

(1) DENNIS TANNER

Claimant

-v-

(1) PETER JOHN FILBY

(2) ALAN G T HOWELL

Defendants

**CHRONOLOGY OF ADVICE GIVEN TO PETER FILBY REGARDING THE
PUBLICATION OF LETTERS IN THE APRIL 2001 EDITION OF "WHICHKIT?"**

1. On 10 March 2001, Dennis Tanner ("DT") agreed settlement terms over the telephone with Keith Marwick ("KM") of Aldrich Crowther & Wood¹. The terms of settlement involved an undertaking by each party not to publish any "article" about the other or their products.
2. KM faxed DT a draft Consent Order the following day, 11 March 2001². DT replied in writing the same day that he wished to obtain his solicitors' advice to ensure that the terms of the draft Order were "all encompassing"³. In a telephone call on the same day it seems that KM reassured DT that the words were "all encompassing" but nevertheless encouraged DT to take legal advice before signing the Consent Order⁴.
3. On 12 March 2001 DT wrote to KM to confirm that his solicitors, Coole & Haddock, had recommended replacing the word "article" in the undertaking with the words "article, letter, advertisement or notice" and requested that this alteration be made to the draft Consent Order⁵.

¹ Tanner's note of conversation with KM is at page 469

² Page 476

³ Page 481

⁴ Page 482

⁵ Page 484

4. On 13 March 2001 KM wrote to Peter Filby ⁶("PF") that:

"I have still not heard from Mr Vandyck⁷ regarding whether or not the meaning of the word article encompasses letters from readers. Personally, and for the reasons set out in my earlier letter of today⁸, I believe it does not. However, as soon as I receive counsel's views, I will be in contact.

Please also note (and ironically) I have received a letter from Tanner stating that he is seeking clarification over this matter from his solicitors! It may be, therefore, that part of the terms of the settlement may need "tightening up". Please note, however, that the claim has been settled and the parties cannot now withdraw from the agreement."⁹

5. According to a telephone attendance note, DT told KM on 13 March that he wanted an "absolute bar on PF/Blueprint printing anything about [CC] + Pilgrim Cars", to which KM had replied that this was "not in the contemplation of the parties under the Settlement Agreement".¹⁰

6. DT followed up this conversation with a letter to KM the same day insisting that:

" the revised wording suggested by my solicitor be implemented".¹¹

7. PF telephoned KM the following morning (14 March) to say that he was happy with the Settlement Agreement but asked KM to:

"try and make sure [PF] can carry on printing readers' letters".¹²

KM's note of this call states that KM should "clarify it poss [sic] with Counsel" and "confirm with Tanner if necessary"

8. A number of telephone calls were exchanged that day between DT and KM¹³ during which the wording of the undertaking was discussed. DT's note of one of these calls records that KM had:

⁶ Page 490

⁷ We do not have a copy Vandyck's instructions.

⁸ A copy of this "earlier" letter has not been disclosed.

⁹ see KM's letter to PF of 13 March 2001 at page 490

¹⁰ See KM's telephone note of 13 March at page 485

¹¹ Page 487

¹² Page 491

¹³ Notes of these calls are at pages 488 and 502

"No problem adding words advert, notice or letter but they shall require qualification. He said he has to speak to Mr Vandyke [sic] (council [sic]) for further input but he shall be contacting me in about 20 minutes."

DT wrote to KM three times on 14 March confirming his understanding of what had been agreed in the telephone conversations.¹⁴

9. Later that day KM wrote to PF that:

"I have now spoken¹⁵ with regard to the publication of the 2 readers' letters in the April edition of "Which Kit?".

Counsel shares my view that as the magazine was published and distributed before the date the settlement¹⁶ was made on the 10th March 2001 (and as you explained on the 13th March¹⁷), the undertaking both you and Blueprint have given will probably not affect the letters. We agreed that the terms of the settlement will only affect those matters arising after the agreement was made.

With regard to whether the word "article" covers readers' letters, Mr Vandyck would prefer to consider this matter in greater detail. However, he felt that although it is debatable whether or not the word covered readers' letters, his advice is to not print any letters concerning Tanner and his products in the future. Please note, however, that this is subject to Mr Vandyck considering the matter further. If, therefore, you would like me to obtain counsel's formal and considered advice, can you please let me know and I will, of course, provide you with an estimate of both this firm's fees and counsel's fees¹⁸.

I have dictated a letter explaining the terms of the settlement. This will be faxed to you tomorrow."¹⁹

10. A letter was duly despatched by KM to PF the following day in which KM wrote:

¹⁴ These letters can be found on pages 492, 494 and 497

¹⁵ A note of Vandyck's advice has not been disclosed.

¹⁶ It is not clear why KM believed that the April edition of *WhichKit?* was published before the date of the settlement. Tanner's letter dated 14 March 2001 (page 494) makes it clear it was published (i.e. became available to purchase) on 16 March 2001.

¹⁷ No record or note of PF's "explanation" has been disclosed.

¹⁸ Unclear whether counsel's formal opinion was ever sought.

¹⁹ See KM's letter to PF of 14 March 2001 at page 499

"...May I please remind you that the undertakings do not extend to any article printed, published, distributed or otherwise communicated before the agreement was made (10th March 2001).

If you have any queries about the extent of the undertakings, drop me a line and I will deal with any queries promptly. However, may I suggest that you do not publish any matter about Tanner or his products until you have discussed the same with me. Also, may I suggest that you do not send your letter to the Industry until I have seen it.

I also confirm that you need to know whether you have retained the right to publish readers' letters. I confirm that Mr Vandyck is not sure (refer to my letter of the 14th March 2001). I confirm, therefore, that I will briefly discuss with Tanner his understanding of this matter and possibly agree a suitable amendment of the order (but without incurring further costs and delaying the filing of the Order).²⁰

11. KM spoke to DT the next day and explained that, in his view, the agreement reached on the 10th March stood, but there had also been a "collateral agreement" to negotiate and to consider any of DT's reasonable proposals for amending the draft Consent Order. However, KM maintained that his client was under no obligation to accept any amendments²¹. The conversation continued "without prejudice" during which KM said that PF would probably be prepared to accept an expansion of the wording to "advertisements" and "notices" but not to "letters".

On 16 March, the April edition of *WhitchKit?* Became available on the shelves²². DT telephoned KM the same day. He referred to the two letters from Peter Smith and B.I. Fry and asked KM to explain "what was going on".²³

²⁰ See KM's letter to PF of 15 March 2001 at page 506

²¹ See KM's typed telephone note of 15 March at page 516.001

²² See DT's letter of 14 March 2001 at page 494

²³ See DT's telephone note of 16 March at page 510