



Neutral Citation Number: [2021] EWHC 836 (Ch)

Claim No. IL 2018-000105

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

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

Date: Wednesday, 1st April 2021

Before:

MR. DAVID STONE
(Sitting as a Deputy High Court Judge)

Between:

- (1) ORIGINAL BEAUTY TECHNOLOGY
COMPANY LIMITED
(2) LINHOPE INTERNATIONAL LIMITED
(3) RETAIL INC LIMITED (in liquidation)

Claimants

- and -

- (1) G4K FASHION LIMITED
(2) CLAIRE LORRAINE HENDERSON
(3) MICHAEL JOHN BRANNEY
(4) OH POLLY LIMITED

Defendants

MS. ANNA EDWARDS-STUART and MR. DAVID IVISON (instructed by **Mono Law Solicitors**) for the **First and Second Claimants**

MR. CHRIS AIKENS (instructed by **Fieldfisher**) for the **Defendants**

Approved Judgment

Digital Transcription by Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

MR DAVID STONE (sitting as a Deputy High Court Judge):

1. This is the form of order hearing in case number IL-2018-000105 in which I gave judgment on 24 February 2021 ('the Judgment'). In addition to passing off, that trial considered whether 20 garments produced by or on behalf of the Defendants infringed unregistered Community design rights (as they then were) (**UCD**) and United Kingdom unregistered design rights (**UKUDR**) in 20 garments designed by or on behalf of the Claimants (the **Selected Garments**).
2. In the Judgment, I found that seven of the 20 Selected Garments infringed both UCD and UKUDR and I found that 13 of the Selected Garments did not.
3. Mr Aikens, who appeared at the trial and appears before me today on behalf of the Defendants, seeks, amongst a range of orders (many of which are already agreed), an additional declaration that:

“The Defendants have not infringed the UKUDR or UCD subsisting in each of the designs referred to in the Court’s judgment as C3, C7, C9, C17, C21, C47, C49, C63, C66, C77, C81, C93 and C102”.
4. That order is resisted by Ms Anna Edwards-Stuart and Mr David Ivison, who appear on behalf of the First and Second Claimants. The Third Claimant has gone into liquidation since the trial, and did not appear before me today.
5. Declarations of non-infringement are a discretionary remedy, the discretion being for the Court to exercise in circumstances where the declaration would “serve a useful purpose”. In his helpful skeleton argument, Mr Aikens submits that there are two useful purposes of the declaration sought. First, he says, without such a declaration, the order would give an incomplete picture as to what was decided in the Judgment. Second, he submits that its omission would give the misleading impression that that issue had not been decided.
6. I disagree. There is already in the proposed draft order at paragraph 9 an order in the following terms:

“Save as aforesaid, each of the Claimants’ claims of infringement of UKUDR and UCD in respect of the Selected Garments is dismissed.”
7. To my mind, this proposed order (which is not resisted by the Claimants) deals with both of Mr Aikens’ points. That order makes abundantly clear that, save for claims over the Selected Garments found to infringe, the claims of both UKUDR and UCD infringement are dismissed. There can therefore be no inaccurate picture of what was decided in the Judgment. Claims relating to all Selected Garments have been dealt with on the face of the order.
8. In addition, it seems to me that the order overall as currently proposed by the parties already needs to be read in conjunction with the Judgment in any event because, without that Judgment, anyone reading the order is not going to know what C3, C4, C7 etcetera relate to.

9. Therefore in all the circumstances and in the exercise of my discretion, I believe it does not serve a useful purpose to include the requested declaration of non-infringement.
