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REGISTERED DESIGNS ACT 1949 (AS AMENDED)

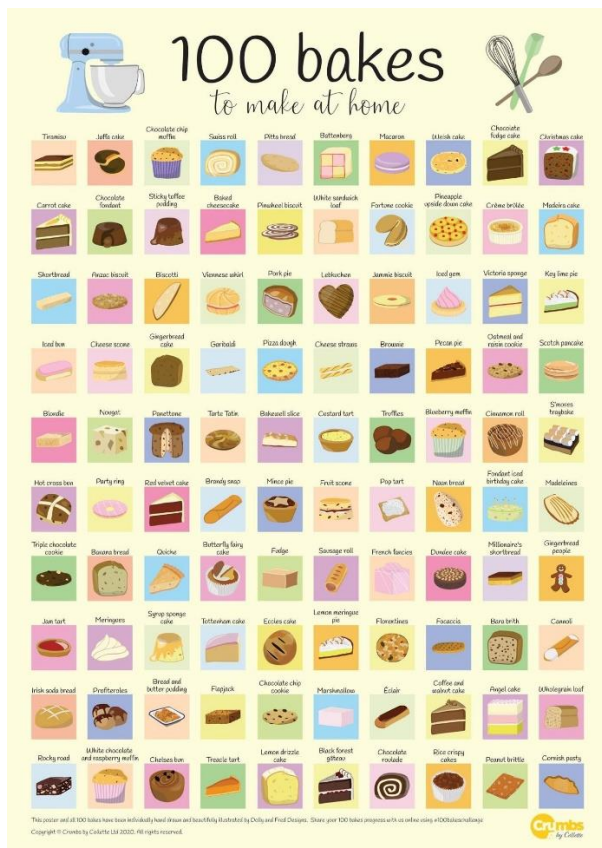
**IN THE MATTER OF REGISTERED DESIGN No. 6198420
IN THE NAME OF GIFTS WITH A PURPOSE LTD**

AND

**THE APPLICATION FOR INVALIDATION THERETO (No. 62/22)
BY COLLETTE PREECE**

“UK design 6181536, registered 15 Dec 21. Prior to this, the design was made available as a listing image on Amazon.co.uk under the product identifier B08BXNSWPM (since 15 Jun 20), and on crumbsbycollette.co.uk since March 2020 (first indexed by web.archive.org on 27 Nov 21)”.

4. An image of the claimed prior art was attached to the application for invalidation, which is depicted below. I will reproduce it in larger size later in this decision.



5. A notice of defence and counterstatement, accompanied by exhibits, was filed by the proprietor, signed on 5 July 2022 with a statement of truth by Sharon Holmes, denying Ms Preece’s claim. I will refer to the content of the counterstatement and exhibits, to the extent necessary, at the appropriate points in this decision. In short, the proprietor claims that the contested design is different to the claimed prior art. It states:

“The overall impression of my design is that it is a poster offering 100 scratch off panels for bakes. This is not a unique concept: indeed, there are other such

products for sale on Amazon.co.uk ... As such, I would argue that the complainant does not have ownership of the concept of a '100 Bakes' Scratch-off poster, and the date of availability is therefore irrelevant.”

6. Regarding the registered design to which the Ms Preece refers in the claim for invalidation, the proprietor points out what it perceives as the difference between the designs, including that:

- “The background colour of my poster is darker
- The heading '100 Bakes' is in a different font
- The heading on my poster is '100 Bakes for Aspiring Bakers' – the complainant's heading is '100 Bakes to make at home'
- The images at the top of both posters are completely different
- My poster has the bakes set out in alphabetical order from left to right across and down the poster – the complainant's poster seems to have the bakes set out randomly;
- My poster has the labels for each scratch off item set underneath the vector images; the complainant's labels for each bake are set above their image;
- The font for each label is different”.

7. The proprietor claims that there are 57 images of bakes in its design which are not featured in the registered design referred to in the claim and there are 52 bake images in the registered design referred to in the claim which do not feature in the proprietor's design.

8. Both parties represent themselves and both filed evidence accompanied by written submissions. Neither party wished to be heard and both filed written submissions in lieu of a hearing. I make this decision after careful consideration of all the papers filed.

Evidence

9. The counterstatement was signed with a statement of truth and its contents and the attachments can be treated as evidence, in accordance with rule 21(1)(a) of the Registered Designs Rules 2006 (“the Rules”). Ms Preece filed her own witness

statement.¹ She states that she is the director of Crumbs by Collette Ltd, which I note is the owner of the registered design referred to in the invalidation claim. The purpose of her evidence is to show alleged prior art. The proprietor's evidence is from Sharon Holmes, who is its director.² The purpose of this evidence is to refute Ms Preece's claims regarding prior art and to provide facts about other posters with a similar 'concept'.

Decision

10. Section 11ZA of the Act provides the capacity for a registered design to be invalidated on the ground that it was not new or that it did not have individual character on the date on which it was filed (section 1B). Section 11ZA(1)(b) reads:

“(1) The registration of a design may be declared invalid

(a)...

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

11. Section 1B 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 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

¹ Witness statement dated 13 December 2022 and exhibits.

² Witness statement dated 8 June 2023 and exhibits.

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 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)

(9)”.

Relevant date

12. According to section 1B(7) of the Act, prior art (a design which has been made available to the public before the relevant date) can only be relied upon to invalidate a registered design if it has been disclosed to the public prior to the application date of the registered design being attacked, unless the exceptions in subsection (6) apply. None of the exceptions apply. This means that the relevant date for my assessment is 25 March 2022.

Claimed prior art

13. In order for the application for invalidation to succeed, it must be shown that the claimed prior art pre-dates 25 March 2022. The alleged prior art which was attached to the application for invalidation is the subject of registered design number 6181536 which was filed on 15 December 2021, registered on 18 January 2022 with effect from the filing date and was published on the website of the UK Intellectual Property Office

on 19 January 2022. Ms Preece refers to the registered design as “my design”. For convenience, I will refer to it as her design, although legally the position is that it is owned by the company of which she is the director. Ms Preece states that the first public use of her design was in a social media post on Instagram on 17 April 2020, where it is described as a ‘scratch-off poster’.³ She also states that the design was launched on her company’s website in May 2020; that the poster bearing the design has been on sale in the UK and the EU via Amazon since July 2020; and that it was launched on the Etsy online marketplace in January 2022.

14. Publication of a design following registration is a disclosure specified in section 1B(5)(a) of the Act. Registered design number 6181536 was therefore disclosed prior to the contested design’s filing date of 25 March 2022. There is no suggestion that any of the exceptions in subsection 6 apply. Ms Preece may rely upon this piece of claimed prior art.

Comparison of prior art and the contested design

15. I will focus on whether the proprietor’s registered design had individual character rather than whether it was new: if it did not have individual character at the relevant date, it cannot be new. Section 1B(3) 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. A design may create the same overall impression on the informed user as another design, while being different from it in some respects. I need to assess the similarities and differences and decide upon their impact on the overall impression of the design.

16. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period (i.e. at 31 December 2020). The provisions of the Act relied on in these proceedings are derived from an EU Directive. That is why there are references in this decision to the designs case law of the EU courts.

³ Exhibit CP1.

17. In *Safestand Ltd v Weston Homes PLC & Ors* HHJ Hacon, sitting as a judge of the High Court, set out at [237] the approach to the assessment of whether a design has individual character:⁴

“(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;

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

(a) the sector in question,

(b) the designer's degree of freedom,

(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,

(d) that features of the designs which are solely dictated by technical function are to be ignored in the comparison, and

(e) that the informed user may in some cases discriminate between elements of the respective designs, attaching different degrees of

⁴ [2023] EWHC 3250 (Pat)

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.”

18. The sector is that for posters. It is common ground between the parties that the designs concern the depiction of 100 bakery items in order to tick (or scratch) off each item as a sort of bucket list of things to bake.

19. The next consideration is the informed user. HHJ Birss QC (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) observed that:⁵

“ ... 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.”

20. I mention this quotation, which refers to attention to detail, because Ms Preece has submitted that the contested design could be confused by potential customers by only having a memory or impression of the designs, or even by word of mouth description. The informed user is not the same as the average consumer in trade mark law, who may only have an imperfect recollection of trade marks and who may only hear them spoken, not see them. The informed user in design law is altogether different. Firstly, designs are about what they look like, not an aural description of them. Secondly, the case law referred to in this decision says that the assessment is to be made from the perspective of the informed user comparing the designs, directly if possible. That is not to say that imperfect recollection is irrelevant in relation the overall impression, but it is not decisive, per *The Procter & Gamble Company v Reckitt Benckiser (UK) Limited*, in which Jacob LJ noted that the informed user is not the same as the “average consumer” of trade mark law:⁶

⁵ [2012] EWHC 1882 (Pat)

⁶ *Procter & Gamble Company v Reckitt Benckiser (UK) Limited* [2007] EWCA Civ 936, Jacob LJ.

“25. The informed user of design law is more discriminating. Whilst I do not say that imperfect recollection has no part to play in judging what the overall impression of design is, it cannot be decisive. The Judge placed more emphasis than I think is right on an ‘imperfect recollection’ test or something like it. He accepted Mr Wyand’s submission that ‘the overall impression of a design is what sticks in the mind after [my emphasis] it has been carefully viewed” [57]. I would say that what matters is what strikes the mind of the informed user when it is carefully viewed.

26. I think the Higher Provisional Court in Vienna, in holding that P&G’s design is not infringed by the Air-Wick product (decision of 6th December 2006, overruling a lower court decision granting an interim injunction) was right when it said:

‘The “informed user” will, in the view of the Appeals Court, have more extensive knowledge than an “average consumer in possession of an average information, awareness and understanding” (see 4 Ob 239/04g), in particular he will be open to design issues and will be fairly familiar with them (Bulling/Langöhring/Hellwig, Gemeinschaftsgeschmackmuster [Community designs], Rz 56).’

27. Policy considerations point the same way. The main point of protection of a trade mark is to prevent consumer confusion or deception. The possibility of imperfect recollection plays a significant part in that. The point of protecting a design is to protect that design as a design. So what matters is the overall impression created by it: will the user buy it, consider it or appreciate it for its individual design? That involves the user looking at the article, not half-remembering it. The motivation is different from purchasing or otherwise relying on a trade mark as a guarantee of origin.

28. So the informed user is alert to design issues and is better informed than the average consumer in trade mark law. Things which may infringe a

registered trade mark may not infringe a corresponding registered design. I cannot think of any instance where the reverse might be so.”

21. In *Samsung Electronics (UK) Ltd v Apple Inc*, HHJ Birss QC summarised the law as follows:

“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 Inc v Grupo Promer Mon Graphic SA* (C-281/10 P) [2012] FSR 5 at [53]-[59] and also in *Grupo Promer Mon Graphic SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (T-9/07) [2010] ECR II-981; [2010] ECDR 7, (in the General Court from which *PepsiCo* [2012] FSR 5 was an appeal) and in *Shenzhen Taiden Industrial Co Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (t-153/08), judgment of June 22, 2010, not yet reported.

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* [2012] FSR 5 at [54] referring to *Grupo Promer* [2010] ECDR 7 at [62]; *Shenzhen* (T-153/08) at [46]);

ii) However, unlike the average consumer of trade mark law, he is particularly observant (*PepsiCo* at [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* at [59] and also [54] referring to *Grupo Promer* [2010] ECDR 7 at [62]);

iv) He is interested in the products concerned and shows a relatively high degree of attention when he uses them (*PepsiCo* at [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* at [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* [2012] FSR 5 at [59]).”

22. The informed user in the present proceedings is a member of the public with an interest in posters, particularly those depicting bakery items. Posters are for display on walls. The informed user will, therefore, pay a relatively high degree of attention because the aesthetic appearance of the design will be an important factor in making their choice of poster. There do not appear to be any special circumstances which would mean that the informed user does not conduct a direct comparison of the designs; in fact, both parties have stated in evidence that they sell the product on Amazon. Direct comparisons of the designs are, therefore, likely to be made.

23. As the case law states, the informed user will have knowledge of the design corpus. This means that they will be aware of current trends in the design of posters. This factor can be significant if an earlier design was markedly different from what has gone before and so is likely to have a greater visual impact: see *The Procter & Gamble Company v Reckitt Benckiser (UK) Limited*.⁷ The parties have both referred to other “100 things” posters and, in particular, to a third party’s poster showing baked items:⁸

⁷ Paragraph 35(iii).

⁸ Exhibit GP3.



24. I note that this evidence does not show that the item was in existence prior to the relevant date. Both parties have relied upon it, albeit for different reasons. The proprietor relies upon it to show that such posters are commonplace. Ms Preece relies upon it as an example of what she considers to be an acceptable design which has individual character compared to her own design: that “it shows that novelty within the 100 bakes poster market is indeed possible.” (Ms Preece claims that the representations of the ‘bakes’ in this poster are sufficiently different to those in her own design). It appears from Ms Preece’s submissions that she considers that whilst she did not invent the ‘100 things’ poster idea, she considers that she/her company “created the 100 bakes niche, but we never assumed to own it, and this is the type of fair competition we expected would arise in response.” However, without firm dating, this example of a poster is of limited assistance in assessing what designs were used for products of this type before the relevant date.

25. In *Dyson Ltd v Vax Ltd*, Arnold J (as he was then) stated that:⁹

⁹ [2010] FSR 39

“34. ... 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).”

26. A poster conveys information and/or images. There is a vast degree of design freedom in relation to posters at large. However, both parties have approached these proceedings on the basis that the designs are ‘100 bakes’ designs. Ms Preece submits:¹⁰

“We registered my design in the knowledge that competing products to our own scratch off poster would inevitably arise, and with a finite number of purportedly ‘classic bakes’ that could possibly be featured as sub-elements of the design, that there would have to be commonalities in the bakes themselves across multiple products.... However, where commonalities exist in the listed items – in our case, bakes – the onus is on each subsequent design to find visually distinct ways of representing the same subject matter to achieve individual character at the level of the icons that form the sub-elements of the ‘grid of things’.

27. In her written submissions in lieu of a hearing, Ms Preece submitted:

“It is acknowledged that the purpose of the products in question limits the freedom of the designer in one specific aspect, i.e. that a product of 100 items must indeed show 100 items, and on a rectangular product, this makes good design sense for all products to display a 10x10 grid of squares.”

28. Ms Preece has therefore conceded that there is a degree of design restriction and, more specifically, she recognises the need to incorporate 100 items in the form of a 10 x 10 grid as features which are common to such products.

¹⁰ Submissions filed with evidence.

29. There is freedom of design in relation to the background colour of the poster and of the icons, and in relation to the individual pictures of bakes within the icons. However, the pictures must still be recognisable as particular bake items, as conceded by Ms Preece (“commonalities in the bakes themselves across multiple products”), which lessens the amount of design freedom for the bake images. Since the design relates to 100 bakes, there is design restriction in using the number 100 in the title, and there are few words other than bakes which could be used to denote the variety of cakes, puddings and biscuits in the pictures.

Claimed prior art:

100 bakes to make at home

Tiramisu	Jaffa cake	Chocolate chip muffin	Swiss roll	Pitta bread	Battenberg	Macaron	Welsh cake	Chocolate fudge cake	Christmas cake
Carrot cake	Chocolate fondant	Sticky toffee pudding	Baked cheesecake	Pinwheel biscuit	White sandwich loaf	Fortune cookie	Pineapple upside down cake	Crème brûlée	Madeira cake
Shortbread	Anzac biscuit	Biscotti	Viennese whirl	Pork pie	Lebkuchen	Jammie biscuit	Iced gem	Victoria sponge	Key lime pie
Iced bun	Cheese scone	Gingerbread cake	Garibaldi	Pizza dough	Cheese straws	Brownie	Pecan pie	Oatmeal and raisin cookie	Scotch pancake
Blondie	Nougat	Panettone	Tarte Tatin	Bakewell slice	Custard tart	Truffles	Blueberry muffin	Cinnamon roll	S'mores traybake
Hot cross bun	Party ring	Red velvet cake	Brandy snap	Mince pie	Fruit scone	Pop tart	Naan bread	Fondant iced birthday cake	Madeleines
Triple chocolate cookie	Banana bread	Quiche	Butterfly fairy cake	Fudge	Sausage roll	French fancies	Dundee cake	Millionaire's shortbread	Gingerbread people
Jam tart	Meringues	Syrup sponge cake	Tottenham cake	Eccles cake	Lemon meringue pie	Florentines	Focaccia	Bara brith	Cannoli
Irish soda bread	Profiteroles	Bread and butter pudding	Flapjack	Chocolate chip cookie	Marshmallow	Éclair	Coffee and walnut cake	Angel cake	Wholegrain loaf
Rocky road	White chocolate and raspberry muffin	Chelsea bun	Treacle tart	Lemon drizzle cake	Black forest gâteau	Chocolate roulade	Rice crispy cakes	Peanut brittle	Cornish pasty

This poster and all 100 bakes have been individually hand drawn and beautifully illustrated by Dolly and Fred Designs. Share your 100 bakes progress with us online using #100bakeschallenge
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Contested design



100 Bakes

.....

for aspiring bakers



									
Angel Cake	Anzac Biscuit	Apple Berry Cobbler	Apple Pie	Apple Strudel	Apricot Almond Cake	Apricot Brioche Tart	Bakewell Tart	Baklava	Banana Loaf
									
Banana Muffin	Banoffee Pie	Battenberg Cake	Belgian Bun	Belgian Bun	Black Forest Gateau	Blueberry Muffin	Brandy Snaps	Bread & Butter Pudding	Caramel Cake
									
Carrot Cake	Cheese & Bacon Turnovers	Chelsea Bun	Cherry Pie	Chocolate Biscuits	Chocolate Brownies	Chocolate Cake	Chocolate Chip Cookies	Chocolate Crunch	Chocolate Eclairs
									
Chocolate Fudge Cake	Chocolate Roulade	Cinnamon Roll	Coconut Macaroon	Coffee Cake	Cornish Pasty	Cranberry & Orange Pudding Cake	Crumpets	Cupcake	Custard Tart
									
Date & Walnut Cake	Dorset Apple Cake	Dundee Cake	Eccles Cake	Empire Biscuits	English Muffins	Eve's Pudding	Flapjacks	Florentines	Fruit Cake
									
Fruit Crumble	Fruit Plait	Fruit Scones	Gingerbread People	Gypsy Tart	Honey & Raisin Cookies	Hot Cross Buns	Jaffa Cakes	Jam Roly Poly	Jam Tarts
									
Jammy Dodgers	Key Lime Pie	Lemon Drizzle Cake	Lemon Meringue Pie	Lemon Poppyseed Cake	Madeira Cake	Melting Moments	Meringues	Millionaire Shortbread	Mince Pies
									
Panna Cotta	Pannetone	Pear Tart	Pecan Pie	Profiteroles	Pumpkin Pie	Quiche	Raspberry Traybake	Red Velvet Cake	Rock Cakes
									
Rocky Roads	Rum Baba	S'mores	Sausage Plait	Shortbread Biscuits	Simnel Cake	Sticky Toffee Pudding	Strawberry Tart	Summer Pudding	Swiss Roll
									
Tarte Tatin	Tea Loaf	Tiramisu	Treacle Sponge	Treacle Tart	Vanilla Cheesecake	Vanilla Poundcake	Victoria Sponge	Viennese Whirls	White Chocolate Chip Cookie

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30. The proprietor has addressed what it sees as an allegation of copying in its evidence and submissions by including material about how it created the design and the inspiration for it. This is not relevant to the assessment because it is the impression upon the informed user which I must consider. The important matter is what the proprietor's particular poster design looks like, rather than the idea of a 100 things/bakes poster. In *Samsung Electronics (UK) Ltd v Apple Inc* HHJ Birss QC said:

“31. I start by reminding myself that what really matters is what the court can see with its own eyes (per Jacob L.J. in *Dyson Ltd v Vax Ltd* [2011] EWCA Civ 1206 at [8] and [9], emphasising a passage from his judgment in *Procter & Gamble Co v Reckitt Benckiser (UK) Ltd* [2007] EWCA Civ 936; [2008] ECDR 3; [2008] FSR 8 (at [3] and [4])). The most important things are the registered design, the accused object and the prior art and the most important thing about each of these is what they look like.” (my emphasis)







31. Although both parties have made submissions regarding the colours in their designs, I note that colour is disclaimed in the contested design, as it is in Ms Preece's (company's) design. A registered design which disclaims colour protects the design in whatever colours are used. This means that colour is not relevant to the comparison.

32. The designs have the following features in common:







- the posters are both in portrait orientation;
- the title appears at the top, in the centre and the top line of the title is 100 followed by the word bakes or Bakes; beneath is a subtitle in smaller, cursive script;
- either side of the title, in the two top corners, are drawn (not photographic) depictions of images commonly associated with baking;
- below the title line are 100 icons, in the form of squares containing drawn (not photographic) pictures of bakes, arranged in a 10 x 10 grid;
- the grid is longer than it is wide;

- each icon has a description of the contents, the majority of which appear in the spaces between each horizontal line of icons;
- the bottom left of each design shows copyright information and the bottom right a logo.

33. Ms Preece claims that the posters have “57 bakes in common”, which means that the posters have 43 bakes which are not in common. She has produced a table showing the bakes which are common to both designs. However, this table is a list of the names of bakes which are in common; the parties’ icons in relation to those bakes, also in the table, are often different, e.g.:

6	Key lime pie		
8	Panettone		
9	Tarte tatin		

34. As said above, what matters is what the design features look like. A further table in Ms Preece’s submissions is said to show fourteen of each parties’ images which are “not substantially different”, e.g.:

	Common or very similar bakes with adjusted titles	Crumbs by Collette Ltd Design 6181536	Gifts with a Purpose Ltd Design 6198420	Comments
1	Éclair / Chocolate éclair			It is evident from the icon, which is not substantially different, that the proprietor agrees the Éclair on my design to be the same bake as theirs. As such, the proprietor’s claim in their DF19B that éclair and chocolate éclair are distinct bakes is deemed invalid.
2	Battenberg / Battenberg Cake			It is evident from the icon, which is subtly different, that the proprietor agrees the Battenberg on my design to be the same bake as theirs. As such, the proprietor did not identify Battenberg and Battenberg cake as being distinct bakes on their DF19B.
3	Baked cheesecake / Vanilla cheesecake			It is acknowledged that cheesecakes can both be baked and chilled and that the proprietor is not explicit on this. It is noted that a baked cheesecake as depicted in our icon is classic and as such vanilla. Regardless of whether the cheesecake is baked or not, the icon is similar to that of the original design.

35. However, it can be seen that (at least) the battenberg and cheesecake pictures are quite different.

36. The proprietor points out that:

- the title '100 Bakes' is in a different font and the subtitles are different: "to make at home" in Ms Preece's design and "for aspiring bakers" in the proprietor's design;
- the images in the top right and left corners are completely different: in Ms Preece's design they are a food mixer and three utensils, whereas in the proprietor's design they are a cake stand bearing a selection of bakes, and a chef whisking something in a bowl;
- the proprietor's design has the bakes set out in alphabetical order from left to right across and down the poster, whereas Ms Preece's icons are not in alphabetical order;
- the proprietor's design has the 'label' for each bake below the icon squares, whereas Ms Preece's labels are above each square;
- the fonts used for the parties' labels are different;
- there are 43 different bakes shown between the two designs.

37. I agree that these are all differences between the two designs. Added to that are the different depictions of some of the 'same' bakes, such as the key lime pie and cheesecake, shown above. Further, the pictures of the bakes in Ms Preece's design are larger within the icon squares than they are in the proprietor's design. Some elements in the designs are more significant than others. The informed user will attach less importance to the title 100 bakes because it is of practical significance in describing the content of the poster and, for the same reason, the 10 x 10 grid layout, which Ms Preece concedes is necessary for a 100 'grid of things'. The 'labels' are in different fonts but they are very small and that difference is unlikely to weigh much in the overall impression; nor the fact that Ms Preece's labels appear above the icons and the proprietor's labels below the icons because they essentially appear in the spaces between the horizontal rows of icons. The copyright, logo and other wording

at the bottom of each design is very small and not likely to carry much weight in the overall impression.

38. The size of the pictures within the squares is likely to be a factor which weighs in the overall impression because the larger pictures in Ms Preece's design are easier to see. Although it is true that all the pictures in the respective top corners are baking-themed, they are different and will form part of the aesthetic choice of the informed user, as will the subtitles. Another choice will be made according to which bakes are featured, particularly given that only 57 'types' are common to both designs (i.e. the generic bake, not the individual pictures of those bakes). In my view, the informed user will also attach importance to the fact that the pictures in the proprietor's design are alphabetically arranged. They may make a choice between the designs based upon that difference if they plan to attempt each bake alphabetically to tick (or scratch) off each picture once the bake has been made; or to find each bake with ease to tick or scratch it off, even if progression through the 100 bakes is made non-alphabetically.

39. Returning to *Samsung Electronics (UK) Ltd v Apple Inc*, these differences and similarities will be observed by the informed user who pays attention to detail. The differences and similarities will not be picked up only through minute scrutiny. Taking all of the above into account, including the weight of the similarities and differences and the degree of design freedom in relation to the various elements, I conclude that the proprietor's design produces a different overall impression on the informed user compared to Ms Preece's design. I find that the proprietor's design had individual character at the relevant date.

Outcome

40. The contested design has individual character when compared with the prior art and so the application for a declaration of invalidity fails. Design No. 6198420 remains registered.

Costs

41. The proprietor has been successful and is entitled to a contribution towards its costs. At the end of the evidence rounds, the proprietor filed a pro-forma providing a breakdown of the number of hours spent on a range of given activities relating to the proceedings. It claims the following hours:

Considering forms filed by the other party	4 hours
Initial legal advice on infringement claim	1 hour
Preparing counterstatement	4 hours
Amended counterstatement	4 hours
Witness statement and submissions	7 hours
Updated witness statement	2 hours
Submissions in lieu of a hearing	2 hours

42. The proprietor is unrepresented, so legal advice is not recoverable. Nor are the amounts for amending its counterstatement and witness statement to correct deficiencies. This leaves a total amount of 17 hours, which I consider to be a reasonable length of time in terms of the individual items. The Litigants in Person (Costs and Expenses) Act 1975 (as amended) sets the minimum level of compensation for litigants in person in Court proceedings at £19.00 an hour. Therefore, the cost award is 17 hours at £19 per hour, which gives a total of £323.

43. I order Collette Preece to pay to Gifts with a Purpose Ltd the sum of £323. This sum is to be paid within twenty-one days 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 June 2024

Judi Pike
For the Registrar,
The Comptroller-General