



Neutral Citation Number: [2022] EWHC 1412 (Ch)

Case No: IL-2021-000081

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

7 Rolls Buildings
Fetter Lane, London
EC4A 1NL

Date: 13/06/2022

Before :

MR JUSTICE ADAM JOHNSON

Between :

(1) LAPPET MANUFACTURING COMPANY
LIMITED
(2) SHEMAGH AL BASSAM COMPANY

Claimants

- and -

(1) MR BASIL IBRAHIM RASSAM
(2) MR IBRAHIM RASSAM
(3) LONDON TEXTILE INDUSTRIES LIMITED

Defendants

Michael Hicks (instructed by Potter Clarkson LLP) for the Claimants
Christopher Hall (instructed by Harper James) for the Defendants

Hearing dates: 3 May 2022

Approved Judgment

This judgment was handed down remotely by circulation to the parties' representatives by email and released to the National Archives. The date and time for hand-down is deemed to be 10am on Monday 13 June 2022.

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MR JUSTICE ADAM JOHNSON

Mr Justice Adam Johnson:

Introduction & Background

1. This case raises certain procedural issues in the context of a trade mark infringement action.

The Claim and the Issues in Outline

2. Three trade marks are involved (the “*Registered Trade Marks*”). They all relate to the same sign featuring Arabic script - used in respect of the sale of head shawls, known as “*yashmaghs*”.
3. The First Claimant, Lappet Manufacturing Company Limited, is a licensee of the Registered Trade Marks from the Second Claimant. It has a business exporting head shawls for sale abroad, in particular in Saudi Arabia. The Claimants are related in that they have a common shareholder. Their case, in short, is that the Defendants have been engaged in counterfeiting their goods.
4. The First Defendant is Mr Basil Ibrahim Rassam and the Second Defendant is Mr Ibrahim Rassam. The Third Defendant is a company, London Textile Industries Limited (“*London Textile*”) which was incorporated on 29 August 2019. Companies House information confirms that the Second Defendant, Mr Ibrahim Rassam, is the sole director of London Textile. The Particulars of Claim allege that “*the Defendants (or one or more of them)*” trade from premises at 150 Cromwell Road, London.
5. The Claim Form is dated 24 November 2021. It was issued in the High Court, Business & Property Courts, Intellectual Property List (ChD), and designated for inclusion in the Shorter Trials Scheme. The basic disagreement between the parties is whether the action should be transferred to the Intellectual Property Enterprise Court (“*IPEC*”). As explained in CPR 63.1(1)(g), IPEC is a “*specialist list established within the Chancery Division of the High Court*”.
6. The Defendants seek to procure their objective by means of two applications. The first is an application for a declaration that the High Court does not have jurisdiction over the claim, or if it does should not exercise such jurisdiction (the “*Jurisdiction Application*”); the second is an application to transfer the action to the IPEC (the “*Transfer Application*”).
7. The Claimants resist both applications, and say that the action should remain in the High Court, Shorter Trials Scheme, at least for now.
8. As to the structure of the claim, it is essentially a claim for trade mark infringement. As is conventional with such claims, the Prayer for Relief in the Claim Form references a number of different remedies, including a claim for an injunction and for relief under s15 of the Trade Marks Act 1994 (“*TMA*”) Additionally, the Claim Form seeks the following:

“An inquiry as to damages for infringement of the Registered Trade Marks (including damages pursuant to the Intellectual

property (Enforcement, etc.) Regulations 2006) or at the Claimants' option, an account of profits."

9. As I understand it, this formulation is quite standard. The approach frequently followed is that the issues of liability and quantum are split. The Claimant, if successful on liability, is required to make an election between an inquiry as to damages and an account of profits; but until then, the precise form of financial relief remains open.

Issue of the Claim Form

10. An issue which has arisen, given this approach, is about the proper fee to be paid on issue of the Claim Form. Schedule 1 of the Civil Proceedings Fees Order 2008 (the "*Fees Order*") makes a distinction between (1) "*... proceedings ... to recover a sum of money*", (2) "*proceedings for the recovery of land*", and (3) "*proceedings for any other remedy*". Conventionally, the approach in trade mark infringement cases is to treat the proceedings as falling within (3), i.e. as "*proceedings for any other remedy*", despite the fact that the relief sought includes an inquiry as to damages or an account of profits. The result is that the fee payable is presently a standard amount of £569 in the High Court, and £480 in the County Court.
11. That was the position in this case. The Claimants treated the claim as "*proceedings for any other remedy*". Conventionally, that approach is justified on the basis that (1) a claim for an account is not, technically, a claim "*to recover a sum of money*", but instead "*a separate and discretionary equitable remedy*" which is not as such a money claim (see the reasoning of Hildyard J in Page v. Hewetts Solicitors [2013] EWHC 2845 (Ch)); and (2) although an inquiry as to damages is a money claim, at the time of issue the Claimant will not have made any election in favour of that particular form of relief – and may never do so – and so it would not be right, at that point at any rate, to describe the claim as a claim for money (see the judgment of Master Clark Lifestyle Equities C.V. and Anor v. Sportsdirect.com Retail Limited [2016] EWHC 2092 (Ch), in which she adopted that reasoning at [15]).
12. A fee of £569 was paid on issue in the High Court. The Claim Form stated as follows, under the heading "*Value*":

"The Claimants are unable at this stage to quantify damages; however, they believe them to be substantial.

This is an intellectual property claim, and in the normal course will proceed by way of a split trial with liability being dealt with first and then quantum, should the Claimants establish liability.

If the Claimants succeed on liability, the Claimants undertake to pay the appropriate Court fee upon an order of the Court directing all due sums to be paid by an inquiry as to damages and the Claimants electing for such an inquiry (or if appropriate an account of profits save that such an account is thought to be non-monetary relief and so covered by the fee already paid)."

Other Points

13. I should mention one or two other points briefly by way of relevant background.
14. The proceedings are obviously at an early stage and no Defence has yet been filed. There has been correspondence between the parties, however, and some progress has been made in developing the issues. Four points are worth flagging at this stage.
15. The first is to note the Claimants' core allegation, and the Defendants' response to it. The Particulars of Claim at para. 21 allege that on 2 September 2021, an investigator acting on behalf of the Claimants visited the Cromwell Road premises and purchased 10 yashmaghs – referred to as the “*Counterfeit Yashmaghs*”. It is alleged that the First Defendant, Mr Basil Ibrahim Rassam:

“ ... took the Counterfeit Yashmaghs from a large box, was only willing to accept cash and was unwilling to give a receipt. In the course of the visit the first defendant said that he was originally a manufacturer but was now only a wholesaler and purchased the shawls which were manufactured in Scotland. The first defendant also said he was an exporter and was sending 120 yashmaghs to a Sheikh in Dubai the following day”.

16. In correspondence, the Defendants' solicitors have accepted that the *Counterfeit Yashmaghs* sold to the investigator bore the relevant mark or marks, but the Defendants' case is that this was an isolated instance of no real significance. They give some background. They say that there was previously a bitter and long-running dispute over one of the Registered Trade Marks – No. 00001220492 – between the Second Claimant (Shemagh Al Bassam Company), and the First Defendant (Mr Basil Ibrahim Bassam), who was the owner of a factory in the UK producing headscarves and yashmaghs from the late 1980s to the early 1990s. The letter from the Defendants' solicitors says:

“The goods obtained by your clients during their investigation in September 2021 form part of this left over stock, which regrettably, was mixed up in our clients' current inventory. There is no more of this old stock left for our clients to destroy ... and they estimate that fewer than 100 pieces were sold”.

17. The second point to note is that the Defendants have now offered undertakings to desist, now or in the future, from making use of the Registered Trade Marks. As between the parties, therefore, the material disagreement is about the financial consequences flowing from what the Claimants say were the Defendants' past infringements.
18. The third important point is that the Defendants, in an effort to limit the financial consequences of such historic activity, have also now issued an application in the IPO to revoke the Registered Trade Marks for non-use, pursuant to section 46(1) of the TMA. Thus, they say that insofar as they may have carried out possibly infringing activity in the past, it was not in fact infringing because the Registered Trade Marks said to give rise to the infringement were in fact invalid, at least for substantial periods. It is accepted by both parties that the IPO challenge should be transferred and dealt with alongside the present claim, and most likely consolidated with it; and as I understand

it, the parties are agreed that they should jointly invite the IPO to effect the requisite transfer accordingly.

19. Fourth and finally, as to the actual, overall value of the claim, the Defendants say it is low and likely to be less than £100,000. In making that submission they rely on how they say the claim is put, which is that the infringing activity was effectively conducted via London Textile – the corporate (Third) Defendant - rather than by the individual Defendants, i.e. Mr Basil Ibrahim Rassam and Mr Ibrahim Rassam. The Defendants point to the fact that London Textile was incorporated only in 2018, and they describe it as a “*micro-entity*” which had a turnover of only £608,188 in 2019, £18,318 in 2020 and £55,000 in 2021. They argue that with total revenue during the claim period of less than £800,000, any claim for damages or for an account of profits could not conceivably be for a figure in excess of £100,000.

The Jurisdiction Application

The Parties’ Positions

20. The Defendants’ Jurisdiction Application rests principally on the wording of Practice Direction 7A (“*PD7A*”). PD 7A supplements CPR, Rule 7, the title of which is, “*How to Start Proceedings – the Claim Form*”. The Defendants rely in particular on PD7A, paras 2.1, 3.6 and 3.7, which provide as follows (emphasis added):

“1. Subject to the following provisions of this practice direction, proceedings which both the High Court and the County Court have jurisdiction to deal with may be started in the High Court or in the County Court.

Where to start proceedings

2.1 Proceedings (whether for damages or for a specified sum) may not be started in the High Court unless the value of the claim is more than £100,000.

...

3.6 If a claim for damages or for an unspecified sum is started in the High Court, the claim form must:

(1) state that the claimant expects to recover more than £100,000 (or £50,000 or more if the claim is for personal injuries); or

(2) state that some enactment provides that the claim may only be commenced in the High Court and specify that enactment; or

(3) state that the claim is to be in one of the specialist High Court lists (see CPR Parts 49 and 58–62) and specify that list.

3.7 If the contents of a claim form commencing specialist proceedings comply with the requirements of the specialist list

in question the claim form will also satisfy paragraph 3.6 above.”

21. The Defendants’ basic propositions, relying on these provisions, are as follows.
22. In the case of a trade mark infringement action, unless a Claim Form contains a statement that the claim has a value of over £100,000 (see PD7A, para. 2.1 and para. 3.6(1)), then it may only be issued in the High Court if it is assigned to the IPEC as “*one of the specialist High Court lists*” (PD7A, para. 3.6(3)). If it is *not* assigned to the IPEC, then the Claimant’s only other available option is to issue the claim in the County Court. If, as here, the Claim Form contained neither a statement that the claim has a value of over £100,000, nor a statement electing for allocation of the case to the IPEC, then the case is simply not suitable for resolution in the High Court and the High Court either has no jurisdiction or should (inevitably) decline jurisdiction to hear it.
23. If correct, the effect of this argument in the present case would be that the High Court could only retain the present action by transferring it to the IPEC, and not otherwise. What the Defendants say is that it must either be transferred to the IPEC, or to the County Court, but cannot be retained in the High Court, Intellectual Property List, Shorter Trials Scheme, because the Claimants did not certify in the Claim Form that it had a value in excess of £100,000.
24. The Claimants say this argument is misconceived, because the requirement for a Claim Form issued in the High Court to state a value of over £100,000 applies only if the proceedings are in the nature of a *claim for money*, and a trade mark infringement action is not a claim for money, for the reasons explained above (see at [11]).
25. In response, the Defendants agree with the idea that the claim is not a *claim for money*, but they contend that does not matter, because PD7A is not concerned with whether or not the claim is a money claim; instead, it is concerned more generally with the “*value*” of the claim, and a claim has a value even if it *is* a non-money claim, albeit that it may be more difficult to assess. They say the CPR are designed to encourage a process of filtration, by means of which lower *value* claims are excluded from the jurisdiction of the High Court; and so it makes good sense to limit a Claimant’s (and the Court’s) options, and to say that unless a Claimant in an infringement action can certify in the Claim Form that the claim has a *value* of over £100,000, or should be dealt with in the IPEC, then it should not be dealt with in the High Court at all.

Discussion and Conclusion

26. Although the Defendants’ case on these points was put very persuasively by Mr Hall, I have reached the conclusion that I must reject it.
27. That is because, in my view, the requirement positively to state in the Claim Form that the claim has a value of over £100,000 *does* apply only where the claim is a *claim for money*, and the parties are agreed that the present is not a *claim for money*. The requirement exists because in such cases, the question whether the claim value exceeds £100,000 is determinative of where the claim may be *issued* (though not determinative of the question whether it should remain in the Court where it is issued). There is no such hard-edged, mechanical rule in other cases.

28. This conclusion seems to me consistent with the general way in which claims are allocated between the High Court and the County Court. A brief explanation is required.
29. To begin with, it is clear that in relation to many categories of claim, the High Court and the County Court have overlapping or concurrent jurisdiction: see The High Court and County Courts Jurisdiction Order 1991 (the “1991 Order”), esp. Art. 2.
30. That being so, there is a question about the allocation of cases between the two Courts. This issue is addressed (broadly) in two ways. The first is via a limitation on where certain types of claim may be *commenced*. The second is via the mechanism which exists, once a claim has been commenced, for it to be transferred elsewhere.
31. It seems to me, however, that the only hard-edged limitation which exists is in relation to where claims may be *started*, and it applies only in relation to *claims for money*.
32. A useful starting point is Art. 4 of the 1991 Order which provides that, subject to certain exceptions, proceedings in which both the High Court and the County Court have jurisdiction may be commenced *either* in the High Court or the County Court. Art 4A, however, goes on to say that a “*claim for money in which the County Court has jurisdiction may only be commenced in the High Court if the value of the claim is more than £100,000*” (my emphasis).
33. Thus, what one sees is a limitation on where any *claim for money* may be *commenced*. This is an entirely understandable and workable limitation, designed in a practical way to direct lower value claims for money to the County Courts as a first step at the point of issue. A great many such claims will no doubt remain in the County Court system, although as I read it, there is still a discretion under CPR Part 30 to transfer such claims to the High Court in appropriate circumstances: see below at [41].
34. This practical limitation on where claims for money may be *started* is reflected in CPR 16.3, which the Claimants relied on before me.
35. CPR 16.3 is headed, “*Statement of value to be included in the claim form*”, but by CPR 16.3(1), rule 16.3 only applies, “*where the claimant is making a claim for money*”. CPR 16.3(5)(a) deals with the case where the Claim Form is to be issued in the High Court, and requires the Claimant to state that it “*... expects to recover more than £100,000*”. But that again is obviously only “*where the claimant is making a claim for money*”.
36. As regards other, non-money claims, the position is more nuanced, and the question of where the claim may be started is dependent on a less mechanical, more evaluative assessment. That is understandable, because if a claim is not a claim for money, it may in practice be difficult to state with precision what *value* it has.
37. As I read it, non-money claims are dealt with in PD7A, para. 2.4. Para. 2.4 provides as follows:

“Subject to paragraphs 2.1 and 2.2 above [2.1 is set out above; 2.2 deals with personal injury claims], a claim should be started in the high Court if by reason of –

*(1) the financial value of the claim and the amount in dispute;
and/or*

*(2) the complexity of the facts, legal issues, remedies or
procedures involved, and/or*

*(3) the importance of the outcome of the claim to the public in
general,*

*the claimant believes that the claim ought to be dealt with by a
High Court judge”.*

38. Para. 2.4(1) makes no reference to the £100,000 figure, derived ultimately from the 1991 Order. Instead, an overall evaluation has to be made by reference to a number of factors, including the “*financial value of the claim*”, but that requirement is not applied in a purely mechanical way, by reference to a headline figure of £100,000, as it is in the case of *claims for money*. Thus, as I see it, the Claim Form is not required in such cases to state that the value of the claim exceeds £100,000, because that factor is not of itself determinative of the question where the Claim Form may be issued.
39. If, after issue, one or other of the parties, or indeed the Court, considers that the claim has been issued in an inappropriate forum and should be transferred, then the machinery exists to allow it to happen; and at that stage the value of the claim – if capable of assessment – is likely to come into sharper focus.
40. The question of transfer generally is dealt with in CPR, Part 30. It contemplates a number of possibilities.
41. CPR Rule 30.3(1)(a) is concerned with transfers between the High Court and the County Court. It is apparent from the “*Criteria for a transfer order*” set out in CPR, Rule 30.3 that the decision in such cases is again a nuanced one, intended to involve the balancing of a range of factors, including (but not limited to) the claim value. The factors include the following:
- “(a) the financial value of the claim and the amount in dispute,
if different;*
- (b) whether it would be more convenient or fair for hearings
(including the trial) to be held in some other court;*
- (c) the availability of a judge specialising in the type of claim in
question ...;*
- (d) whether the facts, legal issues, remedies or procedures
involved are simple or complex;*
- ... ”.*
42. I note here the open-ended reference to the “*financial value of the claim and the amount in dispute*”, not pegged to the £100,000 figure derived from the 1991 Order.

43. There is no doubt that if, in fact, the value of the claim *is* considered to be less than £100,000, that will be a very strong factor in favour of it being transferred from the High Court (if commenced there) to the County Court; but as I read it, the point is not determinative of the question of transfer. That reading is reinforced by the Practice Direction to CPR Part 29 (“PD29”), para. 2.2. PD 29 is headed, “*The Multi-Track*”, and the first part of it (including para. 2.2) is concerned with “*Case Management in the Royal Courts of Justice*”. Para. 2.2 provides (my emphasis):

“2.2 A claim with an estimated value of less than £100,000 will generally, unless:

(a) it is required by an enactment to be tried in the High Court,

(b) it falls within a specialist list, or

(c) it falls within one of the categories specified in 2.6 below or is otherwise within the criteria of article 7(5) of the High Court and County Courts Jurisdiction Order 1991,

be transferred to a county court”.

44. In his submissions, Mr Hall for the Defendants relied on PD29, para. 2.2, but on proper analysis I do not think that it helps his argument. On the contrary, PD29 to my mind emphasises that the question of transfer is not a purely mechanical one to be determined in all cases by whether the claim value is less than £100,000: claims with a value of less than £100,000 will “*generally*” (subject to the stated exceptions) be transferred from the High Court to the County Court; but “*generally*” does not mean always or inevitably.
45. Finally, I consider that this overall approach is perfectly consistent with the provisions in PD7A, paras 2.1 or 3.6 relied on by Mr Hall. In my judgment, the Defendants read rather too much into those provisions. On a proper reading they are only concerned – like the 1991 Order – with the question of what happens at the time of *issue*; and to my mind, they reflect the same basic limitation applicable only to claims for money.
- i) As to the first point, the heading to PD7A para. 2 is “*Where to start proceedings*” - the same topic covered in the 1991 Order, Art 4A. PD7A, para. 3.6(1), also relied on by the Defendants, is concerned with the question of what the claim form must contain if an action is to be “*started in the High Court*”.
- ii) It is true that neither of those paragraphs refer in terms to a “*claim for money*” but it seems to me clear that “[*p*]roceedings for damages or for a specified sum” (PD7A para. 2.1), and claims “*for damages or for an unspecified sum*” (PD7A, para. 3.6(1)), *are* claims for money.
46. In short, it seems to me to make good sense to read these provisions in a manner consistent with the 1991 Order and with CPR 16.3, and not to accord them some wider or different meaning. Accordingly, I view them as recognising the same restriction applicable to where *claims for money* may be *started*, and thus as having no application in the present case, which the parties are agreed is not a *claim for money*.

47. It follows that in my judgment, the present claim was properly issued in the High Court, notwithstanding the absence from the Claim Form of any certification that the claim value exceeds £100,000, or of any specific reference to IPEC as a specialist list. I reject the notion that the High Court has no jurisdiction, or must determine mechanically that it will not exercise it, because the Claimants did not expressly refer in the Claim Form to the £100,000 benchmark or to IPEC as a specialist list. The Court must therefore go on to consider the Transfer Application, but starting from the premise that one permissible choice in determining the outcome of that application – subject to the rules on transfer – is for the case to be retained in the High Court, Shorter Trials Scheme.

The Transfer Application

The Parties' Positions

48. I have already mentioned CPR Part 30 above. It provides for a number of possibilities.
49. Rule 30.3(1)(a) deals with transfers between the High Court and the County Court. In the present case, neither party contended that the case was appropriate for transfer to the County Court. I should add that this rather demonstrates the artificiality in the Defendants' position. Although they focused on the financial limit for the issuance of money claims in the County Court, they do not in fact wish the case to proceed in the County Court. They wish it to be transferred within the High Court, from the Shorter Trials Scheme to the IPEC.
50. In any event, the Defendants argue it is a low value claim and is likely to be straightforward. They point to the financial position of the Third Defendant, London Textile, which has deteriorated due to the Covid-19 pandemic (see above at [19]; the Defendants' solicitor in a witness statement indicates that turnover fell again to approximately £55,000 in the period September 2020 to August 2021). They contrast this with the position of the First Claimant, whose accounts show turnover of some £16m in each of 2019 and 2020.
51. In contrast, the Claimants' position is that the case should remain where it is, at least for now. They say the precise value of the claim is not known but damages or lost profits may turn out to be substantial. They say likewise that the complexity of the case is not yet known, because no Defence has been filed, but there is real potential for complexity. As to the financial resources of the parties, they point to the fact that the only evidence relied on by the Defendants is in relation to London Textile. There is no evidence about the financial means of the two individual Defendants, but there is reason to think they have adequate financial means to be able to fund ongoing litigation in the Shorter Trials Scheme.

Relevant Principles

52. The features of the Shorter Trials Scheme are described in PD 57AB. These include page limits on the parties' statements of case and witness statements; a request-based process of disclosure confined to "*particular documents or classes of documents or ... documents relating to a particular issue*" (PD57AB para. 2.40), and an upper limit on anticipated trial length of 4 days (including reading time). PD57AB para. 2.14 provides that, in determining whether to transfer a case in or out of the Scheme, "*without prejudice to the overriding objective, the court should have regard to the type of case*

the Scheme is for, the suitability of the case to be part of the Scheme and the wishes of the parties”.

53. Transfer to the IPEC is provided for by CPR 30.5, as supplemented by CPR 63.18 (which permits a Judge of the Chancery Division to order a transfer to the IPEC). The procedures in the IPEC, like those applicable to the Shorter Trials Scheme, are designed to streamline the litigation process. There are some similarities – for example disclosure is limited to specific disclosure, described as “*disclosure of either particular documents or particular classes of documents*” (IPEC Guide, para. 4.6). There are also differences, however. For example, a case with an estimated trial length of more than 2 days (excluding pre-reading) is unlikely to be suitable for the IPEC (IPEC Guide para. 3.2), and special rules on costs apply in the sense that in multi-track cases there is an overall cap on recoverable costs of £50,000 and there are limits on costs for each stage of the proceedings (IPEC Guide at para. 1.2).

54. The factors relevant to transfer to the IPEC are identified in PD30, para. 9.1, as follows:

“9.1 When deciding whether to order a transfer of proceedings to or from the Intellectual Property Enterprise Court the court will consider whether –

(1) a party can only afford to bring or defend the claim in the Intellectual Property Enterprise Court; and

(2) the claim is appropriate to be determined by the Intellectual Property Enterprise Court having regard in particular to –

(a) the value of the claim (including the value of an injunction);

(b) the complexity of the issues; and

(c) the estimated length of the trial.”

55. Section 3.2 of the IPEC Guide emphasises the importance of the financial resources of the parties:

“A party may have limited financial resources and may therefore require the lower cost of litigating in the IPEC and the protection of cost caps in order to gain access to justice. If this can be shown, it is likely to be treated as a strong (though not overriding) reason to have the case heard in the IPEC. This will be particularly the case if the court reaches the view that there is a risk of a better funded opponent being able to bring unfair financial pressure to bear should the case be heard outside the IPEC”.

56. Section 3.2 also emphasises that the value of the claim “*though relevant, is generally not a major factor*” (subject to the overall £500,000 limit on damages or an account of profits). That is because it is often difficult to give an accurate overall assessment of claim value.

Discussion and Conclusion

57. I have come to the conclusion that I prefer the Claimants' position, and that there should be no transfer. I therefore propose to dismiss the Transfer Application.
58. I will comment briefly first on the question of claim value, then on the issue of complexity, and finally on what seems to me the most important factor, namely the respective financial positions of the parties.
59. Many of the Defendants' submissions were focused on the likely low value of the claims. I am not persuaded by those submissions, however. There are indicators that this is not such a low value claim as the Defendants suggest.
60. Two points are relevant. The first is that the Defendants' submissions rested on the idea that only the activities of the Third Defendant, London Textile, are relevant in calculating the Claimants' overall loss (see above at [19]). That seems to me quite artificial. The allegation at para. 28 of the Particulars of Claim is more general: "*In the premises, the defendants (or one or more of them) have infringed each of the Registered Trade Marks*". That is not confined to infringements arising only through the activities of London Textile. The point is reinforced by the more precise allegation at para. 21, concerning what the Defendants called the "*trap purchase*" (see above at [15]). The pleaded facts, namely that the First Defendant was only willing to accept cash and would not give a receipt, are consistent with a pattern of activity which did not involve sales being accounted for in the books of London Textile. So I do not consider it realistic to assess the value of the claim only by reference to the turnover of London Textile. True it is that in those circumstances, it is very difficult for the Claimants to attribute a clear financial value to their claims. But that is a function of the nature of the claim, and of the fact that given its nature, there is an obvious asymmetry in the information presently available to the parties.
61. The second point concerns the application for revocation of the Registered Trade Marks now made in the IPO, but which the parties have agreed should be transferred and dealt with in the context of the present action. From the Defendants' point of view, as I have mentioned, their motivation in seeking revocation is to limit their financial exposure in historic periods, prior to the undertakings they have given coming into effect. But if the Registered Trade Marks are revoked, that will obviously have consequences for the Claimants as well, because their position is that they still use those Marks and that they are valuable in their present export business to Saudi Arabia.
62. This point was the focus of some attention at the hearing before me. I was shown the First Claimant's accounts for the year ended 31 December 2020, which show turnover in 2019 of approximately £16.4m and profit of approximately £1.8m; and corresponding figures for 2020 of approximately £16m (turnover) and £917,000 (profit). During the hearing I was told by the Claimants' counsel on instructions that all of the First Claimant's turnover derived from sales of good using the Registered Trade Marks, although that was later corrected in a letter to the Court after the hearing which explained that a small proportion of turnover in 2019 and 2020 derived from other products.
63. The Defendants submitted that the Court should attach no weight to the accounts, given that they had not been exhibited to any witness statement, and given that the Claimants

had not otherwise chosen to lead any evidence going to the value of the Registered Trade Marks, such as evidence of their use in developing a brand identity. I agree that the lack of evidence is a hindrance, but that must be seen in light of the fact that the Defendants' revocation application in the IPO – which put the existence of the Registered Trade Marks in issue – came to the Claimants' attention only late in the day. In any event, the more fundamental point is that the Defendants effectively invite me at this stage to assume that the Registered Trade Marks have no value at all in the context of the Claimants' business. I do not think that a realistic assumption. Their value is certainly unclear, but the fact is that the Defendants are now seeking to revoke them, and that being so the Court is entitled to assume – even on the basis of the admittedly imperfect information presently available – that the Defendants have put in issue a matter having potentially serious consequences for the Claimants.

64. There is then the question of the complexity of the claim, and the likely trial length. The Defendants' submission in Mr Hall's Skeleton was that the case is conventional and straightforward, and would likely involve only four witnesses: a witness for the Claimants, the investigator who made the "*trap purchase*", and the two individual Defendants. However that assessment did not, as I understand it, allow for any further complexities, such as evidence of historic use, arising from consolidation of the IPO revocation action with the present claims. The Claimants' counsel, Mr Michael Hicks, said other issues might arise – for instance, if the Defendants persisted in their position that the "*trap purchase*" was of old stock, it might be necessary to subject the Counterfeit Yashmaghs to technical analysis to assess their age. At the same time, Mr Hicks rather hedged his bets by saying that in other respects the overall position was straightforward, and the Claimants might well issue an application for a strike out and/or summary judgment at an appropriate stage.
65. In my view, the position here is more finely balanced. This is not a case in which there is likely to be a proliferation of issues. The matters in dispute between the parties fall within a fairly narrow compass. The infringement question, if the Registered Trade Marks are not revoked, is likely to be straightforward, even if it does involve testing the Defendants' position about sales of old stock. The revocation issue will be dependent on evidence of use, but again that is likely to be straightforward. A more complex exercise of assessment may arise if liability is established, but for the moment, as far as liability is concerned, it seems to me likely that the case could be equally well dealt with within the IPEC as in the Shorter Trials Scheme. To put it another way, I think the case on liability could just as well be tried in the IPEC with a 2 day time estimate plus pre-reading, as in the Shorter Trials Scheme with a 4 day estimate including 1 day pre-reading.
66. To summarise so far: I consider the Claimants have the better of the argument on the question of claim value, although I note that is not a major factor (given the difficulty in assessing value) in determining whether to transfer to the IPEC or not; and on complexity, the matter is fairly well balanced as I see it between the Shorter Trials Scheme and the IPEC.
67. I come on then to the issue of the parties' resources, which to my mind is the determinative factor on the facts of this case. The importance of the factor is emphasised by the language of PD30, para 9.1 (above at [54]) which requires the Court to consider whether "*a party can only afford to bring or defend the claim in the Intellectual Property Enterprise Court*". It also emerges from para. 1.1 of the IPEC

Guide, which states that the IPEC is designed not only to provide a speedier and less costly means of resolving IP disputes, but also:

“ ... to safeguard parties from the risk of paying large sums in costs to the opposing party at the conclusion of the proceedings. The intention is to ensure that parties without the benefit of large financial resources are not deterred from seeking access to justice because of the high costs of litigation”.

68. In short, I am not persuaded that the Defendants can only afford to bring or defend the claim in the IPEC, or that they will be denied justice if the case proceeds in the High Court, Shorter Trials Scheme.
69. The issue here again for the Defendants is that they advance their argument only by reference to the Third Defendant, London Textile. Mr Hall’s submissions focused on the deteriorating financial position of that company due to Covid-19. It is true that its financial statements show a deteriorating position; but I think it a mistake to consider the question of transfer only by reference to London Textile’s position, without also considering the position of the individual Defendants. I have already explained above why in my view the pleaded case is wider than an allegation of infringing activity only by London Textile: it extends to the individual Defendants as well.
70. The Second and Third Defendants have provided no evidence about their personal financial means. The Defendants’ counsel, Mr Hall, argued that the Court could proceed only on the basis of the available evidence, and all that was available was the evidence showing the poor financial status of London Textile. I do not agree, however. I do not think it can be held against the Claimants that there is no financial information available as regards the First and Second Defendants. The Claimants should not have to find such evidence. It is readily accessible by the Defendants themselves, and if their position is that they have limited financial resources personally then they are the ones who should substantiate it.
71. That is all the more so in a case where there are indicators that they *do* have adequate financial resources. The so-called “*trap purchase*” took place at premises at 150 Cromwell Road, Kensington, London. A Land Registry search shows this is owned by the First Defendant, Mr Basil Ibrahim Rassam. London Textile’s registered office is at 48 Redcliffe Close, Old Brompton Road, London SW5. Again, a Land Registry search shows a long lease of this property was purchased by the First Defendant in January 2001. Finally, as Mr Hicks has pointed out, the Defendants have served costs schedules for the two applications I am concerned with totalling approximately £28,000 – approximately £19,000 being referable to the Jurisdiction Application, and the remainder to the Transfer Application.
72. Taken together, these matters indicate that the Defendants are individuals of at least reasonable financial means. That being so, I am not persuaded that they will be denied justice if forced to litigate the present claims in the High Court, Shorter Trials Scheme rather than in the IPEC. Costs in the Shorter Trials Scheme, given its particular features (above at [52]), are also likely to be much less than those in full scale High Court litigation. Based on the information presently available, it seems to me the Court should proceed on the basis that the Defendants collectively are able to afford such costs. I am not persuaded that they need the protection afforded by the cap on recoverable costs

applicable in IPEC proceedings, in order to be able to deal with the present claims fairly and justly. That being so, and taking account also of the other factors relevant to transfer which I have already dealt with above, I am not persuaded that a transfer to the IPEC is appropriate or necessary.

Overall Conclusion and Disposition

73. The Jurisdiction Application is dismissed, and the Transfer Application is also dismissed. I will ask counsel to liaise with a view to agreeing any consequential orders or directions, if possible.