

What's Wrong With McJustice?

Commentary on the verdict
of Justice Rodger Bell

Based on an article for Peace News by Albert Beale



McDonald's causes cruelty to animals, untruthfully promotes its food as nutritious, pays low wages, and exploits children by using their susceptibility to advertising to persuade them to pressure their parents. For what it's worth, that is now all "official". On 19 June, Day 314 of the record-breaking libel case brought by McDonald's against Helen Steel and Dave Morris, Mr Justice Bell gave his personal verdict. (McD successfully applied to have the case heard without a jury.) The judge decided that McD had been defamed by some of the allegations in the London Greenpeace "What's wrong with McDonald's?" factsheet; but he also ruled that several of the most biting criticisms McD complained about had been proved to be true.

Who 'won'? - As far as McD were concerned, they had been libeled by (at least some of) the leaflet, and so had "won" the case. As far as Dave and Helen were concerned, they had stood up to the threats of one of the most litigious corporations in the world (in a way that many British media organisations had failed to do over the years), and had used the opportunity of the trial to spread the debate over McD as never before: so they too could claim victory.

Publication - The judge ruled that both Dave and Helen had some responsibility for the publication of the factsheet - at least in the sense that they were part of the London Greenpeace group which published it, and generally supported the campaign.

Burden of proof - With the judge satisfied that Dave and Helen had been involved in the publication, and that various of the allegations in the factsheet were indeed defamatory, then the onus was on them to have legally justified the allegations by bringing first-hand evidence to show that they were true. McD didn't have to prove that the allegations were false. So, where the judge ruled in McD's favour, it doesn't necessarily mean that he thought McD had shown the allegations to be false, rather that Dave and Helen hadn't been able to substantiate them.

Definitions and technicalities - Charges in the leaflet which had not, in the judge's view, been substantiated included that of causing both destruction of rainforests and starvation in the third world. Much of the judge's reasoning here related to the precise definition of "rainforest", and to the indirect nature of the links between the meat industry and starvation. These indirect links were not, it was ruled, straightforward enough to justify the factsheet's specific link between McDonald's and third world hunger. This drew criticism from Amazon expert Sue Branford. She gave evidence during the trial that districts in Brazil which McD's admitted were used for cattle for their beef had been deforested to make way for cattle ranches during the 20-year period of her visits to the area. At the time, Mr Justice Bell said that her evidence was one of the most important contributions to the case.

The judge also said that the proportion of recycled paper in McD's packaging was "*small but nevertheless significant*", so they were unjustly defamed by the statement that "*only a tiny proportion*" was recycled. And the factsheet's suggestion that there was a serious risk of food poisoning from McDonald's food had not been proved: some cases were inevitable because it was impossible to eliminate all contamination however good hygiene systems were.

McGUILTY - But the points which McD definitely lost were very significant.

CRUELTY TO ANIMALS - According to the judge: "*[the allegation that McDonald's] 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*".

MISLEADING ADVERTS - The judge said that some of McD's advertisements and literature have claimed positive nutritional benefits for their food which was not matched by the reality. And he decided that the evidence did show that McD customers who eat there several times a week over many years, "*encouraged by [McD's] advertising*", increased their risk of serious diseases. But he said that the relevant section of the factsheet did unjustly defame McDonald's because many of the people the leaflet was addressed to didn't eat there often enough to suffer the ill effects!

EXPLOITING CHILDREN - The judge also found that "*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.*" But, he said, McD had nevertheless been unfairly defamed by the section of the factsheet on advertising because the gimmicks used by McD to get children there were not, as one of the allegations in that section suggested, to cover up the true quality of the food - "*the food is just what a child would expect it to be*".

EXPLOITING WORKERS - Perhaps the least surprising part of the verdict was that McDonald's "*does pay its workers low wages, thereby helping to depress wages for workers in the catering trade*". But even here, in the section on employment practices, the judge found that McD had been defamed. He said that though McD were "*strongly antipathetic to any idea of unionisation*", they did "*not have a policy of preventing unionisation*" - so perhaps the almost universal lack of unions in McDonald's around the world is a coincidence.

COUNTER CLAIM - A significant complication of the case was Dave and Helen's counter-claim. Before the trial, McD issued press statements, and leaflets to their customers in Britain, saying that their critics were liars. Dave and Helen claimed that they, in turn, were defamed by that accusation.

The judge decided that the two had indeed been defamed, because he accepted that they both thought all the statements in the factsheet were true even if, in the judge's view, some of them weren't. But he went on to rule that this defamation by McDonald's was covered by the legal concept of "*qualified privilege*", in that they were responding to attacks on them in material put out by the McLibel Support Campaign. So Dave and Helen didn't win their counter claim.

As Dave and Helen asked at the press conference after the trial, why is there no concept of legal privilege allowing ordinary people to defend themselves against the attacks on their well-being by companies like McDonald's? Indeed, in relation to this point, the two will be appealing to the European Court of Human Rights over the way that libel laws in Britain can be used by unaccountable corporations to try to suppress criticism of them.

DAMAGES - McDonald's was awarded £60,000 Pounds damages in respect of those accusations which Dave and Helen had not, legally, justified. But they say they won't pursue the two for the money. This makes sense given that £60,000 is for McD a trivial amount - and given that there is no chance of Dave or Helen being either willing or able to pay it.

There has as yet been no award of costs: McD could ask the court to award them some, but since, again, Dave and Helen couldn't (and wouldn't) pay them any, it seems likely that they won't bother. And so far there is no sign of any injunctions to try to stop distribution of the current version of the "What's Wrong with McDonald's?" leaflet; this might also show some rare tactical good sense on McD's part.

For further information about McLibel, call 0171 713 1269 or visit McSpotlight on <http://www.mcspotlight.org/>