

BLO/399/20

REGISTERED DESIGNS ACT 1949 (AS AMENDED)

**REGISTERED DESIGN NOS 6013763, 6013765, 6013766, 6013768, 6013769,
6013771, 6013764 & 6013770**

IN THE NAME OF CRAFT SALES LTD

AND




APPLICATION NOS 27/19, 28/19, 29/19, 31/19, 32/19, 33/19, 34/19 & 35/19

BY MYEVERYDAYHOME.COM LTD

TO INVALIDATE THE REGISTERED DESIGNS

Background and claims

1. The registered designs which are the subject of his dispute were filed on 12 June 2017 and now stand registered in the name of craft sales ltd (“the proprietor”). Prior to an assignment dated 4 February 2018, the designs were owned jointly by the current proprietor and another company called Craft Shapes Ltd. The designs were registered with effect from 12 June 2017. I will set out all of the representations later in this decision but the following illustrations give an idea of the designs:

Design registration number and recorded description	Representation
6013763 Plain wooden box treasure chest style with specific top	
6013765 White treasure chest	
6013769 Plain wooden box treasure chest	

<p>6013764</p> <p>Wooden treasure chest</p>	
<p>6013770</p> <p>Wooden box with specific legs cutouts</p>	
<p>6013768</p> <p>Wooden box with lock and slot for letters (wedding box)</p>	
<p>6013766</p> <p>Letter box</p>	
<p>6013771</p> <p>Ornament</p>	

2. On 5 April 2019, MyEveryDayHome.com Ltd (“the applicant”) applied for the registration of the designs to be declared invalid. The applicant claims that the contested designs lack novelty and individual character and should be declared invalid under s. 11ZA(1)(b) of the Registered Designs Act 1949 (“the Act”) on the ground that the contested design did not fulfil the requirements of s. 1B. The applicant claims that the same or similar designs have previously appeared for sale on websites. It filed evidence as part of its statement of case, which I will detail later.¹

3. The proprietor filed counterstatements, identical for all of the applications, denying the grounds for invalidation. It makes a number of criticisms of the applicant’s evidence, particularly its reliability. I also note the following statements:

“3) The proprietor is the owner of the design and using the design through its licensees from the past few years and no one has ever raised any objection regarding the novelty of the design.

4) The design was originally created by the proprietor which was later copied by several people like the applicant and because of the successful sale of the product the people started bullying proprietor through several ways.

5) It is denied that the design was publicly available for more than 4 years before the registration of the design”.

4. Neither party filed any further evidence or submissions. Neither party requested to be heard nor filed submissions in lieu. This decision is made following a careful reading of the papers.

5. The applicant is represented by ITMT Law Ltd and the proprietor is represented by United Legal Experts Limited.

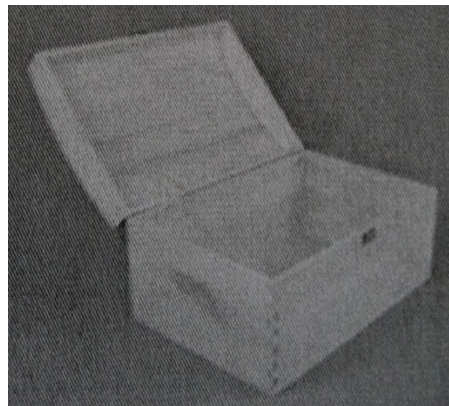
¹ Rule 21(1)(a) of the Registered Designs Rules 2006 permits evidence to be filed with a statement of case.

6. The relevant date for the assessment is the date of application of the contested designs, namely 12 June 2017.

Evidence

7. The only evidence filed in these cases was in the applicant's statements of case. The forms DF19A (as amended) contain a statement of truth concerning the statement of case and were signed by Lidia Ignatowska. The evidence is therefore hers.

8. The following product image is shown in an undated print from amazon.co.uk:²

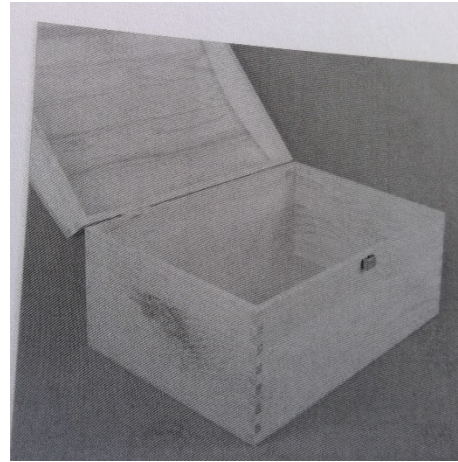
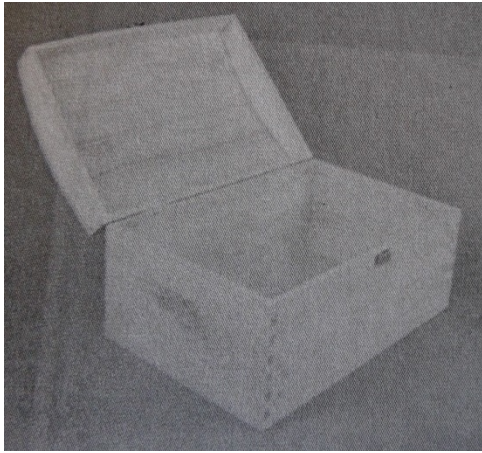


9. Despite the heading “Compare with similar items”, the above product is identified as “This item”: the details appear to relate to this product and the “date first available” is given as 19 June 2011. It is asserted in the evidence that the picture of “the product” is identical to registered design number 6013763. The vendor of the product is identified as “CraftShapesLTD”. There is a further undated print, from amazon.fr, which shows the same image.³ It is said in the statement of case that the product was first sold in France in 2015. The web page has the same format as the UK site: the date “14 mai 2015” is shown in the same place as “Date First Available” on the UK site.

² Statement of case for invalidity 27/19 against registration number 6013763.

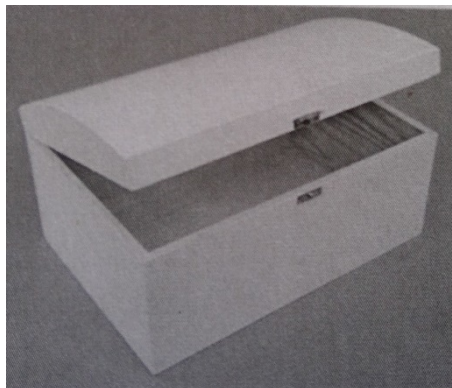
³ Ibid.

10. There is also an undated print from amazon.de.⁴ The narrative evidence is that the product has been sold in Germany since 2014. This print shows the following two images at the top of the page:



At the bottom of the page, there is a table, similar to the “product information” table on the UK site, which contains the date 3 December 2014.

11. A further undated print from amazon.co.uk shows the following product for sale, with a “first available” date of 19 August 2015:⁵



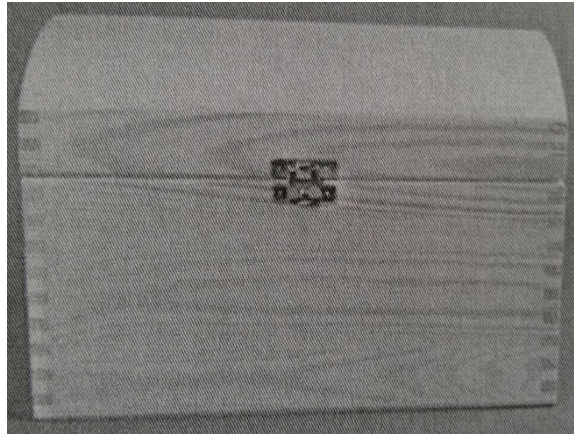
The same image is also included on pages from amazon.it and amazon.de, not dated, in the same format as the print from the UK site.⁶ These pages are said to show that the product was available in Italy from 2016 and Germany from 2015. I cannot make out the date on the Italian page; 2015 is clearly visible in the product information table in the German print.

⁴ Ibid.

⁵ Statement of case for invalidity 28/19 against registration number 6013765.

⁶ Ibid.

12. There is a web print from amazon.co.uk showing the following product on sale, with a “first available” date of 19 May 2011:⁷



The vendor is CraftShapesLTD. Identical product images are visible on pages from amazon.fr, amazon.it, amazon.de and amazon.es.⁸ The product is said to have been available on the Italian sites from 2016 and the remainder from 2015. Corresponding dates are visible on the prints.

13. Web prints from amazon.co.uk, amazon.es, amazon.it and amazon.de show the product reproduced below for sale:⁹



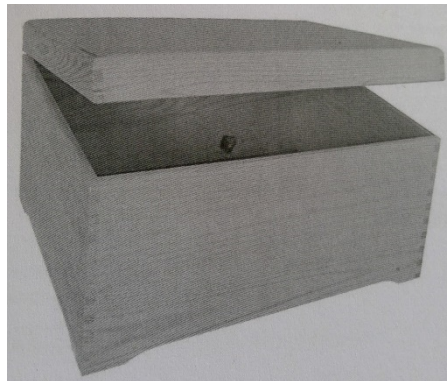
The UK site lists CraftShapesLTD as the vendor and the first available date as 24 October 2011. The remaining websites show dates in 2015, which are said in the narrative evidence to be the dates the products were first available on those Amazon sites.

⁷ Statement of case for invalidity 32/19 against registration number 6013769. This reproduction is taken from “picture 5” of the statement of case (i.e. the Spanish Amazon site) as it is clearer but the images appear to be identical.

⁸ Ibid.

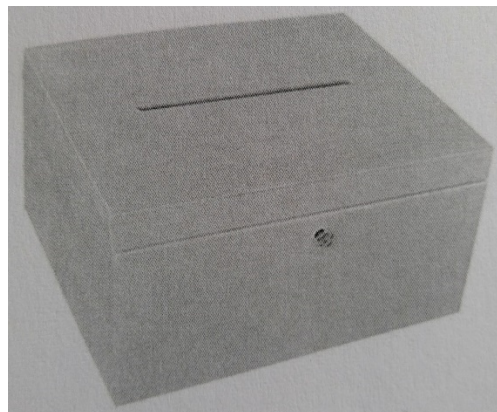
⁹ Statement of case for invalidity 34/19 against design registration 6013764. The image appears to be identical on each of the different websites.

14. Undated prints from amazon.co.uk, amazon.it, amazon.de and amazon.es are provided which show the following product available for sale:¹⁰



The images are identical across the various websites. The print from the UK site gives a “first available” date of 7 February 2012. The narrative evidence is that the product was available on the other sites from 2015, which appears to be supported by the web prints. All of the sites list CraftSalesLTD / Craft Sales LTD as the vendor.

15. An undated print from amazon.co.uk is provided showing the following product available for sale:¹¹



The vendor is CraftShapesLTD and the date first available is given as 5 October 2011. Prints from amazon.it and amazon.de, in the same format and with the same highlighting as the UK page (which identifies the above product as “this item”), show what appears to be the identical product. The evidence is that the contested design

¹⁰ Statement of case for invalidity 35/19 against registration number 6013770.

¹¹ Statement of case for invalidity 31/19 against registration number 6013768. The image is taken from the Spanish website (picture 4 of the statement of case) as it gives a clearer reproduction but the images appear identical.

has been available in Italy since 2016 and Germany since 2011, both of which dates are visible on the web prints.

16. In addition, there are prints from amazon.es and amazon.fr which show the same box for sale.¹² The Spanish site has the vendor as Craft Sales LTD. The narrative evidence is that the goods have been available on these Amazon sites since 2015 and 2014, respectively. Those years are visible in what appear to be product information tables.

17. Prints from amazon.co.uk, amazon.it, amazon.de, amazon.es and amazon.fr show the following product available for sale:¹³



The UK page lists CraftShapesLTD as the vendor and the date first available is given as 11 December 2016. The product is said to have been available from Amazon in Italy and Germany since 2016, in Spain since 2015 and in France since 2013, all of which dates are visible on the prints. Neither of the original proprietors is shown on these pages.

18. The following product is shown for sale via amazon.co.uk, amazon.fr, whrblsale.eu and nskqsstore.com (the images are identical):¹⁴

¹² Ibid.

¹³ Statement of case for invalidity 31/19 against registration number 6013768. The images appear identical.

¹⁴ Statement of case for invalidity 33/19 against registration number 6013771.



None of the prints is dated but the UK page gives a “first available” date of 18 February 2013. The narrative evidence is that the product was sold in France from 2014, and a corresponding date is visible on the web print. It is also said that the product was available in Germany from 2014 but no dates are visible on the prints.

19. That concludes my summary of the evidence, to the extent I consider necessary.

Decision

20. Section 1B of the Act (so far as it is relevant) reads:

“(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 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 consideration.

(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 condition 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 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.

(8) [...].”

21. The relevant case law was conveniently set out by Birss J. in paragraphs 31 to 59 of his judgment in *Samsung v Apple*.¹⁵ The most relevant parts are reproduced below:

“The informed user

33. The designs are assessed from the perspective of the informed user. 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-281/10P)* [2012] FSR 5 at paragraphs 53 to 59 and also in *Grupo Promer v OHIM* [2010] ECDR 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; *Shenzen* 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*

¹⁵ [2012] EWHC 1882 (Pat)

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)”

[...]

Design freedom

40. In *Grupo Promer* the General Court addressed design freedom in paragraphs 67-70. In *Dyson* Arnold J. summarised that passage from *Grupo Promer* as follows:

“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).”

Effect of differences between the registered design and the design corpus

[...]

51. Apple drew my attention to paragraph 74 of the judgment of the General Court in *Grupo Promer* in which the Court agreed with the ruling of the Board of Appeal that:

“as regards the assessment of the overall impression produced by the designs at issue on the informed user, the latter will automatically disregard elements ‘that are totally banal and common to all examples of the type of product in issue’ and will concentrate on features ‘that are arbitrary or different from the norm’.”

52. Apple submitted that this showed that a design feature need not be unique to be relevant. It is only disregarded if it is totally banal. Thus, Apple submitted, for a feature to be relevant it merely needs to differ from the norm and by logical extension, the greater the difference from the norm, the more weight to be attached to it. The point of this submission is to challenge the manner in which Apple contended Samsung was advancing its case. I do not think Apple's characterisation of Samsung's case was entirely accurate but in any case I accept Apple's submission on the law at least as follows. The degree to which a feature is common in the design corpus is a relevant consideration. At one extreme will be a unique feature not in the prior art at all, at the other extreme will be a banal feature found in every example of the type. In between there will be features which are fairly common but not ubiquitous or quite rare but not unheard of. These considerations go to the weight to be attached to the feature, always bearing in mind that the issue is all about what the items look like and that the appearance of features falling within a given descriptive phrase may well vary.

The correct approach, overall

[...]

57. The point of design protection must be to reward and encourage good product design by protecting the skill, creativity and labour of product designers. This effort is different from the work of artists. The difference between a work of art and a work of design is that design is concerned with both form and function. However design law is not seeking to reward advances in function. That is the sphere of patents. Function imposes

constraints on a designer's freedom which do not apply to an artist. Things which look the same because they do the same thing are not examples of infringement of design right.

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”.

What prior art can be considered?

22. To constitute relevant prior art, the designs depicted in the evidence must have been disclosed before the relevant date and not be excluded disclosures under s. 1B(6).

23. All of the prints which identify products as having been available since 2015 or earlier have the potential to count as prior art, irrespective of the vendor. That includes all of the Amazon UK prints depicting lidded boxes of various types, despite the fact that one of the original proprietors was the vendor of these goods: as this was over a year before the relevant date, the provisions of s. 1B(6)(c) do not apply, even if this defence had been pleaded.

24. The print from Amazon Italy regarding the white treasure chest prior art is dated 2016. It is not clear when in 2016 this disclosure took place. However, there is no indication that this disclosure was made by the proprietor or a predecessor in title. It

is not pleaded that any of the defences at s. 1B(6) applies, nor is there any evidence to support such a defence. This disclosure has the potential to qualify as prior art.

25. The Amazon Italy print which depicts the box with a slot in its lid shows 2016 as the year in which the product was first available. The exhibit is not translated and the statement of case does not give the month in which this disclosure took place.¹⁶ I cannot, therefore, be certain whether the disclosure took place over a year before the relevant date. In addition, the Amazon UK print which depicts the letter rack prior art gives a “first available” date of 11 December 2016.¹⁷ This is less than one year before the relevant date. The vendor of both of these products appears to be one of the original proprietors of the designs, CraftShapesLTD. Accordingly, these disclosures appear to fall within the exception at s. 1B(6)(c). Whilst this defence ought to have been distinctly pleaded if it was to be relied upon, it does not, for the reasons I will shortly detail, assist the proprietor in any event.

26. In its counterstatement, the proprietor made a number of points about the disclosures. It complains that the evidence is from “third party” websites and that they are neither reliable nor authentic. It makes the claim, which I do not fully understand, that the Amazon evidence “should not be considered as a reliable evidence because of its flexible functioning of seller and Vendor back end portals”. This appears to concern the later manipulation of data: the proprietor also requested that the tribunal consult an expert to attest how “Amazon things can be manipulated and are not reliable”. In a letter dated 12 July 2019 the proprietor was advised of the guidance for parties who wish to rely on expert evidence and pursued its request no further.

27. The fact that the applicant’s evidence is taken from a third party’s website does not make it either unacceptable or unreliable. There is no issue of standing here: the applicant does not need to be the owner of the website in evidence, nor does it need to be the owner of any prior art. It is entitled to bring the complaint. The fact that the evidence is taken from a third party’s website would, in the ordinary course of events, give it greater weight, as it is independent evidence outside the control of either party.

¹⁶ Statement of case for invalidity 31/19 against registration number 6013768.

¹⁷ Ibid.

I accept that, in theory, information held online may be manipulated but there is no reason to suppose that this is the case here. The proprietor's claims are no more than speculation. It did not, in the event, seek to rely on an expert witness. It could have filed evidence to challenge the truth or accuracy of the applicant's evidence, including by producing its own records, but it did not. I see no reason to doubt the authenticity of the applicant's evidence.

28. I have also considered, given that the proprietor mentions use by its licensees, whether the exception at s. 1B(6)(d) is applicable. However, the proprietor does not indicate which, if any, of the vendors or manufacturers identified in the statements of case is a licensee, nor does it indicate how, specifically, the defence may apply. The information before me is insufficient to establish that this defence applies.

29. In summary, with the exception of the prints described at paragraph 25, above, I consider that the designs shown in the evidence constitute valid prior art.

Informed user

30. The designs are described as treasure chests, boxes, letter boxes and an ornament. The informed user is not a casual user but a knowledgeable or particularly observant user of such items, possessing the characteristics of knowledge and experience set out in the above case law. There is nothing in the parties' evidence or pleadings to suggest that the informed user should be construed in a different way (e.g. a more specialised subset of user).

Design corpus

31. Although there are a number of different lidded boxes and letter racks shown in the evidence as a whole, the website prints are not dated and do not, therefore, clearly show the picture at the relevant date. However, what is provided shows that six different lidded boxes were available at the relevant date, all of which share the same basic oblong shape, though with differences in, for example, the shape of the lid. Other than the specific prior art relied upon, there is no evidence of other letter racks or heart-shaped ornaments on the market prior to the relevant date.

Design freedom

32. Whilst there are some limitations on design freedom for lidded boxes (e.g. there must be a base part and lid), it seems to me that there is scope for design freedom in features such as the precise ratio of width to height and depth, in the depth of the lid in relation to the depth of the box, the shape of the lid (e.g. curved or flat) and in surface decoration or ornamentation. The layout, materials and decoration of the interior also offer some scope for design freedom. Overall, there is a reasonable degree of design freedom for the designer of lidded boxes.

33. As for letter racks, whilst there must be places for letters to sit, there is also a reasonable degree of design freedom overall, given the designer's ability to control the shape of the vertical slots, their number, spacing and size relative to one another, as well as any surface decoration.

34. Regarding heart-shaped ornaments, whilst the designer is constrained to produce an ornament in the basic shape of a heart, there remains some freedom in the precise design and shape of the heart itself. There is also a reasonable degree of freedom in surface decoration, the style of any lettering and its placement.

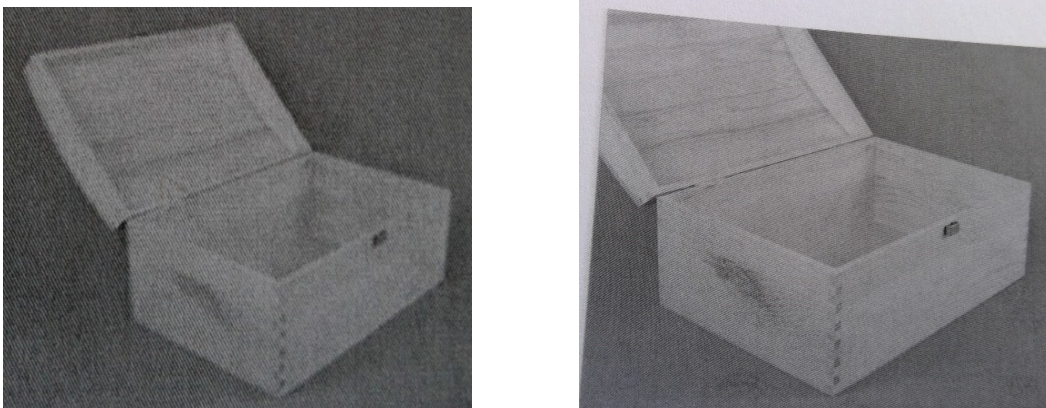
Design registration number 6013763

35. The full set of illustrations for design registration 6013763 contains six images:





36. The prior art is depicted below:



37. The designs share the same oblong base shape, in the same proportions. They also share the same exposed joints at the corners and the same convex lid. In fact, the prior art appears to show an identical product to the first and fourth images in the registered design (which are also identical), even down to the wood grain visible. The second reproduction of the prior art is not particularly clear but it is apparent from the evidence that the bottom part of the clasp in the prior art is identical to that in the registered design.

38. Notwithstanding the identity of the prior art to certain of the illustrations of the registered design, the registered design also includes views of the top of the box. A design can be registered for the appearance of the whole or a part of a product.¹⁸ In this case, the registered design must be taken to be registered for both the internal and external parts of it in the representations filed, which includes the top of the lid. In the prior art, there is no view of the top of the lid. Whilst there are some thumbnails at picture 3 of the statement of case, they are too small to make out. Without a

¹⁸ See s. 1(2) of the Act.

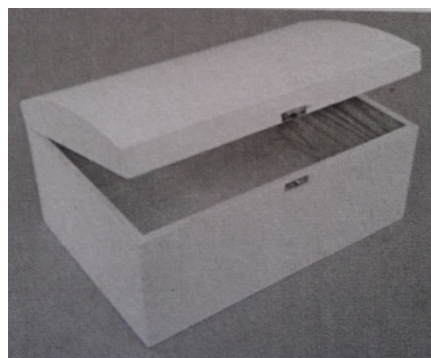
representation of the top of the lid, it cannot be said that the designs are identical. Nor am I able to conclude that the overall impressions are the same: it would be supposition on my part to assume that the top of the prior art has no surface decoration. The overall impression of the registered design must take into account its top surface. The overall impression of the prior art is based purely on the internal and side views visible. With that in mind, and even though I bear in mind the level of design freedom available, the overall impression of the registered design is not, in my view, the same as that of the prior art. The claim under s. 11ZA(1)(b) fails.

Design registration number 6013765

39. The illustrations of the registered design consist of two representations:



40. The prior art is as follows:



41. The second image of the registered design appears to me to be identical to the prior art: the boxes are the same shape and in the same proportions, including the convex lid. Both are white on the outside and have unfinished wood on the inside. What can be seen of the clasp is identical. I accept that the registered design contains another illustration in which the shape of the clasp can be seen. The prior art does not

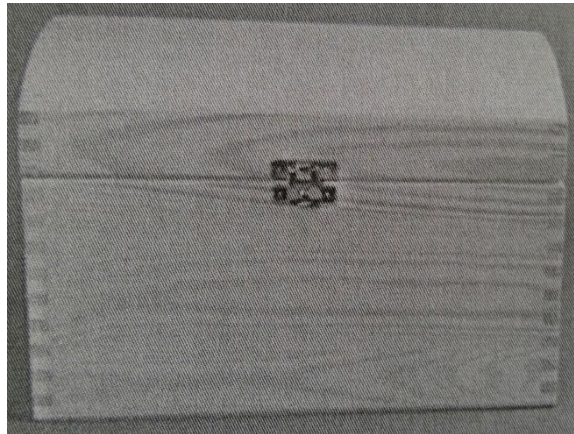
have a corresponding front image of the design. However, it is clear from the evidence, if not the reproduction above, that the clasp on the prior art has a small central post on the base plate, as in the registered design. The above reproduction of the first illustration of the registered design gives the impression of a gap between the two parts of the clasp. It is not entirely clear from the illustrations whether this is a trick of the light and the bottom part of the clasp is, in fact, flush with the edge of the box or whether there is a very small gap. If the former, the designs are identical. If that is not right, my view is that the differences are so small that the registered design would create the same overall impression on the informed user of the prior art. Any differences which may exist between the clasps and their position, bearing in mind what is visible of the clasp in the prior art and the upper part of the clasp in the registered design, are too insubstantial to result in a different overall impression. The design was not new at the relevant date or, if that is not right, did not have individual character at the relevant date. The application succeeds under s. 11ZA(1)(b).

Design registration number 6013769

42. The following four illustrations record the registered design:



43. The relevant prior art is as follows:



44. I can see no difference between the image of the prior art and the first illustration in the registered design: both are of a rectangular box with a curved lid, in the same proportions. The clasps are identical. Both have exposed joints at the corners of the box. Moreover, the wood grain in both is identical, which suggests that the image is not just a representation of an identical design but a photograph of the same finished product.

45. There is, however, no representation in the prior art which shows the interior or the reverse of the box. Although the Spanish Amazon site has thumbnail images next to the main image, they are far too small to make out. The registered design must be taken as a whole: the design is registered not just for the front exterior but for the internal and rear features (or absence thereof). Without any images of the corresponding parts of the product featured in the prior art, it cannot be said that the designs are identical. Similarly, the overall impression of the prior art is of the front and upper features of a box. The overall impression of the registered design as a whole is of an entire box, including its side, rear and internal aspects. The overall impressions cannot, therefore, be regarded as the same. The invalidation under s. 11ZA(1)(b) fails.

Design registration number 6013764

46. These are the illustrations for registered design number 6013764:



47. The prior art is as shown below:



48. The same difficulties arise for the applicant as above. The overall impression of the registered design is for the visible external and internal features of the box, whilst the overall impression of the prior art is confined to its exterior features. Thumbnail images which might have assisted the applicant are too small to make out. The designs cannot be said to be identical because there is no evidence to show whether the internal features of the prior art are the same or otherwise. The overall impressions

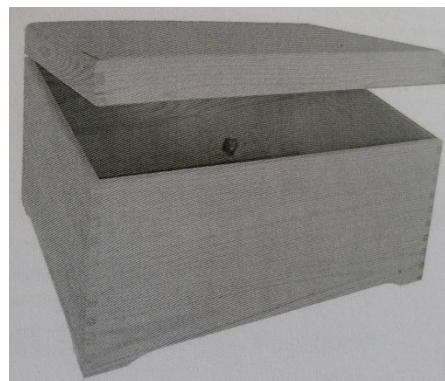
are of the internal and external features in the registered design but only the external features in the prior art: they cannot result in the same overall impression. The application for invalidation fails.

Design registration number 6013770

49. The recorded registration consists of two illustrations:



50. The prior art looks like this:



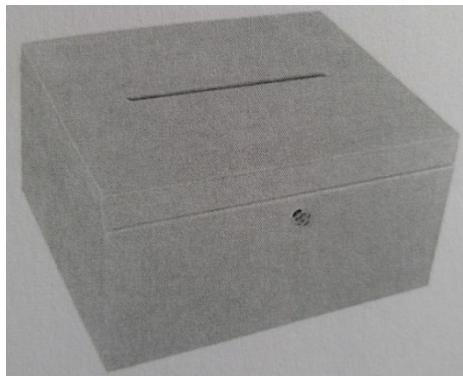
51. The prior art appears to me to be identical to the first illustration of the registered design. The boxes and lids appear to have identical proportions, both boxes have the same recessed base, creating small feet on which the boxes stand. The joints are visible on both base and lid and the lids appear to have the same chamfered edges. In fact, as elsewhere, even the grain of the wood is identical and the photographs appear to be of the same product. The second illustration of the registered design discloses no other features which would mean either that the designs are not identical or that they have a different overall impression. The invalidation succeeds.

Design registration number 6013768

52. Only one illustration is recorded for this design:



53. I indicated, above, that the Amazon Italy print could not be relied upon as prior art. However, the www.amazon.co.uk web print displays the product shown below which was, according to the evidence, first made available in 2011 and therefore constitutes relevant prior art:



54. Both designs are of a plain wooden box with a lid, which has a slot, and a key in a keyhole. The boxes are in the same proportions, as are the size of the lid and the size of the slot relative to the size of the box/lid. The slot appears to be in the identical position in both. The registered design has a key visible, which has three lobes in a triangular shape. The prior art features a key which is, if not identical, highly similar: it, too, has three lobes arranged in a triangular shape. The keyhole is not fully visible in either: what is discernible is identical. I can see no differences between the registered design and the prior art. If there are any differences, they are too small to produce a different overall impression on the informed user. In particular, any differences in wood grain which, as the representations of the designs are photographs may be taken into

account, are unlikely to be taken as design features by the informed user: they are likely to be considered characteristics of the wood which are outside the designer's control. The design is invalid under s. 11ZA(1)(b).

Design registration number 6013766

55. The registered design has only one illustration, as shown below:



56. The prior art is as follows:



57. I remind myself that the Amazon UK evidence does not constitute prior art. However, the statement of case asserts that the design appeared on Amazon sites in France in 2013 and Spain in 2015, before Italy and Germany in 2016. Although the website prints are not translated, the statement of case is admissible as evidence. The proprietor has not challenged the veracity of the evidence and the dates which are claimed are visible on the web prints in tables consistent with the product information table on the Amazon UK site. I have no reason to doubt that the dates claimed in the statement of case are accurate.

58. The prior art is, it seems to me, identical to the registered design. I can see no differences at all: the number, shape and size, including relative to one another, of the

letter slots appear identical. The drawer of both letter racks has visible joints and a slot of apparently identical shape and size. Indeed, as is the case across these proceedings, the photograph appears to be the same in the prior art and the registered design. The design is identical to the prior art. If that is not right, any differences are so small that they do not result in a different overall impression. The invalidation under s. 11ZA(1)(b) succeeds.

Design registration number 6013771

59. This registered design also consists of a single illustration:



60. The prior art is shown below:



61. Both designs consist of an open, heart-shaped ornament with the words “love you” in cursive script in the centre. The heart shape and the script are, as far as I can see, identical. The designs have a small hole, which is likely to have a technical function but is, in any event, of identical shape, size and placement. The registered design appears to be identical to the prior art. If that is not right, any differences are so small that they do not result in a different overall impression. For example, if the woven background cloth is a part of the design rather than simply the fabric upon which the

design was placed for photography, it is likely to be perceived as a background and thus go unnoticed. The invalidation succeeds.

Conclusion

62. Registered design numbers 6013763, 6013769 and 6013764 are valid and will remain registered.

63. Registered design numbers 6013765, 6013768, 6013766, 6013770 and 6013771 are invalid.

Costs

64. The applicant has had more success overall than the proprietor and is entitled to an award of costs. The award will be reduced to take into account the partial success of the applicant. I award costs to the applicant as follows:

Official fees (£48 x 5):	£240
Preparing the applications (which included evidence) and considering the counterstatements:	£800
Total:	£1,040

65. I order craft sales ltd to pay MyEveryDayHome.com Ltd the sum of £1,040. This sum is to be paid within two months of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 13th day of August 2020

**Heather Harrison
For the Registrar
The Comptroller-General**