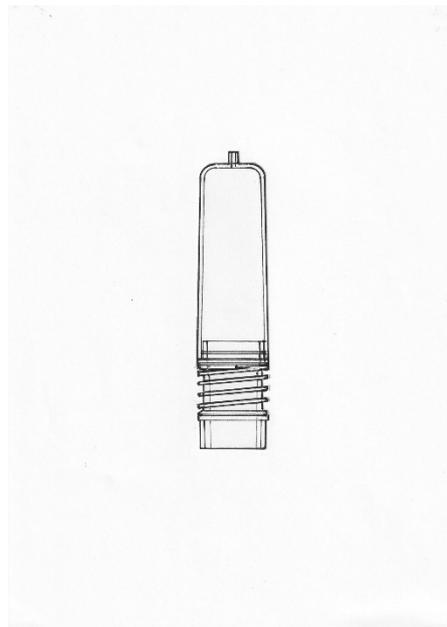


O/009/21

REGISTERED DESIGNS ACT 1949

IN THE MATTER OF:

**REGISTERED DESIGN NO 6048878
IN THE NAME OF CHRISTOPHER BISH
IN RESPECT OF THE FOLLOWING DESIGN**



AND

**AN APPLICATION FOR INVALIDATION (NO 67/19)
BY ALAN WHEELHOUSE**

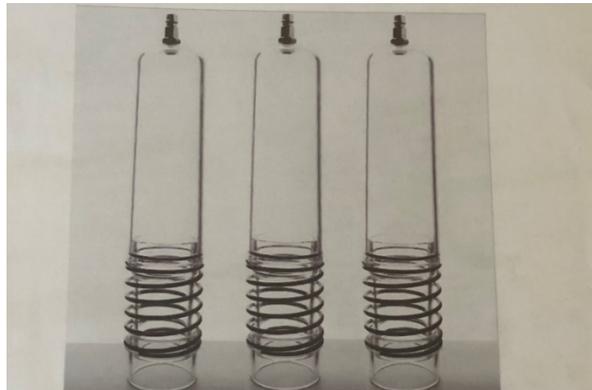
Background and pleadings

1. Mr Christopher Bish (“the registered proprietor”) filed application no. 6048878 for a registered design for a penis pump in Class 24, Sub class 02 of the Locarno Classification (Medical instruments, instruments and tools for laboratory use) on 26 November 2018. It was registered with effect from that date and is depicted in the following representations:



2. On 5 November 2019, Mr Alan Wheelhouse (“the applicant”) applied for the registered design to be invalidated under section 1B, utilising section 11ZA(1)(b), and section 11ZA(4) of the Registered Designs Act 1949 (“the Act”). The applicant claims that the contested design is not new, nor does it have individual character compared with an earlier design of his. In his statement of case, he refers to an earlier application

for a patent and includes the image below. He states that the photograph comes from the mock up of a potential website and was shared with Mr Bish on 6 August 2017.



3. The applicant also claims that the contested design constitutes an unauthorised use of a work protected by the law of copyright in the UK and that he is the copyright holder.¹ The work in question is shown below:



4. The registered proprietor filed a counterstatement on 6 January 2020. This counterstatement contained several deficiencies, so the registered proprietor was required to amend it. As an amended version had not been filed by the deadline given by the Registry, I held a case management conference (CMC) on 31 March 2020. By

¹ In a letter of 4 February 2020, the applicant's representative confirmed that Mr Wheelhouse was a qualifying person under section 154 of the Copyright, Designs and Patents Act 1988 as a British citizen.

this time, both parties, who had originally represented themselves, had secured legal representation from Filemot Technology Law Ltd (for the applicant) and Austin Ryde Private Office Solicitors, then Berkeley Rowe (for the registered proprietor).

5. At the CMC, I directed that an amended counterstatement be filed by 14 April 2020 and that any statements, evidence and written submissions should be directed towards the intellectual property issues for decision here and not include personal information that was not relevant to these issues.

6. The registered proprietor filed an amended counterstatement on 14 April 2020, denying all the claims made. With respect to the section 1B ground, the registered proprietor claims that there is no prior design owned by anyone other than himself which is comparable with the combination of spring and chamber found in the contested design and that this idea was novel when it was created.

7. With respect to the section 11ZA(4) ground, the registered proprietor denies that the contested design constitutes an unauthorised use of work protected by copyright and that the applicant is the copyright holder. He also claims that Mr Wheelhouse was his employee and that, even if Mr Wheelhouse had had any involvement in the creation of the work, the copyright would be owned by Mr Bish as his employer.

8. The applicant filed evidence on 26 May 2020. This will be summarised to the extent that I consider necessary. As a result of the restrictions imposed in response to the COVID-19 pandemic, the registry had increased the time limits allowed for both parties to file evidence to twelve weeks. The registered proprietor was given a deadline of 18 August 2020 for filing evidence and/or submissions.

9. The registered proprietor's evidence was eventually submitted in an incomplete state on 11 September 2020, following two previous short extensions, first to 21 August 2020 and then to 26 August 2020. The applicant objected to the admission of this evidence into the proceedings.

10. I held a further CMC on 29 September 2020, where I heard the submissions of both parties on whether the registered proprietor's evidence should be admitted to the

proceedings. The documentation that had been outstanding on 11 September 2020 had still not been received.

11. The registered proprietor's representative submitted that the registered design was different from the 2016 design claimed by the applicant. If this were the case, that difference would be apparent from a comparison of the registrations with any prior art adduced by the applicant. Furthermore, the witness statement of the registered proprietor was not in line with the directions I had given at the previous CMC, as it contained personal details and allegations that were not relevant to the present proceedings.

12. The Tribunal has an overriding objective to ensure that all proceedings are completed within a reasonable time, avoiding unnecessary expense. In my view, the registered proprietor had been given more than adequate time in which to produce his evidence, had already enjoyed the benefit of short extensions, and still the evidence was incomplete at the date of the CMC. It was also my view that the contents of Mr Bish's witness statement would have no material impact on my decision. Consequently, I refused to admit the registered proprietor's evidence.

13. Neither side requested a hearing and the applicant made final written submissions in lieu of a hearing on 21 October 2020. I have taken this decision after a careful consideration of the papers before me.

Evidence

14. The registered proprietor's evidence comes from Alan Wheelhouse and is dated 20 May 2020.

15. Mr Wheelhouse states that he has been working on designs for penis pumps since about 1996 and has made several patent applications, although he adds that none of these has been published, owing to lack of funding. A version with an integral spring was invented in 2010. Page 1 of Exhibit AW1 is a print-out from Mr Wheelhouse's website, obtained via the Wayback Machine, showing a version containing the spring. This is dated 12 July 2012.



16. In February 2016, he says, he designed a penis pump for a meeting on 2 March 2016 with a company called Lovehoney. A non-disclosure agreement was made between Lovehoney and Mr Wheelhouse.² The following photographs of the design were sent to the co-owner of this distributor and Mr Bish, who, Mr Wheelhouse states, had become involved in 2015 as an investor. The larger photograph is stated to have been sent on 17 February 2016, but there is no record of the email. However, the smaller images can be seen on page 6 of Exhibit AW1 in an email from Mr Wheelhouse to Mr Bish of that date.



² Exhibit AW1, pages 8-9.



17. Mr Wheelhouse states that in April 2016 he sold products that he describes as “very similar” to the design, except for the material of the spring cylinder, on eBay. The date on the listing is 2 April 2016 and the seller is Sizemedics, which, according to Mr Wheelhouse, is his partner’s account.



18. In early 2017, Mr Wheelhouse was in correspondence with moulding companies with a view to developing the product for commercial sale. The project was taken forward by Plastech, who prepared a CAD model. Plastech sent the drawing on page 19 of Exhibit AW1 to Mr Wheelhouse on 5 April 2017.



21. Mr Wheelhouse then says that Mr Bish started selling a penis pump in 2018. The following image is taken from a print-out from amazon.co.uk which shows that this product was on sale from 30 September 2018.⁵



22. This ends my summary of the evidence.

⁵ Exhibit AW1, page 27.

Decision

Legislation

23. Section 11ZA(1)(b) of the Act states that:

“The registration of a design may be declared invalid –

...

(b) On the ground that it does not fulfil the requirements of sections 1B to 1D of this Act”.

24. Section 1B of the Act is as follows:

“(1) A design shall be protected by a right in a registered design to the extent that the design is new and has individual character.

(2) For the purposes of subsection (1) above, a design is new if no identical design or no design whose features differ only in immaterial details has been made available to the public before the relevant date.

(3) For the purposes of subsection (1) above, a design has individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public before the relevant date.

(4) In determining the extent to which a design has individual character, the degree of freedom of the author in creating the design shall be taken into account.

(5) For the purposes of this section, a design has been made available to the public before the relevant date if –

(a) it has been published (whether following registration or otherwise), exhibited, used in trade or otherwise disclosed before that date; and

(b) the disclosure does not fall within subsection (6) below.

(6) A disclosure falls within this subsection if –

(a) it could not reasonably have become known before the relevant date in the normal course of business to persons carrying on business in the European Economic Area and specialising in the sector concerned;

(b) it was made to a person other than the designer, or any successor in title of his, under conditions of confidentiality (whether express or implied);

(c) it was made by the designer, or any successor in title of his, during the period of 12 months immediately preceding the relevant date;

(d) it was made by a person other than the designer, or any successor in title of his, during the period of 12 months immediately preceding the relevant date in consequence of information provided or other action taken by the designer or any successor in title of his; or

(e) it was made during the period of 12 months immediately preceding the relevant date as a consequence of an abuse in relation to the designer or any successor in title of his.

(7) In subsections (2), (3), (5) and (6) above ‘the relevant date’ means the date on which the application for the registration of the design was made or

is treated by virtue of section 3B(2), (3) or (5) or 14(2) of this Act as having been made.

...”

25. Section 11ZA(4) of the Act states that:

“The registration of a design constituting an unauthorised use of a work protected by the law of copyright in the United Kingdom may be declared invalid on the ground of an objection by the owner of the copyright.”

Section 1B

26. I shall begin with the section 1B ground and remind myself of the comments of Jacob LJ in *The Procter & Gamble Company v Reckitt Benckiser (UK) Limited* [2007] EWCA Civ 936:

“The most important things in a case about registered designs are:

- (i) The registered design;
- (ii) The accused object;
- (iii) The prior art.

And the most important thing about each of these is what they look like.”⁶

27. Those proceedings concerned an alleged infringement, but the point applies equally to invalidations on section 1B grounds. I must take into account the appearance of the contested design and compare this to the prior art. Whatever designs Mr Bish is currently selling – and whether they look similar or not to the registered design – are not relevant considerations. The alleged conduct of either party also has no bearing on my decision under sections 11ZA(2) and 1B of the Act. What I am required to determine is whether the contested design had the required novelty

⁶ Paragraph 3.

and individual character at the relevant date, which is the date of the application for registration of the design (26 November 2018).

Prior Art

28. The applicant submits that the following disclosures prevent the design from being novel:

- The sale of products on eBay in April 2016 (as mentioned in paragraph 17 above);
- The disclosure of the design to the moulding companies in January 2017 (paragraph 18);
- A picture sent to Mr Bish on 6 August 2017 showing Plastech samples (paragraph 2);
- The sale of the Plastech samples on eBay at some point between June and August 2017 (paragraph 19);
- The sprhung.com website (paragraph 20); and
- The product put on sale by Mr Bish before the application for a design was filed (paragraph 21).

29. As the patent applications to which Mr Wheelhouse refers were not published, these do not constitute disclosures under the Act, as they could not reasonably have become known in the normal course of business before the relevant date to persons carrying out business in the European Economic Area (EEA) and specialising in the sector concerned.⁷ In paragraph 7 of his witness statement, Mr Wheelhouse acknowledges that the meeting with Lovehoney was a private meeting, and not a disclosure to the public.

30. The applicant submits that the sale of the Plastech samples on eBay alone “is sufficient to invalidate the registration and it may not be necessary to discuss any others”.⁸ Mr Wheelhouse adduces as evidence for these sales an email he received

⁷ Section 1B(6)(a) of the Act.

⁸ Paragraph 13 of the applicant’s submissions.

from Mr Bish on 14 August 2017. The email does refer to Mr Wheelhouse selling goods on eBay, but it does not specify what these goods are. Even if I infer that they were the samples from Plastech, I have before me no images of what was sold. There is a technical drawing on page 19 of Exhibit AW1, but this would not be what was made available to the public. This disclosure cannot, therefore, be part of the prior art with which I must compare the contested design.

31. The 2016 eBay listing is a disclosure to the public. While I have no evidence showing the sprhung.com website, there is an Instagram post dated 4 November 2018. Whether this date marks the original posting or an update, it was available to the public before the relevant date. Both can be taken into account as prior art. The registered proprietor's listing on amazon.co.uk, while before the relevant date, falls within the 12-month period allowed by section 1B(6)(c) for disclosures by the designer and so this is an exempt disclosure and not to be considered as prior art.

32. I turn now to the photograph sent to Mr Bish. Section 1B(6)(b) of the Act states that disclosures made under conditions of confidentiality are exempt, whether those conditions are express or implied. The authors of *Russell-Clarke and Howe on Industrial Designs*, 9th edition, consider confidential disclosures in the following paragraphs (with footnotes omitted):

“3-131. On the other hand, a communication made under circumstances which impose an obligation of confidence on the recipient is not a publication.

3-132. If the person to whom the disclosure is made has himself an interest in the design, then it may be easy to infer that the disclosure is confidential. In *Blank v Footman, Pretty & Co.* Blank, the proprietor of a design, before registering it, showed it to Hummel, a commission agent who had the sole right of selling Blank's goods in England. Hummel, therefore, had an interest in the design, and it was held that, this being so, the communication must be regarded as confidential, and such as not to amount to publication. Kekewich J said:

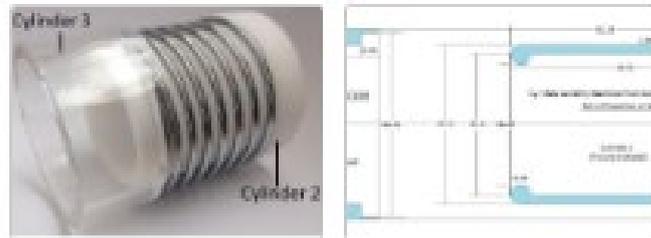
‘Therefore, Mr Hummel has an interest in any design of Mr Blank’s goods of this class, and although he is not a partner, or in any way a partner, he has that interest which makes him a person whom Mr Blank would naturally consult before endeavouring to put any of that class of goods on the market. Mr Blank, therefore, having sketched his design, shows it to Mr Hummel. I cannot conceive that in doing so he would be publishing the design in any sense which could be placed on that word. Even if that relation had not existed between the two parties, I see no reason why a designer should not call in an expert, a gentleman whom he knows to be experienced in the trade likely to advise him well and whom he can trust, for the purpose of advising him before incurring extra expense and trouble.’

3-133. Mere private collaboration will generally not amount to publication. If, however, the disclosure involves anything in the nature of commercial dealing, then prima facie it will not be considered confidential and will amount to publication. In *Gunston v Winox Ltd* Lord Sterndale MR said: ‘There is ample authority that the showing of a design to a person for the purpose of getting an order is prima facie a disclosure of that design’. And this will be so even though the goods are not, in fact, delivered till after the date of registration.”

33. The relationship between Mr Wheelhouse and Mr Bish was, at the time of the email of 6 August 2017, closer than that between Mr Blank and Mr Hummel. In his email of 14 August 2017, Mr Bish admits that he has been an investor in a business with Mr Wheelhouse. This leads me to find that by emailing the photograph to Mr Bish, Mr Wheelhouse did not make it available to the public and so it does not form part of the prior art.

34. Finally, I come to the disclosures to the moulding companies. Mr Wheelhouse states that he sent the same message to ten moulding companies on 16 January

2017.⁹ The email to Plastech, whose quotation he accepted, is at page 11 of Exhibit AW1. It contains the following images:



35. Mr Wheelhouse stated in the email that the product of which the cylinders shown form a part was at that time on sale in the UK and that he hoped to enter the European market. In my view, the cylinders look the same as the lower part of the products sold on eBay in 2016 and shown in paragraph 14 above. I find that this is acceptable prior art.

The designs to be compared

36. The table below shows the contested design and the prior art against which I shall compare it.

The Registered Design	The Prior Art
	

⁹ Paragraph 9.

The Registered Design	The Prior Art
	

37. As the registered design is a line drawing, I consider that it protects the shape of the product. In the absence of any explanation, it seems to me most likely that the second and third representations are views of the product from the top and the bottom. The product shown in paragraph 21 contains what looks like a circular base for the nozzle. While it is not clear whether this is shown in the fourth representation, the main representation (the cross-section) gives no indication that the product contains such a feature.

38. The registered design has the following features:

- a) a construction based on three cylinders, the middle one of which is narrower than the outer two;
- b) straight sides to all three cylinders;
- c) the top of the product appears to be curved towards a flat surface and the fourth representation suggests that there may be some contouring;
- d) a small nozzle-shaped section on the very top of the product;
- e) the top cylinder has an open base which slots over the second narrower cylinder;

- f) a coil surrounding the second cylinder;
- g) the second cylinder has an open top and base;
- h) a third cylinder in which the bottom of the second cylinder sits;
- i) the third cylinder has a slightly protruding lip at the top, which is open, as is the base.

39. Two of the images in the prior art show incomplete products. While the 2016 eBay listing contains two further thumbnail images, these are too small for me to be able to compare them to the contested design. The applicant's best case therefore rests with the Instagram post (the third piece of prior art).

40. The third piece of prior art has the following features of shape and configuration:

- a) a construction based on three cylinders, the middle one of which is narrower than the outer two;
- b) the sides of the top cylinder appear to be slightly tapered, while those of the other two are straight;
- c) the top of the product is curved and appears to be more rounded than the contested design;
- d) the line at the top of the product suggests that there is an opening or an additional piece;
- e) the top cylinder has an open base which slots over the second narrower cylinder;
- f) a coil surrounding the second cylinder;
- g) a third cylinder in which the bottom of the second cylinder sits;
- h) the third cylinder has a slightly protruding lip at the top, which is open.

Novelty and Individual Character

41. Section 1B(2) of the Act states that a design has novelty if no identical design or no design differing only in immaterial details has been made available to the public before the relevant date. In *Shnuggle Limited v Munchkin, Inc & Anor* [2019] EWHC 3149 (IPEC), HHJ Melissa Clarke, sitting as a Judge of the High Court, said:

“‘Immaterial details’ means ‘only minor and trivial in nature, not affecting overall appearance’. This is an objective test. The design must be considered as a whole. It will be new if some part of it differs from any earlier design in some material respect, even if some or all of the design features, if considered individually, would not be.”¹⁰

42. Section 1B(3) of the Act states that a design has individual character when it produces a different overall impression on the informed user than that produced by any design made available to the public before the relevant date. In *Ball Beverage Packaging Europe Ltd v European Intellectual Property Office (EUIPO)*, Case T-9/15, the General Court (GC) said:

“According to the case-law, the individual character of a design results from an overall impression of difference or lack of ‘déjà vu’, from the point of view of an informed user, in relation to any previous presence in the design corpus, without taking account of any differences that are insufficiently significant to affect that overall impression, even though they may be more than insignificant details, but taking account of differences that are sufficiently marked so as to produce dissimilar overall impressions (judgments of 7 November 2013, *Budziewska v OHIM – Puma (Bounding feline)*, T-666/11, not published, EU:T:2013:584, paragraph 29, and of 29 October 2015, *Roca Sanitario v OHIM – Villeroy & Boch (Single control handle faucet)*, T-334/14, not published, EU:T:2015:817, paragraph 16).”¹¹

43. In *Samsung Electronics (UK) Ltd v Apple Inc* [2012] EWHC 1882 (Pat), HHJ Birss (as he then was), sitting as a Deputy Judge of the Patents Court, set out the correct approach to assessing individual character as follows:

“53. The exercise must start with identifying the informed user and the existing design corpus. The overall impression is something produced on the informed user.

¹⁰ Paragraph 26.

¹¹ Paragraph 78.

54. Although the outcome depends on overall impression, as a practical matter the design must be broken down into features. Each feature needs to be considered in order to give it appropriate significance or weight. Each feature needs to be considered in three respects. A feature dictated solely by function is to be disregarded. As long as it is not disregarded, each feature must be considered against the design corpus and it must be considered from the point of view of design freedom.

...

58. How similar does the alleged infringement have to be to infringe? Community design rights are not simply concerned with anti-counterfeiting. One could imagine a design registration system which was intended only to allow for protection against counterfeits. In that system only identical or nearly identical products would infringe. The test of 'different overall impression' is clearly wider than that. The scope of protection of a Community registered design clearly can include products which can be distinguished to some degree from the registration. On the other hand the fact that the informed user is particularly observant and the fact that designs will often be considered side by side are both clearly intended to narrow the scope of design protection. Although no doubt minute scrutiny by the informed user is not the right approach, attention to detail matters."

The informed user

44. Earlier in the same decision, the judge gave the following description of the informed user:

"33. ... The identity and attributes of the informed user have been discussed by the Court of Justice of the European Union in *PepsiCo v Grupo Promer* (C-281/10 P) [2012] FSR 5 at paragraphs 53 to 59 and also in *Grupo Promer*

v *OHIM* [2010] EDCR 7, (in the General Court from which *PepsiCo* was an appeal) and in *Shenzhen Taiden v OHIM*, case T-153/08, 22 June 2010.

34. Samsung submitted that the following summary characterises the informed user. I accept it and have added cross-references to the cases mentioned:

i) he (or she) is a user of the product in which the design is intended to be incorporated, not a designer, technical expert, manufacturer or seller (*PepsiCo* paragraph 54 referring to *Grupo Promer* paragraph 62, *Shenzhen* paragraph 46);

ii) however, unlike the average consumer of trade mark law, he is particularly observant (*PepsiCo* paragraph 53);

iii) he has knowledge of the design corpus and of the design features normally included in the designs existing in the sector concerned (*PepsiCo* paragraph 59 and also paragraph 54 referring to *Grupo Promer* paragraph 62);

iv) he is interested in the products concerned and shows a relatively high degree of attention when he uses them (*PepsiCo* paragraph 59);

v) he conducts a direct comparison of the designs in issue unless there are specific circumstances or the devices have certain characteristics which make it impractical or uncommon to do so (*PepsiCo* paragraph 55).

35. I would add that the informed user neither (a) merely perceives the designs as a whole and does not analyse details, nor (b) observes in detail minimal differences which may exist (*PepsiCo* paragraph 59)."

45. Neither party has made any submissions on the identity of the informed user. In my view, given the knowledge of the design corpus that the informed user is expected to have, this person would be a medical professional or therapist recommending products to clients experiencing erectile dysfunction. However, as Mr Recorder Douglas Campbell (sitting as an Enterprise Judge) stated in *Utopia Tableware Limited v BPP Marketing Limited & Anor*, [2013] EWHC 3483 (IPEC), the identification of the real-life person who most closely fits the description of “informed user” is less important than the fact that the person has knowledge of the existing design corpus and of the features usually included in it.

The design corpus

46. The design corpus includes the product sold on eBay in 2016 and the one from 2012 shown in paragraph 15 above. It will be noted that both of these include a coiled spring, as do the prior art and the contested design. The 2012 product also consists of three cylinders in the same proportions. However, at the very top is a further cylinder which I take to be the integral pump noted on the description.

47. In his witness statement, Mr Wheelhouse describes the spring element of this and his later design as the “USP”, which I understand to mean “unique selling point”, which he hoped would be patentable. I infer from this statement that there were products on the market that did not contain this element, but I have been provided with no images to support such an inference.

Design freedom

48. In *Dyson Ltd v Vax Ltd*, [2010] FSR 39, Arnold J (as he then was) stated that:

“... design freedom may be constrained by (i) the technical function of the product or an element thereof; (ii) the need to incorporate features common to such products; and/or (iii) economic considerations (e.g. the need for the item to be inexpensive).”¹²

¹² Paragraph 34.

49. I have before me little evidence on the technical function of the product, beyond several references to vacuums and a brief description in the Amazon listing for the product first made available by Mr Bish on 30 September 2018.¹³ It is clear, though, that the bottom of the product needs to be open, and there must be sufficient space within the product, for it to fulfil its function and be removed without causing discomfort.

50. The Amazon description states that a vacuum is created in the cylinder. The simplest way to do this is to remove the air from the cylinder using the pump and the image reproduced in paragraph 21 shows such a pump attached to the product via a hose. As has been seen, the designer has a certain degree of freedom as to whether the product has an integral pump or simply the means to attach one externally. If they had chosen the latter option, the attachment would need to be of a size to fit the pump securely.

51. The number of parts to the product, whether the sides are straight or tapered, and any curvature of the end are all design choices.

Overall impression

52. In my view, the features that will make the greatest contribution to the overall impression made by the contested design on the informed user are the three-cylinder construction, the coil spring around the middle cylinder and the curved top – all of which are found in the prior art. The first and third of these are design choices, as shown in the design corpus. The 2012 design has a flat top, which gives a cruder, less sculpted overall impression of the product. I have also taken note of Mr Wheelhouse's suggestion that the spring element was unique. I am, however, giving this feature less weight, as no examples of pumps without a coil spring have been filed in evidence.

53. The contested design's nozzle is small and will be seen simply as a means for attaching a hose, with the size dictated by the dimensions of that hose. It seems to me that this element of the design is dictated by its technical function, and so should be disregarded. Even if I am wrong in this, I still consider that the nozzle makes little

¹³ Exhibit AW1, page 28.

impact on the overall impression of the design, as is also the case with the difference between straight and tapered sides. In my view, the tapering in the prior art is so slight that noticing it would require the kind of minute scrutiny on the part of the informed user that Mr Justice Birss deemed the wrong approach in *Samsung*.

54. I find that the contested design will create the same overall impression on an informed user of penis pumps as the third piece of prior art. Consequently, the contested design did not have individual character at the relevant date.

Section 11ZA(4)

55. In its submissions on the section 11ZA(4) ground, the applicant drew my attention to the decision of HHJ Hacon in *Response Clothing Ltd v Edinburgh Woollen Mill* [2020] EWHC 148 (IPEC), in support of his claim that he owns a work protected by copyright and that unauthorised use has been made of that work. This decision was the first in the English courts to apply the Court of Justice of the European Union's ruling in *Cofemel – Sociedade de Vestuário SA v G-Star Raw CV*, Case C-683/17, on the extent to which copyright protection may apply to designs. *Response* has been appealed, and we are waiting for the judgment of the higher court. Consequently, any decision I were to make under this ground would need to be provisional, pending the handing down of the Court of Appeal's judgment, and this would impose a further delay on the resolution of these proceedings. In the circumstances, therefore, as the application has succeeded on the other ground, I will not decide the section 11ZA(4) claim.

Conclusions

56. The application for invalidity has succeeded.

Costs

57. The applicant has been successful and would under normal circumstances be entitled to a contribution towards the costs of the proceedings in line with the scale of costs set out in Tribunal Practice Notice 2/2006. The applicant's representative has,

however, been acting on a pro bono basis. Consequently, I make no award beyond the value of the official fees of £48.

58. I order Mr Christopher Bish to pay Mr Alan Wheelhouse the sum of £48. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings if the appeal is unsuccessful.

Dated this 7th day of January 2020

Clare Boucher
For the Registrar,
The Comptroller-General