

O/0785/25

**CONSOLIDATED PROCEEDINGS**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. 3714075**

**BY PHILIP MAINWARING**

**AND**

**IN THE MATTER OF THE OPPOSITION THERETO**

**UNDER NO. 430013 BY DAVID MOORE**

**AND**

**IN THE MATTER OF APPLICATION NO. 3737668**

**BY EDUCRAFT LIMITED**

**AND**

**IN THE MATTER OF THE OPPOSITION THERETO**

**UNDER NO. 434518 BY PHILIP MAINWARING**

## BACKGROUND AND PLEADINGS

1. These proceedings concern two separate applications for UK trade marks, both of which consist of logos containing the word “EDUCRAFT”. The dispute centres on a business whose activities included delivering training events related to computing. One of the parties is Mr Philip Mainwaring, the owner and director of Educraft Education CIC, who states that his ambition was to pass on his experience of computing to a younger generation. The other parties are David Moore and Educraft Limited. Mr Moore is a director of the latter. He runs a business that provides entertainment, education and training events relating to computing and computer games.

### Application No. 3714075

2. On 25 October 2021, Mr Mainwaring applied to register the following mark in the United Kingdom:

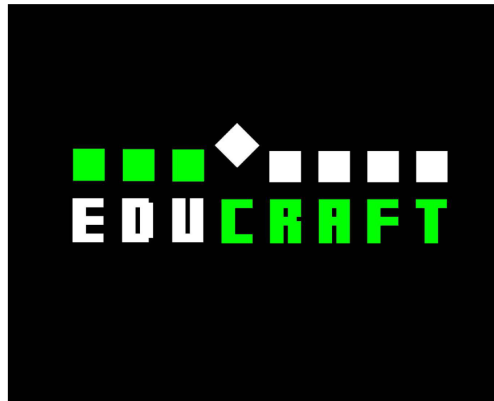


3. Registration was sought in respect of services in Class 41. These are listed in Annex A to this decision.

4. The application was opposed in full on 10 January 2022 by Mr Moore. It was initially opposed solely under section 5(4)(b) of the Trade Marks Act 1994 (“the Act”). After filing his opposition, Mr Moore secured legal representation and on 15 December 2022 filed an application to add grounds under sections 5(4)(a) and 3(6) of the Act to his opposition. His representative explained that, in an earlier version of the notice of opposition that was not admitted, Mr Moore had made it clear that he intended to rely upon bad faith and passing off claims but that he had lacked the knowledge to complete the form correctly. The request to add the grounds was granted.

5. Under section 5(4)(b), Mr Moore claims that use of UKTM(A) 3714075 would be an infringement of his copyright in the logo shown below. He states that he is its author

and owner and that it was created on 10 March 2017 following consultation with a graphic designer. He states that at the time of creation of this work he was (and remains) a British citizen.



6. Mr Moore says that the logo was first used on that date for an event he facilitated at the Newcastle Discovery Museum. He then says that he *“electronically transferred a copy of the logo to a supplier Philip Mainwaring (T/A Imaginary Projects) earlier in the day, so it could be copied across to David’s vintage computers that were in use at the event. Ownership/copyright of the logo was certainly not transferred.”*

7. Under section 5(4)(a), Mr Moore claims that he has used the mark that is the subject of Mr Mainwaring’s application, the word **EDUCRAFT** and the logo shown below in the United Kingdom from at least as early as March 2017 for the following services: *Entertainment services; Education and training services; Workshops, organising events, shows and exhibitions; organising gaming events and workshops; providing, organising, and installing video gaming installations at events and exhibitions.* He claims to have goodwill in the signs and that Mr Mainwaring’s use of the mark he has applied for would be a misrepresentation which would deceive the public and lead to damage to Mr Moore’s goodwill.



8. Under section 3(6), Mr Moore claims that Mr Mainwaring has filed the application in the knowledge that he is not the true owner of the mark and with the dishonest intention of blocking Mr Moore’s use or registration of the mark. He adds that he created the

mark and operated a business under that mark, and that Mr Mainwaring provided assistance in some aspects of this business but had no proprietary right to the mark.

9. Mr Mainwaring filed a defence of the opposition to his application under section 5(4)(b) on 31 May 2022, although an admissible form was not filed until 16 August 2022. He claims that he and Mr Moore worked together between October 2016 and October 2021 and that Mr Moore registered Educraft as a company without his (Mr Mainwaring's) knowledge. He asserts that the mark that is the subject of his application is his own intellectual property and that he sought registration to protect that intellectual property *“and as a last ditch safety measure following David Moore's removal of my likeness (photograph) from all of the promotional materials, in a blatant move to misrepresent our former relationship and his involvement in the building of the brand.”*

10. Following the admission of Mr Moore's amended pleadings, Mr Mainwaring was given the opportunity to amend his counterstatement to address the new claims. However, he simply refiled his original defence. Consequently, his pleadings do not explicitly address the new grounds added into the proceedings. I shall return to this point in due course.

#### **Application No. 3737668**

11. On 29 December 2021, Educraft Limited applied to register the following series of two marks in the United Kingdom:



12. Registration was sought in respect of services in Class 41. These are listed in Annex B to this decision.

13. On 24 June 2022, this application was opposed by Mr Mainwaring. The opposition is based on section 5(4)(b) of the Act and concerns all the services in the application. He claims to be the owner of copyright in the logo for which he seeks registration. He states that he created it in February 2017 and that it was a refinement of earlier works produced between October 2016 and February 2017. There is no dispute that the logo was first used on 10 March 2017 at the workshop held at the Newcastle Discovery Museum. He claims to be the owner of the work and states that at the time of its creation he was a British citizen.

14. A defence of the application was filed on 25 October 2022. Mr Moore denies that Mr Mainwaring is the creator of the logo. He also claims that this application bears no resemblance to the logo.

15. The proceedings were consolidated on 17 November 2022.

## **RELEVANCE OF EU LAW**

16. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

## **THE EVIDENCE ROUNDS**

17. Mr Moore filed three witness statements during the proceedings. The first is dated 17 January 2023 and is accompanied by 12 exhibits. This evidence relates to the section 5(4)(b) ground initially pleaded. The second is dated 31 July 2023 and relates to the additional section 5(4)(a) and section 3(6) grounds. There is a supplementary witness statement of the same date, to which are exhibited invoices. His third witness statement is dated 17 January 2024 and responds to the evidence filed by

Mr Mainwaring. Mr Moore also filed written submissions dated 17 January 2023 and 31 July 2023.

18. Mr Mainwaring’s evidence in chief was filed on 17 March 2023. His witness statement is accompanied by 20 exhibits. Mr Mainwaring also referred to the information contained in his counterstatement dated 16 August 2022. As this has been filed under a statement of truth, I shall treat it as evidence. He also filed a statutory declaration dated 15 February 2024.

*Mr Moore’s first witness statement*

19. Mr Moore states that he chose the name EDUCRAFT on 14 January 2017, following a conversation with a colleague (Ms D).<sup>1</sup> He then instructed his internet service provider to obtain the relevant domain names. Exhibit DM1 shows that educraft.co.uk and educraft.uk were registered on 8 February 2017 and 13 February 2017 respectively.

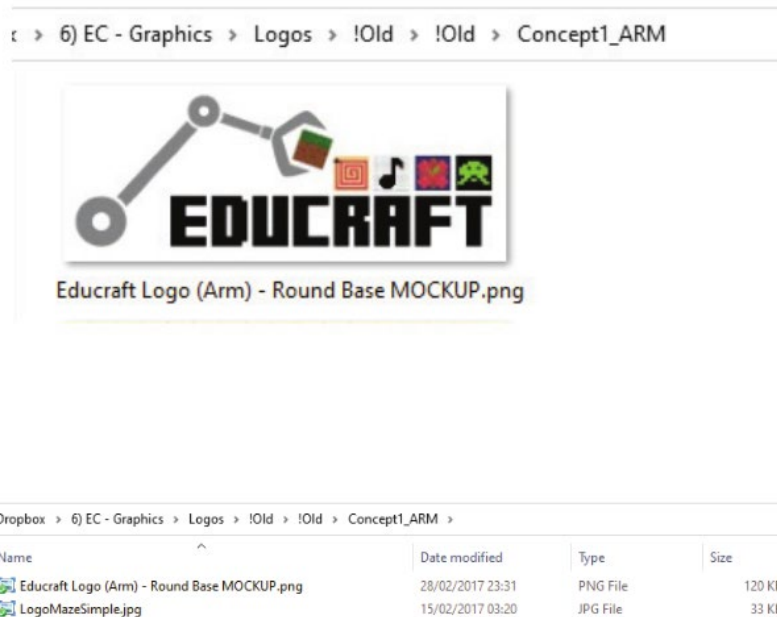
20. On 13 February 2017, Mr Moore emailed a graphic designer instructing him to start work on suitable logos. In his email, Mr Moore explained that the brand name would be “EDUCRAFT” and that he would like the logo to feature blocks, and possibly include a robotic arm picking up one of the blocks. The graphic designer put together a number of concepts which are shown below and were attached to an email dated 14 February 2017:<sup>2</sup>



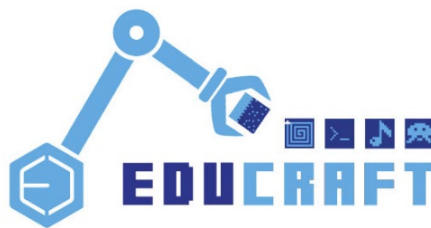
<sup>1</sup> First witness statement of David Moore, paragraph 2.

<sup>2</sup> Exhibit DM2.

21. Mr Moore also sent them to an individual (“Mr S”) who is now a director of Educraft Limited and whom he consulted when developing the brand. They can be seen in the screenshot of messages between the two sent on 27 February 2017.<sup>3</sup> Mr Moore says that on the following day he made further amendments to the robotic arm logo on the basis of these comments. This is shown below, with the date and time stamp from Mr Moore’s Dropbox account (28 February 2017 23:31).<sup>4</sup>



22. On 1 March 2017, Mr Moore emailed Mr S seeking his views on the latest version of the logo which appeared as follows:<sup>5</sup>



23. Mr S made comments and following these a further version was created and emailed at 16:41 on the same day:<sup>6</sup>

<sup>3</sup> Exhibit DM3, page 28.

<sup>4</sup> Exhibit DM3, page 29.

<sup>5</sup> Exhibit DM3, page 30.

<sup>6</sup> Exhibit DM3, page 31.



24. Mr Moore emailed Mr S again on 2 March 2017 to thank him for his comments and saying that he had just sent it to the graphic designer “to do a proper version”.<sup>7</sup>

25. Mr Moore states that this version of the logo was too complex for several of the uses to which he wanted to put it, i.e. on T-shirts, as watermarks on photographs and on vintage computers which were only capable of displaying low-resolution graphics. He states that he designed a simplified version of the logo, removing the robotic arm, and adding three additional blocks on the left-hand side. This is shown below with the details from the Dropbox file, with a date and time stamp of 9 March 2017, 23:32:<sup>8</sup>



26. This version was sent to the graphic designer by email on 10 March 2017 at 06:15.<sup>9</sup>

27. Mr Moore says he then began experimenting with different colours with the aim of producing a logo that was suitable for display on BBC Micro computers which he says could only display 8 basic colours. He states that he produced the following variants on 10 March 2017:<sup>10</sup>

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<sup>7</sup> Exhibit DM4, page 33.

<sup>8</sup> Exhibit DM5, page 35.

<sup>9</sup> Exhibit DM10, page 46.

<sup>10</sup> Exhibit DM5, page 36.



Concept1\_ARM > DM\_Feedback04\_ARM > bbc rej

Name	Date	Type
EC Wide - SIMPLE - BBC COLOURS - WHITE BG - MOCKUP.png	10/03/2017 00:49	PNG File
EC Wide - SIMPLE - BBC COLOURS - BLACK BG - MOCKUP.png	10/03/2017 00:49	PNG File
EC Wide - SIMPLE - BBC COLOURS - YELLOW BG WITH RED - MOCKUP.png	10/03/2017 00:55	PNG File
EC Wide - SIMPLE - BBC COLOURS - GREEN-MAGENTA ON BLACK BG - MOCKUP.png	10/03/2017 00:56	PNG File
EC Wide - SIMPLE - BBC COLOURS - GREEN-WHITE ON BLACK BG - MOCKUP.png	10/03/2017 00:57	PNG File

28. He settled on the green and white version shown on the right of the above image.

29. At 1.09 on 10 March 2017, Mr Moore sent Mr Mainwaring the green and white Educraft logo via the Facebook Messenger service *“because, as part of the overall commission for the Codebreaking workshop, Dave had asked Philip to digitize (i.e. copy) it onto a BBC Microcomputer and add it to the software image (‘filename: enigma.ssd’) that was due to be transferred onto floppy disks for use with the BBC Micro computers that were being set up at the event in the North East later that day.”*<sup>11</sup> Mr Moore states that this was the first time that Mr Mainwaring was aware of the simpler logo.<sup>12</sup> The colour arrangement in the image sent on Facebook Messenger is slightly different from that used in the Dropbox image shown above, with the green and white colours reversed:



<sup>11</sup> Exhibit DM6.

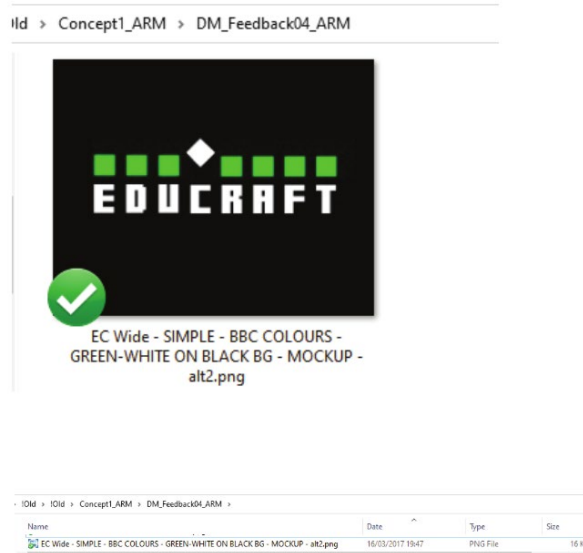
<sup>12</sup> First witness statement of David Moore, paragraph 9.

30. Mr Moore states that he then travelled to Newcastle with Mr Mainwaring to set up the event with two other people. Once the equipment had been set up, Mr Moore took the photograph below and emailed it to the graphic designer at 17.55.<sup>13</sup>



31. It can be seen from this image that the final four blocks are shown in green, rather than white. Mr Mainwaring admitted in a Facebook Messenger conversation dated 16 March 2017 that he had done this in error.<sup>14</sup>

32. Mr Moore further modified the logo on 16 March 2017 when he changed the green letters “CRAFT” to white and retained the colour green for the final four blocks. The date and time stamp reads 16 March 2017 19:47.<sup>15</sup>



<sup>13</sup> Exhibit DM7, page 40.

<sup>14</sup> Exhibit DM7, page 40.

<sup>15</sup> Exhibit DM9, page 44.

33. The logo was then used on T-shirts and Exhibit DM11 contains photographs of Mr Moore and team members wearing them. The earliest of these photographs dates from August 2017.

#### *Mr Mainwaring's evidence*

34. Mr Mainwaring says that he first met Mr Moore in January 2012 and “*many times subsequently*” at computer enthusiast events. He claims to have worked with him at some events run by a company called Replay Events, of which Mr Moore was one of the directors. In August 2014, Mr Mainwaring began talking to Mr Moore about his plans to run educational events. When Mr Moore left Replay in 2015, these talks became more serious and frequent and concerned possible ways of developing and marketing Mr Mainwaring’s educational software.<sup>16</sup>

35. He continues:

“5. I was to provide all the technical and course content and Mr Moore was to use his skills at promoting and organising events. Mr Moore was also to occasionally lend some of his retro computer equipment to compliment [sic] my own smaller collection as this forms the unique selling point for the nine courses which I had in various stages of development.”

36. Mr Mainwaring says that in 2016 Mr Moore approached him about adapting a code breaking course, which was one of nine he had suggested could form the core of an educational business. Mr Mainwaring suggested the name “Edutech” but Mr Moore claimed that this was already in use “*and asked if we could modify the name slightly to something which also reflected and included a series of Minecraft™ events which he was planning to launch early the next year (2017).*”<sup>17</sup> He states that following the choice of the name he designed what he describes as the “*simple/8-bit*” version of the logo for use in workshop resources and on the vintage computer equipment.<sup>18</sup> This version is the same as the mark that is the subject of Mr Mainwaring’s application.

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<sup>16</sup> Witness statement of Philip Mainwaring, paragraphs 3-4.

<sup>17</sup> Witness statement of Philip Mainwaring, paragraph 7.

<sup>18</sup> Witness statement of Philip Mainwaring, paragraph 10.

Except where I am quoting directly from Mr Mainwaring, I shall refer to it as the simple version of the logo.

37. Mr Mainwaring disputes Mr Moore's statement that he was merely a supplier and states that the two men worked together, with Mr Mainwaring developing the brand's products and services and Mr Moore promoting them and facilitating events. He says that Mr Moore set up Educraft Limited without his knowledge and did not mention this when Mr Mainwaring attempted to discuss ownership and roles in the business.<sup>19</sup>

38. He accepts that Mr Moore discussed logo designs with other people and signed a contract with a graphic designer but expresses his belief that the design process was steered *"to include and build upon or extend my pre-existing, simpler '8-bit version' of the logo which I had discussed with David Moore on numerous occasions."*<sup>20</sup> Mr Mainwaring states that he owns this logo and so has a right to use it.<sup>21</sup> In response to Mr Moore's claim that he was a supplier to Mr Moore's business under the trading name "Imaginary Projects", Mr Mainwaring states that Imaginary Projects is a name he sometimes uses for *ad hoc* purposes, including billing.

39. He also says:

"... Due to memory constraints on the old equipment which forms the unique selling point (USP) of my business the Educraft logo that I registered with the IPO does not exist as an image but is, and has been since March 2017, generated by one of these software segments and thus, as listed on the IPO website and with all software, subject to copyright. The exchange of security between Educraft UK<sup>22</sup> and myself for the use of the software generating this logo confirms that they accept that it is an asset belonging to my business which they are attempting to register as their (Educraft UK's) own."<sup>23</sup>

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<sup>19</sup> Counterstatement, point 1.

<sup>20</sup> Counterstatement, point 2.

<sup>21</sup> Counterstatement, point 7.

<sup>22</sup> When using this term, Mr Mainwaring means the company formed by Mr Moore. See "Clarification" in his witness statement.

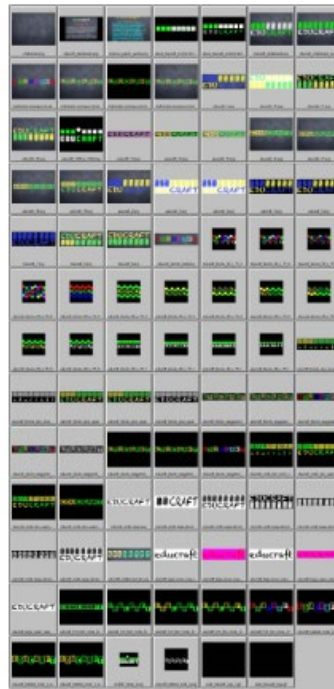
<sup>23</sup> Counterstatement, point 10.

40. The “exchange of security” referred to took place in 2021. On 18 November 2021, Mr Mainwaring completed a licensing arrangement allowing Educraft to use his resources. He denies that this is evidence that he was a supplier to Educraft, and not an employee or owner, and describes it as *“a very generous one-off attempt by myself at a temporary solution whilst other compromises at cooperation or co-existence were sought and to allow Educraft UK to fulfil their obligations to host a series of upcoming events.”*

41. In his TM7 for the opposition to Educraft’s application, he states that during the evidence rounds he will present evidence of the invention of the name, design and development of the Educraft logo artwork and variation artworks (between February 2017 and March 2017), and proof that he has traded under the Educraft brand (comprising the name and logo artworks) from 2017 onwards.

42. Exhibits PM01-PM16 contain images of what Mr Mainwaring describes as versions of the logo. At the top are date stamps of 25 November 2016, 27 December 2016. Exhibit PM17 is a grid of thumbnails, with a date of 27 December 2016. There is no other explanation of what these are.

PM\_17      27/12/2016      15:30      962,426      misc\_edutech\_eduteck\_edu-tech\_educraft\_icons.png



The second thumbnail on the third row is reproduced more clearly below:



43. Mr Mainwaring says that Exhibits PM\_18 to PM\_20 contain “BBC disk image”. It is not clear what these are. PM\_18 appears to be data related to Minecraft font and has a copyright date of December 2016; PM\_19 appears to be a program called “Enigma Emulator (V.0.92)” with a date of November 2016, modified on 8 March 2017; and PM\_20 is a file called “EDULOGO”. This has no date, but at the end there is the following remark: “*Since, at least, October 2017 the ‘8-bit’ educraft logo has been generated by software written by P. Mainwaring.*”

44. Mr Mainwaring states that he has used the logo for the design and delivery of educational courses for children and young adults since early 2017.<sup>24</sup>

#### *Mr Moore’s second witness statement*

45. This witness statement focuses on the claims under sections 5(4)(a) and 3(6). Mr Moore says that, between 17 February 2017 and 13 July 2021, he provided in his personal capacity technology-based workshops to schools, museums and events in the UK. He adds that he recruited a team to help him deliver the workshops and that turnover in this period was approximately £36,335.50. From 13 July 2021 onwards, he traded as Educraft Limited. At paragraph 7 of his witness statement, he provides a table showing these events and workshops. They were dated 17-18 February 2017, 21-21 [sic] February 2017, 11 March 2017, 11-28 August 2017, 19-31 October 2017, 2-3 December 2017, 16 July 2018, 1-2 June 2018, 5 October 2019, 12-13 October 2019, 25-27 October 2019, 6-8 March 2020, 21 August 2021, 4-8 October 2021. No workshops or events were held during the periods of COVID lockdown. Mr Moore says that an early version of the EDUCRAFT logo was used at the first two of these events, with the simplified logo used on 11 March 2017. Exhibits DM1-DM14 and DM20 contain invoices related to these events, photographs and YouTube stills showing use

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<sup>24</sup> Witness statement of Philip Mainwaring, paragraph 8.

of the simplified logo on T-shirts and monitors and a more complex logo on more modern machines and floor plans, such as the one shown below: <sup>25</sup>



46. Exhibit DM15 contains invoices for the T-shirts, ordered in August 2017 and September 2021. Mr Moore also says that he ordered 100 Educraft brochures in July 2019, 5000 flyers in October 2019 and 5000 flyers in August 2021. The logo on these materials is as follows:<sup>26</sup>



47. Mr Moore states that the Educraft Twitter, Facebook and Flickr accounts were set up at least as early as 2017.<sup>27</sup> At the date of printing, the Twitter account had 69 followers and the Facebook account 288 followers. The numbers of followers at the date when Mr Mainwaring applied for the trade mark are not given.

<sup>25</sup> Exhibit DM12.

<sup>26</sup> Exhibit DM16.

<sup>27</sup> Paragraph 12 and Exhibit DM19.

*Mr Moore's evidence in reply*

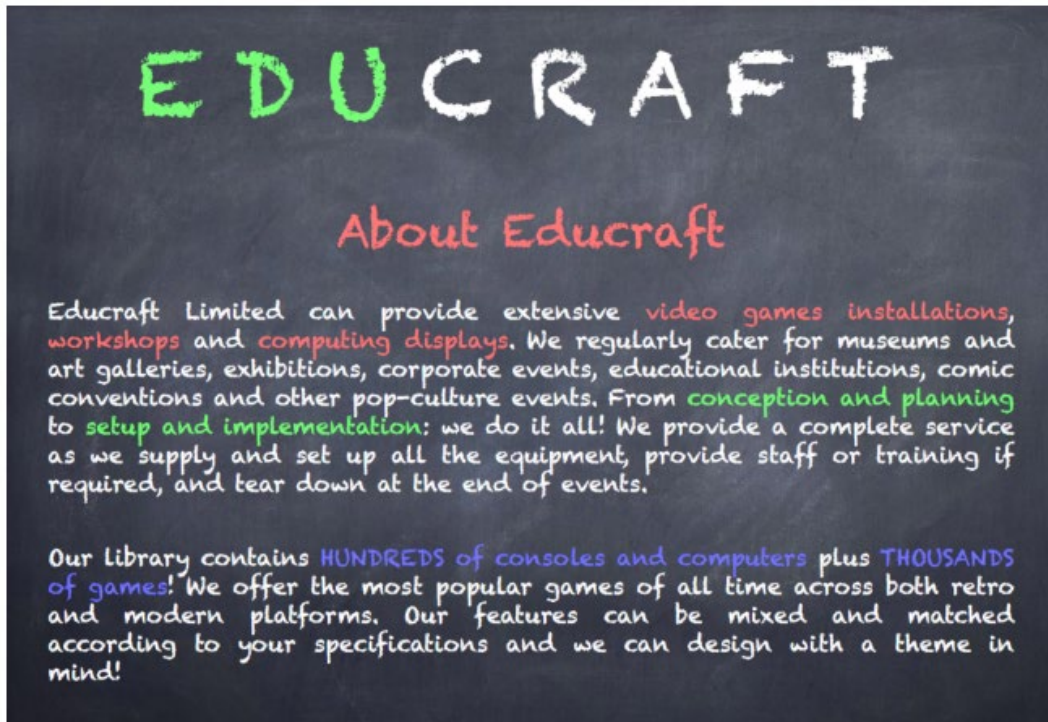
48. Much of the content of Mr Moore's third witness statement is submission, rather than evidence. I shall refer to these, along with the rest of the submissions, where appropriate in my decision. Here I shall highlight the evidence.

49. At Exhibit DM1, Mr Moore provides a screenshot of a conversation he had with Mr Mainwaring on Facebook Messenger on 8 August 2017 in which Mr Moore asked him to produce forms of the logo that could be used on a t-shirt and on the website. An extract is below:

Mr Moore: But for the web version I will need white and green graphics on a black background as per the mockup above.

Mr Mainwaring: personally i still prefer your original staggered diagonal white and green  
as it separates the two words and gives the illusion that the brick turning is changing the colours

50. Mr Moore also responds to Mr Mainwaring's Exhibit PM01, which I reproduce below:



51. Mr Moore states that this text is identical to wording used in a brochure that his associate Ms L produced in June/July 2019. This is shown in Exhibit DM3, along with an email from Ms L to Mr Moore dated 21 June 2019 containing a first draft of the text. Mr Moore claims that Mr Mainwaring copied the text and put it into his witness statement marked with a date of 27 December 2016.<sup>28</sup>

*Mr Mainwaring's statutory declaration*

52. In this declaration, dated 15 February 2024, Mr Mainwaring states that:

"1. I, **Philip Mainwaring**, a director of **Educraft Education CIC** (previously **Phil Mainwaring** trading as '**Educraft**' from **2017 to October, 2021**) am contesting **David Moore**'s trade mark registration **UK00003737668** on the grounds that, using the near identical name and being a derivation of my original logo **UK00003714075** for the same class of services, it:

1.1. infringes my intellectual property and copyright of the presented artwork, and that it

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<sup>28</sup> Paragraph 19.

1.2. infringes my rights in the design of the logotype, and that it

1.3. is an action by **David Moore** and **Educraft Limited/Educraft UK** to pass off my business, brand, software, courseware, reputation and goodwill as their own

2. **David Moore** has been an acknowledged promoter and facilitator to my **Educraft** business since **2017**, but at no time was any partnership offered or agreed with myself

3. I am able to prove and demonstrate my ownership of the original antecedent logo artwork from which the logo presented by **David Moore** is derived

4. **David Moore** does not have permission, nor any legal right, to use my brand, name, software, courseware, logo artwork or derivatives thereof

5. **David Moore** and **Educraft Limited/Educraft UK** are attempting to register and profit from assets belonging to my business as their own

6. I have used the name '**Educraft**' and the logo which I registered on **25<sup>th</sup> October, 2021** for the purposes of design and delivery of educational workshops for children and young adults since **early 2017**, although it should be noted that this trading name is, itself, a later modification of the original name, '**Edutech**', created by myself (**Philip Mainwaring**) in **October 2016**. Subsequent to the choice of this trading name, I then designed the 'simple/8-bit' version of the logo in between **late December, 2016 and early February, 2017** to be used in both the supporting workshop resources and on the vintage computing equipment which forms the unique selling point of my (**Educraft's**) courses and workshops to this day. I had no knowledge that **David Moore** had expanded the simple logo to include the robot arm and icons on the blocks until we were delivering my code breaking workshop in the weekend commencing **11<sup>th</sup> March 2017**.

7. Whilst **David Moore** and [**Mr S**] (now trading using the similar, registered company name of **Educraft Limited/Educraft UK**) have indeed paid a 'one-

off' fee for a temporary licence to use one of my educational courses ('**Pixel Graphics**') prior to this and since then they have consistently used, advertised and passed off as their own work at least three of my courses without any form of written or verbal agreement or payment. It should be noted that the payment by **Educraft Limited/Educraft UK** included the use of workshop resources and PowerPoint presentation including many instances of my **Educraft** logo and website, initially hosted on the **econet.network/educraft website** – they thus paid a fee to use **my resources** containing **my logo**.

8. **David Moore**, without my consent, knowledge or any kind of written or spoken agreement then made the unilateral decision that he alone owned **Educraft**, the brand, outright – a brand which I have spent over five years developing – and then either sold or gave **Mr S** approximately **50%** of the same despite the fact that it was not his to do so.”

53. The declaration is unaccompanied by any exhibits.

## **PROCEDURAL ISSUES**

54. The matter came to be heard by me by videolink on 10 July 2024. Mr Mainwaring represented himself. Mr Moore and Educraft did not take part in the hearing, although Mr Moore and colleagues were present as observers. They are represented by Wilson Gunn, who filed written submissions in lieu of attendance at the hearing, on Mr Moore's behalf on 7 July 2024.

55. On 8 July 2024, Mr Mainwaring had contacted the Tribunal to claim that he needed to file new evidence to answer points made in Mr Moore's written submissions. He also said that he would raise further concerns about issues that were not within the scope of these proceedings. The Tribunal responded the same day pointing Mr Mainwaring to the guidance in the Trade Marks Manual on requests to file additional evidence<sup>29</sup> and informing him of the factors that were set out in *Property Renaissance Ltd v Stanley Dock Hotel & Ors* [2016] EWHC 3103 (Ch), namely:

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<sup>29</sup> Section 4.8.5.

- The materiality of the evidence in question to the issues that the Tribunal has to determine;
- The justice and fairness of subjecting the other party to the burden of evidence in question at the stage that the proceedings have reached, including the reasons why the evidence was not filed earlier;
- Whether the admission of the further evidence would prejudice the other party in ways that cannot be compensated for in costs (for example, excessive delay); and
- The fairness to the party applying to file additional evidence of excluding the evidence in question, including prejudice to the applicant if it is unable to rely on such evidence.

56. Mr Mainwaring was asked to inform the Tribunal as soon as possible, copying in Party B, if he wished to apply to file additional evidence, and, if so, to explain what evidence he wished to file and the reasons it was not filed earlier. No response was received prior to the hearing.

#### *The hearing of 10 July 2024*

57. It became clear during the hearing that Mr Mainwaring had hoped to be able to question Mr Moore and his business partner. He had raised this point earlier in an email of 28 March 2024 in which he clearly stated that he would be asking questions. The Tribunal responded on 9 April 2024 asking Mr Mainwaring to clarify whether he meant that he would be asking rhetorical questions, i.e. ones that he would wish the Hearing Officer to have in mind when making the decision, or whether he was asking for permission to cross-examine a witness on their written evidence. The Hearings Clerk also set out the guidance from the Tribunal Manual on requests for cross-examination.<sup>30</sup> No response was received.

58. Mr Mainwaring said that a rebuttal of the points raised in Mr Moore's submissions in lieu of a hearing would require new evidence to be filed. I referred him to the Tribunal's email of 8 July 2024 where he had been asked to make a request as soon

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<sup>30</sup> Section 6.8.3.

as possible and explain what he wished to file. The point that appeared to me to be of most concern to him was the allegation that he had fabricated evidence. It will be recalled that this allegation had first been made in Mr Moore's evidence in reply (his third witness statement) dated 17 January 2024.<sup>31</sup> On 16 February 2024, Mr Mainwaring had emailed a signed and witnessed statutory declaration, the substance of which I have reproduced in paragraph 52 above. In that email, he stated that he had amended the dates given in paragraph 6 of the statutory declaration for the creation of the simple version of the logo from "*late January/early February*" to "*in between late, December 2016 and early February, 2017*" to respond to Mr Moore's claim that the date stamps on his exhibits were incorrect and that the evidence had been fabricated. This indicates that Mr Mainwaring was aware of the allegations since at least 16 February 2024.

59. After questions from me, Mr Mainwaring clarified that he wished to request permission to file additional evidence. He referred to the constraints that his personal circumstances imposed upon him that had made it difficult to meet some of the deadlines set during the course of the proceedings. I reminded him that, if a request were to be made, I would need to consider the factors set out in *Property Renaissance* and reproduced in the email of 8 July 2024.<sup>32</sup> I gave him a deadline of 14 days (i.e. 24 July 2024) to provide a list of what he wanted to file and said that at this stage it was not necessary to give a witness statement. I then adjourned the hearing.

#### *The request to file additional evidence*

60. On 24 July 2024, Mr Mainwaring requested an extension to the deadline of a further week. He said that the two weeks had proved too short a time to sort through the images that he wanted to submit, noting that he had had 600 images that he had hoped to share on his screen as part of the hearing (and which I had not allowed him to do, particularly given the absence of Mr Moore's legal representative). In addition, he had had to deal with a number of personal issues during this time. I agreed to a further week.

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<sup>31</sup> See paragraph 51 above.

<sup>32</sup> Transcript of the 10 July 2024 hearing, page 14.

61. Mr Mainwaring filed 125 pages of exhibits, some of which were blank. They were unaccompanied by any explanation as to their relevance. Many appeared to cover Mr Mainwaring's career development, his experience and qualifications. There was also a collection of photographs, some of which show Mr Mainwaring working with vintage computers, and some simple graphics such as could be used on a vintage computer and none of which relate to the mark Mr Mainwaring has applied to register. The following items are the only ones that refer to "Educraft":

- PM-E-I-007b, a single page showing images that appear to relate to businesses under the names "EDUTECH" and "EDUCRAFT". These are undated; there are no logos; and there is no evidence that the businesses provided any services in the market;
- PM-E-I-008, a single page showing the words "NEWTECH", "EDUTECH" and "EDUCRAFT" in different colours, some with the initial letter and others with a logo. Again, this is undated and there is no information on the context;
- PM-E-I-028, an undated page containing a 5x6 grid showing each individual stage in the production of the mark for which registration is sought;
- PM-E-I-031, PM E-I-037, PM-E-I-042, being undated screenshots in a variety of colours showing an 8-bit display with the words "WELCOME TO EDUCRAFT PIXEL GRAPHICS WORKSHOP". The simple version of the Educraft logo is used;
- PM-E-I-038, an undated screenshot showing the robot arm Educraft logo;
- PM-E-I-039, an undated screenshot showing the simple version of the logo which forms Mr Mainwaring's trade mark application;
- PM-E-I-043, an undated image of the simple version logo which appears to have been printed using a dot matrix printer;
- PM-E-I-044, an undated variant of the above;

- PM-E-I-045, PM E-I-046, PM-E-I-047, PM-E-I-048, PM-E-I-050, PM-E-I-051, being undated QR codes, with the word “EDUCRAFT” used in the title or the 8-bit logo appearing in the centre;
- PM-E-I-055, an undated image entitled “Army Enigma Emulator”. The simple version of the logo appears in the colourway shown in the photograph in paragraph 30 above;
- PM-E-I-057, a retweet by Mr Moore of a tweet from Educraft showing the photograph in paragraph 30 above. The retweet is dated 10 March 2017. One comment reads *“It’s a fantastic concept and programme you guys have come up with. Hope it goes well mate”*;
- PM-E-I-058, an email dated 25 May 2017 from Mr Moore to the National Museum of Computing showing the tweets above, along with a further tweet from Educraft about the same workshop. He states that he has been running an Enigma-based workshop;
- PM-E-I-059, PM-E-I-060, PM-E-I-078, being undated photographs showing Mr Mainwaring and others, with Mr Mainwaring wearing a T-shirt emblazoned with the simple version of the logo;
- PM-E-I-072, a QR code entitled “Retro Computer Coding – PowerUpVaders Workshop”. The simple version of the logo is in the centre. The web address at the bottom contains the string of letters “pu\_lon17”, which may mean that this relates to the 2017 PowerUp London event;
- PM-E-I-073, an image of, and text about, Mr Mainwaring, showing him wearing a T-shirt emblazoned with the simple version of the logo. This evidence has already been filed by Mr Moore in Exhibit DM7 to his second witness statement;
- PM-E-I-075, an image showing Mr Moore at Power Up wearing a T-shirt emblazoned with the simple version of the logo. This evidence has already been filed by Mr Moore in Exhibit DM5 to his second witness statement;
- PM-E-I-077, an undated screenshot showing the blue logo with text explaining the services offered;

- PM-E-I-079 and PM-E-I-080, two Science Museum contractor’s passes, one undated and one dated 29 October 2017, marked with Mr Mainwaring’s name and giving his company as “EGL/EDUCRAFT”;
- PM-E-I-081, an undated photograph showing the Educraft logo T-shirt and a selection of security passes. The word “EDUCRAFT” can just about be identified on the passes from the Science Museum, but on no others;
- PM-E-I-082, a message from Mr Moore dated 17 August 2021, in which he says *“Btw I’ve thought more about what you said last Tuesday and I accept pretty much everything you’ve said. I’d forgotten all about the Edutech stuff, and if like you say you raised it in late 2016, then despite Freya coming up with the Educraft name in January 2017, it must have been clearly prompted by me mentioning your Edutech idea.”* There is nothing to tell me what was said “last Tuesday”, so the context of this statement is not clear. It falls short of proving that Mr Mainwaring is the author of the simple version of the logo.

62. Having reviewed all these items, it was not clear to me how they were material to the issues that are to be decided in these proceedings. Mr Mainwaring was therefore asked on 2 August 2024 to provide an explanation and informed that I would take a decision during the course of the following week on whether the additional evidence would be admitted (i.e. by 9 August 2024). No response was received and so I therefore applied the *Renaissance Property* factors to what I had in front of me:

The materiality of the evidence in question

I considered that the relevance of the exhibits to the issues to be decided was unclear.

Justice and fairness of subjecting the opposite party to the burden of the evidence in question

I considered that the proceedings were at a very late stage and that Mr Mainwaring had not provided me with compelling reasons why the evidence had not been filed earlier. He had been aware of the allegation that the evidence was fabricated as early as February 2024. If I were to admit the evidence at this stage, it would be unfair not to give Mr Moore the right to reply, thus increasing the costs of the proceedings and leading to further delay.

Whether the admission of the further evidence would prejudice the opposite party

As noted above, the proceedings were already at an advanced stage and at that point had been ongoing for 31 months.

The fairness to the applicant of excluding the evidence in question

The onus is on the party applying for the exercise of discretion to give compelling reasons for it. In my view, no such reasons had been given.

63. The Tribunal therefore wrote to Mr Mainwaring on 9 August 2024, refusing to admit the evidence and setting a period of 14 days in which to request a resumption of the hearing. On 13 August 2024, Mr Mainwaring emailed to say that he was surprised (“to say *the least*”) that the additional evidence had been refused and said that he had been away from his computer for 10 days. He added that he would be speaking to someone at CITMA and then would try to address all the issues in the emails that had been received while he was away. No follow-up email was received. On 23 August, he notified the Tribunal that he wished to resume the hearing and a date was set of 2 October 2024.

*The hearing of 2 October 2024*

64. At the hearing, Mr Mainwaring expressed himself to be extremely disappointed that he was not able to rely on the additional evidence that he had wanted to be admitted. I explained that it had not been clear how any of the images were relevant to the case. Mr Mainwaring said that the reason he had not filed them earlier was that he did not understand the issues around goodwill. Later, he said that he hoped the fact that he was a lay person acting on his own would be taken into account.<sup>33</sup>

65. The Tribunal is required to remain impartial between the parties. Section 1.7.1. of the Trade Marks Manual<sup>34</sup> concerns litigants in person and explains that the Tribunal is unable to advise litigants. It quotes from *Barton v Wright Hassall LLP* [2018] UKSC 12, where Lord Sumption said:

“18. Turning to the reasons for Mr Barton’s failure to serve in accordance with the rules, I start with Mr Barton’s status as a litigant in person. In current

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<sup>33</sup> Transcript of hearing of 4 October 2024, pages 25-26.

<sup>34</sup> <https://www.gov.uk/guidance/trade-marks-manual/tribunal-section>.

circumstances any court will appreciate that litigating in person is not always a matter of choice. At a time when the availability of legal aid and conditional fee agreements have been restricted, some litigants may have little option but to represent themselves. Their lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court. The overriding objective requires the courts so far as practicable to enforce compliance with the rules: CPR rule 1.1(1)(f). The rules do not in any relevant respect distinguish between represented and unrepresented parties. In applications under CPR 3.9 for relief from sanctions, it is now well established that the fact that the applicant was unrepresented at the relevant time is not in itself a reason not to enforce rules of court against him: *R (Hysaj) v Secretary of State for the Home Department* [2015] 1 WLR 2472, para 44 (Moore-Bick LJ); *Nata Lee Ltd v Abid* [2015] 2 P & CR 3. At best, it may affect the issue 'at the margin', as Briggs LJ observed (para 53) in the latter case, which I take to mean that it may increase the weight to be given to some other, more directly relevant factor. It is fair to say that in applications for relief from sanctions, this is mainly because of what I have called the disciplinary factor, which is less significant in the case of applications to validate defective service of a claim form. There are, however, good reasons for applying the same policy to applications under CPR rule 6.15(2) simply as a matter of basic fairness. The rules provide a framework within which to balance the interest of both sides. That balance is inevitably disturbed if an unrepresented litigant is entitled to greater indulgence in complying with them than his represented opponent. Any advantage enjoyed by a litigant in person imposes a corresponding disadvantage on the other side, which may be significant if it affects the latter's legal rights, under the Limitation Acts for example. Unless the rules and practice directions are particularly inaccessible or obscure, it is reasonable to expect a litigant in person to familiarise himself with the rules which apply to any step which he is about to take."

66. It then refers to *EDF Energy Customers Ltd v Re-Energized Ltd* [2018] EWHC 652 (Ch), in which HHJ Matthews, sitting as a Judge of the High Court, considered the judgment of the Supreme Court, along with other authorities, and summarised the following principles at [37]:

“1. There is a general duty on tribunals to assist litigants, depending on the circumstances, but it is for the tribunal to decide what this duty requires in any particular case and how best to fulfil it, whilst remaining impartial.

2. The fact that a litigant is acting in person is not in itself a reason to disapply procedural rules or orders or directions, or excuse non-compliance with them.

3. The granting of a special indulgence to a litigant in person may be justified where a rule is hard to find or it is difficult to understand, or it is ambiguous.

4. There may be some leeway given to a litigant in person at the margins when the court is considering relief from sanctions or promptness in applying to set aside an order.”

67. In my view, Mr Mainwaring has had several opportunities afforded him to seek to file additional evidence. I have already set out how, after the Tribunal received his email saying that he felt he needed to file evidence to respond to submissions made by Mr Moore, he was asked to explain what he wanted to file and why as soon as possible. However, he did not respond to this email. He was also asked to explain how the documents he sent to the Tribunal after the July hearing were relevant to the case. Mr Mainwaring stated that he had been unable to respond to this request as he was away from his computer for a prolonged period of time. While litigants in person have to manage their involvement in proceedings along with a range of other calls upon their time, it is important to be able to receive communications about the case. Mr Mainwaring had already been pointed towards the *Property Renaissance* criteria for the admission of additional evidence. In my view, granting further indulgences risked the impartiality of the Tribunal and would have put the other side at a disadvantage, in further prolonging the proceedings.

68. During both hearings, Mr Mainwaring raised issues that went beyond the specific trade mark issues that are within the remit of this Tribunal. However, I did indicate that I would say something about the issue that was of most concern to Mr Mainwaring, namely, that Mr Moore submitted that he had fabricated some of the evidence. This is a serious allegation and, if made, should be supported by compelling evidence. In his evidence in reply, Mr Moore stated:

“18. Philip Mainwaring includes a document at Exhibit PM01 which he claims is an early version of an Educraft logo that he had shown me. At **Exhibit DM3** I enclose a copy of a brochure that my associate [JL] produced in June/July 2019. I also enclose an email to me from [JL] dated 21 June 2019 with the first draft of the brochure, a copy of the first draft is also enclosed.

19. Philip Mainwaring would have had access to the brochure in its final version once released at one of the Educraft events that we ran. Philip Mainwaring has copied the text and has put this in his witness statement at Exhibit PM01 which has a date of 27/12/2016. It is therefore clear that the evidence has been fabricated. At **Exhibit DM4** I enclose a copy of an email that I sent to Philip Mainwaring on 04<sup>th</sup> October 2019 prior to an event with a copy of the brochure attached to the email. A copy of the brochure is also enclosed.”

69. Mr Mainwaring confirmed that Exhibit PM01 had been created on 27 December 2016. However, at the second hearing, he admitted that it was possible that the original images in this and other files might have been replaced with later ones, without affecting the recorded date of creation. He said that *“My filing system is completely messy. Things get overwritten and this is one of the many ways that time stamps can be wrong.”*<sup>35</sup> I consider this to be a plausible explanation on the basis of the material I have before me and the submissions made at the hearing. I have no reason to believe that Mr Mainwaring set out to fabricate evidence. It is entirely possible that the content of files may have been overwritten. While this weakens the evidence filed by Mr Mainwaring, I do not believe that he has deliberately fabricated it.

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<sup>35</sup> Transcript of 2 October 2024 hearing, page 17.

## DECISION

### Opposition No. 430013 to Mr Mainwaring's Application

#### Section 5(4)(b)

70. Section 5(4)(b) of the Act is as follows:

“A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented–

[...]

(b) by virtue of an earlier right other than those referred to in subsections (1) to (3) or paragraph (a) or (aa) above, in particular by virtue of the law of copyright, or the law relating to industrial property rights.

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of ‘an earlier right’ in relation to the trade mark.”

71. In deciding this ground, I must address the following questions:

- Is the earlier mark a work under the Copyright, Designs and Patents Act 1988 (“CDPA”) and therefore capable of being protected by copyright?
- Who is the owner of the work and when was it created?
- Does the work meet the qualification criteria for copyright protection?
- Would use of the contested mark constitute an infringement of any copyright?

*Whether the earlier mark is a work under the CDPA*

72. Section 1 of the CDPA states that:

“Copyright is a property right which subsists in accordance with this Part in the following descriptions of work–

- (a) original literary, dramatic, musical or artistic works,
- (b) sound recordings, films or broadcasts, and
- (c) the typographical arrangement of published editions.”

73. Section 4 of the CDPA is as follows:

“(1) In this Part ‘artistic work’ means-

- (a) a graphic work, photograph, sculpture or collage, irrespective of artistic quality,
- (b) a work of architecture being a building or a model for a building, or
- (c) a work of artistic craftsmanship.

(2) In this Part –

...

‘graphic work’ includes –

- (a) any painting, drawing, diagram, map, chart or plan, and
- (b) any engraving, etching, lithograph, woodcut or similar work;

...”

74. In *Griggs Group Ltd v Evans*, [2003] EWHC 2914 (Ch), Peter Prescott QC, as a deputy judge of the High Court, said:

“18. ... a drawing is capable of being a ‘work’. So if an artist uses his skill and labour to draw a word or phrase in a stylised way, as in the case of a logo, his drawing is capable of being an original work, protected by copyright law.”

75. I consider that the simple version of the logo is a graphic work and capable of being protected by copyright.

#### *Ownership of the work and its creation*

76. The parties have presented contradictory arguments on this point, and have challenged the veracity of each other’s evidence. However, I bear in mind that I should not resort to the burden of proof unless I cannot reasonably make a finding in relation

to the issue of ownership on the basis of the available evidence: see *Williams & Anor v Canaries Seaschool SLU*, BL O/074/10 at [21].

77. Later in the same case, Mr Geoffrey Hobbs QC, sitting as the Appointed Person, said:

“34. ... it must be remembered that the purpose of Registry proceedings is not to punish or deter, but to deal with issues arising in relation to the registration of trade marks. Such proceedings are civil proceedings. And in civil proceedings the standard of proof with regard to things which are alleged to have been said and done is proof on the balance of probabilities. *‘The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not’*: *In re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563 (HL) at p. 586 per Lord Nicholls of Birkenhead.

...

38. ... it is not obligatory to regard the written evidence of any particular witness as sufficient, in the absence of cross-examination, to establish the fact or matter (s)he was seeking to establish. That is brought out by the following observations of Mann J. in *Matsushita Electric Industrial Co. v Comptroller-General of Patents* [2008] EWHC 2071 (Pat).

‘24. As I have said, the act of being satisfied is a matter of judgment. Forming a judgment requires the weighing of evidence and other factors. The evidence required in any particular case where satisfaction is required depends on the nature of the inquiry and the nature and purpose of the decision which is to be made. For example, where a tribunal has to be satisfied as to the age of a person, it may sometimes be sufficient for that person to assert in a form or otherwise what his or her age is, or what their date of birth is; in others, more formal proof in the form of, for example, a birth certificate will be required. It all depends who is asking the question, why they are asking the question, and what is going to be done with the answer when it is given. There can be no

universal rule as to what level of evidence has to be provided in order to satisfy a decision-making body about that of which that body has to be satisfied.’

39. Thirdly, when assessing the evidence in the witness statements it is appropriate to do so from the perspective identified by Lord Bingham of Cornhill in *Fairchild v Glenhaven Funeral Services Ltd* [2002] UKHL 22; [2003] 1 AC 32 (HL) at paragraph [13]:

‘... And I think it is salutary to bear in mind Lord Mansfield’s aphorism in *Blatch v Archer* (1774) 1 Cowp 63 at 65, 98 ER 969 at 970 quoted with approval by the Supreme Court of Canada in *Snell v Farrell*:

“It is certainly a maxim that all evidence is to be weighed according to the proof which it was in the power of one side to have produced, and in the power of the other to have contradicted.””

78. As noted above, Mr Mainwaring does not dispute the fact that Mr Moore engaged the services of a graphic designer and that he discussed logo ideas with others. He said at the first hearing:

“... it might be a bit of a laboured metaphor, but I watched a film once with James Mason and he says: ‘Fact it may be but truth it is not,’ and a lot of the stuff in Dave Moore’s narrative is factual.

I agree that he did get that logo commissioned. He might have even had the conversation with Freya, but he admits in a video, in an audio recording I had, that he was wrong about that, you know. Yes, I mean, my narrative, if I was to submit all this extra stuff, my narrative would support Dave Moore’s facts and my facts, whereas Dave Moore’s narrative supports his facts but does not support mine.”<sup>36</sup>

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<sup>36</sup> Transcript of the first hearing, pages 11-12.

79. At this point, I note that there were no video or audio recordings in the additional evidence that Mr Mainwaring had requested be admitted into the proceedings. I have included this extract from the transcript to show that Mr Mainwaring was not denying the existence of the emails from Mr Moore; rather, I understood him to be challenging the way those facts were being put together to create a picture. Consequently, I accept that Mr Moore was involved in discussions with a graphic designer about a logo.



80. It is important to note here that, where a graphic work is commissioned, the individual who creates it is the first owner of any copyright within that work. Frequently, the ownership of copyright may be assigned to the individual or organisation that commissioned the work, but there is no evidence to indicate that this was the case here. Therefore, I cannot find that Mr Moore was the owner of work that was created by the graphic designer at the date Mr Mainwaring made his application.

81. However, Mr Moore's version of events is that he himself came up with the logo that Mr Mainwaring wishes to register, because he was looking for something simpler than the logos that the graphic designer had produced, that could be used on vintage computers or T-shirts. To support his account, he has filed copies of emails, messages and images with time and date stamps from Dropbox. These include a message to Mr Mainwaring asking him to digitise it, and a reply from Mr Mainwaring saying that he had got the colours wrong. In a conversation from Facebook Messenger dated 8 August 2017, Mr Mainwaring tells Mr Moore that "*personally I still prefer your original staggered diagonal white and green*".<sup>37</sup> He does not use the word "our", "my" or even "the", but "your".

82. It is instructive to compare this simple logo with works created by the graphic designer:

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<sup>37</sup> Exhibit DM1 to Mr Moore's third witness statement.

<p><b>The Simple Logo</b></p>	
<p><b>The Graphic Designer's Works</b></p>	<p>— Educraft Logo concepts-02.jpg</p> 

83. I consider that there are sufficient differences between them for the simple logo to be an original work.

84. In his statutory declaration, Mr Mainwaring states that he is able to prove his claims to ownership of the simple version of the logo. However, in my view, the nearest he comes to this are Exhibits PM01-PM17, with date stamps from November and December 2016. At the second hearing, Mr Mainwaring confirmed that these are the dates on which the files were created. However, he cast doubt on the value of his own evidence when he admitted that it was possible that, although the files had been created on those dates, the original images might have been replaced with later ones, and that this would not affect the recorded date of creation. He also admitted that this would not happen in the case of Dropbox files. Furthermore, Mr Mainwaring has filed no evidence, for example, in the form of emails that could demonstrate that he had

shown an earlier version of the simple logo to Mr Moore. Had such evidence existed, it should have been within Mr Mainwaring's power to produce it.

85. On the basis of the evidence before me, I consider that it is probable that Mr Moore himself produced the simple logo and that he is therefore the author, and owner, of the work.

*Whether the work meets the qualification criteria for copyright protection*

86. Section 153 of the CDPA states that copyright does not subsist in a work unless certain conditions are met.

87. Section 154 of the CDPA states that:

“1. A work qualifies for copyright protection if the author was at the material time a qualifying person, that is-

(a) a British citizen, a British Dependent Territories citizen, a British National (Overseas), a British Overseas citizen, a British subject or a British protected person within the meaning of the British Nationality Act 1981 ...

...

4. The material time in relation to a literary, dramatic, musical or artistic work is-

(a) in the case of an unpublished work, when the work was made or, if the making of the work extended over a period, a substantial part of that period;

(b) in the case of a published work, when the work was first published or, if the author had died before that time, immediately before his death.

...”

88. The work on which Mr Moore relies was not published. This is because the colour combination used on the monitor screens and T-shirts was not identical. Therefore,

the material time is the date of creation of the work. Mr Moore states that he was a British citizen at this point. This has not been disputed by Mr Mainwaring.

*Whether use of the mark would constitute an infringement of the copyright in the work*

89. Section 16 of the CDPA is the relevant legislation and reads as follows:

“(1) The owner of the copyright in a work has, in accordance with the following provisions of this Chapter, the exclusive right to do the following acts in the United Kingdom –

- (a) to copy the work (see section 17);
- (b) to issue copies of the work to the public (see section 18);
- (ba) to rent or lend the work to the public (see section 18A);
- (c) to perform, show or play the work in public (see section 19);
- (d) to communicate the work to the public (see section 20);
- (e) to make an adaptation of the work or do any of the above in relation to an adaptation (see section 21);

and those acts are referred to in this Part as the ‘acts restricted by the copyright’.

(2) Copyright in a work is infringed by a person who without the licence of the copyright owner does, or authorises another to do, any of the acts restricted by the copyright.

(3) References in this Part to the doing of an act restricted by the copyright in a work are to the doing of it –

- (a) in relation to the work as a whole or any substantial part of it, and
- (b) either directly or indirectly;

and it is immaterial whether any intervening acts themselves infringe copyright.”

90. Section 17 of the CDPA provides that:

“(1) The copying of the work is an act restricted by the copyright in every description of copyright work; and references in this Part to copying and copies should be construed as follows.

(2) Copying in relation to a literary, dramatic, musical or artistic work means reproducing the work in any material form.

This includes storing the work in any medium by electronic means.

(3) In relation to an artistic work copying includes the making of a copy in three dimensions of a two-dimensional work and the making of a copy in two dimensions of a three-dimensional work.

...

(6) Copying in relation to any description of work includes the making of copies which are transient or are incidental to some other use of the work.”

91. In *Designers Guild Ltd v Russell Williams (Textiles) Ltd (t/a Washington DC)*, [2000] 1 WLR 2416, Lord Millett set out the approach to assessing whether artistic copyright has been infringed at [2425]-[2426]. He said:

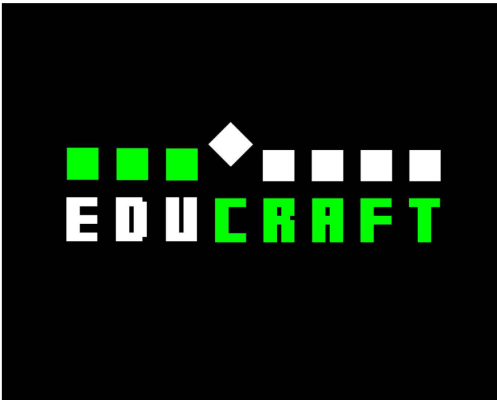
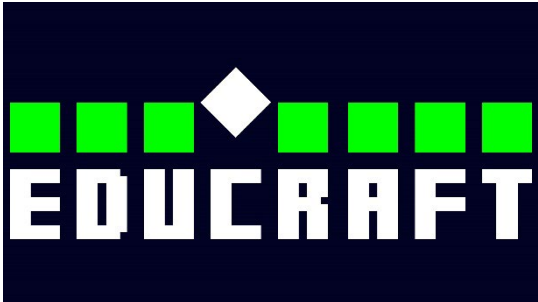
“The first step in an action for infringement of artistic copyright is to identify those features of the defendant’s design which the plaintiff alleges to have been copied from the copyright work. The court undertakes a visual comparison of the two designs, noting the similarities and the differences. The purpose of the examination is not to see whether the overall appearance of the two designs is similar, but to judge whether the particular similarities relied on are sufficiently close, numerous or extensive to be more likely to be the result of copying than of coincidence. It is at this stage that similarities may be disregarded because they are too commonplace, unoriginal or consist of general ideas. If the plaintiff demonstrates sufficient similarity, not in the works as a whole but in the features which he alleges have been copied, and establishes that the defendant had prior access to

the copyright work, the burden passes to the defendant to satisfy the judge that, despite the similarities, they did not result from copying.

...

Once the judge has found that the defendant’s design incorporates features taken from the copyright work, the question is whether what has been taken constitutes all or a substantial part of the copyright work. This is a matter of impression, for whether the part taken is substantial must be determined by its quality rather than its quantity. It depends upon its importance to the copyright work. It does not depend upon its importance to the defendant’s work, as I have already pointed out. The pirated part is considered on its own (see *Ladbroke (Football) Ltd v William Hill (Football) Ltd* [1964] 1 WLR 273, 293, *per* Lord Pearce) and its importance to the copyright work assessed. There is no need to look at the infringing work for this purpose.”

92. The protected work and Mr Mainwaring’s application are shown in the table below:

Protected Work	Mr Mainwaring’s application
	

93. The two logos are identical, except that the final four blocks are white in the protected work and green in Mr Mainwaring’s application and that the word “EDUCRAFT” is shown in white and green in the protected work but solely in white in Mr Mainwaring’s application. The basic layout of the logo is the same, with the same configuration of blocks above the word EDUCRAFT, which is a coined word not in the dictionary. Both logos contain a rotated and elevated block above the letter “C”.

94. Mr Moore has established that Mr Mainwaring had access to the protected work before he made his trade mark application. I consider that the works are sufficiently similar that, in the light of Mr Mainwaring's access to the work, there is a *prima facie* case that the similarities result from copying the earlier work. The burden therefore shifts to Mr Mainwaring who must persuade me that there was no copying. Mr Mainwaring's defence of the allegations rests in his claims to ownership of the simple logo, and I have already found that the evidence he has filed does not support these claims. I therefore find that the use of this mark is liable to be prevented by the law of copyright.

95. The opposition to Mr Mainwaring's application succeeds under section 5(4)(b).

### **Sections 5(4)(a) and 3(6)**

96. I have already noted that Mr Moore's request to add the above grounds to his original pleadings was successful, and that Mr Mainwaring was invited to amend his defence to cover these grounds. However, he simply refiled his original defence.

97. The need for pleadings to be fully particularised was emphasised by Professor Phillip Johnson, sitting as the Appointed Person, in *SkyClub Trade Mark*, BL O/044/21, at [23]-[28]. He quoted Lord Hoffmann's statement in *Barclays Bank Plc v Boulter* [1991] 1 WLR 1919 at [1923]:

“The purpose of the pleadings is to define the issues and give the other party fair notice of the case which he has to meet.”<sup>38</sup>

98. This applies as much to defences as it does to the statements of case filed by opponents. Tribunal Practice Notice (“TPN”) 4/2000 contains the following guidance on the content of counterstatements:

“19. A defence should comment on the facts set out in the statement of case and should state which of the grounds are admitted or denied and those which the applicant is unable to admit or deny but which he requires the opponent to prove.

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<sup>38</sup> Quoted at [26] of BL O/044/21.

20. The counter-statement should set out the reasons for denying a particular allegation and if necessary the facts on which they will rely in their defence. For example, if the party filing the counter-statement wishes to refer to prior registrations in support of the application then, as above, full details of those registrations should be provided.”

99. In *SkyClub*, Professor Johnson held that it had been wrong for the Hearing Officer to proceed on the basis that issues were in play, even though the applicant had been silent on them in its counterstatement. This is because the Court of Appeal has ruled in *Magdeev v Tssvetkov* [2019] EWCA Civ 1802 that a court cannot proceed to consider something requiring an application without a formal application having been made. Rule 62(1)(e) of the Trade Marks Rules provides that a Hearing Officer may, on application from the relevant party, allow a statement of case or counterstatement to be amended. It was under this power that I allowed Mr Moore to amend his statement of case and add claims under sections 5(4)(a) and 3(6) of the Act.

100. Rule 62(1)(a) gives a Hearing Officer the power to request clarifications from a party. I have considered whether it would be appropriate to issue another invitation to Mr Mainwaring to amend his counterstatement. I bear in mind that he has already had the opportunity to do so when Mr Moore’s additional grounds were accepted. Mr Mainwaring did not say anything at the hearing that appeared to me to be an explicit denial of either of these claims. On numerous occasions, he referred to his ownership of the course material, but I do not consider that this is the same thing as ownership of the goodwill in a business.

101. Consequently, I take the view that the sections 5(4)(a) and 3(6) claims have not been denied, and have therefore been admitted.

### **Opposition No. 434518 to Mr Moore’s Application**

102. This opposition is made under section 5(4)(b) only of the Act. I do not need to repeat the legislation, which can be found earlier in my decision.

103. The logo that Mr Mainwaring had applied to be registered as a series of trade marks is a graphic work and capable of being protected by copyright. The next hurdle that Mr Mainwaring must get over is to show that he is the owner of the work. I have

already dealt with these claims in paragraphs 75-81 above and found that the evidence filed does not support these claims. Consequently, Mr Mainwaring's opposition to Mr Moore's application fails.

## **OUTCOME**

104. Mr Moore's opposition is successful and Application No. 3714075 is, subject to a successful appeal, refused registration.

105. Mr Mainwaring's opposition has failed and Application No. 3737668 may, subject to a successful appeal, proceed to registration.

## **COSTS**

106. Mr Moore has been successful in these proceedings and is entitled to a contribution towards his costs. Rule 67 of the Trade Marks Rules 2008 states that:

"The registrar may, in any proceedings under the Act or these Rules, by order award to any party such costs as the registrar may consider reasonable, and direct how and by what parties they are to be paid."

107. Costs are generally awarded on the basis of an official scale, but are unlikely to reimburse the total cost of the proceedings, as costs are intended to be a contribution rather than full compensation. The scale governing these proceedings is the one set out in TPN 2/2016. In making an award of costs, I am required to act fairly. Mr Moore has been the successful party in these proceedings, and the fact that Mr Mainwaring is a litigant in person is not a reason to decline to award costs to Mr Moore. Consequently, I make the following award:

*£300 for preparing a statement and considering the other side's statement;*

*£1000 for preparing evidence and considering and commenting on the other side's evidence;*

*£300 for preparing written submissions in lieu of a hearing;*

*£200 for official fees for filing an opposition to Mr Mainwaring's application.*

***£1800 in total***

108. I therefore order Philip Mainwaring to pay David Moore the sum of £1800. This sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

**Dated this 27<sup>th</sup> day of August 2025**

**Clare Boucher  
For the Registrar,  
Comptroller-General**

## **ANNEX A**

### **Specification for Application No. 3714075**

#### Class 41

Academies [education]; Academy education services; Adult education services; Adult training; Advanced training; Arranging of educational events; Awarding of educational certificates; Career and vocational training; Coaching [training]; Computer assisted education services; Computer based educational services; Computer based training; Computer education training; Computer education training services; Computer based training; Computer education training; Computer education training services; Computer training; Computer training services; Computerised training; Conducting of educational conferences; Conducting of educational events; Conducting training seminars; Conducting workshops [training]; Continuous training; Developing educational manuals; Dietary education services; Dissemination of educational material; Education; Education (Information relating to -); Education academy services; Education and instruction; Education and instruction services; Education and training; Education and training consultancy; Education and training services; Education examination; Education in road safety; Education information; Education information services; Education services; Education, entertainment and sports; Education, teaching and training; Educational and teaching services; Educational and training services; Educational assessment services; Educational consultancy; Educational consultancy services; Educational courses (Provision of -); Educational demonstrations; Educational examination; Educational examination services; Educational information; Educational information services; Educational institute services; Educational instruction; Educational research; Educational seminars; Educational services; Educational services for providing courses of education; Educational services provided by institutes of further education; Educational services provided by institutes of higher education; Educational testing; Electronic data processing training; Engineering training services; English language education services; Examination services (Educational -); Foreign language education services; Further education; Health education; Higher education services; Hire of educational apparatus; Industrial training; Information (Education -); Information about education; Information on education; Instructional and training services; Issuing of educational

awards; Language training; Legal education services; Life coaching (training); Management education services; Management training services; Meditation training; Musical education services; Online education services; Organisation of educational events; Organisation of educational seminars; Organisation of educational shows; Organisation of training; Organisation of training seminars; Organising of commercial training; Organising of education conventions; Organising of education exhibitions; Organising of educational conferences; Organising of educational congresses; Organising of educational lectures; Organising of educational seminars; Organization of educational conferences; Organization of educational congresses; Organization of educational symposia; Personal coaching [training]; Personal training services; Personnel training; Play schemes [entertainment/education]; Postgraduate training courses; Practical training; Practical training [demonstration]; Practical training services; Primary education services; Production of training films; Production of training videos; Providing courses of training; Providing educational demonstrations; Providing information about education; Providing of education; Providing of training; Providing online training seminars; Providing training; Provision of education courses; Provision of educational examinations; Provision of educational information; Provision of physical education; Provision of training; Provision of training courses; Publication of educational texts; Publishing of educational material; Publishing of educational matter; Rental of educational materials; Rental of recorded education; Rental of training simulators; Residential education courses; Residential training courses; Road safety training; Sales training services; Second language educational services; Secondary school educational services; Services of schools [education]; Setting of educational standards; Singing education; Staff training services; Symposiums relating to education; Teacher training services; Teaching of diet education; Team building (education); Technological education services; Training; Training (Practical -) [demonstration]; Training and further training consultancy; Training and instruction; Training consultancy; Training courses; Training facilities (Provision of -); Training for automobile competitions; Training in computer programming; Training in electronics; Training in philosophy; Training in yoga; Training of magicians; Training of teachers; Training related to nutrition; Training services; University education services; Vocational education; Vocational skills training; Vocational training; Vocational training services; Voice training; Wine tasting services (education); Wine tastings [educational

services]; Wood working training; Workshops for educational purposes; Written training courses.

## **ANNEX B**

### **Specification for Application No. 3737668**

#### Class 41

Workshops and events relating to STEM/STEAM (science, technology, engineering, arts and maths); Education; Educational research; Education demonstrations; Educational testing; Further education; Music education; music education; Educational instruction; Educational consultancy; Physical education; Singing education; Educational seminars; Education services; Educational services; Education information; Educational information; Health education; Academies [education]; Vocational education; Information (Education -); Residential education courses; Primary education services; Medical education services; Business educational services; Academy education services; Information on education; Educational services for providing courses of education; Educational services provided by institutes of higher education; Educational services provided by institutes of further education; Musical education services; Physical health education; Higher education services; Pre-school education; Technological education services; Education and training; Academy services (Education -); Educational examination services; Physical education services; Sports education services; Online education services; Developing educational manuals; Physical education instruction; Educational institute services; Club education services; University education services; Career counselling [education]; Boarding school education; Team building (education); Adult education services; Educational consultancy services; Educational advisory services; Providing of education; Education academy services; Educational information services; Education information services; Sporting education services; Computer education training; Educational assessment services; Management education services; Education and instruction; Dietary education services; Providing educational demonstrations; Examination services (Educational -); Information about education; Physical education services; Educational certificate services, namely, providing training and educational examination; Conducting of educational conferences; Teaching of diet education; Organising of education exhibitions; Computer assisted education services; Rental of educational materials; Organising of educational congresses; Organisation of educational seminars; Educational and training services;

Services of schools [education]; Provision of educational information; Education (Information relating to -); Education and training consultancy; Organisation of educational events; Arranging of educational events; Publishing of educational material; Publishing of educational matter; Publication of educational texts; Organising of educational lectures; Secondary school educational services; Organization of educational symposia; Organization of educational conferences; Organising of education conventions; Hire of educational apparatus; Workshops for educational purposes; Education and training services; Organisation of educational shows; Education and instruction services; Provision of physical education; Physical fitness education services; Rental of recorded education; English language education services; Organising of educational conferences; computer based educational services; Provision of education courses; Educational courses (Provision of -); Computer education training services; Organization of educational congresses; Play schemes [entertainment/education]; Nursery school services [educational]; Dissemination of educational material; Organising of educational seminars; Symposiums relating to education; Education, entertainment and sports; Provision of educational examinations; Providing information about education; Educational and teaching services; Conducting of educational events.