

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

	:	
BASSAM Y. ALGHANIM,	:	
Plaintiff,	:	09 Civ. 8098 (NRB)
v.	:	
KUTAYBA Y. ALGHANIM, OMAR K.	:	SUPPLEMENTAL
ALGHANIM, ALGHANIM INDUSTRIES	:	DECLARATION OF JOHN L.
COMPANY W.L.L., YUSUF AHMED	:	GARDINER IN OPPOSITION
ALGHANIM AND SONS W.L.L., and	:	TO MOTION TO DISMISS
WALEED MOUBARAK,	:	<u>AND/OR STAY ACTION IN</u>
Defendants.	:	<u>FAVOR OF ARBITRATION</u>
	:	

JOHN L. GARDINER, an attorney duly admitted to practice before this Court, declares under penalties of perjury pursuant to 28 U.S.C. §1746 as follows:

1. I am a partner in the law firm of Skadden, Arps, Slate, Meagher & Florn LLP, counsel to Plaintiff Bassam Y. Alghanim (“Bassam” or “Plaintiff”) in this action. I submit this supplemental declaration in further opposition to the motion of defendants Kutayba Y. Alghanim, Omar K. Alghanim (“Omar”) and Waleed Moubarak to dismiss this action in favor of arbitration in order to transmit to the Court additional materials that were recently filed in the English proceedings brought by Bassam against Mr. Timothy Zimmer, Mr. Steven McIntyre and certain companies owned or affiliated with Mr. McIntyre (the “English Proceedings”) for their role in the email hacking scheme.

2. Since the submission of my initial Declaration dated December 18, 2009, which outlined some of the evidence supporting the allegations made in the First Amended Complaint herein, additional evidence has been gathered in the English Proceedings, including

from Mr. Zimmer. As a consequence of this additional evidence gathering, and in accordance with English legal procedure, on May 19, 2010, Bassam served Re-Amended Particulars of Claim (“Amended Particulars”) on the defendants in the English Proceedings to add additional particulars of his claims in that action. (A copy of Plaintiff’s Amended Particulars is attached hereto as Exhibit A.)

Bassam’s Amended Particulars Lay Out Omar's and Waleed Moubarak’s Involvement In the Scheme

3. Among other things, Bassam’s Amended Particulars allege the following new facts concerning the manner in which the email hacking scheme operated:

- (a) By early 2009, Mr. McIntyre or his employees were requesting that Mr. Zimmer provide Bassam’s stolen emails almost every day. Mr. Zimmer initially refused but was subsequently persuaded by the offer of more money. (Exhibit A at para. 19(xii).)
- (b) In or about April or May 2009, Mr. Zimmer and Mr. McIntyre (or one of his companies) agreed that Mr. Zimmer would start supplying Bassam's emails in electronic form (pdfs) instead of hard copy, as had been the case up to then. Mr. Zimmer accordingly uploaded the emails to a newly-created website named www.tpart.info, after which Steve Hulland and Bryan Miller of Cerule Limited printed them out, rescanned them, and then uploaded them to www.jackshome.info. (*Id.*, para. 19(xiv).)
- (c) On September 4, 2009, Waleed Moubarak informed Mr. McIntyre (or one of his companies) that www.jackshome.info and its content were visible on Google. Immediately thereafter, Steve Hulland (acting on behalf of Mr. McIntyre and one of his companies) instructed Mr. Zimmer to remove all of the contents of www.jackshome.info. (*Id.*, para. 19(xvi).)
- (d) Upon discovering that www.jackshome.info was visible on Google, Mr. McIntyre (and his companies) and Mr. Zimmer ceased all use of the website. (*Id.*, para. 19(xviii).)

4. In addition to these new facts, the Amended Particulars detailed a meeting that took place in New York on September 16, 2009 at The Carlyle Hotel involving Omar and Waleed Moubarak.¹ Specifically, as set forth in the Amended Particulars:

[u]pon receipt of [Mr. McIntyre's] explanation as to why the ftp site had become accessible on Google, Omar Alghanim and Waleed Moubarak contacted [Mr. McIntyre] and requested a meeting in New York to discuss the issue in person. This meeting took place at the Carlyle Hotel in New York on 16th September 2009 and was attended by Omar Alghanim, Waleed Moubarak, Steve Hulland and [Mr. Zimmer]. ([Mr. McIntyre] did not attend but paid Steve Hulland and [Mr. Zimmer] to travel to New York and attend in his place).

(Id., para. 19 (xx).)

5. The Amended Particulars further state:

At that meeting, Omar Alghanim and Waleed Moubarak (a) rejected the explanation that www.jackshome.info had become accessible on Google through spyware on a receiving machine, (b) requested that access to [Bassam's] email accounts be regained, (c) requested that access be obtained to the private email accounts of Waleed Alghanim (a person close to [Bassam]) for which purpose his yahoo, gmail and msn email addresses were provided to Steve Hulland and [Mr. Zimmer], and (d) requested that access be obtained to the entire email system of a company called Antar Investments (on the basis that it was suspected [Bassam] had started using an email address at that company). Specifically, in relation to (d), [Mr. Zimmer] was instructed to configure the equipment that would be needed to infiltrate the company's IT network.

(Id.)

¹ The possibility that such a meeting had occurred was referenced in my initial declaration at paragraphs 52-53. Further evidence concerning the meeting has since been obtained.

Mr. McIntyre's Amended Defense Confirms Omar's and Waleed Moubarak's Involvement In the Scheme

6. Just last week, on June 2, 2010, in response to the Amended Particulars, Mr. McIntyre submitted an Amended Defence, a copy of which is attached hereto as Exhibit B. In that Amended Defence, Mr. McIntyre continues to admit that the fruits of Mr. Zimmer's unlawful activities (which Mr. Zimmer concedes comprised emails stolen from Bassam's email accounts) were made available for review by Omar and Waleed Moubarak, both in person and through electronic means.

7. Thus, although Mr. McIntyre tries to defend his own position by asserting that neither he nor any of his employees ever read Mr. Zimmer's work product (Mr. McIntyre's "see no evil defense"), he nevertheless re-confirms that (i) he personally delivered the documents obtained from Mr. Zimmer to Omar, (ii) the password-protected website created by Mr. Zimmer was accessed by Omar and Waleed Moubarak, and (iii) he facilitated the posting of documents obtained by Mr. Zimmer on the www.jackshome.info website. (See Exhibit B, ¶¶ 16(ix), 16(x), 16(xi).)

8. Equally significantly, Mr. McIntyre also admits in his Amended Defence virtually all of the new allegations set forth in paragraphs 3 through 5 above. Specifically, Mr. McIntyre admits:

- (a) The mechanism that was used for transferring Mr. Zimmer's work product (i.e. Bassam's stolen emails) in electronic format was that Mr. Zimmer uploaded documents (Bassam's emails) to an ftp site www.tpart.info and they were then downloaded from there by Cerule Limited, printed, rescanned and uploaded to the www.jackshome.info ftp site. (Id., para. 16(xiv).)
- (b) That on September 4, 2009, Waleed Moubarak informed Mr. McIntyre (or one of his companies) that www.jackshome.info and its content were visible on Google

and that immediately thereafter, Steve Hulland instructed Mr. Zimmer to remove all of the contents of www.jackshome.info. (*Id.*, para. 16(xvi).)²

- (c) That -- notwithstanding his claim that he thought the documents being posted to www.jackshome.info were all publicly-available information -- he, his companies, and Mr. Zimmer all ceased using the website "once it had been discovered that it had been indexed by Google." (*Id.*, para. 16(xvii).)

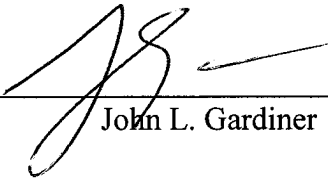
9. Even more significantly, with respect to the allegations concerning the meeting held at The Carlyle Hotel in New York, Mr. McIntyre admits that such a meeting occurred in New York with Omar and Waleed Moubarak "after the alleged hacking had been discovered," and that Mr. Zimmer and Mr. Hulland attended. The only detail contested by Mr. McIntyre is his assertion that he did not pay for Mr. Zimmer and Mr. Hulland (who Mr. McIntyre admits is an employee of his company, Cerule Limited) to attend the meeting but rather charged the costs "to the client". (In other words, Omar paid for Mr. Zimmer and Mr. Hulland to attend the meeting.) (*Id.*, paras. 16(i), 16(xx).)

10. In an apparent effort to deflect the weight of these allegations, Mr. McIntyre asserts that Mr. Hulland "was engaged on the telephone" during significant portions of the meeting. Notably, Mr. McIntyre does not deny that Mr. Zimmer was asked by Omar and Waleed Moubarak to regain access to Bassam's email accounts and to gain access to Waleed Alghanim's email accounts. He denies only that Mr. Hulland was asked to do these things. (*Id.*, para. 16(xx).) (Attached as Exhibit C is a chart excerpting certain Amended Particulars and the response by Mr. McIntyre to these allegations.)

² The only portion of Plaintiff's allegation in this respect that Mr. McIntyre disputes is that Mr. Hulland's instructions to Mr. Zimmer to remove the contents of www.jackshome.info was given on behalf of Mr. McIntyre. (*Id.*)

11. In short, Mr. McIntyre's defense confirms the involvement of Omar and Waleed Moubarak in the email hacking scheme and leaves no doubt that they were the ringleaders of the scheme.

Dated: June 11, 2010
New York, New York



John L. Gardiner

Exhibit A

Re-Amended Particulars of Claim under CPR rule 17.1(2)(a) dated 19 May 2010

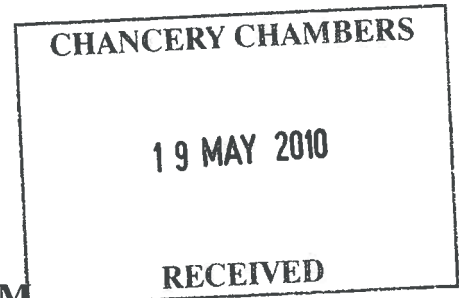
Case No.HC09C03426

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

INTELLECTUAL PROPERTY

B E T W E E N

BASSAM ALGHANIM



Claimant

- and -

(1) STEVEN MCINTYRE
(2) VERIFY LIMITED
(3) CERULE LIMITED
(4) BLUE CRM LIMITED
(5) TIMOTHY ZIMMER

Defendants

RE-AMENDED PARTICULARS OF CLAIM

The Parties

1. The Claimant is a Kuwaiti citizen resident at 1005 Bel Air Court, Los Angeles, CA 90077, USA.
2. The Claimant brings these proceedings against the Defendants in respect of infringement of copyright and breach of confidence, and conspiracy by unlawful means.

Background to the Claim

3. The Claimant and his brother, Kutayba Alghanim, each retain a 50% interest in a number of businesses and properties. In 2008, the Claimant's brother began to assert that he owned more than 50% of such businesses and properties. The said businesses and properties include:

- (i) A very substantial interest in the second largest bank in Kuwait, Gulf Bank, which is understood to have an asset value of over US \$1.5 billion dollars;
 - (ii) A substantial shareholding in Alghanim Industries and Yusuf Ahmed Alghanim & Sons W.L.L ("YAAS") which, together with certain other corporations jointly owned by the Claimant and his brother, generate revenues in excess of US \$2 billion per year;
 - (iii) A family investment office based in New York which manages approximately US \$450 million of joint assets;
 - (iv) Multiple homes throughout the world, including in New York, London, Los Angeles, Montreal, Kuwait, Lebanon and Colorado; and
 - (v) An art collection whose value is estimated to be in excess of US \$100 million.
4. In March 2008, the Claimant and his brother agreed to divide their assets and go their separate ways. However, since March 2008, the Claimant and his brother have continued to disagree about the division of their properties and businesses. In this regard, the Claimant has engaged Skadden, Arps, Slate, Meagher and Flom ("Skadden"), a US law firm, as well as lawyers in Kuwait (the Osaimi Group and Abdullah al Ayoub).
5. The said lawyers have been providing advice to the Claimant (privilege in the contents of which is not hereby waived) in relation to the dispute, both in terms of: (i) strategy arising out of and in connection with the dispute; and (ii) Kutayba Alghanim's material breach of the express terms of certain agreements between the Claimant and his brother and engagement in self-dealing transactions with respect to the brothers' joint assets (as a result of which the Claimant has suffered substantial losses and irreparable harm).
6. For the last sixteen months, the Claimant has lived both in Kuwait and Los Angeles. During that time, and in each location, he has used email as his principal means of communication. For that purpose, the Claimant had two private AOL email addresses. Both of the email accounts associated with these email addresses were password-protected, and nobody apart from the Claimant (and as it turned out the Defendants, see below) was aware of either of the passwords; and nor had the Claimant authorised anybody else to use or access these email accounts (save for the Claimant's assistant, Wassim Hachem in respect of one of the AOL email accounts).
7. The Claimant used these email addresses to conduct certain of his business activities and to correspond with his legal advisers in the United States (Skadden) and Kuwait (Abdullah al Ayoub and the Osaimi Group). He did so in the reasonable expectation that all of his communications were private and confidential. He was regularly receiving legal advice in relation to the dispute set out above as well as other legal matters, and that advice impacted on the instructions given to his legal advisers.
8. Furthermore, the Claimant used the email addresses to transmit and receive private and confidential documents relating to his financial affairs, as well as medical and health issues and to carry on private and personal correspondence with friends and family.

Again, he did so in the reasonable expectation that such correspondence would remain private to himself.

9. In August 2009, the Claimant was informed by a third party that the third party had found examples of the Claimant's private and confidential documents being returned by the search engine Google during a routine internet search of individuals affiliated with Gulf Bank. The documents had been posted on a website with the domain name www.jackshome.info, to which it is believed that file transfer protocol ("ftp") access had been designed to be password-protected, but had unintentionally turned out to be accessible to Google searches. As further explained below, it has since transpired that the publication of material from www.jackshome.info on Google was an accidental side effect of either a flaw in the design and/or operation of the ftp access or the transmission of documents by the Defendants to Omar Alghanim, and/or Waleed Moubarak (an advisor to Omar Alghanim and Kutayba Alghanim and an employee of Alghanim Industries and YAAS) and/or Kutayba Alghanim.
10. Following this discovery, the Claimant's advisors immediately accessed www.jackshome.info through the internet using Google searches and reviewed those documents belonging to the Claimant that were still available on the site at the time (all of which were confidential to the Claimant). That review identified the following categories of confidential and/or copyright documents (privilege in the contents of which is not hereby waived):
 - (i) Legally privileged documents containing legal advice from either Skadden and/or the Osaimi Group and/or Abdullah al Ayoub in respect of various matters, including but not limited to the ongoing dispute in Kuwait;
 - (ii) Confidential financial information relating to (a) the Claimant's personal finances, and (b) companies with which the Claimant is associated;
 - (iii) Confidential communications relating to the Claimant's employees;
 - (iv) Communications of a confidential medical nature; and
 - (v) Private and personal communications.

The documents, being privileged and/or highly confidential in nature, and having originally been obtained by the Defendants in any event, will not be made available for inspection by the Defendants.

11. Based on investigations carried out by Claimant's advisors, a 'who is' inquiry of www.jackshome.info revealed the name of a purported person called Jack Jones of 25 Church Road, Rustington, Bognor BN16 3NN as registrant, and an email address of harryj665@yahoo.co.uk, which email address subsequently turned out to be under the control of the Fifth Defendant (see below). The address of 25 Church Road, Rustington turned out to be a false address, belonging in actual fact to a firm of estate agents in Rustington. The name of Jack Jones was also false. The said website was hosted by a company called GX Networks Limited ("GX").

12. On 12th August 2009, the Claimant changed the passwords of the two email accounts to prevent further access. This immediately caused the Fifth Defendant to attempt to ascertain the new passwords (see below) for the purposes of continuing the illegal hacking exercise.

Procedural history

13. Following an application made by the Claimant to the Court on 28th August 2009, Nichol J. granted an order that GX should disclose contact information for the owner of the website www.jackshome.info together with (i) FTP server logs showing times, dates and IP addresses from which information was uploaded to the website; and (ii) the times, dates and IP addresses from which the website had been viewed. The information provided by GX pursuant to the said order disclosed that: (i) the Fifth Defendant was the account holder for the said website; (ii) the IP address of 213.123.227.80 had been used to upload the confidential documents to the said website; and (iii) that certain IP addresses, including those associated with the Claimant's brother's premises in New York, had downloaded some of the confidential documents by ftp.
14. The IP address 213.123.227.80 is administered by British Telecommunications plc ("BT"). Following an application made by the Claimant to the Court on 7th September 2009, Keith J. made an order that BT should disclose the identity of the persons associated with the said IP address. Pursuant to the said order, BT disclosed that the account holder was the First and/or Second and/or Third Defendants and the relevant premises were 6 Malthouse Lane, Reading RG1 7JA. It follows that a person or persons at those premises were responsible for uploading confidential documents of the Claimant onto a server in the United Kingdom, for onward transmission to the Claimant's brother (and/or those acting on his behalf). The fact of the uploading from the premises of the First, Second and/or Third Defendants was later confirmed by the Affidavit of the First Defendant and verbally by the Fifth Defendant.¹
15. Further, information obtained from AOL in the US disclosed that the following IP addresses, namely 86.148.158.41, 81.153.157.31, 86.144.56.103, 86.136.121.190 and 81.153.157.238, had accessed the Claimant's email accounts from at least May 2009 until August 2009, and had attempted to do so after the said change of passwords referred to in paragraph 12 above. The said IP addresses are administered by BT. Following an application made by the Claimant to the Court on 15th September 2009, Morgan J. made an order that BT should disclose the identity of the persons associated with the said IP addresses. Pursuant to the said order, BT disclosed that the account holder at the relevant time was the Fifth Defendant, from his home premises at 17 Glendevon Road, Woodley, Reading, RG5 4PJ.
16. Another IP address disclosed by AOL as having accessed the email account was 84.12.61.188, which is administered by Vialtus Solutions. Following an application made by the Claimant to the Court on 16th September 2009, Morgan J. made an order that Vialtus should disclose the identity of the persons associated with this IP address.

¹ As recorded in the Witness Statement of Gulnaar Zafar dated 1 October 2009.

Pursuant to the said order, BT disclosed that the account holder was the Fourth Defendant, a company of which records show the First Defendant is a shareholder and for whom the Fifth Defendant worked between July 2007 and August 2009.

17. Based on the information then available to the Claimant, an application was made on 22nd September 2009 for search orders against the First to Third Defendants, the Fourth Defendant and the Fifth Defendant. Pursuant to those search orders, which were made by Briggs J., the Claimant has recovered evidence of wrongdoing (which is further referred to below) and affidavits have been sworn by the First Defendant on behalf of himself and the Second and Third Defendants, by Mr Parry on behalf of the Fourth Defendant and by the Fifth Defendant. Insofar as the affidavits comprise admissions by the Defendants, those admissions are relied upon for their full terms and effect. Save as aforesaid, the contents of the affidavits are not admitted.
18. Further, in the course of the electronic searches of the Defendants' computers and other equipment (and in accordance with the orders of Briggs J.), the Claimant sought confirmation from the Defendants in respect of each item of evidence that the Claimant considered to be relevant.

Evidence of wrongdoing against the Claimant

19. In general terms, based on the evidence retrieved from (or pursuant to) the search orders and the information provided in the above referenced affidavits and additional information received from the Fifth Defendant, it appears clear that:
 - (i) the First, Second and/or Third Defendant were instructed and/or paid by Omar Alghanim and/or Waleed Moubarak and/or Kutayba Alghanim or the companies they presently control, namely Alghanim Industries and YAAS, to hack into the Claimant's private emails. This is evidenced by the fact that Sarah Richards, a personal assistant working for Kutayba and Omar Alghanim who was employed in London, emailed Omar and Waleed Moubarak regarding invoicing by the First Defendant for miscellaneous payments on 12th March 2009 (the email also refers to previous invoices and was found on Steve Hullah's computer from the Malthouse Lane premises; Steve Hullah is an employee of the Third Defendant). The fact that the First and Third Defendants were directly instructed with respect to the hacking by Omar Alghanim and/or Waleed Moubarak and/or Kutayba Alghanim was confirmed verbally by the Fifth Defendant² and is in any event conclusively established by the Fifth Defendant's meeting, together with Steve Hullah, with Omar Alghanim and Waleed Moubarak at the Carlyle Hotel, New York, on 16th September 2009 in connection with the hacking and the accidental exposure of www.jackshome.info to Google (see below). It is believed that the project of hacking into the Claimant's email accounts was referred to as "IT Security" and this is corroborated by invoices located at the 6 Malthouse Lane premises and attached to the First Defendant's affidavit;

² As recorded in the Witness Statement of Gulnaar Zafar dated 1 October 2009.

- (ii) in or about June 2008, and while acting as a consultant of the Fourth Defendant, and in furtherance of the instructions received from Omar Alghanim and/or Waleed Moubarak and/or Kutayba Alghanim, the Fifth Defendant was instructed by the First and Third Defendants to hack into the Claimant's berryhoney@aol.com account (the First Defendant's initial invitation to the Fifth Defendant to discuss the proposed hacking occurred by an email dated 15th June 2008). Once access to this account had been obtained in July 2008, the Fifth Defendant was then instructed by the First and Third Defendants to check in the account for specific names that regularly appeared (two such names being "Sathian" and "Gori"). Shortly thereafter, the Fifth Defendant was instructed to print off all the material that was available in the account and provide it to the First and Third Defendants;
- (iii) the precise respective role of the Second and Fourth Defendants in the matters complained of are not presently known, pending disclosure and requests for further information and trial. It is understood that the First Defendant had previously acted by the Second Defendant, that the First Defendant acts by a number of companies, and hence it will be alleged that the Second Defendant is at least liable as a joint tortfeasor with the First and Third Defendants;
- (iv) similarly, records show that the First Defendant is a shareholder and former director of the Fourth Defendant. The Claimant's advisors' investigation shows that correspondence regarding the First Defendant's initial invitation to the Fifth Defendant to discuss the proposed hacking occurred by email of the Fourth Defendant (i.e. from the First Defendant's email address at the Fourth Defendant to the Fifth Defendant's email address at the Fourth Defendant);
- (v) pursuant to the plan hatched between the First and Fifth Defendants, and in furtherance of the instructions referred to above, the Fifth Defendant unlawfully obtained the Claimant's AOL passwords from an organisation called the Invisible Hacking Group, upon payment of the sum of £265 via Western Union to an address in China (the email regarding payment instructions is dated 12th August 2008 and was recovered by the Claimant's advisors from one of the Fifth Defendant's personal email accounts);
- (vi) using the said passwords, the Fifth Defendant performed hacking of the Claimant's personal and confidential AOL email accounts continuously from July 2008 until August 2009, and provided material obtained from these accounts to the First, Second and/or Third Defendants on a regular basis. The Fifth Defendant attempted further hacking from 12th August 2009 until September 2009 after the passwords for the email accounts were changed. Between January 2009 and August 2009, the Fifth Defendant was an employee of the Fourth Defendant. He used at least one company desktop of the Fourth Defendant and a company laptop of the Fourth Defendant to perform the hacking complained of, and performed some of the hacking during office hours while at the premises of the Fourth Defendant. Indeed, the vast majority of the hacking appears to have taken place from the Fourth Defendant's premises;

- (vii) in addition to using the boardroom company desktop at the Fourth Defendant and one of the Fourth Defendant's laptops, the Fifth Defendant also used his home computer to perform the hacking complained of, as well as a further laptop found at the premises of the First, Second and/or Third Defendants;
- (viii) according to the affidavit of the Fifth Defendant (and additional information received from him), on each occasion that the Fifth Defendant hacked into the Claimant's email accounts prior to May 2009, he printed off hard copies of various emails from the Claimant's accounts. He then supplied these documents to the Third Defendant by personally delivering them to the First Defendant, Mr Hulland or Mr Miller at the Third Defendant's offices; from time to time the documents were picked up from him by Mr Hulland or Mr Miller;
- (ix) according to the affidavit of the First Defendant, in July 2008 on one occasion the First Defendant, and on another occasion Steve Hulland, an employee of the Third Defendant, hand delivered certain documents received from the Fifth Defendant to Omar Alghanim (on a private yacht belonging either to Omar or Kutayba Alghanim);
- (x) on 24 and 26 July 2008, on the instructions of the First Defendant, the Fifth Defendant registered and paid for the domain name www.jackshome.info and set up an ftp site at that address to which the documents unlawfully obtained from the Claimant's email accounts could be uploaded. The Fifth Defendant supplied the password and log in details for the ftp site to the First, Second and/or Third Defendants;
- (xi) following the creation of the above ftp site, a person or persons associated with the First, Second and/or Third Defendants, probably Mr Miller and/or Mr Hulland (although the First Defendant admits processing at least one batch of the materials received from the Fifth Defendant himself), uploaded the documents received from the Fifth Defendant to the site. The investigation conducted by the Claimant's advisors to date, confirmed by information received from the Fifth Defendant, demonstrates that the uploaded documents were then downloaded by Omar Alghanim and/or Waleed Moubarak and/or Kutayba Alghanim and/or individuals acting on their behalf in the United States as well as in Lebanon and Kuwait, for which purpose the First and/or Second and/or Third Defendants must have supplied the same ftp password and log in details which had been supplied to them by the Fifth Defendant as aforesaid. The First Defendant swears in his affidavit that Omar Alghanim and Waleed Moubarak were given access to the ftp site;
- (xii) by early 2009, the First, Second and/or Third Defendants were requesting that the Fifth Defendant provide the Claimant's emails almost every day. The Fifth Defendant initially refused but was subsequently persuaded by the offer of more money;
- (xiii) on 1 May 2009, the Fifth Defendant sent an email to Bryan Miller and Steve Hulland circulating new password and login details for www.jackshome.info. This

email stated: *"Hi Bryan. Sorted. New address: <ftp://jackshome.info> UserName: <ftp@jackshome.info>. Password: [aceshigh11](#). All working"*. Based upon the browser history from the Third Defendant's computer of which Mr Miller had the use, it would appear that within 6 days of receiving the new password and login details from the Fifth Defendant, Mr Miller continued to access the ftp site for the purpose of uploading the confidential emails provided by the Fifth Defendant. It is inferred for the reasons stated above that the new password and login details were provided to Omar Alghanim and Waleed Moubarak by the First and/or Second and/or Third Defendants;

- (xiv) in or about April or May 2009, it was agreed between the Fifth Defendant and the First, Second and/or Third Defendants that the Fifth Defendant would start supplying the Claimant's emails in electronic form (pdfs) rather than hard copy. Specifically, the Fifth Defendant uploaded the documents to an additional ftp site at www.tpart.info for download by Steve Hulland and Bryan Miller of the Third Defendant to enable the information to be uploaded directly to www.jackshome.info by way of ftp. Mr Hulland and Mr Miller continued to print out those pdfs, rescan them, and upload them to www.jackshome.info;
- (xv) after the Claimant changed his passwords on discovering the existence of the ftp site in August 2009, the Fifth Defendant (at the instigation of the First Defendant) sent urgent emails on 12th and 17th August 2009 to the Invisible Hacking Group requesting that they find out the new passwords and offering more money than had been paid the last time. In fact, in a follow up email dated 31st August 2009 (again at the instigation of the First Defendant), he offered to pay £500 per account (these emails were recovered from the laptop used by the Fifth Defendant and found at the premises of the First, Second and/or Third Defendants);
- (xvi) when choosing the method of transmission of documents to Omar Alghanim and/or Waleed Moubarak and/or Kutayba Alghanim via ftp through www.jackshome.info, the Defendants appear to have overlooked a flaw in the design and/or operation of the ftp access that developed with use of the website so that the website was unintentionally accessible to be indexed by the Google search engine. On 4th September 2009, Waleed Moubarak informed the First, Second and/or Third Defendants that the ftp site and its content were visible on Google. Immediately thereafter, the Fifth Defendant was instructed by Steve Hulland (acting on behalf of the First Defendant and the Third Defendant) to remove all the contents from the ftp site;
- (xvii) such instruction is evidenced by an email dated 5th September 2009 from the Fifth Defendant to Steve Hulland, in which the Fifth Defendant stated that *"I have now taken as much action as possible in getting everything removed from the web and Google... all traces should be gone in the next 24 hours"*. In the same email, the Fifth Defendant explained that *"the reason the info appeared on the web was because someone had initiated the Google analytics in the control panel... only one site in question which was www.jackshome.info, this is the site that is for the client to download, not the site where I send info to, that is [tpart.info](http://www.tpart.info) and I have*

checked it and it is all ok, no Google analytics running... the only person I know that has accessed the control panel regularly and called several times about files they had uploaded via the control panel... was Bryan [Miller]”;

- (xviii) upon discovering that the ftp site at www.jackshome.info had been indexed by the Google search engine, the Defendants ceased their activity on the site (as evidenced by internet history records recovered from (a) the laptop used by the Fifth Defendant and found at the premises of the First, Second and/or Third Defendants, (b) Bryan Miller's computer at the same premises, and (c) information received from the Fifth Defendant);
- (xix) notwithstanding the Fifth Defendant's explanation as to the real cause behind the discovery of the ftp site on Google, the First Defendant instructed him to draft a report to be sent to Omar Alghanim and Waleed Moubarak which suggested that the error was in fact their fault rather than that of the First, Second and/or Third Defendants. The Fifth Defendant prepared and sent this report to the First Defendant in which he attempted to blame spyware on a receiving machine for having caused the publication of the material;
- (xx) upon receipt of the First, Second and/or Third Defendant's explanation as to why the ftp site had become accessible on Google, Omar Alghanim and Waleed Moubarak contacted the First Defendant and requested a meeting in New York to discuss the issue in person. This meeting took place at the Carlyle Hotel in New York on 16th September 2009 and was attended by Omar Alghanim, Waleed Moubarak, Steve Hullah and the Fifth Defendant (the First Defendant did not attend but paid for Steve Hullah and the Fifth Defendant to travel to New York and attend in his place). At that meeting, Omar Alghanim and Waleed Moubarak (a) rejected the explanation that www.jackshome.info had become accessible on Google through spyware on a receiving machine, (b) requested that access to the Claimant's email accounts be regained, (c) requested that access be obtained to the private email accounts of Waleed Alghanim (a person close to the Claimant) for which purpose his yahoo, gmail and msn email addresses were provided to Steve Hullah and the Fifth Defendant, and (d) requested that access be obtained to the entire email system of a company called Antar Investments (on the basis that it was suspected the Claimant had started using an email address at that company). Specifically, in relation to (d), the Fifth Defendant was instructed to configure the equipment that would be needed to infiltrate the company's IT network;
- (xxi) following Steve Hullah's and the Fifth Defendant's return to London from New York, the First, Second and/or Third Defendants commenced preparatory work on the new instructions received from Omar Alghanim and Waleed Moubarak. The codename for this new phase was 'Project Zero'; and
- (xxii) according to the affidavit of the Fifth Defendant (and additional information received from him) and corroborated by the affidavit of the First Defendant (in which he swears that the Third Defendant received approximately 20 pages of documents from the Fifth Defendant every 2-3 days over the period from July

2008 to August 2009), the wide scale obtaining of the Claimant's confidential documents occurred more or less continuously from July 2008 until 12 August 2009. Further, the numbering system used for the batches of stolen emails uploaded to the www.jackshome.info website, implies that at least 383 batches of emails were uploaded.

20. The documents taken by the Fifth Defendant from the Claimant's private email accounts and found in the Defendants' possession supplement (and, in some cases, match) those which the Claimant's advisors accessed on www.jackshome.info in August 2009 when they learned of the theft and fall within the same categories of confidential and/or copyright material listed at paragraph 10 above.
21. The Claimant will rely upon all further instances of infringement of copyright and breach of confidence, and all further facts and matters of which it becomes aware prior to trial herein.
22. The said acts of the Fifth Defendant in obtaining the passwords to the Claimant's email accounts, obtaining confidential documents from the Claimant's email accounts, passing the same to the First and/or Second and/or Third Defendants, uploading the same to the ftp site www.jackshome.info for the purposes of download by Omar Alghanim and/or Waleed Moubarak and/or Kutayba Alghanim and/or individuals acting on their behalf, constitutes a breach of confidence and, in respect of documents written by the Claimant or works written on his behalf in which he is equitable owner of copyright, infringement of copyright.
23. The First, Second and Third Defendants are liable as joint tortfeasors, by procuring the passwords to the Claimant's email accounts, procuring confidential documents from the Claimant's email accounts, scanning and uploading the same to the ftp site www.jackshome.info for the purposes of download by Omar Alghanim and/or Waleed Moubarak and/or Kutayba Alghanim and/or individuals acting on their behalf, and/or delivering the same to Omar Alghanim and/or Waleed Moubarak, for breach of confidence and, in respect of documents written by the Claimant or works written on his behalf in which he is equitable owner of copyright, infringement of copyright.
24. Further or alternatively, the First, Second, Third and/or Fifth Defendants have conspired to injure the Claimant by unlawful means, namely the said infringement of copyright and/or breach of confidence.
25. By reason of the matters aforesaid, the Claimant has suffered loss and damage. Further, unless the Defendants are restrained, there is a genuine risk that they will continue to perpetrate the acts complained of whereby the Claimant will suffer further loss and damage. Such is confirmed in the case of the First and/or Second and/or Third Defendants by: (i) Pitman's letter of 29th September 2009 in which they deny, on behalf of their clients, that the First and/or Second and/or Third Defendants had any confidential or copyright material of the Claimant (a denial which is, and was, self-evidently false); and (ii) Pitman's letter of 6th October 2009 in which they state that "*the most that can be said*" against the First and/or Second and/or Third Defendants is that they passed information

obtained by the Fifth Defendant to Omar Alghanim and Waleed Moubarak (when, in fact, the First and/or Second and/or Third Defendants were instrumental in instructing the Fifth Defendant to carry out the hacking, then regularly received what must have been many hundreds of documents over the period from July 2008 to August 2009, and passed these to Omar Alghanim and Waleed Moubarak, whether personally by hand, or by ftp or by other means presently unknown).

26. The acts complained of were flagrant, in that the documents were self-evidently highly confidential such that it is appropriate to award additional damages for flagrancy pursuant to s.97(2) Copyright Designs and Patents Act 1988 and/or exemplary and/or aggravated damages at common law and/or equity.
27. Further the Claimant is entitled to interest upon all sums found to be due to him pursuant to s.35A Supreme Court Act 1981 or the Court's equitable jurisdiction at such rate and for such period as shall seem fit to the Court.

AND THE CLAIMANT CLAIMS

1. An injunction to restrain the First to Third Defendants, in the case of the First Defendant whether by himself, his servants or agents and in the case of the Second and Third Defendants, whether by their directors, officers, servants or agents, or otherwise howsoever from committing the following acts or any of them that is to say:
 - (i) infringing the Claimant's copyright in documents written by the Claimant and/or works written on his behalf in which he is equitable owner of copyright; and
 - (ii) breaching the Claimant's confidence in documents confidential to the Claimant.
2. Delivery up of all documents and articles in the power, possession, custody or control of the First to Third Defendants, the distribution of which would be in breach of the injunction in paragraph 1 above, or where such documents are on non-removable electronic media, deletion of the same supervised by the Claimant.
3. As against the First to Third Defendants, an inquiry as to damages for infringement of copyright and breach of confidence, including additional damages for flagrancy pursuant to s.97(2) Copyright Designs and Patents Act 1988 and/or additional or exemplary damages at common law or, at the Claimant's option, an account of profits and an order for payment of all sums found to be due together with interest thereon pursuant to section 35A Supreme Court Act 1981 at such rate and for such period as shall seem fit to the Court.
4. Costs on an indemnity basis.
5. Further or other relief.

ROBERT ONSLOW

Statement of Truth

The Claimant believes that the facts stated in these Particulars of Claim are true. I am duly authorised by the Claimant to sign this statement.

SIGNED

DATED

Bruce Macaulay
Partner

Served this 2nd of November 2009 by Skadden, Arps, Slate, Meagher & Flom (UK) LLP of 40 Bank Street, London E14 5DS, Solicitors for the Claimant.

Statement of Truth

The Claimant believes that the facts stated in these Amended Particulars of Claim are true. I am duly authorised by the Claimant to sign this statement.

SIGNED

DATED

Bruce Macaulay
Partner

Served this 8th of April 2010 by Skadden, Arps, Slate, Meagher & Flom (UK) LLP of 40 Bank Street, London E14 5DS, Solicitors for the Claimant.

Statement of Truth

The Claimant believes that the facts stated in these Re-Amended Particulars of Claim are true. I

am duly authorised by the Claimant to sign this statement.

SIGNED

A handwritten signature in blue ink, appearing to read 'B Macaulay', written in a cursive style.

DATED

19 May 2010

Bruce Macaulay
Partner

Served this 19th of May 2010 by Skadden, Arps, Slate, Meagher & Flom (UK) LLP of 40 Bank Street, London E14 5DS, Solicitors for the Claimant.

Exhibit B

HC09C03426

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
INTELLECTUAL PROPERTY

BETWEEN:**BASSAM ALGHANIM****Claimant****and**

(1) STEVEN MCINTYRE
(2) VERFIY LIMITED
(3) CERULE LIMITED
(4) BLUE CRM LIMITED
(5) TIMOTHY ZIMMER

Defendants

AMENDED DEFENCE
of the First, Second and Third Defendants

This statement of case is served on behalf of the First to Third Defendants in response to the Re-Amended Particulars of Claim dated 19 May 2010.

References to paragraph numbers are to paragraphs in the Particulars of Claim unless otherwise stated.

1. The First Defendant is a private investigator. The First Defendant incorporated the Third Defendant on 3 February 2009. The First Defendant has been employed by the Third Defendant since May 2009. The Third Defendant is a company that provides investigation services. The Third Defendant engages a number of people to carry out work on its behalf including sub-contracting specific tasks to freelance investigators. The Fifth Defendant is one such freelance investigator.
2. From about the first quarter of 2008 the First Defendant was engaged by Omar Alghanim, through his Personal Assistant Sara Richards, from time to time to carry out a number of investigation and security checking services for him and for Alghanim Industries. Where the First Defendant lacked the necessary skills to perform any of the requested assignments he would put Mr Alghanim in touch with others who might be able to assist. Among those engaged in this way was the Fifth

Defendant. The Fifth Defendant was initially engaged to carry out a number of tests of Mr Alghanim's IT security systems.

3. Among the assignments given to the First Defendant was a request to provide the results of regular, routine searches of publicly available data sources concerning Alghanim Industries and Bassam Alghanim. The First Defendant assigned this task to the Fifth Defendant. Following the incorporation of the Third Defendant the Fifth Defendant was engaged by the Third Defendant to carry out this work. The Fifth Defendant provided to the First Defendant or other employees of the Third Defendant the results of his investigations.
4. The Fifth Defendant would produce material up to several times a week during the course of the investigation. Initially, in July 2008, this information was hand delivered to Mr Alghanim. However, later, to facilitate the information transfer it was scanned at the offices of the Third Defendant and uploaded by ftp to a website set up by the Fifth Defendant to which Mr Alghanim was given access.
5. In this system the information provided by the Fifth Defendant to Mr Alghanim was handled by, but not reviewed by, the First Defendant or another employee of the Third Defendant. The First and Third Defendant's merely acted as a post office. Neither the First nor Third Defendant were aware or had any reason to believe that the Fifth Defendant had strayed outside his instructions to provide publicly available data.
6. Paragraph 1 is admitted and paragraph 2 noted.
7. The facts and matters in paragraphs 3 to 6 lie outside the knowledge of the First to Third Defendants but they are prepared to admit them for the purposes of these proceedings.
8. Paragraphs 7 to 10 are not admitted. In particular it is not admitted that there were confidential and/or copyright documents on the website www.jackshome.info. The First to Third Defendants have no knowledge of what actual documents appeared on that site. As stated above the documents that the First and Third Defendants were party to scanning and transferring to the website were not reviewed by the First and

Third Defendants but were understood to be publicly available data. Accordingly, to understand the case against them and to be able to plead properly to the Particulars of Claim it will be necessary to have sight of the documents alleged to be confidential and/or copyright in paragraph 10. Until that access is provided it is manifestly impossible for the Defendants to either admit or deny the allegations made against them. The First to Third Defendants will say that, in the first instance, their legal representatives should be allowed sight of the said documents subject to the provision of suitable confidentiality restrictions in order that they might properly defend themselves. The First to Third Defendants reserve the right to amend their pleading once that information has been provided as is required under CPR 31.14.

9. The first and last sentences of paragraph 11 are admitted. Save as aforesaid the matters pleaded therein and in paragraph 12 are not known to the First to Third Defendants but they are prepared to admit them for the purposes of these proceedings.
10. The matters in paragraph 13 are not known to the First to Third Defendants but they are prepared to admit them for the purposes of these proceedings save that it is not admitted that there were *confidential* documents uploaded to the website www.jackshome.info from the IP address 213.123.227.80 or that *confidential* documents were downloaded to IP addresses associated with the Claimant's brother's premises in New York.
11. The Second Defendant is a dormant company. The Second Defendant was the original account holder with BT in respect of the IP address 213.123.227.80. However, after the Second Defendant ceased trading and the Third Defendant was incorporated the account was transferred to the Third Defendant. Save as is consistent with the foregoing paragraph 14 is not admitted.
12. The matters in paragraph 15 are not known to the First to Third Defendants but they are prepared to admit them for the purposes of these proceedings.
13. It is admitted that the First Defendant is a minority shareholder in the Fourth Defendant and that the Fifth Defendant worked for the Fourth Defendant between July 2007 and August 2009. The First Defendant had no involvement in the day to

day operation of the Fourth Defendant. Save as aforesaid the matters in paragraph 16 are not known to the First to Third Defendants but they are prepared to admit them for the purposes of these proceedings.

14. Save that it is denied, if the same be alleged, that the Claimant has recovered evidence of wrongdoing by the First to Third Defendants or that there are admissions of wrongdoing in the Affidavit of the First Defendant; and save that it is not admitted that the Claimant has recovered evidence of wrongdoing by the Fourth and/or Fifth Defendants paragraph 17 is admitted.
15. Paragraph 18 is not understood. If it is alleged that the Claimant sought and obtained confirmation that confidential or copyright documentation were found on the Defendants' computers and other equipment then this is denied.
16. Paragraph 19 is denied. The Claimant has not provided any particulars of the additional information received from the Fifth Defendant and has declined to provide further information. Pending provision of such particulars the First to Third Defendants are unable to plead in relation to it. The role of the First, Second and Third Defendants is as set out in paragraphs 1 to 5 and 11 above. As to the sub-paragraphs:
 - i. It is denied that the First to Third Defendants were instructed and/or paid by Omar Alghanim, Waleed Moubarak, Kutayba Alghanim, Alghanim Industries, YAAS or any other entity to hack into the Claimant's private emails. It is denied that the email from Sara Richards dated 12 March 2009 is evidence of instructions to hack into the Claimant's private emails. The First and later Third Defendants were engaged by Omar Alghanim in relation to entirely legitimate and mundane security and investigation services. It is admitted that Steve Hulland is an employee of the Third Defendant. It is denied that the Fifth Defendant verbally confirmed that the First and/or Third Defendants were directly instructed with respect to the hacking by Omar Alghanim, Waleed Moubarak or Kutayba Alghanim and it is

denied that such instructions were established at a meeting in New York which, in any event, took place after the alleged hacking had been discovered. It is denied that there was a project of hacking, that it was referred to as "IT Security" and that this is corroborated by invoices.

- ii. Denied for the reasons given above. It is denied that the email of 15 June 2008 discusses the hacking of the Claimant's private emails. It is denied that the Fifth Defendant was instructed to check in the Claimant's email account for specific names, or at all, or that he was instructed to print off all the material that was in the Claimant's email account.
- iii. As set out in paragraph 11 above the Second Defendant is a long dormant company. Otherwise denied.
- iv. The first sentence is admitted. The First Defendant introduced the Fifth Defendant to the Fourth Defendant having met the Fifth Defendant when he worked for another company. ~~It is denied that the email of 15 June 2008 discusses the hacking of the Claimant's private emails.~~
- v. It is denied that there was a plan "hatched" by the First and Fifth Defendants in furtherance of any instructions to hack the Claimant's private emails. It is averred that the First to Third Defendants never instructed the Fifth Defendant to act unlawfully. Save as aforesaid the matters are outside the knowledge of the First to Third Defendant. If, which is not admitted, the Fifth Defendant did engage in hacking as pleaded he did so outside the course of any instructions given to him by the First to Third Defendants and outside of their knowledge.
- vi. Save that the employment of the Fifth Defendant by the Fourth Defendant is admitted this paragraph is not admitted.

- vii. Not admitted.
- viii. The first sentence is not admitted. It is admitted that documents were delivered to the Third Defendant or picked up from the Fifth Defendant but it is not admitted that this included emails unlawfully obtained by the Fifth Defendant and denied that, if it did so, this was done with the knowledge or instructions of the First to Third Defendants.
- ix. Admitted. It is averred that the First Defendant did not review these documents he simply understood them to be the work product of the Fifth Defendant who was acting according to his instructions to provide publicly available data. It is not admitted that the documents provided on these occasions were either confidential or copyright.
- x. ~~It is admitted that the work product of the Fifth Defendant was uploaded to the website www.jackshome.info by way of ftp and that the First and Third Defendants were aware of this. It is not admitted that this included emails unlawfully obtained by the Fifth Defendant and denied that, if it did so, this was done with the knowledge or instructions of the First to Third Defendants.~~ It is admitted that (on dates unknown to the First to Third Defendants) the Fifth Defendant registered and paid for the domain name www.jackshome.info and set up an ftp site. It is denied that this was done on the instructions of the First to Third Defendants. The First to Third Defendants had no involvement in its operation. The First to Third Defendants simply knew of the website as a convenient way of conveying the Fifth Defendant's work product to their client. The First and Third Defendants received log in details in about May 2009.
- xi. It is admitted that the First and Third Defendants facilitated the uploading of the Fifth Defendant's work product to the website and that access to this website was provided to Omar Alghanim and Waleed Moubarak. Again, it is not admitted that this included emails

unlawfully obtained by the Fifth Defendant and denied that, if it did so, this was done with the knowledge or instructions of the First to Third Defendants.

- xii. Not admitted. Denied. The Fifth Defendant was instructed to provide publicly available data on a continuing basis and his instructions did not change.
- xiii. It is admitted that the work product of the Fifth Defendant was uploaded to the website www.jackshome.info by way of ftp and that the First and Third Defendants were aware of this after about early May 2009. It is not admitted that the www.jackshome.info site was accessed by the First to Third Defendants before then. It is not admitted that this included emails unlawfully obtained by the Fifth Defendant and denied that, if it did so, this was done with the knowledge or instructions of the First to Third Defendants.— The website www.jackshome.info was registered and administered by the Fifth Defendant. The First to Third Defendants had no involvement in its operation.— The First to Third Defendants simply knew of the website as a convenient way of conveying the Fifth Defendant's work product to their client.
- xiv. The alleged agreement is denied. It is admitted that the Fifth Defendant supplied his work product by uploading it to an ftp site www.tpart.info and that it was downloaded from there by the Third Defendant, printed, rescanned and uploaded to the www.jackshome.info ftp site.
- xv. (xii) It is denied that the First Defendant instigated any emails from the Fifth Defendant as alleged or at all in connection with the Claimant's email accounts. Save as aforesaid this sub-paragraph is not admitted.
- xvi. (xiii) The website www.jackshome.info was registered and administered by the Fifth Defendant. The First to Third Defendants

had no involvement in its operation. The First to Third Defendants simply knew of the website as a convenient way of conveying the Fifth Defendant's work product to their client. The last 2 sentences of sub-paragraph xvi are admitted save that it is denied that Steve Hulland was acting on behalf of the First Defendant.

- xvii. It is admitted that the Fifth Defendant sent an email to Steve Hulland on 5th September 2009. Save as aforesaid this sub-paragraph is not admitted.
- xviii. It is admitted that the Defendants ceased to use the www.jackshome.info site once it had been discovered that it had been indexed by Google.
- xix. Denied. The First Defendant did not instruct the Fifth Defendant to draft a report suggesting the error was the fault of Omar Alghanim and Waleed Moubarak. It is admitted that the Fifth Defendant, who administered the site, sent an email to the First Defendant on 6th September 2009 and forwarded a copy to Steve Hulland the following day.
- xx. It is admitted that there was a meeting in New York on 16th September 2009. Steve Hulland and the Fifth Defendant attended but Mr Hulland was not present for significant parts of the meeting as he was engaged on the telephone. It is denied that the First Defendant paid for Mr Hulland and the Fifth Defendant to attend; their expenses were charged to the client by the Third Defendant. As to the specific allegations: (a) not admitted – Mr Hulland was present intermittently when the explanation about the indexing by Google of the ftp site was discussed but did not participate in the technical discussions; (b) it is denied that this request was made to Mr Hulland; (c) it is denied that this request was made to Mr Hulland or that he was given any email addresses; and (d) it is admitted that Mr Alghanim requested the Fifth Defendant to

undertake regular, routine searches of publicly available data sources concerning Antar Investments.

xxi. Denied. The First to Third Defendants did not undertake any preparatory work in relation to any instructions referred to in sub-paragraph xx. The Third Defendant did not have any project codenamed Project Zero.

xxii. ~~(xiv)~~ The number of documents uploaded is not admitted. Nor is it admitted that stolen emails were uploaded. Save as is consistent with the Affidavit of the First Defendant this sub-paragraph is not admitted. It is averred that the First to Third Defendants were unaware of the presence of any confidential or copyright materials.

17. Paragraph 20 is not admitted.

18. Paragraph 21 is noted.

19. It is not admitted that there have been any breaches of confidence or infringements of copyright. If there have been such acts it is denied that the First to Third Defendants are liable for them.

20. For the reasons given above it is denied that the First to Third Defendants are liable as joint tortfeasors for the allegedly infringing acts of the Fifth Defendant. If, which is not admitted, the Fifth Defendant has breached the confidence of the Claimant or infringed his copyright it is denied that this was done pursuant to a common design with the First and/or Second and/or Third Defendants. Further it is denied that if, which is not admitted, the Fifth Defendant has breached the confidence of the Claimant or infringed his copyright this was authorised or procured by the First and/or Second and/or Third Defendants.

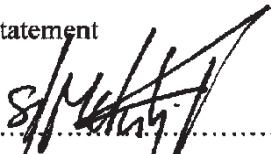
21. In the premises the allegations in paragraphs 22 to 24 and 26 to 25 and 27 are denied.

22. It is denied that the Claimant has suffered loss and damage by reason of the acts of the First and/or Second and/or Third Defendants. It is not admitted that the Claimant has suffered loss and damage at all. It is denied that the First to Third Defendants intend to commence, let alone continue, any acts of breach of confidence or infringement of copyright. The First to Third Defendants hereby voluntarily undertake not to infringe the Claimant's copyright or breach the Claimant's confidence.

BENET BRANDRETH

Statement of Truth

The First, Second and Third Defendants believe that the facts stated in this Amended Defence are true. I am duly authorised by the Second and Third Defendants to sign this statement


.....
Steven McIntyre

Served this 30th day of November 2009 by Messrs Pitmans of The Anchorage, 34 Bridge Street, Reading RG1 2LU, Solicitors for the First, Second and Third Defendants

Re-served this 2nd day of June 2010 by Messrs Pitmans of The Anchorage, 34 Bridge Street, Reading RG1 2LU, Solicitors for the First, Second and Third Defendants

HC09C03426

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
INTELLECTUAL PROPERTY

BETWEEN:

BASSAM ALGHANIM

Claimant

and

1. STEVEN MCINTYRE
2. VERFIY LIMITED
3. CERULE LIMITED
4. BLUE CRM LIMITED
5. TIMOTHY ZIMMER

Defendants

AMENDED DEFENCE
of the First, Second and Third Defendants

Pitmans Solicitors
The Anchorage
34 Bridge Street
Reading RG1 2LU
Ref: TGDC/MAS
Tel: 0118 958 0224

Solicitors for the First, Second
and Third Defendants

Exhibit C

Exhibit C

Bassam’s Amended Particulars of Claim	Mr. McIntyre’s Response
<p>"when choosing the method of transmission of documents to Omar Alghanim and/or Waleed Moubarak and/or Kutayba Alghanim via ftp through www.jackshome.info, the Defendants appear to have overlooked a flaw in the design and/or operation of the ftp access that developed with use of the website so that the website was unintentionally accessible to be indexed by the Google search engine. <u>On 4th September 2009, Waleed Moubarak informed [Mr. McIntyre, Verify Limited and/or Cerule Limited] that the ftp site and its content were visible on Google. Immediately thereafter, [Mr. Zimmer] was instructed by Steve Hlland (acting on behalf of [Mr. McIntyre] and [Cerule Limited]) to remove all the contents from the ftp site;</u>" (Para. 19(xvi) (emphasis added).)</p>	<p>"The website www.jackshome.info was registered and administered by [Mr. Zimmer]. [Mr. McIntyre, Verify Limited and Cerule Limited] had no involvement in its operation. [They] simply knew of the website as a convenient way of conveying [Mr. Zimmer's] work product to their client. <u>The last 2 sentences of subparagraph xvi are admitted save that it is denied that Steve Hlland was acting on behalf of [Mr. McIntyre].</u>" (Para. 16(xvi) (emphasis added).)</p>
<p>"upon discovering that the ftp site at www.jackshome.info had been indexed by the Google search engine, the Defendants ceased their activity on the site (as evidenced by internet history records recovered from (a) the laptop used by [Mr. Zimmer] and found at the premises of [Mr. McIntyre, Verify Limited and/or Cerule Limited], (b) Bryan Miller's computer at the same premises, and (c) information received from [Mr. Zimmer]);" (Para. 19(xviii).)</p>	<p>"It is admitted that the Defendants ceased to use the www.jackshome.info site once it had been discovered that it had been indexed by Google." (Para. 16(xviii).)</p>

Bassam's Amended Particulars of Claim	Mr. McIntyre's Response
<p>"upon receipt of [Mr. McIntyre's, Verify Limited's and/or Cerule Limited's] explanation as to why the ftp site had become accessible on Google, Omar Alghanim and Waleed Moubarak contacted [Mr. McIntyre] and requested a meeting in New York to discuss the issue in person. This meeting took place at the Carlyle Hotel in New York on 16th September 2009 and was attended by Omar Alghanim, Waleed Moubarak, Steve Hulland and [Mr. Zimmer] ([Mr. McIntyre] did not attend but paid for Steve Hulland and [Mr. Zimmer] to travel to New York and attend in his place). At that meeting, Omar Alghanim and Waleed Moubarak (a) rejected the explanation that www.jackshome.info had become accessible on Google through spyware on a receiving machine, (b) requested that access to [Bassam's] emails be regained, (c) requested that access be obtained to the private email accounts of Waleed Alghanim (a person close to [Bassam]) for which his yahoo, gmail and msn email addresses were provided to Steve Hulland and [Mr. Zimmer], and (d) requested that access be obtained to the entire email system of a company called Antar Investments (on the basis that it was suspected the Claimant had started using an email address at that company). Specifically, in relation to (d), [Mr. Zimmer] was instructed to configure the equipment that would be needed to infiltrate the company's IT network;" (Para. 19(xx).)</p>	<p>"It is admitted that there was a meeting in New York on 16th September 2009. Steve Hulland and [Mr. Zimmer] attended but Mr. Hulland was not present for significant parts of the meeting as he was engaged on the telephone. It is denied that [Mr. McIntyre] paid for Mr. Hulland and [Mr. Zimmer] to attend; their expenses were charged to the client by [Cerule Limited]. As to the specific allegations: (a) not admitted – Mr. Hulland was present intermittently when the explanation about the indexing by Google of the ftp site was discussed but did not participate in the technical discussions; (b) it is denied that this request was made to Mr. Hulland; (c) it is denied that this request was made to Mr. Hulland or that he was given any email addresses; and (d) it is admitted that Mr. Alghanim requested [Mr. Zimmer] to undertake regular, routine searches of publicly available data sources concerning Antar Investments." (Para. 16(xx).)</p>