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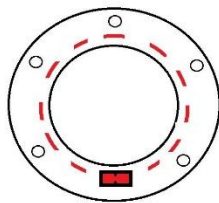
REGISTERED DESIGNS ACT 1949

IN THE MATTER OF:

REGISTERED DESIGN NO 6084012

IN THE NAME OF LYNN REDDALL

IN RESPECT OF THE FOLLOWING DESIGN



TOP DOWN VIEW

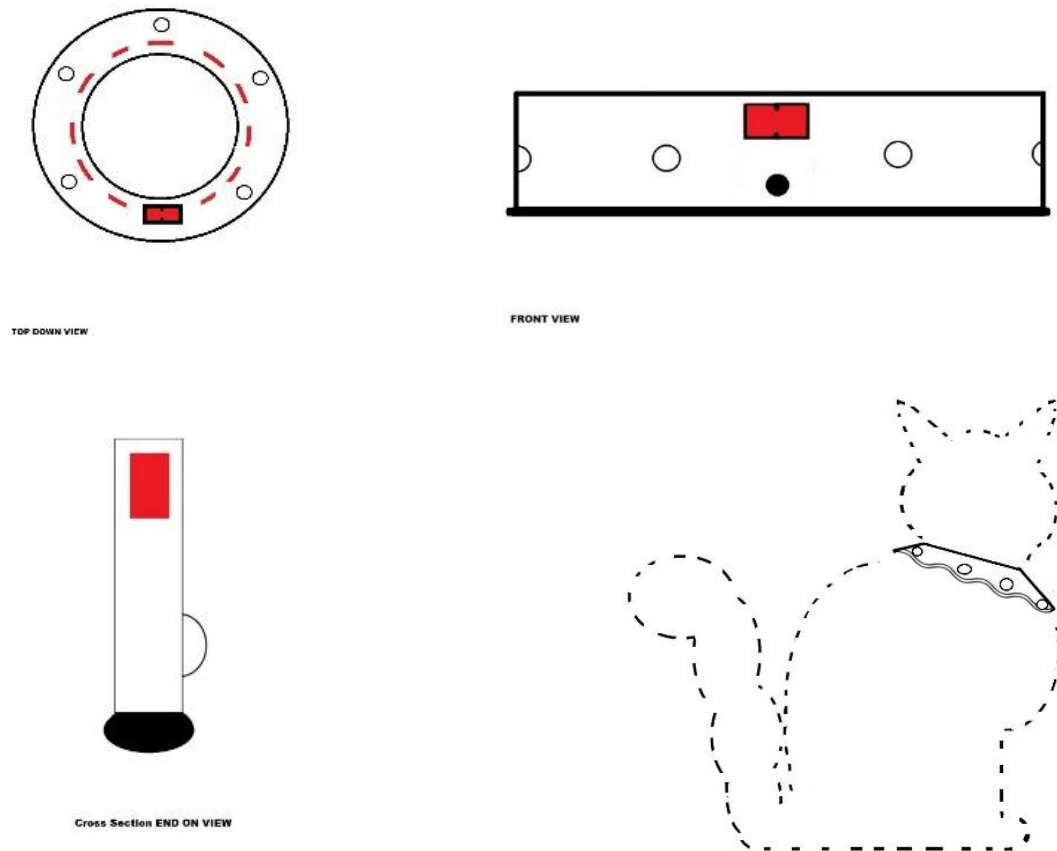
AND

AN APPLICATION FOR INVALIDATION (NO 104/22)

BY TRACY KIRSOPP

Background and Pleadings

1. On 21 February 2020 (“the relevant date”), Lynn Reddall (“the registered proprietor”) applied to register the following design for a “*Cat collar hi viz*”. It was classified in Class 30 (Articles for the care and handling of animals), Sub class 4 (Saddlery) of the Locarno Classification. It was registered on 12 March 2020 with effect from the relevant date and was published on 13 March 2020. The registered design is depicted in the following representations:



2. No claim was made for the colours shown in the representations.

3. On 4 August 2022, Tracy Kirsopp (“the applicant”) applied for the registered design to be invalidated under section 1B of the Registered Designs Act 1949 (“the Act”), on the grounds that the design was not new and did not have individual character compared to other designs that had been made available to the public before the application date of the contested design. Section 1B has effect in invalidation proceedings through section 11ZA(1)(b) of the Act. In particular, the applicant claims that the registered design is a copy of cat collar covers sold by other companies and

featured in videos and articles for at least 10 years before the relevant date. Attached to the application are print outs of alleged earlier designs, which I shall discuss in due course.

4. On 16 December 2022, the registered proprietor filed a counterstatement, denying the applicant's claims. In particular, she claimed that the designs relied on by the applicant were for different products, being for cat collar covers, while her design was a cat collar.

5. Neither side requested a hearing. I have taken this decision after a careful consideration of the papers before me. In these proceedings, both parties have represented themselves.

Evidence and Submissions

6. Both parties filed evidence with the application for invalidation and the defence. These statements were signed with a statement of truth and their contents and attachments may be treated as evidence, in accordance with Rule 21(1)(a) of the Registered Designs Rules 2006.

7. The applicant filed written submissions on 4 March 2023.

8. The registered proprietor filed evidence in the form of her own witness statement dated 23 April 2023. The witness statement and accompanying exhibits respond to arguments made by the applicant in her written submissions.

9. The applicant then filed what she described as "*further information*", together with two exhibits. The Tribunal wrote to the applicant on 27 July 2023 to inform her that what had been filed was not admissible as evidence as it had not been filed in the proper format, i.e. under cover of a witness statement including a statement of truth. The applicant was given a period of two weeks in which to file amended evidence. As she did not do so, the "*further information*" document was admitted as submissions without the exhibits.

10. The applicant filed brief written submissions in lieu of a hearing on 7 October 2023.

DECISION

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 whose features differ only in immaterial details has been made available to the public before the relevant date.

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

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

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

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

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

(6) A disclosure falls within this subsection if–

(a) it could not reasonably have become known before the relevant date in the normal course of business to persons carrying on business in the 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.

...”

13. The provisions of the Act relied on in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated

law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

The Registered Design

14. In her witness statement, Ms Reddall says that the registered design covers the “Stop Cat” collar system. She has provided a number of images which, she argues, illustrate the differences between her design and the alleged earlier designs.¹ She also refers to her promotional material, that states that, unlike other collars on the market, her collar does not rely solely on bright colours or patterns to reduce the number of birds killed by cats, but also on ultraviolet light reflectors (“UVR reflectors”) and multi-tonal bells.² She describes it as “*a multi functional complete collar*”, consisting of a straight collar, a ruched and pleated outer cover, the ultraviolet reflectors, bells, outer collar popper fasteners and a tracking system, with a unique number printed on the label.

15. In *Magmatic Ltd v PMS International Ltd* [2016] UKSC 12, Lord Neuberger (with whom the rest of the Supreme Court agreed) held that:

“30. Article 3(a) of the Principal Regulation [Regulation No 6/2002] identifies what is meant by ‘design’, and, unsurprisingly, it refers to the appearance, which is expressed to include a number of different factors, all, some or one of which can be included in a particular registered design. It is, of course, up to an applicant as to what features he includes in his design application. He can make an application based on all or any of ‘the lines, contours, colours, shape, texture ... materials ... and/or ... ornamentation’ of ‘the product’ in question. Further, he can make a large number of different applications, particularly as the Principal Regulation itself provides that applications for registration have to be cheap and simple to make. As Lewison J put it in *Procter & Gamble Co v Reckitt Benckiser (UK) Ltd* [2007] FSR 13, para 48, ‘[t]he registration holder is entitled to choose the level of generality at which his design is to be considered. If he chooses too general a level, his design may be invalidated by the prior art. If he chooses too

¹ Exhibits scC, scD, scE and scF.

² Exhibit scL.

specific a level he may not be protected against similar designs'. So, when it comes to deciding the extent of protection afforded by a particular Community Registered Design, the question must ultimately depend on the proper interpretation of the registration in issue, and in particular of the images included in that registration.

31. Accordingly, it is right to bear in mind that an applicant for a design right is entitled, within very broad limits, to submit any images which he chooses. Further, in the light of article 36(6), an applicant should appreciate that it will almost always be those images which exclusively identify the nature and extent of the monopoly which he is claiming. ..."

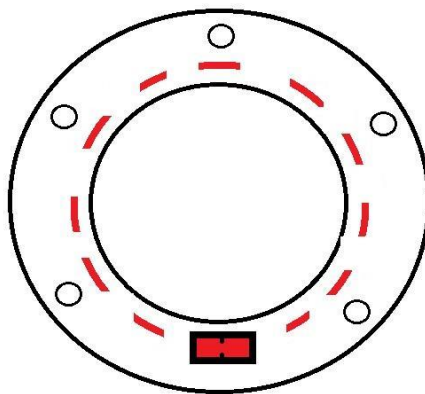
16. I have highlighted two brief passages from this judgment. They emphasise the importance of the representations that were filed with the application. It is those representations, together with any disclaimers, that, in almost all cases, will determine what is protected by the registered right. I must therefore consider what design is shown in the representations. The courts have said that this should be done objectively, without taking account of any intention on the part of the designer. In *Marks and Spencer plc v Aldi Stores Ltd* [2023] EWHC 178 (IPEC), HHJ Hacon said that:

"12. A design must be interpreted objectively; the circumstances of the proprietor of the design, and by extension the intention of the designer, are not relevant, see *Celaya Empananza y Galdos Internacional SA v Proyectos Integrales de Balizamiento SL* (Case C-488/10) EU:C:2021:88, at [55].

13. Objective interpretation of a design is a matter for the court – not the court viewing the matter through the eyes of the informed user, particularly since there is no reason to suppose that the notional informed user is aware of the conventional understanding of what dotted lines, grayscale etc. are intended to convey, see *Sealed Air Limited v Sharp Interpack Limited* [2013] EWPC 23, at [20]-[21]."

17. The representations in the registered design are technical line drawings, with some colour used. I remind myself that no claim was made as to the colours shown, and so this factor will play no part in my assessment of the registered design or the alleged earlier designs.

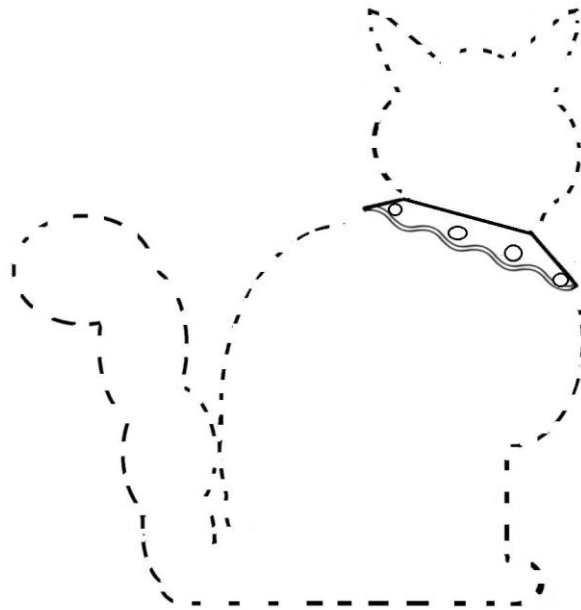
18. The main representation is reproduced below and is a top-down view of the design. It shows a circle, with its diameter indicated by a thick line, at the centre of which is another circle. On the basis of the fourth representation, I consider that this inner circle is a hole for the cat's neck. Five smaller circles can be seen, at 0°, 60°, 120°, 240° and 300°. There is nothing in the registered design to indicate that these are UVR reflectors (or indeed anything else specific), and so I shall at least for the present treat them as being circles. At 180°, there is a rectangular shape with two short lines extending from the centre of its long sides. The shape has a bold outline. Level with the top of this rectangle is a broken line in red. The proprietor has filed what she states is the original design sheet for her cat collars. This contains information on the different parts of the design, and indicates that this rectangle is a break-free safety clasp and the broken line marks the position of the inner collar.³



TOP DOWN VIEW

19. Broken lines may be used in technical drawings to indicate edges that are unseen and so I interpret this line to show a circular part of the product that is not visible during normal use and that begins and ends at the rectangle. I have also taken into account the fourth representation which does not show any lines between the top and bottom of the collar:

³ Exhibit scS.



20. In my view, it is not immediately apparent from the first representation that the rectangle is a safety clasp, although this inference is more reasonable if I were to accept that the broken line is an inner collar. I am aided in my interpretation by the third representation which shows the end-view of the collar:



Cross Section END ON VIEW

21. It consists of a long rectangle, towards the top of which is a smaller rectangle shown in the same colour as the rectangle in the main representation. At the bottom of the rectangle, there is a bulbous black shape that, in my view, corresponds with the dark border on the outside of the circle shown in the main representation. I interpret this representation to show the arrangement of the elements that make up the design as they would be seen when the user is looking at the collar from one end that would

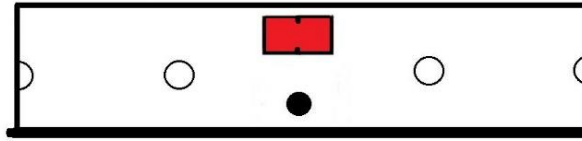
be joined to the other around the cat's neck. I accept that the red rectangle represents the clasp used to fasten an inner collar. I have not needed to take the original design sheet into account in making this finding.

22. Towards the bottom of this end-view, there is a semicircle on the right-hand side. This is shown in the same place relative to the bottom of the design as the circles visible in the top-down view. I consider that this semicircle is one of the five smaller circles seen on the top-down view. Taking these representations together, it seems to me that the circles are rounded and project from the surface of the collar. Alternatively, they may be fixed to the collar only at the very top and bottom, allowing some movement of the sides away from the fabric. I am conscious that this differs from the flat discs that can be seen in Ms Reddall's photographs of the Stop Cat collar, an example of which can be seen below:



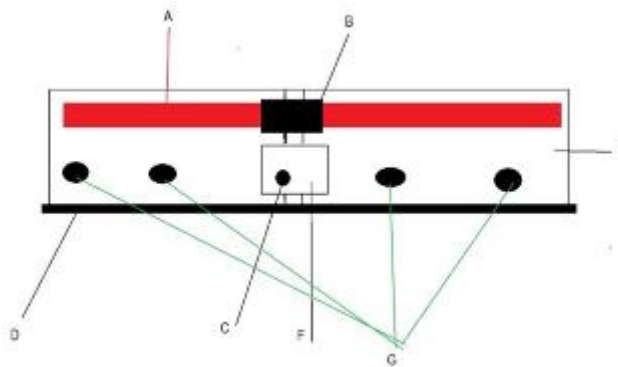
Nevertheless, I remind myself that it is the representations in the registration that determine what is protected by that registration. I have been provided with no drawing conventions that tell me that I should interpret the semicircle as showing the disc depicted in the photograph above, and the way that it is fixed to the collar.

23. I note that there is also a front view which shows a dark circle below the clasp (reproduced below). This is not visible on any other representation.



FRONT VIEW

24. I note that the original design sheet does contain a front view showing a small circle, within a rectangle, and marked “C”. Elsewhere on the sheet, the letter “C” is explained to refer to “*Snap closure to secure outer collar*”. This is different from what is shown on the third representation, where there is just a black circle.



25. In my view, the third representation appears to show a slightly different design from that shown in the other representations. It is permissible for a set of products to be registered: see *GBL UK Trading Ltd v H&S Alliance Ltd*, BL O/374/21 for a discussion. However, there is no obvious reason why cat collars would be sold in a pair. I therefore have reservations that the registered design is a single design, rather than two designs. Nevertheless, the applicant has not pleaded that the design is invalid on that basis and so this is a matter beyond the remit of this decision.

26. In summary, I consider that the registered design is a collar, consisting of inner and outer parts. The inner collar is fastened by a clasp. Apart from this clasp, and possibly a short length of the collar either side of it, the inner collar would not be visible in normal use of the product. The outer collar sits on top of the inner collar and extends below it, where it is finished with a trim. The outer collar is also decorated with five circles, which, with rounded profiles, project from the surface of the collar. When worn,

the outer collar is slightly ruched, as the bottom edge is shown as waved. There is nothing on the register that shows that the design includes the bells, poppers or labels shown in the photographs adduced by the registered proprietor.

Earlier Designs

27. The registered proprietor submits that the registered design is for a different product (a cat collar) than the earlier designs relied on by the applicant for cat collar covers. However, it is not necessary for the earlier designs relied on to be designs for the same product as that indicated on the application for registration. The Court of Justice of the European Union said in *Easy Sanitary Solutions BV v European Union Intellectual Property Office*, Joined Cases C-361/15 P and C-405/15 P:

“89. It follows from Article 5(1)(b) of Regulation No 6/2002 that a design is considered new if no identical design has been made available to the public, in the case of a registered Community design, before the date of filing of the application for registration of the design for which protection is claimed, or, if priority is claimed, the date of priority.

90. The wording of that provision does not mean that the novelty of a design is dependent on the products in which it is capable of being incorporated or to which it is capable of being applied.

91. In addition, it should be noted that, in accordance with Article 10(1) of Regulation No. 6/2002, the protection conferred by a Community design is to include ‘any design’ which does not produce on the informed user a different overall impression.

92. Accordingly, it must be held that if ESS’s position that a design’s protection depends on the nature of the product in which that design is incorporated or to which it is applied were to be accepted, such protection would be limited only to the designs belonging to a specific sector. Such a position cannot therefore be accepted.

93. In addition, as the General Court was right to hold in paragraph 115 of the judgment under appeal, it follows from both Article 36(6) and Article

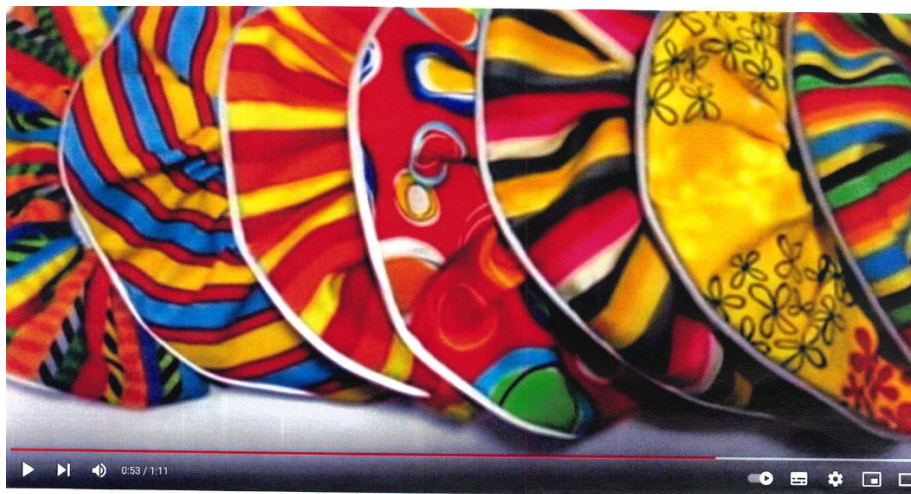
19(1) of Regulation No. 6/2002 that a registered Community design confers on its holder the exclusive right to use the relevant design in all types of products, and not only in the product indication in the application for registration.

...

96. ... The fact that the protection granted to a design is not limited only to the products in which it is intended to be incorporated or to which it is intended to be applied must therefore mean that the assessment of the novelty of a design must also not be limited to those products alone. Otherwise, as the General Court pointed out in the same paragraph, the subsequent registration of a Community design, which could be obtained despite the earlier disclosure of an identical design intended to be incorporated into a different product or to be applied to such different product, would allow the holder of that subsequent registration to prohibit the use of that same design for the product that was the subject of the earlier disclosure, which would be an absurd result.”

The Birdsbesafe collar cover

28. The applicant claims that the proprietor has used a design that, at the time of application, had been known to the UK public for over 10 years. The first design relied on is a collar cover made by a company called Birdsbesafe, which is based in the US. The screenshots below were taken from a YouTube video posted on 5 November 2014 and which, at the date of printing, had had 43,205 views. The description of the video states that the collar is made in the US.



29. There is also an article from the *Daily Mirror* website which appears to be about the same collar cover. It is dated 19 February 2015.



30. This is followed by screenshots from videos from MyNBC5-WPTZ dated 10 September 2015. One of these shows a head-on shot of a cat wearing the collar cover:



31. The applicant claims that the cover comes in the form of a tube and adduces the following still, also dated 10 September 2015.



32. The proprietor accepts that the Birdsbesafe collar cover is a tube that would be placed over the cat's collar.⁴

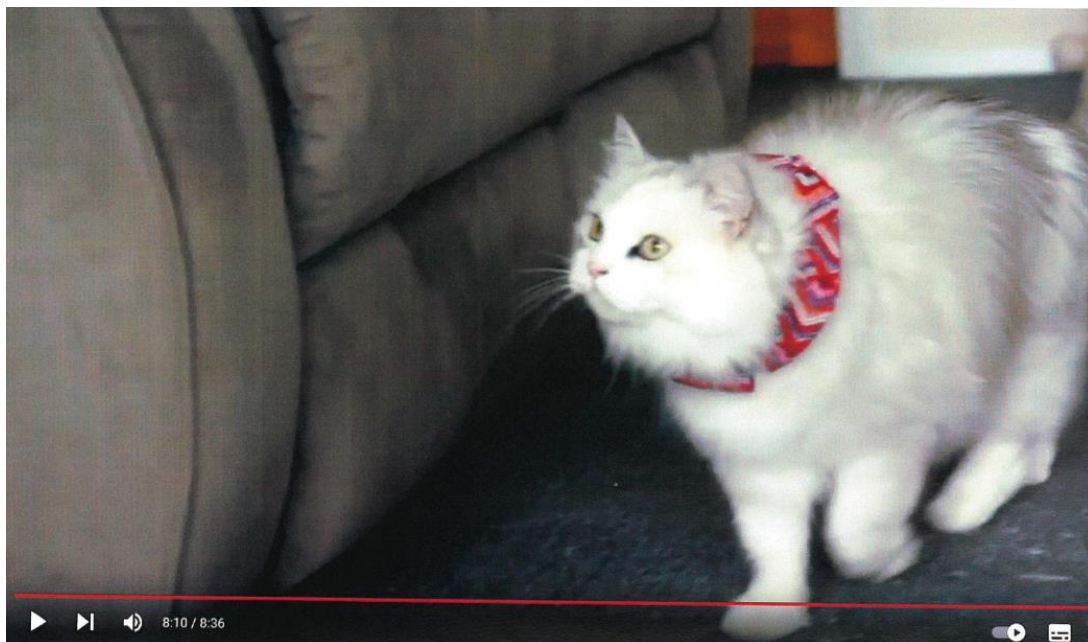
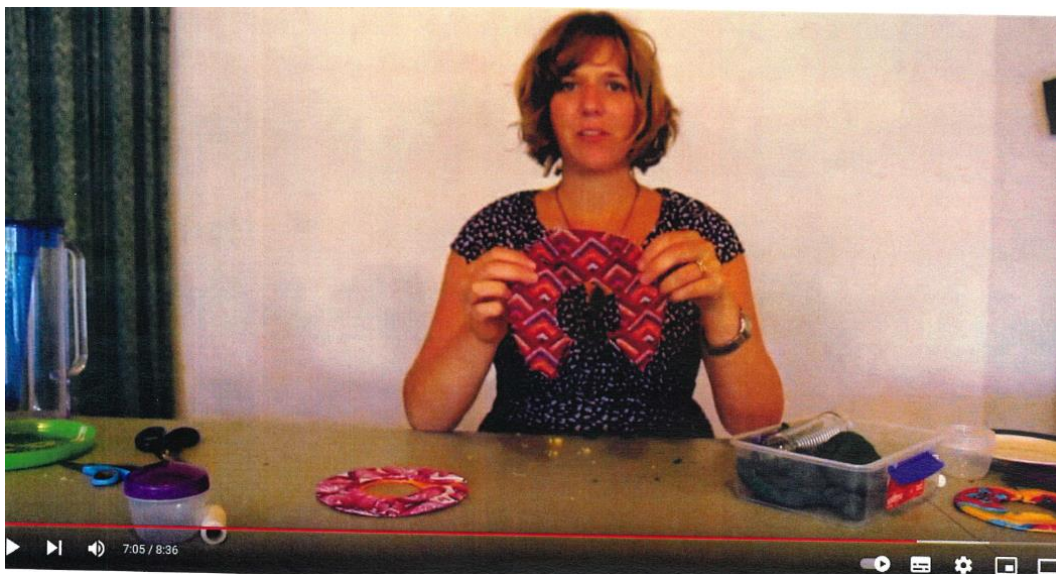
33. I am satisfied that collar covers such as those shown in the images above were made available to the public prior to the relevant date. A disclosure on YouTube or the website of a newspaper constitutes a disclosure that could reasonably have become

⁴ Exhibit scA.

known to persons carrying on business in the UK and the European Economic Area and specialising in the sector concerned. The proprietor has not claimed that any of the exceptions in section 1B(6) apply.

YouTube video showing how the covers are made

34. On 26 April 2017, a video was uploaded to YouTube with the title “Protect the birds in your backyard from cats with this easy project”. As of the date of printing, it had been viewed 11,272 times. Three stills show various stages in the process of making the cover, with the final still showing it in use.



35. As with the YouTube videos showing the Birdsbesafe collar cover, I am satisfied that the design shown in this video was made available to the public prior to the relevant date. The proprietor has not claimed that any of the exceptions in section 1B(6) apply.

The Protected Wings collar cover

36. The applicant also names Protected Wings as a supplier of earlier designs that were available to the public before the relevant date. She has not, however, provided me with any details of a specific design that she alleges would destroy the novelty of the registered design. Exhibit scG attached to the registered proprietor's defence shows a review dated 11 April 2019 of the collar shown below:



37. As the applicant has not pleaded that this is an earlier novelty-destroying design, I shall not use it as a comparison later in my decision. However, even if I were, I do not consider that it puts the applicant in a better position than the Birdsbesafe collar cover that I have already discussed.

The proprietor's alleged disclosure

38. The applicant claims that the proprietor was selling the registered design on the UK eBay marketplace 14 months before registration. The item listed is shown below:



stop-cat

100% Positive feedback (559) 2.9K Items sold

39. The listing does not say when this product was first made available. The only date provided is 17 January 2019, when the proprietor became a member of eBay. In her defence, Ms Reddall states that it was a different product that she sold at this point and describes it as a “*simplified*” or “*basic*” version. She says that this earlier version was featured in the January/February 2020 edition of a magazine called *PLATINUM* and that “*I was happy for them to use this collar in their feature as it bore no similarity or resemblance to the design I was registering with IPO UK.*” An image from the article is shown below.⁵



⁵ Exhibit scU.

40. The image itself was disclosed within the 12 months before the relevant date and so falls within the exempt disclosures of section 1B(6). There is only one view of the collar, showing a circular piece of highly patterned material, and there are no images of the collars that were sold in January 2019. Therefore, it is my view that this admission does not assist the applicant any further. I shall therefore base my comparison on the Birdbesafes collar cover and the YouTube tutorial.

Individual Character

41. I will begin with the question of 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.

42. 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:

“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;

(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, 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.”

43. 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.”⁶

The sector concerned

44. The sector is that of cat collars and related accessories.

The informed user

45. In *Samsung Electronics*, HHJ Birss QC (as he then was) 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

⁶ Paragraph 58.

concerned (*PepsiCo* paragraph 59 and also paragraph 54 referring to *Grupo Promer* paragraph 62);

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

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

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

46. The informed user is a cat owner, to the extent that a human can ever be said to own a cat. They exhibit all the traits set out in the case law quoted above. I see no circumstances, or particular characteristics of the products, that would make it impractical or uncommon for the informed user to conduct a direct comparison of the designs in issue.

The design corpus

47. The "design corpus" is the term used to refer to the body of designs that already exists and of which the informed user is deemed to be aware. I have already referred to cat collar covers produced by Protected Wings in paragraph 34 above. A further image is shown below and the informed user is deemed to be aware of these designs:⁷

⁷ Registered proprietor's counterstatement, Exhibit sck.



Design freedom

48. 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).”⁸

49. A cat collar would be worn around the neck. Consequently, the design must include a means of securing it in this position. In my view, this is most likely to be done by a clasp, which enables the collar to be easily put on and taken off. The designer does have a degree of freedom in deciding what this clasp would look like. For example, Ms Reddall’s evidence shows clasps shaped like the head of a cat,⁹ but a rectangular clasp could also be used. A further design constraint would be imposed by the size and shape of the cat itself. The collar should not be so wide as to hamper the animal’s movement. It would also be expected to have a means of adjusting the size of the collar so that it fits securely and safely.

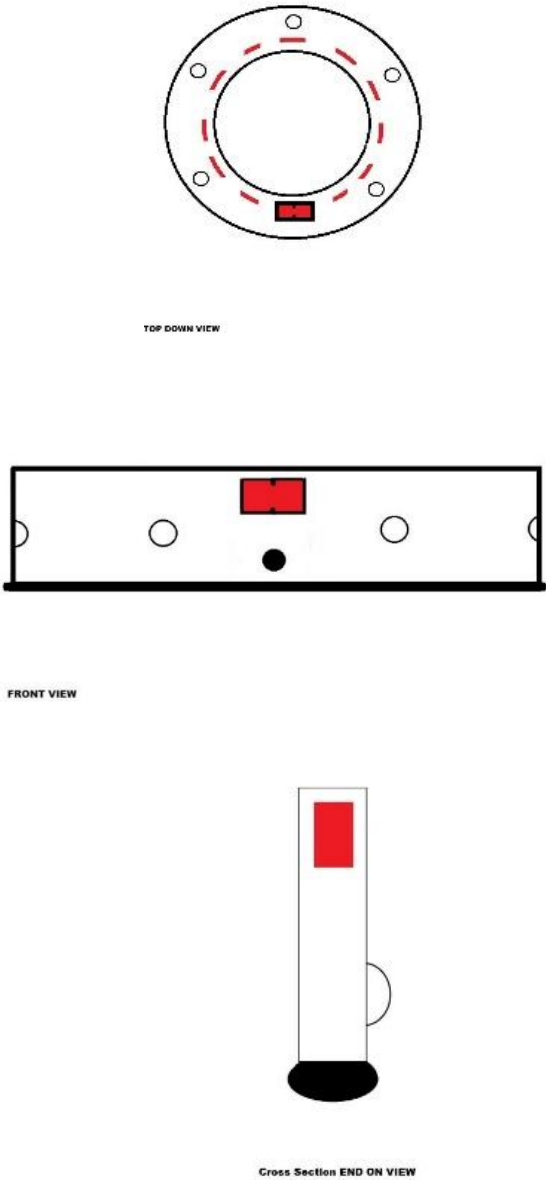



50. Beyond these constraints, the designer may choose the colour of the collar, the materials used, and whether it has any surface decoration or attachments, such as bells, and the size, shape, position, texture, colour and materials of those decorations or attachments.

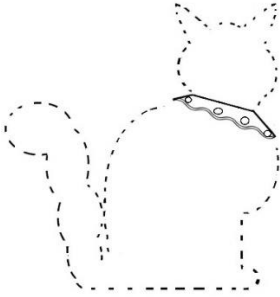

⁸ Paragraph 34.

⁹ See, for example, Exhibit 1.

Comparison of the designs

51. In the table below I show the registered design alongside the prior art upon which the applicant may rely:

The Registered Design	The Earlier Designs
 <p>The Registered Design is shown through three technical views:</p> <ul style="list-style-type: none">TOP DOWN VIEW: A circular collar with a red dashed line indicating a pattern of small circles and a red rectangular element at the bottom.FRONT VIEW: A rectangular collar with a red rectangular element in the center and small circles on either side.Cross Section END ON VIEW: A vertical cross-section showing a red rectangular element on the inner surface and a black semi-circular base at the bottom.	<p>Birdsbesafe collar cover:</p>   <p>YouTube video:</p> 

The Registered Design	The Earlier Designs
	

52. Earlier in my decision, I considered the features of the registered design. For the convenience of the reader, I reproduce my findings here:

“26. In summary, I consider that the registered design is a collar, consisting of inner and outer parts. The inner collar is fastened by a clasp. Apart from this clasp, and possibly a short length of the collar either side of it, the inner collar would not be visible in normal use of the product. The outer collar sits on top of the inner collar and extends below it, where it is finished with a trim. The outer collar is also decorated with five circles, which, with rounded profiles, project from the surface of the collar. When worn, the outer collar is slightly rucked, as the bottom edge is shown as waved. ...”

53. The earlier designs are both cat collar covers. I shall compare the registered design with the Birdsbesafe cover first. When worn, the cover appears as a circle with a central hole for the cat’s neck and with a trim around the outside. These features also appear in the registered design. The photographs above show the trim as being white, but, as colour is disclaimed in the registered design, this factor has no bearing on the outcome of my comparison.

54. In the earlier design, the circle is complete, with no gaps visible. The top-down representation indicates that this is also the case with the registered design. I have accepted that both the registered design and the earlier collar cover have ends, but the means of securing those ends is not clear in either case.

55. I now turn to the differences between the designs. The earlier design does not contain an inner collar, although this does not in itself mean that the designs create different overall impressions on the informed user. However, I have found that a clasp

and (possibly) a small portion of the inner collar would be visible during normal use. This constitutes a difference between the designs. The fourth representation shows that, when worn, the edge of the outer collar is wavy, while the Birdsbesafe cover has a smooth circular outline. A further difference lies in the five circles that are present on the registered design. In my view, these five circles make a significant contribution to the overall impression of the registered design, particularly given that I interpreted the third representation to show rounded, projecting circles. In my view, the differences between the designs outweigh the similarities and so I find that the registered design has individual character when compared with the Birdsbesafe collar cover.

56. For completeness, I note that, as the design shown in the YouTube video is different from the registered design in more ways (for example, the lack of an outer trim), this earlier design does not improve the applicant's position.

Novelty

57. 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:

“26. ‘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.”

58. As I found that the differences between the designs were sufficient to create a different overall impression on the informed user, it follows that these details are material and so the registered design is new when compared with the earlier designs relied upon by the applicant.

Conclusion

59. The application for invalidity has failed and Registered Design No. 6084012 remains registered.

Costs

60. The registered proprietor has been successful and is entitled to a contribution to its costs. As the registered proprietor is a litigant in person, she was invited to complete a proforma setting out the time spent on particular activities during these proceedings. These were as follows:

- 3 hours 20 minutes on considering the application for invalidity;
- 3 hours on completing the notice of defence;
- 8 hours on preparing the witness statement; and
- 4 hours 45 minutes on preparing the exhibits.

These figures add up to a total of 19 hours 5 minutes.

61. I consider that the total amount is a reasonable length of time in terms of the individual items and the information filed. The Tribunal's practice is analogous to that of the Civil Procedure Rules, part 46, which sets the sum to be awarded per hour at £19.00. Therefore, the costs award is 19 hours 5 minutes at £19.00 an hour, which gives a total of £362.58. No official fees were incurred.

62. I order Tracy Kirsopp to pay Lynn Reddall the sum of £362.58. 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 28th day of June 2024

Clare Boucher
For the Registrar,
The Comptroller-General