporting the stock owned by SDIR on 20 June 2017
(b) information supporting any stock brought in on 21 June 2017, including details of the ageing of the stock on or before 21 June 2017, the original cost of the stock together with any provisions made against such stock in periods prior to 21 June 2017;
(c) information supporting the stock held at the start of each Quarter, including quantities and cost values of each stock line;
(d) floor reports to support the operating cost percentage for each Quarter;

(e) information supporting SDIR's sales of numerous items at prices below cost in the period 21 June 2017 to 31 December 2017, including the dates of acquisitions of items of this stock and any provisions previously made against such stock.

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Annual Statement

79. Further or alternatively, SDIR failed to exercise the requisite skill, care and attention and/or in failed to act in good faith and/or acted in further breach of the Agreement in failing to provide to Rangers, within 60 days of 20 June 2018, an Annual Statement for the period 21 June 2017 to 20 June 2018.

80. On Monday 8 October 2018, RPC (on behalf of SDIR) sent to Rangers a statement for the period 21 June 2017 to 30 June 2018.

81. By reason of SDIR failing to exercise the requisite skill, care and attention and/or in failing to act in good faith and/or in further breach of the Agreement, that statement was not an Annual Statement for the purposes of and/or in compliance with the Agreement because it covered a period of more than 12 months. In the circumstances, the 15-day period in paragraph 2.10 of schedule 3 for Rangers to confirm or dispute that statement was not triggered by the provision of that statement.

82. Further, SDIR failed to exercise the requisite skill, care and attention when compiling and/or preparing that statement and/or in further breach of the Agreement did not provide an Annual Statement which was accurate and materially complete. Prior to SDIR providing reasonable supporting information necessary to allow Rangers to check the accuracy and material completeness of the statement and/or completion of the disclosure process, the best particulars Rangers can currently provide of why the statement was not accurate and/or materially complete are set out in Appendix A.

83. By letter dated 22 October 2018 (the full terms of which are relied upon), and without prejudice to Rangers' right to raise further areas of dispute, Rangers requested SDIR

to comply with the terms of the Agreement and to provide an Annual Statement for the period 21 June 2017 to 20 June 2018. If Rangers was obliged pursuant to paragraph 2.10 of schedule 3 to dispute the statement which has been provided (which is denied), then, by the same letter, Rangers gave notice disputing all the numbers set out in that statement (on grounds of no or insufficient supporting information) as well as with more particularity the inclusion of stock provision costs, carriage distribution costs and operating costs of SD Stores. That letter, addressed to Mr Nevitt, was delivered by hand to SDIR at its registered office on 22 October 2018.

84. Further or alternatively, in breach of the Agreement SDIR continues to fail and refuses to exercise the requisite skill, care and attention and continues to fail and/or refuse to comply with its obligations in that it continues to fail, despite requests, to provide Rangers with a proper Annual Statement.

Discussions

85. Rangers (including through solicitors) have discussed with SDIR (including through RPC) in good faith and in correspondence disputed parts of the Quarterly and/or Annual Statements without reaching any agreements.

86. Further, without prejudice meetings took place between Stewart Robinson, the managing director of Rangers, and SDIR for the purpose of discussing the financial information among other matters on 28 June and 5 July 2018.

Relief

87. Rangers is entitled to and requests interim and/or final mandatory injunctions and/or orders for specific performance requiring:

87.1. SDIR to provide Quarterly Statements for the Quarters ending on the following dates together with reasonable supporting information necessary to allow Rangers to check the accuracy and material completeness of those Quarterly Statements: 30 June 2017 and/or 11 August 2018;

87.2. SDIR to provide reasonable supporting information necessary to allow Rangers to check the accuracy and material completeness of the purported Quarterly Statement for the Quarters ending on the following dates: 30 September 2017, 31 December 2017, 31 March 2018 and 30 June 2018;

87.3. SDIR to provide an Annual Statement for the period 21 June 2017 to 20 June 2018.

88. Further or alternatively, Rangers currently seeks declarations that, in relation to the purported Quarterly Statements:

88.1. SDIR wrongfully did not include carriage takings in relation to sales on SDIR's website;

88.2. SDIR wrongfully deducted 30% in fact for "Operating Costs relating to SD Stores";

88.3. SDIR wrongfully deducted operating costs relating to SD Stores rather than operating costs incurred by SDIR in connection with sales of Replica Kit, Branded Products and Additional Products.

89. Further or alternatively, Rangers currently seeks declarations that in relation to the purported Annual Statement:

89.1. SDIR wrongfully did not include carriage takings ,VAT and carriage distribution costs in relation to sales on SDIR's website;

89.2. SDIR wrongfully deducted 30% in fact for "Operating Costs relating to SD Stores";

89.3. SDIR wrongfully deducted operating costs relating to SD Stores rather than operating costs incurred by SDIR in connection with sales of Replica Kit, Branded Products and Additional Products.

90. Rangers reserves the right to add to Appendix A (including in relation to costs of goods and stock) after SDIR has provided reasonable supporting information necessary to allow Rangers to check the accuracy and material completeness of the Quarterly Statements and/or Annual Statement and/or after completion of the disclosure process.

91. By reason of the aforesaid breaches, Rangers has suffered and continues to suffer loss and damage. Amongst other things, Rangers would have been entitled to greater sums on earlier dates. Rangers is currently unable to particularise those losses fully due to SDIR's failure to give information and/or disclose documents.

92. Further, Rangers claims compound interest as damages, alternatively is entitled to and claims simple interest pursuant to section 35A of the Senior Courts Act 1981 on all sums found to be due at such rates and for such periods as the court thinks fit.

AND THE DEFENDANT Counterclaims:

(1) interim and/or final mandatory injunctions and/or orders for specific performance requiring SDIR to provide a proper Quarterly Statement for the Quarter ending on the 30 June 2017 together with reasonable supporting information to allow Rangers to check the accuracy and material completeness of that quarterly statement;

(2) interim and/or final mandatory injunctions and/or orders for specific performance requiring SDIR to provide an Annual Statement for the period 21 June 2017 to 20 June 2018;

(3) interim and/or final mandatory injunctions and/or orders for specific performance requiring SDIR to provide a proper Quarterly Statement for the Quarter ending on the 11 August 2018 together with reasonable supporting information to allow Rangers to check the accuracy and material completeness of that quarterly statement;

(4) interim and/or final mandatory injunctions and/or orders for specific performance requiring SDIR to provide reasonable supporting information to allow Rangers to check the accuracy and material completeness of the statements delivered to date relating to the periods ending 30 September 2017, 31 December 2017, 31 March 2018 and 30 June 2018

(5) declarations that the following ought to have been and are to be included within a Quarterly Statement or Annual Statement: carriage takings, VAT and carriage distribution costs in relation to products sold on SDIR's website;

(6) declarations that the following ought not to have been and are not to be included within a Quarterly Statement or Annual Statement: operating costs relating to SD Stores in principle and/or at 30%;

(7) damages;

(8) the aforesaid interest.

STEPHEN HOFMEYR QC

MICHAEL RYAN

BEN QUINEY QC

MICHAEL RYAN

JASON EVANS-TOVEY

AKHIL SHAH QC

CHRISTOPHER KNOWLES

Statement of Truth

The Defendant believes that the facts stated in the amendments to this ~~Re-Amended~~ Defence and Counterclaim are true. I am duly authorised by the Defendant to sign this statement of truth.

Signed: [signature]

Name: JAMES DON BLAIR

Position: COMPANY SECRETARY

Dated: 29/11/2019

APPENDIX A

1 In each purported Quarterly Statement and/or the purported Annual Statement, 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 SDIR's website.

2 In the statement for the periods ending 30 September 2017 and 31 December 2017, SDIR stated in "Note 3" of its "Notes to the Statement" which related to "Operating Costs relating to SD Stores" that "*The charges on the SD Stores are based on the percentage of operating cost over revenue per the floor report. This percentage of 20% has been applied to the net income for products sold in SD stores to reflect our operating cost. This ignores the unallocated warehouse central costs as these would be covered by the cost of sales markup of 10%*". In fact SDIR has refused to provide the floor reports. Moreover, in each purported Quarterly Statement and/or the purported Annual Statement the amount which SDIR deducted in fact for "Operating Costs relating to SD Stores" was 30%.

3 Still further, by schedule 3 and in relation to certain income streams, SDIR was permitted to deduct operating costs incurred by SDIR in connection with sales of Replica Kit, Branded Products and Additional Products. However, SDIR has deducted "Operating Costs relating to SD Stores". Prior to SDIR providing supporting information, the natural and reasonable inference is that SDIR has deducted operating costs relating to SD Stores rather than operating costs incurred by SDIR in connection with sales of Replica Kit, Branded Products and Additional Products.

Claim No. CL-2018-000631

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

COMMERCIAL COURT (QBD)

B E T W E E N

SDI RETAIL SERVICES LIMITED

Claimant

-and-

(1) THE RANGERS FOOTBALL CLUB LIMITED

(2) LBJ SPORTS APPAREL LIMITED

Defendants

RE-AMENDED DEFENCE

AND

COUNTERCLAIM
