

Wolves logo – wandering origin story doubted by High Court

An amateur designer, Peter Davies, has claimed copyright infringement against Wolverhampton Wanderers FC, alleging that a design he entered into a competition in the early 1960s was copied by Ian Jackson, who designed a new logo for the club in 1979, and then by Jonathan Russell, who redesigned the Wolves logo in 2002.

The High Court was not persuaded by Mr Davies' evidence and found that Mr Davies could not provide credible evidence of the competition, nor of the design entered into it. Even if the identity of competition and the design entered had been proven, Mr Justice Nugee held that the route of the design's transmission to Mr Jackson was wholly implausible. So Nugee J concluded that Mr Jackson had not copied Mr Davies' design; nor had Mr Russell, whose 2002 design was a variant of the 1979 logo. Accordingly, Mr Davies' claim failed.¹

Background

In late 1978 Wolverhampton Wanderers FC commissioned a new logo from Mr Jackson. Mr Jackson created a wolf's head design. Between 1979 and 2002 (with the exception of the period 1993-1996), the club used that 1979 design as its logo. In late 2001 Mr Russell was asked to redesign the club's logo and created a variant of the 1979 logo. From 2002 onwards the club has used the 2002 design.

In February 2018 Mr Davies issued a claim against the club, alleging that he had created a wolf's head design and entered it into a competition in the early 1960s, and that Mr Jackson had copied his design (consciously or subconsciously). Mr Davies claimed to have been aware of the similarity between his design and the 1979 logo since 1979, but only in September 2015 did he discover that he had any physical evidence (samples of work that he had done as a boy) to support his claims.

Issues

The primary issues that Nugee J considered were:

- Did Mr Davies enter a competition? If so, which competition and what design did he enter?
- Even if Mr Davies had entered a competition and the identity of that competition and of the design could be established, were there any plausible grounds to suggest Mr Jackson had copied Mr Davies' design (consciously or subconsciously)?

In a case that relied on witness evidence, a secondary issue was the credibility of the witness evidence from both Mr Davies and Mr Jackson.

Decision

As to the credibility of Mr Davies' witness evidence, Nugee J found that he must treat Mr Davies' evidence with considerable caution on the grounds of: (a) the sheer length of time since the occurrence of the events on which Mr Davies sought to rely; (b) discrepancies between various accounts of events provided by Mr Davies from time to time; and (c) the apparent tampering with audio recordings by Mr Davies with no plausible explanation provided for why that had occurred. By contrast, Nugee J found Mr Jackson's evidence (which included that he had come up with the 1979 design alone) to be compelling.

Nugee J was satisfied that Mr Davies had drawn the samples of works that Mr Davies claimed to have located in September 2015, including two designs of a wolf's head. Nugee J was willing to assume

¹ *Davies v Wolverhampton Wanderers Football Club (1986) Ltd* [2019] EWHC 1252.

that Mr Davies had entered his wolf's-head design into an art competition in the early 1960s. Nonetheless, while Mr Davies identified a competition that he may have entered, he could not establish that this was the competition into which he had entered a wolf's-head design and, as such, Mr Davies was unable to establish the identity of the competition he had entered. Further, even on the assumption that Mr Davies had entered a wolf's-head design into an art competition, Mr Davies could not reconstruct its detailed appearance with any precision. So Nugee J had no confidence that Mr Davies' reconstructions were reliable. Accordingly, Mr Davies could not provide any compelling evidence of the actual design entered.

As to the possibility that Mr Jackson could have copied Mr Davies' design, even on the assumption that the competition Mr Davies entered was the one he had identified, Nugee J was not convinced that any plausible account could be given as to how Mr Davies' design would have been transmitted to Mr Jackson to facilitate copying.

Finally, Nugee J considered the similarity between the 1979 logo and the designs made by Mr Davies. Nugee J, having already discounted the credibility of Mr Davies' reconstructions, determined that a precise comparison could not be made between the 1979 logo and the actual competition design that had been lost. This left the judge to compare Mr Davies' sample designs with the 1979 logo. Nugee J found that, while there were similarities between the works, there were also differences, and he was not persuaded that the similarities were so marked and so striking as to lead to a conclusion that, despite the implausibility of transmission, the only possible explanation (or the more probable one) for the similarities was that Mr Jackson had copied Mr Davies' design.

Nugee J was further persuaded by the credibility of Mr Jackson's evidence that he had come up with the 1979 design alone. Additionally, Nugee J found that the degree of similarity may have been inevitable: "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."

On the grounds above, Nugee J dismissed the infringement claim, concluding that Mr Jackson had not copied Mr Davies' design (consciously or subconsciously). It followed that Mr Russell had not copied Mr Davies' design when creating the 2002 logo.

Costs

It was widely reported in the [national press](#) that the claimant faced costs in the region of £450,000 and was ordered to pay £250,000 by 29 May 2019. Mr Davies said that he has "no assets" and "obviously can't pay". In the circumstances, if the club pursues Mr Davies for the costs, the almost inevitable consequence is that he will be made bankrupt. Mr Davies purports to have been advised by his solicitors of the associated risks in costs, but this case illustrates the paramount importance for lawyers of advising clients of the significant costs risks associated with losing at trial and the real-life impact it may have on them.

By contrast to Mr Davies' financial position, the club is a wealthy and successful team in the Premier League. It recently finished in seventh position, benefiting from wealthy owners and, among other commercial revenue streams, enjoying a share of the multi-billion pound Premier League television rights deal. So the club is a relative Goliath to Mr Davies' David. As ever, brand-owners need to be mindful of the way in which enforcing rights might have a detrimental impact on a brand and its reputation if handled in the wrong way. Here, for instance, to bankrupt an individual who had a genuine belief that he had created the club's logo might not play well in the media or with the general public, and that risk would need to be balanced carefully with the club's interest in recovering its costs of litigation.

Comment

Perhaps unsurprisingly, Mr Davies struggled to overcome the hurdle presented by the sheer length of time that passed between the creation of the 1979 logo and the issuing of the claim. In the absence of physical evidence (for example, a copy of his entry into the competition, or a photograph of his design), Mr Davies was forced to rely on witness evidence. Understandably, Nugee J was wary of the imperfect recollections that will invariably occur in witness evidence over the course of such a long period of time.

The credibility of the witnesses had a large bearing on the court's decision. Nugee J was impressed by the "straightforward and confident, indeed forceful manner" of Mr Jackson's evidence, which was "entirely unshaken in cross-examination". So the decision underlines that witnesses will lack credibility if they struggle to provide facts in a clear and straightforward manner, are prone to changing their accounts of events and/or crack under pressure on cross-examination. As such, it is important that lawyers, while staying within the parameters of acceptable witness preparation, ensure that the witness evidence on which their client intends to rely has been fully tested before reliance is placed on it in court.

In this case, the club had sufficient evidence of chain of title to establish its rights in the 1979 and 2002 logos. That is not always the case for organisations, however. Copyright may subsist in logos, many of which will be registered as trade marks. Without good evidence of such rights, organisations are at risk from claims of infringement, and for organisations like football clubs that make extensive use of their logos via TV deals and worldwide merchandising operations, that is a significant risk. As such, brand-owners should make sure that they can readily prove their chain of title to underlying designs – which is not always a foregone conclusion for clubs that rely on logos with a complex ancestry.

Peter Hopton, Associate, Simkins LLP