



BL O/239/06

25 August 2006

**COPYRIGHT, DESIGNS AND PATENTS  
ACT 1988**

**PARTIES**

P J International Leathercrafts Limited                      Applicant

and

Peter Jones (ILG) Limited    Licensor

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**PROCEEDINGS**

Application under section 247 to settle the terms of a licence of right available under section 237 in respect of certain design rights

HEARING OFFICER                      P Hayward

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**DECISION**

**Introduction**

- 1    This application arises from the provisions of section 237 of the Copyright, Designs and Patents Act 1988, under which:
  - (1) Any person is entitled as of right to a licence to do in the last five years of the design right term anything which would otherwise infringe design right.
  - (2) The terms of the licence shall, in default of agreement, be settled by the comptroller.
  
- 2    Peter Jones (ILG) Limited ("Peter Jones") claim ownership of certain design rights which, it is agreed, entered the licence of right period on 1 January 2005. P J Leathercrafts Limited ("P JL") would like a licence but have been unable to agree the terms with Peter Jones. Accordingly, on 21 June 2004 they applied to the comptroller to settle the licence terms. The specific provisions for such applications are in section 247, the relevant parts of which read:

"(1) A person requiring a licence which is available as of right by virtue

of section 237 . . . may apply to the comptroller to settle the terms of the licence.

(2) The terms of the licence settled by the comptroller shall authorise the licensee to do . . . everything which would be an infringement of the design right in the absence of a licence . . .”

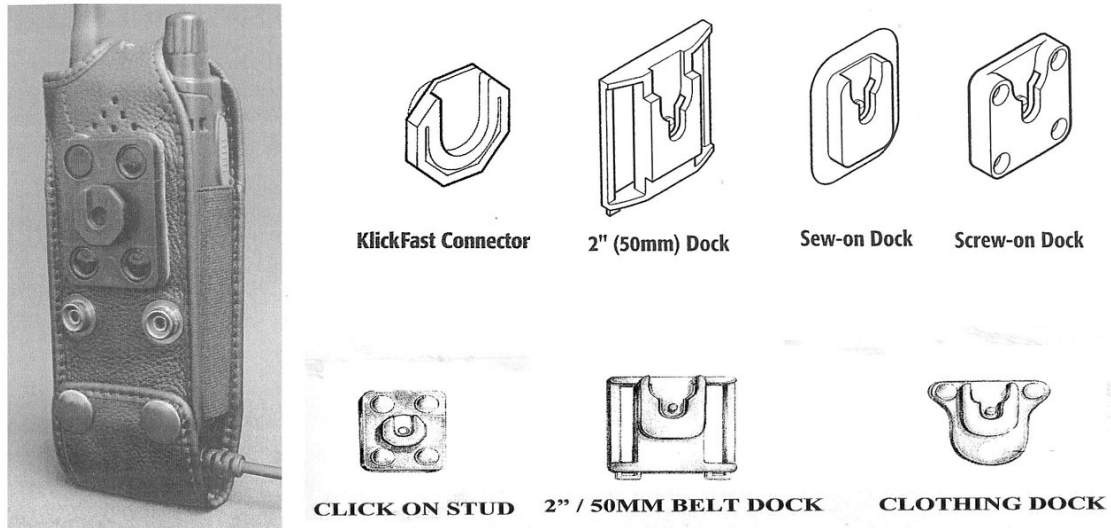
- 3 Section 247 also allows the Secretary of State to prescribe by statutory instrument factors which should be taken into account in settling licence terms, but to date no such factors have been prescribed.
- 4 As always in these disputes, the main argument centres on royalty. There is one other licence term on which the parties have been unable to agree, and I shall come to that at the end of my decision. The remaining terms had, by the end of the hearing, been agreed.
- 5 To assist the parties in focussing their evidence so that it would be more helpful to me I convened a case management conference on 6 May 2005. Both sides subsequently filed written evidence, but overall it took another year before the dispute came before me at a hearing on 5 May 2006. Miss Margaret Briffa appeared for PJJ and Mr Dominic Hughes appeared for Peter Jones.

### **The designs**

- 6 The designs in question are for a pair of components that allow items such as leather cases for radios to be connected in a releasable way to belts, jackets and other articles worn by police officers, and to other fittings. The connection system was originally developed by Peter Jones and is sold by them as the ‘Klick Fast’ system. It comprises an octagonal shaped stud mounted on the radio case and a dock to receive the stud carried by the belt, jacket or other article.
- 7 The system is not limited to police force use, and I was given some examples of other markets. However, it was common ground that, so far as the present application is concerned, the police forces are by far the largest market. Likewise, the system is not limited to mounting radio cases, but as far as the present parties are concerned, that is their main interest. Indeed, both parties are predominantly leather case manufacturers, and if a police force is using this coupling system, they will sell cases to them with the stud already attached.
- 8 Of course the police forces will also need docks. Whilst the socket element of the dock will be of a standard design so that it can receive the studs, the back plate or mounting for the socket will vary depending on what it is to be attached to. It may, for example, be designed to be threaded onto a belt, sewn on to clothing or even stuck on to a dashboard. A police officer may well have more than one dock on a jacket or the like so that he or she can either carry two different items or mount an item in different places, and they may have several changes of some items of clothing, each equipped with a dock or

docks.

- 9 The following pictures show a radio case with a stud mounted on the back. I have taken this picture from a PJJ catalogue simply because it had a clearer image, but the Peter Jones stud is similar. I have also shown some drawings of a stud and several docks from (a) the Peter Jones range (top row) and (b) the PJJ range (lower row).



- 10 The range of designs that has been offered by Peter Jones has varied over time, but PJJ want a licence for five specific designs having product codes CM48, 49, 53, 55 and 59 that were developed by Peter Jones at the end of 1998. I believe some of these are shown in the top row above. Peter Jones assert design right in these five designs. The extent of the design right is disputed, because PJJ say there is no design right in the interconnecting parts of the stud and dock as these are excluded by the so-called "must match, must fit" exception of section 213(3)(b) which says that design right does not subsist in:

"features of shape or configuration of an article which –  
(i) enable the article to be connected to, or placed in, around or against, another article so that either article may perform its function, or  
(ii) . . . "

- 11 On several occasions during these proceedings I have felt that this is the real issue between the parties - ie the subsistence of design right in the interconnecting parts - not what the terms of a licence should be. It is clear that PJJ are mainly interested in being able to sell docks and studs that are compatible with those of Peter Jones, not in copying other aspects of their designs, and even with a licence I can see clear potential for dispute about whether royalty is or is not payable on what PJJ actually sell. PJJ, though, have not asked me under section 246 to determine subsistence. They have only asked me under section 247 to determine the licence terms, and that is what I will do. Nevertheless, I have not found it possible to ignore the question of subsistence altogether because it underlies one of the main points of

difference between the parties on royalty rate.

### **Royalty: the principles**

- 12 I will now turn to the key issue of royalty rate. I will start by summarising the principles on which the parties had, by the end of the hearing, agreed.

The correct basis for determining the licence terms was what willing parties would agree. This is consistent with the basis on which previous licences have been settled, though it is not always easy to apply when in practice the licensor is most unwilling to grant a licence, as is the case here.

In the absence of any comparable licences, the royalty should be determined by looking at the profits available. In theory this should be the profits available to the licensee, but sometimes, if the licensee is not yet established in the market, the only available figures may be the profits available to the licensor.

The split should be 25%:75% between the licensor and licensee, though the parties seemed somewhat confused about what it was that was going to be divided in this ratio!

- 13 There were also a number of other points which the parties had agreed by the end of the hearing.

For present purposes I could take the cost of manufacturing a stud as being roughly 25p and the cost of manufacturing a dock as being the same, excluding tooling costs.

Royalty should be charged on studs and docks alone. Right up to the hearing Peter Jones had been arguing for a further royalty on leather cases sold with a stud, but they dropped that during the hearing.

The main market will be the police forces.

- 14 That left three main areas of dispute. First, what are the profits available, or to put that more accurately, what is the figure that I should be splitting 25%:75%? Second, should that figure get an uplift to reflect the spin-off sales of cases and other accessories that came from selling studs and docks? Finally, should the royalty be specified as a percentage of the selling price or as a fixed amount per item?

- 15 In relation to the principles, the parties mentioned two prior cases in their skeletons, my own decisions in *Stafford Engineering Services Ltd Licence of Right (Copyright) Application* [2000] RPC 797 and *NIC Instruments Ltd's Licence of Right (Design Right) Application* [2005] RPC 1. I do not need to go into them in detail because in the event the parties made very little use of them. Perhaps the main point was the observation that in *NIC Instruments* I had been prepared to take spin-off sales into account.

## The evidence

- 16 Before I go into the application of these principles to the present case, I need to assess the evidence. PJJ have provided two witness statements from their Managing Director, Philip Parker. The first gives some background, makes a few submissions and provides evidence supported by a quotation of what it costs PJJ to buy studs and docks from the injection moulding company who makes them for PJJ. The second is largely challenging evidence that had been provided by the other side. Mr Parker was cross examined. He came across as a robust witness in the sense that he was well able to resist attempts in cross examination to get him to support elements of the other side's case, but nevertheless an honest one. PJJ also provided a short witness statement from their solicitor Margaret Briffa, but in the event nothing really turns on that.
- 17 Peter Jones have provided a short witness statement from their Sales Supervisor, Jon Gwilym. His evidence goes to the impact the Klick Fast system has had on their sales and to marketing activity by PJJ. He was not cross examined, so I shall take his evidence at face value.
- 18 Peter Jones' main evidence is in the witness statements of their Managing Director Morgan Jones. His first statement exhibits catalogues from 1999 and 2005 complete with prices, a selection of invoices for the supply to them of studs and docks from the injection moulding company they use, three invoices for the sale by them of leather cases equipped with the Klick Fast system, three invoices for the sale by them of studs and five invoices for the sale of docks. This evidence, he said, showed that they sold studs for £3.75 to £4.75, docks for £4.40 to £4.50 and cases equipped with the Klick Fast system for £10.95 to £14.50. His company's manufacturing costs, he said were under a tenth of a penny for studs and 25p for docks, so nearly all of the sale price was profit. His second statement is largely challenging evidence provided by the other side.
- 19 On the face of it, the exhibits to Mr Jones' first witness statement look very helpful. However, scratch the surface a little and a rather different picture emerges. The sample invoices from the company manufacturing studs and docks for Peter Jones suggest they were buying in large quantities. For example, they bought at least 10,000 studs in August 2004 and 15,000 docks in May 2005. This is consistent with the assertion in Mr Jones' second witness statement that over the five year period of the licence PJJ should be able to sell a minimum of half a million studs and docks – and that, I note, is in the face of competition from Peter Jones who already have 51 out of 52 police forces as their customers. However the sample invoices for sale of studs and docks by Peter Jones to its customers are for trivial quantities. There is one invoice for 100 studs but the rest are for 24, 10 and, in several instances, single items. The same is true of the invoices for sales of cases equipped with the Klick Fast system. It doesn't need a genius to realise that these invoices cannot be representative of typical sales. The names of the purchasers had been redacted from the invoices allegedly "to preserve commercial confidentiality". I think it more likely they were redacted to hide the fact that

these are not typical invoices for sales to police forces.

- 20 Not surprisingly, the other side smelt a rat, and Mr Parker questioned this evidence in his second witness statement. However, Peter Jones did nothing until the morning of the hearing, when they produced a further witness statement from Mr Jones saying that he did not rely on the invoices of case and stud sales “as indicating the full range of prices” and withdrawing the invoices for sales of docks completely. He also revised the range of sales prices for cases, studs and docks very significantly. For example, he now said studs were sold for as little as 85p (compared with £3.75 to £4.75 asserted previously). He also said the relevant price for docks was £1.50, but then acknowledged that they gave discounts for bulk purchases and that the majority of sales were nearer 75p each. This is substantially less than the £4.40 to £4.50 he had asserted previously.
- 21 Mr Jones’ credibility as a witness was now in tatters before he had even set foot in the witness box, but did he redeem himself there? I regret not, because it became clear under cross examination that his last-minute further witness statement was some way short of a full confession. He had to concede, for example, that the invoices for both purchase and sale of studs did not relate to the designs in question. That may or may not have made much difference to the figures, but given that his company had made sales of these designs, it is odd that invoices for different designs should have been submitted. He also conceded that none of the invoices related to sales to police forces, but perhaps more seriously given the apparent plausibility of prices printed in a brochure, he acknowledged that the priced brochure he had exhibited was not the one produced for police forces but a specialist one for the much smaller PMR (private mobile radio) market.
- 22 I came to the conclusion that I could not rely on any of Mr Jones’ prices and quantities as being fairly representative for the purposes of my decision. They had clearly been put forward to mislead, not help. The best they do is provide me with an upper limit, but beyond that, I must rely entirely on the figures provided by PJJ’s witnesses.

### **What are the profits available?**

- 23 PJJ say they intend to sell studs at 50p and docks at 75p. They provide no illustrative invoices of actual sales because, they say, they haven’t made any. That is, perhaps, not quite the whole picture because what they mean is that they haven’t sold anything to the precise designs for which they seek a licence. They have, they concede, both marketed and sold products that are compatible with the Klick Fast system, and even though it is not clear that any sales took place before these proceedings were launched, one wonders whether invoices for these sales – even if they had to be submitted as late evidence - would at least have been indicative of the sort of price that products like this can command. Nevertheless, these figures of 50p and 75p have not been challenged by Peter Jones, and of course 75p matches the figure that Peter Jones have now conceded for their own sales of docks. I shall therefore accept these figures as a fair starting point.

- 24 PJJ provide evidence that their manufacturing costs are an average of 22p per stud and 24p per dock. There are some arithmetical errors in their calculations – I think these figures should be 23.5p and 22.8p – but they are of no real consequence. However, PJJ say that 11.5p needs to be added to both these figures to cover tooling costs. They base this on a quotation of £11,500 for moulds to make two kinds of stud and three kinds of dock. I am not sure that these studs and docks necessarily exactly matched the designs for which a licence is now sought, but I am satisfied they are close enough for present purposes. They arrive at 11.5p by assuming that they will make 20,000 of each component (ie 100,000 components in all).
- 25 Peter Jones say 11.5p is too high because PJJ will be able to sell far more components than this over the 5 year period of the licence. In cross examination Mr Parker accepted that the 155,000 police officers in the UK would together need something of the order of one million docks. However, Mr Parker pointed out that Peter Jones have already soaked up the market, having had a five year head start, leaving only replacement sales, and Peter Jones do not deny this. He insisted that his figure of 20,000 for each type of component was reasonable.
- 26 Given that PJJ will not have the future market to themselves – as Peter Jones have done in the past – I am not convinced that spreading the tooling costs over 100,000 components is grossly unreasonable, but the figure may be a little on the low side. In the absence of more precise evidence of the potential market size, I am going to assume the tooling costs could be spread over 200,000 components. In round figures, that takes the cost of manufacturing studs and docks up to 30p, giving a gross profit of 20p on a stud and 45p on a dock.
- 27 Of course, gross profit is very different from net profit. All businesses have significant overheads, including marketing and distribution costs, and these have to come out of gross profit. Surprisingly, neither side provided any evidence of these overheads. However, during cross examination Mr Parker said his company's gross profit, before running costs, was about 35% and the average net profit, across the board and after deducting running costs – was 10%. These figures strike me as entirely reasonable for this sort of business, and in the absence of any other evidence, I shall assume they are fair. That means I must divide the gross profit figures I have arrived at above by 3.5, giving a net profit of just under 6p for a stud and just under 13p for a dock.
- 28 The 25:75 split which both sides conceded was reasonable is normally applied to the net profit. Indeed, applying to anything else would be nonsensical. Certainly applying it to gross profit, as Mr Hughes suggested at the hearing, would leave most licensees making a net loss. This gives a starting point for royalty payable of 1.5p per stud and 3.25p per dock.

**Should there be an uplift for spin-off sales of cases?**

- 29 There is no dispute that both parties are primarily in the business of selling leather cases. Selling studs and docks is not their main objective. They sell them because police forces want their leather radio cases fitted with this quick-release system. Cases, of course, cost rather more than studs and docks, and Peter Jones argue that there should be a significant uplift on the royalty rate to reflect the fact that the main profit is in the cases. Indeed, right up to the hearing they were arguing for a royalty to be levied on cases when sold with studs and docks.
- 30 There is fairly convincing evidence that the quick-release system does have a big impact on case sales to the police. Prior to 1999 Peter Jones manufactured and supplied leather cases to carry radios to only 9 police forces. Having introduced their Klick Fast system, they have now sold cases to 51 out of the 52 police forces, and even PJJ seem to accept that this growth in sales is at least in part, if not mainly, down to this system. Indeed, Mr Parker specifically accepted in cross examination that Klick Fast was helping Peter Jones sell cases. Peter Jones argue that if willing parties were negotiating a royalty rate, they would unquestionably take account of the fact that selling studs and docks allowed them to sell more cases.
- 31 In principle I agree, but the facts of this case introduce a twist that I cannot ignore. This is where it becomes impossible to isolate the question of subsistence of design right entirely from the question of licence terms. PJJ say that they do not need a licence to sell studs and docks that are compatible with the Klick Fast system because those elements of the design that allow compatibility are excluded from the scope of design right by the must match, must fit exception. All the licence will do is allow them to sell studs and docks whose other features (eg the mounting plates) are the same as Peter Jones'. Thus it is not the design rights being licensed that produce spin-off sales of cases, but features that are not subject to design right.
- 32 This begs the question of why PJJ want the licence, especially as they suggest they may not necessarily sell any studs and docks that replicate those of Peter Jones precisely. The question is strictly irrelevant because there is nothing in the Act to require applicants to justify their request for a licence, but I feel PJJ have nevertheless answered it adequately. They say their entry into the market has been hampered by assertions of design right that Peter Jones have been making to potential police force customers, and there is certainly some evidence that Peter Jones have been trying to deter police forces from buying from PJJ. Having a licence, they say, will remove any possible basis on which Peter Jones could make such assertions. I make no finding on whether Peter Jones have or have not acted properly, but I simply say I am satisfied PJJ have given a plausible reason for seeking the licence.
- 33 Mr Hughes argued that I could not take subsistence into account because it is not in issue. That is wrong – it was clearly put in issue in the counterstatement. He also argued that I could not investigate the matter as I had been given no specific evidence identifying exactly which parts of the designs do not have design right because of the must fit, must match exception. However, for the purposes of this licence I do not need such



evidence. It is sufficient for me to know that the designs contain features that allow what I might call interoperability. I don't need to know precisely what those features are.

- 34 It seems to me unarguable that those features of a stud – whatever they may be – that enable the stud to inter-engage effectively with the Klick Fast dock must fall within the must match, must fit exclusion, because they are unquestionably “features of shape or configuration of an article to be connected to, or placed in, around or against, another article so that either may perform its function”. The same, of course, is true of the corresponding features of the dock. Those features – again, whatever they may be – do not therefore attract design right. It also seems to me on the evidence that it is those features which primarily open up the market for sale of leather cases to the police. Certainly there is no evidence that the police care one bit about the precise design of, say, the backplate, and I would be very surprised if they did. It remains true that P JL will only be selling studs and docks in order to sell cases, but I do not believe the design features being licensed play a significant role in that. Because of that, I do not believe willing parties would agree a significant uplift to reflect spin-off sales of cases.
- 35 I had arrived at a figure of 1.5p per stud and 3.25p per dock before I started looking at the question of uplift. P JL are offering a royalty of 2p a stud and 5p a dock. In the circumstances that strikes me as entirely reasonable, and that is the royalty I will order.

#### **Percentage royalty, or so much per item?**

- 36 At the case management conference I had encouraged the parties to go for a royalty based on so much per item because of the inevitable difficulties in working on a percentage basis when the products in question are mainly sold in conjunction with other items (ie leather cases). Peter Jones are happy with that. P JL are concerned that if they have a fixed royalty and competition forces prices down, they could be left with a royalty that is too high for them to compete effectively.
- 37 P JL offered to invoice studs and docks separately and to undertake never to sell them at less than a 50% mark up on the manufacturing costs. However, I still see too much potential for dispute with such an arrangement. I agree that P JL's concerns about falling prices would have been a significant factor if I had gone for a royalty anywhere near the £1 a stud and 75p a dock that Peter Jones had originally requested, but I can't see it as a significant factor with the royalty levels I have determined. I am therefore going to go for a fixed sum per item.
- 38 For completeness I should add that the draft licence included a provision for the royalty to go up with inflation. However, given the likelihood that competition will actually bring prices down and given the relatively short period of the licence, Mr Hughes tacitly accepted at the hearing that such a provision was not necessary.

### **Other licence terms**

- 39 I will now turn to the only other disputed term in the draft licence. I can deal with it very briefly. There is a clause that makes P JL responsible for the independent auditor's fees if the auditor discovers they have underpaid by more than X%. Peter Jones say X should be 3%, P JL say 5%. Given the nature of the products and the level of the royalty, 5% seems to me more reasonable in the present circumstances.

### **Conclusion**

- 40 Having considered the evidence and the submissions from both sides, I order that the terms of the licence be as appended to this decision.

### **Costs**

- 41 At the hearing it was agreed that I should defer consideration of the issue of costs until the parties had has the opportunity to consider this decision and to make submissions if they so wished in the light if it. To that end I would invite either party to make submissions within four weeks of the date of this decision, that is, by 22 September. Any submissions should, as I indicated at the hearing, provide argument why I should depart from the general presumption in licence of right cases that each side bears its own costs.
- 42 If no submissions are filed, I shall make no order for costs. If submissions are filed, I shall consider them before making an order. Obviously if submissions are filed either side will be at liberty to request an oral hearing, though I hope that will not prove necessary.

### **Appeal**

- 43 Under section 249 of the Act, any appeal lies to the Registered Designs Appeal Tribunal. As this decision is not on a matter of procedure, any appeal must be lodged within six weeks.

**P HAYWARD**

Divisional Director acting for the Comptroller

## LICENCE OF RIGHT

THIS LICENCE OF RIGHT is ordered between:

- (1) Peter Jones (I.L.G.) Limited, whose registered office is at Unit 1, Monk Street Industrial Estate, Lower Monk Street, Abergavenny, Monmouthshire NP7 5YG (“The Licensor”); and
  
- (2) P J International Leathercrafts Limited whose registered office is at Unit 17, Suprema Business Park, Edington, Nr Bridgwater, Somerset TA7 9LF (“the Licensee”)

WHEREAS:

- (A) The Licensor asserts that design right subsists in the designs (which relate to docks, studs and (where docks and studs are used together) fastening systems) annexed hereto (“the Designs”);
  
- (B) The Licensor’s design right in the Designs is subject to Licences as of Right under section 237 of the Copyright, Designs and Patents Act 1988;
  
- (C) The Licensee wishes to take a licence in respect of all components of the Designs and has applied to the Comptroller-General of Patents, Designs and Trade Marks under Section 247 of the Copyright Designs and Patents Act 1988 to settle its terms;
  
- (D) The Licensor and the Licensee have failed to agree the terms of the Licence of Right and the Licensee has applied to the Comptroller General of Patents, Designs and Trade Marks to settle the terms by an application on Design Right Form 3 dated 17<sup>th</sup> June 2004

The Comptroller orders that a Licence be granted on the following terms.

## **1. Definitions**

In this Licence:

1.1 "The Act" means the Copyright Designs and Patents Act 1988 including any amendment to it or re-enactment of it.

1.2 "Commencement Date" means 1<sup>st</sup> January 2005, being the date on which the Licence of Right under the Act became available.

## **2. Licence**

2.1 The Licensor hereby licenses the Licensee to do all such acts as would otherwise constitute an infringement of the design right pursuant to the Act in the Designs. All products made under this Licence by the Licensee or by any sub-licensee of the Licensee shall so far as reasonably practical be marked to indicate that the products originate from (as appropriate) the Licensee and/or the sub-licensee.

2.2 Subject to notifying the Licensor of the name of the sub-licensee and the grant of a sub-licence, the Licensee shall have the right to grant sub-licences under the foregoing licence to third party sub-contractors provided that:

2.2.1 the design sub-licensed, the royalty rate, the payment terms and the Licensor's right of independent audit mirror those set out in this Licence Agreement; and

2.2.2 all such articles as are manufactured or dealt in or by such sub-licensee are recorded in the records which the Licensee shall cause to be kept pursuant to Clause 4.1 below; and

2.2.3 the Licensee takes steps to ensure that the royalties due from such sub-licensee are paid by the Licensee and that the Licensee maintains records

of acts of the sub-licensees giving rise to royalty payments so far as is reasonably possible.

2.3 This Licence shall have effect for the term from the Commencement date and shall continue until the last day of December 2009.

2.4 Nothing in this Licence shall be construed as a licence to the Licensee under any other rights of the Licensor.

### **3. Royalty**

3.1 The Licensee shall pay to the Licensor royalties at the rate of:

2p per stud

5p per dock

for each article in respect of which the licensee commits an act that would (save for this licence of right) constitute infringement of the Designs under the Act.

3.2 Payments due under Clause 3.1 above shall be made (i) within thirty (30) days of the date of the decision settling this licence in respect of royalties accruing in the period from the Commencement Date up until 30<sup>th</sup> June 2006 and thereafter (ii) quarterly by the following method: within 30 days of each of the 31<sup>st</sup> December, 31<sup>st</sup> March, 30<sup>th</sup> June and 30<sup>th</sup> September ("Quarterly Dates"), payment shall be made in respect of royalties due for the quarter terminating on the said Quarterly Date. For the avoidance of doubt, a payment will fall due within 30 days of the 31<sup>st</sup> December 2009 in respect of royalties due (if any) from the period 1<sup>st</sup> October 2009 to 31<sup>st</sup> December 2009.

3.3 Each such payment shall be accompanied by a statement setting out the amount of royalties due.

## **4. Accounts**

4.1 The Licensee shall cause to be kept full and accurate records pertaining to its operation under this licence from which the accuracy of the statements in Clause 3.3 may be independently verified.

4.2 The Licensee shall permit an independent auditor agreed between the parties to inspect and audit such records at all reasonable times at the Licensor's expense, except that the Licensor's auditing expenses shall be paid by the Licensee if the actual payments made to the Licensor are more than 5% less than the correct figure.

4.3 The Licensee may remove from such records any information which enables any person inspecting the records to identify any of the Licensee's customers except where the independent auditor can demonstrate that such information is necessary to verify the accuracy of the figures and the independent auditor also agrees by way of a signed confidentiality agreement not to disclose to any other person firm or company including the Licensor the identity of the Licensee's customers.

4.4 The Licensor shall give 28 days written notice of such inspection.

4.5. The right for inspection under this Clause shall continue for a period of two months after termination of this Licence.

## **5. Termination**

The Licensor shall have the right to terminate this licence with immediate effect by written notice to the Licensee if:

- (a) the Licensee is in breach of any term of this licence and fails to remedy that breach within one month of a notice from the Licensor calling upon the Licensee to remedy the breach; or

(b) the Licensee shall enter into liquidation (other than for the purposes of reconstruction or amalgamation).

## **6. Service**

6.1 Service may be by registered first class post from within the United Kingdom in which case it shall be deemed for the purposes of this licence to have been received on the third working day after posting or by acknowledgement facsimile transmission in which case it shall be deemed to have been received on the date of the acknowledgement.

6.2 Service upon the Licensee shall be to the Licensee's address at the address provided at the beginning of this licence or to such other address in the United Kingdom as the Licensee shall give by notice in writing to the Licensor.

6.3 Service upon the Licensor shall be to the Licensor's address at the address provided at the beginning of this licence or to such other address in the United Kingdom as the Licensor shall give by notice in writing to the Licensee.

## **7. Governing law**

This licence is governed by and shall be construed in accordance with English law.

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