



Neutral Citation Number: [2024] EWHC 1955 (KB)

Case No: KB-2024-001250

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA & COMMUNICATIONS

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/07/2024

Before :

DEPUTY HIGH COURT JUDGE AIDAN EARDLEY KC

Between :

(1) Mr ZDZISLAW SLEDZIEWSKI Claimant
(2) CORNICES CENTRE LTD

- and -

(1) PERSONS UNKNOWN GOING BY Defendant
CHAPONA (AKA) CHAPONA
BICYCLETTE
(2) DANIEL SHENSMITH (AKA)
BLACKBELTBARRISTER

Beth Grossman (instructed by PAIL Solicitors) for the Claimants
The Defendants did not appear and were not represented

Hearing dates: 19 July 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 29 July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Aidan Eardley KC

1. Cycling videos appear to be something of a genre on social media. Typically, a cyclist uploads a video filmed with their helmet-mounted camera showing some piece of dangerous or inconsiderate driving by a vehicle, together with commentary shaming the driver for their lack of concern for the cyclist. The criticism is often expressed in strong terms. People who view the video then pile in with their own comments, again in terms that are often hostile and abusive towards the driver. This case concerns one such video and its unhappy consequences for the Claimants. The underlying claim is for harassment, breach of data protection law and trademark infringement, but I am concerned only with an application by the First Claimant for an interim injunction against the First Defendant in harassment. The injunction application against the Second Defendant has fallen away upon him giving undertakings without admission of liability.

Background

2. The First Claimant is a British citizen of Polish descent. He is the managing director of the Second Claimant, a company that manufactures bespoke plaster coving products. It is described in the Amended Particulars of Claim as a well-established, market-leading company with a long list of prestigious clients. The First Defendant is a person who operates a YouTube channel called “Chapona Bicyclette” where he uploads cycling videos of the sort I have described above. He signs off his emails as “Mr Chapona”. His real name is unknown. The Second Defendant operates a YouTube channel call “Black Belt Barrister” where he posts videos commenting on legal issues.
3. On 10 November 2023, a van belonging to the Second Claimant overtook a cyclist on the Victoria Embankment in London, passing extremely close to the cyclist. The driver (who was not the First Claimant) has since been dealt with by the police. The cyclist was the First Defendant and he was filming at the time. Later that day he uploaded a video of the incident to his YouTube channel and titled it “*Cornices Centre...Chelsea Embankment Close Pass Van*”. Beneath it he wrote, “*Cornices Centre? I don't think I'll be bothering with any fancy plaster work from yourselves. Wouldn't want a road death on my conscience if one happened whilst you were out driving. Which seems entirely plausible*”. I will call the video and the associated

comment **the First Post**. The First Defendant also emailed the Second Claimant sharing the link to the First Post and saying *“This is an absolutely appalling standard of driving, and your driver needs retraining...Please take appropriate action before he runs someone over”*.

4. On 20 December 2023, the First Claimant emailed the First Defendant, in polite terms, asking him to remove the Second Claimant’s name *“from your video content and descriptions”*. His concern seems to have been that, because the First Defendant had used the words “Cornices Centre” in the First Post and in the URL for the First Post, people who googled “Cornices Centre” were being shown links to the First Post which implicitly suggested that the Second Claimant employs dangerous van drivers. The First Claimant’s email mentioned the damage to the Second Claimant’s reputation but it was not framed as a complaint about defamation; it was framed as a complaint of trademark infringement.
5. Shortly thereafter (the precise date is unclear but it was before 3 January 2024), the First Defendant posted an updated on his YouTube channel (**the Second Post**): *“Zdzislaw SLEDZIEWSKI, Director of Cornices Centre Ltd, whom I suspect may also be the driver of this van, instead of perhaps apologising, has threatened me with legal action for illegal use of the Cornices Centre ® trademark in this YouTube post. Which will have consequences.”*
6. On 1 January 2024, the Second Defendant posted a video on his YouTube Channel referring to these events. His video shows him pressing the subscribe button on the First Defendant’s channel and apparently encouraging his own followers to do the same. He shows some excerpts of the First Defendant’s video and the First Claimant’s email and then provides some explanation about the Trade Marks Act 1994 and how, under s21 and s21A, it provides a cause of action for someone who is unjustifiably threatened with legal action for trade mark infringement. He expresses the view that the First Claimant’s email may be just such a threat, essentially because, though he mentioned “Cornices Centre” in the First Post, the First Defendant did not do so in the course of trade. (I do not need to go into the technicalities of trade mark law for the purposes of this judgment). The First and Second Defendants had obviously been in touch before this, because the Second Defendant had sight of the First Claimant’s

email, which the First Defendant had only summarised on his channel. There is as yet no evidence about how they came to be in touch with each other.

7. On 6 January 2024, the First Defendant emailed the First Claimant, denying trade mark infringement, arguing that he had not used the Second Claimant's trademark to sell or promote goods or services. He continued: *"Your legal threat is thus entirely unjustified, and has caused me a great deal of anxiety and distress. Please retract your unjustified trademark infringement legal threat, by means of an email response, by 8 January 2024. I have also been advised to seek compensation, in the region of £10,000. Failing which I have been advised I can take this matter to court, as my advisors are supremely confident of success and claiming well in excess of this amount. Your response will dictate the next course of action I will take. I also believe you were the driver of the van in question, and an apology for your careless driving would be appreciated"*.
8. On 13 January 2024, having received no response, the First Defendant emailed the First Claimant again, saying: *"...The unjustified legal threat you have made has not been withdrawn, and still persists. Please can you withdraw this so we can all move on. I urge you to seek professional legal advice on this matter. I feel £10,000 in compensation is reasonable in consideration of the circumstances. Your solicitor will be able to advise on the drafting of a settlement agreement..."*.
9. On 19 January 2024, the Claimants' solicitor sent the First Defendant a letter of claim, asserting a claim in harassment based on the First and Second Posts and the offensive comments of third parties which they were said to have provoked (to which I shall come), as well as the First Defendant's emails asking for £10,000. The letter states, *"Our client is not a lawyer and did not realise trademark law is not used to deal with antisocial conduct. It is admitted that our client made an actionable threat or threats within the scope of the Unjustified Threats Act [sic] ...our client hereby withdraws the threat of any legal action for trademark infringement..."*. The letter disputes however that the admitted unjustified threat could give rise to any claim for damages. In his First Witness Statement, filed in support of this injunction application, the First Claimant takes the same stance (*"I wrongly thought that the law supported my request to remove CORNICES CENTRE. I have been advised that it does not"*). I should record however that the Claimants' position has now changed. Both the First

Claimant and his solicitor have filed witness statements stating that the Claimants have now been advised that the Second Claimant does have a good trademark infringement claim against the First Defendant, and one has been pleaded in the Amended Particulars of Claim.

10. On 26 January 2024, the Claimants' solicitors wrote to the Second Defendant accusing him of furthering the First Defendant's campaign of harassment, questioning his compliance with the Bar Council's Code of Conduct and requesting that he remove his video. This provoked the Second Defendant to post another video on 27 January 2024, entitled "More unjustified threats".
11. On 28 January 2024, the First Claimant made a further update on his YouTube channel (**the Third Post**). When doing so, he removed the suggestion in the Second Post that the van driver had been the Claimant. From this date on, the Claimant's name no longer appeared. The Third Post reads: *"It has been alleged that they have now also sent a further legal threat to Black Belt Barrister, with an implication they may submit a complaint to the Bar Council. STILL NO APOLOGY OR ANY SIGNS OF REMORSE from Cornices Center [sic] for the terrible standard of driving, which has been dealt with by the police and action taken. Please do not harass the company or its staff with any phone calls, emails or negative reviews. I don't condone this, and Daniel [i.e. the Second Defendant] doesn't either"*.
12. The First Defendant's posts and the Second Defendant's videos resulted in various third parties deciding to pass comment on the Claimants. Some contacted the Second Claimant using a messaging function on its website and its social media account. Others posted comments on one or other of the Defendants' YouTube channels beneath the posts and videos. The Claimants refer to these individuals as "End-Users" and do not seem to draw a distinction between those who posted on YouTube and those who contacted the Second Claimant directly, although I think there may be relevant distinctions to be drawn. The First Claimant says that there have been an enormous number of such comments. I can summarise those that were put in evidence as follows.
13. All of the End-User comments I was shown appear to have been made after the Second Post, in which the First Claimant was identified. They tend to refer to the threat of trademark infringement rather than the driving shown on the First

Defendant's video or his suggestion that the Second Claimant is somehow at fault for employing dangerous drivers. Some of the comments are directed at the Second Claimant: they refer to "the company", or "Cornices Centre", or "they" or use other plural terms. Others are more specifically targeted at the First Claimant. Between 7 and 9 January 2024, a number of individuals sent abusive messages directly to the Second Claimant via its website and some of these were plainly directed at the First Claimant and were racist. The comments posted on the two Defendants' YouTube channels were generally more moderate in tone, many of them observing, with amusement, that the Claimants' actions were having the "Streisand effect" (i.e. drawing public attention to the very thing they were seeking to suppress). However, at least one of these comments (posted on the Second Defendant's channel) was directed at the First Claimant and was racist in tone. I was shown evidence that, as recently as June 2024, individuals were continuing to contact the Second Claimant directly with hostile and abusive criticisms. Given his senior role in the business, these End-User comments will have come to the First Claimant's attention. He says, and I have no reason to doubt, that he has found the whole experience extremely distressing.

14. The First Defendant has a Twitter/X account, also in the name of "Chapona Bike". On 29 January 2024, he tweeted "*I'd almost forgotten about all this, but now there have been further legal threats, the view counter is going up again. From 400 in November, to 290,000 views today*". His tweet included a link to the video on his YouTube channel. Two followers responded in terms that were critical of the First Defendant, accusing him of shaming drivers for money without regard to the consequences for the individuals involved, rather than acting out of a genuine concern for road safety. The First Defendant responded that "*All the money I make goes to cycling charities. It's not a lot, only a grand a month or so...*".

Procedural history

15. The First Defendant did not reply to the letter of claim. A claim form and particulars of claim were issued on 23 April 2024 and then amended prior to service. The application for an interim injunction was filed the same day. On 30 May 2024 Master Stevens made an order for alternative service by email to the First Defendant's email address and the Claimants then sent the Amended Claim Form, Amended Particulars of Claim and the injunction application to that address on 3 June 2024. There may be

a question about whether this constituted good service of the amended statements of case (I need say nothing further about that) but it was certainly good service of the injunction application. The First Defendant did not respond in any way. Miss Grossman, counsel for the Claimants, told me on instructions that the Claimants notified the First Defendant by email on 21 June 2024 that the injunction application was to be heard on 19 July 2024.

16. The First Defendant did not attend the hearing before me on 19 July 2024. In light of the matters set out above, I was satisfied that the requirements of the Human Rights Act 1998, s.12(2) have been complied with and that it was appropriate to hear the application in the First Defendant's absence. He appears to have taken a conscious decision not to engage in these proceedings.

Legal Principles

Harassment

17. Section 1 of the Protection from Harassment Act 1997 (**PfHA**) materially provides:

- "(1) A person must not pursue a course of conduct - (a) which amounts to harassment of another, and (b) which he knows or ought to know amounts to harassment of the other.
- (1A) [...]
- (2) For the purposes of this section [...], the person whose course of conduct is in question ought to know that it amounts to [...] harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to [...] harassment of the other.
- (3) Subsection (1) [...] does not apply to a course of conduct if the person who pursued it shows -
- (a) that it was pursued for the purpose of preventing or detecting crime,
 - (b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or
 - (c) that in the particular circumstances the pursuit of the course of conduct was reasonable."

18. Section 7 provides some definitions including:

"[...]

- (2) References to harassing a person include alarming the person or causing the person distress.

- (3) A "*course of conduct*" must involve –

- (a) in the case of conduct in relation to a single person (see section 1(1)), conduct on at least two occasions in relation to that person, [...]

- (3A) A person's conduct on any occasion shall be taken, if aided, abetted, counselled or procured by another—
- (a) to be conduct on that occasion of the other (as well as conduct of the person whose conduct it is); and
 - (b) to be conduct in relation to which the other's knowledge and purpose, and what he ought to have known, are the same as they were in relation to what was contemplated or reasonably foreseeable at the time of the aiding, abetting, counselling or procuring.

(4) “*Conduct*” includes speech.

(5) References to a person, in the context of the harassment of a person, are references to a person who is an individual.”

19. The PfHA creates both criminal offences (see e.g. s.2) and civil liability (s3). The civil remedies available are an injunction and damages which “may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment.”: s.3(2).
20. The question of what amounts to harassment has been considered in a large number of appellate and first instance cases. Nicklin J summarised the principles in *Hayden v Dickenson* [2020] EWHC 3291 (QB) at [44]. I need not set out the passage here but I have taken all the principles into account. There are a number of features of the law of harassment that have particular importance in this case.
21. The hallmark of harassment is conduct that is unacceptable and oppressive, not merely unattractive or unreasonable. It must be of an order which would sustain criminal liability: *Hayden* principle (ii). It is the course of conduct, viewed as a whole, which must be assessed. Harassment can arise from the unwanted repetition of acts that are, viewed in isolation, innocuous or not particularly serious: see *Iqbal v Dean Manson Solicitors* [2011] EWCA Civ 123.
22. The course of conduct must be targeted at someone, but the target need not be the claimant. The Act protects all those “*who are foreseeably, and directly, harmed by the course of targeted conduct of which complaint is made, to the extent that they can properly be described as victims of it*”: *Hayden* principle (v), summarising *Levi v Bates* [2016] QB 91, where the Defendant had incited football supporters to attend the First Claimant’s home and was held liable also to the First Claimant’s wife, who lived there. It seems to me that a claimant could sue on this basis where the target is a

company rather than another individual. That may be appropriate where, for example, the company is the claimant's alter ego, or the harassment consists in criticisms of the company for things that were in fact done on its behalf by the claimant.

23. Correspondence threatening legal action can sometimes amount to harassment. That occurred in *Worthington v Metropolitan Housing Trust Ltd* [2018] HLR 32, where a social housing provider threatened two tenants with possession proceedings on the basis of alleged anti-social behaviour without having taken the most basic steps to ensure that the allegations had a proper foundation. In *Iqbal v Dean Manson Solicitors* [2011] EWCA Civ 123, solicitors wrote letters to a solicitor acting for the opposing party making serious allegations of professional and personal misconduct in an effort to pressure him into ceasing to act for his client. The Court of Appeal held that this was arguably harassing conduct, though noted at [41] "*It must be rare indeed that such complaints [between lawyers as to the conduct of litigation], even if in the heat of battle they go too far, could arguably fall foul of the Act*". Whether such correspondence crosses the high threshold of gravity required will be a question of fact.

24. Any claim of harassment by publication is likely to engage the defendant's ECHR Art 10 rights, but Art 10 has particular importance where the course of conduct is said to consist of or include the publication of journalistic material. In *Thomas v News Group Newspapers* [2002] EMLR 4, Lord Phillips MR said, at [32]:

"When considering whether the conduct of the press in publishing articles is reasonable for the purposes of the 1997 Act, the answer does not turn upon whether opinions expressed in the article are reasonably held. The question must be answered by reference to the right of the press to freedom of expression which has been so emphatically recognised by the jurisprudence both of Strasbourg and this country."

He continued:

34. [...] In general, press criticism, even if robust, does not constitute unreasonable conduct and does not fall within the natural meaning of harassment. A pleading, which does no more than allege that the defendant newspaper has published a series of articles that have foreseeably caused distress to an individual, will be susceptible to a strike-out on the ground that it discloses no arguable case of harassment.

35. It is common ground between the parties to this appeal, and properly so, that before press publications are capable of constituting harassment, they must be attended by some exceptional circumstance which justifies sanctions and the restriction on the freedom of expression that they involve. It is also common ground that such circumstances will be rare.

25. Similar points have been made in *Trimingham v Associated Newspapers* [2012] EWHC 1296 (QB) and *Sube v News Group Newspapers Ltd* [2020] EMLR 25. In the latter case, at [68], Warby J summarised the required approach as follows: “*nothing short of a conscious or negligent abuse of media freedom will justify a finding of harassment.*” He also observed that “*In general, the techniques of reporting, including the tone and editorial decisions about content, are matters for the media and not the Court to determine*”.
26. The approach identified in this line of case is not limited to publications by the mainstream press. It extends to citizen journalism of the type engaged in by bloggers: *McNally v Saunders* [2022] EMLR 3 at [70]-[75].
27. Lastly, PfHA s7(3A) has significance in this case. It permits the conduct of another person to be regarded as forming part of the defendant’s course of conduct where the defendant has “aided, abetted, counselled or procured” them to act as they did. These are familiar terms from the criminal law, often summarised to juries as meaning assistance or encouragement. In *Davies v Carter* [2021] EWHC 3012 (QB) at [69] (citing *Smithkline Beecham v Avery* [2009] EWHC 1488 (QB); [2011] Bus LR D40 at [63]-[64]) Saini J explained that conduct can be attributed to a defendant under this provision “*where they provide active support and encouragement “behind the scenes”, and by showing continuing approval for a course of conduct of its means of operation (where such approval might be material)*”. Importantly though, the defendant’s state of knowledge (actual or constructive) is assessed at the time he provides the assistance or encouragement, not (if later) the time at which the third party actually takes their action.

Interim Injunctions

28. The injunction sought by the First Claimant would, if granted, affect the exercise of the First Defendant’s rights under ECHR Art 10. Accordingly, Human Rights Act s.12(3) applies. I cannot grant an interim injunction unless satisfied that the First Claimant is likely to establish at trial that publication should not be allowed. “Likely”

generally means “more likely than not”, though in exceptional circumstances (such as extreme urgency or a very great degree of risk of harm) a lesser likelihood of success will suffice: *Cream Holdings Ltd v Banerjee* [2005] 1 AC 253 [21].

The First Claimant’s case on this application

29. In her skeleton argument, Miss Grossman relies on the following facts and matters as constituting a course of conduct by the First Defendant amounting to harassment:

- (a) The First Defendant’s publication on YouTube of his video and the updates. Miss Grossman explained that this is intended to encapsulate what I have referred to above as the First, Second and Third Posts;
- (b) The First Defendant’s two emails to the First Claimant;
- (c) The Second Defendant’s publications on his YouTube channel;
- (d) “The abuse (continuing to the present) experienced by [the First Claimant] and propagated by third parties”, i.e. the End-User comments.

30. As to (c) and (d), Miss Grossman’s skeleton argues that the publications of the Second Defendant, and the End-User comments fall to be treated as “conduct” of the First Defendant, for the purposes of the PfHA, by reason of PfHA s.7(3A).

31. The Amended Particulars of Claim (not settled by Miss Grossman) set out a somewhat different and more extensive case as to how the liability of the First Defendant can be founded on things done by the Second Defendant and the End-Users. In respect of the Second Defendant, the Amended Particulars of Claim allege that he and the First Defendant “*combined to harass the First Claimant*”. That language appears to invoke the common law principle of joint liability in tort, as explained in *Fish & Fish v Sea Shepherd UK* [2015] AC 1229, which requires proof of a common design shared by the defendant and the principal tortfeasor. In respect of the End-User comments (and I hope I am fairly reflecting the Claimants’ pleaded case here), the Claimants appear to allege that the First Defendant negligently failed to remove the comments from his YouTube channel, and that this therefore means that the comments form part of his own course of conduct. The Claimants can pursue this

case at trial, if so advised, but it is not how the case was argued before me and it would have required evidence – not yet adduced - about the degree of control that the First Defendant has over the comments that appear on his YouTube channel. It is not a case that could run in respect of the End-Users who contacted the Second Claimant directly.

32. For present purposes therefore, the publications of the Second Defendant and the End-Users will only fall to be treated as part of the First Defendant's course of conduct if they can be included via the operation of PfHA s7(3A). If that is unlikely to be established at trial, I must ignore them. However, Miss Grossman fairly makes the point that, even if End-User comments do not fall to be attributed to the First Defendant as part of his course of conduct, they nevertheless have some evidential value. Her case includes the proposition that the First, Second and Third Posts were in terms that incited third parties to attack the First Claimant and therefore harassing in nature. In order to make good that submission, she is entitled to point to what actually occurred.

33. The First Defendant's Twitter/X post referred to above is not relied upon in the Amended Particulars of Claim or in Miss Grossman's skeleton as forming part of the alleged course of conduct. Miss Grossman accepts this, but relies on it for two evidential points (as she is entitled to do). First she says, it is evidence of how, once objectionable material is available online, it has a propensity to resurface in unpredictable ways, such that it continues to cause alarm and distress (or is likely to do so). That is something that could be argued in response to a contention by the First Defendant that there is no need for an injunction because he has done nothing vis-à-vis the Claimants since January. Second, she says that the comments made in response to the First Defendant's Tweet, expressing sympathy for the "victim" of the First Defendant's Posts, supports her case that the First Defendant's Posts were in fact targeted at the First Claimant.

Discussion

34. It is convenient to address first the question whether, in reliance on PfHA s7(3A), the conduct of either the Second Defendant or the End-Users falls to be regarded as part of the First Defendant's own course of conduct.

35. Looking at the position of the Second Defendant, it seems unlikely on present evidence that the First Claimant will establish at trial that the First Defendant did indeed encourage or assist him to publish his two videos. Clearly there has been communication between the two Defendants. Disclosure in due course might, I suppose, show that the First Defendant persuaded the Second Defendant to publish his videos. However, on present evidence, the likelihood is that the Second Defendant, upon learning of the First Defendant's case, thought it raised interesting legal issues and made his own independent decision to publish, thinking it would be of interest to his followers.
36. Then, turning to the End-User comments, I think it is unlikely that any of them could be attributed to the First Defendant on the basis of PfHA s.7(3A). It is true that they would not have behaved as they did if the Claimant had not made one or more of his Posts and, given the somewhat febrile nature of the genre, it was probably reasonably foreseeable that some End-Users would write things that were abusive (though not foreseeable, in my view, that the abuse would be racist). But Saini J's summary of PfHA s7(3A) in *Davies* indicates that something more than but-for causation and foreseeability is required. The First and Second Posts do not contain any express encouragement to End-Users to contact the Claimants or to post derogatory comments about them, nor do I think that this was implicit. The Third Post expressly discourages such behaviour. Miss Grossman invites me to find that the Third Post is disingenuous: in effect, that it means the opposite of what it says and is an implicit encouragement to End-Users to carry on abusing the Claimants. I reject that characterisation. I think the Third Post should be taken at face value.
37. Miss Grossman submitted that the Claimant had facilitated or provided a vehicle for the End-User comments that were posted on YouTube. That might be a form of "abetting" but, at present, it is insufficiently evidenced. It may emerge at trial that the First Defendant specifically switched the comment feature on when he uploaded the First and/or Second Posts and that he knew or ought to have known that doing so would enable End-Users to post hateful comments in response. But there is no such evidence yet, and I would have thought it more likely that facility to place comments on a YouTube channel is simply something that is routinely provided by YouTube. Setting up a YouTube channel that has a comment facility (or opting in to the facility

when first setting up a channel) is unlikely, in itself to amount to facilitation of everything that is later posted there by third parties. And in any event, if the initial setting up of the channel is the only thing the First Claimant can point to as an act of aiding or abetting later third party comments, it would not be possible to say that the First Defendant knew or ought to have known, at that time, that third parties would post material attacking the Claimants.

38. So, for present purposes, I must consider the likelihood of the First Claimant obtaining a final injunction at trial based only on the three Posts and the First Defendant's two emails.
39. I am prepared to accept that these acts were sufficiently connected to form a "course of conduct" and that the course of conduct, viewed as a whole, was targeted at the First Claimant. Some of it was directly targeted at him. It was reasonably foreseeable that that the First and Third Post, though directed at the Second Claimant, would cause alarm and distress to the First Claimant, its managing director. The critical question therefore is whether a trial judge is likely to find that this course of conduct was sufficiently oppressive to cross the line from the merely unreasonable and disagreeable and to amount to harassment. I remind myself that it is the course of conduct as a whole that must be assessed. Nevertheless, some analysis of the individual constituent acts is required.
40. The three Posts, in my judgment, engage the principles enunciated in the *Thomas* line of authority. They were not random conversations on social media; they appeared on the First Defendant's YouTube channel, which appears to be dedicated to raising awareness of road safety issues for cyclists. They are likely to be regarded as a form of citizen journalism. Accordingly, the ultimate question will be whether they were so oppressive as to amount to a conscious or negligent abuse of press freedom. I think that is unlikely to be the Court's finding at trial.
41. First, although I have found that the First and Third Posts fall to be considered as part of a targeted course of conduct on the *Levi v Bates* basis, it is nevertheless relevant that they did not identify the First Claimant by name, and that the First Defendant also edited the Second Post to remove the First Claimant's name in response to the Letters of Claim.

42. Second, as I have already indicated in my discussion of PfHA s7(3A), I do not consider that any of the Posts can properly be described as incitement, still less incitement to racial hatred. This case falls far short of the facts in *Thomas* where the Defendant's articles referred to the Claimant as a "black clerk" whose complaints had precipitated the disciplining of white police officers for allegedly racist comments – a state of affairs that, as it made very clear to its readers, the *Sun* considered to be unjust. Here, the First Defendant simply gave the First Claimant's name. It happens to be Polish, but the Second Post made nothing of that fact and there was no suggestion of an underlying dispute with a racial element. The fact that some extreme and unreasonable readers might seize upon the First Claimant's name to make racially abusive comments (as, regrettably, they did here) cannot be held against the First Defendant. To do so would be a very far-reaching and unjustifiable interference with freedom of expression. See by analogy *Redmond-Bate v DPP* [2000] HRLR 249.
43. Third, this is not a case where allegations have been gratuitously repeated. The First Defendant was reacting to new developments: the Second Post was a reaction to the First Claimant's email; the Third Post was a reaction to the letters of claim. This was an important consideration in *Trimingham* (see [268]-[269]) and it is important here too.
44. Fourth, the extent to which publication has interfered with a claimant's ECHR Art 8 rights is a relevant consideration (*Trimingham* [263]). Here, the interference has been limited. Nothing has been disclosed about the First Claimant's private and family life. The End-Users' comments have been made online or addressed to the Second Claimant, not the First Claimant's home or his personal email address or social media accounts. He has been falsely accused of driving the van, but that accusation was deleted. The main attack on him was for writing his email threatening trade mark infringement proceedings, but that is something he did in his professional capacity and the First Defendant was entitled to comment about it.
45. Fifth, the Third Post (which, as I have said, deserves to be taken at face value) appears to show the First Defendant acting with a degree of responsibility, of the sort required of media publishers under the ECHR Art 10 case law, rather than abusing the freedom of the press. He had seen the letters of claim and responded by removing the First

Claimant's name and asking his followers not to harass the Second Claimant or their staff. His response may have been tardy (it seems to have come about following the Second Defendant receiving a letter of claim, which he probably discussed with the First Defendant, rather than being a direct reaction to the letter of claim sent to the First Defendant), but it counts in his favour.

46. Sixth (and turning now to the best points urged on the First Claimant's behalf), I would accept that many people in the First Defendant's position would have confined themselves to posting the video of the incident and criticising the van driver. They may not have gone further, as the First Defendant did, and start casting aspersions on the Second Claimant in extravagant terms ("*wouldn't want a road death on my conscience...*"). But the admitted bad driving of the van driver, while driving one of the Second Claimant's vans, gave some basis for questioning whether the Second Claimant exercises sufficient care in the appointment or training of its drivers, and the Court is not generally concerned with questions of editorial judgment.
47. Seventh, it was false to suggest that the First Claimant was driving the van and, so far as I can see, there was no basis for making that suggestion, even at a "grounds to suspect" level. However, falsity is rarely a sufficient basis for making out a claim in harassment by publication (*Hayden* principle (xi)) and it is highly pertinent that, once informed that the allegation was false, the First Defendant withdrew it.
48. I turn next to the First Defendant's two emails and consider whether they are likely to push his conduct over the line into the realm of harassment when considered alongside the rest of the course of conduct. My conclusion is that they are not.
49. First, it is very hard for the First Claimant to argue that the First Defendant's threat of legal action was baseless when the Letter of Claim itself admitted that the First Claimant had made an "actionable threat" of trademark proceedings that was unjustified within the meaning of ss. 21 and 21A of the Trade Marks Act 1994. I recognise that the First Claimant has now received different legal advice, but the very fact that the First Claimant, on legal advice, initially admitted a breach of the legislation strongly suggests that there are arguments both for and against. It is likely to have been reasonable for the First Defendant to assert the claim and then to repeat it when the Claimants did not respond.

50. Second, I would accept that it was unreasonable of the First Defendant to mention the sum of £10,000 in damages. It is hard to see how he could recover any substantial damages at all in a trade mark claim against the Claimants. Typically a claim for damages will arise where the threat of infringement proceedings deters the claimant from marketing their own goods or entering into contracts (not relevant here). I am not aware of any authority that recognises a right to damages for injury to feelings.
51. Nevertheless, the suggestion of £10,000 compensation was not put forward in a particularly aggressive way by the First Defendant. The primary relief he sought in his first email was a retraction of the Claimants' threat. He added, "*I have also been advised to seek compensation, in the region of £10,000*". In his second email he said, "*I urge you to seek professional legal advice on this matter. I feel £10,000 in compensation is reasonable in the circumstances. Your solicitor will be able to advise on the drafting of a settlement agreement...*". The Amended Particulars of Claim describe these communications as "blackmail". Miss Grossman was careful not to adopt that description, and rightly so.
52. The First Defendant's emails do not come anywhere close to the level of unjustified threats that were seen in *Worthington* or *Iqbal*.
53. So, although I would accept that the First Claimant is likely to establish at trial that the First Defendant behaved unreasonably in some respects, I do not consider it likely that he will establish that the First Defendant's conduct crossed the line and can properly be termed unacceptable and oppressive.

Conclusion

54. For these reasons, I must refuse the application for an interim injunction. On present evidence, the First Claimant is unlikely to obtain an injunction at trial on the grounds of harassment. The evidence and arguments at trial may be different from those presented to me. Nothing in this judgment should be taken as underestimating the alarm and distress that the First Claimant has experienced. I entirely accept that both he and his wife have been deeply affected by these events.

