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Fax - Urgent

To: Your Ref: ARK/MET022/127

Fax No: 01582 457 900

Date: 30.10.12

Pages: 56 (including this one)

Re: Ager/Metropolitan International Schools

From: MLS.

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Date: 30 October 2012

Taylor Walton LLP
DX: 130460
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By DX and by Fax: 01582 457900
And by Email

URGENT

Dear Sirs

Our Client: Mr Robert Ager
Your Client: Metropolitan International Schools Limited
Re: Claim No: HQ12X0240

We attach, by way of service, our client's Defence in accordance with the recent Order made by Master Eyre.

Please acknowledge safe receipt.

Yours faithfully

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CLAIM NO: HQ12X02409

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

BETWEEN:

METROPOLITAN INTERNATIONAL SCHOOLS LTD

(t/a SkillsTrain)

Claimant

-and-

ROBERT AGER

Defendant

DEFENCE

1. The Claimant has served "Particulars of Claim Short Form" (hereafter PoC SF) and Particulars of Claim. Insofar as there are inconsistencies between those statements of case, the Defendant responds to the statement of case as set-out in the Particulars of Claim save that the Defendant contends that he is not required to plead to the following aspects of the Claimant's case as set out in the Particulars of Claim:
 - 1.1 The purported claim for "*damages representing the irrecoverable costs of proceedings against the Claimant incited by the Defendant*" because no cause of action is pleaded in the PoC SF in relation to this alleged unparticularised loss.
 - 1.2 The video referred to in paragraph 21 of the Particulars of Claim which is not complained of in the POC SF and is not particularised in the Particulars of Claim.
 - 1.3 The additional "natural and ordinary" meaning in paragraph 30 the Particulars of Claim which is not complained of in the POC SF and is a meaning said to be "deployed" by the Defendant.

2. Unless stated otherwise references to paragraph numbers are to the corresponding paragraph of the Particulars of Claim.

The Claimant

3. No admissions are made as to paragraph 1. Further the Claimant's case is inconsistent: in paragraph 1 PoC SF the Claimant asserts that it provides distance learning courses and other types of learning courses to students "*through a variation of different Corporate entities*"; in paragraph 1 of the Particulars of Claim the Claimant asserts that these learning courses are provided through "*various trading names and brands*". The Claimant previously traded under the name Scheidegger MIS and/or Scheidegger, and in 2007 to 2009 its course documents stated "*in association with Scheidegger Training*". The corporate status of Scheidegger or its connection to the Claimant is unknown. From 2004 onwards under the name SkillsTrain and also trades or has traded under the name Train4TradeSkills.
4. The Claimant, via its "CEO" Jan Telensky is or has been linked to the following companies:
 - 4.1 Career Development Finance Ltd ('CDF Ltd'): Mr Telensky is the director and sole shareholder of CDF Ltd. He resigned as a director on or around 14 October 2008 and was reappointed in January 2009. In its accounts filed for the year ending 31 March 2010 the ultimate parent company of CDF Ltd was named as "Metropolitan Investments SRO" a company registered in the Czech Republic which is or was at the material time under the control of Mr Telensky.
 - 4.2 Multimedia (UK) Ltd: Mr Telensky is the director of this company.
 - 4.3 Yard Stick Media Ltd: from March 2007 to Jan 2011 Mr Telensky was a director of Yard Stick Media Ltd.

4.4 Skills2Learn Ltd: a company founded in August 2007. Mr Telensky is the director of this company.

4.5 Apprenticeship Training Ltd (ATL): the parent company of ATL is JT Consultancy Ltd. JT Consultancy Ltd shares the same registered address as CDF Ltd and Mr Telensky owns 100% of the shares in JT Consultancy Ltd.

5. In paragraph 11 of the Particulars of Claim the Claimant avers that Multimedia Computer Training Ltd (MCT) is a “*subsidiary*” of the Claimant. In a Part 18 Response dated 10 October 2012, the Claimant stated that the Claimant and MCT are “*trading partners*” and MCT “*provides a marketing and promotion service for the Claimant*” and the “*corporate structures are entirely different*”. No admissions are made to these averments as, pending disclosure and the clarification of the use of the word “subsidiary”, the precise relationship between MCT and the Claimant is not known to the Defendant. Neklan Herold is the controlling shareholder of MCT and the controlling shareholder of Multimedia (UK) Ltd of which Mr Telensky is a director (paragraph 4.2 above is repeated). In documents filed with Companies House MCT records the purchase of services from Multimedia (UK) Ltd:

5.1 During the year end 31 July 2009: £211,926

5.2 During the year end 31 July 2010: £175,754

5.3 During the year end 31 July 2011: £149,837

6. Mr Herold and Mr Telensky are also linked via a company Scheidegger Training Institute Europe s.r.o.

The Defendant

7. As to paragraph 2: the Defendant is a part-time support worker and part-time independent film maker and film analyst. Between September 2009 and April 2010 he was the Liverpool Branch Chairman for UKIP. It is admitted that the Defendant is the editor and controller of the website at <http://robager.hubpages.com>, (“the hubpages website”) and the owner author, publisher and editor of the website <http://www.collativelearning.com> (“the collative learning website”).

The background & relationship between the parties

The Enrolment

8. It is admitted that on 21 August 2007 the Defendant entered into an agreement with the Claimant pursuant to which the Defendant enrolled on the Claimant's Web Design Manager course. The Defendant was visited at home by one of the Claimant's "Course Advisors". It is averred that at all material times the Course Advisor was acting as the agent of the Claimant. The Defendant completed an Aptitude Test and was told by the Course Advisor that his scores were some of the highest he'd seen. The Course Advisor advised the Defendant that the Web Design Manager course would be the most appropriate course for the Defendant's abilities and that he would not find it particularly difficult (or words to that effect). The Course Advisor told the Defendant that the SkillsTrain and its courses were endorsed by all the "major IT companies" whose logos were featured on the information pack pages.

9. The Course Advisor gave the Defendant, (or the Defendant shortly afterwards received) various documents which included:
 - 9.1 a document headed "CIW Website Design Manager" which purportedly set out the training services which the Claimant agreed to provide; ("the Training Services document")
 - 9.2 a document headed "study guide"; ("the Study Guide")
 - 9.3 a document headed "Plan of the Course" CIW Website Design Manger Version 5." ("the Course Plan")
 - 9.4 a "welcome letter" signed by the "Director" which stated: "Within twenty-one days of enrolment the college will send you your Tutor's details. Please remember to read your Study Guide before you start your course..."
 - 9.5 a "guarantee certificate" signed by the Course Advisor, and a leaflet explaining the Claimant's "Discretionary Benefit Payment Plan".

10. During the same visit, the Course Advisor told the Defendant that the whole course fee had to be paid for in full in one lump sum and offered to arrange a credit

agreement for the Defendant through CDF Ltd. On the same date as enrolment the Defendant signed a fixed sum loan agreement with CDF Ltd for the sum of £2925. The agreement was described as “a Credit Agreement regulated by the Consumer Credit Act 1974” Pursuant to this agreement the Defendant was to pay 36 monthly payments of £75 to CDF Ltd. The amount of credit £2850 was to be paid to the Claimant by CDF Ltd on the Advance Date. Accordingly, pursuant to that agreement the Claimant was to receive £2850 from CDF Ltd in advance payment for the entire course and the Defendant would thereafter make payments of £75 per month to CDF for 3 years. The Defendant also signed a document headed “Cardcharge Authority”. This document authorised the single payment of £75 to CDF Ltd.

11. The CDF Ltd agreement stated “*YOUR RIGHT TO CANCEL Once you have signed this agreement, you will have a short time in which you can cancel it. We will send you exact details of how and when you can do this.*” The Defendant did not receive notification of the Advance Date or details of how to cancel the agreement.
12. By letter dated 31 August 2007, 10 days after the date on which the Defendant signed the CDF Ltd agreement, the Claimant notified the Defendant that SkillsTrain had received payment in full for the course fee and his enrolment had been fully completed.
13. It is admitted that the written contract (a document headed “Enrolment Form”) contained clauses 6 and 7 as set out in paragraph 3 of the Particulars of Claim. However, the contract also stated “*Clause 6 above is applicable only to students who are not on credit terms*”. In the premises the Claimant is required to prove that the Defendant’s request to cancel the agreement was “*therefore out of time as provided for by the agreement*” as averred in paragraph 4 of the Particulars of Claim. Further, the Claimant’s letter dated 31 July 2009 stated:

“You may recall that at the time you chose your course, we offered you 21-days to consider whether this was the right study choice for you. Within this period we are happy to accept written requests to cancel, sent recorded delivery in line with the

terms and conditions of the college agreement. Once your course has started, we can of course no longer offer this facility”

14. In the same letter, the Claimant stated that *“the notice period for cancellation in the credit agreement”* was *“linked to the course agreement and has similarly expired.”* The credit agreement did not include a cancellation period, paragraph 11 above is repeated.

The cancellation

15. As to paragraphs 4 to 11:

15.1 Save that no admission is made as to whether the Defendant was out of time to cancel the course as provided for by the agreement, paragraph 13 above is repeated, paragraph 4 is admitted.

15.2 Paragraph 5 is admitted insofar as that paragraph includes a quote from the Defendant’s letter, (“the July 2009 letter”). The letter also contained an explanation of the Defendant’s dissatisfaction with the quality of the course manuals, the difficulty of the later modules of the course and the fact that the Defendant had to purchase or borrow cheaper off the shelf books which made a lot more sense than the Claimant’s course materials. The Claimant explained that the salesperson who sold him the course said that the Defendant would not find the course particularly difficult. The Defendant thereby reasonably believed that he had been mis-sold the course and requested a cancellation and a refund.

- 15.3 As to paragraph 6:

15.3.1 it is admitted that in the Defendant received a letter from the Claimant dated 31 July 2009 and in that letter the Claimant offered to arrange for a personal tutor to contact the Defendant but it is denied if it so alleged that a tutor did in fact contact the Defendant;

15.3.2 it is denied that the Defendant had given an “*unlawful notice of cancellation*” and accordingly it is denied that the letter of 31 July 2009 amounted to a rejection of the same.

15.4 The first sentence of paragraph 7 is admitted insofar as there was further correspondence between the parties but is otherwise denied. It is admitted that the Defendant’s letter dated 10 September 2009 contained the words selectively quoted in that paragraph, but it is denied that that the Defendant threatened to take the actions described therein “*if*” the cancellation was not processed and a full refund given. The Defendant will rely on the following facts and matters and the entirety of that letter:

15.4.1 The Defendant had notified the Claimant in a letter dated 17 August 2009 that if necessary, he would make his dissatisfaction with the enrolment procedure known to the “*appropriate watchdogs*” and via “*online forums*”. In that letter the Defendant set out the reasons for the two year gap in seeking the cancellation.

15.4.2 In the same letter the Defendant notified the Claimant that he had spoken to CDF Ltd and had been advised by CDF Ltd to resolve the matter with the Claimant and, if the matter was not resolved, to seek professional legal advice.

15.4.3 The Defendant telephoned the Claimant’s office in or around early September 2009 and spoke with Ian Simpson. Mr Simpson told the Defendant that he had not encountered any other requests for a cancellation of the course on the grounds that the Defendant had given.

15.4.4 On or around 10 September 2009 the Defendant carried out online research into SkillsTrain customer dissatisfaction and discovered several online complaints and a BBC Watchdog programme entitled “*Skills training under scrutiny*” broadcast or around 20 October 2008

("the BBC Watchdog programme") which contained various allegations about the Claimant including interviews with industry specialist who had made serious allegations about the quality of the Claimant's courses and whether the courses were backed by all of the companies claimed.

15.5 In light of this information, in his 10 September 2009 letter, the Defendant stated that he would "*allow one week for a response*" from the Claimant after which he would, in addition to the steps described in the quoted passages in paragraph 7: write to BBC Watchdog and write to CDF Ltd. The Defendant was not at this stage aware of the link between CDF Ltd and the Claimant.

15.6 In or around late September 2009, the Defendant discovered:

15.6.1 That on 22 August 2007 the Advertising Standards Agency had ruled that the Claimant's television advert was in breach of ASA TV Advertising Standards Code.

15.6.2 CDF Ltd's address was on the same street as the SkillsTrain office.

15.6.3 Jan Telensky was a director of CDF Ltd and had resigned his directorship 1 week before the broadcast of the BBC Watchdog programme, and taken up his directorship three months later.

15.7 On or around 2 October 2009, the Defendant contacted Liverpool Trading Standards by phone and letter in relation to his complaint.

15.8 On 2 October 2009, having received no substantive response to his letter of 10 September 2009 the Defendant wrote to CDF Ltd and the Claimant setting out the matters at paragraph 15.6 above and asked the Claimant for a response to his previous letter and information about the logos that were at that date featured on the SkillsTrain website and on the course materials

which the Defendant had received. The Defendant notified the Claimant that he was pursuing the matter with Liverpool Trading Standards.

15.9 On a date currently unknown to the Defendant, Liverpool Trading Standards contacted the Claimant in relation to the Defendant's complaint.

15.10 By letter dated 7 October 2009, the Claimant informed the Defendant that its position remained as before and the Defendant's request to cancel was not accepted. The Claimant did not respond to the Defendant's request for information about the logos. The Claimant stated that it had "*successfully prosecuted several companies and individuals*" in relation to online comments.

16. Paragraph 8 is denied. The Claimant's letter of 9 October 2009 was not an "*agreement*" to cancellation of the course. The letter contained an offer to cancel the course "*strictly*" on the basis of a breakdown of mutual trust without acceptance or admission of any liability on the part of the Claimant and subject to the Defendant agreeing inter alia:

"That as a result of this cancellation you will neither make, publish or in any way directly or indirectly encourage, incite or abet in the publication of any similar material whether directly, indirectly or otherwise."

17. The Claimant was thereby attempting to prevent the Defendant from publishing material about the Claimant, notwithstanding that the Claimant had made no attempt to respond to the Defendant's requests for clarification about its claims of accreditation or its use of logos.

18. The first sentence of paragraph 9 is admitted. The second sentence is admitted insofar as the Defendant's letter dated 20 October 2009 contained the quoted words. The Defendant will rely on the words in their proper context which make clear that the Defendant's intent to publish was based on his belief that "*other dissatisfied customers have a right to be informed about the illegality of the Skillstrain enrolment process*". Further, the Defendant set out the reasons he rejected the offer

including the Claimant's failure to respond to his request for information about the logos.

19. The first sentence of paragraph 10 is admitted. In that letter the Claimant contended that the issues raised by the Defendant "*relate to marketing matters, which are dealt with by a marketing company, [MCT], contracted with us.*" The Claimant stated that it had referred the complaint to MCT to conduct an internal investigation, but that rather than making the Defendant wait for the outcome of the investigation it would offer a full refund. The second sentence is denied insofar as it purports to set out the grounds on which the Defendant rejected the Claimant's offer:

19.1 In the July 2009 letter the Defendant had notified the Claimant that he had incurred a loss of over £1,000 in interest fees in taking out a bank loan to pay for the course (a reference to the Defendant's overdraft charges). In his letter of 17 November 2009, the Defendant stated the reason for rejection of the Claimant's offer was the four conditions attached to the offer by the Claimant. The Defendant made two alternative offers of settlement, the second of which included a "compensatory payment" in return for the settlement being on the basis of no admission of liability. Further the letter repeated that he was unwilling to waive his right to publish information about SkillsTrain business activities and that he was unlikely to agree to provide a waiver in return for compensation.

20. As to paragraph 11:

20.1 No admission is made as to the averment that Multimedia Computer Training Ltd ("MCT") is a "*subsidiary*" of the Claimant. Paragraph 5 above is repeated.

20.2 It is admitted that MCT openly accepted liability. Neither MCT nor the Claimant explained the basis on which such liability was admitted.

20.3 It is denied that MCT offered a full refund. MCT paid the Defendant £1725 by cheque to “*cover repayments made to your credit provider to date*” and stated that it was organising the “*redemption*” of the credit agreement. It is admitted that by letter dated 4 December 2009 the Claimant stated the course had been cancelled and that it considered the matter closed. The Claimant incorrectly stated that MCT had agreed to the refund as “*an expression of goodwill*”.

20.4 Accordingly:

20.4.1 MCT refunded £1725, being the money the Defendant had paid to the CDF Ltd;

20.4.2 MCT organised the “*redemption*” of the Defendant’s credit agreement with CDF Ltd. The precise meaning of “*redemption*” is unclear. CDF Ltd had, according to the Claimant, paid the Claimant £2850 in August 2007.

21. Paragraph 12 is denied: the Defendant has never made a complaint to the Financial Ombudsman Service.

22. Paragraph 13 is admitted insofar as the Defendant has not sought to bring a claim for the additional loss he suffered in addition to the course fee. The relevance of this fact is not understood.

Publication

23. As to paragraph 14:

23.1 It is denied that the Defendant has sought to conduct a campaign against the Claimant or actively incited others to advance complaints and claims against the Claimant as averred therein.

23.2 No admission is made as to unparticularised “*complaints and claims against the Claimant*” referred to in this paragraph. The assertion that all of the

complaints and claims against the Claimant alleged to have been incited by the Defendant have been dismissed either by agreement or by court order is denied insofar as that assertion implies that none of those claims and complaints led to a refund of those complainants'/claimants' course fees. As set out below at paragraphs 59-60 the Claimant has settled numerous claims, albeit the repayment of course fees is paid by MCT who "*accept liability*" for those claims.

24. As to paragraph 15 :

24.1 The Defendant is unable to plead to this paragraph because it is vague and is unparticularised. In so far as the Claimant is asserting that the Defendant published false defamatory allegations on the websites referred to therein, that assertion is denied and it is irrelevant. The Claimant's claim is limited to the words complained of at paragraphs 20 and 22.

24.2 The Defendant does not plead to the reference to "*other mediums*" because it is unparticularised and does not form part of the Claimant's claim.

25. As to paragraphs 16 to 30 generally, the Claimant has, in part, conflated the two articles containing the words complained of in this action. In paragraphs 28 to 39 below the Defendant pleads to the claim relating to the collative learning article, and in paragraphs 40 to 49 below to the claim relating to the hubpages article.

26. In paragraph 25 the Claimant pleads the natural and ordinary defamatory meaning of the words complained of. By its Part 18 response dated 10 October 2012, the Claimant has confirmed that it relies on this meaning for both articles. In paragraph 30, the Claimant sets out a further natural and ordinary meaning which is not set out in the PoC SF. In the same Part 18 response the Claimant states that paragraph 30 does not plead a different meaning. In the premises the Defendant pleads to the meaning as set out in paragraph 25 save for the words "*and were intended to convey the direct impression*" as these words cannot form part of the meaning itself and motive is, as a matter of law, irrelevant to meaning.

27. The Defendant does not plead to paragraph 21: the video referred to therein is not complained of in this action and/or is unparticularised and the paragraph should be struck out. Without prejudice to that contention, it is averred that the Claimant caused the removal of the video from YouTube and such removal was not “*in acceptance*” of its defamatory and/or malicious content.

THE COLLATIVE LEARNING ARTICLE

28. As to paragraphs 17 and 18(c) and 19:
- 28.1 It is admitted and averred that in late December 2009 the Defendant posted the words complained of in paragraph 20 of the Particulars of Claim on the collative learning website. The Defendant does not know the precise date, but to the best of his belief it was in the week beginning 14 December 2009.
- 28.2 The Defendant relies on a limitation defence in respect of any publication of the words complained of prior to 15 June 2011; such claim being barred by virtue of section 4A Limitation Act 1980.
- 28.3 Between 15 June 2011 and 15 June 2012, the collative learning webpage was accessed approximately 6,000 times. In the premises, paragraph 19 is admitted but the Defendant will ask the court to infer that a substantial proportion of these hits will have been repeat views by the same user, webcrawlers and/or views by the Claimant and/or its agents.
- 28.4 Sub-paragraphs 18(c) and 18(d) are admitted. The hit counter and the 25,000 visitors per month referred to visitors to the entire collative learning website not the collative learning article.
29. No admissions are made to sub-paragraph 18(e). The Claimant is required to prove that each of the actions listed in Annex B have been struck out, dismissed or failed as averred therein. Further:

- 29.1 The word "failed" is not defined.
- 29.2 In any event, all of the actions there listed were issued prior to 15 June 2011 and accordingly to the extent that any of the claimants in those actions viewed the words complained of on the collative learning website, the Claimant is time barred from relying on those views in this action. Paragraph 28.2 above is repeated.

The words complained of

30. Paragraph 20 is admitted save for:
- 30.1 the error in the website name and errors in the words complained of as follows (correct wording in bold):
"Trading Standards authority, inform them of **whichever...**"
"You **may** be able..."
- 30.2 Paragraph 28.2 above is repeated.
- 30.3 The Defendant disabled access to the collative learning website on 3 September 2012 pending the outcome of this action.
- 30.4 For the reasons explained in paragraph 31 below, no admission is made as to whether the words complained of were defamatory of the Claimant.

Reference

31. As to paragraph 23: save that it is admitted that the words complained of in paragraph 20 referred to SkillsTrain, the Claimant is required to prove that the words complained of referred to the Claimant.
32. Paragraph 24 is noted. The Claimant's claim in relation to the collative learning article is confined to the words complained of as set out in paragraph 20 of the Particulars of Claim.
33. No admission is made as to whether the words complained of in paragraph 20 meant or were understood to bear the meaning set out in paragraph 25.
34. As to paragraph 26: save that it is admitted that the words complained of in the collative learning article contain the words "a scam", "fraudulent" and "false

endorsements” the relevance of paragraph 26 is denied. The words complained of in paragraph 20 do not include the Claimant’s name and the Claimant has chosen not to complain about the entire collative learning article. The averment “*all of which are untrue and baseless*” is, insofar as it is understood to allege that the words complained of are untrue and baseless, denied.

JUSTIFICATION

35. If and in so far as the words complained of in the Collative Learning article, when read in the context of that article, meant that the Claimant:

- (1) had engaged in fraudulent activities;
- (2) had engaged in dubious business practices by itself and/or with other companies connected to the Claimant;

they are true or substantially true.

PARTICULARS OF JUSTIFICATION

Summary

35.2 It is the Defendant’s case that:

35.2.1 the Claimant, through itself or its agents, via the use of logos which it ~~which was not authorised or entitled to use; and/or false statements as~~ to the approval and/or validation and/or accreditation of its training and/or courses by third parties falsely represented its courses to induce students to enrol and/or remain on those courses and to enter ~~into loan agreements with a connected company CDF Ltd which did~~ not provide the required information about how to cancel the agreement, in circumstances where the Claimant knew that those representations were false or was reckless as to their truth or falsity.

35.2.2 the Claimant has avoided admitting that it has used logos which it was not authorised or entitled to use and/or making false statements about its courses by blaming MCT and/or causing MCT to accept

liability and/or redeem students' credit agreements with CDF Ltd in circumstances where the Claimant had itself caused such use and/or caused or authorised the false statements to be made.

35.2.3 when students have made complaints to the Claimant about alleged misrepresentation of its courses the Claimant has refused to admit that its use of the logos was unauthorised and/or that it had made or caused or authorised to be made false representations about its courses and has instead:

- (a) directed those complainants to a video containing false statements about the Defendant which the Claimant knew or should have known were false in an effort to discredit the Defendant's allegations about the Claimant; and/or
- (b) sent students, or caused or authorised to be sent to students, false and irrelevant information about the Defendant in an effort to discredit the Defendant's allegations about the Claimant;

35.2.4 caused or authorised the creation of anonymous websites and the publication of articles designed to attack critics and competitors of the Claimant and the character of the Defendant and thus undermine his credibility and thereby undermine the Defendant's allegations about the Claimant and its courses.

False endorsements & MCT & CDF Ltd

Background: 2006 BBC INSIDE OUT PROGRAMME

35.3 On 18 September 2006, in a BBC "Inside Out" feature, an undercover reporter posed as potential student and was visited by one of the Claimant's "course advisors". The BBC alleged that the course advisor told the reporter that SkillsTrain worked in association with Manpower and that they were advised by Elan IT on the content of their course.

35.4 Further the BBC alleged that the reporter was promised a job in web design at the end of the course and told that the course certification was required by

a lot of companies. The BBC reported that Manpower had stated that their association with the Claimant was at an end and they had been in contact with SkillsTrain over the past 18 months requesting them to stop using the Manpower name. The BBC reported that Elan IT had told them that it had never advised SkillsTrain on the content of their course and that the certification the reporter was offered was not a requirement in the UK and was in fact largely unheard of. In response to that programme the Claimant (then trading as Scheidegger and SkillsTrain) stated that:

35.4.1 It had a current agreement with Manpower; and

35.4.2 It was not at fault because its student enrolment was contracted out to MCT.

35.4.3 It was not SkillsTrain's policy to guarantee jobs at the end of the course and if MCT and or its advisor had broken the policy further action would be taken

35.4.4 MCT stated that it did not believe such false representations were made and, if they were, disciplinary procedures would be taken against the salesperson.

35.5 The Defendant does not rely on the Inside Out programme as proof of the allegations therein, but relies on the Claimant's response to the programme in support of the contention that as early as 2006:

35.5.1 the Claimant sought to blame MCT for alleged false representations notwithstanding that the "course advisors" were acting as the Claimant's agents.

35.6 The Claimant is linked to both MCT and CDF Ltd via its CEO Jan Telensky. The facts and matters in paragraphs 4 to 6 above are repeated.

35.7 Paragraphs 8 to 10 above are repeated. Other students including Gary Davies and Muhammad Anwar were similarly induced to enrol on the Claimant's course and enter into loan agreements with CDF Ltd.

35.8. CDF Ltd did not send the Defendant information about how to cancel the credit agreement or notice of the Advance date. Other students were not provided with the correct information and/or documents to enable them to cancel their credit agreements with CDF Ltd.

35.9 Insofar as any purported 21 day period to cancel the course was applicable, the Defendant, and other students, were not in any proper position to assess whether the course was as it had been held out to be, in terms of quality, or difficulty and/or in terms of accreditation or approval because within that period only a small part of the course material had been provided.

35.10 The documents provided to the Defendant on or around 21 August 2007, and it is to be inferred provided to other students around this time, displayed various logos:

35.10.1 the “Study Guide”, and a welcome letter displayed, in so far as is relevant, the following logos:

- (1) e-skills uk member (“the e-skills logo”)
- (2) Cisco Systems Networking Academy (“the Cisco logo”)
- (3) Microsoft Office Specialist. Authorised Training Center (“the Microsoft ATC logo”)
- (4) Member of the British Learning Association (“the BLA logo”)
- (5) City & Guilds Approved Centre (“the City & Guilds logo”)

35.11 Page 16 of the Study Guide stated under the heading “Qualification to further enhance your career prospects” *“The purpose of your training is to enhance your career, which will require validation by a recognised commercial body. To this end, we are validated to conduct City & Guilds and Microsoft® examinations and in addition, courses are accredited by such prestigious organisations as; The Association of Computer Professionals, CompTIA, The International Association of Bookkeepers, OCR (Oxford, Cambridge and RSA) The Open College Network and the*

Internet-Certification-Institute International, CIW and CISCO." (emphasis added).

35.12 The Training Services document and the Course Plan contained, insofar as is relevant, all of the logos at paragraph 35.10.1 above and in addition displayed the Institute of IT Training Accredited Training Provider logo ("the IIT logo")

35.13 Letters sent from the Claimant to the Defendant in August to October 2007 contained all of the logos at 35.10.1 above.

The 2007 dvd

35.14 In a date unknown in 2007 the Claimant caused or authorised a dvd to be made called "Hands on Blended Learning" ("the 2007 dvd"). Printed on the dvd was the following: "*This software is protected by copyright © STI Europe s.r.o. 2007*". STI Europe s.r.o. is or was the company referred to in paragraph 6 above. Jan Telensky and Neklan Herold are directors of that company.

35.15 The Claimant provided the 2007 dvd to students and/or potential students until a date currently unknown to the Defendant, but to at least October 2007.

35.16 The 2007 dvd stated:

*"Hello and welcome to SkillsTrain the premier trading provider in the UK for commercially driven and results based training. Here you are in safe hands. SkillsTrain is acknowledged by the leading accreditation bodies in the UK for successful distance learning. Bodies such as the **BLA**, the British Learning Association [BLA logo displayed], **e-skills** [e-skills uk member logo displayed] the skills council, elcas [elcas logo displayed] all of our courses are British forces approved and the prestigious Institute of IT Training [IIT logo displayed] . Our courses and training procedures are validated and approved by these and the British Standards Institute.*

SkillsTrain is proud to conform to the ISO 9001 [Registered Company ISI 9001 logo displayed] national quality standard...

[at 7:40]: “*That’s why our training is approved and accredited by the most prestigious names in the industry Cisco, [Cisco Systems logo displayed] Microsoft...[Microsoft Specialist Authorised Testing Center logo displayed].*”

The 2009 course material-

- 35.17 Course material for the CIW Website Design Manager (version 5) Javascript Section-2 Part A provided to the Defendant in or around early 2009 (the 2009 course material) and, it is to be inferred other students around that time, contained all of the logos at 35.10.1 above.

Institute of IT Training

- 35.18 The Institute of IT Training, (now the Learning and Performance Institute) was a professional body for the training industry.
- 35.19 The Claimant was accredited by the IIIT from on or around 28 October 2005 to on or around 31 October 2006 when the accreditation lapsed.
- 35.20 The Claimant removed the IIIT logo from its homepage in or around November 2006.
- 35.21 In the premises:
- (a) the claim in the 2007 dvd that the Claimant’s courses and training procedures were validated and approved by the IIIT; and/or
 - (b) the claim via the use of the logo on the Course Plan and Training Services document that the Claimant was an IIIT Accredited Training Provider

were false and the Claimant was thereby holding out to students and potential students that its courses were so validated and approved and it was an IIIT Accredited Training Provider in circumstances where the Claimant:

- (1) knew that its courses and training procedures were not validated and approved by the IIFT; and/or
- (2) knew that it was not an IIFT Accredited Training Provider, or
- (3) was reckless as to the truth or falsity of those statements.

“e-skills uk”

35.22 “e-skills uk” is the Sector Skills Council for the IT industry.

35.23 The Claimant’s association with e-skills uk ceased in 2006. On or around 27 March 2007 e-skills uk wrote to the Claimant requesting that it removed the e-skills logo from its website and any publications. The Claimant’s documents annexed to the Particulars of Claim include a letter from Niall Daly, Finance Director of e-skills uk confirming this fact. The Annexed documents also include a letter from the Claimant (t/a Train4Trade Skills) dated 18 April 2008 to Steven Hanley in which the e-skills uk member logo is displayed.

35.24 In the premises:

- (a) The claim in the 2007 dvd that the Claimant’s courses and training procedures were validated and approved by e-skills uk; and/or
- (b) The claim via the use of the e-skills uk member logo in the 2007 dvd and on the Study Guide and letters sent by the Claimant to the Defendant in 2007 and on the 2009 course material that the Claimant was a member of e-skills uk ;

were false and the Claimant was thereby holding out to students and potential students that its courses were so validated and approved and that it was a member of e-skills uk in in circumstances where the Claimant:

- (1) knew that its courses and training procedures were not validated and approved by e-skills; and/or
- (2) knew that it was not a member of e-skills; or
- (3) was reckless as to the truth or falsity of those statements.

35.25 Further, in a letter dated 18 March 2010 from the Claimant's then solicitors Eversheds to the Defendant, Eversheds asserted on behalf of the Claimant, and it is to be inferred on the Claimant's instruction, that the Claimant's association with "eSkills" continued until 2007 and the Claimant ceased to refer to it after that time. For the reasons set out above that assertion was untrue.

BLA/BILD

35.26 The British Learning Association was an independent organisation which promoted excellence in learning. In February 2008 the BLA became the British Institute for Learning and Development ('BILD').

35.27 Membership of the BLA (or BILD) is not an endorsement of an organisation or its qualifications.

35.28 In February 2008 SkillsTrain's membership of the BLA was revoked.

35.29 In the premises:

(a) The claim in the 2007 dvd that the Claimant's courses were validated and approved by BLA; and

(b) The claim via the use of the BLA logo on the 2009 course material that the Claimant was a member of BLA;

were false and the Claimant was thereby holding out to students and potential students that its courses were so validated and approved and that in 2009 it was a member of BLA in circumstances in circumstances where the Claimant:

- (1) knew that its courses and training procedures were not validated and approved by the BLA; and/or
- (2) knew that it was not a member of the BLA, or
- (3) was reckless as to the truth or falsity of those statements.

35.30 Further, in a letter dated 18 March 2010 from the Claimant's then solicitors Eversheds to the Defendant, Eversheds asserted on behalf of the Claimant, and it is to be inferred on the Claimant's instruction, that the Claimant's association with "BLA" continued until 2007 and the Claimant ceased to refer to it after that time. For the reasons set out at 35.17 above that assertion was untrue.

British Standards Institute ("BSI")

35.31 The BSI is an independent body which assesses procedures and provides certification in respect of those procedures.

35.32 The Claimant was registered with the BSI from a date unknown until 20 December 2007. Until 20 December 2007 the Claimant was permitted to use the BSI Registered logo. The BSI IS09001 Certificate held by the Claimant up until 20 December 2007 involved assessment of the Claimant's company procedures. However, the BSI did not "validate" the Claimant's courses

35.33 In the premises:

- (a) the claim in the 2007 dvd that the Claimant's courses were validated and approved by the BSI and/or
- (b) the claim via the use of the BSI logo on the 2009 course material that that Claimant held a BSI Certificate.

were false and the Claimant was thereby holding out to students and potential students that its courses were so validated and approved and that in 2009 it held a BSI certificate in circumstances where in circumstances where the Claimant:

- (1) knew that its courses were not validated and approved by the BSI; and/or
- (2) knew that it did not hold a BSI Certificate; or

- (3) was reckless as to the truth or falsity of those statements.

City & Guilds

35.34 City & Guilds (C&G) is a long-established vocational education organisation which creates qualifications delivered by approved colleges and training providers (“approved centres”). C&G approved centres can apply to use the C&G Approved Centre logo.

35.35 The Claimant, t/a SkillsTrain was not a City & Guilds approved centre. The claim, via the use of the Approved Centre logo on SkillsTrain material including the CIW Website Design Manager document provided to the Defendant in August 2007, and on the 2009 course material and the claim in the Study Guide that the Claimant (that is, the Claimant t/a SkillsTrain) was “validated to conduct” C&G examinations was false and the Claimant was thereby holding out to students and potential students it was so validated in circumstances where the Claimant:

- (1) knew that it was not a City & Guilds approved centre; and/or
- (2) knew that it was not validated to conduct C&G examinations; or
- (3) was reckless as to the truth or falsity of those statements.

35.36 In the alternative, to the extent that other companies associated with the Claimant, including Apprentice Training Ltd and “Scheidegger” (the legal status of which is unknown to the Defendant) were approved to offer C&G awards, it is averred that the use of the C&G logo on course material relating to courses not provided by those companies amounts to a false representation which the Claimant knew was false or was reckless as to its truth or falsity.

Microsoft & Cisco

35.37 The claims in:

- (a) The 2007 dvd that the Claimant’s training was approved by and/or accredited by Cisco and Microsoft; and/or

(b) The Course Plan, the Study Guide and the 2009 Course Material, via the use of the Microsoft logo and Cisco logo that it was an authorised testing centre for Microsoft and a Cisco Systems Networking Academy;

were false and the Claimant was thereby holding out to students and potential students that the Claimant t/a SkillsTrain:

35.37.1 was an “authorised testing centre” for Microsoft and a Cisco Systems Networking Academy;

35.37.2 provided training which was approved and accredited by Cisco and Microsoft;

35.37.3 was validated to conduct Microsoft examinations

in circumstances where the Claimant knew that it:

- (1) was not an authorised testing centre for Microsoft; and/or
- (2) it was not a Cisco Systems Networking Academy;
- (3) its training was not approved and accredited by Cisco and/or Microsoft; and/or
- (4) it was not validated to conduct Microsoft examinations; or
- (5) was reckless as to the truth or falsity of those statements.

The Claimant’s Website & BBC Watchdog Programme

35.38 Until at least May 2008, the Claimant’s homepage on its website included the Microsoft logo, the Cisco logo and the e-skills uk member logo. In or around June 2008 the Claimant’s homepage was redesigned. From thereon until around late October 2008 the logos displayed on the homepage included: “skills2learn” (“the skills2learn logo”) “ATL Apprenticeship Training Ltd” (“the ATL logo”), “Yardstick Media” (“the Yardstick Media logo”), “Train4TradeSkills” (“the T4TS logo”), the Microsoft logo and a logo which was similar in appearance to the Cisco logo but was in fact “Misco Systems Networking Academy” (“the Misco logo”).

35.39 The ATL, skills2learn and Yardstick Media logo related to companies which were owned by Mr Telensky and/or companies of which Mr Telensky was a director:

35.39.1 Apprenticeship Training Ltd (“ATL”) is a company which at the material time was controlled by Mr Telensky by virtue of his shareholding in JT Consultancy Ltd the ultimate parent company of ATL.

35.39.2 Yard Stick Media Ltd is a company founded in November 2006. All of the shares in the company are owned by Mr Telensky. Mr Telensky was a director of the company between March 2007 and January 2011.

35.39.3 “skills2learn”: a company called skills2learn Ltd was founded in August 2007. Mr Telensky is a director and shareholder of this company.

35.40 The “train4tradeskills” logo relates to a trading name of the Claimant.

35.41 The origin of the Misco logo is presently unknown to the Defendant.

35.42 In the BBC Watchdog programme broadcast on 20 October 2008, which remains available to view on the BBC website:

35.42.1 Darren Strange, Microsoft Office Product Manager in the UK confirmed that the Claimant’s training was not approved and accredited by Microsoft contrary to the Claimant’s claim in its promotional material.

35.42.2 The presenter stated that Cisco had not given the approval of the Claimant’s training claimed by the Claimant.

35.43 For the avoidance of doubt: the Defendant does not rely on the facts at 35.42 above as justification of the fact that the Claimant was falsely claiming its courses were approved and accredited by Microsoft or Cisco. The Defendant relies on the date and the content of the broadcast and the subsequent actions of the Claimant as set out below as a basis from which it is to be inferred that the Claimant knew that it was not entitled to use the Microsoft and Cisco logos or claim that its training courses were approved and accredited by Microsoft and Cisco.

35.44 The Claimant's response to the BBC broadcast during the programme and as published on the BBC website did not address Microsoft's or Cisco's claims.

35.45 On a date unknown to the Defendant but shortly after or before the broadcast of the BBC Watchdog programme, the Claimant removed, or caused or authorised the removal of the Microsoft logo and the Cisco logo from its homepage.

35.46 In a document entitled "WatchDog 2008" which the Claimant caused or authorised to be published online at www.thetruth.skillsrainuk.com and sent to students who complained to the Claimant, the Claimant asserted that:

35.47 Cisco courses were conducted under contract with Dunstable College. The students the Claimant enrolled usually took more than one subject. A common combination was A+, N+ and Cisco. The Claimant would teach the A+ and N+ subject, and thereafter the student would go to Dunstable College on their Cisco Academy.

35.48 A large number of students complained about the level of service at Dunstable College which reflected very badly on the Claimant.

35.49 The Claimant believed that most of the 270 complaints made to BBC Watchdog were related to the Cisco course as administered by Dunstable College.

35.50 The Claimant gave notice on the contract with Dunstable College. The notice period expired on “9 February 2010”. The Claimant had since found alternative Cisco providers.

35.51 To the extent that any of the above assertions were true, which pending disclosure the Defendant is unable to ascertain, it is averred that this did not entitle the Claimant to hold itself out as a Cisco Systems Networking Academy and/or to claim that its training was approved and accredited by Cisco.

35.52 In a document headed “Mr Robert Ager’s False Claims vs the Truth about Skillstrain” the Claimant asserted:

“SKILLSTRAIN TRUTH: In so far as Microsoft is concerned we were a Microsoft Office User Specialist (MOUS) Testing Centre and for this reason the MOUS logo was used on our material. However as we no longer offer the MOUS course or test for this course, the logo has been removed. With regards to Cisco accreditation we can confirm that we had a validation agreement through FE College in relation to the Cisco Networking Academy. It is for this reason that the Marketing Company, Multimedia Computer Training Ltd previously made reference to (MOUS) and Cisco in our promotional material.”

35.53 The logo displayed on the course documents and on the website was not a “MOUS” logo. It was a Microsoft Office Specialist Authorised Training Centre” logo (“MOS”). The Claimant, trading as SkillsTrain had not been authorised to use the term “Microsoft Office Specialist Authorised Training Centre” or to use the logo.

35.54 In a document entitled “Mr Robert Ager’s False Claims vs the Truth about Skillstrain” the Claimant blamed MCT for “making reference” to Microsoft and Cisco in its promotional material when it was the Claimant who had

caused or authorised such references and had also used the Cisco and Microsoft logos in its course material and on its website.

35.55 In its letter to the Defendant dated 5 November 2009, the Claimant sought to blame MCT for “marketing matters” raised by the Defendant.

35.56 In a Defence filed by the Claimant in a County Court action brought by Muhammad Anwar (Claim Number IIG00351) the Claimant contended that MCT was responsible for all “*representations and statements made*” because it employed MCT to undertake all marketing and enrolment procedures.

35.57 Students who brought proceedings or complaints against the Claimant have received refunds via MCT and MCT has purported to “redeem” the credit agreement with CDF Ltd in circumstances where MCT was not a party to the claim or the complaint. The Claimant then contended that the settlement agreement was between the student and MCT. These students include the Defendant and Gary Davies.

Attacks on the Defendant’s character and credibility

36. The Claimant has sought to attack the Defendant’s character and credibility and thus undermine his allegations about the Claimant’s false endorsements as follows:

36.1 The Defendant posted the collative learning article on the collative learning website in late December 2009. The Defendant had also made a short video with similar content to the article which he uploaded onto YouTube, vimeo and made available via the collative learning website. In the Defendant’s video, the Defendant had described how the courses were sold, how he got his refund, what other students could do to get a refund and alleged inter alia:

36.1.1 That in the Watchdog programme the Claimant had been found to have falsified some of its endorsements of its courses.

36.1.2 The Watchdog programme fuelled an angry response on the internet.

- 36.1.3 After the Watchdog programme the Claimant tried to sue Google for allowing supposedly defamatory blog entries to be posted online and the case was “appropriately thrown out of court.”
- 36.1.4 The Advertising Standards Agency ruled in August 2007 that the Claimant’s advert was in breach of 3 of the ASA’s rules.
- 36.1.5 The course material was badly written, the order it was taught in seemed wrong.
- 36.1.6 That in addition to the false endorsements found by Watchdog, the Claimant used false endorsements from e-skills, C&G and BLA and the Defendant had obtained confirmation from those bodies as to this fact.
- 36.1.7 That CDF Ltd did not have a business address on its letterhead
- 36.1.8 There was a “*management combination*” between CDF Ltd and the Claimant both in its addresses and the fact that Mr Telensky was CEO of SkillsTrain and a director of CDF Ltd.
- 36.1.9 That Mr Telensky had resigned 1 week before the BBC Watchdog programme and had been reappointed 3 months later.
- 36.1.10 That the Defendant had taken his complaint to Liverpool Trading Standards and as soon as they had challenged the Claimant, he was offered a refund. The Claimant admitted liability and refunded his money.
- 36.1.11 Liverpool Trading Standards was pursuing criminal proceedings against the Claimant.

36.2 On 21 December 2009 the Claimant via its solicitors Eversheds wrote to the Defendant complaining about certain elements of the collative learning article. In that letter the Claimant denied being involved in a scam or that students were “ripped off” but did not address any alleged factual inaccuracies in the words complained of, save for the allegation about Liverpool Trading Standards pursuing criminal proceedings. The Claimant notified the Defendant that Liverpool Trading Standards had confirmed that it did not intend to take any action against it.

36.3 The Defendant responded by email dated 21 December 2009 stating that:

36.3.1 He had been informed by Keith Marshall of Liverpool Trading Standards that his complaint had been passed on to a colleague who in turn would pursue criminal proceedings against the Claimant.

36.3.2 He would attempt to contact Mr Marshall the following day, and if Mr Marshall confirmed the Claimant’s claim about the criminal proceedings he would re-edit and repost the video and article removing the related section of the narration.

36.3.3 The false endorsements that had been used to sell SkillsTrain courses were fraudulent and by definition could be referred to a “scam”.

36.4 In light of the information from the Claimant about Liverpool Trading Standards, the Defendant edited the video to remove the reference to Liverpool Trading Standards pursuing criminal proceedings against the Claimant. The original video containing this allegation was online for no longer than two weeks.

36.5 On or around 1 February 2010, a video was posted online under the name: Skillstrain Scam smear campaign exposed Rob Ager Never Use the Internet Unless Telling the Truth.” (“the RA video”). The video was posted by a person using the username “Andrew Lucas” and purported to address the

claims made by the Defendant in his video that he had uploaded as set out at paragraph 36.1 above. The Defendant will rely on the full content of that video.

36.6 The RA video was published online at www.vimeo.com (“the vimeo website”); www.dailymotion.com (“the dailymotion website”) and www.myvideo.de (“the myvideo website”) on 1 February 2010. On 2 February 2010 it was posted on www.mynet.com (“the mynet website”).

36.7 The RA video did not address the Defendant’s assertions at 36.1.1, 36.1.2, 36.1.4, 36.1.5, the BLA allegation at 36.1.6, 36.1.8, or 36.1.9 above.

36.8 The RA video accurately stated that the Defendant was wrong to state that CDF Ltd’s letters did not contain a business address. This fact, though accurate was immaterial to the substance of the Defendant’s allegations. The key point, namely the link which the Defendant had discovered between the Claimant and CDF Ltd was not addressed. The RA video included the following false and/or highly misleading allegations which it is averred the Claimant knew were false and or highly misleading:

36.8.1 That the Claimant’s libel case against Google was “clearly not thrown out of court.”

36.8.2 The Defendant had, in an attempt to hide a lie, deleted a short clip from the video which alleged that Liverpool Trading Standards were pursuing criminal proceedings against SkillsTrain and removed any reference to Liverpool Trading Standards from his website.

36.8.3 Liverpool Trading Standards had not been involved in the Defendant’s complaint and the complaint only existed in the Defendant’s “head”.

36.8.4 The Claimant had not offered a full refund to the Defendant.

- 36.8.5 The letter from C&G to the Defendant dated 23 November 2009 supported the Claimant not the Defendant.
- 36.8.6 The letter from e-skills uk was the type of letter sent to a company the Defendant was working for (thus implying the Defendant was not a genuine student).
- 36.9 It is to be inferred from the content of the RA video and the dates on which the RA video was uploaded that the Claimant caused or authorised the RA video to be made and published online. The Claimant will rely on the proximity of the upload date of the video to the Claimant's letter of complaint via Eversheds and the following facts in support of this inference:
- 36.9.1 The original version of the Defendant's video containing the "criminal proceedings" allegation was posted online for a very short time over the Christmas period in 2009 before it was edited by the Defendant following the complaint from Eversheds on 21 December 2009. In order to create the section of the RA video which included this clip, the maker of the RA video must have made a copy of the Defendant's video within a very short period of it being uploaded.
- 36.9.2 In response to the Defendant's assertion that the Claimant's case against Google had been thrown out of court. The voice over ("v/o") stated "*we asked for the opinion of a leading law firm*" the narrator then quoted what the Defendant will contend was a document addressed to the Claimant.
- 36.9.3 On a date currently unknown to the Defendant the Claimant began directing customers who had submitted complaints about their courses to the RA video. In those letters the Claimant falsely stated that the Defendant was being sued by Twentieth Century Fox, Warner Brothers, Disney Group and Universal Studios and that all of

these companies were pursuing him for copyright infringement.

Recipients of this letter included:

- (1) Gary Davies by letter dated 19 February 2010
- (2) Ian Watson by letter dated 25 February 2010
- (3) Colin Campbell by letter dated 22 March 2010. This letter related to a complaint about the Claimant's course provided under the Train4Trade Skills trading name.

36.10 In a letter dated 18 March 2010 Eversheds, on behalf of the Claimant, and it is to be inferred on instruction sent a further letter of complaint to the Defendant. In that letter Eversheds stated with reference to the additional false endorsements the Defendant had uncovered namely, e-skills uk, the BLA, and C&G:

"we can only assume that you are referring to course materials dating from around 2006 (which we understand is when you were a student of our client). The reference to the association with eSkills and the British Learning Association were correct at that time. Those associations continued until 2007, and our client, naturally, ceased to refer to them after that time. The association with City & Guilds continues to this day, as you were specifically informed in a letter to you from City & Guilds dated 23 November 2009...Your failure to alter the Statements in this regard upon receipt of the letter makes plain your flagrant disregard for the facts, and intention to damage our client."

36.11 Contrary to those assertions the Claimant knew that:

36.11.1 The Defendant had in fact enrolled as a student in 2007;

36.11.2 The e-skills association ended in 2006 and the Claimant continued thereafter to use the e-skills uk logo when it was not entitled to.

36.11.3 The letter from C&G did not confirm that Skillstrain was entitled to use the C&G logo on its Web Design course material.

36.11.4 The Claimant was using both the e-skills and the BLA logo on its 2009 course material.

36.12 The Defendant responded by letter dated 20 March 2010 repeating his assertion that the use of false endorsements that had been used to sell many Skillstrain courses were fraudulent and could be referred to as a “scam”. In that letter the Claimant put the Claimant on notice that:

36.12.1 He was aware that the Claimant was making the statements in 36.9.3 above in letters to students.

36.12.2 He strongly suspected the Claimant was responsible for articles on the website citizenfreepress.blogspot.com which implied that the Defendant was sexually perverted and that he posted sexually explicit material on websites aimed at children.

36.12.3 The Claimant responded via Eversheds on 24 March 2010, erroneously asserting that the Defendant had removed his video from his website and stated that it had instructed counsel and was continuing to prepare its claim against the Defendant. The Claimant did not address any of the points raised in the Defendant’s previous letter. Nor did it address any of the alleged inaccuracies as identified in the RA video despite the fact that the Claimant was by that date directing students towards that video.

36.13 The Defendant wrote to the Claimant, via Eversheds on 25 March 2010 stating that if the Claimant was able to provide verifiable evidence that the course he signed up to was endorsed by Microsoft, CISCO, e-skills, City & Guilds and the BLA at the time of his enrolment and the subsequent year in which he received course materials featuring those logos, he would replace the article and video with the relevant corrections and an apology. No response was received to that letter.

36.14 Instead the Claimant continued to provide or authorise to be provided to students who complained to it, documents designed to undermine the

Defendant's credibility and which contained statements which the Claimant knew or should have known were false including:

- 36.14.1 A document entitled "*Mr Robert Ager's False Claims vs the Truth about SkillsTrain.*"
- 36.14.2 A document headed "*The Crusade of Robert Ager: Companies, Institutions, etc attacked by Robert Ager, and SkillsTrain is just one of them,*" ("the Crusade document"). This document contained various quotes attributed to the Defendant but taken out of context so as to imply that the Defendant was a racist.
- 36.14.3 A document headed "*Negative Reports regarding Mr Ager*" which included urls for the RA video on the vimeo website, the daily motion website and the myvideo website and the mynet website.

Smear Buster

- 36.15 In or around April 2009, a website called SMEAR BUSTER – CITIZEN FREE PRESS was created on www.citizenfreepress.blogspot.co.uk, ("the Smear Buster website"). The Smear Buster website was run by the account holder "MontysFreepress". The Smear Buster website is purportedly an independent website but the Defendant will ask the Court to infer that it was a website created and/or authorised by the Claimant to undermine its online critics including the Defendant and the Claimant's competitors. The Defendant will rely on the following facts in support of this inference:
 - 36.15.1 The website purports to expose smear campaigns but the only smear campaigns it covered were those which relate to the Claimant's trading names: Train2Game and Trade4TradeSkills and SkillsTrain.
 - 36.15.2 The website reports an ASA finding about one of the Claimant's competitors New Career Skills Ltd.
 - 36.15.3 The website contains a video uploaded by Smear Buster about another of the Claimant's competitors International Correspondence Schools.
- 36.16 The twitter account @smearbuster which is associated with the Smear Buster page posted its first tweet on 23 April 2009. The Defendant will rely on the following tweets ("the Smear Buster tweets") and where indicated the

articles which remain on the Smear Buster website in support of his contention that the Claimant caused or authorised the publications by Smear Buster to attack the Defendant's character and credibility and thereby undermine his allegations about the Claimant:

- (1) 25 April 2009: "Digital Trends – SMEAR BUSTED! Next? More e-mails PLEASE great story."
- (2) 4 May 2009: "Digital Trends, the Saga Continues. Now requests from their forum members LOL"
- (3) 20 May 2009: "Glengaryglennos – SMEAR BUSTED. More at <http://citizenfreepress.blogspot.com>." The hyperlink led to an article on the Smear Buster website addressing allegations on the Digital Trends website about Train2Game and alleged that the poster was a competitor and : "*Scheidegger was dissolved in 1990 so how can there be a link to Train2game?*"
- (4) 20 July 2009: "Google may seem to be the winner in defamation case, but the real winner can be seen here <http://citizenfreepress.blogspot.com> UK1 USA0"
- (5) 4 August 2009: "I uploaded a YouTube video—so-called GAMES PEOPLE EXPOSED – SOON"
- (6) 6 August 2009: "I uploaded a YouTube video – International Correspondence Schools 2009." The hyperlinks led to a video on YouTube containing allegations about the Claimant's competitor ICS.
- (7) 12 Feb 2010: "Smear Busted, who is this man working for and please read the WARNING! <http://citizenfreepress.blogspot.com> .
- (8) 8 March 2010 "Please help me expose Liverpool's parliamentary (sic) pervert candidate"
- (9) 16 May 2010: "smearbuster Skillstrain Scam exposing Rob Ager on Digg.com ... Thank you for the entry."
- (10) 17 May 2010 "Skillstrain Scam exposing the Smear Campaign, <http://hubpages.com/t/14dcca>" the hyperlink led to the article at 36.17 below,

- (11) 18 May 2010: "UKIP through the eyes of a long-standing member" <http://juniusonukip.blogspot.com> Bless You Sir!" the juniusonukip blog had linked to the Smear Buster "Skillstrain Scam exposing the Smear Campaign" article.
- (12) 19 May 2010: "New on The Hub. <http://hubpages.com/hub/SkillstrainScam-exposing-the-Smear-Campaign>."
- (13) 15 June 2010: "OLCI out of Gas And Barclays shocking <http://is.gd/cQcFQ> , great headline young man". The hyperlink led to an article by "Smear Buster" on the hubpages website about training courses involving a competitor of the Claimant OLCI Construction Training Ltd but included a positive mention of ATL.

36.17 The Skillstrain Scam Exposing the Smear Campaign hubpages article included the following allegations about the Defendant:

- 36.17.1 The Defendant had deliberately posted inappropriate content on a website likely to be visited by children;
- 36.17.2 The Defendant had left his father in a flat "not fit for a dog"
- 36.17.3 The Defendant had "voiced the vitriol in a video against Black groups in the NUJ"

36.18 The article concluded with the following: "*Which leads to my final point, do remember our primary role is to expose ridiculous SMEAR CAMPAIGNS. This is the man that has now launched a SMEAR CAMPAIGN on a distant learning college called SkillsTrain. Let me recap for a moment rob, ager, serial, killer, suspense, thriller, horror, his entries on the web site not mine. This is the man suspended by YouTube for inappropriate content. This is the man that claims to have created a new way of Learning whilst NO RECOGNISED EDUCATIONAL body endorses his so-called learning scheme. This is the man that hides away under a PO Box when dealing with UK citizens on e-bay and further REFUSES TO ISSUE REFUNDS for items the public have purchased and find sub-standard.*"

36.19 No further tweets were made on the @smearbuster twitter account until 7 September 2011. Between 7 September 2011 and 16 September 2011 the @smearbuster account posted 4 tweets: 2 linked to an article on the Smear Buster website about and ASA finding relating to one of the Claimant's competitors New Career Skills. The remaining two tweets, posted on 16 September 2011 linked to an article on the Smear Buster website "*Train4TradeSkills Smear BUSTED they were not on Watchdog*". The article contained a letter dated 15 September 2011 from Bird & Bird addressed to the Claimant's directors Edward Butler and Jaroslav Bradik concerning the removal of a reference to Train4TradeSkills from the BBC Watchdog website. It is to be inferred from the date of that letter and the date the article was posted (one day later) that the Claimant supplied the letter to the individual operating the Smear Buster account.

Tabloid Investigator

36.20 In or around October 2010, a website "Tabloid Investigator" was published online at tabloidinvestigator.wordpress.com. The first post, published on 27 October 2010 was an article called "*How the Smiths were allowed to Kane the Citizens*" purportedly authored by "Tom Dylan" which was critical of citizen journalism. The second post published on the same date was entitled "*Rob Ager the 'Orrible is Wrong! Wrong! Wrong!'*" ("the RA is Wrong article") and linked to the full article on hubpages.com. The RA is Wrong article contained serious allegations about the Defendant similar in content to the *Skillstrain Scam Exposing the Smear Campaign* article. The RA is Wrong article has been removed from the internet. The introduction to the article on the Tabloid Investigator website read:

"Rob Ager is a film analyst of some little renown on the internet. Everybody to their own, but personally I find his material not particularly well written, its verbose and frankly quite boring and unedifying. One of the problems is that Rob sees conspiracy – and not a little sex- in everything..."

In conclusion: I've spent a bit of time investigating Mr Ager for a number of reasons (a) the weirdness of posting 'bondage' films on children's website (something he has never addressed) (b) his unbridled attacks on organisations (c) his lack of legal knowledge and the inarticulacy of his rantings (d) his complete lack of conscience about the potential damage he might do to businesses and honest people."

36.21 No further posts were made by Tabloid Investigator on the Tabloid Investigator website until 2 July 2012 when an article was published entitled: "*The Moral Issues Surrounding Amateur Film Maker Rob Ager.*"

36.22 The Tabloid Investigator website is associated with the twitter account Tom Dylan "@UK Investigator" and a Scribd account "Tom Dylan". The first tweets on the @UKInvestigator account were on 21 October 2010. On 27 October 2010, the @UKInvestigator account linked to the *How the Smiths are allowed to Kane the Citizens* article. The Defendant will rely on the following tweets from that account in support of his contention that the Claimant caused or authorised the publications on the Tabloid Investigator website and or to undermine the Defendant's credibility and thereby undermine his allegations about the Claimant:

- (1) 27 October 2010: "Published Wrong! Wrong! Wrong!A on Scribd <http://scr.bi/beEtf1>."
- (2) 27 October 2010: "Rob Ager the 'Orrible is Wrong! Wrong! Wrong! <http://www.delicious.com/tabloidjournalist>."
- (3) 27 October 2010: "Reading Wrong! Wrong! Wrong!A on Scribd <http://scr.bi/beEtf1>."
- (4) 28 October 2010: "Reading Wrong! Wrong! Wrong!A on Scribd <http://scr.bi/beEtf1>."
- (5) 28 October 2010: "Rob Ager is WRONG, <http://hubpages.com/t/1b2f6a>"
- (6) 30 October 2010: "Published Rob Ager is Wrong on Scribd <http://scr.bi/chckue>

(7) 30 October 2010: Reading “Rob Ager is Wrong” on Scribd
<http://www.scribd.com/doc/40475589> “

36.23 There were no further tweets on the @UKInvestigator account until 28 June 2012, when the account tweeted a link to an article *PCC Shock* published by the account “Tom Dylan” on Scribd. The article was called: “*The Tabloid itch that roused the old dog in Rob Ager*” and attempted to undermine the Defendant’s claim, (which is true), to have complained to the Press Complaints Commission about allegations published about him in newspapers in 2010. It is to be inferred that this was in response to the Defendant’s hubpages article complained of in this action.

36.24 On 28 June 2012, the @UKInvestigator account tweeted: “*Published Suicide Watchdog on Scribd.*” The Suicide Watchdog article was entitled “*BBC Watchdog – suicide Lies, secrets and fraud*” and contained information about a former Watchdog presenter.

36.25 On 2 July 2012, the @UKInvestigator account tweeted:

- (1) “Published New Careers Skills Anyone Got Any Feedback on Scribd”.
- (2) “Published Google UK Entry New Career Skills Scam Page 1 on Scribd”
- (3) “Published New Career Skills Complaints on the Plumbers Forum on Scribd”
- (4) “Published News Career Skills FIVE Complaints UPHOLD on Scribd.”

36.26 The hyperlinks in the tweets at paragraph 36.25 above led to webpages which have now been removed. New Career Skills is a competitor of the Claimant and is the same rival company mentioned on the Smear Buster website.

36.27 On 2 July 2012, "Tabloid Investigator" published an article "*The Moral Issues Surrounding Amateur Filmmaker Rob Ager*". It is to be inferred that the article was a response to the Defendant's hubpages article complained of in this action.

36.28 No further articles have been published on the Tabloid Investigator website, or on the Scribd account linked to "Tom Dylan".

QUALIFIED PRIVILEGE AT COMMON LAW

37. Further or in the alternative, the words complained of in the article were the product of responsible journalism on a matter of public interest.

37.1 The words complained of are contained in an article which was first published in 2009. The subject matter of the article was a matter of public interest namely: informing potential and existing customers of the Claimant about the Defendant's experience of being a customer of the Claimant, the difficulty he had in obtaining a refund for his course in 2009, the link between the Claimant and CDF Ltd and the further evidence of false endorsements which he had discovered. The article was a piece of citizen journalism and would be understood as such.

37.2 The tone of the article was measured and factual. The Defendant's use of the word "scam" was at all material times based on his honest belief that the Claimant was using false endorsements selling its courses, was linked to CDF Ltd and blamed MCT for the false endorsements.

37.3 The date of the article was clearly stated to be "2009" and the Defendant made it clear to the reader that his complaint related to a course he enrolled on in 2007.

- 37.4 The account of the Defendant's dealings with the Claimant and CDF Ltd was based on his first-hand experience and on letters sent to and received from the Claimant, CDF Ltd and MCT.
- 37.5 The article contained hyperlinks to the sources referred to and relied on by the Defendant prior to writing the article including:
- 37.5.1 the 2008 BBC Watchdog programme
 - 37.5.2 a report of the Claimant's libel case against Google
 - 37.5.3 the 2007 ASA ruling;
 - 37.5.4 the 2006 Inside Out Programme.
- 37.6 The BBC Watchdog programme contained a statement from Microsoft itself stating that the Claimant's claim that its training was approved and accredited by Microsoft was false. The programme reported that Cisco had made it clear that it hadn't given the approval claimed by the Claimant. At the time of publication of the words complained of, the BBC Watchdog programme was published online and the statement from the Claimant in response to the Watchdog allegations did not address the Microsoft or Cisco claims.
- 37.7 The Defendant obtained information from Companies House relating to the Claimant and CDF Ltd prior to writing the article.
- 37.8 The Defendant wrote to Microsoft, e-skills uk, the BILD, and City & Guilds for information about the Claimant's use of their logos prior to writing the article.
- 37.9 Prior to the original publication of the words complained of in late 2009 the Defendant gave the Claimant an opportunity to respond to the allegations about the use of logos and endorsements:

37.9.1 In a letter dated 2 October 2009 the Defendant had sought information from the Claimant about the use of logos on its website and on course materials.

37.9.2 The Claimant did not respond to the Defendant's enquiry or allegations as set out in his correspondence with the Claimant.

37.10 To the best of the Defendant's knowledge at the time of the original publication the Claimant had never given a credible explanation for its claim that its training was approved and accredited by Microsoft and Cisco.

37.11 In respect of publication occurring during the period not time barred in this action:

37.11.1 Upon complaint from the Claimant via Eversheds on 21 December 2009, the Defendant removed an allegation in the article that Liverpool Trading Standards were pursuing criminal proceedings against the Claimant. The Defendant will rely on this fact in support of his contention that he acted responsibly and in the public interest in publishing the article.

37.11.2 The Defendant gave the Claimant a further opportunity to address the allegations in the article. In a letter dated 25 March 2010 to the Claimant's then solicitors Eversheds, the Defendant stated that if the Claimant was able to provide verifiable evidence that the course he signed up to was in fact endorsed by Microsoft, CISCO, e-skills, C&G and the BLA at the time of his enrolment then he would replace his article with the relevant corrections and an apology. No response was received to that invitation.

37.11.3 The Claimant could have provided the information sought. It chose not to do so prior to the publication of the article in 2009, in its letter of complaint dated 21 December 2009, or in its letter of complaint dated 30 May 2012. In the premises, it was reasonable for the Defendant to continue to publish the words complained of.

37.11.4 Following the original publication of the article, several students contacted the Defendant to inform him that they had obtained refunds for their courses.

37.12 In the premises, the publication of the words complained of amounted to responsible journalism on a matter of public interest. The collative learning article is an archived article and this claim, brought some 2.5 years after the Claimant first became aware of the words complained of is an unwarranted interference with the Defendant's Article 10 ECHR right to freedom of expression.

38. Further, or in the alternative: the words complained of were published on an occasion of qualified privilege. At all material times the Defendant published the words complained of in furtherance of legitimate moral or social duty, namely to inform existing and potential students of matters which the Defendant had discovered about the Claimant and its courses, and those students and potential students had a corresponding interest in receiving that information.

39. In all the circumstances, it was reasonable for the Defendant to publish the words complained to those students and potential students via the internet.

HUBPAGES ARTICLE

The hubpages webpage

40. It is admitted and averred that on 23 May 2012 the Defendant posted the words complained of in paragraph 22 of the Particulars of Claim on the hubpages website.

40.1 Between 23 May 2012 and 15 June 2012, the hubpages article was accessed approximately 688 times. In the premises, paragraph 19 is admitted but the Defendant will ask the court to infer that a substantial proportion of these hits will have been repeat views by the same user, webcrawlers and or views by the Claimant and/or its agents.

40.2 Sub-paragraphs 18(a) and (b) are admitted.

41. No admission is made to sub-paragraph 18(e). The Claimant is required to prove that each of the actions listed in Annex B have been struck out, dismissed or failed altogether as averred therein. Further:

41.1 The word “failed is not defined.

41.2 In any event, all of the actions there listed were issued prior to the date on which the hubpages article was posted online and accordingly those claimants cannot have relied on the words complained of in the hubpages article to “bring a claim” against the Claimant.

42. As to paragraph 22:

42.1 For the reasons explained in paragraph 43 below, no admission is made as to whether the words complained of were defamatory of the Claimant.

42.2 The Defendant disabled access to the words complained of on or around 25 July 2012 after he had discovered that the Rob Ager is Wrong article had been deleted. The date on which the Rob Ager is Wrong article was removed from the internet is not known to the Defendant but it was some time after the Claimant’s letter of complaint on 30 May 2012.

Reference

43. As to paragraph 23: save that it is admitted that the words complained of in paragraph 22 referred to the Claimant’s trading name, the Claimant is required to prove that the words complained of referred to the Claimant.

44. Paragraph 24 is noted. The Claimant’s claim in relation to the hubpages article is confined to the words complained of as set out in paragraph 22 of the Particulars of Claim.

Meaning

45. No-admission is made as to whether the words complained of in paragraph 22 meant or were understood to bear the meaning set out in paragraph 25.
46. As to paragraph 26: save that it is admitted the words complained of in the hubpages article contains the words “illegal” and “a scam” the relevance of paragraph 26 is denied. The Claimant has chosen not to complain about the entire hubpages article.. The averment “*all of which are untrue and baseless*” is, insofar as it is understood to allege that the words complained of are untrue and baseless is denied.

JUSTIFICATION

47. If and in so far as the words complained of in the hubpages article, when read in the context of that article, meant that:
- (1) the Claimant :
 - (a) engaged in fraudulent activities;
 - (b) engages in dubious business practices;
 - (2) there were very strong grounds to suspect that the Claimant had caused or authorised online articles about the Defendant which were designed to: discredit the Defendant’s character and thereby his credibility and present the Claimant as the victim of a smear campaign;
- they are true or substantially true.

PARTICULARS OF JUSTIFICATION

- 48.1 Paragraphs 35.2 to 36.28 above are repeated.

QUALIFIED PRIVILEGE AT COMMON LAW

49. Further or in the alternative, the words complained of in the Hubpages article were the product of responsible journalism on a matter of public interest.

- 49.1 The subject matter of the article was a matter of public interest namely: informing the public that the online allegations about the Defendant including the articles Rob Ager is Wrong, and SkillstrainScam exposing the Smear Campaign were very likely to have to been written by individuals connected to the Claimant.
- 49.2 The tone of the article was measured and factual. The Defendant informed the reader that he could not prove that the articles were written by SkillsTrain executives or employees but explained the reasons for his suspicions.
- 49.3 The article included hyperlinks to the Rob Ager is Wrong article and the SkillstrainScam exposing the Smear Campaign articles.
- 49.4 The Defendant checked whether the hubpages account holder who had published the Rob Ager is Wrong article and whether the hub pages account holder who had published the Skillstrain Scam exposing the Smear Campaign had published any other articles on the hubpages site. At the time of publication both account holders had only published one article on the hubpages site. Accordingly it was reasonable for the Defendant to believe that the authors were not the journalists they claimed to be.
- 49.5 The Defendant explained in the article itself why he believed that the Claimant was responsible for the articles
- 49.6 At the time of publication, the Claimant had not responded to the Defendant's letter of 20 March 2010 to Eversheds in which the Defendant had put the Claimant on notice of his strong suspicion that Skillstrain managers were the source of the online articles about him.

49.7 The Claimant, in March 2010 contended that it was preparing legal action against the Defendant in respect of the “scam” allegations in the collative learning article. No such action had been taken.

49.8 Prior to publication of the hubpages article the Defendant had received a substantial number of emails from the Claimant’s students which stated that they when they complained to the Claimant, they had been sent a report about the Defendant which contained accusations about the Defendant’s personal life and his family and in at least one instance a cd called “AGER the truth”.

49.9 A very large number of complaints about the Claimant remained online in consumer forums, in particular the online thread: *How to get some or all of your money back from skillstrain* on the website consumeractiongroup.co.uk.

49.10 To the best of the Defendant’s knowledge , at the time of publication the Claimant had not given a credible explanation for its claim that its courses were approved and accredited by Microsoft and/or Cisco. The BBC Watchdog programme containing Microsoft and Cisco’s allegations remained available to view online.

49.11 In the premises the publication of the words complained of amounted to responsible journalism on a matter of public interest.

49.12 In further support of this contention, the Defendant will rely on the fact that he removed the hub pages article upon discovering that the RA is Wrong article had been deleted.

50 As to paragraph 27: the relevance of this paragraph is not understood. The action is limited to the words complained of in paragraphs 20 and 22. Paragraph 27 appears to relate to a claim for malicious falsehood but such claim does not appear in the PoC SF. Nor has the Claimant set out any particulars of falsity or malice.

- 51 Without prejudice to that contention, no admission is made to the assertion that the Claimant “uses a number” of logos it is entitled to use on the basis of their agreements and/or understanding with the relevant party. The Claimant is required to set out and prove which logos it is, and has been, entitled to so use.
- 52 As to paragraph 29: the first sentence is vague and unparticularised. In its Part 18 response the Claimant has stated that it does not believe there have been “errors” but “possible misunderstanding as to the validation and the certifications.” The second sentence is denied: paragraphs 35.2 to 36.28 are repeated.
- 53 The Defendant does not plead to paragraph 30 which appears to set out a further meaning unlinked to the words complained of and said to be “deployed by the Defendants” (sic). The Claimant has stated in its Part 18 response that paragraph 30 does not plead “a different meaning”. Paragraph 1.3 above is repeated.
- 54 Paragraph 31 is denied in so far as it is alleged that the Defendant made a formal (or any) complaint to the Financial Ombudsman Service or that the Financial Ombudsman Service found in favour of the Claimant “*at first instance and on review*”. The Defendant has never made a complaint to the Financial Ombudsman Service. No admissions are made as to the remainder of that paragraph: the Claimant is required to plead and prove which regulatory bodies it has responded to as averred therein.
- 55 Paragraph 32 is denied insofar as the Claimant alleges that the words complained of in this action have caused injury to the Claimant’s reputation. No admission is made as to the unparticularised claim for “*direct financial loss in having to defend vexatious and frivolous claims*”. The Claimant as a corporate entity, cannot as a matter of law, suffer hurt, distress and embarrassment. By reason of the foregoing it is denied that the Claimant is entitled to the relief sought in Particulars of Claim or any relief.
- 56 The Defendant will rely on section 5 Defamation Act 1952.
- 57 If, which is denied, the Claimant is entitled to any damages, in mitigation of those damages the Defendant will rely on the facts and matters set out or relied on in paragraphs 35.2 and 36.28 above, and:

57.1 The Claimant has already been awarded £50,000 in damages in respect of words to the same effect as those complained of in this action in the case Metropolitan International Schools Ltd v Designtecnica Corporation & Ors Case No: HQ09X01852.

58 As to paragraphs 33 and 34:

58.1 No admissions are made as to whether the claims listed in Annex B to the Particulars of Claim were encouraged by the Defendant. Pending disclosure of all documents relevant to these claims the Defendant makes no admissions as to the allegation in paragraph 33 that all claims against the Claimant were struck out, dismissed or “failed” altogether and the Claimant is required to provide further information and disclosure of the documents in each of these claims.

58.2 As a matter of law, the Claimant as a corporate entity cannot suffer hurt distress and embarrassment.

58.3 It is admitted that the document at Annex D is a statement signed by one Gordon Robinson. The relevance of the statement, which is dated after the proceedings were dismissed and relates to another of the Claimant’s trading names, Train4TradeSkills, is not admitted. The Claimant is required to particularise and prove the circumstances in which the witness statement was made and the basis on which the claim was dismissed by consent.

58.4 The 3rd sentence is noted. No admissions are made as to the reason why Mr Hanley’s claim (which also relates to Train4TradeSkills) was dismissed.

58.5 Without prejudice to the Defendant’s contention that the Claimant must particularise and prove the assertion that all claims allegedly incited by the Defendant were struck out, dismissed or failed altogether, the Defendant will rely on complaints and claims brought against the Claimant in which the Claimant settled the action or complaint including, but not limited to, those

set out below. If and to the extent that the Claimant contends that these actions and complaints were settled by MCT, the Defendant will ask the court to infer that this is a means by which the Claimant seeks to avoid admitting liability.

Ian Watson-

59 In 2010 Mr Watson complained to the Financial Ombudsman Service about the Claimant miss-selling him a course in 2008.

59.1 FOS investigated the complaint.

59.2 On June 2010 Mr Watson received a letter from Neklan Herold the Managing Director of MCT Ltd., stating that *"in our capacity as the marketing company and the enrolment procedures and/or as a goodwill gesture we have accepted liability"* and enclosed a cheque for £1,395 which was *"to be accepted and banked"* on the basis of full and final settlement between Mr Watson and "SkillsTrain" and *"there is no further liability in this matter particularly as they have only facilitated this settlement."*

59.3 On 3 August 2010, CDF Ltd wrote to Mr Watson confirming that it was in receipt of a refund from "SkillsTrain" and that the credit agreement had been cancelled.

Gary Davies

60 In March 2010 Mr Davies issued a claim ^{RA} ~~in the~~ against the Claimant in the Rotherham County Court (Claim Number 0RT00489) in respect of alleged misrepresentation by the Claimant as to its course being "authorised and endorsed by Microsoft and Cisco networking".

60.1 The Claimant filed a Defence dated 5 March 2010. On 12 May 2010 District Judge Corkhill struck out the Claimant's (the Defendant in that action) defence as it disclosed no reasonable grounds for defending the claim. The Defendant filed a particularised Defence on 24 May 2010. Shortly before the

trial, by letter dated 11 August 2010 MCT (who was not a party) notified Mr Davies that it had agreed with the Claimant to provide a refund (a cheque being enclosed), on the basis of no liability and subject to a confidentiality clause. Mr Davies did not sign that agreement. By letter dated 11 August 2010 the Claimant wrote "*Further to an agreement made with*" MCT Ltd and enclosed a copy of a consent order for Mr Davies to forward to the court. Mr Davies notified the court by letter dated 16 August 2010, and the Court ordered the discontinuance of the claim on 1 September 2010.

61 Muhammed Anwar.

- 61.1 In or around 21 October 2008, Mr Anwar enrolled on one of the Claimant's computer course. In 2009 Mr Anwar complained to Claimant directly and through his solicitors about the use of logos and the Claimant's false claims as to accreditation
- 61.2 Mr Anwar subsequently issued a claim against the Claimant in the Ilford County Court (Claim No IIG00351. The Claimant filed a Defence on 23 May 2011.
- 61.3 On or around 12 December 2011, the Claimant settled Mr Anwar's claim at Luton County Court. Until disclosure, the Defendant is unable to state the terms of the settlement save that in a letter dated 14 December 2011, from Neklan Herold of MCT (describing itself as the "marketing agents for SkillsTrain"), stated that it had agreed to pay the sums due as part of the settlement. MCT provided a cheque for £2,000 and stated that it had also "settled" the outstanding balance with CDF. By letter dated 14 December 2011, CDF Ltd confirmed that MCT had settled the balance of £1,649.99.
- 61.4 On 15 December 2011 the Court ordered that upon the defendant (the Claimant) promising to pay Mr Anwar £2,000 and procure his discharge from any further liability to CDF Ltd the claim the claim was stayed, and upon payment of the same and the discharge of liability the claim be struck out.

62 As to paragraph 35, it is denied that the Defendant's conduct amounted to "*consistent incitement of others to bring proceedings against the Claimant*". It is admitted that the Defendant has not brought legal proceedings against the Claimant but the relevance of this is denied.

63 It is admitted that the Defendant intends to continue to publish the words complained of. The Claimant is not entitled to the relief sought in paragraphs 36.

64 Paragraph 37 is vague in that it refers to "content" and is not linked to a cause of action and accordingly save that as a matter of law the Claimant as a corporate entity cannot suffer hurt, distress or embarrassment, the Defendant does not plead to this paragraph.

65 For the reasons set out above the Claimant is not entitled to the relief sought, or any relief.

VICTORIA JOLLIFFE

STATEMENT OF TRUTH

I, Robert Ager believe that the facts stated in this Defence are true

Signed..........

Dated: 30 October 2012