



**Judgment
by
Mr Justice Bell**

**McDonald's Corporation
and
McDonald's Restaurants Limited
against**

**Helen Marie Steel
and
David Morris**

Summary

19 June 1997

IN THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION.

19th June 1997
No. 1990-M-NO. 5724

McDonald's Corporation

First Plaintiff

and

McDonald's Restaurants Limited

Second Plaintiff

against

Helen Marie Steel

First Defendant

and

David Morris

Second Defendant

Before

The Hon. Mr Justice Bell

SUMMARY OF THE JUDGMENT

(read in Open Court on Thursday, 19th June, 1997.)

I direct pursuant to RSC Ord. 68 1 (1) that no official shorthand note shall be taken of this summary and that copies of this version may be treated as authentic.

Roques Bell
19.6.97.

This summary is not part of the judgment. If this summary is perceived to differ in any material respect from the judgment handed down, the judgment prevails. I have made this summary which I will now read, so that the parties and others with an interest in the case may understand my main conclusions more quickly, but primarily so that they may be heard publicly in open court.

Introduction.

This is a claim for libel brought by McDonald's Corporation, the First Plaintiff, and McDonald's Restaurants Limited, the Second Plaintiff, against Ms Helen Steel and Mr Dave Morris, the First and Second Defendants, and a counterclaim for libel brought by Ms Steel and Mr Morris against McDonald's Restaurants Limited.

McDonald's Corporation is a company incorporated in the State of Iowa, in the United States of America. It started business in 1955. It has its headquarters at Oakbrook near Chicago. It is responsible for a vast chain of McDonald's quick service restaurants throughout the world. The restaurants are owned and run by subsidiaries of McDonald's Corporation, or by franchisees or owner operators, or by joint ventures of McDonald's Corporation or its subsidiaries and outside partners. Together they make up the McDonald's system. The system and any individual part of it, down to individual restaurants, are all loosely referred to as "McDonald's".

These proceedings began with the issue of the writ on 20th September, 1990. At the end of 1990, there were about 11,800 McDonald's restaurants in a total of 53 countries. About 8,600 of the restaurants were in the United States. Total systemwide sales were about 18.75 billion U.S. dollars. By the end of 1995, which is the latest time for which I have figures, there were about 18,400 restaurants in a total of 89 countries. About 11,400 of the restaurants were in the United States. Total systemwide sales had grown to nearly 30 billion U.S. dollars. No doubt all those figures are larger still by now.

The first McDonald's restaurant in Britain was opened in 1974 in Woolwich, south east London, as a joint venture between McDonald's Corporation and an American, Mr Robert Rhea, and another partner. Mr Rhea brought Mr Paul Preston, now the President and Chief Executive Officer of McDonald's Restaurants Limited, over from the U.S.A. to manage the Woolwich restaurant. According to Mr Preston it was the first "finger-feeding hamburger restaurant in the U.K." Mr Rhea retired in 1983 and McDonald's Restaurants

Limited which was formerly called McDonald's Golden Arches Restaurants Limited, has been responsible for McDonald's restaurants in Britain since then. It is a wholly-owned subsidiary of McDonald's Corporation.

At the end of 1990 there were about 380 McDonald's restaurants in Britain. There were about 650 by the end of 1995. By May, 1996, which is the latest time for which I have figures, there were 674. So new McDonald's restaurants have been opening in Britain at the rate of about one a week since these proceedings began.

McDonald's is very successful, as these figures show. Its success must primarily depend on the provision of what its customers want, which is the quick service of a limited menu of burgers and other fast foods which please their taste, in convenient, disposable containers, at an affordable price. Its success is promoted by vigorous marketing which portrays its brand image as a benevolent, community-based, family-aware, ever-growing, green giant providing consistent quality, service, cleanliness and value.

McDonald's Corporation and its subsidiaries, including McDonald's Restaurants Ltd, see an attractive image as commercially vital to themselves, their joint venture partners and franchisees, all of whom depend on the brand name and, therefore, on the attraction of the brand image to existing and potential customers.

Not everyone, however, loves McDonald's.

From some time in the early or mid 1980s a group of people calling itself "Greenpeace [London]" or "London Greenpeace" ran an anti-McDonald's campaign. From 1986 onwards, a six page leaflet - "What's wrong with McDonald's? Everything they don't want you to know." - was at the heart of the campaign.

The leaflet accused McDonald's of being responsible for starvation in the Third World, of destroying vast areas of Central American rainforest, of serving unhealthy food with a very real risk of cancer of the breast or bowel and heart disease and food poisoning, of lying when it claimed to use recycled paper, of exploiting children with its advertising and marketing, of cruelty to animals, and of treating its employees badly; all the while

deceiving the public and hiding its true nature behind a clean, bright image.

The leaflet was published at a time when there was growing public awareness of issues affecting the environment and the relationship of diet to health. Animal welfare and mass media advertising attracted campaigners. Working conditions have always been the subject of debate. A "multinational" like McDonald's has an influence for good or ill in all those areas. That influence grows and spreads as the number of McDonald's restaurants increases and the system opens up in new countries.

Ever alert to public perceptions, McDonald's became concerned about the leaflet, particularly in this country where it originated. The leaflet was seen as defamatory of McDonald's Corporation as the body responsible for McDonald's as a whole, and of McDonald's Restaurants Limited as the company operating in the country where the leaflet was produced. Its contents were seen by people inside McDonald's as completely untrue and going beyond any legitimate criticism, and as part of a campaign to destroy the businesses of McDonald's Corporation and McDonald's Restaurants Limited, to "smash" McDonald's, regardless of the truth.

In 1989 a decision was made to try to stop further publication of the leaflet. Attempts were made to obtain cogent evidence identifying the members of London Greenpeace, who were responsible for publishing the leaflet, and in September, 1990, proceedings were started against Ms Steel, Mr Morris and three others, Paul Gravett, Andrew Clarke and Jonathan O'Farrell. The writ and Statement of Claim sought damages and an injunction restraining further publication of the words complained of in the leaflet.

In due course, Mr Gravett, Mr Clarke and Mr O'Farrell apologised for the contents of the leaflet. They fell from the case. Whether their apologies were given because they had no answer to McDonald's claims, as McDonald's would say, or because they could not face a long and costly court case, as they would say, is immaterial to the decisions which I have to make. Ms Steel and Mr Morris fought on. They denied that they had been involved in the publication of the leaflet. They took some issue as to just what the leaflet meant. They alleged that the words complained of were true or that they were fair comment on matters of public interest. McDonald's Corporation and McDonald's

Restaurants Limited denied this.

In the run up to the trial which eventually began on 28th June, 1994, the case received publicity, some of which was unfavourable to McDonald's who were portrayed in some quarters as bullies who were trying to stifle freedom of speech. Between March and May, 1994, the U.K. company produced and published a press release, a leaflet and a background briefing to explain why McDonald's was going to court. Ms Steel and Mr Morris took those publications to call them liars and to make other defamatory statements about their conduct.

So Ms Steel and Mr Morris counterclaimed damages for libel from the U.K. company which took issue with the meaning of the words complained of and alleged that what had been said was true or protected by qualified privilege as a necessary, reasonable and legitimate response to a public attack made on it, or prompted, by Ms Steel and Mr Morris. Ms Steel and Mr Morris denied this.

Those were the broad battle lines.

The issue of publication of the leaflet.

The cause of action in libel in this case arises from the publication in England or Wales of written matter which is defamatory of the Plaintiffs to persons other than the Plaintiffs without the consent of the Plaintiffs and within the three year "limitation" period immediately preceding the commencement of the Plaintiff's action by issue of the writ. The writ was issued on the 20th September, 1990.

The claims of both Plaintiffs are specifically founded on the leaflet to which I have already referred, although there were other leaflets which bore similar messages.

The first issue in the case is whether Ms Steel and Mr Morris published the leaflet complained of between the 21st September, 1987, and the 20th September, 1990.

As a matter of law, any person who causes or procures or authorises or concurs in or approves the publication of a libel is as liable for its publication as a person who physically hands

it or sends it off to another. It is not necessary to have written or printed the defamatory material. All those jointly concerned in the commission of a tort (civil wrong) are jointly and severally liable for it, and this applies to libel as it does to any other tort.

The burden of proving publication by any Defendant lies on the Plaintiff.

In civil, non-criminal, libel proceedings the standard of proof in all matters is the preponderance of probability, usually referred to as the balance of probability. Certainty is not required.

The Plaintiffs' case was that at the material time Ms Steel and Mr Morris were members of, or involved in the activities of the group called Greenpeace (London) or London Greenpeace; that London Greenpeace ran an anti-McDonald's campaign which involved dissemination of the leaflet complained of; that Ms Steel and Mr Morris were directly involved in the furtherance of the campaign; indeed that they each took a leading role in the campaign; and that by virtue of their involvement, working in harness with other members of the group, they caused or procured or authorised or concurred in, or approved and were therefore party to the distribution and publication of the leaflet complained of wherever and whenever it was distributed and published between the 21st September, 1987, and the 20th September, 1990. The Plaintiffs also alleged that Mr Morris took part in the initial production of the leaflet.

Both Ms Steel and Mr Morris denied that they published the leaflet complained of as alleged by the Plaintiffs.

Ms Steel denied that she ever played any part in the production or distribution of the leaflet complained of. Her case was that she was not responsible for, nor was she involved in organising the anti-McDonald's campaign although she attended anti-McDonald's events and handed out shorter anti-McDonald's leaflets because the aims of the campaign were the same as her own.

Mr Morris's case was that he played no part in the production or distribution of the leaflet. His attendance at London Greenpeace meetings and events tailed off during the period from

September, 1987, to September, 1990. He rarely attended meetings after August, 1989, and he was not really interested in McDonald's by 1990.

Alternatively, Ms Steel and Mr Morris contended that the Plaintiffs consented to the publication of the leaflet and of the words complained of contained in it. They said that the Plaintiffs' consent to publication was to be inferred from the instruction of enquiry agents to involve themselves in, and thereby encourage the activities of London Greenpeace, which involved publication of the leaflet complained of.

I have no doubt that Mr Morris published the leaflet complained of between 21st September, 1987, and 20th September, 1990, and that Ms Steel published it between early 1988 and 20th September, 1990.

At all material times Greenpeace (London) or London Greenpeace was a small group of people who worked together with the common aim of campaigning against McDonald's. Members of the group had other interests, but McDonald's remained an important target for collective attack.

Both Ms Steel and Mr Morris were core members of that small group and they were active in its anti-McDonald's campaign up to the commencement of the proceedings on the 20th September, 1990: Mr Morris from the beginning of the campaign in about 1984, and Ms Steel from early 1988 at the latest.

A major feature of the group's anti-McDonald's campaign was the publication, including the publication in England and Wales, of the leaflet complained of, the London Greenpeace "factsheet". Publication was achieved by handing the leaflet out at demonstrations, by putting it out for collection at meetings and events and by sending it through the post in answer to requests for information. Publication was indirectly achieved by encouraging other groups to distribute it.

Mr Morris participated in the production of the leaflet complained of in 1986, although the precise part which he played in its production cannot be identified. He must have done so with the intention that copies should be published whenever and wherever possible in the future which included the period from the 21st September, 1987, to the 20th September, 1990. There is no

evidence that Mr Morris ever tried to arrest the publication which he had helped set in train. On the contrary, after the initial production of the leaflet by members of the group, Mr Morris remained a member of the group and encouraged its anti-McDonald's campaign which included the publication and distribution of the leaflet, until the commencement of proceedings on the 20th September, 1990. Although his "hands-on" participation in London Greenpeace activities may have grown less as time went by, particularly for some time after August, 1989, because of his interest in other matters and a family misfortune, he remained interested in McDonald's as a multinational target, and he was active in anti-McDonald's activities.

My conclusion is that, jointly with others, Mr Morris caused, procured, authorised, concurred in and approved all publications of the leaflet complained of in England and Wales, as well as elsewhere, between the 21st September, 1987, and the 20th September, 1990, which is the relevant period for the purposes of this action.

The exact extent of the publication of the leaflet, for which Mr Morris shared responsibility, is impossible to specify precisely, but it must have involved several thousand copies being published worldwide, both directly and consequentially by those to whom it was originally handed or sent handing or copying it on, including several thousand copies within England and Wales.

Ms Steel did not participate in the initial production of the leaflet and it has not been proved that she took part in London Greenpeace's anti-McDonald's activities in the Autumn of 1987, the first few months of the relevant period for the purposes of this action. But by her participation in the group's activities, sharing its anti-McDonald's aims, from early 1988, Miss Steel jointly with others including Mr Morris, caused, procured, authorised, concurred in and approved all publications of the leaflet complained of in England and Wales, as well as elsewhere, between that time and the 20th September, 1990.

Ms Steel's involvement in the anti-McDonald's campaign, involving distribution of the leaflet, during that period, was considerable.

Ms Steel's responsibility for publication of the leaflet in England and Wales coincided with that of Mr Morris from early

1988, but she has not been shown to be responsible for publication of copies of the leaflet before that.

That leaves the question of whether the Plaintiffs or either of them consented to publication or any significant part of the publication of the leaflet by Ms Steel or Mr Morris, so as to deprive them of their cause of action or any part of it.

It is a defence to an action for defamation that the Plaintiff consented to the publication of which he now complains, by participating in or authorising it. Thus, if the Plaintiff has consented to the publication of the words used substantially as they were, there is a good defence to the action.

Proof of consent must be clear and convincing, since it is inherently unlikely that a party, albeit a company, has consented to being libelled.

The consent may be expressly given or it may be implied, that is inferred from what the Plaintiff has said or done or what its agents have done with its express or implied authority.

There was no evidence that anyone employed by either Plaintiff in this case expressly authorised or consented to publication or any act of distribution of the leaflet complained of or of any other anti-McDonald's material.

The Defendants' real case was that consent to publication was to be inferred from the nature of the Plaintiffs' instructions to enquiry agents and from the activities of those enquiry agents with, it is said, the approval of the Plaintiffs.

There was no evidence that any enquiry agent actually shared the anti-McDonald's aims of London Greenpeace.

In my judgment it is clear that the enquiry agents did what they did the easier to remain apparent members of the group in order to pursue their investigations which were in fact directed by the Plaintiffs at obtaining evidence in order to stop publication of the leaflet complained of.

I do not believe that Ms Steel or Mr Morris or Mr Gravett needed any encouragement to continue the anti-McDonald's campaign and publication of the leaflet between October, 1989, and

September, 1990, or at all: nor did the group need any encouragement to keep going.

One of Ms Steel's and Mr Morris's points in relation to the litigation as a whole was that the Plaintiffs could not resist the temptation to suppress any material which was critical of them. Whether or not this point was fully justified, it is quite clear from this litigation and from the Plaintiffs' threats to sue others and from proceedings against others in other actions, that they take very unkindly to defamatory material which their executives believe to be untrue.

The whole idea of either Plaintiff consenting to, let alone encouraging, the publication of the leaflet complained of is bizarre.

The defence of consent to publication of the leaflet fails.

Some general principles.

Since Ms Steel and Mr Morris did, in my judgment, publish the factsheet to the extent which I have just set out, I must next consider the meaning of the factsheet, whether it is defamatory of either Plaintiff in any respect and, if so, whether either Defendant nevertheless has a defence to a claim of libel. In this summary I will mention some, only, of the most fundamental principles which apply.

The Court should give to the material complained of the natural and ordinary meaning which it would have conveyed to the ordinary, reasonable reader.

The meaning intended to be conveyed by the author or publisher of the material complained of is irrelevant.

Portions of text, headlines, pictures and cartoons in a leaflet, can not be read in isolation from each other. This is important in this case where there has been a tendency to take individual sentences in the leaflet, with a view to justifying them, without regard to their context.

A statement is defamatory of a Plaintiff if it would tend to lower the Plaintiff in the estimation of right thinking members of society generally or would be likely to affect the Plaintiff adversely in the estimation of reasonable people generally.

The essence of the tort of defamation in English law is the protection of the reputation of a person whether a living human person or a legal fiction such as a corporation or a company. A company has a trading character which may be destroyed by libel, but the words complained of must attack the company in the method of conducting its business or affairs. The question for the court is whether the words complained of contain statements with regard to the Plaintiff company's conduct of its business, tending to show that it was so improper or inefficient as to bring it into contempt or discredit.

It is not necessary to prove any particular financial loss or "special damage", provided that damage to its goodwill is likely.

Where a Plaintiff establishes the publication of words which are defamatory, he has established his claim subject to the Defendant proving that he has a defence to the claim. The Plaintiff does not have to prove that the defamatory words are false. The law presumes that the defamatory words are false until the contrary is shown.

However, it is a complete defence to an action for libel to show that defamatory statements of alleged fact are true in substance and in fact. This is the defence of "justification" and it was the primary defence of Ms Steel and Mr Morris in this case. They contended that the substance of what is said in the factsheet is true.

The burden of proving that the substance of the words is true lies on the Defendant even though the Plaintiff may have set out to prove that the words are in fact false, as McDonald's have done in many instances in this case. Again the standard of proof is the balance of probabilities.

It is no defence of justification of a defamatory matter that the Defendant was merely repeating what he or she had been told or that he or she believed that what was said was true. The defence of justification does not extend to cover misstatements

of fact even if the statement of alleged fact is made in good faith about a matter of public interest. There is no general freedom in English law to make defamatory misstatements of fact with impunity provided that they are made about a matter of public interest or about a person or trading corporation of public importance, in the genuine belief that they are true.

Quite apart from any question of justification it is a defence to an action for libel that the words complained of are fair comment on a matter of public interest.

There is no doubt that the statements made in the leaflet complained of relate to matters of public interest, and during the trial the Defendants repeatedly described one statement or another in the leaflet as fair comment or as a comment which they were entitled to make.

However, the defence of "fair comment" is available only in relation to statements which are expressions of opinion and not defamatory statements of fact. A comment is a statement of opinion on facts, and the defence of fair comment does not extend to cover misstatements of fact, however bona fide.

Save for one sentence, I have come to the conclusion that the defamatory statements in the leaflet complained of taken in their context, are statements of fact, and not comments or expressions of opinion. The introduction promises the reader of the leaflet the true facts about McDonald's, and what follows throughout the leaflet is a series of categorical statements of alleged fact.

It follows that the real issue in the case is whether the statements of alleged fact, where they are defamatory of the Plaintiffs, have been shown to be true.

Although the leaflet stands to be judged as a whole, it falls into different sections, each with its own introductory headline, and I propose to take them in the order in which they appear.

Starvation in the Third World and destruction of rainforest.

The first two sections of the main text of the leaflet complained of appear under the bold headlines "What's the connection between McDonald's and starvation in the 'Third World'?" and "Why is it wrong for McDonald's to destroy rainforest?" They cover the two topics signalled by the headlines.

I will take these sections of the leaflet together, because the theme of the defence case in relation to both is that McDonald's needs large quantities of beef for its hamburgers which consist of beef patties with some garnish, sandwiched in buns; that large numbers of cattle must be reared to satisfy McDonald's appetite for beef patties; that large numbers of cattle need large areas of land for grazing or for growing their feed, and that this land might be used for growing other food products or left in its natural state, some of it forest, were it not for the need for cattle. The Defendants' attempts to justify what is alleged in both sections of the leaflet depended upon their contention that cattle ranching to provide McDonald's restaurants with beef patties has caused deforestation and displacement of small farmers in Costa Rica and Guatemala, and that both cattle ranching and soya farming to produce cattle feed to provide McDonald's restaurants with beef patties has caused deforestation and displacement of small farmers and indigenous peoples in Brazil.

The first section of headings and text plainly bears the meaning that McDonald's is to blame for starvation in the Third World; firstly because it has bought vast tracts of land in poor countries (for cattle ranching, presumably) and evicted the small farmers who lived there growing food for their own people; secondly because the power of its money has forced poor countries to export food (beef, most obviously) to it in the United States, and thirdly because it has drawn some Third World countries to export staple crops as cattle feed.

The message of blame for starvation and buying land and evicting small farmers, which is what the Plaintiffs complained about, is defamatory of both Plaintiffs; the First Plaintiff as the company responsible for running McDonald's restaurants around the world, and the Second Plaintiff as the company running McDonald's in this country where publication is complained of.

The words complained of, bearing the meaning which they clearly do, are straightforward statements of alleged fact. I can see no comment or expression of opinion. This means that if they are to be successfully defended they must be justified as true in substance and in fact.

The second section of the leaflet bears the meaning that the Plaintiffs are guilty of the destruction of rainforest; that they use and have used lethal poisons to destroy vast areas of Central American rainforest to create grazing pastures for cattle to be sent to the United States as burgers and to provide fast-food packaging materials; that the Plaintiffs are through this conduct causing wanton damage to the environment and contributing to a major ecological catastrophe, and that they are forcing the tribal people in the rainforest off their ancestral territories where they have lived peacefully for thousands of years, without damaging their environment.

Again, this is defamatory of both Plaintiffs. It is a straightforward statement of alleged facts, not comment or opinion, so it must be defended as true in substance and in fact; but on balance, I judge the statement at the end of this section of text, saying that "It's no exaggeration to say that when you bite into a Big Mac, you're helping the McDonald's empire to wreck this planet", to be comment, largely because of its figurative language. This is the one defamatory statement in the leaflet, which I judge to be comment. The validity of the comment is clearly based upon McDonald's alleged destruction of rainforest.

There was an issue as to what "rainforest" meant to the ordinary reader of this leaflet. The Defendants, through Mr Morris particularly, argued that it comprised all tropical forest including dry forest.

In my judgment "rainforest" in the context of this leaflet, not otherwise defined, must mean more than tropical forest of any kind. After all, the leaflet could have said simply "tropical forest" throughout, but it did not. In my view "rainforest" would mean something special to the ordinary reader. In my view it would mean luxuriant, broad-leaved, evergreen, very wet, canopy forest - very wet because of very heavy rainfall - to the ordinary reader of this leaflet.

Both the general, factual sting and the comment to which I have referred clearly relate to damage to the environment by destruction of rainforest. They do not, in my view, relate to possible damage to the environment by any other means such as the use of CFC or HCFC or pentane gases to make polystyrene foam packaging or the simple use of non-biodegradable polystyrene foam packaging, as the Defendants alleged, or by the cutting down of forests generally, or by the processing of pulp to make paper or paperboard packaging, or by incineration of waste, or by methane emissions from cattle. Those topics are not mentioned in the leaflet, nor are they fairly referable to any defamatory statement about which the Plaintiffs complain in the leaflet.

The text does, in parentheses, allege that the Plaintiffs are lying when they claim to use re-cycled paper and that the Plaintiffs are to blame for tons of the Plaintiffs' paper packaging ending up littering the cities of developed countries, and I will return to those matters when I come to the use of recycled paper; but however unattractive litter is, I do not consider that the ordinary reader would see it as part of the allegation of damage to the environment or major ecological catastrophe or wrecking the planet by destruction of the rainforest.

The text in the same parentheses says that it takes 800 square miles of "forest" just to keep McDonald's supplied with paper for one year, and the Defendants contended that this statement referred to forest generally as distinct from "rainforest"; but in my view the ordinary reader would take this reference to "forest" to mean "rainforest". Although the statement is in parentheses, the parentheses are placed deep in the section which attacks McDonald's for destruction of rainforest and they come immediately after the reference to destruction of rainforest to provide fast-food packaging materials.

There was no evidence that any rainforest timber has ever been used to make McDonald's paper or paperboard packaging. In fact there was no evidence that McDonald's packaging required anything like 800 square miles of any kind of forest, whether cut down each year, which is what I take the leaflet to mean ("just to keep them supplied with paper for one year"), or as an area of sustained forest from which McDonald's requirements could be met indefinitely.

To return to relevant issues, the Plaintiffs contended that these first two sections of the leaflet are false in the meanings which they bear. The Defendants claimed that they are justified and that the comment about wrecking the planet is fair comment.

Quite apart from seeking to justify the particular words in the leaflet, the Defendants asked me to draw the conclusion that by increasing the beef-based fast food market globally, in particular in the U.S.A. and in Western Europe, the Plaintiffs encouraged people around the world, and in rainforest countries, to rear more cattle, thereby contributing to destruction of the rainforest, as part of a "world wide hamburger connection".

However, on the evidence which I have heard and read, and upon which I must judge this case, I can not share the defence view of the extent to which, if at all, the First Plaintiff has helped stimulate markets for beef from former tropical forest or from former rainforest lands.

It is perfectly clear from my reading of the First Plaintiff's Annual Reports that it aims to expand as much and as quickly as possible in countries where McDonald's restaurants are already established and that it aims to continue opening up in new countries, even where there is no, or no significant, beef eating culture. Where the growing and spreading hamburger industry, of which McDonald's is such a powerful part, goes from here, may be a matter of some concern in a number of areas. But in my own judgment McDonald's alleged part in an alleged worldwide hamburger connection does not justify the defamatory allegations actually made in the leaflet complained of, so far as starvation in the Third World and destruction of rainforest are concerned.

Taking all the matters which I have set out in the judgment into account and on the evidence which I have heard and read, I conclude that the Plaintiffs have not been to blame for starvation in the Third World and they have not been guilty of destruction of rain forest. The defamatory charges in the leaflet that the Plaintiffs are to blame for starvation in the Third World and that they are guilty of the destruction of rainforest are not justified. They are not, and never have been true.

Neither Plaintiff has ever bought or owned vast tracts of land in poor countries or in the Third World, or in Costa Rica, Guatemala or Brazil. They have not bought or owned farming land there. They have not themselves evicted small farmers or anyone else from their land, nor have they directly caused anyone else to do so.

There is no evidence that any farmers or ranchers whose cattle have been slaughtered and processed into McDonald's patties have dispossessed small farmers or tribal people in Costa Rica, Guatemala, Brazil or anywhere else. Even in Brazil where the evidence of dispossession of small farmers and tribal people for cattle ranching generally was strongest, I am unable to draw the inference that any cattle ranchers whose cattle have gone to make McDonald's burgers have been implicated.

In any event the case of implication of either Plaintiff or of any McDonald's company by virtue of the implication of those who have reared cattle which have gone to make McDonald's burgers falls far short of the charge of buying land and of evicting or causing the eviction of small farmers that lived there growing food for their own people which is made in the leaflet.

Neither of the Plaintiffs has drawn any poor country or Third World country or Costa Rica, Guatemala or Brazil to export food including beef to it or any other McDonald's company in the United States. On the evidence which I have heard and read there have been no imports of beef into the United States from anywhere for processing into McDonald's burgers there. There were limited exports of beef from Brazil to the U.K., for McDonald's use, in 1983, and there have occasionally been exports to Argentina and Uruguay in pattie form, but they have been minimal and inconsequential so far as hunger or deforestation in Brazil is concerned.

Neither Plaintiff has drawn any poor country or Third World country or Costa Rica, Guatemala or Brazil to export staple crops as animal feed so as to cause hunger and starvation in the exporting country. Although some Brazilian soya meal has probably been fed to cattle in Germany and may have been fed elsewhere to other animals including chickens and pigs which have in due course been slaughtered and processed into McDonald's products, the comparatively small use of Brazilian soya bean meal to help feed such animals has not been responsible for the advance of soya

farming, nor for any consequence of it, in Brazil. Soya farming in Brazil has been largely directed at producing oil for human consumption, that is to limit hunger or starvation.

Neither of the Plaintiffs have used lethal poisons to destroy vast areas or any areas of Central American or Latin American rainforest or any rainforest to create grazing pastures or to provide fast food packaging materials, or for any other reason.

Neither the Plaintiffs nor any McDonald's company has directly destroyed any rainforest. The evidence is insufficient to implicate cattle ranchers whose cattle have gone to make McDonald's burgers in the destruction of rainforest in Costa Rica, Guatemala or Brazil.

Although the expansion of beef cattle production has, with other factors in Costa Rica and Guatemala, and on its own as well as with other factors in Brazil, led to the destruction of areas of rainforest in those three countries, there was no evidence that either Plaintiff or its partners in McDonald's Costa Rica, McDonald's Guatemala and McDonald's Brazil has taken any active part in that destruction or urged anyone else to do so.

In my judgment the farmers and ranchers in Costa Rica, Guatemala and Brazil who have reared cattle which have eventually become beef for McDonald's burgers, have done so on land in each country which had been pasture from a time before McDonald's decided to open up in each country.

I do not consider that McDonald's can be held responsible for destruction of rainforest in those countries before McDonald's operated there. Nor do I consider that McDonald's can be held responsible for destruction of rainforest in those countries on the basis that continued grazing by cattle which have gone to become McDonald's beef have stopped regeneration of rainforest. Interference with regeneration of rainforest is not in my view the destruction of rainforest alleged in the leaflet, but in any event I find that the cattle which have gone to become McDonald's beef have come from pastures which were well established in the three countries before McDonald's arrived. There was no evidence that grazing would have ceased on such of those pastures as had been rainforest years before, were it not for McDonald's limited demand for beef there, and the evidence that rainforest would probably

have regenerated on those pastures was, in any event, unconvincing.

Neither of the Plaintiffs nor any McDonald's company has been shown to be responsible for any pressure on the rainforest caused by soya farming in Brazil.

It follows that I find that the defamatory charges complained of, that McDonald's, including the First and Second Plaintiffs, is responsible for starvation in the Third World and that by purchasing large tracts of land in poor countries they have evicted or caused the eviction of small farmers that lived there growing food for their own people, are unjustified. They are not true.

It also follows that I find that the defamatory charges that McDonald's, including the First and Second Plaintiffs, is guilty of destruction of rainforest and, more specifically, that it uses and has used lethal poisons to destroy vast areas of Central American rainforest to create grazing pastures for cattle to be sent to the United States as burgers and to provide fast food packaging are unjustified. They are not true.

It also follows that I find that the consequential defamatory charges that the Plaintiffs are, through this conduct, causing wanton damage to the environment and contributing to a major ecological catastrophe, and that they are forcing the tribal people in the rainforest off their ancestral territories where they have lived peacefully for thousands of years without damaging their environment are unjustified. They are not true.

The defamatory comment in the leaflet that McDonald's, including the First and Second Plaintiffs, is wrecking the planet is not fair, because the allegations of fact relating to destruction of the rainforest, upon which it purports to be based, are untrue.

The use of recycled paper.

The parentheses, referring to recycling and litter, state: "Don't be fooled by McDonald's saying they use recycled paper: only a tiny per cent of it is. The truth is it takes 800 square miles of forest just to keep them supplied with paper for one year. Tons of this end up littering the cities of 'developed' countries."

Taken with the leaflet's introductory theme that McDonald's has a lot to hide, they amount to a clear allegation that McDonald's is lying when it claims to use recycled paper. This charge is defamatory of both Plaintiffs.

Mr Morris's contended that the evidence showed that McDonald's used very little recycled paper before 1990 or 1991 which took us outside the period of relevant publication of the leaflet.

I disagree. On the evidence which I have heard and read I conclude that between 1987 and 1989 McDonald's paper in the U.S. contained a small but nevertheless significant proportion of recycled fibre, certainly more than a tiny percentage, although I cannot say what the proportions of post-industrial and post-consumer were then because the distinction was not generally perceived to be important. By 1990 McDonald's U.S. packaging contained a substantial proportion of recycled post-consumer waste.

The proportion of recycled paper in the U.K. was less clear because there was less information, but upon what I did hear and read I conclude that from the early 1980s McDonald's paper contained a small but nevertheless significant proportion of recycled fibre. I do not consider that the proportion of recycled fibre in the Second Plaintiff's paper can fairly be said to have been tiny at the time of relevant publication of the leaflet (September, 1987, to September, 1990,), even though many paper items appear to have contained no recycled fibre at all. Paper carry bags, napkins and paper trays all of which featured significantly in the McDonald's system contained substantial proportions of recycled fibre from the early 1980s. In my judgment, the recycled fibre in those items makes it impossible for me to hold that only a tiny percentage of the paper which U.K. McDonald's used during the 1980s was recycled paper.

There is no doubt that the proportion of McDonald's paper which is recycled has increased greatly from 1990 onwards in the U.S. and from 1991 onwards in the U.K. but this does not mean that the percentages of recycled paper were tiny before.

There was evidence that McDonald's publicity material in 1990 was misleading about some packaging in England actually being recycled when it was not, in fact. This deception does not, however, in my view, help the Plaintiffs to substantiate the specific defamatory charge of lying about the recycled content of McDonald's paper.

I find that the defamatory charge that the First and Second Plaintiffs are lying when they claim to use recycled paper is not justified, even in part. It is not true.

I have come to the conclusion that the leaflet's reference to litter is not, in law, relevant to the issues which I have to decide in the case. Even if it amounts to a defamatory charge of being to blame for litter, the Plaintiffs have not made it part of their case, and the Defendants can not rely upon it, if true, in justification of other, separate and distinct charges in the leaflet.

In any event, I am far from persuaded to the standard required that McDonald's, including either Plaintiff, is in ordinary good sense "to blame" or culpably responsible for litter which has left their restaurants as packaging in customers' hands. I do not consider that they can fairly be blamed for it just because they have provided disposable packaging. The Plaintiffs clearly feel some understandable civic obligation to clear up that which falls reasonably near to its restaurants.

My conclusion from the evidence which I accept is that McDonald's restaurant frontages have been kept clear of litter, but that the system of regular patrols to clear up litter rather further afield has often broken down. I do not, however, consider that failure to achieve their objective of more extensive clearance makes them culpably responsible for what is left on the streets away from the actual fronts of their stores, or responsible at all for items of their packaging which are dropped some munching or drinking distance away. In my judgment the blame for all that lies firmly on the inconsiderate customer.

McDonald's food, heart disease, cancer of the breast and cancer of the bowel.

The leaflet bears the meaning that McDonald's food is very unhealthy because it is high in fat, sugar, animal products and salt (sodium), and low in fibre, vitamins and minerals, and because eating it more than just occasionally may well make your diet high in fat, sugar, animal products and salt (sodium), and low in fibre, vitamins and minerals, with the very real, that is to say serious or substantial risk that you will suffer cancer of the breast or bowel or heart disease as a result; that McDonald's know this but they do not make it clear; that they still sell the food, and they deceive customers by claiming that their food is a useful and nutritious part of any diet.

This charge is defamatory of both Plaintiffs.

My conclusions and findings in this part of the case are accordingly as follows.

At the material time of publication of the leaflet between September, 1987, and September, 1990, McDonald's food was high in fat (including saturated fat) and salt (sodium) and animal products and it has continued to be so. It was low in fibre at the material time of publication of the leaflet, but it has not been proved to be so now. It has not been shown that McDonald's food generally is high in sugar, although some individual times are. It has not been shown that McDonald's food is low in vitamins or minerals.

It is not true to say that eating McDonald's food albeit more than just occasionally, might well make your diet high in fat, animal products and salt (sodium), let alone sugar, or low in fibre, let alone vitamins and minerals. Such a statement is not justified. It is not true in substance and in fact because it is only true (so far as fat, animal products, salt and fibre are concerned) in relation to a small proportion of people who eat McDonald's food several times a week. The leaflet does not say that if you eat McDonald's food several times a week it might well make your diet high in fat, animal products and salt (sodium), and low in fibre. It leads the reader to believe that this is to be expected from anything more than just the occasional McDonald's meal.

It follows that it cannot be right to say that eating McDonald's food will bring the very real risk that you will suffer cancer of the breast or bowel or heart disease as a result of making your diet high in fat, sugar, animal products and salt (sodium), and low in fibre, vitamins and minerals, even if such a diet carries such a risk.

Nevertheless I have gone on to consider whether it has been proved that a diet high in fat (including saturated fat), animal products and salt (sodium), and low in fibre leads to a very real, that is serious or substantial, risk of heart disease or cancer of the breast or cancer of the bowel.

In my judgment a diet high in fat (including saturated fat) and animal products, and low in fibre, sustained over very many years, probably does lead to a very real risk of heart disease in due course.

This conclusion does not help the Defendants to justify the meaning and message of this part of the leaflet because of my finding that it is not true to say that eating McDonald's food more than just occasionally might well make your diet high in fat and animal products and low in fibre. It does mean, in my judgment, that the small proportion of McDonald's customers who eat McDonald's food several times a week will take the very real risk of heart disease if they continue to do so throughout their lives, encouraged by the Plaintiffs' advertising.

It has not been proved, on balance of probabilities, that a diet high in fat, including saturated fat, and animal products, and low in fibre, even if sustained over very many years, leads to a very real risk of cancer of the breast in due course, although it is possible that it increases the risk to some extent.

It has not been proved, on balance of probabilities, that a diet high in fat, including saturated fat, and animal products, and low in fibre, even if sustained over very many years, leads to a very real risk of cancer of the bowel in due course, although it is strongly possible that it increases the risk to some extent.

It follows that McDonald's food is not very unhealthy as stated in the leaflet.

However, I do find that various of the First and Second Plaintiffs' advertisements, promotions and booklets have pretended to a positive nutritional benefit which McDonald's food, high in fat and saturated fat and animal products and sodium, and at one time low in fibre, did not match.

Save in this last respect, the defamatory meaning and message of the leaflet is not justified.

Had the leaflet said that in order to do his or her best to keep any risk of suffering heart disease or cancer of the breast or cancer of the bowel to a minimum the reader would be well advised to keep consumption of fat, particularly saturated fat, and animal products down and consumption of fruit, vegetables and cereals up, should take a fair amount of exercise and, above all, avoid smoking, and had it gone on to say that if the reader ate McDonald's meals several times a week indefinitely, without taking a lot of care with the rest of his or her meals, there would be a very real risk of heart disease in due course and that it was possible that there would be some increase in the risk of cancer of the breast and cancer of the bowel also, and had it concluded that the reader would, therefore, be well advised to ignore any McDonald's advertising which might appear to encourage him or her to eat McDonald's meals several times a week, then, in my view, McDonald's (the Plaintiffs) would have had no just cause for complaint. But that was not the message which the leaflet gave. Its actual message of a very real risk of heart disease or cancer of the breast or cancer of the bowel simply from eating at McDonald's more than just occasionally for any period, and of a cover up of that fact, is not justified.

Advertising.

The next section of the leaflet turns to McDonald's advertising and marketing. The leaflet's references to McDonald's food, heart disease and cancers of the breast and bowel involved some consideration of McDonald's marketing, advertising and promotion to the public at large. The next section deals specifically with advertising and other means of promotion, particularly as far as children and the things which appeal to children are concerned.

This part of the leaflet brings more than one charge.

Firstly, it bears the meaning that the Plaintiffs use gimmicks in their restaurants to cover up for the fact that the food is of low quality.

It is not in my view defamatory to say that the Plaintiffs use gimmicks. Many marketing companies do so, and I do not believe that this on its own would lower either Plaintiff in the estimation of reasonable people. Nor in my view is simple disparagement of the Plaintiffs' food as "low-quality" or "at best mediocre" (the words used in this part of the leaflet) defamatory. I do not read those terms as a reference back to the allegations that the high fat and sodium and low fibre content, for instance, of McDonald's food leads to a risk of heart disease and cancers of the breast and bowel. In my judgment the terms "low-quality" and "at best mediocre", which come to the same thing, are just general terms of disparagement like "junk food".

What is, in my view, defamatory about the first charge is the allegation of covering up the food's quality at all, so far as children are concerned. It is part of the theme of alleged deception which runs through the leaflet.

Secondly, the leaflet bears the meaning that in order to ensure that their food looks the same throughout the world the Plaintiffs require it to be treated with numerous chemicals. I am not, however, satisfied that this is defamatory, as the Plaintiffs contended. I am not satisfied that the allegation of the use of chemicals for consistency of product would tend to lower either Plaintiff in the estimation of reasonable people generally. Had the allegation been the use of chemicals which the Plaintiffs knew to be potentially dangerous, the position would be different. But the leaflet does not either expressly or implicitly in my view allege danger from chemical treatment of the Plaintiffs' food products.

Thirdly, the leaflet bears the meaning that the Plaintiffs nearly always use advertisements whose object is to trap children into thinking that they are not normal if they do not go to McDonald's and who accordingly, as the Plaintiffs intend, pressurise their parents into taking them there.

This charge is clearly defamatory. The real sting is the extensive exploitation of children by using them, as more susceptible subjects of advertising, to pressurise their parents into going to McDonald's. The "normality trap" is a detail, in my view.

Finally, the leaflet bears the defamatory meaning that the Plaintiffs promote the consumption of meals at McDonald's as a fun event when they know full well that the contents could poison the children who eat them.

The defamatory allegations in this part of the leaflet are presented as simple statements of fact.

It was clear from the evidence that McDonald's thinks that children's advertising and marketing is very important. A considerable amount of its advertising and marketing is, as a result, directed at children.

McDonald's advertising and marketing is not directed at children specifically to trap them into thinking that they are not normal if they do not go to McDonald's. It is simply designed to make McDonald's attractive so that they will want to go there.

However, in my judgment, McDonald's advertising and marketing is in large part directed at children with a view to them pressuring or pestering their parents to take them to McDonald's and thereby to take their own custom to McDonald's.

This is made easier by children's greater susceptibility to advertising, which is largely why McDonald's advertises to them quite so much.

The Plaintiffs use gimmicks, but not to cover up the true quality of their food. The gimmicks are aimed at making the experience of their visiting McDonald's seem fun, but McDonald's food is just what a child would see it and expect it to be: beef burgers in buns or chicken in a coating, for instance, soft drinks, milk shakes and "best bits" of all, I suspect, chips or fries. No cover up could last long. No cover up is necessary anyway.

It follows that in my judgment the defamatory charge that the Plaintiffs use gimmicks to cover up the true quality of their food is not justified, but the sting of the leaflet to the effect that the Plaintiffs exploit children by using them, as more susceptible subjects of advertising, to pressurise their parents into going to McDonald's is justified. It is true.

In my judgment McDonald's advertising and marketing makes considerable use of susceptible young children to bring in custom, both their own and that of their parents who must accompany them, by pestering their parents. It may be said that this is an inevitable result of advertising at all to children who cannot buy for themselves. So be it. McDonald's have, after all complained about the allegation.

I will come to the question of food poisoning shortly, but I have decided that the defamatory charge that the Plaintiffs promote the consumption of meals at McDonald's as a fun event when they know full well that the contents could poison the children who eat them is not justified because although they do promote their meals as a fun event there is no real risk of food poisoning, and the charge clearly refers to food poisoning.

The rearing and slaughter of animals.

After advertising, the leaflet turns to the rearing and slaughter of animals.

In my view the leaflet means that the Plaintiffs are culpably responsible for cruel practices in the rearing and slaughter of some of the animals which are used to produce their food. In particular, some of the animals, especially chickens and pigs, spend their whole lives without access to open air and sunshine and without freedom of movement; animals waiting to be slaughtered often struggle to escape; cattle waiting to be slaughtered become frantic as they watch the animal before them in the killing-line being prodded, beaten electrocuted and knifed; and the methods used to stun the animals are so inefficient that animals are frequently still fully conscious when they have their throats cut.

Birds are animals.

The charge is clearly defamatory. It is expressed as statements of fact.

My conclusions so far as justification of the defamatory message of this part of the leaflet complained of is concerned, are as follows.

Laying hens which are used to produce eggs for the First and Second Plaintiffs spend their whole lives in battery cages without access to open air or sunlight and without freedom of movement. I do not find the lack of open air or sunshine to be cruel, but the severe restriction of movement is cruel and the First and Second Plaintiffs are culpably responsible for that cruel practice.

Broiler chickens which are used to produce meat for the First and Second Plaintiffs' food spend their whole lives in broiler houses without access to open air or sunshine, I do not find this in itself cruel. However, they spend the last few days of their lives with very little room to move. The severe restriction of movement over those last few days is cruel and the First and Second Plaintiffs are culpably responsible for that cruel practice.

A small, but not insignificant proportion of the sows which produce pigs which contribute to the supply of pork for the Second Plaintiff's food in the U.K. spend virtually the whole of their lives in dry sow stalls, with no access to the open air and sunshine and without freedom of movement. I do not find the lack of open air or sunshine to be cruel, but the severe restriction of movement is cruel and the Second Plaintiff is culpably responsible for that cruel practice.

Some pigs which are used to make the Second Plaintiff's food in the U.K. spend the whole of their lives indoors and all or virtually all of them spend a significant part of their lives indoors. The situation is probably the same for the pigs which are used to make the Second Plaintiff's food in the U.S. On the evidence which I have heard about their living conditions, I do not find this to be cruel, however.

It was not shown that cattle which are used to produce the Plaintiffs' food spend any significant part of their lives without access to open air and sunshine and without freedom of movement.

Nevertheless in my judgment the restriction of movement of laying hens throughout their lives in the U.K. and the U.S., and of broiler chickens in their last days in the U.K. and the U.S., and of some sows for virtually the whole of their lives in the U.K. is quite enough to justify the first particular charge of culpable responsibility for cruel practices in the way some of the animals spend their lives.

Although many cattle are frightened by the noise and unfamiliar surroundings of the abattoirs in which they are slaughtered and some cattle are urged on by electric prods, the charges that animals waiting to be slaughtered often struggle to escape and that cattle waiting to be slaughtered become frantic as they watch the animal before them in the killing-line being prodded, beaten, electrocuted and knifed are not justified so far as animals which are used to produce the Plaintiffs' food are concerned.

It was not shown that cattle or pigs which are used to produce the Plaintiffs' food are frequently still fully conscious when they have their throats cut. A proportion of the chickens which are used to produce the First and Second Plaintiffs' food are still fully conscious when they have their throats cut. This is a cruel practice for which the Plaintiffs are culpably responsible. The proportion of such chickens is very small, but the number of chickens is so large that the allegation that animals are frequently still fully conscious when they have their throats cut is justified.

Although not all the particular charges are justified, in my overall judgment those that are justified, relating to the restriction of movement of battery hens, broiler chickens and chickens who have their throats cut while still fully conscious are sufficient to justify the general charge that the First and Second Plaintiffs are culpably responsible for cruel practices in the rearing and slaughter of some of the animals which are used to produce their food.

There are other cruel practices affecting chickens which are used to provide the Plaintiffs' food; calcium deficit resulting in osteopaenia in battery hens, the restriction of broiler breeders' feed with the result that they go hungry although bred for appetite, leg problems in broilers bred for weight, rough handling of broilers taken for slaughter and pre-stun electric shocks suffered by broilers on the way to slaughter. Those matters, for which the Second Plaintiff or both Plaintiffs are in my judgment culpably responsible, go to strengthen my view that the sting of this part of the leaflet to the effect that the First and Second Plaintiffs are culpably responsible for cruel practices in the rearing and slaughter of some of the animals which are used to produce their food is justified, true in substance and in fact.

Food poisoning.

After the subject of animals, the leaflet turns to food poisoning.

In my judgment, the defamatory message and meaning of the leaflet is that the First and Second Plaintiffs sell meat products which, as they must know, expose their customers including children, to whom they promote their meals, to a serious risk of food poisoning and of poisoning by the residues of antibiotic drugs, growth-promoting hormone drugs and pesticides, although the Plaintiffs only complained about the risk of food poisoning.

The message is expressed as an allegation of fact. There is no comment.

No other kind of poisoning is referred to in the leaflet, but the Defendants sought to rely on other matters which were not in my view relevant to the allegation of risk of poisoning as expressed in the leaflet.

I do not consider that the words complained of in this part of the case can be taken to refer to any risk of degenerative disease. No ordinary reader of the leaflet, in my view, would think of the high fat or high sodium or low fibre content, for instance, of food as "poisonous", even if it led to a risk of degenerative disease.

On 7th February, 1995, I ruled that there was nothing in the leaflet which could be sensibly taken as a reference to bovine spongiform encephalopathy (BSE), however interesting it may have become since the leaflet was written.

The Defendants pleaded that McDonald's food products contained specified additives which were known to have specified, undesirable side-effects, and I heard evidence on the topic. If it was necessary to decide the point I would unhesitatingly find in the Plaintiffs' favour on the issues relating to additives, but I do not consider that additives have any relevance to any issue in the case. There is no mention of them in the box which deals with food poisoning and drug and pesticide residues. The only part of the leaflet which could be taken to be a reference to food additives is the reference to McDonald's alleged use of chemicals to achieve conformity of product, and this does not suggest any risk to health as a result.

The Defendants called evidence that styrene could be leached from polystyrene foam packaging or cups into the food or drink which they contained, and then pass into human tissue where its metabolites could be carcinogenic. I preferred the Plaintiffs' evidence that there is a lack of evidence that styrene is carcinogenic in humans and that the maximum contamination from food containers would lead to mean intakes which were hundreds of thousands of times lower than some industrial exposures which have not caused a demonstrable increase in cancer incidence. Again, however, I do not consider that styrene has any part in the case so far as health is concerned. The leaflet does not raise it as a possible cause of cancer, although it deals with certain cancers, and it does not raise it as a cause of poisoning.

The Defendants introduced evidence that from time to time foreign bodies, in which they included small bits of bone, were found in McDonald's food products, but there was no evidence that anyone had been poisoned or harmed at all by these.

It follows from all this that the one real issue in this part of the case is whether it has been shown that eating McDonald's food involves a serious risk of food poisoning or poisoning by residues of antibiotic drugs, growth promoting drugs or pesticides.

There is no sensible room for complacency about food safety, but it is a fact of life that it is impossible to eliminate all contamination by food poisoning organisms and it is impossible to test every item of food to see whether food poisoning organisms are present. However good hygiene systems are, there will always be human errors.

So those who want to will always be able to point to areas of risk in any food seller's chain of supply from live animal to customer.

However, it is unsound in my judgment to look at the number of risk areas at various stages and say that since they are numerous the accumulated risk must be very real or serious. Such an approach takes no account of the fact that the world in which we live abounds in micro-organisms including food-poisoning organisms to which we have built up many and varied defences with the result that, as the Defendants' main witness on the subject said "you have to work very hard to get food poisoning". Assessment of the ultimate risk must take proper account of that fact as well as making some broad judgment of the degree of risk involved in contamination, proliferation or failure to kill throughout the particular chain of supply.

My judgment on all the evidence which I have heard is that the risk of food poisoning from eating McDonald's food is minimal. From time to time people will no doubt get food poisoning from eating McDonald's foods but the risk is very small indeed.

There was no evidence that antibiotic or growth promoting hormone drug residues have actually been found in McDonald's food.

There was no evidence that pesticide residues have actually been found in McDonald's food.

There was no suggestion, let alone any evidence, that any McDonald's customer anywhere had been shown to have been harmed by residues of antibiotic drugs, growth promoting hormone drugs or pesticides.

With all these matters in mind I find that the message and meaning of the leaflet that the First and Second Plaintiffs sell meat products which, as they must know, expose their customers, to whom they promote their meals, to a serious risk of food

poisoning and poisoning by the residues of antibiotic drugs, growth-promoting hormone drugs and pesticides, is not justified. It is not true.

Employment practices.

The last part of the leaflet, of those parts which the Plaintiffs allege to be defamatory, relates to their employment practices.

This part of the leaflet bears the defamatory meaning that the First and Second Plaintiffs pay their workers low wages and provide bad working conditions, helping to depress wages for workers in the catering trade in Britain; that they are only interested in recruiting cheap labour and exploit disadvantaged groups, women and black people especially, as a result; and that they have a policy of preventing unionisation by getting rid of pro-union workers.

It is defamatory of a commercial, trading company to say that it pays its workers low wages. It is more defamatory to say that it is only interested in recruiting cheap labour and that it exploits disadvantaged groups, women and black people as a result. It is also and separately defamatory to say that it provides bad working conditions, but the real, general sting of this part of the leaflet is the combination of low pay and bad working conditions: low pay for bad conditions.

The allegation that the Plaintiffs have a policy of preventing unionisation by getting rid of pro-union workers is not just part of the general sting, it is a specific defamatory charge of its own.

On balance I do not believe it to be defamatory of a corporation to say simply that it is "anti-union" which is what the Defendants were determined to prove to be true of each of the Plaintiffs. But it is clearly defamatory to say that the Plaintiffs have a policy of sacking employees who have union sympathies.

Although saying that workers do "badly" in terms of pay and conditions or that wages are "low" might appear to be expressions of opinion or comments in many contexts, I judge the defamatory

statements in this part of the leaflet, or "factsheet", as the Defendants called it, to be statements of alleged facts. Apart from the introductory statements to the leaflet as a whole, this section of the leaflet begins with the headline question "What's it like working for McDonald's?" Clearly what is to follow are the facts, or alleged facts, about working for McDonald's. Although the first words of the text - "There must be a serious problem" - are opinion or comment, I see everything which follows as categorical statements of fact.

It follows that if the Defendants are to defend the defamatory charges successfully, they must justify them by showing them to be true in substance and in fact.

My conclusions are as follows.

The Second Plaintiff does pay its workers low wages, thereby helping to depress wages for workers in the catering trade in Britain. To this extent the defamatory charge in the leaflet is partly justified.

It may be that the First Plaintiff also pays its workers low wages, but the evidence is insufficient to prove that this is so.

Despite the Second Plaintiff's low wages it is not true to say that it is only interested in recruiting cheap labour and that it exploits disadvantaged groups, women and black people especially as a result. Nor is this true of the First Plaintiff. Both Plaintiffs are interested in inexpensive labour, but they are also keen to have people who will work well and appear cheerful to please their customers. They treat women and black crew members the same as the rest so far as pay and other conditions of employment are concerned. They do not target them as cheap labour. They are genuinely equal opportunity employers.

So far as working conditions apart from pay are concerned the Plaintiffs' crew do work in the evenings and at weekends as alleged in the leaflet, but there is nothing bad about this; indeed it suits many employees.

While the statistical chances of significant promotion for the Plaintiffs' crew members are small, it is not true to say that chances of promotion are minimal. There is a real chance of anyone who is really interested moving to some level of

responsibility but most people who work in McDonald's restaurants are not interested in significant promotion in their part-time jobs with McDonald's.

The work of a McDonald's crew member is hard and sometimes noisy, and it is hectic for significant parts of some shifts, for the whole of the middle of Saturdays in all restaurants and for a lot of every day in some particular busy restaurants. There are occasions of particularly intense pressure on some occasions when some restaurants find themselves short-staffed. All this appears to be the same in both the U.S. and the U.K.

It has been common for full-time workers at the Second Plaintiff's U.K. restaurants to work more than the so-called maximum 39 hours a week, but it has been unusual for crew to work more than 45 hours a week. As often as not, weeks over 39 hours have been worked willingly because crew have wanted to earn more money. 45 hours is not an unduly long week for McDonald's crew to work from time to time, in my view, even for someone in his or her late teens working hard for a lot of the time.

The significance of such weekly hours relates to pay (absence of an increased overtime rate in U.K. McDonald's and the need to work those hours to collect something like a decent wage) rather than to bad working conditions.

Weeks over 40 hours are less likely in the U.S. because of the Federal requirement to pay overtime rates for hours over 40 per week.

Double shifts or unduly long shifts have been comparatively rare in the U.K. I had no real evidence of them being common in the U.S., and they are less likely there because of the risk of running into overtime with its extra expense.

On the other hand it is not unusual to be asked to stay on after the end of a shift for a while, and there is a significant risk of substantial, unwarned extensions from time to time. I would expect the position to be much the same in the U.S., but modified by the need to avoid overtime costs.

Very late cleaning up "closes", sometimes going on through the night, have occurred from time to time in the U.K., but generally speaking they only occur on very few occasions each year

for any one crew member. I would expect the position to be the same in the U.S., but yet again moderated by the need to avoid overtime if possible.

Proper breaks are subject to the demands of custom in the Second Plaintiff's restaurants. This means that they are often taken early or late in a shift, or cut short. Adequate drink breaks are not always easy to come by. The result is that crew can work hard for long periods without adequate breaks. I would expect the position to be the same in the U.S. because the pressures are the same.

There was evidence of young people working unlawful hours, but this did not in itself help me to decide whether conditions were generally bad.

The complete reverse of the practices to which I have just referred, is that from time to time U.K. crew are invited to go home early if a restaurant is quiet. Some crew agree to go but the very act of asking puts pressure on young crew to agree and there have been occasions when direct and unfair pressure has been put on crew to agree. Sometimes crew have been sent home for reasons, like an untidy uniform, which would not have bitten if the restaurant had been busy. If a crew member agrees to go home, he or she is not paid for the balance of the shift. This practice is most unfair as it deprives crew, mostly young, of pay for time which they have set aside to earn money at McDonald's. On the evidence before me I cannot say that it happens often but it should not happen at all, and in my judgment it shows where the ultimate balance lies in the Second Plaintiff's judgment, between saving a few pounds and the interest of the individual, often young employee. I had no direct evidence of the extent to which it happens, if it happens at all, in the U.S. However, it is the kind of systemic practice which is passed from an international holding company to its national offshoot, and on that basis I find that it probably happens in the U.S. too.

This must bear on job satisfaction, as must the fact that there are no contractually guaranteed hours from week to week, but both are primarily relevant to pay.

There have been instances of autocratic management in individual stores in the U.K. Although this does not surprise me with so many young managers working under pressure to provide fast service according to regimented procedures, the evidence fell short of showing that it was a standard characteristic of work in U.K. stores. The Defendants' case to this effect assumed a policy of breaking crew morale, which I found totally implausible. There was little evidence of the U.S. in this respect.

Because of the lack of union representation, there is no third party for any member of crew to go to in the event of a serious grievance relating to his or her employment by either Plaintiff, but generally speaking the Plaintiffs' system of Rap Sessions and Crew Meetings at which criticisms can be voiced and paid heed to, works, although some crew are suspicious of it. The Plaintiffs intend it to work.

Although one might expect that the pace of work at McDonald's, and the long hours on occasions, might lead to an element of risk, and although it has been thought necessary to improve the Second Plaintiff's safety management systems since the company appointed a Safety Officer in 1990 and voluntarily subjected itself to a Health and Safety Executive inspection and report in 1992, crew work in the Plaintiffs' restaurants is not unsafe or dangerous. People suffer minor burns as one would expect in any work involving kitchens and they suffer other injuries from time to time. But even the number of burns has not been extravagant and the number of serious injuries, including serious burns, has been modest. I was told of only one fatal injury to a crew member employed by the Second Plaintiff. Although that was one too many it occurred after eighteen years of operation in the U.K. There is no reason to believe that the safety picture is different in the U.S.

The Defendants made much during the evidence, although not in final submissions, of the Plaintiffs' insistence that crew should smile at customers. I could not understand their criticism. Many normal people greet strangers as well as friends with a smile anyway, and I do not see why a retail company should not expect its staff to welcome customers in that way. It costs the employee nothing, and the evidence that crew found it difficult was negligible. The Plaintiffs' keenness that crew should smile, which was common ground, to my mind shows that both companies want crew to appear cheerful to please the customer, and

they are unlikely to achieve that if working conditions are bad.

Despite the hard and sometimes noisy and hectic nature of the work, occasional long, extended shifts including late closes, inadequate and unreliable breaks during busy shifts, instances of autocratic management, lack of third party representation in cases of grievance and occasional requests to go home early without pay for the balance of the shift, if business is slack, I do not judge the Plaintiffs' conditions of work, other than pay, to be generally "bad", for its restaurant workforce.

Although a number of the witnesses disliked the work, even some of those who came to Court with strong criticisms stayed in their jobs for quite a while. There was evidence that young crew liked the buzz of being busy together. One of the Second Plaintiff's big store managers, now a franchisee, agreed with responses to a crew questionnaire, which said that crew most liked the atmosphere and least liked the money. One of the Second Plaintiff's severest critics said that the satisfaction which he gained from the work was quite high, but the satisfaction from pay was non-existent. So there was the same picture from both ends of the spectrum of evidence.

The success of the restaurants of both Plaintiff companies has relied on smart, cheerful staff providing brisk service and it seems to me that it is inherently difficult to achieve this unless crew are reasonably happy at their work. I take full account of the indomitability of the human spirit in the face of adversity, but I find it difficult to see how either Plaintiff could have grown so fast in countries where there is a high expectation of living and working conditions if McDonald's working conditions had been truly and generally bad.

The First and Second Plaintiffs are strongly antipathetic to any idea of unionisation of crew in their restaurants but they do not have a policy of preventing unionisation by getting rid of pro-union workers as the leaflet alleges. That allegation is untrue.

The result of all this is that the message of this part of the leaflet to the effect that the Second Plaintiff pays its workers low wages, helping to depress wages for workers in the catering trade in Britain has been proved to be true. It is justified.

first
The message that the ~~Second~~ Plaintiff pays its workers low wages has not been proved to be true.

The charge that the Plaintiffs are only interested in recruiting cheap labour and that they exploit disadvantaged groups, women and black people especially, as a result, has not been proved to be true. It is not justified.

It has not been proved that the Plaintiffs provide bad working conditions. That charge has not been justified.

The charge that the Plaintiffs have a policy of preventing unionisation by getting rid of pro-union workers is not true.

The evidence has disclosed unsatisfactory aspects of the Plaintiffs' working conditions, and these are to be taken into account in assessing damages, but the real, general sting of low pay for bad conditions has not been shown to be true. It has not been justified.

Section 5 of the Defamation Act, 1952.

Section 5 of the Defamation Act, 1952, provides that in an action for libel like this action, where the Plaintiffs' claims have been brought in respect of words containing distinct charges, the Defendants' defence of justification shall not fail by reason only that the truth of every charge is not proved, if the words not proved to be true do not materially injure the Plaintiffs' reputations having regard to the truth of the remaining charges.

However, the serious charges which have not been justified including particularly those relating to being blamed for starvation in the Third World and for destruction of rainforest and knowingly selling food with the serious risk of damaging their customers' health do materially injure the Plaintiffs' reputations, even giving full weight to the matters which have been shown to be true, distinct charges or not. The result is that section 5 cannot save the Defendants from awards of damages in favour of the Plaintiffs.

The Defendants' counterclaims.

Both Ms Steel and Mr Morris counterclaimed damages for libel by the Second Plaintiff, McDonald's in this country, in the form of three documents which were first put out in March, April and May, 1994, as the beginning of the trial of this action approached.

Two documents were published to prominent arms of the media, and one to customers of the Second Plaintiff.

The three documents clearly bore the meaning, defamatory of both Defendants, that by distributing the leaflet with which this case is concerned, knowing that its contents are untrue, both Ms Steel and Mr Morris had persistently spread lies and intentionally made numerous false statements about McDonald's, thereby deliberately deceiving the public and thereby harming McDonald's staff, customers, suppliers and franchisees; and that they have tried to avoid responsibility for what they have done by falsely claiming that they have not been involved in a London Greenpeace campaign against McDonald's and by ignoring several letters sent to them since 1984 by McDonald's solicitors, complaining about the leaflet in question.

The sting was that the Defendants had published a leaflet which they knew to be untrue and that they had tried to avoid responsibility for it.

^{PLAINTIFF}
The Second Defendant contended that the charge of publishing a leaflet which they knew to be untrue and of trying to avoid responsibility for it, was justified in the case of both Ms Steel and Mr Morris; true in substance and in fact. Ms Steel and Mr Morris contended, of course, that the contents of the leaflet were true, so there could be no question of them lying. In any event they believed them to be true. They said that the allegation of several ignored letters was false.

Although I have found the majority of the defamatory statements in the leaflet to be untrue, others were and are true. The same applies to inoffensive statements in the leaflet. Some are true: some are not.

Ms Steel gave evidence that she believed the leaflet to be true. Although she could not, in my judgment, provide any support for the statements that McDonald's had bought vast tracts of

farming land in poor countries or used lethal poisons to destroy rainforest, for instance, I take heed of Lord Diplock's advice in Horrocks v. Lowe, that one should be slow to find that a person publishing defamatory matter does so without honest belief in its truth.

With this in mind, I believe Ms Steel's evidence to the effect that it did not come as a surprise to her to read what she found in the leaflet complained of, and that she trusted the author or authors to have checked what they were writing and that it was not contradicted by anything she personally knew about McDonald's. So she believed it.

This means that the Second Plaintiff's defamatory charge that she published a leaflet, the leaflet complained of, which she knew to be untrue, has not been justified.

Mr Morris did not give evidence, but I have concluded that the Second Plaintiff's charge of publishing a leaflet, the leaflet complained of, which he knew to be untrue, has not been justified so far as he is concerned either.

Although it was inaccurate to allege that the Defendants had ignored several letters sent to them since 1984 by McDonald's solicitors, the Second Plaintiff's charge, in early 1994, that the Defendants had tried to avoid responsibility for the leaflet complained of has been justified. It was true in substance and in fact. I regard the allegation of ignoring several letters as an inconsequential detail in all the circumstances.

The Second Plaintiff put forward a defence of qualified privilege to the counterclaim. It contended that the three documents of which the Defendants complained were published on occasions protected by qualified privilege in the form of the right of reply to an attack which had been made by the Plaintiffs with others in the form of material put out as part of a "McLibel Support Campaign" between the service of the writs in the action and the publication of the three documents which the Defendants complained about.

Where a person (including a company) is the subject of an attack upon his character or conduct, the law permits him to answer that attack to anyone who has an interest in receiving, or a duty to receive his reply, and any defamatory statements about

the attacker contained in his reply to that attack are privileged and immune from a successful claim for libel, subject to certain qualification, one of which is that the privilege is lost if the reply is made with actual or express malice, that is with a sole or dominant motive which is improper.

The material which the Defendants put out as part of the McLibel Support Campaign contained strongly worded criticisms of the Plaintiffs, involving repetition of the allegations in the leaflet complained of, assertions that those allegations were true, criticism of the Plaintiffs for having instituted and continued libel proceedings against the Defendants to intimidate the Defendants and to suppress freedom of speech, and an allegation that the Second Plaintiff had suppressed material documents to cover up the truth contained in the leaflet complained of.

In my judgment the three documents of which the Defendants complained in their counterclaim and which made the unjustified defamatory charge that the Defendants had published a leaflet which they knew to be untrue, were published on occasions of qualified privilege of reply to that attack.

I am not satisfied that the statements made in the three documents of which the Defendants complained were made in bad faith.

I consider that part of the motive for the three documents and the parts of them which were defamatory of the Defendants was to discredit the Defendants, although Mr Preston did not accept that, and I am satisfied that there was considerable ill will towards the Defendants by the time that the three documents were published. But all that was understandable in the light of the terms used in the material put out by the McLibel Support Campaign of which the Defendants were part, and I am not satisfied that there was an improper motive in all the circumstances. Even if there was an element of improper motive. I am satisfied that the predominant motive of the three documents, expressed as they were, was to refute the out-of-court public attack which the Defendants, with others, had made. That attack had been expressed in the strongest terms and the Defendants cannot complain that like was to some extent met with like.

In my judgment the defamatory statements upon which Ms Steel and Mr Morris relied for their counterclaims were made by the Second Plaintiff on occasions of qualified privilege which was not vitiated by express malice, and it follows that the counterclaims must fail.

Conclusions.

That leaves the question of the amounts of damages to be awarded to the First and Second Plaintiffs against the Defendants, Ms Steel and Mr Morris.

A successful trading corporation Plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sums as will compensate it for the wrong it has suffered. That sum must compensate it for the damage to its trading reputation and goodwill, and vindicate its good name such as it may be, but it does not take account of distress, hurt and humiliation as damages to an individual Plaintiff must do, because a corporation does not have feelings to be hurt, however much the defamatory material may have hurt the feelings of individual officers who feel themselves affected by it.

In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel. The more closely it touches its trading reputation, the more serious it is likely to be. The fact that others may have defamed a Plaintiff in the same or similar respects is irrelevant. There is no basis upon which I could find that either Plaintiff in this case has a generally bad reputation.

The Defendants criticised the Plaintiffs for bringing proceedings at all, and the First Plaintiff for bringing proceedings in this jurisdiction, of England and Wales, but I am not persuaded that the bringing of these proceedings should be regarded as disreputable, nor that damages should be reduced for that reason. Foreign Plaintiffs are entitled to sue in our courts if they have a valid cause of action here. My duty is to apply the law of this jurisdiction to a claim properly brought within this jurisdiction. I do not doubt that both Plaintiffs brought the proceedings in good faith to defend their trading reputations and goodwill from defamatory statements which they, through their officers, genuinely believed to be untrue, and not to stifle

criticisms which they knew to be well-founded.

The extent of publication is also very relevant to the amount of damages.

Where there are separate Plaintiffs who have been successful in the same action each is entitled to an award of damages, and where there are separate Defendants who have published material defamatory of the Plaintiffs each is liable for an award of damages in favour of each Plaintiff but in so far as both Defendants have been jointly responsible for relevant publication they are jointly as well as severally liable for the damages appropriate to that publication. In so far as one Defendant, but not the other, is responsible for further, relevant publication, he alone is severally responsible for the further damages appropriate to that further publication.

Since the purpose of compensatory damages is to compensate the Plaintiff, the means or lack of means of the Defendant are irrelevant. Information as to whether a Plaintiff will or will not seek to enforce a judgment are equally irrelevant. I do not know what will happen in this case, in any event.

In my judgment, as I have already said in relation to the issue of publication, the Defendants were both responsible for the publication of several thousand copies of the leaflet, directly and consequentially, within the jurisdiction and within the limitation period of September, 1987, to September, 1990; Mr Morris for the whole of that period, Ms Steel from early in 1988. Their determination to seek to justify these allegations in the leaflet, which I have found to be untrue, has resulted in their wide publication in the national media in this country, which is just what the Defendants wanted, but fighting the case has resulted in justification of some of its defamatory charges, which would not have been possible had the Defendants made a complete retraction as the Plaintiffs wished.

In my view, the unjustified allegations of blame for starvation in the Third World, and destruction of rainforest, and of knowingly selling food with a serious risk of damaging their customers' health, are particularly damaging to the Plaintiffs' reputations. The allegation of lying about their use of recycled paper is serious because of the element of deception.

On the other hand, there has been an element of justification in relation to the Plaintiffs' advertising, their responsibility for some cruelty towards some of the animals which are reared and slaughtered for their products, and the Second Plaintiffs' low pay. Although the Plaintiffs succeeded on other elements of the defamatory of the defamatory charges relating to their employment practices, the evidence did disclose unsatisfactory aspects of their working conditions.

The important charges of deception made against the Plaintiffs in the leaflet have not been justified, but some of the Plaintiffs' publicity material has been shown to be misleading.

The extent of publication of the libels was the same in relation to each Plaintiff, and the seriousness of the unjustified charges and the extent of any allowance to be made for partial justification, were broadly the same in respect of each Plaintiff.

In his final submissions, counsel for the Plaintiffs suggested that a total award of damages in the bracket of £40,000 to £60,000 to each of the Plaintiffs was appropriate. I would have thought a figure somewhere in the middle of that bracket appropriate for each Plaintiff, if all the defamatory statements complained of had turned out to be untrue and without any foundation.

Putting the chaff with the wheat, however, I assess the damages for each individual Plaintiff at £30,000 for the publications between September, 1987, and September, 1990, for which Mr Morris is responsible, of which I allocate £27,500 to the period from early 1988 to September, 1990, for which Ms Steel is jointly liable with Mr Morris.

It follows that there will be judgment for the First Plaintiff for £30,000 against Mr Morris and for £27,500 against Ms Steel. Mr Morris is severally liable for the whole £30,000 awarded to the First Plaintiff. He and Ms Steel are jointly and severally liable for £27,500 of the £30,000 awarded to the First Plaintiff.

There will be judgment for the Second Plaintiff for £30,000 against Mr Morris and for £27,500 against Ms Steel. Mr Morris is severally liable for the whole £30,000 awarded to the Second Plaintiff. He and Ms Steel are jointly and severally liable for £27,500 of the £30,000 awarded to the Second Plaintiff.

There will be judgment for the Second Plaintiff on the Defendants' counterclaims which are dismissed.

I make no further orders at this stage. If any party wishes to apply for any further order such as an order for costs, that party should give notice in writing to the Court and to the other parties not later than Thursday, 17th July, 1997, which allows four weeks to read and consider the full effects of this judgment which I now hand down. That date falls two weeks before the end of this legal term.

There will be liberty to apply as to the precise form of the orders which I have so far made, if there is any dispute as to their form.

I direct, pursuant to RSC, Order 68, rule 1(1), that no official shorthand note shall be taken of this summary or of the judgment and that copies of the version of the judgment as handed down, and of this summary, may be treated as authentic.