



Neutral citation number [2025] EWHC 1954 (IPEC)

IN THE HIGH COURT OF JUSTICE

Claim No. IP-2024-000074

BUSINESS & PROPERTY COURTS OF ENGLAND & WALES

INTELLECTUAL PROPERTY ENTERPRISE COURT

Royal Courts of Justice
The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

31 July 2025

Before:

RECORDER AMANDA MICHAELS

Between:

CONRAD LANT

Claimant

- and -

(1) PLASTIC HEAD MUSIC DISTRIBUTION LIMITED

(2) ANTHONY BRAY

Defendants

- and -

RAZMATAZ.COM LIMITED

Third Party

DOMINIC HOWELLS of counsel instructed by Northrop McNaughtan Deller for the
Claimant and the Third Party

RICHARD COLBEY of counsel instructed by RafterMarsh UK for the Defendants

Hearing dates: 16 and 17 June 2025

APPROVED JUDGMENT

This judgment was handed down by the Court remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 on 31 July 2025.

Miss Recorder Amanda Michaels:

1. Between 1979 and 1986, the Claimant (“Mr Lant”) and the Second Defendant (“Mr Bray”) performed together as members of the hard rock band professionally known as ‘Venom’. During that period, Venom performed live and recorded and released music, including albums entitled ‘Welcome to Hell’, ‘Black Metal,’ ‘At War with Satan’ and ‘Possessed.’
2. Many claims between members of bands relate to the authorship of their songs or rights in the band’s name. Unusually, this claim and counterclaim relate only to the subsistence and ownership of the copyright in certain artworks and photographs associated with Venom. It appears that the dispute arose because Mr Bray licensed the First Defendant to sell merchandise bearing the copyright works, and the Third Party was similarly licensed by Mr Lant, and each of them objects to the other’s licensing activities. This judgment follows the trial of liability only.
3. Mr Lant claimed that he had been the author of 6 artistic works and that he was and remained the owner of the copyright subsisting in them. The 6 works are shown in Annex A to this judgment. The Defendants’ case was either that Mr Bray was the author of the works, or that the works were too derivative to qualify for copyright protection. They counterclaimed in respect of the works of which Mr Bray claimed authorship and in respect of Mr Lant and the Third Party’s use of two additional works, photographs used on album covers, which he said were also his copyright works. Those are shown in Annex B.
4. Neither side in this dispute pleaded that the band members’ relationship amounted to a partnership at will or suggested that any copyright in issue before me would have been an asset of any such partnership. In closing arguments, Mr Colbey suggested that some of the works might have been works of joint authorship, jointly owned. That was unpleaded and was not put to the Claimant. I do not consider it open to me to make any finding as to joint authorship or ownership of any of the works in issue.

Background

5. One of the problems with this case is that the witnesses were trying to recall events which took place many years ago, essentially between about 1979 and the mid-1980s, with very little contemporaneous documentation to help them. Most of them were teenagers at the beginning of that period, and it seemed to me from their evidence that

Mr Lant, Mr Bray and their band mate Jeffrey Dunn, who gave evidence for Mr Bray, concentrated on making the band a success, rather than on any legal niceties about the nature of their trading relationship or copyright ownership. Indeed, Mr Dunn's view was that at that time the teenage band members "hadn't a clue." I discuss the conflicts of evidence later in this judgment, but at this point I will try to set out the history of the band and of this dispute in general terms.

History of the band

6. The witnesses could not agree on a number of points relating to the early days of the band, most of which I do not need to resolve. Mr Bray and Mr Dunn (and some other musicians) were members of a band from about March 1978 onwards. Mr Lant joined the band as rhythm guitarist in October or November 1979 although he later played bass guitar and became the band's vocalist. There was a dispute as to what that band was called prior to autumn 1979. Mr Bray and Mr Dunn said the name became Venom in mid-late 1978, whilst Mr Lant said that the band was first called Guillotine, and its name was not changed to Venom until after he joined. The membership of the band varied over the years, for example, the original vocalist, Mr Archer, left quite soon after November 1979 and (on his account) Mr Lant then not only became their vocalist but took on a greater role in the band. He said that he was heavily involved in the artwork used for record sleeves, onstage décor, etc. On the other hand, Mr Bray also claimed to have designed much of the artwork used by the band and on its recordings. From about 1980, the three members of the band used stage names: Mr Lant was Cronos, Mr Dunn was Mantas and Mr Bray was Abaddon. Their recordings were released by Neat Records.
7. By the mid-1980s tensions were growing between the band members, and in particular, it seems, between Mr Lant and Mr Dunn. Mr Dunn left in 1986, and Mr Lant said that he left the band in 1988 with two of the guitarists and began to perform under the name "Cronos." He, Mr Bray and Mr Dunn reformed as Venom in the mid-1990s and undertook at least one tour in 1997. A company called Batplus produced merchandise for that tour. Some of this seems to have borne a Venom copyright notice. Mr Bray said that at around that time Mr Lant suggested setting up a company "CMA Inc" to hold their rights. In one letter in evidence, Mr Lant used the CMA name when corresponding with Batplus, but as I understand it no company was incorporated because no agreement was reached with Mr Bray and Mr Dunn. The reformed band did not last long and fell apart acrimoniously in about 1997 or 1998.
8. Mr Lant started to record and tour as Venom. Neat Records' interests in Venom's masters were acquired by Sanctuary Records in the early 2000s. Mr Lant, Mr Bray and Mr Dunn entered into an agreement with Sanctuary in about 2004 as to its release of Venom's recordings. This agreement offers no guidance as to the ownership of any existing artwork. Mr Lant entered into a separate agreement with Sanctuary dated March 2005 but effective from 1 March 2002, by which at clause 14 Mr Lant granted Sanctuary a non-exclusive licence to use "all artwork owned and/or controlled by [Mr Lant] and (i) featured in the Venom Albums and (ii) featured in any Venom singles ... and/or (iii) any Venom artwork delivered by [Mr Lant] to Neat Records ..." The licence explicitly excluded any grant of merchandising rights to Sanctuary. Mr Bray or Mr Dunn say that they did not know about that agreement. Neither of them suggested that they had entered into an equivalent individual agreement.

9. One of the Claimant's witnesses, Mr Leonard, began selling Venom merchandise in around 1996, through Batplus and then through the Third Party, Razmataz. Mr Lant said that his informal merchandising agreement with Razmataz was formalised in 2013. This included exploiting the disputed designs, and he and Mr Leonard said that Mr Bray and Mr Dunn raised no objections in 1997 or subsequently. Mr Bray and Mr Dunn said that they expected to receive income from the merchandise, but never did, and there is no evidence that they complained about that. Mr Lant said that in 2005 he had complained to Bravado International about unlicensed Venom merchandise. A deal was reached, possibly with the aid of a letter purporting to be from Mr Bray (a draft of which was in evidence although Mr Bray denied having written it) which confirmed that all rights in Venom artwork were held by himself or Mr Lant.
10. In around 2015, Mr Bray and Mr Dunn began to record and perform as 'Venom Inc.' Mr Lant's solicitor wrote to them to complain about their use of his artwork. Mr Lant said he was assuaged by Mr Bray's assurance that he had redesigned the Venom Logo and took no further action about it then.

Making the artworks

11. It was common ground that the first Venom logo ("Venom Logo 1") was the first logo used by the band and appeared on its first album, *Welcome to Hell*, in 1981. There was no dispute as to the subsistence of copyright in Venom Logo 1, but both Mr Lant and Mr Bray claimed ownership of the copyright.
12. Mr Lant said that soon after he joined the band, he began to work on creating some artwork for it. He said that he designed Venom Logo 1 in late 1979 or early 1980, based on some stylised drawings he had done for a logo for a band he had played in before joining Venom. However, Mr Bray's case was that he had designed Venom Logo 1. He said that in early 1979 – before Mr Lant joined the band - he painted the logo onto canvas to use as a "drum riser," that is, to cover the supports for the platform on which the drummer sits during a performance.
13. The next work relied on by Mr Lant was a revamped version of Venom Logo 1, identified as "Venom Logo 2," which he said he designed in around 1980 or 1981. Mr Bray did not claim authorship of Venom Logo 2. The Defendants pleaded that it was created by Mr Lant together with an employee of the band's record company, Neat Records, a lady called Magda. In Mr Bray's first witness statement he simply described Magda as having created the layout for the album cover, and the Defendants later sensibly accepted that Mr Lant had created the artwork. They maintained their pleaded case that Venom Logo 2 was simply a derivative work of Venom Logo 1, lacking sufficient originality to gain protection as a copyright work, but accepted that if the work merited copyright protection, it belonged to Mr Lant.
14. Mr Lant said that at about the same time, when working on the design of the sleeve for the album *Black Metal*, he decided to draw a demonic face of Lucifer. This is what became the third work in issue, "Goat Head Lucifer." Mr Bray accepted that Mr Lant produced it but said that it was based closely upon a painting by Austin Osman Spare, so that again it did not have sufficient originality to be protected as a copyright work.
15. Mr Lant says that he designed the fourth work, the "Sigil of Baphomet" in late 1979. He accepted that this was an adaptation of an 1897 design by the occultist Stanislas de Guaita. He said that it had been used initially on a large drape used onstage by the band

- and appeared on the sleeve of the album *Welcome to Hell*, and the single *In League with Satan* in 1981. The Defendants accepted that this work was an adaptation of the Guaita design but said that it was Mr Bray who had produced it, again before Mr Lant joined the band.
16. The fifth work is the "Legions Logo." Both Mr Lant and Mr Bray said that they had designed it.
 17. The last of the works claimed by Mr Lant is "At War with Satan" a design for the band's third album. Again, both Mr Land and Mr Bray claimed to have designed this.
 18. The works which are introduced in the Counterclaim are two photographs ("the Photographs"), both of which were said in the Defence and Counterclaim to have been taken by Mr Bray. In the Defendants' response to a Part 18 request and in Mr Bray's witness statement, the claim that he was the photographer was dropped. Instead, Mr Bray said that the first Photograph was taken at his direction and on his camera, but the photographer was his flatmate Peter Moore (known as "Ferret"), and the second Photograph was taken by a photographer, Mr Richard Nichol. Mr Bray said it was his concept and that he had paid Mr Nichol to take it.
 19. The first of the Photographs dates from 1982 and was used on the cover of a single, *Bloodlust*. It shows three faces, and I was told that these were Mr Lant, Mr Bray and Mr Dunn. The second Photograph shows the rather ghostly figures of two children who apparently were Mr Bray's son and Mr Nichol's daughter. It was used on the album cover of *Possessed*.
 20. Mr Lant's Defence to the Counterclaim was to deny that Mr Bray owned the copyright in either of the Photographs. He said that Neat Records had commissioned them and owned the copyright in them. He acquired and has retained the negatives of the Photographs, and claimed to have acquired the copyright from Neat Records, although no written assignment was pleaded or produced and no claim was made by him in relation to the Defendants' use of the Photographs.
 21. There was no real dispute that each side had produced merchandise using some of the works claimed by the other and had copied at least a substantial part of those works. Neither side claimed that such use was authorised by the other. In the circumstances, any unauthorised use of the other's copyright works would have given rise to acts of infringement, for example by offering for sale and selling in the United Kingdom. Images of the allegedly infringing merchandise were annexed to each side's statements of case, but were rather small and indistinct, so detailed findings as to what artwork was used on any particular item will need to await further steps in the proceedings.

The dispute and the proceedings

22. There was some correspondence between Mr Lant, Mr Dunn and Mr Bray in 2015, when Mr Lant complained of their use of his artwork. This was not pursued at the time, but no point was taken about that.
23. Then in late 2023, Mr Lant learned that the First Defendant was selling *Venom* merchandise using the works in which he claims copyright. This appears to have flowed from a licensing agreement executed in early November 2023 between Mr Bray's company Abaddon Clothing and the First Defendant. The Particulars of Claim alleged

that Mr Bray had authorised the First Defendant's acts of infringement and this was not disputed. It was not clear to me when the First Defendant first started selling merchandise pursuant to the agreement. Mr Lant's solicitors first wrote to the First Defendant on 22 December 2023 and provided additional details of his claim in January 2024. The claim form was issued on 19 June 2024. A case management conference was held on 15 January 2025.

Witnesses

24. For the Claimant and Third Party, I heard oral evidence from Mr Lant and from Mr Michael Leonard, the chairman and a director of Razmataz. For the Defendants, I heard oral evidence from Mr Bray, Mr Dunn, Mr Stephen Ash, who was a friend of Mr Bray's from 1977 and was involved in the early years of the band, and Mr Stephen Beatty, a director of the First Defendant.
25. Mr Beatty claimed in his witness statement to have direct knowledge of the authorship of some of the disputed works but readily accepted in cross-examination that this was not the case. His views were based on information given to him from Mr Bray. His evidence was therefore irrelevant to most of the points I have to decide. Mr Leonard's evidence, which I accept, was also of marginal relevance.
26. Mr Lant, Mr Bray, Mr Dunn, and Mr Ash were trying to give evidence of events which occurred between about 1978 and the mid-1980s, over 40 years ago. There was little by way of contemporaneous documentation to help the witnesses, and unfortunately the documents which have survived are mostly undated, and the photographs are blurry. Although Mr Lant produced a range of sketches and drawings, they are undated and some of them are partially obscured by the copyright notices he stamped over them. The authenticity of the documents was not challenged prior to the trial. The Defendants' case lacked contemporaneous supporting evidence.
27. The difficulties for a judge in such circumstances were considered by Ms Pat Treacy, sitting as a Deputy High Court Judge, in *Alan Williams Entertainments Ltd v Clarke* [2022] EWHC 1798 (IPEC); [2022] E.T.M.R. 50, and I have borne the slightly shortened points below in mind in this case:

“40 My starting point is the Judgment of Leggatt J (as he then was) in *Gestmin v Credit Suisse* [2013] EWHC 3560 (Comm) (*'Credit Suisse'*), from [19]. ... the best approach in the trial of a commercial case is to base factual findings on inferences drawn from the documentary evidence and known or probable facts. The value of oral testimony is ideally “*to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness.*”

41 In a case such as this, where almost all the witnesses are personally involved ... Leggatt J's observations in *Credit Suisse* on the fallibilities of human memory and the distorting effect of the litigation process are particularly important:

“The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is obvious where the witness is a party or has a tie of loyalty (such as an employment relationship) to a party to the proceedings. Other, more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to assist, or at least not to prejudice, the party who has called the witness or that party's lawyers, as well as a natural

desire to give a good impression in a public forum, can be significant motivating forces.

Considerable interference with memory is also introduced in civil litigation by the procedure of preparing for trial. A witness is asked to make a statement, often (as in the present case) when a long time has already elapsed since the relevant events. The statement is usually drafted for the witness by a lawyer who is inevitably conscious of the significance for the issues in the case of what the witness does nor does not say. The statement is made after the witness's memory has been "refreshed" by reading documents. The documents considered often include statements of case and other argumentative material as well as documents which the witness did not see at the time or which came into existence after the events which he or she is being asked to recall. The statement may go through several iterations before it is finalised. Then, usually months later, the witness will be asked to re-read his or her statement and review documents again before giving evidence in court. The effect of this process is to establish in the mind of the witness the matters recorded in his or her own statement and other written material, whether they be true or false, and to cause the witness's memory of events to be based increasingly on this material and later interpretations of it rather than on the original experience of the events." [19] and [20]

42 ...

43 The difficulties of assessing the witness evidence are compounded by the uneven documentary record. ... The Defendants' case, in particular, relies principally on oral evidence with a lack of contemporaneous supporting documentation. As a result, while some factual findings can be made by reference to the contemporaneous documents, it has been necessary to assess the reliability of the witness evidence also by reference to other considerations.

44 The relatively recent Judgment of HHJ Richard Williams, sitting in the Business and Property Courts in Birmingham, in *Singh v Jhutti* [2021] EWHC 2272 (Ch) contains a summary of relevant considerations when assessing evidence of events which took place over an extended period of time, in respect of at least some of which there is limited or disputed documentary evidence, and where the oral evidence is largely given by witnesses closely related to the dispute. Many of the difficulties in *Singh v Jhutti* also arose in this case. For example, as mentioned above, the oral evidence was, ... given by witnesses closely connected to the dispute and therefore likely to be subject to, in the words of HHJ Williams "... significant motivating forces and powerful biases..." [59b].

45 Facing a similar situation, HHJ Williams referred to the Judgment of Lewison J (as he then was) in *Painter v Hutchison* [2007] EWHC 758 (Ch) at [3] setting out a non-exhaustive list of indicators of unsatisfactory witness evidence that can assist in assessing oral testimony. These were summarised by HHJ Williams as:

...

- (v) self-contradiction;
- (vi) internal inconsistency;
- (vii) shifting case;
- (viii) new evidence; ...

46 I have borne all of those indicators in mind when listening to the oral testimony and subsequently reviewing my note of cross-examination. I have also reminded myself that, as highlighted in *Credit Suisse*, a witness may have a conviction as to

the truth of a particular fact, which is found to be incorrect or probably incorrect when other evidence is examined. A witness whose evidence is found to have been unreliable or not convincing on one issue is not necessarily to be regarded as unreliable on other issues. There may, however, be some issues where the only conclusion that can be drawn is that the witness is consistently unreliable or even deliberately untruthful. Such instances will inevitably taint the Court's perception as to the overall reliability of that witness."

28. It was not suggested in this case that any of the witnesses had been less than truthful, nor that Mr Dunn and Mr Ash were supporting Mr Bray out of loyalty or friendship rather than giving their own evidence. On the whole, I consider that all of these witnesses were genuinely doing their best to recall matters from their teenage years, many of which took on greater significance in this trial than I think they would have had at the time. Whilst I am satisfied that they were giving what they honestly believed they remembered of those events, it is of course easy to be mistaken as to what is genuine memory and what is supposition or reconstruction, or possibly, wishful thinking. That was amply demonstrated by the changes which were made in chief to important dates in Mr Bray's and Mr Dunn's witness statements and by some of the contradictions in the evidence of all three ex-band members. I did not consider that any of them were seeking to mislead the Court. However, there is some justification for Mr Howells' suggestion that some of Mr Bray's less compelling evidence was no more than wishful thinking. In addition, I formed the view that some of his recollections may have been affected by the process of litigation. That applied with particular force to his changing evidence about the authorship of the Photographs. He was rather unwilling to accept that his memory could be at fault despite the passage of time, even when faced with apparently contradictory documentary evidence. Mr Lant and Mr Dunn were far more open to the possibility that their recollections were not exact. I deal with these points further below. I therefore think it right to treat all of the witness statements and oral evidence with caution, save as supported by the documents before me.

Subsistence and ownership of copyright

1. Venom Logo 1

29. I heard a good deal of evidence about the creation of Venom Logo 1 which it was common ground was the first logo used by the band. It was the version of the logo used on the album *Welcome to Hell*, released by Neat Records in 1981, but plainly predated that release.
30. Mr Lant said that he had produced the logo soon after joining the band, whilst Mr Bray said that he had painted it himself onto a drum riser used for the band before Mr Lant joined it. Mr Bray's evidence was supported by Mr Dunn and Mr Ash, both of whom agreed that the band had been called Venom before Mr Lant joined it, and that Venom Logo 1 was in use on the drum riser before he joined the band.
31. The Defendants had no documentary support for the claim that the logo was designed by Mr Bray before autumn 1979. They initially relied on a photograph of the original vocalist Mr Archer standing on stage in front of a Venom Logo, saying this showed Venom Logo 1. Mr Bray said that this was taken at a birthday party and predated Mr Lant joining the band. However, the Defendants later conceded that the image had been cropped from a photograph which it was agreed had been taken at a performance in Newcastle in 1980 which showed Mr Lant on stage too, playing guitar. The logo in that complete photograph could be either version 1 or 2, so does not help to establish either

side's case on Venom Logo 1. On the other hand, there is a photograph of Mr Dunn standing before the drum riser on stage, and the logo on it appears to me to be Venom Logo 1. The V is not shown in full, but the tops of the letter N, O and M are visible and are rounded rather than pointed, which means this was Logo 1. Mr Lant identified that photograph as being from a performance in about March 1980 in Newcastle. I think it likely that it is from the same gig as is shown in the larger photograph, but if it is not, it is from much the same time. Unfortunately, the fact that the band was using Venom Logo 1 in early 1980 – which I do not think was really in issue - does not help me to resolve the question of who designed it.

32. Mr Lant said that he started by redesigning the Sigil of Baphomet device which I discuss below, and the following week took some sketches of a new Venom logo to rehearsals to show to the others. He worked on the sketches and got Mr Bray's approval of them before reaching the final version, which was then put onto a drum riser. He believes that happened in late 1979 or early 1980. He disclosed some early sketches, which include some versions of the logo which are highly similar if not identical to Venom Logo 1. However, the sketches are all undated and it is not possible to know the sequence in which they were drawn, or whether they were original works or copies of an existing form of the logo used as a baseline for design ideas. One such drawing shows a logo which is neither Venom Logo 1 or 2 on a sketch of a ticket for a very early performance by the band. This does not help to establish dates or the sequence of design iterations. In the circumstances, it does not seem to me that Mr Lant's evidence that he drew Venom Logo 1 as well as 2 is clearly supported by any documents. My finding that Venom Logo 1 was in use on a drum riser in early 1980 cannot help me to resolve the issue of its authorship.
33. Mr Lant's claim to authorship was contradicted by the evidence of Mr Bray, Mr Dunn and Mr Ash, all of whom were involved with the band prior to Mr Lant joining it. Both Mr Dunn and Mr Ash believe that Mr Bray was the author of Venom Logo 1 and produced it before Mr Lant joined the band. Mr Ash said that he remembered helping to attach the signage with Venom Logo 1 to the drum riser to do a show on Mr Bray's mother's lawn, when the band made so much noise that the neighbours called the police. Mr Dunn said that the version of the logo shown to him by Mr Lant at the rehearsal was Venom Logo 2, not 1, and his willingness to accept that Mr Lant was the author of that version of the logo gives some weight to that evidence and his view that he did not draw Venom Logo 1. On balance, I consider that I should accept the evidence for the Defendants on this point, the veracity of which was not challenged.
34. In the circumstances, I dismiss Mr Lant's claim to be the author of and owner of the copyright in Venom Logo 1. I find that Mr Bray was the author of it and owns the copyright in it.

2. *Venom Logo 2*

35. As I have said, the Defendants' case on this work as pleaded was that Mr Lant had created it with the help of an employee of Neat Records, Magda. Mr Bray did not really grapple with the point in his first witness statement, but in his witness statement in reply he accepted that Mr Lant was the sole author of Venom Logo 2. There was no real explanation for Mr Bray's change of view, save that he said that he accepted that Magda had designed the sleeve layout rather than the logo. However, the Defendants accepted that Mr Lant alone had created Venom Logo 2, which, they said, was based upon Venom Logo 1.

36. The only question for me, therefore, is whether the work has sufficient originality over Venom Logo 1 to qualify for copyright protection. It was common ground that the test of originality has not changed substantially from the time when these works were made, when the Copyright Act 1956 was in force. The test for originality is low. The law was summarised by Joanna Smith J in *Lidl Great Britain Ltd v Tesco Stores Ltd* [2023] EWHC 873 (Ch), [2023] F.S.R. in relation to an extremely simple design which was the latest iteration of a series of logos. She held:

“282 Copyright only protects works which are original in the sense that they are the author’s own creation. The test for originality was considered by the European Court of Justice in *Infopaq International A/S v Danske Dagblades Forening* (C-5/08) EU:C:2009:465; [2010] F.S.R. 20 at [39]. A work, and its various parts, will be considered original “provided that they contain elements which are the expression of the intellectual creation of the author of the work”. This EU test of originality was further elaborated upon in *Cofemel - Sociedade de Vestuário SA v G-Star Raw CV* (C-683/17) EU:C:2019:721; [2020] E.C.D.R. 9 at [29]-[31]:

“29. The concept of “work”...[f]irst...entails that there exist an original subject matter, in the sense of being the author’s own intellectual creation. Second, classification as a work is reserved to the elements that are the expression of such creation...

30. As regards the first of those conditions...if a subject matter is to be capable of being regarded as original, it is both necessary and sufficient that the subject matter reflects the personality of its author, as an expression of his free and creative choices...

31. On the other hand, when the realisation of the subject matter has been dictated by technical considerations, rules or other constraints, which have left no room for creative freedom, that subject matter cannot be regarded as possessing the originality required for it to constitute a work...”

283 The court went on at [35] to observe that, where subject matter has the characteristics identified in [30], and therefore constitutes a work, “it must, as such, qualify for copyright protection...and it must be added that the extent of that protection does not depend on the degree of creative freedom exercised by its author, and that that protection is therefore not inferior to that to which any work falling within the scope of that directive is entitled”. In other words, the question of protection is a matter of fact and not degree.

...

288 In my judgment, the act of bringing together the Lidl text with the yellow circle and the blue background was an act which involved skill and labour – the combination of colours and shapes and the orientation of the various elements. Tesco’s real complaint, as I pointed out in opening, appears to be that the combination consists of insufficient skill and labour because it is too simple. However, as to that, my second reason for rejecting Tesco’s argument is that simplicity of design and/or a low level of artistic quality does not preclude originality ...

...

290 ... Ultimately the litmus test must be whether the [work] involves the exercise of intellectual creation involving the expression of free choice. In my judgment, it does.”

37. Joanna Smith J's summary of the law and finding of the subsistence of copyright in Lidl's extremely simple logo were approved by the Court of Appeal, see [2024] EWCA Civ 262, [2024] FSR 17 at [198]-[191]. At [191] Arnold LJ said:
"The degree of creativity involved in the creation of the [work] may have been low, but it was not a purely mechanical exercise, nor was the result dictated by technical considerations, rules or other constraints which left no room for creative freedom."
38. I consider that there are some significant differences between the versions of the Venom Logo in dispute. The initial V in version 2 is larger than in version 1, more exaggerated and of a more unusual shape. In particular, there is a striking cross stroke, which reminds me of the shape of a whale's fluke, at the top of the left-hand leg of the V, and the bottom of the V is much more sharply pointed than in Version 1. In addition, the N and M are both much spikier at the top and the bottom of the letters than in version 1.
39. In my view it is abundantly clear that there was a sufficient degree of creativity involved in the creation of Venom Logo 2. It had original features, especially in the amendments to the shape of the V, the N and the M, which I consider to be striking, distinctive, and to add substantially to the overall design. My view of the amount of work which went into the logo is supported by some sketches produced by Mr Lant, which show a variety of different forms of the logo, suggesting a wide degree of artistic freedom. There was additional evidence of use of variations of the logo. For instance, in my view the Venom logo used on the Bloodlust single in 1982 was something of a hybrid between versions 1 and 2. In the circumstances, I have no hesitation in finding that the creation of Venom Logo 2 would not have been a purely mechanical exercise, nor was the result dictated by technical considerations, rules or other constraints which left no room for creative freedom.
40. In the circumstances, I find that copyright did subsist in Venom Logo 2, and in light of the Defendants' sensible concessions, I find that Mr Lant is the owner of that copyright.
3. ***Goat Head Lucifer***
41. Again, the only issue as to this work is that of originality. Mr Bray accepted that Mr Lant produced it, but said that he had learned that it was copied from a painting by Austin Osman Spare used on the cover of a book called Man, Myth & Magic. Mr Lant said that he may have been inspired by the Spare work but said he had done a good deal of work to produce his own image, which he intended to show the face of Satan. He gave evidence of how he had worked on the image by sketching himself pulling faces in a mirror. He said that the Spare picture shows a bat rather than a goat, and whilst if that is so it is a strange sort of bat, in my view the creature depicted is not much like a goat. There are certainly differences between it and Goat Head Lucifer. It has huge ears, whilst Mr Lant's image has twisted horns, the shape of the eyes and nose are different, and Mr Lant's version lacks the mop of hair or fur shown in the Spare picture.
42. Again, I have no hesitation in finding that the creation of Goat's Head Lucifer would not have been a purely mechanical exercise, nor was the result dictated by technical considerations, rules or other constraints which left no room for creative freedom. I find that copyright does subsist in it, and it was accepted by the Defendants that the copyright would belong to Mr Lant.

4. ***Sigil of Baphomet***

43. It was common ground that the band used a backdrop or drape with a version of the Sigil of Baphomet on it. The band also used a version of the Sigil of Baphomet on the cover of its first single, *In League with Satan*, and later on the cover of the album, *Welcome to Hell*. Mr Lant and Mr Dunn said it was inspired by the front cover of a book called the *Satanic Bible* by Anton LaVey, whilst Mr Bray suggested in his oral evidence that LaVey had copied his from the same source that he (Mr Bray) had used, which he did not identify. However, both sides accept that there are quite a number of differences between the Sigil identified in the Particulars of Claim and that shown on the cover of the LaVey book. In the circumstances, neither side suggested that the version of the Sigil used by the band lacked sufficient originality to be entitled to copyright protection, but again the issue was as to authorship.
44. Mr Bray said that this was his design, copied and sewn on to the backdrop by a relative, and Mr Dunn and Mr Ash confirmed that they recalled a sigil backdrop being used before Mr Lant joined the band. There were some photographs of the band performing on stage in which a large version of a sigil is shown. Mr Bray had said in his witness statement that the sigil shown in the photographs was the original version, and he accepted in cross-examination that the version in the photographs differs from the version which is now in issue, which was used on the record covers.
45. I think Mr Lant also accepted that there had been an early version of the backdrop with a sigil on it, although he did not agree about the details of the design or who had made it. Mr Lant said that this backdrop was produced by a friend of their then vocalist, Clive Archer rather than by Mr Bray's relative. However, he said that some time after he joined the band he produced a new version of the sigil, and this was then used on stage. Mr Lant also produced some sketches of what he said was his version, including some which appear (so far as I can judge without seeing the originals) to have been sketched in pencil. There are also drafts of the record covers featuring the sigil. In cross-examination, Mr Bray suggested for the first time that that one such sketch might have been drawn by him and attempted to explain his failure to say so earlier by saying that he had not realised this was an issue. Mr Bray had declined to inspect the disclosed drawings before making his witness statements, which may not have helped him set out his case with clarity but I was not satisfied by that explanation. In my view, this was an example of Mr Bray's wishful thinking about the evidence, seeking to explain away Mr Lant's possession of what appear to be preliminary sketches of one of the disputed designs. Moreover, one page has sketches of 3 images, each of which has a band member's stage name beneath it. There were spelling mistakes in the names Abaddon and Mantas. It seems wholly improbable to me that this was a sketch first done by Mr Bray, who would have been unlikely to misspell his own stage name, and I was unconvinced by his suggestion in cross-examination that he had drawn the logo but not added the names to it. This was pure speculation. The authenticity of the documents had not been challenged prior to the trial, and I place no weight on Mr Bray's speculation that they may have been generated recently rather than contemporaneously.
46. In the light of Mr Bray's acceptance that the version of the Sigil in issue differs from his version used on the drum riser, Mr Lant's possession of sketches of the current version, and the lack of any explanation from Mr Bray as to whether, how or when he claims to have produced the version in issue, I find on balance that Mr Lant was the author of the disputed version of the Sigil, and remains the owner of the copyright in it.

5. *Legions Logo*

47. Again, both Mr Bray and Mr Lant claim authorship of this logo, but again there were many versions of a logo of this sort in evidence. Mr Bray said that he drew a version which had an inverted cross through it, as can be seen on the back cover of the Bloodlust single from 1982. He also said that he had drawn a version of the logo in which a sword replaced the cross. However, Mr Bray accepted in cross-examination that Mr Lant had drawn a sketch for the version which is now in issue, which was significantly different to the version used on Bloodlust, and has a sword with a double-layered cross guard. That admission contradicted the Defendants' pleaded case about this logo, which was that the work was created by Mr Bray in 1981.
48. Mr Lant's case on this logo was also somewhat inconsistent. He said that he had created the logo in 1980/1 for the band's 'legion' of fans but accepted in cross-examination that the band had not had many fans until after the release of its first record in 1981. Then he said that the drawing had been done earlier and chosen for the fans' logo. He also suggested in his witness statement that the work in issue was used on the Bloodlust single. In my view, that is incorrect, as important details of the pommel and cross guard of the sword in the Legions logo are missing from the version used on the Bloodlust single.
49. Despite the rather unsatisfactory nature of Mr Lant's evidence about the Legions Logo, given Mr Bray's concession that Mr Lant drew the sketch for the version of the logo which is in issue, and in the absence of any suggestion that the Legions Logo lacks sufficient originality to attract copyright protection, I find that Mr Lant is the owner of the copyright in this version of the logo.

6. *At War with Satan*

50. The last of the works in which Mr Lant claims copyright is a design for part of the cover of the band's third album, *At War with Satan*, released by Neat Records in 1983. It is, as he accepted, a simple design, of the album name in a standard gothic style of font (a font already used on some of the band's other recordings) over quite a simple upturned cross shape. Despite its simplicity, the Defendants did not suggest that the work was not capable of being protected as a copyright work, nor did they suggest that the work was only part of the original album cover design.
51. The album was originally going to be called *The Book of Armageddon*. Mr Lant says that he sketched the album sleeve and showed it to Neat Records together with leather samples as he wanted the sleeve to look like a leather-bound book. Mr Bray made very similar claims. He said that he drew the cover to look like a leather-bound book with brass corners and pointed out that a sketch for the album cover relied on by Mr Lant included *Venom Logo 1*, suggesting that it was indeed Mr Bray's work. The Defendants say, with some justification I think, that it is unlikely that Mr Lant would have used Mr Bray's version of the *Venom Logo* long after designing *Venom Logo 2*. However, Mr Lant also disclosed another document showing what appears to be a later (if not final) version of the cover, which does incorporate *Venom Logo 2*. In any event, neither of those documents show the work in which Mr Lant now claims copyright as a separate work, but both include other elements such as the corner decoration or the *Venom Logo*.
52. The first sketch mentioned above shows the front and back of the album cover, with the album name and a cross on the front, together with corner devices and with the *Venom*

Logo 1 beneath the cross. In my judgment, this version does not use the font which is a feature of the disputed work and is not an original sketch of that work, as opposed to a sketch for the whole album cover. The copy in evidence looks as if an initial pencil draft was gone over in pen. Mr Bray suggested in cross-examination that he had drafted the design in pencil and then Mr Lant had gone over it in pen. He did not explain why that would have been done, and in my judgment it is rather unlikely that one of them simply inked in the other's work, without amending it. I preferred Mr Lant's explanation that he used pencil initially and then filled in the details in ink. Mr Bray also thought that another design document disclosed by Mr Lant, with a variety of designs for the brass corners, might have been drawn by him and said that some of the handwriting on these documents was his. The latter point was not put to Mr Lant, so I do not know his position on it, but he denied Mr Bray's suggestion that he had inked over Mr Bray's pencil draft, whilst accepting that other changes had been made after he made the draft in evidence.

53. This evidence is all most unsatisfactory, and is an example, in my judgment, of Mr Bray's case shifting as the litigation proceeded, including by adding new evidence orally. However, I consider that the dispute over whether Mr Bray created the sketch for the whole album cover does not help to resolve the question of how or by whom the disputed work with its specific style of lettering, the shape of the cross and the title's position over the cross, was made. In the circumstances, I consider that the direct conflict of the recollections of Mr Lant and Mr Bray is irrelevant to the question of the authorship of the disputed work.
54. Neither Mr Lant nor Mr Bray gave a detailed explanation of how or when he said he designed the work which is in issue, rather than the album cover as a whole. Whilst I preferred the evidence of Mr Lant to that of Mr Bray on most matters and was unconvinced by Mr Bray's changing evidence about the album cover, I have not found it easy to resolve the question of the authorship of this work. Neither Mr Lant nor Mr Bray addressed this work, as such, in their evidence. In the circumstances, I do not find that either side has proved authorship of this work, and I will dismiss both the claim and the counterclaim based upon it.

The Photographs

55. The Counterclaim introduced a dispute over two additional works, a photograph used on the sleeve of the single *Bloodlust*, released in 1982, and another used on the album *Possessed*, released in 1984. The Copyright Act 1956, which was in force when these photographs were taken, provided in s 48 that

““author”, in relation to a photograph, means the person who, at the time when the photograph is taken, is the owner of the material on which it is taken.”

The Act also provided at s 4 that:

“(1) Subject to the provisions of this section, the author of a work shall be entitled to any copyright subsisting in the work by virtue of this Part of this Act.

(2) ...

(3) ... where a person commissions the taking of a photograph, or the painting or drawing of a portrait, or the making of an engraving, and pays or agrees to pay for it in money or money's worth, and the work is made in pursuance of that commission, the person who so commissioned the work shall be entitled to any copyright subsisting therein by virtue of this Part of this Act.”

Bloodlust Photograph

56. The Defendants' case about this Photograph changed in the course of the proceedings. In the Counterclaim it was said that he had taken the Photograph. The Claimant served a Part 18 Request asking for particulars of his claim to authorship of the Photograph. In his Replies, Mr Bray accepted that he was not the photographer but said that the Photograph was taken by a roadie called Peter Moore (nicknamed 'Ferret') on Mr Bray's camera "on the commission of" Mr Bray, for which he was paid by Mr Bray. This Reply not only smacked of an attempt to bring in the necessary elements to satisfy s 4(3) and s 48 but contradicted the Counterclaim. To be fair to Mr Bray, he had not signed the statement of truth to the Defence and Counterclaim and may not have read it at the time, but in chief he did confirm the truth of its contents. In his statements Mr Bray said again that Ferret had taken the Photograph on his camera. He did not pursue the pleaded commissioning point or suggest that he had paid Ferret to take the Photograph.
57. Overall, I formed the view that Mr Bray had no real recollection of this photograph being taken or the arrangements made for it to be taken, and I consider that his evidence on this point was unreliable. He presented a shifting case about this work, which appeared to me to have been influenced by the course of the litigation.
58. Mr Lant's pleaded case was that Mr Nichol, a professional photographer, had been commissioned by Neat Records to take the Photograph, but he did not deal with this in his witness statement. I consider that Mr Lant's suggestion that the photograph was taken by Mr Nichol, who had been commissioned to take it by Neat Records is plausible, bearing in mind that of course Mr Lant was also present when the photograph was taken, and that the negatives appear all to have been held by Neat Records.
59. Given the contradictions in Mr Bray's evidence, and in the absence of any evidence to corroborate his claim that Ferret rather than Mr Nichol took the Photograph, and did so using material owned by Mr Bray, I find that he has not proved that he is the owner of the copyright in it.

Possessed Photograph

60. There was a similar change in the Defendants' case on how this Photograph was taken. Again, it was initially pleaded as taken by Mr Bray, and then in the Part 18 Replies it was said that Mr Nichol took it, having been commissioned to do so by Mr Bray, and that the negative was owned by Mr Bray at the time the photograph was taken. In his witness statement in reply, for the first time Mr Bray said that this Photograph was owned by a management company called Beardawn Ltd. He did not explain how or why that was so, nor how he had acquired the copyright he now claims in it.
61. Mr Bray's evidence about this Photograph is in my view also unreliable, and again I was not satisfied that Mr Bray has any real recollection of the arrangements made in relation to this Photograph. He gave no explanation as to why he rather than one of the other band members or Neat Records would have commissioned the Photograph to be taken, nor as to why Mr Nichol – a professional photographer – would have taken the picture using Mr Bray's materials. Indeed, his witness statement did not repeat or reinforce the allegation in the Part 18 Replies that the material used belonged to him rather than to Mr Nichol. He offered no detail about the alleged commission. The fact that the Photograph features Mr Bray's child does not seem to me to have any bearing on the issue. The reference to Beardawn Ltd is also puzzling and unsatisfactory.

62. Again, it appears to me at least equally plausible that Mr Nichol would have been commissioned to take the Photograph by Neat Records. In the absence of any evidence to corroborate Mr Bray's claim that he rather than Neat Records commissioned and paid Mr Nichol to take the Photograph, and given the contradictions in his evidence, I find that he has not proved that he is the owner of the copyright in it.
63. In summary, I have upheld Mr Lant's claim to copyright in the works identified as (2) Venom Logo 2, (3) Goat Head Lucifer, (4) Sigil of Baphomet and (5) Legions Logo. I have found that Mr Bray was the author of (1) Venom Logo 1. I have dismissed both sides' claims to copyright in (6) the At War with Satan design, and dismissed Mr Bray's claim to own the copyright in the two Photographs.

Infringement

64. As I have said, it was accepted on each side that the conclusions on infringement would follow those of subsistence and ownership. Mr Dunn expressed the view in evidence that all of the artworks in issue were produced by the band and could be used by any member of the band. He thought that was made plain by the presence of copyright notices in the form "© Venom" on the albums and older merchandise, such as that produced by Razmataz in 1996. However, as I have said, this was not either side's pleaded case. Also, as I have mentioned, in the 1990s the members of the band discussed entering into an agreement to share use of the band's artwork, but that did not happen. On the contrary, there is no suggestion that at any time Mr Lant authorised the Defendants to use his copyright works, or that Mr Bray authorised Mr Lant and Razmataz to use his works.
65. Pictures of the merchandise offered for sale or sold by the First Defendant with Mr Bray or his company's authority are annexed to the Particulars of Claim. The pictures are not of high quality, and I have not seen samples of the merchandise. However, it does seem to me that some of Mr Lant's copyright works are reproduced on the goods. No doubt that is a matter which can be clarified between the parties in due course, as can the question of the date when such infringements first occurred (included as a separate point in the List of Issues), as the only real evidence before me on that point was the licence granted to the First Defendant by Mr Bray which was dated 1 November 2023.
66. The pictures of Razmataz's merchandise annexed to the Defence and Counterclaim are equally hard to make out, but any use of Venom Logo 1 on such goods will have infringed Mr Bray's copyright. Again, there was insufficient evidence before me as to the timing of any acts of infringement, despite the point being raised in the List of Issues, and the parties will have to deal with that in due course. It was no part of the Defendants' pleaded case that use of Venom Logo 2 would infringe the copyright in Venom Logo 1, so that only the Claimant and Third Party's use of Venom Logo 1 itself will infringe.

Flagrancy




67. Neither side dealt with the pleaded issue of flagrant infringement either in their skeleton arguments or in court. The law on flagrancy reviewed by David Stone sitting as a Deputy High Court Judge in *Original Beauty Technology Company and Ors v G4K Fashion Limited and Ors* [2021] EWHC 3439 (Ch), [2022] FSR 11 at [140]-[147]. For completeness, given the findings I have made above, I find that none of the infringements I have found in this case were committed flagrantly, and an award of



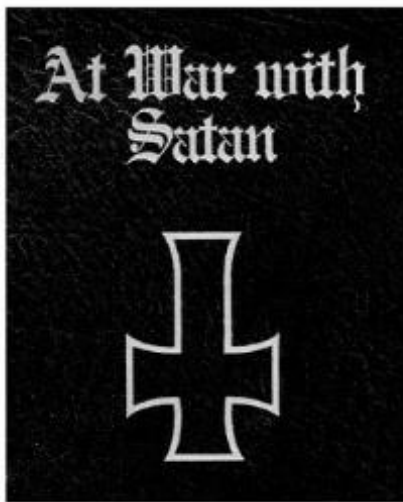
flagrancy damages, would in my judgment neither be just in all the circumstances of the case, nor “effective, proportionate or dissuasive.”

Relief

68. I will not deal now with the question of what relief is appropriate following my findings but will hear argument on it (to the extent that it cannot be agreed) at a form of order hearing to be arranged through the usual channels.
69. This judgment will be handed down remotely and, if necessary, the time for lodging any appeal will be extended in the usual way.

Annex A

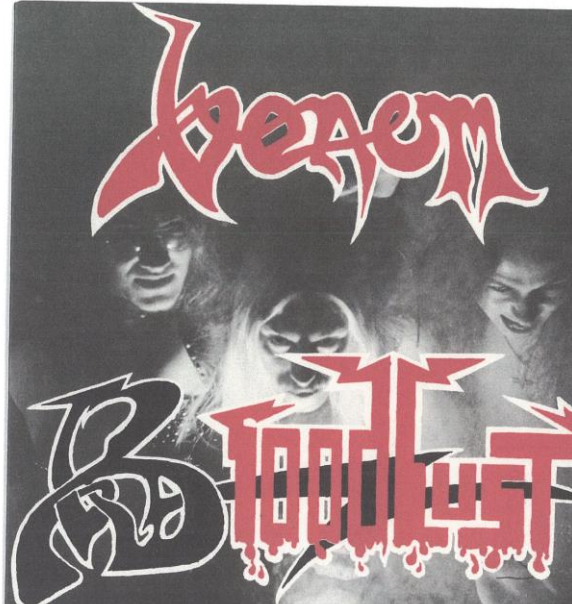
1	Venom Logo 1 
2	Venom Logo 2 
3	Goat Head Lucifer 

4	<p>Sigil of Baphomet</p>  The Sigil of Baphomet is a black and white illustration. It features a central figure with a goat's head, a human body, and large, pointed ears. The figure is positioned within a five-pointed star (pentagram) that is itself enclosed within a circle. The figure's arms are raised, and its legs are spread apart, following the points of the star.
5	<p>Legions Logo</p>  The Legions Logo is a black and white illustration. It features a central figure with a human body and large, pointed ears, similar to the Sigil of Baphomet. The figure is positioned within a five-pointed star (pentagram) that is itself enclosed within a circle. The figure's arms are raised, and its legs are spread apart, following the points of the star.
6	<p>At War with Satan</p>  The image shows a black and white graphic. At the top, the text "At War with Satan" is written in a stylized, gothic font. Below the text is a large, white, stylized cross symbol on a black background.

Annex B

The “Other original works” subject of the counterclaim

1. The Bloodlust Photograph



2. The Possessed Photograph

