



Neutral Citation Number: [2021] EWHC 1316 (IPEC)

Case No: IP-2017-000178

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**INTELLECTUAL PROPERTY ENTERPRISE COURT**

Royal Courts of Justice, Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 17 May 2021

**Before:**

**Ian Karet (sitting as a Deputy High Court Judge)**

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**Between:**

**F.B.T. Productions, LLC**

**Claimant**

**- and -**

**Let Them Eat Vinyl Distribution Limited**

**Defendant**

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**Jamie Muir Wood** (instructed by **Simons Muirhead & Burton LLP**) for the  
**Claimant**

**Richard Colbey** (instructed by **RafterMarsh UK**) for the **Defendant**  
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**Approved Judgment**

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

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**Ian Karet:**

1. This judgment deals with the interest that may apply to the award of damages set out in my judgment of 20 April 2021. In this judgment I use the defined terms as in that judgment.
2. Each party made a written submission on interest.
3. The Claimant's position is as follows. It says that it should be awarded interest pursuant to section 35A Senior Courts Act 1981 or the inherent jurisdiction of the court. The court should adopt a broad-brush approach in assessing that. Since FBT is a US entity the relevant interest rate should be that for borrowing in the US, and the appropriate rate would thus be the US prime rate or 2.5% (or similar) above the three-month US LIBOR. Given that the sums are relatively small, the former should be adopted.
4. The infringing copies were delivered to Plastic Head on or about 1 June 2015, so that royalty would become payable on sales from that time. Applying the US prime rate to damages of £7,452.50 over that period would give interest of £1,805.55.
5. The Defendant submits that there should be no award of interest because the Claimant delayed in seeking payment and demanded "absurd sums" in damages preventing any sensible disposal of the matter.
6. The Defendant says that if there is to be an award then the rate should be 2.5%. This is on the basis that the damages award is in Sterling and there is no reason to apply US rates. This rate is said to be 2% over the UK base rate. That varied from 0.1% to 0.75% over the relevant period and can be averaged to 0.5%. The Defendant notes that there are many commercial cases in which the court orders 1% over the base rate, so that its proposal of 2% over base is itself a concession.
7. The Defendant proposes that interest should run from (i) 5 December 2016, when the Claimant drew the copyright to the Defendant's attention, or (ii) the midpoint between 1 June 2015 and 12 January 2017 when the infringing records were withdrawn from sale. Using first date would result in an award of £791.77. Using the second would give interest of £946.46.
8. The Defendant pointed to correspondence in which the Claimant said that its business was very substantial.
9. The overriding principle is that interest should be awarded not as compensation for the damage done but as compensation for being kept out of money which ought to have been paid. It is not always easy to say when the money ought to have been paid and the courts have taken a pragmatic approach.

10. The contract between LTEV and Boogie Up Productions which I found to be a useful comparator provided for the licensee to provide statements of sales every six months and payment within 60 days of receipt of invoice.
11. The Claimant's conduct has not been such that there should be no award in this case. The damages awarded and any interest are very small in the overall context of the Claimant's business. Having made the award in Sterling, I shall award interest on a UK basis.
12. Taking all these matters into account and adopting a pragmatic approach, I shall award interest of £946.46.