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Case No: IL-2018-000028

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

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: Wednesday, 15th May 2019

Before:

MR. JUSTICE NUGEE

Between:

MR. PETER DAVIES
- and -

Claimant

WOLVERHAMPTON WANDERERS
FOOTBALL CLUB (1986) LIMITED

Defendant

DR. TIMOTHY SAMPSON (instructed by **Keystone Law Ltd**) for the **Claimant**

MR. ADRIAN SPECK QC and MR. THOMAS ST. QUINTIN (instructed by **Browne Jacobson LLP**) for the **Defendant**

Approved Judgment

Digital Transcription by Marten Walsh Cherer Ltd.,
1st Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. Fax No: 020 7831 6864 DX 410 LDE

Email: info@martenwalshcherer.com

Web: www.martenwalshcherer.com

MR. JUSTICE NUGEE:

1. This judgment is given after the trial of an action for infringement of copyright. The defendant, Wolverhampton Wanderers Football Club (1986) Limited, is the operator of the well-known Premiership Club, which I will call "the Club". The Club has a long and proud history dating back to the 1870s. It has long been known as "Wolves". Mr. Terence Bond, who was born in 1938, told me that they were known as Wolves by the spectators when he was going to matches at the age of seven, although he said the Club itself then preferred to use the formal title, "Wolverhampton Wanderers".
2. In those days, the players' shirts were generally plain, without badges or crests, but when, in 1970, the Club adopted a badge, it consisted of a leaping wolf seen side-on, and the letters "WW". In 1974, that was replaced by three leaping wolves arranged vertically, and that remained the position until 1979. Around the end of 1978, however, the Club commissioned a new logo from a designer, Mr. Ian Jackson. His design was very different. It was a wolf's head seen head-on with a stylised geometric appearance. It was adopted by the Club during the 1979 season. The earliest example of its use that has been found is in a programme from August 1979, and by September, the programmes were advertising scarves with the new wolf's head design. It took a bit longer before a new strip was available, but the players first wore a new strip with the wolf's head badge at a home match against Coventry in November 1979. I will refer to Mr. Jackson's design as the "1979 logo".
3. The Club made extensive use of the 1979 logo. Apart from an interlude between 1993 and 1996, when the Wolverhampton Town crest was used, the 1979 logo was used as the main element of the badge on the players' kit until it was replaced by a reworked version in 2002. The reworking, or revision, was done by another designer, Mr. Jonathan Russell, who was asked by the Club in late 2001 to redesign the logo. After trying out a number of ideas, Mr. Russell recommended to the Club a reworking of Mr. Jackson's 1979 logo, rather than anything radically different, and the Club accepted his recommendation. Mr. Russell revised Mr. Jackson's logo by changing the proportions of the head, reworking the eyes so they appeared less threatening and more friendly, and enclosing the whole in a hexagonal border. In this form, which I will call the "2002 logo", the Club has used the wolf's head on its kit ever since. As well as use on the kit, the Club has, since 1979, used the 1979 and then 2002 logos in numerous other ways, both on merchandise and in other ways to promote the Club. It has become very well-known and is described in the Club's current (that is 2018) brand guidelines as a badge that is strong, simple and iconic, that should be treated with the utmost respect, and that is sacrosanct.
4. The claimant in this action, Mr. Peter Davies, was born in 1947 into a large family in Wolverhampton. In his childhood money was, as he accepted, very scarce. He claims that he designed a wolf's head design when a young teenager in the early sixties, which he entered into a local art competition. He says that his design was strikingly similar to Mr. Jackson's 1979 logo and although he cannot prove exactly how, he says that Mr. Jackson must have copied it consciously or subconsciously.
5. Mr. Davies says that he has been aware of the similarity between his design and Wolves' 1979 logo since 1979, but these proceedings were not brought until nearly 40 years later, in February 2018. Mr. Davies' explanation of that is that, until recently, he

had no physical evidence to support his claims, but that in September 2015 he came across samples of work that he had done as a boy. They were, according to him, in a manilla folder, which had been among the things that he had cleared out from his younger brother David's flat, after David's death.

6. One of the items in the folder was a stamp album belonging to his older brother, Ron. Someone, probably Mr. Ron Davies, has pencilled in a date of 21st May 1961 on the inside cover. The last two pages contain drawings by Mr. Peter Davies; one unlabelled, but showing an angular wolf's head with triangular slanting eyes, constructed from a hexagon and a circle; the other labelled "mystery wolf" and "puzzle by Peter Davies" consisting of an outer hexagon, an inner circle and an inner hexagon, criss-crossed by a lattice of straight lines, in which the outline of a wolf's head can be discerned hidden in the resulting network of lines.
7. Another item said to have been in the manilla folder that Mr. Peter Davies says he discovered in 2015 was a poster entitled "Animals of the Cat Tribe", by Cyril Cowell, on the back of which are four more examples of Mr. Davies' work. They are each animals' heads seen face-on, namely: an elephant; a cobra or other snake; a cat or tiger; and a wolf. They are labelled "Design ideas for exams", followed by a very faint date, which is either 1962 or 1963, and "P. davies". Each of them, very like the wolf's head in the stamp album, is symmetrical and shows geometrical elements used in its construction, in the form of hexagons, circles and a lattice of criss-crossing lines.
8. Although Mr. Speck QC, who appears for the defendant, disputes whether the stamp album and poster were really lost and only rediscovered in 2015, he does not challenge the authenticity of the drawings on them. They are accepted to be Mr. Peter Davies' drawings and to have been drawn on the dates they appear to have been, that is in about 1961-1963, when Mr. Peter Davies was about 13-15.
9. I find that it has therefore been established that Mr. Peter Davies was drawing geometric animals' heads face-on, including various versions of the wolf's head, in the period 1961-1963, as exemplified by those that have happened to survive in the stamp album and on the back of the Cyril Cowell poster. There is no doubt that they have a considerable degree of similarity to the 1979 logo designed by Mr. Jackson. In each case, the wolf's head is seen face-on, is symmetrical, stylised and marked by angular straight lines, the most distinctive features being two prominent triangular ears, a muzzle or snout tapering downwards, straight-edged cheeks out to the sides and eyes in the shape of narrow, slanting triangles. They are not identical. In particular, Mr. Davies' drawings, both on the back of the poster and in the stamp album, have a slightly curved base to the muzzle, whereas Mr. Jackson's muzzle has a straight line at its base, but it is not surprising that anyone seeing them side-by-side would regard them as having a noticeable resemblance.
10. Mr. Davies' evidence is that he entered a version of his wolf's head design in a local art competition which was drawn to his attention by his mother. He has, after a great deal of time spent trawling through archives of local newspapers, succeeded in finding a notice in the Wolverhampton Chronicle for 7th June 1963 of a junior painting competition run by a business called the Picture Gallery Limited, which had an art shop in Cleveland Street, in Wolverhampton. It announced that "Mr. B Brett and Mr. A Evans, both well-known in local Art Circles, have kindly consented to act

as the local hanging committee". They would select six pictures from each of two age groups, 7-11 and 12-16, which would be framed and hung in the gallery, and the public would be asked to vote for the first three in each group. The names of the winners were announced in a further item in the Chronicle in September 1963. Mr. Davies was not among the winners.

11. The first question I need to resolve is whether I find, on the evidence, that Mr. Davies did submit a wolf's head design to this competition. At this point, I should say something about the oral evidence. I heard from a number of witnesses. For Mr. Davies, I heard from Mr. Davies himself; his older brother, Ron; Ron's wife, Joanna; and Mr. Patric Williams, who won third prize in the 12-16 age group of the competition run by the Picture Gallery. A statement from Mr. Peter Davies's wife, Jean, was also adduced, but she was too infirm to attend court, so it was admitted under a hearsay notice and has not been tested in cross-examination.
12. For the defendant, I heard from both Mr. Jackson, who designed the 1979 logo, and Mr. Russell, who designed the 2002 logo. I also heard from: Mr. David Moor, who runs a website on historical English and Scottish football kits; Mr. Terence Bond, already mentioned, who was responsible for recommending Mr. Jackson to Mr. Harry Marshall, the then Chairman of the Club, in or about 1978; Ms. Catherine Wiseman, a trade mark attorney and partner at Barker Brettell LLP, who act in trade mark matters for the Club; Mr. Matthew Wild, the Company Secretary and Head of Football Administration for the defendant; Ms. Bonita Trimmer of Browne Jacobson LLP, the solicitors acting for the defendant in this litigation; and Mr. Anthony Marshall, the son of Mr. Harry Marshall.
13. Leaving aside for the moment Mr. Peter Davies himself, and Mr. Ron Davies, I have no hesitation in concluding that each of the other witnesses from whom I heard oral evidence was doing their best to assist the court to the best of their recollection, and although not tested in cross-examination I have no reason to doubt that the same is true of Mrs. Jean Davies, whose statement was adduced as hearsay.
14. As to Mr. Ron Davies, unlike his brother who was interested in following speedway, he was a Wolves fan and following them from about 1960. According to both him and Mr. Peter Davies, it was he who first noticed that the Club was using a new logo from November 1979 that looked like his brother's wolf's head design and who persuaded his brother to write a letter to the Club in 1979 asking where they had got the logo from. On his own account, therefore, for nearly 40 years, Mr. Ron Davies has believed that the Club has been using his brother's design and he himself says that since the discovery of the manilla folder in 2015, he has been supporting his brother in his researches and in bringing forward his case. It is evident that he believes strongly in the justice of his brother's cause.
15. I have no reason to doubt his *bona fides* in the evidence he gave, but it is inevitable that these matters make it difficult for him, when seeking to remember what happened in the early 1960s, more than 50 years ago, to distinguish clearly between what he believes happened or must have happened and what he can really remember. It also became apparent in the course of his cross-examination that a plain statement in his short witness statement that he saw his brother writing a letter to the club in 1979 was simply wrong. These points inevitably reduce the confidence I can have in his evidence and I have approached his evidence with a degree of caution as a result.

16. As for Mr. Peter Davies himself, I must say a little more. Having heard his evidence being tested in a lengthy, detailed and skilful cross-examination, I accept that this is not a fabricated claim and that Mr. Davies has convinced himself that Wolves did copy his design. However, there are a number of reasons why I have found it difficult to have confidence in his evidence and consider it essential to test it against such other evidence as there is. I will refer here to three points in particular, although this is not exhaustive.
17. The first is the sheer length of time since the events relied on. He is giving evidence about events which happened over 50 years ago. The limitations of human memory, even for events far more recent than that are by now very familiar to the courts, and there are a number of statements in recent cases as to the difficulties in placing reliance on the uncorroborated oral testimony of witnesses. See, for example, the well-known and oft-cited comments of Leggatt J in *Gestmin SGPS SA v Credit Suisse UK Limited* [2013] EWHC 3560, (Comm) at [18]-[23].
18. That is a point of general application, but the second one is more specific. Mr. Speck was able to show that the details of Mr. Davies' account have varied in their particulars from time to time, by comparing the account which was first put forward on his behalf in a letter dated 3rd October 2016 from his then solicitors, Mishcon de Reya, with the accounts given in his witness statements (of 17th July 2018 at an interlocutory stage, and 7th February 2019 for trial) in two videos which he made and in his oral evidence.
19. I need not detail all the discrepancies that Mr. Speck points to. One example will suffice. In the Mishcon de Reya letter it was asserted that the sketches on the back of the poster were drawn using a mathematical theorem known as Pascal's Hexagrammum Mysticum theorem. Pascal did, indeed, put forward such a theorem, and a detailed account of it (which states that if six arbitrary points are drawn on a conic section and joined to form a hexagon, then the three pairs of opposite sides of the hexagon will meet at three points which all lie on a straight line) was given in the Mishcon de Reya letter and repeated in similar terms in his witness statements.
20. This appeared to give credibility to his account, and was backed by a reference to his having been required to study Pascal's theorem as a punishment at school, but by the time he gave evidence before me, his evidence was that he did not understand the mathematics of the theorem at all, that he took the description of the theorem in his witness statement off the internet and that, to him, "Pascal" meant no more than that six points of a design should lie on a circle and that neither the poster designs, nor the stamp album designs, were drawn using Pascal in this sense, or at all.
21. Indeed, not only did the designs in the stamp album and on the back of the poster not conform to the rubric that six points should lie on a circle, neither did Mr. Davies' first attempt at reconstructing the design he said he submitted to the art competition. Nor, indeed, does the revised reconstruction now put forward as the copyright work, being the work shown as the final stage in his second video and identified in a still at Bundle XX, tab 5, page 1.
22. Far less did any of his designs in fact make use of Pascal's Hexagrammum Mysticum theorem. Indeed, none of the designs incorporated a conic section in the form of an ellipse, parabola or hyperbola, save in the rather strained sense that they incorporated

circles which are technically a special type of ellipse. Although they do contain hexagons, all six points of which lie on the circumference of a circle, these are all regular hexagons to which Pascal's theorem does not in fact apply, as the opposing pairs of sides are parallel and never meet. I do not believe that Pascal's theorem ever had anything to do with Mr. Davies' designs at all, despite it forming a noticeable part of the account given in the Mishcon de Reya letter.

23. The third point I refer to here is that Mr. Davies at some stage in 2016 had a telephone conversation with Mr. Anthony Marshall, which he recorded. He provided first a transcript and then, at their request, a number of MP3 files of the recordings to the defendant's solicitors. No less than five recordings were sent in this way, and although the fourth and fifth are copies of the first and second, the first three all differ from each other and also from a sixth recording, which is on Mr. Davies' laptop and was played in court. It is apparent that none of them are complete. I do not intend to go into the detail of the differences between the various versions, which were explored at length in cross-examination. For present purposes, what is significant is that they formed the basis of a suggestion that Mr. Davies has deliberately sought to edit the recording to his advantage. I agree that these matters give rise to real suspicion, and that no plausible explanation has been provided for the discrepancies. I am left with a very strong suspicion that Mr. Davies knows more about this than he professes to.
24. I accept the point made by Dr. Sampson, who appears for Mr. Davies, that if he had really sought deliberately to distort the evidence, he went about it in a very cack-handed and stupid way, but I have still not understood what alternative explanation there might be, and neither Mr. Davies in his evidence, nor Dr. Sampson in closing submissions, was able to suggest one. I need not, and do not, make any formal finding that Mr. Davies deliberately tampered with the evidence so as to mislead the court, but in the absence of rival explanations and in the light of the other matters I have referred to, I have approached Mr. Davies' evidence with a considerable degree of caution.
25. I can now revert to the narrative. The question I need to consider is whether I am satisfied that Mr. Davies entered his wolf's head design in the art competition identified by him. I am prepared, in Mr. Davies' favour, to assume -- although I have considerable doubts about it -- that he did enter his wolf's head design into an art competition in the early 1960s. Nevertheless, I find that it has not been established, and cannot now be established, that it was the particular competition in 1963 run by the Picture Gallery.
26. I say that for the following reasons. The first account Mr. Davies gave was in October 2015, shortly after, on his account, discovering the manilla folder. He came across an online post by a Mr. Alex Broadhurst, a designer who described himself as a "third generation Wolves fan", who developed an unhealthy obsession in the 1990s with repeatedly scribbling the Wolves logo, which was "really, really easy to draw". He commented that, "I have never discovered who first drew this perfectly distilled badge". Mr. Davies, having seen that post, sent Mr. Broadhurst a series of tweets on 30th October 2015, including one which read "In 1960 there was a competition in the Express and Star to design such a thing and that logo was my entry."

27. When one puts that together with Mr. Davies' evidence that he would draw a lot and that he used to enter many art competitions, maybe a dozen or so per year, and Mr. Ron Davies' recollection of coming home to find his siblings sitting round the table and his brother Peter showing him a wolf's head design in yellow and black, it is certainly possible that Mr. Peter Davies did enter such a design in one or other of the art competitions he referred to. The evidence from the stamp album and the poster support Mr. Davies' evidence that he was keen on geometric designs and Mr. Ron Davies' evidence that his brother seemed to spend a lot of time working on patterns with a straight edge and compass set.
28. Mr. Peter Davies was keen on speedway, and I find it quite credible that he thought his wolf's head design could be used as a speedway bib for the Wolverhampton team, who were also known as Wolves. I will assume, therefore, that he did design a wolf's head similar to those in the stamp album and on the back of the poster and enter it into an art competition and, further, that it was painted in yellow and black, the colours of the Wolverhampton Speedway team.
29. But any such artwork has not survived and I find that, even on that assumption, it is impossible now to reconstruct its detailed appearance with anything like precision. Mr. Davies has attempted to do so on more than one occasion. Indeed, he told me he had done so four, five or six times. But I do not have any confidence that his attempts at reconstruction are reliable. Although he has made two videos explaining in detail how he has made his reconstructions using a compass and straight edge to produce hexagons and circles and criss-crossing lines, I am entirely unpersuaded that he can now remember the steps he took as a boy to create whatever he may have submitted. That is illustrated by the fact I have already referred to, that his first attempt at reconstruction did not have all six points of the design lying on a circle, although this appeared from his evidence to have been a point of some importance to the design.
30. Having recently managed to find and acquire a 1979 Wolves shirt, he realised that the logo there printed (which was rather wider, for some reason that was left completely unexplained in the evidence that I heard, than Mr. Jackson's original design) did not conform to his first attempt at reconstruction, and he had another go, this time widening the cheeks so they do lie on a circle. But even then, as I have referred to, the muzzle, in fact, does not. That produced something that looked much more like the logo on the 1979 shirt but, as this account shows, the process by which he arrived at his final reconstruction is not one based on a real memory of what he did in the early 1960s, but is inevitably influenced by his belief that the Club copied his design.
31. There was a revealing passage in his evidence on Day 1:

"(Q) It is even more remarkable, given that you have had to try again, having earlier made it match against an image which turned out to be the wrong one? (A) You do not get these things right first time, do you? Okay, let us see you draw something from when you was at school and see how often you get it right first time.

(Q) That is the point. How can his Lordship take it that you can now recall this kind of detail? (A) Because I have told you how it happened. Because the Pascal design is original design

designed by me. I can remember the design, but I did not remember it at first. I had to work on it and say, oh, yes, that is how I did it. That is how I did it. That is how I did that. There is a slight couple of things different here and there, but eventually I got it back to fit my original Pascal design. You cannot do these things, even if any designer in the world cannot just come along -- I mean, did the Wright brothers just go into their shed and think, 'I will build an aeroplane?' No."

32. As I have said, without accusing Mr. Davies in any way of making things up, I find that it is impossible now to know quite what any design that was submitted by him looked like. Any such design, no doubt, would have had a general resemblance to those found in the stamp album and on the back of the poster, but beyond that, one cannot now go.
33. Nor do I think that it can now be proved quite which competition, if any, Mr. Davies entered his wolf's head design into over 50 years ago. I have already referred to his evidence that he entered many competitions. Mr. Ron Davies confirmed that he did and said, in this context, that their mother was forever and ever cutting bits out of newspapers. Mr. Peter Davies has put in a lot of time to try and find one which it might have been, and it was that that led him to the newspaper announcement I have referred to, but I have no corroborative evidence that he did enter that particular competition.
34. Having found it, Mr. Davies, by his own account, did some research to try and find a link to the Club. He initially thought that there might be such a link, because he believed that the Mr. A Evans who was one of the judges was Mr. Alun Evans, who had played for West Bromwich Albion in the 1940s and whose son (also called Alun Evans) signed for Wolves as a youth player in 1964 and played for the Club until 1968 or 1969, including for the first team, before being transferred to Liverpool. It is now accepted that that belief is wrong. The Mr. B Brett referred to is agreed to be Mr. Bernard Brett, who was Head of a Department at Wolverhampton College of Art, and the Mr. A Evans (described along with Mr. Brett as "well-known in local Art Circles") is almost certainly not Mr. Alun Evans, the West Bromwich Albion footballer, but Mr. Arthur Evans, who also worked at Wolverhampton College of Art and had been trained by Mr. Brett.
35. Nevertheless, Mr. Davies' belief that he had come across Mr. Alun Evans with a connection to the Club no doubt led him to believe that this was indeed the competition he had entered, but I do not think he can have had any real memory of which competition it was, as shown by his initial tweet to Mr. Broadhurst, and I have no evidence which would help identify that as the relevant competition.
36. I find that it has not been proved and cannot now be proved that he entered his wolf's head design in this particular competition, even on the assumption that I have made in his favour that he did enter it into a competition.
37. In this respect, the evidence of Mr. Patric Williams does not, to my mind, assist. Mr. Davies tracked him down, having obtained his name from the list of winners in the Chronicle. He gave evidence that he was a Wolves fan and very familiar with the logo, but that he recalled seeing it way before the Club started using it, almost

certainly in the early sixties. He said he had always associated it with Speedway, but in oral evidence he gave no reason to think that he had seen it as a result of entering the competition run by the Picture Gallery. He thought he might have seen it in the art classroom at the school he attended, Mr. Davies having told him that they were at the same school. Although it was suggested by Mr. Speck in his written closing that Mr. Davies had attended a different school and had lied to Mr. Williams, that was never put to him, and in closing Dr. Sampson told me on instructions that Mr. Davies had in fact moved to Mr. Williams' school at the end of his time at school.

38. I have no formal evidence to that effect, but I am not going to find that Mr. Davies lied about this when it was not put to him, and will assume that Dr. Sampson's instructions are correct. Nevertheless, I do not think any findings can now be made as to where and when Mr. Williams saw the design, or even whether he really did so. But, on any view, as Dr. Sampson, I think, accepted in closing submissions, this evidence does not assist in the question of whether Mr. Peter Davies submitted his design to the competition run by the Picture Gallery.
39. I come now to Mr. Jackson's design of the 1979 logo. He was friends with Mr. Bond who, at the time, owned a PR agency, and had been providing PR services to the Club for most of the 1970s. Probably in late 1978, Mr. Bond recommended Mr. Jackson and his company, Jackson Bird and Partners Limited, to Mr. Harry Marshall, who as already mentioned, was the Club Chairman, the Board of Directors having decided that they wanted to update the rather old-fashioned image of the Club. Mr. Bond's evidence, which I accept, was that Mr. Marshall wanted a simple, modern design that would, among other things, be easy for children to copy.
40. Mr. Jackson duly met Mr. Marshall and was instructed to design a new logo. His recollection was that Mr. Marshall wanted a simple, modern-looking design, which would stand out from the logos of other football clubs. He also recalled that it was desired to create something that would be easy for the fans, including children, to reproduce. Mr. Jackson, who is now in his eighties, came forward to give evidence voluntarily when his attention was drawn to press reports about this litigation. Despite his age and some physical frailty, he gave his evidence in a straightforward and confident, indeed forceful manner. It was entirely unshaken in cross-examination and I am firmly disposed to accept it as completely credible.
41. His evidence was that he had designed the 1979 logo himself, that he was not provided with any specific design ideas or given any sketches or other materials by anyone else, that he had not copied and would not ever copy anyone else's work, and that he had never seen any of Mr. Davies' designs. He told me that he did not use a compass to make his design. He drew it free-hand, probably in felt tip, and then squared off the edges. By chance, some of his original artwork has survived. This includes an example of design part-way through the development process. It is a copy made using a camera of his design, printed on what is known as PMT or Photo Mechanical Transfer paper, and it shows clear signs of having been cut in half and re-arranged so as to make the wolf's head narrower. That supports Mr. Jackson's account of how he played around with the design until he was happy with it. Once Mr. Jackson had finished the design process and reached a version he was happy with, he presented it to Mr. Marshall, probably in early 1979. Mr. Marshall liked it and the Club, in due course, decided to adopt it.

42. As already referred to, Mr. Jackson's 1979 logo bears a noticeable similarity to the wolf's head designs Mr. Peter Davies had been drawing in the early 1960s, some 16 years or more before. I do not find it at all surprising that Mr. Ron Davies noticed the resemblance when he saw the new logo and told his brother of it, nor that he persuaded him to write to the Club about it. Indeed, Mr. Peter Davies said his brother pestered him about it. No copy of the letter survives, but I do not find that surprising either, and I accept that Mr. Peter Davies probably did write to the Club, but if he did so, his letter did no more than ask where they got the logo from. He did not receive an answer and he never followed it up.
43. It is not enough, however, for Mr. Davies to establish that Mr. Jackson's logo was similar to his design. He must show that Mr. Jackson copied his design consciously or subconsciously, as Dr. Sampson naturally accepted. See, for example, *Sawkins v Hyperion Records Limited* [2005] EWCA (Civ) 565, where Mummery LJ set out some well-established principles of copyright law, and at [29], said this:
- "The important point is that copyright can be used to prevent copying of a substantial part of the relevant form of expression, but it does not prevent use of the information, thoughts or emotions expressed in the copyright work. It does not prevent another person from coincidentally creating a similar work by his own independent efforts. It is not an intellectual property monopoly in the same sense as a patent or a registered design. There is no infringement of copyright in the absence of a direct or indirect causal link between the copyright work and the alleged copy."
44. Dr. Sampson also accepted that in order to do that, he had to: (1) identify the copyright work relied on; and (2) put forward some account of how Mr. Jackson could have had access to that work, as without that there could have been no copying.
45. As to (1) the copyright work relied on, Mr. Davies' case, as put forward in his evidence, and by Dr. Sampson in closing submissions, was that it was the latest reconstruction as shown on the second of Mr. Davies' videos identified in the still I have already referred to at Bundle XX, tab 5, page 1. This may not be his formally pleaded case, but I put that particular difficulty on one side. I have already said that I do not think it is possible now to reconstruct with any confidence the details of his design. I will however for present purposes assume that contrary to my findings, he can establish that his design was that so identified.
46. As to (2), in closing submissions three alternative routes were suggested. The first is that Mr. Brett, or Mr. Arthur Evans, passed Mr. Davies' design to Mr. Jackson in 1963-1965, that Mr. Jackson kept it until 1979 and that he consciously copied it when designing his 1979 logo. The second is a variant of this, which is that Mr. Brett and Mr. Evans passed or showed the design to Mr. Jackson in 1963-1965, that he did not keep it, but that it made an impression on him and that he drew subconsciously on this impression when designing his 1979 logo. The third is that Mr. Brett passed Mr. Davies' design to Harry Marshall, again in 1963-1965, that Mr. Marshall kept it until 1979 and gave it to Mr. Jackson, and that Mr. Jackson consciously copied it when designing his logo.

47. I will take this third possibility first. I will say straightaway that I am satisfied that this did not happen. To establish it, Mr. Davies would have to persuade me (1) that it was the competition judged by Mr. Brett in 1963 that he entered, (2) that Mr. Brett knew Mr. Marshall and passed him the design, (3) that Mr. Marshall kept it for many years, and (4) that Mr. Marshall then passed it to Mr. Jackson, who copied it. I am satisfied that each of these steps is difficult to prove and cumulatively, they are insuperable obstacles to my accepting this route of transmission. As to (1), I have already said that I do not find it has been proved or could have been proved that it was that particular competition Mr. Davies entered, although it is at least a possibility.
48. As to (2) there is no real evidence before the court that Mr. Harry Marshall knew Mr. Brett at all. Mr. Davies relies on the telephone conversation with Mr. Marshall's son, Anthony. It is true that, at one point on the transcript, after Mr. Davies has suggested that Mr. Alun Evans and "Bernard" were friends of Mr. Harry Marshall, Mr. Anthony Marshall said that they were names that were certainly mentioned, but in oral evidence before me, Mr. Anthony Marshall was adamant that although he had heard the name Alun Evans, who played, as I have said, for the Club in the late 1960s, he had never, in fact, heard the name of Bernard Brett at all, and he did not recall his father, who he said was completely uninterested in the arts, mentioning him. I accept this evidence and I accept that Mr. Anthony Marshall's apparent acceptance to the contrary in the telephone call is to be explained by his desire to be friendly and helpful to a person he understood to be a fan. He had no idea at the time that the call was being recorded or the use Mr. Davies would seek to make of it.
49. Step (2) also requires Mr. Brett to have been sufficiently interested in Mr. Davies' design to have kept it and handed it to Mr. Marshall. Mr. Jackson told me that Mr. Brett was a figurative illustrator, who would have had no interest in a stylised design such as Mr. Davies' would have been. I accept his evidence and find it improbable in the extreme that Mr. Brett would have kept Mr. Davies' design or had any reason to pass it to Mr. Harry Marshall.
50. Step (3) requires Mr. Harry Marshall to have kept Mr. Davies' design for some 16 years without doing anything with it and to have still retained it at the time that Mr. Jackson was instructed.
51. Step (4) requires me to reject Mr. Jackson's clear evidence that he was given no ideas or materials, and that he came up with his wolf's head design entirely by himself. I have not the slightest hesitation in saying that I am wholly unpersuaded that his evidence should be rejected. There is, in my judgment, no real possibility that contrary to the entirety of his evidence, Mr. Jackson really based his design on something shown or passed to him by Mr. Marshall and I find that not only is this suggested route of transmission not proved, but I am completely satisfied that it did not take place.
52. As to the first route suggested, it is the case (and much relied on by Mr. Davies) that Mr. Brett and Mr. Arthur Evans were known to Mr. Jackson. Quite how much of a coincidence that might be depends on how small the art world in Wolverhampton was in the 1960s, something of which I have no real evidence. Mr. Jackson himself was a lecturer at Wolverhampton College of Art between 1958 and 1962 and, as such, knew both Mr. Brett, who was the Head of his Department, and Mr. Arthur Evans, who was in the same Department.

53. Although Mr. Jackson had left by 1963, he went to work for the Midlands office of a design consultancy called Midland Creative Publicity. Mr. Brett and Mr. Evans remained at the Wolverhampton College of Art, but did some project work with Midland Creative Publicity. Mr. Jackson left Midland Creative Publicity in 1964 and set up his own business with Mr. Bird in 1965. Mr. Brett and Mr. Arthur Evans themselves left Wolverhampton College of Art in around 1965. Thereafter, Mr. Jackson had nothing to do with them and was not in touch with them.
54. That at least establishes that there was the possibility of contact between Mr. Brett or Mr. Evans and Mr. Jackson, but to accept this case requires not only accepting that the competition that Mr. Davies entered was that judged by Mr. Brett and Mr. Evans, but also accepting that Mr. Brett or Mr. Evans gave his design to Mr. Jackson in 1963, but that Mr. Jackson kept it until 1979, and that he then copied it.
55. I find that these are wholly implausible scenarios. Leaving aside the difficulty that I am not satisfied that Mr. Davies did send his wolf's head design to that particular competition, it seems to me wholly implausible to suppose that Mr. Brett and Mr. Evans would have shown or given the work to Mr. Jackson in 1963, especially given Mr. Jackson's description of Mr. Brett as a figurative illustrator who would have been very unimpressed with such a work, and of Mr. Evans, who had been trained by Mr. Brett, as having had similar views. It is equally implausible to suppose that if they had given it to him in 1963, he would have kept it and later deliberately copied it; something which, in my judgment, would require me to reject his evidence as deliberately untruthful.
56. Dr. Sampson suggested in closing that I could accept this part of his case without having found Mr. Jackson to have given untruthful evidence, on the basis that his evidence could be explained as faulty recollection, but I do not accept this. The clarity and forcefulness of his evidence left no room for that and I cannot find that he kept for 16 years, and then copied, Mr. Davies' design without finding that he deliberately lied to me. That is a finding that is entirely contrary to my assessment of him as a witness and not one I am remotely disposed to make.
57. As to the third possibility, that of subconscious copying, this, too, requires accepting that Mr. Brett and Mr. Evans showed or passed Mr. Davies' design to Mr. Jackson in 1963-1965, and that he retained sufficient memory of it, such as to enable him to draw on it subconsciously some 14-16 years later. That, too, I find highly implausible and, indeed, Dr. Sampson's initial instinct was to suggest that this was a case of conscious copying or nothing. He later resiled from that and advanced a case of subconscious copying, but in my judgment, his initial instinct was right.
58. In the case of subconscious copying after more than a decade, Mr. Jackson could never have reproduced Mr. Davies' design with anything like precision and, at best, all that he could have copied is the general idea of a geometric wolf's head seen face-on. No reliance, for these purposes, can therefore be placed on any detailed similarity to suggest the copying. However, once the similarity of Mr. Davies' design is reduced, as it has to be in the case of subconscious copying, to such a general resemblance, there is no reason in my judgment to infer that the resemblance is the product of subconscious copying, rather than, as Mr. Jackson said, his own ideas uninfluenced by anything else.

59. In summary, I find all three suggested routes of transmission highly unlikely. The only consideration to be put on the other side is the similarity between Mr. Jackson's 1979 design and the designs made by Mr. Davies. I have already found that it is not now possible to reconstruct with any precision any competition design entered by Mr. Davies. That means that no precise comparison can be made between Mr. Jackson's 1979 logo and the actual competition design which has been lost.
60. Mr. Sampson attempted to support the case of copying by an analysis of the precise angles of certain lines of the design, but in the absence of any reliable reconstruction of what Mr. Davies submitted, I do not think any weight can be placed on this at all. In any event, the work relied on by Mr. Davies as the copyright work is noticeably not the same as Mr. Jackson's 1979 logo, although it does bear a resemblance to the 1979 shirt, and the angles and proportions are quite different.
61. However in reality I think that all that can now be done is to compare Mr. Jackson's design with the sort of designs Mr. Davies was producing, as shown in the stamp album and poster drawings. At a high level of generality, these do indeed show noticeable similarity, as I have said, although they also show differences. The question is whether the similarities are so marked and so striking as to lead to a conclusion that despite the implausibility that I have referred to, the suggestion that Mr. Brett or Mr. Evans shared or gave Mr. Davies' design to Mr. Jackson or Mr. Marshall, should be accepted as the only possible explanation or at any rate the more probable one. I have no hesitation in saying that I am not persuaded that they are. As between the possibility that Mr. Jackson copied Mr. Davies' design and the possibility that he, as he so clearly said, came up with his design himself, uninfluenced by Mr. Davies' design, and that the similarities are no more than a coincidence, I have no hesitation in preferring the latter.
62. Indeed, once Mr. Jackson had made the decision to adopt a simplified, stylised design of a wolf's head seen face-on, it may be that it was inevitable that the prominent features would be the ears, the muzzle or jaw and the eyes, and the fact that Mr. Jackson's design and Mr. Davies' designs are not dissimilar is not perhaps that surprising, even though they are, as I find, entirely independent of each other. I conclude that Mr. Jackson did not copy Mr. Davies' design, either consciously or subconsciously.
63. It follows that Mr. Russell did not copy Mr. Davies' design in his 2002 reworking either and, as Dr. Sampson accepts, that means that the claim for infringement of copyright falls to be dismissed. This will be a disappointment to Mr. Davies who, as I said, has no doubt convinced himself that the Wolves logo is derived from his design. It may or may not be some comfort to him to have successfully established that while he was still a young teenager, he did come up with a wolf's head design that in many respects anticipated by many years the iconic logo designed by Mr. Jackson, which has become so well-known.
64. For the reasons I have given, however, the claim for infringement for copyright advanced in these proceedings fails, and the action must be dismissed. It is unnecessary to consider the further issues that would have arisen had the copying been established.
