

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST (ChD)
PATENTS COURT

B E T W E E N:

HESCO BASTION LIMITED

Claimant

and

- (1) DIRICKX SYSTEMS LIMITED**
- (2) KEVIN LYONS**
- (3) MIKE PICKUP**
- (4) SHAUN ELLIS**
- (5) BEN JENKINS**

Defendants

PARTICULARS OF CLAIM

A: The Parties

1. The Claimant ("**Hesco**") is Company No. 02600319 incorporated on 10 April 1991 under the laws of England and Wales. It carries on business as a designer, manufacturer and supplier of, *inter alia*, gabion baskets, perimeter fencing incorporating gabion baskets and 'sangan' structures incorporating gabion baskets for use in military force protection and flood defence. Since March 2016, Hesco has been a wholly owned subsidiary of Praesidiad Group Limited ("**Praesidiad**"). Praesidiad also owns the Betafence group of companies ("**the Betafence Group**"), which manufactures world leading perimeter systems at a number of sites in Europe.
2. The First Defendant ("**Dirickx Systems**") is Company No. 14098488 incorporated on 10 May 2022 under the laws of England and Wales. It has, since

the date of its incorporation, carried on in business as a manufacturer and supplier of, *inter alia*, gabion baskets, perimeter fencing incorporating gabion baskets and 'sangan' structures incorporating gabion baskets. Dirickx Systems is controlled by Wim Deblauwe. Mr Deblauwe is the President of Dirickx, a French manufacturer of fences, gates and access ("**Dirickx France**"), which is in turn part of the Picot Group.

3. The Second Defendant ("**Mr Lyons**") is a director and CEO of the First Defendant. Between September 2015 and December 2019, he was Hesco's Chief Operating Officer. Between January 2020 and May 2021, he was the Group Manufacturing Director for the Betafence Group.
4. The Third Defendant ("**Mr Pickup**") is employed by the First Defendant as Engineering Design Director. Between February 2011 and May 2020, he was employed by Hesco in the role of Engineering and/or Technical Director.
5. The Fourth Defendant ("**Mr Ellis**") is employed by the First Defendant as Sales Director. Between August 2008 and May 2022, he was employed by Hesco as an International Sales Team Manager.
6. The Fifth Defendant ("**Mr Jenkins**") is employed by the First Defendant as Regional Sales Director. Between March 2013 and September 2022, he was employed by Hesco as a Technical Support Manager.
7. The Second to Fifth Defendants shall be referred to collectively as "**the Personal Defendants**".

A1 Background

8. Between at least 2013 and 2020 the Personal Defendants worked together, within their respective roles, on the design, manufacture, sale and delivery of Hesco products, including gabion baskets marketed by Hesco under the name 'MIL' ("**MIL Gabions**"), a perimeter security fence system incorporating MIL Gabions marketed under the name Terrablock XS ("**XS Fence**") and flood defence gabion baskets marketed under the brand Floodline ("**Floodline Gabions**").

9. In or about 2021, the Personal Defendants and each of them entered into a secret plan to set up their own company to manufacture facsimiles of Hesco's MIL Gabions, XS Fence and Floodline Gabions.
10. In light of Dirickx Systems' name and Mr Deblauwe's control thereof, the Claimant infers that the aforesaid secret plan involved securing investment, assistance and/or support from Mr Deblauwe and/or Dirickx France to set up and launch Dirickx Systems under the Dirickx brand.
11. Mr Lyons, Mr Pickup and Mr Ellis took up their aforesaid positions at Dirickx Systems in May 2022. Mr Jenkins took up his aforesaid position at Dirickx Systems in January 2023. Dirickx Systems now markets its facsimiles of Hesco's MIL Gabions, XS Fence and Floodline Gabions respectively as 'EB Units', 'PS Systems' and 'FB Units'.

B: Hesco's rights

B1 The Patent

12. Hesco is the registered proprietor of UK Patent GB 2608722B entitled 'Assembly Line' ("**the Patent**"). That Patent has been in force since 8 November 2023.

B2 Rights in confidence

13. To the extent stated below, the following documents and each of them were and/or contained information confidential to Hesco in that the same was commercially sensitive and was not in the public domain:
 - (1) the Ellis Documents (as that term is defined in section C below)
 - (2) the Jenkins Documents (as that term is defined in section C below)
 - (3) the Hesco Test Data (as that term is defined in section C below)
 - (4) the Advantica Test Data (as that term is defined in section C below)

B3 Rights in copyright

14. Hesco is the owner of literary and artistic copyright in the following documents, in that the same were or contained in each case the original literary and/or artistic works of qualifying persons produced in the course of their employment by Hesco:
- (1) the Ellis Documents
 - (2) the Jenkins Documents
 - (3) the Sangar Artwork (as that term is defined in section C below)
 - (4) the XS Fence Photograph (as that term is defined in section C below)
15. Further particulars of subsistence and title will be provided in the event that Hesco's ownership of copyright in the aforesaid documents is not admitted.

B4 Goodwill

16. Hesco is the owner of a substantial goodwill attaching to, *inter alia*, its MIL Gabions, XS Fence and Floodline Gabions and each of them as a result of its longstanding and successful trade in the same. Further particulars of that trade will be provided if Hesco's goodwill is not admitted.

B5 Contractual rights

17. Mr Ellis's and Mr Jenkins' written contracts of employment contained, among others, the following express provisions:

“16 CONFIDENTIAL INFORMATION

16.1 You agree during and after the termination of your employment not to use or disclose to any person (and shall use your best endeavours to prevent the use, publication or disclosure of) any confidential or secret information:

16.1.1 concerning the business of [Hesco] which comes to your knowledge during the course of or in connection with your employment; or

16.1.2 concerning the business of any Associated Company and/or of any customer, supplier, business partner or

other person having dealings with [Hesco] or any Associated Company and which is obtained directly or indirectly in circumstances where [Hesco] or any Associated Company is subject to a duty of confidentiality.

16.2 *For the purposes of clause 16.1 above information of a confidential or secret nature includes but is not limited to:*

16.2.1 *any trade secret or confidential or secret information in respect of [Hesco] and/or any Associated Company;*

...

16.2.3 *details of financial projections, current or planned projects, prices or pricing strategy, current or planned marketing strategy of [Hesco] and/or any Associated Company;*

16.2.4 *any confidential research, report or development undertaken by or for [Hesco] or any Associated Company;*

16.2.5 *technical or market information and all other details of any of the current products or planned future products including any product development programmes of [Hesco] or any Associated Company;*

...

16.2.8 *details of relationships or arrangements with [Hesco]'s customers or suppliers and/or customers or suppliers of any Associated Company;*

16.2.9 *lists and details of contracts with customers or suppliers of [Hesco], and/or of any Associated Company;"*

18. Mr Ellis's and Mr Jenkins' contracts of employment further contained an implied duty of fidelity, including a duty to act honestly towards Hesco, a duty not to disrupt Hesco's business and a duty not to compete with Hesco (either on behalf of another business or on their own account).

C: The Defendants' breaches and infringements of Hesco's rights

19. The particulars of breach and infringement in this section are the best particulars Hesco can currently provide based on the information currently available to

Hesco. The full extent of those breaches and infringements are peculiarly within the knowledge of the Defendants. Hesco will rely upon and seek relief in respect of all further breaches and infringements as come to light, whether in the course of these proceedings or otherwise.

C1 Infringement of the Patent

20. Dirickx Systems has, since 23 November 2023, infringed the Patent by doing the acts particularised in the Particulars of Infringement served herewith.
21. Further, Dirickx Systems did, between 11 January 2023 or the date its gabion barrier assembly line was installed (whichever is the later) and 8 November 2023, infringe Hesco's rights arising upon publication of the application for the Patent pursuant to s.69(1) of the Patents Act 1977 by doing the aforesaid acts.

C2 Mr Ellis's unauthorised taking of Hesco documents

22. In January 2022, Hesco (via James Blackwell) informed Mr Ellis that his role had been provisionally selected for redundancy. Following a series of consultations, on 20 May 2022 Mr Ellis signed a settlement agreement which terminated his employment the same day. Hesco infers that he did so following discussions with Mr Lyons, Mr Pickup and/or Mr Jenkins and the offer of a role at Dirickx Systems.
23. Between 5 February and 5 April 2022, Mr Ellis sent a series of emails from his work address (shaun.ellis@praesidiad.com) to his personal email address (smellis500@gmail.com) attaching the following documents, each of which was confidential to Hesco with the exception of item (9) below, the Hesco Sales Briefing (Betafence Product Training) (presentation) ("**the Ellis Documents**"):
 - (1) Hesco Bastion Ltd – Focus Regions Research Document (PDF)
 - (2) Hesco 5 Year Strategy Financials (spreadsheet)
 - (3) Quotes for MIL Gabions issued to International Golden Group (PDF)
 - (4) Quotes for MIL Gabions issued to Tawazun Industrial Park (PDF)
 - (5) Hesco's Product Price List, September 2021 (PDF)

- (6) Hesco Budget 2022 Sales Forecast Detail_v2 (spreadsheet)
 - (7) Hesco Strategic Plan, January 2021 (presentation)
 - (8) Inquiry re. armoured vests (email)
 - (9) Hesco Sales Briefing (Betafence Product Training) (presentation)
24. Mr Ellis sent the Ellis Documents to his personal email address without Hesco's consent. Further, there was no legitimate commercial reason for him to have done so.
25. In support of the foregoing allegation, Hesco will rely (without limitation) on the fact that Mr Ellis did not habitually send Hesco documents to his personal email address, nor did he have any reason to do so given that his work email and documents were both accessible remotely via Hesco's IT system.

C3 Breaches and infringements of Hesco's rights in the Ellis Documents

26. In the premises, Mr Ellis's aforesaid acts of sending himself the Ellis Documents and each of them constituted breaches of his contractual and equitable obligations of confidence, his duty of fidelity and an infringement of Hesco's copyright.
27. Further, in light of the absence of any legitimate commercial reason for Mr Ellis to have sent himself the Ellis Documents or any of them, and the timing of the same, Hesco infers that Mr Ellis did so intending to use those documents for the benefit of Dirickx Systems and/or make them available for use by the Defendants to benefit the business of Dirickx Systems.
28. Hesco further infers that the Ellis Documents were received by the Defendants and so used, in further breach of Hesco's rights in confidence and in further infringement of Hesco's copyright, with actual or constructive knowledge that (where rights in confidence are alleged) the same were confidential to Hesco. Knowledge of that inferred use is peculiarly within the knowledge of the Defendants. Hesco seeks admission of and disclosure on all such use so that it may seek appropriate relief.

29. Without prejudice to the generality of the foregoing paragraph, Hesco infers that the Defendants used at least confidential information relating to Hesco's pricing (whether contained in the Ellis Documents or otherwise) to undercut Hesco by small margins in order to win business from Hesco at maximum profit. In support of said inference, Hesco relies on the confidential spreadsheet attached as Annex 1 hereto, which shows relative degrees of undercutting by different recent competitors of Hesco, including Dirickx Systems.

C4 Mr Jenkins' unauthorised taking of Hesco documents

30. On 29 June 2022, Mr Jenkins resigned his employment with Hesco effective 29 September 2022. Hesco infers that he did so following discussions with Mr Lyons, Mr Pickup and/or Mr Ellis and the offer of a role at Dirickx Systems. Mr Jenkins was placed on gardening leave for the remainder of his notice period.
31. Between 6 and 28 June 2022, a number of Hesco folders and/or documents stored on Mr Jenkins' laptop were uploaded to and/or accessed from a Bluetooth folder. A schedule of the documents relied upon by Hesco is attached as Annex 2 hereto ("**the Jenkins Documents**"). In said Annex, green rows indicate receipt of the folder or document into the Bluetooth folder/cloud. White rows indicate a folder or document that has been at least accessed but no receipt generated. Said documents included:
- (1) Confidential Hesco price lists dated September 2021 and June 2022
 - (2) Confidential image files and/or other documents relating to installations of Hesco products in Mogadishu and Camp Bastion.
 - (3) Technical data. Pending disclosure and/or further information on the documents in question, Hesco cannot currently state whether or not the same were confidential to Hesco
 - (4) Technical specification sheets for the Hesco MIL 2, 3, 4, 5, 7, 8 and 11 Gabions
 - (5) Hesco construction guides
 - (6) Hesco Sangar guides and/or technical sheets

32. Hesco infers that the Jenkins Documents were downloaded and/or accessed as aforesaid by Mr Jenkins. The same was done without Hesco's consent. Further, there was no legitimate commercial reason for Mr Jenkins to have downloaded and/or accessed the Jenkins Documents or any of them using Bluetooth.
33. In support of the foregoing allegation, Hesco will rely (without limitation) on the fact that Bluetooth is not a system used by Hesco or its employees to access or transfer documents, and is a slow and cumbersome way of doing so, and Mr Jenkins did not habitually download and/or access Hesco documents via Bluetooth, nor did he have any reason to do so given his work email and documents were both accessible remotely via Hesco's IT system.

C5 Breaches and infringements of Hesco's rights in the Jenkins Documents

34. In the premises, Mr Jenkins' aforesaid acts of accessing and/or downloading the Jenkins Documents and each of them constituted breaches of his contractual and equitable obligations of confidence, his duty of fidelity and an infringement of Hesco's copyright.
35. Further, in light of the absence of any legitimate commercial reason for Mr Jenkins to have downloaded and/or accessed the Jenkins Documents or any of them, and the timing of the same, Hesco infers that Mr Jenkins did so intending to use the Jenkins Documents and each of them for the benefit of Dirickx Systems and/or to make them available for use by the Defendants to benefit the business of Dirickx Systems.
36. Hesco further infers that the Jenkins Documents were received by the Defendants and so used, in further breach of Hesco's rights in confidence and in further infringement of Hesco's copyright, with actual or constructive knowledge that (where rights in confidence are alleged) the same were confidential to Hesco. Knowledge of that inferred use is peculiarly within the knowledge of the Defendants. Hesco seeks admission of and disclosure on all such use so that it may seek appropriate relief.

C6 The Mensah Message

37. On a date presently unknown to Hesco, but while on his gardening leave, Mr Jenkins notified Ms Chantal Mensah of Matrans SARL (an authorised

representative of HESCO products in Mali and customer of Hesco) of his resignation via WhatsApp and further messaged Ms Mensah as follows (“**the Mensah Message**”):

“If you have any requirements for HESCO get in touch with kev.lyons@icloud.com and tell him you used to work with me [laugh emoji]”

38. The Mensah Message was a clear attempt to divert business intended for Hesco to Dirickx Systems via Mr Lyons and therefore a breach of Mr Jenkins’ duty of fidelity.
39. Further, Hesco infers that Mr Jenkins sent the Mensah Message with the knowledge and assent of Mr Lyons. Hesco relies on the same in support of its plea of joint tortfeasance at section D below.

C7 Taking and misuse of the Hesco Test Certificates

40. On or before 11 January 2023, Mr Jenkins emailed Mr Puthier of MP SEC Terrang and stated as follows:

“I just wanted to let you know I have left HESCO. I have been on termination leave for the last 6 months and have not been allowed to speak with any of my customers.

...

I wanted to let you know, secretly over the last 2 years, myself, and some of the old HESCO staff made a plan to set up our own company manufacturing our products to a higher standard with the same suppliers with the service and support expected from our customers.

Please look us up and let me know if we can assist with any requirements, you may have.

*Ben Jenkins
Regional Sales Director
phone: [mobile telephone number]
email: bjenkins@dirickx.com <mailto:bjenkins@dirickx.com>*

dirickx-systems.com”

41. On 6 April 2023, following receipt of a Dirickx Systems products and services brochure from Mr Jenkins, Mr Puthier requested a quote for 200m of Dirickx Systems' 'PS-01' hostile vehicle mitigation ("HVM") perimeter security fence and 200m of Dirickx Systems' 'EB Units'. Mr Jenkins replied the same day, copying in Mr Lyons, Mr Pickup and Mr Ellis. All the Personal Defendants were copied in on all the ensuing emails in the chain ("**the MP SEC Terrang Exchange**").
42. Mr Puthier responded by, *inter alia*, requesting the specification sheets and certifications for the PS-01 system and EB Units. Mr Jenkins replied as follows:

"All the DIRICKX Systems team are formed from our previous roles at HESCO. Mike Pickup, our Engineering Director was responsible for the development of the HESCO XS system. This is given us an ideal opportunity in our new roles to enhance the original design of the XS to make our own version, the PS-01. We have made it easier to construct with further options to increase the already tested vehicle rating to meet the changing vehicle threats. The EB units used within the system are much stronger and are bespoke to this product. We can also advise on the addition of further EB units to match the perceived vehicle threats.

The original system was tested to IWA-14. I will send you the certification though."

43. Upon Mr Puthier pressing for the IWA-14 certificate, Mr Pickup stated as follows:

"Dear Luc

I have been asked to provide the crash rating test certificate for the PS01 barrier.

In terms of background - The XS product (also known as the Geoquip HVM fence) was originally designed by myself and the team when we worked for Hesco a number of years ago.

When we designed the XS barrier we knew and accounted for the fact that the fence post and wire mesh contributed virtually nothing to the vehicle stopping capability of the product - The fence part of the product was to provide the anti-climb function, the earth filled barrier provided the HVM part by utilising the mass and inertia of the baskets.

The barrier system that Dirickx Systems manufactures is virtually a direct copy of the XS product in terms of mass – (in fact ours is actually slightly heavier) – however the fundamental difference is that we have re-engineered it allow for a far more simpler and rapid installation speed in terms of metres/day without altering the mass distribution and density of the product.

In our original calculations we knew (from testing) that:

** 2 cells of EB01 stopped a 7500kg vehicle at 64 km/h in approx. 11m – this equates to a deceleration of 14 m/s² which requires a stopping force of approx. 10.5 tons*

** 4 cells of EB01 stopped a 7500kg vehicle at 64 km/h in approx. 6.9m (2 cells wide and 2 cells thick providing an impacting surface of 2 cells width) – this equates to a deceleration of 26 m/s² which requires a stopping force of approx. 19.8 tons*

The original crash test result for the Geoquip product was recorded as: V/7200[N2A]/64/90:6.9 - which I am sure you are aware translates to a 7200kg vehicle impacting 64 km/h perpendicular to the barrier alignment and achieving a penetration of 6.9m. (see attached certificate)

For the XS product this equates to a deceleration of 22.9 m/s² which requires a stopping force of approx. 16.5 tons – the difference between this test and the 2 cells test done previously (10.5 tons) is accounted for by the fact that in the XS test the vehicle width meant it impacted slightly more than 2 cells of EB01 this impacting a higher mass resulting in a higher deceleration and thus a greater stopping force.

So in summary, we do not have an actual test certificate for the Dirickx Systems PS01 product but it has been engineered on the identical principle of the XS product in terms of mass distribution, density and layout of the earth filled component.

I hope this helps to address any concerns you may have and please feel free to get in touch with any questions you may have.

Kind regards

Mike”

44. In the premises of the aforesaid emails, Hesco infers that one or more of the Personal Defendants took and/or retained copies of confidential Hesco test data (“**Hesco Test Data**”) for use by the Dirickx Systems and/or the other Personal Defendants for the benefit of Dirickx Systems’ business (including to enable the sale of Dirickx Systems products without Dirickx Systems conducting testing of its own) and that the same have been so used, in each case in breach of Hesco’s rights in confidence.
45. The nature and extent of the Hesco Test Data inferred to have been taken and the nature and extent of the Defendants’ use thereof is peculiarly within the

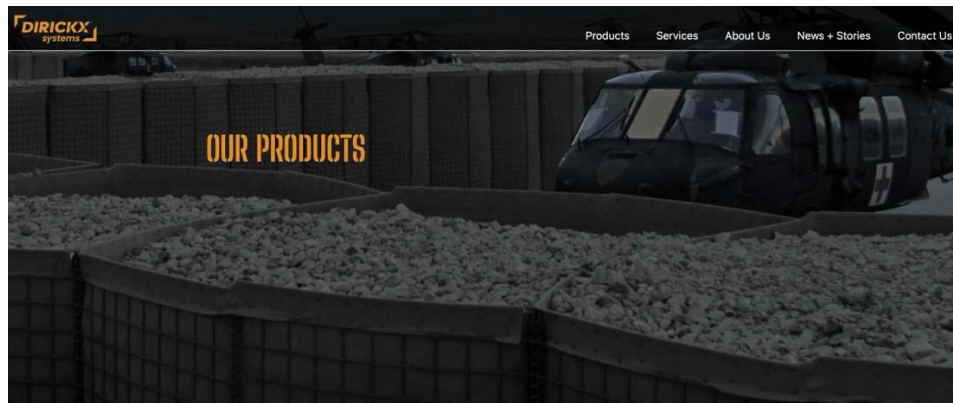
knowledge of the Defendants. Hesco seeks admission of and disclosure on all such use so that it may seek appropriate relief.

46. Further, Hesco relies on the fact that all the personal Defendants were copied in on the MP SEC Terrang Exchange (which attaches, refers to and/or uses Hesco Test Certificates) in support of its plea of joint tortfeasance at section D below.

C8 Passing off by the Dirickx Systems website

The Dirickx Systems website

47. In or about late 2022, Dirickx Systems launched a website at <https://dirickx-systems.com> (“**the Dirickx Systems Website**”). In view of the timing of said launch, Hesco infers that the initial design and construction of said website was arranged and/or procured on behalf of Dirickx Systems by Mr Lyons, Mr Pickup and/or Mr Ellis.
48. The Dirickx Systems website features the following combination of text and images, including text that appears when the cursor is left over each half page image:



DIRICKX systems

Products Services About Us News + Stories Contact Us

INTRODUCING EB-UNITS – OUR EXPEDITIONARY BARRIER SYSTEMS

Manufacture, supply and install of defensive systems for protecting people, assets, temporary, permanent infrastructure against a multitude of direct and indirect threats.

Delivered on time, on location, we are your reliable and trusted partner to protect what matters most.

[CLICK FOR MORE](#)

(2)

DIRICKX systems

Products Services About Us News + Stories Contact Us

MAINTENANCE & AFTER SALES

We are committed to providing ongoing after-sales support and maintenance to ensure our customers' products continue to function at optimal levels.

Our maintenance package is customisable to meet client specific needs, working closely with our experts to ensure our products are always performing to the correct standard and provide the highest level of protection.

DIRICKX Systems EB Unit 01

(3)

DIRICKX systems

Products Services About Us News + Stories Contact Us

EXPEDITIONARY BARRIERS

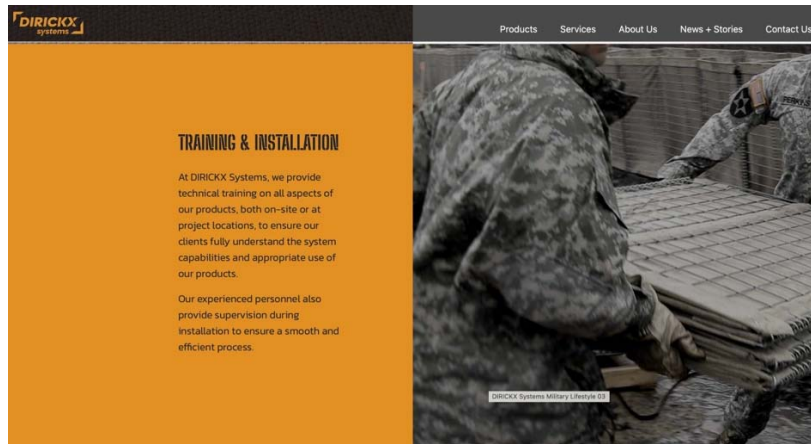
The original just got better.

Our ED UNITS are surface mounted, earth-filled perimeter barrier systems, engineered to defend against blast, ballistics, hostile vehicle, and secure sites and assets.

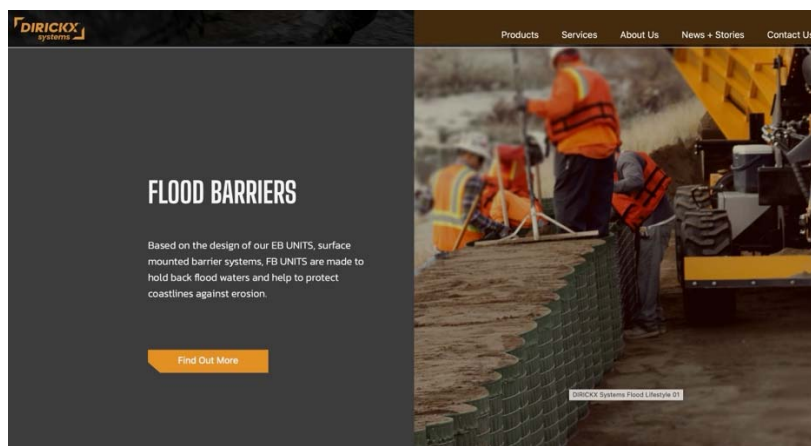
[Find Out More](#)

DIRICKX Systems Military I Range 02

(4)



(5)



(6)

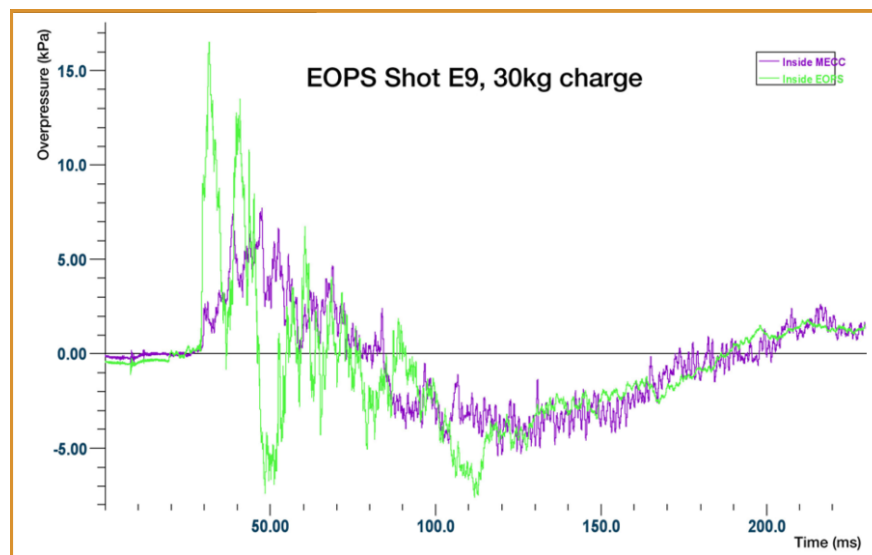
49. The aforesaid combinations of text and photographs, viewed in the context of the Dirickx Systems website as a whole, falsely represent that the products depicted and each of them are Dirickx Systems products, when they are in fact Hesco products.
50. Said misrepresentations and each of them damages and/or threatens to damage Hesco's goodwill on the principle articulated in *Bristol Conservatories Ltd v Conservatories Custom Built Ltd* [1989] RPC 455.
51. In the premises, Dirickx Systems and the Personal Defendant(s) responsible for setting up the Dirickx Systems website are each liable for passing off by means of the content of that website.

C9 Breach of confidence, infringement of copyright and/or passing off by the ERDC Presentation

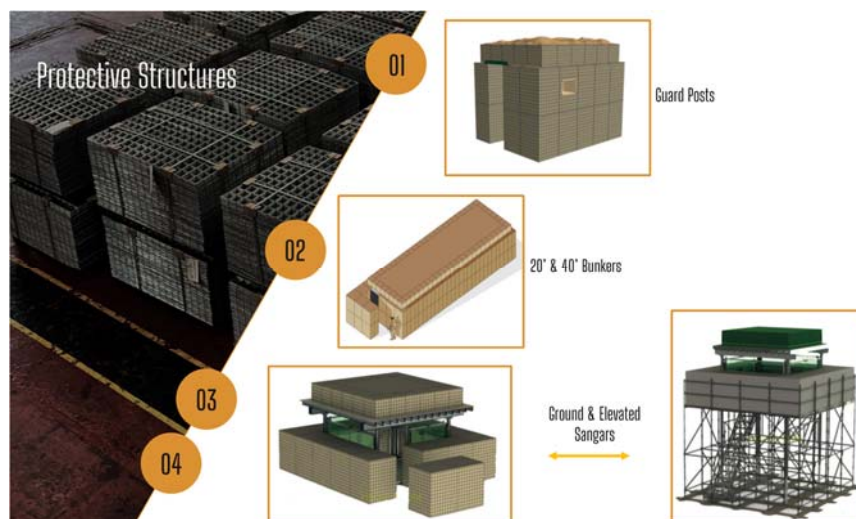
The offending images

52. In or before November 2022, Dirickx Systems prepared a presentation for the US Military Engineer Research and Development Center (ERDC) (“the ERDC Presentation”). In view of the timing of that presentation, Hesco infers that it was prepared on behalf of Dirickx Systems by Mr Lyons and/or Mr Pickup.

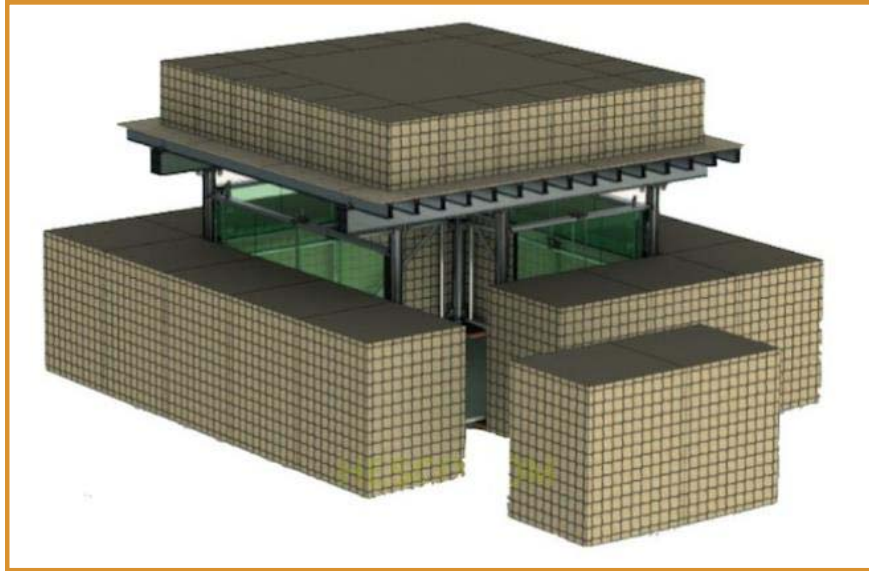
53. The ERDC Presentation contains the following images:



(1)



(2)



(3)



(4)



(5)

54. Image 1 above is a reproduction of confidential data generated in blast testing commissioned by Hesco and performed by Advantica (“**the Advantica Test Data**”).
55. Images 2 and 3 above are Hesco’s copyright drawings of sangar structures comprising MIL Gabions (“**the Sangar Artwork**”).
56. Image 4 above is Hesco’s copyright photograph of an XS Fence installation in South Africa (“**the XS Fence Photograph**”).
57. Image 5 above is a photograph of a hostile vehicle mitigation test performed on a barrier constructed of Hesco MIL Gabions (“**the HVM Test Photograph**”).

Breach of confidence

58. In the premises of the use of the Advantica Test Data in the ERDC Presentation, Hesco infers that one or more of the Personal Defendants took and/or retained a copy of the Advantica Test Data in breach of Hesco’s rights in confidence with the intention that the same be used by Dirickx Systems and/or the Defendants for the benefit of Dirickx Systems’ business. Hesco further infers that the same has been so used (including but not limited to use in the ERDC Presentation) in further breach of Hesco’s rights in confidence.

Infringement of copyright

59. In the premises of the use of the Sangar Artwork and the XS Fence Photograph in the ERDC Presentation, Hesco infers that one or more of the Personal Defendants took and/or retained electronic copies of at least the Sangar Artwork and the XS Fence Photograph in infringement of Hesco's copyright with the intention that the same be used by Dirickx Systems and/or the Defendants for the benefit of Dirickx Systems' business. Hesco further infers that the same have been so used (including but not limited to use in the ERDC Presentation) in further infringement of Hesco's copyright.
60. Without prejudice to the generality of the foregoing paragraph, Hesco notes that the Jenkins Documents included Hesco sangar specifications, which included the Sangar Artwork. Hesco infers accordingly that the copies of the Sangar Artwork in the ERDC Presentation were most likely derived from the Jenkins Documents, in which case Hesco further infers that Mr Jenkins provided some or all of the Jenkins documents to Mr Lyons and/or Mr Pickup prior to the preparation of the ERDC Presentation (and therefore prior to Mr Jenkins' joining Dirickx Systems), and that Mr Lyons and/or Mr Pickup received and/or used the same (including, without limitation, in the ERDC Presentation) with knowledge of Hesco's rights in the same.

Passing off

61. Further, viewed as a whole, the ERDC Presentation falsely represents that the Advantica Test Data, the Sangar Artwork, the XS Fence Photograph and the HVM Test Photograph and each of them are concerned with and/or depict Dirickx Systems products and/or testing, when in fact they are concerned with and/or depict Hesco products and/or testing.
62. Said misrepresentations and each of them damages and/or threatens to damage Hesco's goodwill on the principle articulated in *Bristol Conservatories Ltd v Conservatories Custom Built Ltd* [1989] RPC 455.
63. In the premises, Dirickx Systems and the Personal Defendant(s) responsible for preparing the ERDC Presentation are each liable for passing off by means of the content of the ERDC Presentation.

C10 Further unlawful taking and use of Hesco documents

64. Hesco relies on the Defendants' aforesaid taking and use of the Hesco Test Certificates, the Advantica Test Data, the Sangar Artwork and the XS Fence Photograph and each of them to support an inference that one or more of the Defendants took and/or retained further documents or batches of documents from Hesco (i.e. in addition to the Ellis Documents and Jenkins Documents) in breach of Hesco's rights in confidence and/or in infringement of Hesco's copyright with the intention that these be used by Dirickx Systems and/or the Defendants for the benefit of Dirickx Systems' business. Hesco further infers that the same have been so used (including but not limited to use in the ERDC Presentation) in further breach of Hesco's rights in confidence and/or in further infringement of Hesco's copyright.
65. The timing, nature and extent of that inferred further taking, retaining and use of Hesco documents is peculiarly within the knowledge of the Defendants. Hesco seeks admission of and disclosure on all such use so that it may seek appropriate relief.

C11 Further acts of passing off

66. In the light of the Defendants' acts of passing off via the Dirickx Systems website and the ERDC website, Hesco infers that the Defendants have committed further acts of passing off by the use of images of Hesco products (including, without limitation, photographs of UN installations of Hesco products in Mogadishu included within the Jenkins Documents) in further promotional materials that have not yet come to Hesco's notice.
67. The timing, nature and extent of that inferred further use of images of Hesco products is peculiarly within the knowledge of the Defendants. Hesco seeks admission of and disclosure on all such use so that it may seek appropriate relief.

D: Joint tortfeasance

68. In all the circumstances, including in particular the close working relationships between the personal Defendants, their secret plan to start Dirickx Systems, the Mensah Message and the MP SEC Terrang Exchange, Hesco infers that each of the aforesaid acts of breach of confidence, copyright infringement, passing off

and patent infringement and each of them was done with the knowledge of and pursuant to a common design between the Defendants and each of them insofar as (in the case of the Personal Defendants) they were employed or otherwise engaged by Dirickx Systems at the date of said act.

E: Loss, damage and relief

69. By virtue of the acts of which complaint is made above, Hesco has suffered loss and damage. Unless restrained by this honourable Court, the Defendants threaten and intend to continue said acts, whereby Hesco will continue to suffer loss and damage.
70. In the premises, Hesco is entitled to and claim interest pursuant to Section 35A of the Senior Courts Act 1981 and / or the inherent jurisdiction of the Court at such a rate and for such a period as the Court sees fit.

AND THE CLAIMANT CLAIMS:

- (1) An injunction to restrain the Defendants and each of them (whether acting by themselves, through their respective directors, officers, servants, agents or otherwise howsoever) from further:
- (i) infringing UK Patent GB 2608722B
 - (ii) misusing the Claimant's confidential information
 - (iii) infringing the Claimant's copyright
 - (iv) making further misrepresentations liable to damage the Claimant's goodwill
- (2) An inquiry as to damages suffered or, at Hesco's election, an account of profits made by the Defendants, by reason of the acts of infringement / breach established herein (including damages assessed pursuant to the Intellectual Property Enforcement Directive (2004/48/EC)).
- (3) An order for delivery up or destruction upon oath of all articles and materials in the possession, custody or control of the Defendants and each of them, the use,

keeping, sale or supply of which would constitute a breach of the injunction in paragraph (1) above.

- (4) An order for appropriate measures for the dissemination and publication of the judgment and order, at the expense of the Defendants.
- (5) Costs.
- (6) An order that the Defendants pay the Claimant all sums found due together with interest pursuant to section 35A of the Senior Courts Act 1981 or the Court's equitable jurisdiction for such period and at such rate as the Court considers fit.
- (7) Further or other relief.

TOM ALKIN

STATEMENT OF TRUTH

I believe that the facts stated in this Particulars of Claim are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by statement of truth without an honest belief in its truth.

Signature: 

Name: James Blackwell

Position or Office held: Director

Date: 14 March 2024

SERVED this day of 18 March 2024 by Collyer Bristow LLP, St Martin's Court,
10 Paternoster Row, London, EC4M 7EJ, Solicitors for the Claimant

Claim No.: HP-2024- 000006

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST (ChD)
PATENTS COURT

B E T W E E N:

HESCO BASTION LIMITED

Claimant

and

(1) DIRICKX SYSTEMS LIMITED

(2) KEVIN LYONS

(3) MIKE PICKUP

(4) SHAUN ELLIS

(5) BEN JENKINS

Defendants

PARTICULARS OF CLAIM

Collyer Bristow LLP
St. Martin's Court
10 Paternoster Row
London
EC4M 7EJ
Tel: 020 7242 7363
DX: 163 London Chancery Lane
Ref:TZB/84583.1

Solicitors for the Claimant

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST (ChD)
PATENTS COURT

B E T W E E N:

HESCO BASTION LIMITED

Claimant

and

- (1) DIRICKX SYSTEMS LIMITED**
- (2) KEVIN LYONS**
- (3) MIKE PICKUP**
- (4) SHAUN ELLIS**
- (5) BEN JENKINS**

Defendants

CONFIDENTIAL ANNEX 1 to the PARTICULARS OF CLAIM

CRM Ref.	Year	Month	Product	List Price	Sales Price	Discount	Measure	Agent	Competitor	Country	Customer Name	Customer Count	Competitor Sales Price	Measure	Delta
2021	10		MIL3_CL	€ 516.00	€ 426.00	17%	Unit	Suministro	Not Known	China	Iturri S.p.a	Spain	€ 374.00	Unit	-12%
2022	9		MIL7_CL	\$ 4,114.82	\$ 4,114.82	0%	Unit		Champions Energy	U.A.E	N.A	Saudi Arabia	\$ 7,209.00	Unit	75%
2022	9		MIL1_CL	\$ 732.87	\$ 732.87	0%	Unit		Champions Energy	U.A.E	N.A	Saudi Arabia	\$ 999.00	Unit	36%
2023	1		MIL3_CL	\$ 732.87	\$ 654.12	11%	Unit		Maccaferri	Italy	DLA (DE)	United States	\$ 540.38	Unit	-17%
2023	4		MIL7_CL	\$ 4,114.85	\$ 4,114.85	0%	Unit		Dirickx Systems	UK	RA International/Mogadishu	UAE	\$ 3,950.00	Unit	-4%
2023	4		TERRABLOCK XS	\$ 412.70	\$ 412.70	0%	L/m		Dirickx Systems	UK	MP Sec	France	\$ 387.00	L/m	-6%
2023	4		RAZOR WIRE												
2023	4		MIL	\$ 1,700,000.00	\$ 1,700,000.00	0%	Project	N.A	Joesco	Italy	Maccaferri	Italy	\$ 1,200,000.00	Project	29%
2023	6		MIL1_CL	\$ 732.87	\$ 685.00	7%	Unit	N.A	Dirickx Systems	UK	Paramount	Burkina Faso	\$ 680.00	Unit	1%
2023	8		MIL10	4,702.82	4,510.85	5%	Unit	Arveka	Joesco	Lithuania	Arveka	Lithuania	2,291	Unit	45%

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
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INTELLECTUAL PROPERTY LIST (ChD)
PATENTS COURT

B E T W E E N:

HESCO BASTION LIMITED

Claimant

and

- (1) DIRICKX SYSTEMS LIMITED**
- (2) KEVIN LYONS**
- (3) MIKE PICKUP**
- (4) SHAUN ELLIS**
- (5) BEN JENKINS**

Defendants

ANNEX 2 to the PARTICULARS OF CLAIM

6/8/2022/12:00:00/A6 11:24:1 AM
6/7/2022/12:00:00/A6 11:02:4 AM
6/6/2022/12:00:00/A6 7:39:28 PM
6/6/2022/12:00:00/A6 8:13:42 AM
6/27/2022/12:00:00/A 8:13:29 AM
6/24/2022/12:00:00/A 10:54:1 AM
6/23/2022/12:00:00/A 10:54:1 AM
6/23/2022/12:00:00/A 3:37:35 PM
6/23/2022/12:00:00/A 3:37:34 PM
6/23/2022/12:00:00/A 3:37:33 PM
6/23/2022/12:00:00/A 3:37:33 PM
6/23/2022/12:00:00/A 3:37:33 PM
6/23/2022/12:00:00/A 3:37:32 PM
6/23/2022/12:00:00/A 3:36:22 PM
6/23/2022/12:00:00/A 3:36:02 PM
6/23/2022/12:00:00/A 3:35:58 PM
6/23/2022/12:00:00/A 3:35:57 PM
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6/23/2022/12:00:00/A 3:35:34 PM
6/23/2022/12:00:00/A 3:35:02 PM
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6/23/2022/12:00:00/A 3:34:28 PM
6/22/2022/12:00:00/A 11:38:5 AM
6/22/2022/12:00:00/A 11:38:0 AM
6/14/2022/12:00:00/A 6:45:18 AM