



# Claim Form

In the High Court of Justice  
Queen's Bench Division

**CLAIMANTS COPY**

	<i>for court use only</i>
<b>Claim No.</b>	HQ11D01162
<b>Issue Date</b>	29 MAR 2011

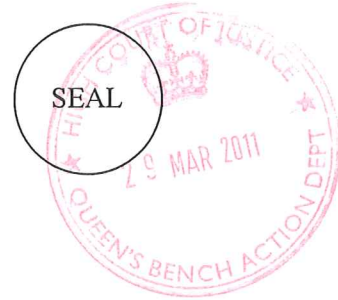
**Claimants:**

(1) Tesla Motors Limited  
(Company Number - 04384008)

of Kings Chase, Kings Street, Maidenhead  
Berkshire, SL6 1DP

(2) Tesla Motors Inc.

of 3500 Deer Creek, Palo Alto  
CA 94304, USA



**Defendant:**

British Broadcasting Corporation

of White City, Wood Lane  
London, W12 7TS

**Brief details of claim:**

(1) Damages for libel and malicious falsehood, comprising words, sounds and images of and concerning the Claimants and the Tesla 'Roadster' motor vehicle which formed part of the "Top Gear" programme originally broadcast and published by the Defendant on its BBC 2 channel on 14 December 2008 and which have been broadcast and published by the Defendant by various means within the 12 months immediately preceding the commencement of these proceedings.

(2) An injunction restraining the Defendant whether by its servants, agents or otherwise howsoever from further publishing the said or any similar words false or defamatory of the Claimants.

**Value:**

The Claimants expect to recover not more than £100,000.

The Claimants wish to have their claim issued in the High Court because their claim must by law be issued in the High Court. The Act which provides this is the County Courts Act 1984, s 15(2)(c)

Defendant's name and address	British Broadcasting Corporation	£	
	White City	Amount claimed	Unspecified
	Wood Lane	Court fee	£1,030.00
	London, W12 7TS	Solicitor's costs	TBA
		Total amount	Unspecified

The court office at Royal Courts of Justice, Strand, London WC2A 2LL

is open between 10am and 4pm Monday to Friday. When corresponding with the court, please address forms or letters to the Court Manager and quote the claim number.

N1 Claim form (CPR Part 7) (01.02) (Expandable)

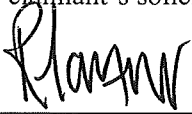
Laserform International 3/02

Assigned to Master Yoxall

Claim No.	
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Does, or will, your claim include any issues under the Human Rights Act 1998?  Yes  No

Particulars of Claim attached.

<b>Statement of Truth</b> * The Claimants believe that the facts stated in this Claim Form are true * I am duly authorised by the claimants to sign this statement	
Full name Rebecca Toman	
Name of claimant's solicitor's firm Carter-Ruck	
signed 	position or office held Solicitor
*Claimants' solicitor	(if signing on behalf of firm or company)
<i>*delete as appropriate</i>	

Carter Ruck  
6 St Andrew Street  
London EC4A 3AE  
333 Chancery Lane  
020 7353 5553  
NT/RT/14550.1  
Dated: 29 March 2011

Claimant's or claimant's solicitor's address to which documents or payments should be sent if different from overleaf including (if appropriate) details of DX, fax or e-mail.

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

**Claim No. HQ**

**Claim Form issued 29 March 2011**

**B E T W E E N : -**

**(1) TESLA MOTORS LIMITED**  
**(2) TESLA MOTORS, INC.**

**Claimants**

**and**

**BRITISH BROADCASTING CORPORATION**

**Defendant**

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**PARTICULARS OF CLAIM**

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**The Parties**

1. (1) The First Claimant is a limited liability company registered in the jurisdiction and a wholly owned subsidiary of the Second Claimant which is a corporation registered in the United States of America.
- (2) The Second Claimant has, and at all material times has had, an established reputation around the world, including within the jurisdiction, as the manufacturer and distributor of electric powered automobiles, one model being an electric powered sports car known as the Tesla Roadster ("the Roadster").
- (3) The First Claimant has, and at all material times has had, an established reputation within the jurisdiction, as the company responsible for the Second Claimant's European operations which include (a) the First Claimant's

headquarters in Maidenhead (covering Roadster sales administration and marketing support for Tesla stores and sales operations in the U.K. and other countries in Europe including Germany, Switzerland, Austria, Denmark, Netherlands, France, Monaco, Italy and Spain) together with finance and human resources support, (b) manufacturing operations in Hethel (vehicle production and supply chain management), (c) logistics in Wymondham (pre-delivery vehicle inspection, warehousing of manufacturing and service parts, shipping of vehicles to Tesla stores in the U.K. and throughout Europe), and (d) the First Claimant's retail store in central London.

2. The Defendant broadcasts and publishes and/or causes the broadcast and publication of television programmes via
  - (1) its own television channels;
  - (2) the [www.bbc.co.uk](http://www.bbc.co.uk) and [www.topgear.com](http://www.topgear.com) websites;
  - (3) the licensing of repeat showings on other television channels; and
  - (4) the sale of recordings of television programmes on DVD.

One such television programme is "Top Gear" which deals with motoring-related subjects and has a wide audience both within and outside the jurisdiction.

### **Publication**

3. Within the 12 months immediately preceding the commencement of these proceedings, the Defendant has broadcast and published (or has caused or permitted to be broadcast and published) words, sounds and images of and concerning the Claimants and the Roadster, which formed part of the "Top Gear" programme originally broadcast and published by the Defendant on its BBC 2 channel on 14 December 2008 ("the item" and "the broadcasts" respectively). For ease of reference a transcript of the words published (spoken unless otherwise identified by Jeremy Clarkson) and an indication of the images published within the item are set out below. Insofar as necessary the Claimant will refer to a digital recording of the item for its full effect and meaning.

*(Shots of the Roadster in a hanger)*

*"It's called the Tesla. It's made in California. It's based on the Lotus Elise and as a result it looks good.*

*However you are going to look like a bit of a berk driving around in a low slung convertible sports car if you get turned off at the lights by a fat jogger.*

*(On the track)*

*The thing is though that Tesla say it's pretty nippy, so what I've done is line it up alongside a normal petrol powered Elise and now we will see which is the fastest in a drag race.*

*(In the Roadster on the track)*

*Right. It's on, I think. There's no noise at all but anyway. Put it into drive. It has a one speed gear box. They tried it with a two speed and that kept breaking. So...one it is...we're in drive and I'm ready...*

*(Driving)*

*God almighty. Wave goodbye to dial up and say hello to the world of broadband motoring. Twelve and a half RPM. I cannot believe this. That is biblically quick. This car is electric...literally.*

*(Track shots)*

*The top speed may only be 125 mph but there is so much torque it does 0 – 60 in 3.9 seconds.*

*(In the Roadster - piece to camera)*

*Not bad for a motor that is the size of a watermelon and only has one moving part.*

*And even more not bad when you start looking into the costs. Filling a normal Elise costs £40. Filling this with cheap rate electricity costs just £3.50.*

*(In the Roadster, on the track – piece to camera)*

*It's not what you call quiet. Fair bit of wind noise from round the roof and there is a lot of tyre roar but that is a small price to pay really when you consider the upsides....and I haven't even got to the really big upside yet.*

*(Sitting in the Roadster on the track – piece to camera)*

*An electric Gee Whizz with its old fashioned batteries has the top speed of a horse and runs out of juice after a mile or so. This has the same sort of batteries that you get in a laptop but it has 6831 of them. So Tesla say even if you drive quickly it will go 200 miles between trips to the plug. Of course putting 6000 laptop batteries in a car does add a fair bit of weight. Half a tonne to be exact, and that does affect the handling slightly.*

*(In the Roadster - piece to camera whilst driving)*

*The chassis is aluminium and the body is totally carbon fibre, which of course is very light, but with that big lump of battery in the middle it's kind of like me ...thinning at one end, thin at the other and then a sort of a big fat bit in the middle.*

*Couple that to wheels that are set up for rolling resistance rather than handling and the result is this. The Elise will squeeze past in the hammer head, however, come the next straight.....yesss come on, come on ...byeeee. The volt-head has over-taken the petrol head. And yes I have just heard it is snowing in hell.*

*This car really was shaping up to be something wonderful but then ...*

*(artificial dying motor sounds and music slowing down and stopping)*

*...although Tesla say it will do 200 miles we worked out that on our track it would run out after just 55 miles and if it does run out it's not a quick job to charge it up again.*

*(Footage of people pushing the Roadster into hanger followed by Jeremy Clarkson inserting the charger lead into the Roadster)*

*Ok, to fill the tank on a normal car takes what ... a couple of minutes, to fully recharge the batteries in this from a normal 13 amp socket like that...*

*(Points to a normal double socket point on the wall of the hanger)*

*...takes 16 hours. So to get from here to the top of Scotland will take more than 3 days and before green people say that is a price worth paying. Let's not forget shall we where the electricity in this socket is coming from.*

*(Footage of high speed journey along power lines to a power station accompanied by thunder noises)*

*(Piece to camera – standing with Roadster next to a small ‘wind turbine’)*  
*Of course you could get yourself a little windmill like that which generates electricity at no cost to you or Johnny polar bear but to charge a Tesla from something like that would take 600 hours, that’s 25 days and that’s assuming it’s windy which, it isn’t.*

*(On the track)*

*Perhaps then the best idea is to have two Teslas, so you can use one while the other is charging.*

*(Piece to camera from inside the Roadster)*

*Unfortunately that is quite an expensive solution because Teslas cost £92,000 each, £92,000. They are three times more expensive than Elises. That’s madness.*

*And it doesn’t appear that you get much in reliability either. Oh...I don’t believe this...the motor has overheated and I have reduced power.*

*(Shot of Tesla sitting on the track)*

*While it cooled down we went to get the silver car out again....*

*(Shot of back of silver Roadster in the hanger with its bonnet up)*

*...only to find that while it was being charged its brakes had broken.*

*(Shot of empty track)*

*So then with the light fading we had no cars at all.*

*(Shot of the darkening sky over empty track followed by piece to camera whilst walking along a dark and empty track)*

*I did think that the Teslas would bring a bit of peace and quiet to our track with their electric motors but I didn’t think it would be this much peace and quiet though. The sound of silence.*

*(Shot of the Roadster in the hanger being lit with ‘lightning style’ lighting – internal and external shots)*

*What we have here then is an astonishing technical achievement.*

*(Fading electric spark noises – screen blacks out and then flicks on again to show car on the track)*

*The first electric car that you might actually want to buy, it's just a shame that in the real world, it doesn't seem to work.*

*(In the studio with the studio audience)*

*I tried to be fair, I did try.*

*Richard Hammond: It's not good though is it?*

4. The broadcasts have been made and/or caused and/or permitted by the Defendant in the following ways:

(1) online at <http://www.topgear.com/uk/videos/electric-shocker> ("the website");

(2) on "Dave", "Dave ja vu", and other television channels;

(3) via sales of a boxed set of "Top Gear" Season 12 programmes;

both inside and outside the jurisdiction. The Claimants are unable at present to set out the precise details of the extent and nature of each of the above categories of the broadcasts. They will plead further following disclosure and/or the provision by the Defendant of further information relevant to this issue, which information is readily available to it. Pending the provision of such disclosure/information the Claimants rely upon the inference that because "Top Gear" is a popular programme both within and outside the jurisdiction, each of the categories of broadcast set out above will have been substantial.

### **Libel**

5. In their natural and ordinary meaning (including the entirety of the broadcast as context) the words (as interpreted by s.16 Defamation Act 1952) within the item

*"although Tesla say it will do 200 miles we worked out that on our track it would run out after just 55 miles"*

(1) were defamatory of each of the Claimants, and

(2) meant and were understood to mean that each of the Claimants had intentionally and/or recklessly, grossly misled potential purchasers of the Roadster by claiming that it had a range of about 200 miles when in fact its true range was in the order of 55 miles.



6. As a result of the publication of these words within the item the reputation of each Claimant has been severely damaged.

**Malicious falsehood**

7. The item was false in the following respects:

Particulars of Falsity

- (1) The first Roadster shown (which was silver in colour) did not run out of charge.
  - (2) The first Roadster did not have to be pushed into the hanger as a result of running out of charge.
  - (3) At no point were the brakes on the first Roadster broken.
  - (4) The second Roadster (which was grey in colour) did not become immobile as a result of overheating.
  - (5) There was no time at which neither Roadster was available for driving.
8. The Defendant made or caused or permitted each of these falsities to be published within the broadcasts, maliciously.

Particulars of Malice

- (1) The footage for the item (insofar as material to the falsities alleged) was shot on 24 & 26 November 2008. The item as broadcast included an edited version of some of that footage to which had been added sound and visual effects. The Claimants infer that the individuals responsible for the decision as to the version of the item within the broadcasts included (and includes) the programme's (a) executive producer, Andrew Wilman (b) researcher, Gavin Whitehead and (c) presenter, Jeremy Clarkson. As at the date of each of the broadcasts, the Defendant, by each of these persons either knew of each of the

falsities set out at paragraph 7 above or did not believe them to be true (because he was present and/or because he had been so informed by persons who had been present and/or because he had viewed documents recording what had happened) or recklessly did not care about what had happened in relation to those matters because he did not bother to take any of these steps to establish what had happened before the final version of the item was broadcast. It is each Claimant's case that each of the falsities was incorporated within the item for a dominant improper motive, namely to bolster a pre-judged, pre-determined and pre-scripted adverse verdict on the Roadster that "in the real world, it absolutely doesn't work".

- (2) In respect of broadcasts occurring after 4 June 2010 and 22 November 2010 the Claimants will, in addition to the matters set out at (1) above, rely upon the notification to the Defendant of the said falsities in the e-mail of 28 May 2010 and the Claimant's solicitor's letter of 15 November 2010, the contents of each of which it is inferred was placed before one or more of Messrs Wilman, Whitehead or Clarkson and provided information which caused him to know that each of the matters listed in paragraph 7 was false and/or not to believe that each was true and/or to recklessly not care whether each was true or false.

**Paragraphs 7(1) & (2)**

- (3) As set out at (1) & (2) above, each of Messrs Wilman, Whitehead & Clarkson knew or recklessly did not care
- (a) that at no time did the first Roadster run out of charge, and
  - (b) that it did not need to be pushed into the hanger on that account
- or did not believe either that it had run out of charge or that it had needed to be pushed into the hanger on that account.

- (4) During filming, the Second Claimant's UK Director of Sales and Marketing, Don Cochrane (who had previously expressed concern about whether the Roadster would be fairly portrayed, having seen whilst on the set, a script written before the Roadster had been driven at all which concluded with the words "It's just a shame that in the real world, it absolutely doesn't work."), challenged Mr Whitehead about another script which he had seen which called for the Roadster to be filmed being pushed into the hanger having run out of charge. Mr Cochrane said that Top Gear could not do this and Mr Whitehead purported to agree and said words to the effect of "We don't want to be sued."
- (5) On or about 21 December 2008 (ie shortly after the initial broadcast of the item) the Defendant issued a press release which claimed that the Roadster was shown being pushed into the hanger to demonstrate "what would happen if it did" run out of charge. The Claimants infer that this press release was issued on the basis of an account given by one or more of Messrs Wilman, Whitehead & Clarkson. This reason was a lie. It is in any event, an admission that the Defendant (by any/all those men) knew both when filming and by the date of the press release that the Roadster had not run out of charge and did not need to be pushed into the hanger as a result.
- (6) Mr Clarkson made a statement to the *Daily Telegraph* on or about 29 December 2008 that the Roadster was pushed into the hanger for health and safety reasons. This was a lie (and in any event an admission that he knew when filming and by this date that the Roadster had not run out of charge and did not need to be pushed into the hanger as a result). The reason the Roadster was pushed into the hanger was for the purpose of presenting the false impression that it had run out of charge. Mr Clarkson told this lie in an attempt to avoid admitting the intention to mislead viewers into believing that the Roadster ran run out charge. The Claimants rely upon the inference that if the true reason for the Roadster having been pushed into the hanger was as set

out in the press release referred to at (5) above, Mr Clarkson would have said so, and that if the true reason were as Mr Clarkson said, the press release would have said so.

**Paragraph 7(3)**

- (7) As set out at (1) & (2) above, each of Messrs Wilman, Whitehead & Clarkson knew or recklessly did not care that the brakes on the first Roadster were not broken or did not believe that they had because
- (a) this was apparent to Mr Clarkson, who was driving the Roadster at the material time, and
  - (b) the Claimant's engineer Stuart Brierley, and Mr Cochrane explained to various members of the Top Gear crew and Mr Whitehead that all that had happened was that a fuse within an electrical circuit providing additional power to the brake pedal had "blown" meaning that while the brakes were still entirely safe, the brake pedal needed to be pressed down harder than would otherwise be the case.

**Paragraph 7(4)**

- (8) As set out at (1) & (2) above, each of Messrs Wilman, Whitehead & Clarkson knew or recklessly did not care that the second Roadster was at no time "immobile" due to overheating or did not believe that it was. This was evident because it did not overheat (but rather reduced the torque available to prevent overheating) and because at all times it remained capable of being (and was) driven by Mr Clarkson, including being driven by him to the point at which it was shown sitting immobile on the track.

**Paragraph 7(5)**

- (9) As set out at (1) & (2) above, each of Messrs Wilman, Whitehead & Clarkson knew or recklessly did not care that at all times, at least one of the Roadsters was available for driving or did not believe that there was a time at which neither was available.
9. Each of the broadcasts was and is calculated to cause pecuniary damage to each of the Claimants in respect of its business.
10. The Claimants claim interest on the damages to which either of them is entitled in malicious falsehood at such rate(s) and over such period(s) as the Court thinks fit pursuant to s.35A Senior Courts Act 1981.
11. Unless restrained the Defendant will further publish
- (1) the words set out at paragraph 6, or similar or other words bearing the same or similar meanings defamatory of the Claimants, and
  - (2) the same or similar false statements of and concerning the Claimants and their respective businesses, including the Roadster.

**AND THE CLAIMANTS CLAIM:**


- (1) Damages, for libel and malicious falsehood.
- (2) The aforesaid interest pursuant to statute.
- (3) An injunction to restrain the Defendant whether by itself, its directors, servants or agents or otherwise from further publishing or causing or authorising the publication of

- (a) the same or any similar or other words bearing the meanings complained of in these Particulars of Claim or similar meanings defamatory of either Claimant;
- (b) the same or similar false statements of and concerning either Claimant or the Roadster.

**RONALD THWAITES QC**  
**WILLIAM MCCORMICK QC**

STATEMENT OF TRUTH

The Claimants believe that the facts stated in these Particulars of Claim are true. I am authorised to sign this statement on the Claimants' behalf.

  
.....

29 March 2011

Rebecca Toman, Solicitor  
Carter-Ruck  
6 St Andrew Street  
London  
EC4A 3AE

SERVED this 29<sup>th</sup> day of March 2011 by Carter-Ruck, 6 St Andrew Street, London EC4A 3AE, solicitors for the Claimants.

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

**Claim No. HQ**

**Claim Form issued 29 March 2011**

**B E T W E E N : -**

**(1) TESLA MOTORS LIMITED**

**(2) TESLA MOTORS INC**

**Claimants**

**and**

**BBC**

**Defendant**

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**PARTICULARS OF CLAIM**

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**Ref: NT/RT/14550.1**

**Solicitors for the Claimants**