

**HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
INTELLECTUAL PROPERTY LIST
INTELLECTUAL PROPERTY ENTERPRISE COURT**

BETWEEN

WHO DARES WINS (ALFRETON) LIMITED (CLAIMANT)

AND

(1) RACING PIGEON INTERNATIONAL LTD

(2) MARK JAMES LYFORD

(3) BMI ONE LOFT RACE LIMITED

(4) LEE BARRY SULLIVAN

(5) IAN SULLIVAN (DEFENDANTS)

CONTRACT AND NON-PAYMENT FOR WORK

1. I, Mark James Lyford, Director of Racing Pigeon International Limited, Defendant 1 and 2 in this Claim, deny all claims in the Claimant's statement.
2. Further, I deny to provide the Claimant with any rights to the work I created (subject to his claim) as he used it without paying and despite my demands to stop it, he carried on using it and made significant gains as a result (in excess of £350,000). Despite stating in his statement at paragraph 18 that “*he*

proposed to complete on its part of the agreement”, he actually did everything he could to stop me from realising on our contract and declined all my proposals for getting paid. He transferred my birds into his name without my consent and offered them to charity for free. Furthermore, despite signing a Statement of Truth, he made several claims under his Court statement which he knows are untrue: his paragraph 17, paragraph 18, paragraph 19. The Claimant failed to provide any evidence to support these claims (whether pre-Court or this Court case).

3. The Claimant falsely states at his paragraph 29 that the DVD “Who Knows Wins” is part of the contract in dispute under his Claim. The Claimant includes this DVD in his definition of “The Works” which is intentionally misleading to the Courts as this is another item of dispute between us. The Claimant knows that the DVD is part of a completely different arrangement between us and it has nothing to do with the WDW race. The Claimant uses the image of the DVD in his Annex 9 stating that it is part of the work for the WDW race. I own the full rights to the DVD “Who Knows Wins”, which is subject to my Counterclaim.

BACKGROUND, STATEMENTS AND EVIDENCE

4. I met Mr Tomlinson, the sole Director of WDW (Alfreton) Ltd, Claimant in this claim, early in 2019 when he contacted me with a view to help him with his race, Who Dares Wins (WDW), as he was struggling financially and his race was not profitable. He needed support with marketing and promotion of his race and to attract more than the 700 entries that he had as otherwise the race would not be commercially viable and he was risking to losing the race

together with the income it generated. He contacted me as he said he had been watching my online shows about the pigeon sport and that I was the right person to help him out. At the time I was running a weekly live show on a Monday evening for 1 hour about the sport of racing pigeons. The show attracted thousands of viewers from around the world. Thanks to the show and exposure it provided, I was invited to cover events around the world, interview famous people in the sport and film lofts in other countries for the benefit of the pigeon community. I also run a Facebook group called Racing Pigeon International (RPI) which has circa 12,600 members from all over the world. At the time the Claimant contacted me, in 2019, the RPI group had circa 7,000 members, a considerable number compared to circa 2,000 that were in his WDW racing group. **<Annex 1 - photo of RPI Facebook group with membership numbers>.**

5. After a few weeks of consideration on my part, I agreed to help him out. He said that he was struggling financially and he couldn't afford to pay me in money so I proposed to have some entries into his race (which would not cost him anything). I drew up a contract which he agreed to. I believe it is evident that the contract was in his favour, as I wanted to help him out. The contract stated that I would offer the following services for the 2019/2020 year only:

- New website name
- Complete design of website
- Hosting of the website on my servers
- New logo design
- Design for flyers to be used in marketing events
- Printing of marketing material
- Live coverage of races in 2020
- Facebook live coverage

- Invitations on my live show
- Offline promotions at events
- Promotion of the ‘easy plan’ online and offline

<Annex 2 - text about not being able to pay me, copy of contract>

6. In return, the Claimant would provide me with 30 entries into the WDW 2020 race. This would equate to circa £5,000, which was a reduced amount compared to the real cost of my work, which was circa £10,000. The Claimant offered to breed the 30 birds for me. In line with RPRA (the race regulator) rules, these birds have to wear rings which are registered to me, so in effect they are mine, although they were bred by the Claimant. I provided the Claimant with 30 rings around November-December 2019. **<Annex 3 - copy of invoice>**

7. Page 3 of our contract, section “*Our Deal*” paragraph 2 states that I would sell some of the entries into the race and I would keep some as part of a syndicate. The contract states clearly that I would have entries into the race in my company name, RPI, for which I am the sole Director. The Claimant agreed to this and did not state that by me entering the race in my company name or my name would be in breach of any race rules.

8. We both agreed to this contract around September 2019 time, just as preparations for the new year race (2020) would begin. I started to work on the new image for the WDW race 2020.

9. I completely re-designed his website and created it in its existing format. I registered the current website into the claimant's name and hosted his website onto my servers. I created new advertising material, including flyers, newspaper adverts, online adverts. I hosted him on my shows nearly every

week, to the point where my audience started to complain that it had turned into his show as opposed to mine. I created banners to be used for events (two independent banners, one with the prize money for the 2020 race and one with the winnings of the Irish teams, again created for the use in the 2020 event only). I created advertising videos of his lofts, using my drone. I used these to promote his race through the RPI Youtube channel, Facebook and Telegram. I designed his loft signage, carried out marketing campaigns. I sourced suppliers and ordered all material stated above. The Claimant did not carry out any of these tasks.

10. In addition, I also secured two important contracts for the Claimant in order to give his race credibility:

A) One contract was with Benzing (the market leader in electronic clocking systems used for recording races around the world), which I secured through a personal relationship I enjoy with the company representative in Austria (Head Office of Benzing). The Claimant had been unsuccessful in securing an agreement with Benzing prior to my engagement with the company for the two years prior to 2019. Without the Benzing clocking system, races are viewed as inferior and do not attract public interest. As mentioned in paragraph 4 above, the Claimant only managed to attract a maximum of 700 pigeons prior to engaging my services.

B) Registration with the FCI (Federation Colombophile Internationale), which is the most prestigious organisation in the pigeon sport, with membership from around the world. To be member of the FCI, One Loft Races have to have at least 500 pigeons from 80 participants and have a return of at least 25% of initial bird entries from the final race. The Claimant did not have this registration prior to my involvement. He

subsequently lost the right to the registration in 2021 due to low returns in the 2020 race, which were short of the 25% requirements.

11. I delivered on my side of the contract by completing all the requirements above, including attracting 1,506 entries into his race, with 6 more over the target of 1,500. Thanks to my personal connections in the sport, I also attracted participants from other countries, such as Romania. All this was done by March 2020, as the race would close its doors to entries in April 2020. Entries into One Loft Races, such as the WDW, is limited to usually beginning of April each year, to allow for training and preparations ahead of the main events, which begin in about June time. Most work for promoting a race (like with any event) is being carried out before the actual competition starts. **<Annex 4 - photo of total entries in the race from Benzing, independent source>.**

12. Once all entries were concluded into the race, I started promoting the 30 places. I did online videos, Facebook posts etc. I advertised within my RPI Facebook group. I wanted to get people from around the world to be part of this race.

13. Unbeknown to me, there were no longer 30 birds available. The Claimant let the birds fly out and not all of them returned in the loft. The Claimant did not inform me about it. Instead he started posting on Facebook about it, stating that I was selling birds that were not available and that I was conning people into buying tickets. In addition, he began a sustained campaign of denigrating my name, calling me a fraudster and a con man. He further commented against my methods of advertising, such as selling under a “bonus ball” type competition and via a syndicate. He confirmed to me in a text message on 8 April 2020 that I can continue with the syndicate as per

attached evidence. A “bonus ball” is a popular method within the pigeon racing community of acquiring entries into a race. It is allowed by the race rules. The Claimant uses this as a method of selling places in his race. The syndicate was clearly stated within the contract. So I believe that my actions were in line with the rules and our signed agreement **<Annex 5 - posts by Mr Tomlinson about not being 30 birds in the race, commenting against my advertising and alleging that I sell birds that are not there, texts regarding using the syndicate>**

14. I got contacted by various people who had bought tickets for the 30 birds, telling me that the Claimant had put some posts on Facebook which he then deleted, claiming that he did not know how many birds were available and that I was conning people into buying birds that did not exist. I was unaware of this and I tried to contact the Claimant on the phone and texts. I texted him on 10 April, 14 April and 17 April 2020, with no replies from him as per attached evidence. He did not return my calls, stating that he was busy and that he works 15 hour days and can't return my calls. Instead he continued with the online posting against me. Other holders of tickets I had sold expressed their concern publicly at the fairness of treatment from the Claimant against these birds given his public comments against me and the fact that he was posting comments that he was then deleting. The Claimant did not address these concerns, therefore people contacted me asking for their money back. They were concerned that they would not be treated fairly by the Claimant. **<Annex 6 - posts about people expressing concern, messages contacting me with concerns, texts to Mr Tomlinson to contact me>**

15. Through his direct actions the Claimant made it impossible for me to realise on the sale of the tickets for the 30 birds.

16. I refunded all the money to people. I proposed to the Claimant to enter the birds in the race in my name or my son's name instead. My son is also a pigeon fancier and a member of the RPRA, so in line with the RPRA rules, we could entry any UK competition. He declined, stating that it was against the race rules. He stated that nobody connected to the race can take part in the race, including immediate family and/or friends. I challenged this as this went against our contract, in which it is stated that I would own some of the birds in the race. He stated that he had delivered under the contract in that he gave me the 30 birds. Although I explained to him that the contract is about entering the race and not the 30 birds, he refused to discuss this further and accused me of harassment. **<Annex 7 - emails and texts about the alleged rule, texts about harassing him>**

17. The WDW race rules are published on the website "<https://whodareswinsrace.com/race-rules/>". There are 21 rules, out of which the first rule states that the race is "*Open to all*". The only prohibition is rule number 21 which states that "*No family member or anyone assisting in the daily/weekly running of the loft will be allowed to participate*". The prohibition clearly states the "*running of the loft*", meaning being involved in the daily activities of looking after the birds and not running the actual race or being involved with the race. There are no other rules that the WDW states that would apply. **<Annex 8 - photo of rules from the official WDW race website>**.

18. The rule that the Claimant relies on in his statement in paragraph 17 does not exist and it is not implied in any of the rules. Therefore I believe the Claimant purposely denied me or my son of entering the race.

19. If this rule did exist or it was implied, the Claimant entered into our contract knowing that my statement in relation to my retaining the birds was not valid. Our contract states clearly on page 3 section “Our Deal” paragraph 2 that I will retain some of the birds: *“WDW gives 3x10 bird teams to RPI as payment for all the above (30 bird entries total). Some of these teams will be retained by RPI and some will be sold using the syndicate system launching on oneloftracing.com”*. This demonstrates to me that the Claimant did not intend to pay for the services I provided from the moment he agreed to our contract. **<Annex 2 - copy of contract>.**

20. Furthermore, if this rule did exist or it was implied, the Claimant broke it by allowing at least two people closely connected to the race to enter the race. As follows:

A) Mr Sorin Dudu, who is the official race agent for Romania and Bulgaria had 4 pigeons in the 2019/2020 race and 3 pigeons in the 2020/2021 race. Being an official agent for the race means that the person is the representative of the race in the respective country and is responsible for promoting the race in that country for the purposes of attracting entrants. Usually an agent is being paid a percentage of the amount of fees from the birds entered from that country. So it is evident that Mr Sorin Dudu had a vested interest in the race, he is close connected to the race and was allowed to enter the race, whilst I was denied entering the race. **<Annex 9 - screenshot taken from the WDW official website showing Mr Sorin Dudu as official race agent and entries in the WDW race in 2020 and 2021 from the official Benzing website>**

B) Mr Pete Berry who is a close friend of the Claimant, manages and runs the WDW Auctions website, where the birds from the final are sold. In addition, Mr Pete Berry also runs competitions (“bonus ball”) on behalf

of WDW to enter the race and he is also an administrator of both Facebook groups run by the Claimant, Who Dares Wins One Loft Race and Racing Pigeons UK & Ireland. In addition, in a public post on Facebook dated 29 November 2021, the Claimant endorsed a competition run by Mr Pete Berry and called him “good friend”. Mr Pete Berry is part of a syndicate called Four Nations Syndicate who had 12 birds in the 2019/2020 race and 25 birds in the 2020/2021 race. This demonstrates that Mr Pete Berry has a vested interest in the race, is a friend of the Claimant and was allowed to enter the race, whilst I was denied entering the race. **<Annex 10 - Screenshots of Facebook evidence about Mr Berry being an admin, advertising bonus ball for WDW race, entries in the WDW race in 2020 and 2021 taken from the official Benzing website, Mr Tomlinson calling Mr Berry “a good friend”>**

21. Therefore by allowing at least two people associated with the race to enter despite quoting the rule that he used to deny me of entering the race, the Claimant denied to make payment for my work.
22. Following on, around 15 June 2020, he transferred the birds into his name without my permission, committing fraud and breaching RPRA rules and offered the birds for free to the public. I only found out about this as one member of the public contacted me to let me know that the Claimant was offering the birds to charity. I only managed to stop this on the day the birds were going to be given away by the Claimant. When the Claimant got contacted by the RPRA on my behalf to ask to stop, he took the birds out of the competition, he removed them off the official race system and made a public live video about it stating that he had removed them and demanded that I take the birds off his premises. He declared them as “stray”, which, under the RPRA rules (rule 111), means that they have to be returned to the

owner (myself). He also sent me an invoice for holding the birds. I refused to pay the money and did not want to collect the birds (**Annex 11- Email chains about the fraudulent transfer, invoicing me for the keeping of pigeons and declaring them as stray, Facebook posts giving the birds away to charity, Facebook posts and other articles confirming he took the birds out of the race**>

23. The Claimant contacted the RPRA and complained, stating that these birds do not belong to him as they were registered in my name and that he does not want them in his lofts. RPRA contacted me asking me to remove the birds off the Claimant's premises as they were registered to me and I can not have them on the Claimant's premises without his permission. Failure to pick up the birds would mean my termination of membership with the RPRA as I would be in breach of the RPRA rules. Losing my membership with the RPRA would mean a massive detriment to me (personally and professionally for example, I would not be allowed to enter any competitions in the UK or abroad). I had no choice but to remove the birds from the Claimant's premises. < **Annex 12 - Email chains stating that I do not want the birds**>

24. Therefore I deny the Claimant's statement under paragraph 19 of this Claim where he states that I took ownership of the birds because I wanted to retain them myself and so I took full payment for the work. Not only that the birds were not payment for my work, but he also created an unfair position for me, forcing me to have the birds removed off his premises. I did not want to take these birds. The Claimant knows this as I stated it clearly in our correspondence (as paragraph above).

25. The birds have no financial value as they have no pedigree information (so it is not known how good their competition capabilities are) and can never be

used to fly out and participate in competitions given that they were raised in the Claimant's loft. Racing pigeons will always fly back to the place they were born and raised, in this case the Claimant's lofts. So these birds can only be used as stock birds, meaning that they can only be used to produce other birds that could fly out. I decided to give these birds away for free to members of the public who could not afford to buy their own birds. **<Annex 13 - Email chain showing that birds have no value and my Facebook post giving them away to the public for free>.**

26. The Claimant was aware that I gave these birds away for free as he agreed to the pick up of the birds by individual members of the public. So the Claimant's statement in paragraph 19 that "*he was not aware who I sold the birds to*", is untrue and he knows it is untrue **<Annex 14 - Facebook post about members of public picking up their birds from the Claimant's premises>.**

27. On 20 April 2020, Mr Tomlinson made me a monetary offer in lieu of the entires, of £3,000, which he retracted a few hours after as he said his wife, Mrs Annette Tomlinson, as a 50% shareholder in the business, did not agree with it. On 13 June 2020, as part of our mediation by the RPRA, he offered a lower amount of £2,000 which would include him taking ownership over the 30 birds from the race and the rights to the DVD "Who Knows Wins" together with other 7 pigeons that were in his lofts and belonged to me. I rejected the offer. To me these offers demonstrate that he knows that he never paid for the services I have provided for him and he knows he does not own the rights to the "Who Knows Wins" DVD **< Annex 15 - texts from Mr Tomlinson with the offer and retraction, email chain with RPRA in which Mr Tomlinson admits to not owning the rights to the DVD Who Knows Wins>**

28. Therefore I deny all claims under paragraph 18 of the Claimant's statement. The Claimant did not propose to "*complete on its side of the agreement*", on the contrary, he made every effort possible to deny me of realising any payment from the contract.

PASSING OFF ALLEGATIONS

29. I deny any claims of passing off and copyright infringement. I deny that there were any implied contract terms between me and the Claimant. I successfully submitted cease and desist requests to Vimeo and Facebook to have my work removed (May 2020). The email I sent was addressed to Mr Gary Tomlinson, at the same email address I used to communicate with him prior to that point. This demonstrates that I did take action to have the material removed. I contacted the Claimant several times to stop using my work. He accused me of harassment and reported me to the police (in November 2020 and April 2021). Based on my evidence, the police confirmed that the Claimant's allegations were not supported and there was no action taken against me. Therefore I believe that the Claimant's statement at paragraph 27 is untrue and he knows it is untrue. **<Annex 16 - DMCA notice, my letter to the Claimant's solicitors dated 21 December 2021Annexes >**

30. Therefore I deny the claim under paragraph 27 of the Claimant's statement.

31. I was unable to have the Claimant's website taken off line as he had moved his website to another server one week prior to starting calling me a con man

publicly and I do not know who the new provider is. I can not make him stop using other material I have produced unless I have a Court injunction.

32. The Claimant continued to use the website I designed, the loft signage and other signage within his shop. In 2020, due to Covid restrictions, all pigeon exhibitions/shows were cancelled, therefore the Claimant was unable to use the banners that I have designed for the 2020 season and which he now claims became “*synonymous with his race*”. Thanks to my direct online live promotions of his event through my show to participants outside the UK, the Claimant attracted new entrants, such as participants from Romania and he made an income of at least £350,000 (1,506 entries), a significant increase from circa £117,000 which he generated in the past (700 entries). In addition to the £350,000 he also gained an unknown amount (estimated to at least £50,000) from the sale of birds in the auction after the final race. So the Claimant gained significantly from my work whilst denying me of payment for my services.

33. Around June 2020, the Claimant started to broadcast a show of his own, which was held at the same time as my show, on a Monday at 7pm. His show’s purpose was to advertise his race. This is the only way he could advertise the banner in 2020 and 2021 whilst all events had been cancelled. However, he did not use the banners I had designed and instead used his old one. In **Annex 17** there is evidence to show that between 2020 and 2021 (to the moment of engaging solicitors in December 2021) there are at least 33 instances of shows where he did not use the banner he now claims became synonymous to his race. **<Annex 17 - 33 individual photos with dates taken from Facebook live shows, showing no banner in the background or his old banner>.**

34. The banner the Claimant alleges was synonymous with his race, states clearly on the header, the year 2020. The banner shows the prize money for the 2020 season only. It was for advertisement purposes at a point in time and not intended to be used as a logo or image for the race. I believe that this was the reason the Claimant stopped using it after the 2019/2020 season. In addition, the 2020/2021 and 2021/2022 prizes were different to the 2019/2020 season, hence the use of a banner with the 2019/2020 money would have been misleading. The 2019/2020 banner was out of date, so it made no sense to use it beyond 2020.

35. The Claimant stated in a live Facebook show (3 November 2020) that his race is “always full within seven weeks” of the previous race ending and attributed this to his “100% OF EFFORT, 100% OF HONESTY 100% OF INTEGRITY AND 100% OF TRANSPARENCY”. Seven weeks from the end of the race is approximately end of October. Therefore Mr Tomlinson stated clearly that his race is full thanks to his efforts and reputation and thus there is no passing off and there can not be any confusion. In his Facebook post dated 18 November 2020 Mr Tomlinson confirmed that WDW loft was full and could not take any further entries. Furthermore, in his live Facebook show on 7th December 2021 he stated that for the 2022 he *“has a record number of entries from Ireland”*, which demonstrates that people are not confused about the race <**Annex 18 - transcript of the show and link to the recording of show, Facebook post confirming loft full**>. ***NB: the banner in the background of this video is not the one the Claimant claims became synonymous with his race.***

36. The Claimant’s race is not one of the *“pre-eminent”* races in the UK as claimed in his statement. On the contrary. WDW has increasingly lost credibility within the One Loft Race (OLR) circuit in the UK, due to the

direct actions and comments of Mr Tomlinson, insults and threats addressed to people through his live video shows (in some instances even naming people directly), extremely poor returns in comparison to other OLRs (penultimate out of 7 races in the UK) and false claims about financial wealth and membership of a prestigious organisation (FCI - mentioned in my Defence statement at paragraph 10 (B)). Mr Tomlinson is using his weekly Facebook live show as a platform to express his anger against people, threat people who have commented against him and WDW, make false allegations and thus actively inciting hate and causing harm. Some examples are provided below, although I can provide further evidence and recordings of shows:

A) The race returns for WDW are some of the worst in the UK meaning that people pay a lot of money and get very little chance at returns.

- North West OLR: Start 259 birds; Final 100 birds = 38.61% returns
- Barcelona OLR: Start 706 birds; Final 233 birds = 33% returns
- RPRA OLR: Start 1,512 birds; Final 374 birds = 24.74% returns
- BRITISH Masters OLR: Start 1,310 birds; Final 203 birds = 15.50% returns
- Prince of Wales OLR: Start 513 birds; Final 61 birds = 11.89% returns
- **WDW OLR: Start 1,861 birds; Final 106 birds = 5.70% returns**
- Pride of the Potteries: Start 1,097 birds; Final 30 birds = 2.73% returns

Data is extracted from Benzing (www.oneloftrace.live), which is independent and publicly available. In the 2020/2021 race the Claimant offered free entries to compensate participants who complained about the massive losses in the 2019/2020 race. The Claimant charges money per pigeons that enter the loft and not per pigeon that goes in the final. So any pigeons that are lost in-between represent a profit for the Claimant as he has less pigeons to feed, train and treat. The more pigeons are lost, the

more the profit increases. There were participants that paid the full £500 and had no birds in the final as the Claimant lost all of them so they had no chance of realising any gains on the money they paid upfront.

<Annex 19 - data from Benzing, post from individual about Mr Tomlinson losing pigeons>

B) The financial claims made by the Claimant about the race are not true and are not supported by evidence. He claims on Facebook of being “*the richest in the world*”, and “*paying over £750,000 in 7 years*”, without showing how this is supported. There are hundreds of races in the world that pay more than the WDW race. (For example, a renowned Thailand race pays \$1.74 Million every year). Based on the Claimant’s claim, on average, the race paid £107,000 in prizes per annum. This is not supported by historical evidence. In 2015 his entire turnover was £32,000, so he could not have paid £107,000. In 2020 and 2021 he only paid £100,000 each year. The figures do not add up. The 2016 accounts show that WDW only have £1 in current assets and in 2021 £81, with liabilities that have increased year on year to a total overall liability of £13,313. Based on these figures, it is not evident how the claims can be supported and where the money came from. So I believe that WDW is not in a position to guarantee any money to the participants and the Claimant’s claims of financial wealth can not be supported. In 2021, one of the One Loft Races in the UK, the Prince of Wales, failed to pay money to the winners, therefore there is already a precedent of races being poorly managed and money not paid out. WDW accounts from Companies House show the following data:

- 31 March 2015: made profit of £14,582
- 31 March 2016: made profit of £14,699
- 31 March 2017 : £2,740 (total net liabilities)

- 31 March 2018: £2,470 (total net liabilities)
- 31 March 2019: £3,123 (total net liabilities)
- 31 March 2020: £12,849 (total net liabilities)
- 31 March 2021: £13,313 (total net liabilities) (latest set of accounts filed on 22 December 2021)

<Annex 20 - copies of accounts from Companies House, photo of Facebook statement claiming to be the richest in the world, copy of leaflet from 2022 claiming payment of £750,000 which also shows the guarantee of prizes, posts from participants in Prince of Wales who did not get their money>

C) In his live Facebook video show dated 4 November 2021 he made several false allegations and insulted people, calling them “rats”, “pri.ks” “bas..rds” and urged them to “grow some bo.....cks”. He proceeded to describe an incident asking his listeners’ opinion whereby he got approached by a member of the public at a show in Epsom. The member of the public challenged him over the WDW results and performance. Mr Tomlinson described how he got annoyed because of the challenge, as the individual had no right to challenge him as he had no entries in Mr Tomlinson's race. He further called the person a “toerag” and stated that *“perhaps I should have been more professional but it really turned bad and he had to go before he got knocked out basically”*. During the same broadcast he also made threats and false allegations giving enough information to the public for them to understand he is talking about me. His false allegations this time stated that I reported his friend Mr Pete Berry to Facebook and also that I made up statistics to make WDW look bad. Both allegations are false and he knows they are false as the data I provided is from independent sources (Benzing), it was not aimed at WDW. I understand from Mr Tomlinson’s allegations that Mr Pete Berry had posted pigeons for sale, which is against Facebook’s policies,

therefore he got banned in line with those policies. Facebook have algorithms and staff whose responsibility is to enforce its policies. Listeners to the show joined in the hate, with one of them urging Mr Tomlinson to get his boxing gloves out. Therefore I believe that this is evidence that Mr Tomlinson's comments have extremely negative influence on people, inciting and fuelling hate. In another live video for his 2021 race he insulted someone who challenged him about his methods of looking after the pigeons. He gave the individual's full name and stated that the individual "*opened out his mouth, and a lot of s..t came out of it*". So another example of targeting people and inciting hate. **<Annex 21 - transcript of the shows and link to the recording of shows>. NB: the banner in the background of this video is not the one the Claimant claims became synonymous with his race.**

D) In his Facebook post in November 2021 he stated that "*pigeon people are strange*", which prompted reaction against his comments **<Annex 22 - Facebook post with comment>.**

E) In his live video Facebook show dated 20 December 2021 he stated that the hotels in Blackpool are full because of refugees, so there's little or no availability for pigeon fanciers to book hotels for the January 2022 show. Not only that he can not evidence his claim, but statements such as this may incite the public to discriminate against refugees. **<Annex 23 - transcript of the show and link to the recording of show>. NB: The banner in the background is the one he claims is synonymous with his race as this show was after engaging services of solicitors>**

F) In his live video Facebook show in October 2021 he named two people for talking against him in a different pigeon group. He further insulted

one of them and disclosed confidential personal information about the individual, information that was not common knowledge (relating to the individual relationship with his daughter). He proceeded further calling them derogatory names and threatening them during the live show. **<Annex 24 - transcript of the show and link to the recording of show>. NB: the banner in the background of this video is not the one the Claimant claims became synonymous with his race.**

G) In September 2020, during the Covid pandemic, when public gatherings were not allowed, the Claimant organised the final race with public, without a licence and without appropriate Covid measures in place, putting the public's lives at risk. He got reported to his local council and his response was to publicly shame people who were against his organising the race and place blame on competitors for reporting him. He even named an individual who challenged him about organising the event. He further insulted people stating "*to shove it up your a..e to people who make this complaint*". In line with Government's guidance, no other race organiser in the UK held public gatherings in 2020 or 2021. **<Annex 25 - photos from event, Facebook posts posted by Mr Tomlinson shaming the person who complained, transcript of show and link to recording of show> NB: the banner in the background of this video is not the one the Claimant claims became synonymous with his race.**

H) He stated numerous times that he will only allow 1,500 birds into the competition. For example, in an advert published on 24 October 2020 he stated that only 1,500 birds are allowed in the race and that WDW was a member of FCI. These statements are both false as his race was no longer a member of FCI and he allowed 1,861 birds into the 2021 competition.

People were directly misled by the Claimant. **<Annex 26 - Advert from Facebook post>**

- I) In his live video Facebook show in September 2021 he encouraged animal cruelty by recommending that pigeon fanciers give Domestos (household bleach) to their pigeons to drink in order to kill viruses. He also stated that “*some pigeons will die, and some will die immediately*”. He further states that Domestos “*definitely stops any virus spreading. It’s amazing. Really, really amazing*”. His comments were challenged by the audience. **<Annex 27 - transcript of the show and link to the recording of show>**. ***NB: the banner in the background of this video is not the one the Claimant claims became synonymous with his race.***

37. There are only circa 22,000 pigeon sport members in the UK, it is a close-knit community that relies on word of mouth and reputation. Participants know which race to enter as there are only 7 major One Loft Races in the UK. One has to contact the race organisers to enter a competition, pay the entry fee and send their birds to the loft. So the steps required are extensive and can not cause confusion.

38. Therefore I deny the claim in paragraph 48 and 49 of the Claimant's statement that there is a direct link between the decreases in entries that WDW suffered and the change of marketing material used by British Masters. I believe that the decreases in the Claimant's race are directly linked to his behaviour, denigratory comments, public deception and poor management of the race. As stated above at paragraph 35, the Claimant stated that he relies on his reputation to attract participants.

39. On 24 October 2020, as part of the 2020/2021 campaign, the Claimant posted a flyer on Facebook with the prize money for the 2020/2021 race. This flyer has no resemblance to the banner the Claimant alleges has become synonymous with his race. **<Annex 28 - photo of flyer and date>**. Therefore I believe this is evidence that the Claimant's race is not synonymous with the alleged banner.

40. I deny all claims in relation to flyers at paragraph 35 and 59. I was not aware of what flyers the Claimant is using as part of his 2021/2022 campaign as he did not market any. The Claimant did not produce any evidence to demonstrate that he used the flyer with the pigeon and cup between 2020 and 2021. There were no pigeon exhibitions in 2020 and most of 2021, so there was no opportunity to give out flyers to the public. It was only in January 2022 (after submitting his claim of passing off to the Courts) that he had printed a new leaflet copying the 2020 one. **<Annex 29 - photo of flyer dated 2022 after engaging solicitors for this Claim>**.

41. The Claimant claims loss of income due to less birds to be auctioned (paragraph 49 in his statement) as a result of passing off. There is no direct correlation between initial entries into a race and income made in an auction sale after the final because there is no guarantee of how many birds would return in the final. For example, (based on data publicly available from Benzing at <https://www.oneloftrace.live/>) the Pride of the Potteries in the UK only had 2 birds that returned in the Final within the official time allowed for returns (on the same day of liberation), from a total number of 1,097 birds entered initially at the beginning of the race (0.18% returns). WDW only had 106 birds returning in the final from a total of 1,861 (5.7% returns) in 2021. Out of these 106, only 51 returned within the official time allowed for returns (on the same day of liberation). Therefore only the 51 birds (2.74%)

would have a chance of attracting interest in a sale after the race and not all 106 that returned. So there is no correlation between the number of initial entries in a race and the number of birds that can be auctioned after the final as claimed by the Claimant. <Annex 30 - photos of results from <https://www.oneloftrace.live/> showing the data>.

42. Therefore I deny the claim in paragraph 49 of the Claimant's statement that links drops in entries in the Claimant's race to a drop in income at auction after the final race.

EVIDENCE USED BY THE CLAIMANT

43. I deny all claims in paragraph 45 of the Claimant's statement that the amended flyer has become synonymous with the Claimant's race due to being "*extensively used*". The Claimant did not advertise at all in 2020 and 2021, did not give out flyers as there were no public shows. I believe the evidence provided by the Claimant in his Annex 17,18 and 19 to support this statement is not sufficient or relevant to demonstrate the claim because:

- A) The evidence in Claimant's Annex 17 is not dated, so it is not evident when it was last used;
- B) The evidence in Claimant's Annex 18 depicts the use of banner in only three instances: one post from 2019, prior to the termination of contract between the Claimant and me, and two posts both dated December 2021, after engaging services of solicitors for this Claim;
- C) Claimant's Annex 19 only depicts the use of the banner in two Facebook live shows, both shows in December 2021, after engaging the services of solicitors for this claim. I believe that this

evidence is not reliable in supporting the claimant's claim. As stated in paragraph 33 above, I attached evidence to demonstrate that at least in 33 instances the Claimant did not use the said material in 2020/2021 or 2021/2022 until engagement of solicitors for this claim.

44. I deny any claims at Claimant's paragraph 46. There is no evidence to demonstrate his allegation.

45. I further deny any claims of passing off and allegations of risk of damage at paragraph 60 because I believe the evidence provided in Annex 20 of Claimant's statement is not representative or significant as stated. In addition, all three individuals (Mr Pete Berry, Mr Kevin Frail and Mr Les Adams) are closely linked to the race and friends of Mr Tomlinson, therefore they are not independent public/participants:

A) There are only three emails, which represent 0.002% of 1,500 entries (the maximum the Claimant stated that he would allow in the race) or 0.001% based on 1,861 entries (allowed in 2021) which is an insignificant number for alleging "*significant proportion of the public*". At paragraph 47 of his statement the Claimant claims that he received a number of messages from the public. The evidence provided is all on email. I would expect members of public to contact the Claimant in other ways, for example text message, online messages etc.

B) All three emails are from friends of the Claimant, so I believe they are not representative of a "*significant proportion of the public*" as alleged by the Claimant. And they are not independent:

- Mr Pete Berry, also mentioned in this Defense statement previously at paragraph 20(B), is a close friend of the Claimant. In a Facebook post

on 29 November 2021 the Claimant called Mr Pete Berry a “*good friend*”. As mentioned at paragraph 20(B) Mr Pete Berry is heavily involved in the Claimant’s race, running bonus balls competitions and the WDW auction site where the birds are sold after the final. Mr Pete Berry is also an admin on two of the Claimant’s Facebook groups: the WDW race and a separate pigeon group, demonstrating that he is a person trusted by the claimant. **<Annex 31 - evidence of friendship, bonus ball and being an administrator>**

- Mr Kevin Frail, has insulted and falsely accused me in the past of actions that I never did and that were not proven (hacking into his computer). Furthermore, Mr Kevin Frail, in a public post on Facebook admitted to have been in my pigeon group (RPI Facebook group) only to get any information that Mr Tomlinson could use against me. Mr Kevin Frail has actively posted numerous times false allegations against both me and my son as per evidence attached. He also offered to join in to kill my dog further to a post that Mr Tomlinson posted. I only know of Mr Kevin Frail because he joined my RPI Facebook group. I never met him in person. I have no idea who the individual behind the screen is and I do not know why he made these statements about me **<Annex 32 - posts about hacking into his computer, being in my group and joining in to kill my dog>**.
- Mr Les Adams is a long term supporter of the race, as confirmed by the Claimant in an article dated 30 March 2020 on WDW website, in which he is mentioned as a “*superb supporter*” of the WDW race. **<Annex 33 - <https://whodareswinsrace.com/news/25th-march/> - copy of article>**.

C) All three emails are dated the same date, 23 December 2021, and they are issued two days after I sent my reply to the Claimant’s solicitors in

which I contested all of their original allegations. I would expect evidence to have been pre-dated engagement with solicitors, for example as soon as BMI began using the flyer subject to this Claim. And I would also expect the emails not to be dated the same date and state the same reason as “confusion”.

D) The initial allegation in Claimant’s solicitor letter dated 16 December 2021 differs from the one in this Claim, in that in the letter it was stated that public have been “*mislead*” into entering the BMI race, whereas in the evidence for this Claim it is stated that the public are “*confused*” and that they do not wish to send entries into the WDW race. I said in my letter of 21 December 2021 that it is impossible to enter another race due to being mislead: one has to contact the representatives of the race, pay a deposit by bank account (which states clearly the name of the race). The name of the race is clearly stated on all material (regardless of a particular race), so it is impossible to be mislead and enter a different race. So the initial allegation of being “*mislead*” was changed to “*being confused*”.

E) Mr Tomlinson has boasted on several occasions that his lofts are full by November every year and attributed this to his integrity, honesty and openness, therefore it is evident that the entries in his loft are not linked to any specific image or advertising. **<Annex 18 - transcript of the show and link to the recording of show, Facebook post confirming loft full>. NB: the banner in the background of this video is not the one the Claimant claims became synonymous with his race.**

COUNTERCLAIM

I, Mark Lyford, Defendant 2 in this Claim, wish to Counterclaim against the following:

- A) Mr Gary Mark Tomlinson (Director in Who Dares Wins (Alfreton) and
- B) Who Dares Wins (Alfreton) Ltd, Claimant in this Claim; and
- C) WDW Pigeon Auctions (trading name of Who Dares Wins (Alfreton) Ltd);
and
- D) Mrs Annette Tomlinson (wife of Mr Gary Mark Tomlinson), shareholder in WDW (Alfreton) Ltd and joint decision maker with Mr Gary Mark Tomlinson in relation to the running of Who Dares Wins (Alfreton) Ltd and
- E) Mr Robert Mark Tomlinson (son of Mr Gary Mark Tomlinson) who is involved in the daily running of the Who Dares Wins race organised by Who Dares Wins (Alfreton) Ltd

For:

- I) Loss of income from sales of the DVD “Who Knows Wins”, and
- II) Damages as a result of the unauthorised use by Mr Gary Tomlinson of my company name (Racing Pigeon International Ltd) logo and designs on the DVD “Who Knows Wins” and
- III) Damages as a result of loss of income and business from the denigration of my name by Mr Gary Tomlinson, Mrs Annette Tomlinson and Mr Robert Tomlinson. As follows:

46. Loss of income from the sale of 400 DVDs titled “Who Knows Wins” that I produced and own the rights to. This was a separate verbal agreement between us whereby we would share the proceeds on a 50-50 basis. It was the first DVD in a series of 4 whereby I would interview Mr Gary Tomlinson in relation to various aspects of pigeon husbandry. The idea for the series, the title, the content, the production, editing, printing and advertising all

belong to me. Mr Tomlinson had not produced any DVDs prior to our relationship. The DVD was retailing at £25 each and Mr Tomlinson had 400 copies in his possession. In April 2020 he told me that I no longer owned any rights to the DVD and that I own the online link that we were giving away for free to holders of the DVD. There is an amount of £10,000 that he retained further to these initial sales. Based on his Facebook post in May 2020, where he stated there were only a few DVDs left, I believe that by now he sold them all, thus making sales of at least £10,000. Mr Tomlinson is aware that he does not own the rights to the DVD as admitted in an email dated 13 June 2020 to the RPRA (as part of our mediation discussion). I ask the Courts for a judgment against Mr Gary Mark Tomlinson, for an amount of £5,000 which equates to my 50% share of the original sale. The DVD has my company logo on the cover and throughout the footage. **<Annex 34 - post on Facebook about the sale, advert in the BHW in December 2021 with the DVD, emails to RPRA admitting he does not own the rights to the DVD>**

47. I ask the Courts for a judgment against Mr Gary Mark Tomlinson for an amount of £50,000 to provide him with transfer of my rights to him to enable him to benefit exclusively from any future sales of the “Who Knows Wins” DVD. Mr Tomlinson has had other copies printed and he continues to sell these as evidenced in two recent advertisements in the British Homing World (BHW) in December 2021 and January 2022. My company name Racing Pigeon International and logo are clearly visible on the cover. I believe that it is fair that Mr Tomlinson continues to advertise and sell these DVDs as this would benefit the wider pigeon community. Therefore I ask the Courts for a judgment for an amount of £50,000 to be awarded to me in return to my passing on all rights to Mr Tomlinson (which includes the right to use the photos I have taken, design of the DVD cover sleeve and DVD content) and

thus, not having any future claims to any earnings he is making from the sale of the DVD “Who Knows Wins”. In addition, for any copies from the date of this judgment, my company name “Racing Pigeon International” and logo to be removed from the DVDs. Any association between me and/or my company, Racing Pigeon International, and Mr Gary Tomlinson to be removed from any DVDs that he advertises and sells. I believe the amount is a modest sum based on the following:

- A. The original idea belongs to me. Mr Tomlinson had not done any such DVDs prior to my suggesting it. Had it not been for me to suggest, record and produce this DVD, Mr Tomlinson would have never done it. My suggestion helped him benefit greatly financially now and for years to come;
- B. Mr Tomlinson stated in a Facebook post on 24 May 2020 that the DVD was very popular with the pigeon fanciers, stating that: *“Fanciers are saying they have never had their birds fly so hard or in such great condition using our system, nothing has been left out, only a few DVDs remaining <...>”*. In another post in December 2020 he stated that the Who Knows Wins DVD *“has taken total novices from winning nothing to topping the Federations and more, some taking 8 positions in the first 10 from 4,000 birds”*.
- C. During his live Facebook show on 16 November 2020 Mr Tomlinson stated that he: *“sold 110 copies of the DVD in one week-end alone”*, so I believe he has sold more than the initial 400 copies.

Had it not been for me to propose and make this idea happen, Mr Tomlinson would have never realised financially on his knowledge at this level. Thus I believe £50,000 is a modest amount based on his sales and future potential sales. I will remove any copies, online links and any other resources I have on full receipt of the payment. **<Annex 35 - Mr Tomlinson’s Facebook post with the claim, DVD adverts in BHW**

December 2021 and January 2022, Facebook posts throughout 2020 and 2021 using my company name through advertising his DVD, Video transcript and link to show stating that he sold 110 DVDs in one week-end alone>. *NB: the banner in the background of this video is not the one the Claimant claims became synonymous with his race.*

48. I ask the Courts for a judgment against Mr Gary Tomlinson for damages resulting from Mr Tomlinson selling the “Who Knows Wins” DVD without my permission from April 2020 to date (January 2022). By showing my company name on a DVD that he advertises he associates me and my name with him, which is something that has further damaged my reputation as although I have disassociated myself from him, people questioned my integrity when they saw the DVDs. The sum to be determined by the Courts as deemed fair, based on the reputational damage this association has caused me not only amongst pigeon fanciers but also amongst the wider public who believe that I still have a financial interest that I am not disclosing.

49. An unspecified amount for loss of income, work and reputation within the pigeon community and beyond due to the denigration of my name and reputation by Mr Gary Tomlinson, Mrs Annette Tomlinson, Mr Robert Tomlinson, jointly as WDW Race and individually. In all his Facebook live shows, Mr Gary Tomlinson refers to Mrs Anette Tomlinson and Mr Robert Tomlinson as one family the “*Who Dares Wins family*” as quoted by Mr Gary Tomlinson. Therefore his words, comments and opinions in his show represent them as well (as per evidence attached throughout this counterclaim statement). In addition, Mr Gary Tomlinson’s Facebook profile is also showing Mrs Annette Tomlinson’s name as she hasn’t got an individual profile. Therefore Mr Gary Tomlinson’s comments on Facebook also belong to Mrs Annette Tomlinson. Although I estimate my losses at

circa £350,000 (based on income for 5 years alone), I would welcome the Courts' guidance in this matter. As I stated in my paragraph 38 above, the pigeon sport community in the UK is close-knit and their false allegations against me and continuous online (and offline) denigration of my name have heavily affected my reputation and my business:

- A) I stopped broadcasting my weekly show due to continued abuse received since April 2020 during my live shows from their supporters. I stated earlier in this statement at paragraph 4 that Mr Gary Tomlinson contacted me as a result of the show and that I received further work as a result of it. This show was a way of me promoting my work and attracting new customers. Stopping this show resulted in not being able to attract any further work
- B) I also lost business from my website rpiauctions.com due to Mr Gary Tomlinson's continuing false allegations that I am a hacker and that I steal people's details if they go on my websites or click on links I provide. For example, in a public post on Facebook in May 2020 he stated that if people click on a link I provided on Youtube, their details will be hacked by me and so, to stay away from every website or online activity that I post about, including my auctions website. He stated on other occasions that I would hack into people's computers if they used my auction site. Through his direct actions Mr Gary Tomlinson made it impossible for me to realise an income from this website. I was planning for this website to be a platform where individual pigeon fanciers could sell their birds and also to host auctions from races from the UK and Europe. I intended to charge a percentage of between 5% and 10% of each sale. A modest projection for 5 years taking into consideration sales based on WDW race auction in 2021, would equate to circa £40,000 (£8,000 per annum) from one auction alone.

C) I lost income from an agreement with a provider of natural supplements from Poland. I met the Polish provider at a show abroad and I approached him with a view of distributing his products in the UK. I introduced Mr Gary Tomlinson to him as a way of Mr Gary Tomlinson using the products within the WDW race. The Polish owner of the natural supplements distanced himself from me as a result of Mr Gary Tomlinson's denigration of my name. Who Dares Wins (Alfreton) Ltd is now the sole distributor of the products in the UK and he is selling these products on his website: <https://whodareswinsrace.com/shop/>. I estimate my losses at at circa £10,000 per annum from the supplements. <**Annex 36 - Facebook main page for Mr Gary Tomlinson, posts on Facebook about getting people's details, text conversation with the owner of supplements, photo of products on WDW website, abuse from Mr Tomlinson's supporters, >.**

50. The continuous defamatory campaign carried out by Mr Gary Tomlinson (and Mrs Annette Tomlinson through association of the Facebook account) (with the latest being in December 2021) has resulted in immense stress to me (and my family), and loss of credibility amongst some of the pigeon fanciers who accept their false statements as facts. They also encouraged and endorsed others in calling me other derogatory names on and off line. I received insults, slurs and death threats from people I never met, all as a result of their false claims. I don't know any of these people. Never met them in my life. Yet, encouraged and supported by Mr Gary Tomlinson, these individuals insulted me, threatened me and followed his example in denigrating my name and reputation. Some examples are below and I have enclosed evidence to support these:

A) Mr Gary Tomlinson has accused me numerous times of hacking into his computer which has encouraged others to say the same, without having

any evidence of this. The latest false allegations were made in a live broadcast video on 4 November 2021 inciting people into hating me because I hacked into their auction site and 40 people lost money because of this. Mr Gary Tomlinson re-iterated three times within the space of less than one minute, that 40 people lost money. He even stated that “these people won’t forget that”. In this video, Mr Gary Tomlinson states that he believes that the attack was against him, Mrs Annette Tomlinson and Mr Robert Tomlinson as one. I believe his words are very powerful and damaging as it is very difficult to demonstrate to a public that believes him and does not understand how internet works that I couldn’t do what he’s accusing me of and that I have not got the skills it takes. I do not hack in anyone’s computers, I am not a hacker. I have no skills to carry out any hacking. Mr Gary Tomlinson’s actions against me are targeted and intended to causing me immense harm. Mr Tomlinson stated in the same video (see **Annex 21**) that he has “*no clue about the internet*”, yet he can advise that his website got hacked. He further falsely stated that he could prove that and that he complained to the RPRA about it. Both allegations are untrue and he knows they are untrue. Yet the public do not know he is being deceitful. **<Annex 37 - Facebook posts, transcript of show and link to show>.** *NB: the banner in the background of this video is not the one the Claimant claims became synonymous with his race.*

B) Mr Gary Tomlinson called me a con man and a fraudster in posts on Facebook and alleged that I wanted people's details to defraud them. At some point he simply referred to me as the “con man”. He copied posts from my Facebook account from 2016 when I went bankrupt (which he knew about as I am very open about my life) in which I stated that I was very low as I received threats to have my dog killed. Mr Kevin Frail

(mentioned in this statement at paragraph 45 (B)) commented on the Claimant's post and offered to join in **<Annex 38 - Facebook posts about denigration of my name and Kevin Frail's offer to join in>**.

C) Mr Gary Tomlinson encouraged others in their abuse towards me. In April 2020, a woman I never met, stated on a Facebook post that I tried to take her *"family down through lies and blackmail"*. I never met this person in my life, I do not know who she is. I have no idea what she is talking about. Yet, Mr Tomlinson stated in reply, *"Could not have put it any better"*, endorsing her claims. In May 2020 I received a threatening call from a withheld number who threatened my life and my family if I didn't stop talking about Mr Tomlinson. The caller stated that she can identify me, my son and my girlfriend anywhere. My girlfriend and son listened to the call. My girlfriend blacked out and fainted with a suspected mini stroke on 11 May 2020 due to all the stress caused by Mr Tomlinson. I reported this to the police. **<Annex 39 - Facebook posts, text from man who saved my girlfriend>**.

D) After Mr Robert Tomlinson got charged with assault against my brother, Mr Gary Tomlinson falsely stated on social media that it was all fixed as my dad used to be a police officer. **<Annex 40 - transcript of Facebook show and link to the show>**. *NB: the banner in the background of this video is not the one the Claimant claims became synonymous with his race.*

E) Mr Robert Tomlinson regularly posts false allegations against me on social media, with the latest one on or around 14 December 2021 alleging that I am attempting to defraud people through a life insurance scam . This is an example of targeted actions intended to harm me as he has no

evidence and he knows his statement is untrue. **<Annex 41 - photo of Facebook post by Rob Tomlinson>.**

F) On 11 December 2021 (last month), Mr Gary Tomlinson contacted a total stranger on Facebook, someone who had a complaint against one of my employees 7 years ago (2014). This person is not linked to the pigeon sport, to me or Mr Tomlinson. I do not know this person. Mr Gary Tomlinson messaged this person directly and alleged that I “*am still scamming*” and that I tried to “*rip them off and that he had three years of hell*” because of me. Although all these allegations are false (including the fact that Mr Tomlinson hasn’t known me for 3 years), the other person does not know this. Therefore Mr Tomlinson’s action incites hate, it is malicious and targeted. It demonstrates that the Mr Tomlinson purposely searched for someone on social media to continue to cause me harm. **<Annex 42 - photo of Facebook communication between Mr Tomlinson and third party>.**

G) There are people within Mr Gary Tomlinson’s circle who call me derogatory names as per a public Facebook comment in November 2021 (two months ago) on one of Mr Tomlinson’s posts. I was called the “*child porn boy*”, a comment that literally made me sick. I do not know the person who made the comment, never met him in my life. The post was neither denied nor deleted by Mr Tomlinson, demonstrating endorsement of the comment. I complained to the RPRA and there is a hearing about my complaint on 19 February 2022. I do not know this person. The thing he is accusing me is absolutely abhorrent. **<Annex 43 - copy of Facebook post>.**

51. Mr Gary Tomlinson even directed his attacks towards my 16 year old son, calling him a “*con man like his dad*” and other names. He addressed to my son in a direct and threatening way in his live video in April 2020 saying: “ *the cyber geek Zandie got his phone straight out and he started filming everything. which I’ve seen the video, Zandie, you think that’s constructive do ya?*”. My son feels intimidated by Mr Tomlinson (who is an ex-professional boxer) and does not want to be in proximity of Mr Tomlinson. **<Annex 40 - transcript of Facebook show and link to the video>. NB: the banner in the background of this video is not the one the Claimant claims became synonymous with his race.**

52. I ask the Courts for a judgment for damages against Mr Gary Mark Tomlinson, Mrs Annette Tomlinson, Mr Robert Tomlinson and Who Dares Wins (Alfreton) Ltd (including the trading name of WDW Auctions) jointly and severally for an amount it considers fair based on my statements and evidence provided in relation to loss of business, income and reputation as a direct result of their actions and defamation.

53. Costs to bring my defence to the Courts.

INJUNCTION

54. I wish to ask the Courts for an injunction restraining the Claimant, WDW (Alfreton) Ltd, Mr Gary Tomlinson, Mrs Annette Tomlinson, Mr Robert Tomlinson and anyone connected in any way to the running of the WDW race and lofts, WDW auction website, employees or/and contractors for Mr Gary Tomlinson and/or Who Dares Wins (Alfreton) Ltd and any other businesses in which Mr Gary Tomlinson is a Director or ultimate beneficial

owner from using any of my work. I want any association between the work I have created, my name and/or my company name Racing Pigeon International Ltd, to be removed from Mr Gary Tomlinson, WDW and/or their associates:

- A) The W D W Website in its current format at www.whodareswinsrace.com. to be taken offline with immediate effect of the judgment and not to be allowed to be published in its current format again;
- B) Logo for the Who Dares Wins race. The injunction to be applied for the use of the logo I designed that appears on any website on the internet, advertising (online or offline), any other form of media, merchandise, stationery, and any other sources that would display the WDW logo as designed by me.
- C) All Banners and leaflets that I designed as part of our contract for the 2019/2020 race (including the updated one Mr Tomlinson copied for the 2022 race). Any association between the banner I have designed and WDW to be removed from any future events, social media posting and/or any other public displays.
- D) All Signage. Any signage that I have designed to be removed with immediate effect of the judgment. The injunction to be applied to the loft, the shop, marketing, advertising and any other places where it may be used.
- E) All Videos that I shot and/or produced for Who Dares Wins lofts, race and any other videos linked to the promotion of the race or the Claimant to be removed from all social media and any websites.
- F) Photos and images that I took and created, including those for the 2019/2020 contract and others taken outside the contract that promote the Who Dares Wins race and/or the Claimant not to be reproduced or published going forward (whether in print or online).

STATEMENT OF TRUTH

I believe that the facts in this Defence Statement are true. I understand that proceedings for contempt of Court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed.....



Date: 28 January 2022

Mr Mark James Lyford as Defendant 1 and 2 in this Claim (IP-2021-000125)