

**BL O/0683/23**

**REGISTERED DESIGNS ACT 1949**

**IN THE MATTER OF:**

**REGISTERED DESIGN No. 6132695**

**IN THE NAME OF LANXI YICHAO  
ELECTRONIC BUSINESS COMPANY LIMITED**

**AND**

**APPLICATION FOR INVALIDATION No. 86/21**

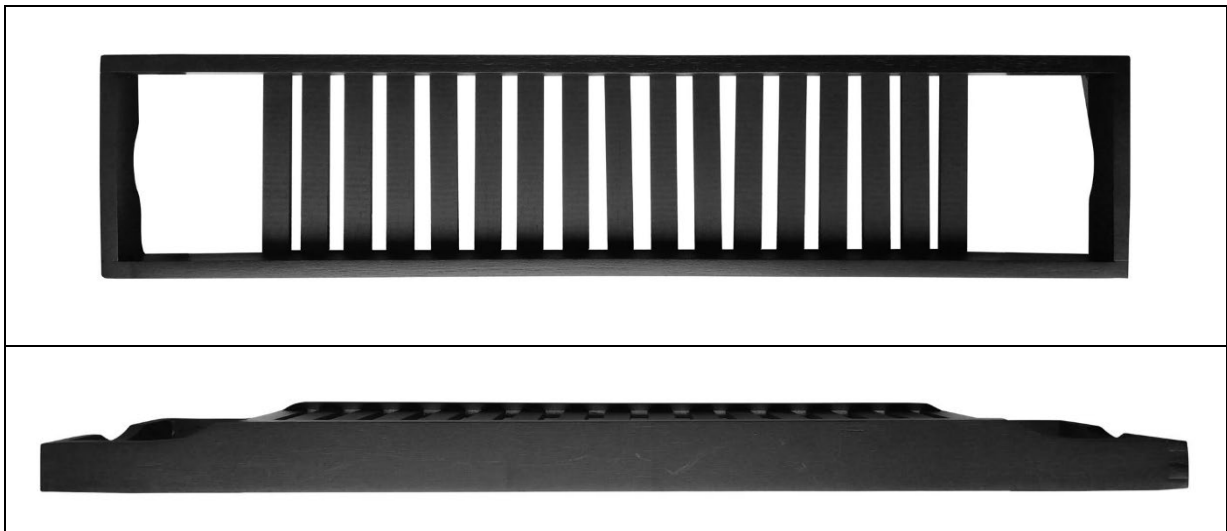
**BY  
LIMAR TRADING LIMITED**

## Background and pleadings

1. This decision deals with the request filed by Limar Trading Limited (“**the Applicant**”) to invalidate Design Number: 6132695 (“**the Contested Design**”), which stands registered in the name of Lanxi Yichao Electronic Business Company Limited (“**the Proprietor**”).
2. The Contested Design was applied for on 23 April 21 and became registered with effect from that date (“**the Relevant Date**”) in Class 06, Sub class 04 (Furnishing / Storage Furniture) and Class 07, Sub class 99 (Household Goods, not elsewhere specified / Miscellaneous).<sup>1</sup> The registration includes the disclaimer that “no claim is made for colour shown; no claim is made for material shown”. The Contested Design is shown below.



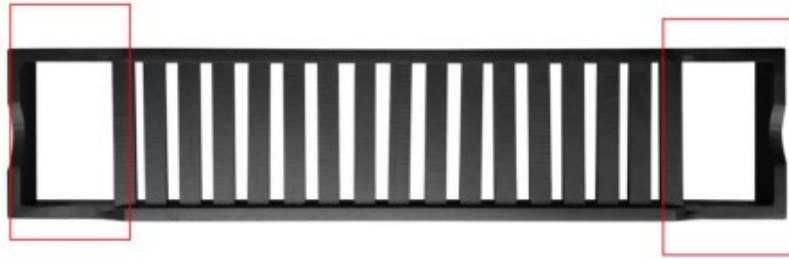
<sup>1</sup> The registration was published on 4 June 2021.



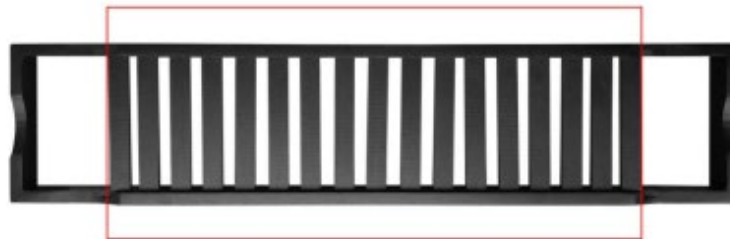
3. On 23 September 2021, Wilson Gunn LLP, on behalf of the Applicant, filed a Form DF19A, requesting that the Contested Design be invalidated under section 11ZA(1)(b) of the Registered Designs Act 1949 (“**the Act**”). The Applicant claims that the Contested Design was not new and lacked individual character compared to other designs that had been made available to the public before the relevant date and therefore did not fulfil the requirements of section 1B of the Act.
4. As the point of comparison in support of its invalidation request, the Applicant’s statement of grounds claims that “the product subject of the design was available on Amazon under ASIN B07QDRXD72 in the UK in April 2019”, and states that the Applicant would provide details in its evidence. The Applicant’s Form DF19A included this image (which I refer to in this decision as “**the Unibos XD72 tray**”):



5. The Proprietor filed a Form DF19B (amended) defending its design registration on the basis that it is different from the design of the Unibos XD72 tray. The counterstatement highlighted firstly the different “hollow out”, which areas it marked with red squares below:



6. The Proprietor stated secondly that “the sort and density of diaphragms is also different”, and provided the following image of its Contested Design, with the relevant area indicated by the red rectangle.



7. During the evidence rounds, written submissions were filed on behalf of the Applicant, along with evidence from Andrew Marsden. Mr Marsden is a Chartered Trade Mark Attorney at Wilson Gunn LLP, who act on behalf of Applicant. His short witness statement simply introduces Exhibit AM1, which shows pages from the Amazon UK website, based on his on-line research. Aspects of Exhibit AM1 are shown later in this decision.
8. The Proprietor did not engage professional legal representation. During the evidence rounds, the Proprietor filed a document that essentially repeated the content of what was previously filed with the form DF19B. The Tribunal caseworker wrote to the Proprietor, explaining that although headed as a Witness Statement, the filed document could not be considered as evidence since it was not in the correct format for a witness statement, notably, the writer was not identified and it contained no statement of truth. The document was however admitted into these proceedings as written submissions.

9. Neither side requested an oral hearing. I make this decision after a careful consideration of the papers before me and refer to the parties' submissions / evidence to the extent warranted to determine the request for invalidation.

### **Decision**

10. The following pages set out relevant provisions under the Act and extracts from case law, which together provide the context in which to determine the validity of the challenged registered designs.

11. 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”.

12. 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 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 geographical area comprising the United Kingdom and 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.

(8) For the purposes of this section, a design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and to have individual character –

(a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the complex product; and

(b) to the extent that those visible features of the component part are in themselves new and have individual character.

(9) In subsection (8) above ‘normal use’ means use by the end user; but does not include any maintenance, servicing or repair work in relation to the product.”

Assessment based on the prior art claimed by the Applicant

13. The prior art relied on by the Applicant is the Unibos XD72 tray. In addition to the image in black that appeared in the DF19A as shown earlier in this decision, the same product, this time in white, is shown in the image below, from Exhibit AM1.

**Unibos Bamboo Wood Bath Tub Rack Bathroom Shelf Tidy Tray Storage Caddy Organiser (White)**

Visit the Unibos Store 1,490 ratings

**£11.95**

New (2) from **£11.95 & FREE Delivery**

Colour Name: **White**

	£9.95		£10.90
	£8.99		£10.90
	<b>£11.95</b>		

Colour: White  
Material: Bamboo  
Brand: Unibos  
Finish: Bamboo  
type

**About this item**

- **PERFECT BAMBOO FURNITURE ACCOMPANIMENT:** The Tray Is Perfect For Bamboo-Lovers - A Decorative Highlight In Any Home.
- **USEFUL SHELF:** Organise Bathroom Utensils Like Shower Gel Or Shampoo - A Book Or Glass Of Wine Can Also Fit On The Spacious Caddy.
- **LOVELY BATHROOM ACCESSORY:** This Bathroom Shelf Is Light-Weight And Has A Modern And Chic Appearance - Matches Any Bathroom.
- **ROBUST MATERIAL:** The Bamboo Material Is Weather-Resistant And Moisture-Resistant, Making It Perfect For Use In The Bathroom.
- **FOR STANDARD BATHTUBS:** The Length Of 70 Cm Fits All Standard-Sized Bathtubs - Simply Lay It Over The Tub And Enjoy The Practical Tray Function.


£11.95  
FREE delivery April 21 - 22.  
Details  
Select delivery location  
In stock.  
Quantity: 1  
Add to Basket  
Buy now  
Secure transaction  
Dispatches from UNIBOS  
Sold by UNIBOS  
Add to List  
New (2) from £11.95 & FREE Delivery  
Share  
Other Sellers on Amazon  
£15.95  
Sold by: UNIBOS  
Add to Basket  
5% off voucher  
LEKEYE Drain Hair Catcher/Batht...  
14,900  
£18.99  
Sponsored

14. The exhibit is focused on the Unibos XD72 tray offered for sale through Amazon. The image of the product in black, as featured in the Form DF19A - which was under a signed statement of truth and which has evidential standing - bore the brand name “Unibos”. There are also repeated references to “Unibos” in the exhibit – including in the product

description “Unibos Bamboo Wood Bath Tub Rack...”, “Visit the Unibos Store”, “Brand – Unibos”, “Dispatches from UNIBOS” and “Sold by Unibos”. The image of the product in Exhibit AM1 has the same quoted ASIN number as given in the statement of case, as can be seen here:

Product information		Additional Information	
<b>Technical Details</b>		<b>Additional Information</b>	
Brand	Unibos	ASIN	B07QDRXD72
Model Number	UNID001	Customer Reviews	4.5 out of 5 stars <a href="#">1,490 ratings</a>
Colour	White	Best Sellers Rank	5,224 in Home & Kitchen (See <a href="#">Top 100 in Home &amp; Kitchen</a> ) 3 in Bath Trays 25 in Bathtub Accessories
Package Dimensions	70.4 x 14.6 x 4.7 cm; 700 Grams	Date First Available	8 April 2019
Material	Bamboo	<b>Feedback</b>	
Special Features	Portable	Would you like to <a href="#">tell us about a lower price?</a>	
Item Weight	700 g		

15. The exhibited image shows the product in white rather than black (though colour, as noted, is not part of the Contested Design). The exhibit does not show the brand name on the product in white. I can only compare what is visible from the evidence. The image in the exhibit shows only one side of the product and it is quite possible that the word may feature on the other side, particularly since I note that the reviews included the following:

 Elizabeth

**Miss Sold**

Reviewed in the United Kingdom on 23 December 2020

Colour Name: White **Verified Purchase**

The tray came with big UNIBOND logo down the side of it and really dosen't give me the look I was going for.

Other than the unsightly logo its perfectly fit for purpose

4 people found this helpful

16. It seems likely that the reference to the “big UNIBOND logo” in the above is a misspelling, which should accurately read “big UNIBOS logo”. (This seems a reasonable conclusion, since, as I outlined above, the product is clearly sourced from UNIBOS, and since the short review, by Elizabeth, includes several other typographical errors.)

17. As Mr Marsden points out in his written submissions, the evidence in the Exhibit AM1 provides the date from which the product corresponding to the earlier design was first available in the UK. That date - 8 April 2019 - is seen under the “Additional Information” shown in the extract at the end of my paragraph 14 above.



18. The reviews shown in the exhibit also include dates that pre-date the Relevant Date. There is, however, cause to doubt that the reviews shown in the exhibit (or at least not all of them) relate to the precise product that I have defined as the Unibos XD72 tray. For example, the exhibited reviews include the following:



Mad as a bag of frogs

**Excellent quality, multi-purpose tray**

Reviewed in the United Kingdom on 7 January 2021

**Verified Purchase**

A really good product, it's sturdy and of good quality. I was a bit worried as it was a Christmas present. Our daughter loved it.  
 It holds a tablet/book, phone, cup of tea /coffee, there's space for a glass of wine plus room for your bath products. The width is adjustable so should fit all bath widths - it didn't need any adjustment for the standard width bath at our house.  
 The legs are easy to use if you're using it as a breakfast tray.  
 I'd definitely recommend this and the seller.

19. I note the references in the review to the tray’s capacity to hold a ‘tablet/book’, and having ‘space for a glass of wine’, and the references to its having legs and being adjustable in width. These are not features that are apparent in the Unibos XD72 tray. They are however features in the trays shown below, which also appear in the exhibit, but which are marked as “Products related to” [the Unibos XD72 tray]:

**Products related to this item**

Sponsored ⓘ



Bamboo Bath Tray Bath Tray For Tub Bamboo Caddy Tray Adjustable Bamboo Bathtub Tray  
**£15.99**



Blanks Direct Bath Caddy with candle, wine glass, book, tablet, ipad & phone holder...  
 1  
**£24.99**



VELIATTE Wooden Bath Tray Extendable 70-105 x 23 x 4 cm - Bath Tablet Holder with S...  
 26  
**£23.90**



Corazon Home Luxury Grey Bamboo Bath Tray - Wooden Bath Caddy in Cool Grey with Ipa...  
 92  
**£30.99**



woodluv Luxury Extendable Bath Tub Caddy Bathroom Trays with Tablet Phone...  
 392  
**£24.45**



Deep Calm Bath Tray  
Caddy - Extendable  
Bamboo Bathtub Boar...  
451

Amazon's Choice  in Bath

Trays

£24.95

Get it as soon as Sunday, Apr  
17

FREE Delivery on orders  
dispatched by Amazon over  
£20



Bath Caddy with candle,  
wine glass, book, tablet,  
ipad & phone holder....  
2,142

#1 Best Seller  in Bath

Trays

£27.99

Get it as soon as Sunday, Apr  
17

FREE Delivery on orders  
dispatched by Amazon over  
£20

20. The trays shown in these images are not expressly referenced by the Applicant, whose objection is based squarely on the earlier availability of the Unibos XD72 tray. However, I note their presence at least as a potential factor in considering the issues of design freedom and design corpus, as I shall come to.
21. What can be said from the above consideration of the Applicant's evidence is that the Unibos XD72 tray appears to have been available for the public to buy on Amazon since 8 April 2019, which is before the Relevant Date. It is therefore, in that regard, a design that satisfies the requirement in section 1B of the Act. This decision shall focus on the images of the Unibos XD72 tray as the basis of the Applicant's claim.
22. The Applicant's written submissions are that *"the evidence shows that an identical or at least a design which is not different in overall impression was in existence and available to the public before the date of application of the contested design."* I therefore turn to decide whether the Contested Design had the required novelty and individual character when compared with the Unibos XD72 tray. The Contested Design is protected in respect of shape and form, but since its registration expressly states that colour and material do not form part of the design, I will disregard colour and material for the purposes of my comparison.

### **Novelty**

23. 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.”<sup>2</sup>

**Comparison of the designs**

24. The registered designs are shown in the tables below:

The Unibos XD72 tray	The contested design
	<p>View 1:</p>  <p>View 2:</p> 
	<p>View 3:</p>  <p>View 4:</p> 

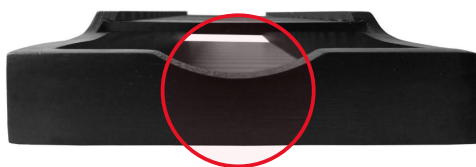
<sup>2</sup> Paragraph 26.

25. The fundamental emphasis of design law is the protection of the appearance of a whole or part of a product, which may arise for example from the lines, contours, shape or ornamentation of the product. I note that the designs have in common the following aspects:

- (i) Both involve rectangular frames that are significantly longer than they are wide.
- (ii) The majority of the floor of the frames is taken up with a number of rectangular slats running across the width. (The Contested Design has 17 such slats; the Unibos XD72 tray appears to have at least 16, possibly 17.)
- (iii) Toward each end of the frames, the frame depth is shallower (allowing the tray to sit a little beneath the lip of a bath). The reduced depth curves to meet the longer full-depth section of the frame.

26. The designs differ in the following aspects:

- (i) In the Unibos XD72 tray the floor of slats ends by abutting a section of frame. In the small rectangle enclosed by that section of frame, there are four more slats, which run parallel to the length of the main outer frame of the tray (and at 90 degrees to the 16 or 17 slats of the central floor). The Contested Design has no such feature; its floor of slats simply end at the point where the frame begins its curve to a shallower depth, leaving an open section at both ends of the main rectangular frame.
- (ii) The ends of the frame of the Contested Design feature a curved cut-away at their centre (as can be seen in the circled area below) and which would be at the bottom of the tray in use. It is not shown that the Unibos XD72 shares this feature.



- (iii) The Unibos XD72 is shown (at least in the black version) to feature the brand name on its surface (again, circled below). As noted at my paragraphs 15 and 16 above, one reviewer (Elizabeth) highlights the presence of the 'big unsightly logo' that 'really doesn't give her the look she was going for.' The Contested Design bears no such element.



27. The designs at issue are obviously not identical, nor do they differ only in immaterial details, as indicated by the differences listed above. The additional slats at both ends of the Unibos XD72 are especially significant and are clearly not “minor and trivial”. Since I find that the differences between the Contested Design and the prior art of the Unibos XD72 tray are not immaterial, the objection based on lack of novelty must be rejected.

### ***Individual Character***

28. The approach to carrying out an assessment of individual character was helpfully summarised by HHJ Hacon, sitting as a Judge of the Patents Court, in *Cantel Medical (UK) Limited v ARC Medical Design Limited* [2018] EWHC 345 (Pat). He said:<sup>3</sup>

“181. I here adapt the four stages prescribed by the General Court in *H&M Hennes* for assessing the individual character of a Community design to the comparison of an RCD with an accused design, adding other matters relevant to the present case. The court must:

(1) Decide the sector to which the products in which the designs are intended to be incorporated or to which they are intended to be applied belong;

(2) Identify the informed user and having done so decide

(a) the degree of the informed user’s awareness of the prior art and

(b) the level of attention paid by the informed user in the comparison, direct if possible, of the designs;

(3) Decide the designer’s degree of freedom in developing his design;

<sup>3</sup> Although the UK has left the European Union, what the judge says in relation to a Registered Community Design (RCD) remains applicable to UK registered designs.

(4) Assess the outcome of the comparison between the [earlier design] and the contested design, taking into account

(a) the sector in question,

(b) the designer's degree of freedom, and

(c) the overall impressions produced by the designs on the informed user, who will have in mind any earlier design which has been made available to the public.

182. To this I would add:

(5) Features of the designs which are solely dictated by technical function are to be ignored in the comparison.

(6) The informed user may in some cases discriminate between elements of the respective designs, attaching different degrees of importance to similarities or differences. This can depend on the practical significance of the relevant part of the product, the extent to which it would be seen in use, or on other matters.”

29. I also bear in mind the comments of HHJ Birss (as he then was), sitting as a Deputy Judge of the Patents Court, in *Samsung Electronics (UK) Ltd v Apple Inc* [2012] EWHC 1882 (Pat):

“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.”<sup>4</sup>

### *The informed user*

30. 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

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<sup>4</sup> Paragraph 58.

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).”

31. The informed user of a bath tray is anyone who chooses to buy one for use when having a bath. The informed user would have an understanding of the products available in this sector. They would be able to make direct side-by-side comparisons and would have an interest in the tray design both from an aesthetic and functional perspective, so would pay a reasonable degree of attention.

*The design corpus*

32. Again, in the *Samsung Electronics (UK) Ltd v Apple* case cited above, Judge Birss said the following:

*“Effect of differences between the registered design and the design corpus*

51. [...] 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.”

And

*“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.”

33. In the present case, the Applicant’s evidence included several images of bath trays other than the Unibos XD72 tray, but the evidence does not establish clearly *when* they were offered for sale, so it is not clear whether these were available to the public before the Relevant Date. Consequently, they do not reliably form part of the prior art in this field as points of comparison against the Contested Design, nor were they invoked as such by the Applicant. However, trays that share the features of those shown were described in reviews that are shown to date from before the Relevant Date (features such as a stand for a book or tablet device and a designated spot for a wine glass). It is therefore at least open to me to have in mind the potential for bath trays to include such features when I consider the question of design freedom.

#### *Design freedom*

34. In *Dyson Ltd v Vax Ltd*, [2010] FSR 39, Arnold J (as he was then) 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).”<sup>5</sup>

35. Even without regard to the images in the materials filed, as a member of the general public, I am aware (and can take judicial notice of the fact) that the nature of a bath tray is informed by its purpose, which is to provide a moveable shelf facility to span the width of one’s bath and which is apt to hold items - such as a soap or sponge<sup>6</sup> - that may typically feature as useful accompaniments when having a bath. The need to suitably span the width of the bath would be a prevalent feature. It would also be typical that the shelf itself had a tray lip to lightly contain whatever is placed on it, and too that the floor of the shelf would be designed to let out water, to avoid it becoming water-logged through splashes or showering.

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5 Paragraph 34.

6 Or, seemingly, a tablet, book or glass of wine.

36. Nonetheless, a designer of bath tray has some freedom in the design of the product presented to the informed user. For instance: there is freedom in the width of the tray (how generous the shelf); in the appearance of the supporting pieces that sit on the rim of the bath; in alternative ways of letting the water out (for example, round holes in a solid piece), and even where slats are chosen there is freedom as to their number, configuration, size and shape. There is also design freedom to include surface embellishments such as a pattern, emblem or word.

#### *Overall impression*

37. I have already identified relevant features of the respective designs. The trays appear to be of comparable overall dimensions, involve comparable numbers of slats forming the main shelf, and the slats are all flat and comparably shaped. The trays also both have a reduced frame depth at either end, the better that the tray should nestle between the internal sides of a bath. However, the differences arising in particular from the open-ended nature of the shelf in the Contested Design, will make a significant contribution to its overall impression in the eyes of the informed user. The additional slatted sections at either end of the Unibos XD72 tray are significant in its overall impression, since the overall tray frame is consequently fully occupied and the end slats run perpendicular to the slats of the main part of the tray shelf. I find that the Contested Design has individual character when compared with the prior art put forward by the Applicant.

**Outcome:** The evidence does not establish that Registered Design No 6132695 lacked novelty or individual character at the Relevant Date. It remains validly registered.

#### **Costs:**

38. The application for invalidity has failed. Successful parties are entitled to a contribution towards the costs of the proceedings. At the conclusion of the evidence rounds the tribunal informed the Proprietor that since it had not engaged professional representation, to request an award of costs it would need to complete a proforma indicating a breakdown of its actual costs, including providing accurate estimates of the number of hours spent on a range of activities relating to the defence of the action. It was made clear that if the proforma was not completed, no costs other than official fees arising paid by the successful party would be awarded. The Proprietor did not respond to that invitation, and

since it has incurred no official fees in defending its design registration, I make no order for costs in its favour.

**Dated this 18<sup>th</sup> day of July 2023**

**Matthew Williams**

**For the Registrar**

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