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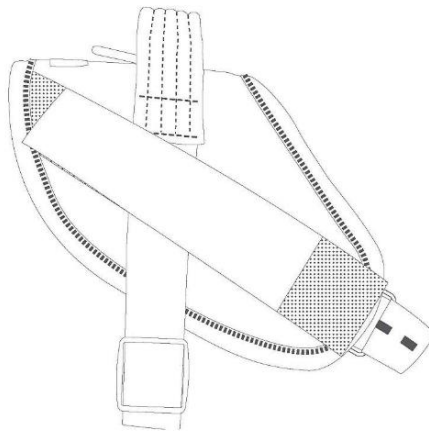
REGISTERED DESIGNS ACT 1949

IN THE MATTER OF:

REGISTERED DESIGN NO 90016557210001

IN THE NAME OF JULIUS-K9 ZRT

IN RESPECT OF THE FOLLOWING DESIGN:



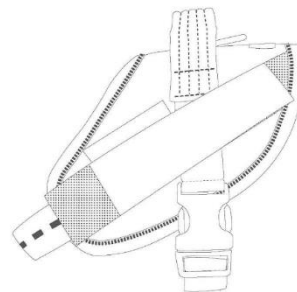
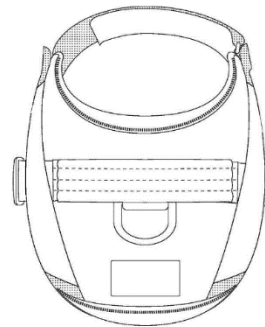
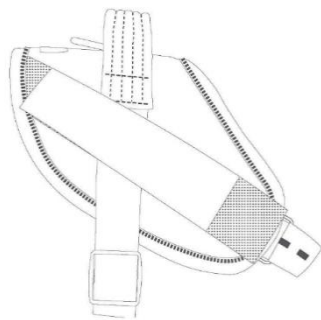
AND

AN APPLICATION FOR INVALIDATION (NO 0053/23) BY

RICHARD WARD

BACKGROUND AND PLEADINGS

1. Registered Design No. 90077713730001 (“the contested design”) stands in the name of JULIUS-K9 Zrt. (“the registered proprietor”). The design is a reregistered design, created pursuant to Article 54 of the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community. It has an application date of 12 January 2010 (“the relevant date”) and was published on 28 January 2010.
2. The design is registered as applying to ‘halters for dogs’ and is depicted in the following representations:



3. On 20 March 2023, Richard Ward (“the applicant”) applied for the contested design to be invalidated under section 1B of the Registered Designs Act 1949 (“the Act”), on the grounds that it lacked novelty and did not have individual character. Section 1B has effect in invalidation proceedings through section 11ZA(1)(b) of the Act. In particular, the applicant claims that the contested design closely resembles what is referred to as the ‘Julius-K9 Power Harness’ which the applicant claims to have been developed in 2000 and made publicly available ‘well before’ the registration date of the design. Attached to the application are a number of screenshots taken from various websites showing the alleged earlier designs and their availability to the public. I will discuss these where appropriate.
4. The registered proprietor filed a counterstatement to the application for invalidation on 4 July 2023. The registered proprietor argues that the differences between the contested design and the prior design relied upon demonstrate its claim that the contested design possesses its own individual character. In making this argument, the registered proprietor relies on section 1B(3) of the Act which sets out that a design has an individual character if the overall impression it produces on the informed user differs from the overall impression by any design made available to the public before the relevant date.
5. Both parties filed evidence in chief with the applicant also electing to file written submissions alongside his evidence.¹ I also note that the applicant filed evidence in reply. Neither side requested a hearing though both did file written submissions in lieu of the same. I have taken this decision after a careful consideration of the papers before me. In these proceedings, the applicant represents himself and the registered proprietor is represented by Stephens Scown LLP.
6. The provisions of the Act relied upon 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

¹ It is noted that in admitting these submissions into proceedings, the Tribunal confirmed via correspondence dated 27 February 2024 that any submissions that were deemed to be evidence (and that had not been provided in the required evidential format) would not be considered by the Hearing Officer ultimately responsible for this matter.

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.

EVIDENCE

7. Firstly, the applicant filed evidence with the application for invalidation. This statement was signed with a statement of truth meaning that its contents and attachments may be treated as evidence, in accordance with Rule 21(1)(a) of the Registered Designs Rules 2006.
8. As for that which was filed during the evidence rounds, I note that the applicant filed a witness statement in his own name dated 10 November 2023. The applicant's witness statement is accompanied by 18 exhibits, being those labelled RW1 to RW18. The purpose of the applicant's evidence was to discuss and demonstrate how the contested design has the same overall impression as the prior art. As above, the applicant's evidence was accompanied by written submissions.
9. The registered proprietor's evidence came in the form of the witness statement of Dr Zoltan Varga dated 29 January 2024. Dr Varga is a brand protection and Intellectual Property specialist for the registered proprietor. Their evidence was accompanied by 11 exhibits, being those labelled JK1 to JK11, and was adduced to distinguish between the contested design and the prior art and also to comment on the applicant's evidence.
10. As set out above, the applicant also filed evidence in reply. This came in the form of a second witness statement in the applicant's own name dated 6 April 2024. This was accompanied by an additional five exhibits, being those labelled RW1 and RW11 to RW14. I note that the exhibit numbers were also referred to in the applicant's first statement so, for the purposes of this decisions, I will refer to them as Exhibits 2RW1 and 2RW11 to 2RW14. The purpose of the applicant's second

witness statement was to address points raised by the registered proprietor in its evidence in chief.

PRELIMINARY ISSUES

The applicant's evidence

11. In his first witness statement, the applicant refers to a design for a dog harness produced by a firm called 'Bende' in Budapest in 1990. He goes on to allege that the registered proprietor produced a dog harness similar to the Bende harness and that this was not registered. He says that this unregistered design is shown in Exhibit RW7. Later, the registered proprietor produced a dog harness that did obtain the protection of a registered design. The applicant states that a feature of this harness was that the back was entirely convex and says that this is shown in Exhibits RW8 and RW9. He adds that this particular design is known as the 'IDC Powerharness', but claims that the registered design is not reproduced throughout the product range. He characterises this as an attempt on the part of the registered proprietor to protect a wide range of different designs, and notes that some of his own listings were removed from the Amazon marketplace, following action by the registered proprietor. The applicant acknowledges that it is not necessary for the design to be used, but alleges that the registered proprietor and its legal advisors are in a state of some confusion as to what exactly has been registered.

12. A comparison between the applicant's design and the registered design would only be a matter for this Tribunal if the applicant claimed that his design was made available earlier than the contested design. He has not done so. Instead, I must compare the design as registered with any earlier designs that the applicant is relying on.

13. The applicant makes a further point that I shall briefly address here. He claims that the registered proprietor has registered the same design twice, once with the representations shown as line drawings (the contested design in these proceedings) and once with the representations being photographs (Registered

Design No. 90016064840001). The design with photographs was published on 23 September 2009, which is less than 12 months before the application date of the contested design. Because of the differences in the type of representation, the registrations are not the same. The contested design protects the shape of the harness, while the other design protects the product as shown in the photographs, i.e. in the same colour and with the same text included on it. The applicant's point is therefore not relevant in the current proceedings, and I shall say no more on the matter.

The applicant's written submissions in lieu

14. In its written submissions, the applicant argues that the absence of a cease-and-desist letter from the registered proprietor demonstrates that there was a lack of confidence in the registered proprietor's claim. For the avoidance of doubt, this has no bearing on these proceedings. The fact that the registered proprietor did not send the applicant a cease-and-desist letter is, in no way, detrimental to the registered proprietor's case. In addition, I note that applicant has complained about the registered proprietor's delayed responses in correspondence. Again, this has no bearing here and I will say no more about it.

Costs

15. In his evidence in reply, the applicant makes reference to a number of operations of the registered proprietor in Hungary. In addition, reference is made to the fact that the registered proprietor is a large employer in Hungary and that, in the opinion of the applicant, Hungary is the most corrupt country in Europe. Such a statement is inappropriate for these proceedings and is not supported by any evidence whatsoever. Ordinarily, I would refrain from addressing such a statement, however, I do so here because in its written submissions in lieu, the registered proprietor claims that such statements should be deemed as personal attacks and, therefore, should be given determination when it comes to considering costs.

16. I appreciate that no formal claim for off-scale costs has been made, however, I raise this point here as even if there had been such a claim, it would have no merit. I say this because while the statements of the applicant are plainly inappropriate and of no relevance, I am not convinced that they alone constitute unreasonable behaviour that warrant a determination of off-scale costs. I will, therefore, deal with costs in the ordinary way at the conclusion of my decision.

DECISION

17. 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”.

18. 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.

[...]

Prior Art

19. The applicant claims that the K9 Power Harness was created in 1997 and, in its application for invalidity, provided two screenshots attesting to this point.² While noted, the first screenshot only includes a brief summary of the history of the company that sells the K9 Power Harness and does not contain an image of what the harness looked like in 1997. As for the second screenshot, I appreciate that this does show an image of a harness, however, it is not dated. While I note that the screenshot includes an image stating that the ‘K9 Power Harness’ was created in 1997, it is not clear whether the image shown on the screenshot is an image of the 1997 model or a present (and possibly, different) version of the same. On this point, I note that the applicant even acknowledges the fact that he was not able to provide a specific date for the screenshot. In respect of these images, I do not consider that they are of any assistance to the present proceedings as there is nothing to confirm whether the harness shown was available to the public prior to the relevant date.

² On this point, I note that there is a claim by the applicant that this was created in 2000 but the evidence indicates that it was 1997.

20. The above being said, I note that the applicant has provided an additional screenshot dated 29 May 2003. This screenshot is taken from the website 'www.hundesportartikel.at/dogsport/geschirre.html' and was obtained via an internet archive facility and shows what the applicant refers to as a power harness. I do not intend to reproduce the entirety of the screenshot on the basis that one half of it shows text in a foreign language.³ However, I will reproduce the screenshot insofar as it covers images of the power harness below:



³ It is noted that a Google translation of the text has been provided. However, this is not a certified translation and, as a result, it is of no assistance to the present proceedings.



21. Having considered the above image, I note that the bottom photograph appears to be a harness of an entirely different design from the other photographs shown. I will discuss this point further below. In addition, I consider it necessary to point out, for the avoidance of doubt, that the remaining photographs all appear to show the same harness (albeit with different wording).

22. The next question I must consider is whether the publication of the product on the above website is an event that is capable of constituting a disclosure that could reasonably have become known to persons carrying on business in the UK and the European Economic Area and specialising in the sector concerned. I appreciate that the disclosure concerned does not necessarily need to be from within the UK or the European Economic Area,⁴ however, in the present case, the

⁴ See *H. Gautzsch Großhandel GmbH & Co KG v Münchener Boulevard Möbel Joseph Duna GmbH*, Case C-479/12

website is one that is targeted at the Austrian market. I say this because, while this point is not mentioned in evidence, the website was published via a '.at' website address, being the primary domain designation for Austria, being a country within the European Economic Area.

23. A disclosure of prior art on a website constitutes a disclosure that could reasonably have become known to persons carrying on business in the UK and the European Economic Area and specialising in the sector concerned.

24. As set out above, the website provided is dated 29 May 2003 and was, plainly, disclosed more than 12 months before the relevant date. As such it does not fall within the exception set out under section 1B(6)(e). In respect of the other objections set out within this section of the Act, I note that the registered proprietor has not claimed that any of the other exceptions in section 1B(6) apply and neither do I consider that any of them are relevant here. As such, I am satisfied that the prior art shown above is capable of being relied upon as the basis for the present invalidation application.

25. Before proceeding, I wish to discuss the fact that the applicant's evidence makes reference to harnesses that were produced prior to 2003. This includes reference to a saddle harness that was produced in Budapest in 1990.⁵ A photograph of this harness is provided in evidence.⁶ Firstly, I will say that it is not clear whether the applicant is actually claiming that this harness should be considered an additional example of prior art or not. Even if he did make such an argument, it would not assist. I say this because the design of this saddle harness is sufficiently different from the contested design as many of the features of the contested design are missing from it. Further, there is nothing to suggest how or precisely when this harness was disclosed to the public.

⁵ I note that the submissions of the applicant provide further examples of this, however, this was not relied as evidence of fact and, as set out above, the applicant was informed that such evidence would not form the basis of these proceedings if it was not duly filed. I will, therefore, give this no further consideration.

⁶ RW6

26. In addition, I also wish to clarify that while the applicant's evidence introduces a number of images from websites of harnesses for sale,⁷ the screenshots showing these are all dated 16 August 2023, being some 13 years after the relevant date. There is nothing in the evidence before me to confirm these products' availability prior to the relevant date and, without such, I am not willing to accept that they were. Therefore, for the purposes of the existence of products as prior art, this evidence is of no assistance.

Individual Character

27. I will begin with the question of whether the contested design had individual character. 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.

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:

“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;

⁷ See RW1 to RW5

(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 section 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.”⁸

The sector concerned

30. The sector concerned is that of dog accessories, namely dog harnesses.

The informed user

31. In *Samsung*, HHJ Birss (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

⁸ Paragraph 58

PepsiCo was an appeal) and in *Shenzhen Taiden v OHIM*, case T-153/08, 22 June 2010.

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

- i) he (or she) is a user of the product in which the design is intended to be incorporated, not a designer, technical expert, manufacturer or seller (*PepsiCo* paragraph 54 referring to *Grupo Promer* paragraph 62, *Shenzhen* paragraph 46);
- ii) however, unlike the average consumer of trade mark law, he is particularly observant (*PepsiCo* paragraph 53);
- iii) he has knowledge of the design corpus and of the design features normally included in the designs existing in the sector concerned (*PepsiCo* paragraph 59 and also paragraph 54 referring to *Grupo Promer* paragraph 62);
- iv) he is interested in the products concerned and shows a relatively high degree of attention when he uses them (*PepsiCo* paragraph 59);
- v) he conducts a direct comparison of the designs in issue unless there are specific circumstances or the devices have certain characteristics which make it impractical or uncommon to do so (*PepsiCo* paragraph 55).

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

32. The informed user is a member of the public who buys and uses dog harnesses. They may also be law enforcement organisations such as canine units of the police force that need to harness and control dogs. As the informed user will consider that the restraint and control of dogs is an important aspect of dog ownership, they will display a relatively high degree of attention when using the products and I see no reason why they should not be able to conduct a direct comparison of the designs in issue.

Design freedom

33. 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).”⁹

34. I note that there is a focus on the design freedom for dog harnesses in the applicant’s evidence. I will summarise this below.

35. The applicant’s evidence sets out that there are a number of features that are essential in order for a harness to perform its necessary functions. These are claimed to be the webbing straps to strengthen the harness and restrain the dog, high visibility elements for low light environments, handles to restrain larger dogs, areas to inform the public of the nature or purpose of the dog and securing points for the lead. In support of this, the applicant refers to a number of screenshots that show harnesses for sale. The applicant claims that while the shapes of the harness shown vary, the saddle concept and functional features remain the same. While this evidence is noted, I have set out above that the screenshots shown all appear to have been captured on 16 August 2023, being after the relevant date. As a

⁹ Paragraph 34.

result, this evidence does not constitute examples of other designs that would have been available to the informed user at the relevant date (the “design corpus” referred to in the extract from *Samsung* at [34] quoted above). This being said, I can still give due consideration to the comments of the applicant in its evidence as to the degree of freedom enjoyed by the designer of dog harnesses.

36. To fulfil the product’s function, I agree that there must be straps in order to strengthen the harness and restrain the dog. In my view, those straps must be adjustable in order to be able to fit different-sized dogs. That being said, I do not consider that the location, arrangement or direction of the straps is something that is governed by any essential function. For example, I note the presence of the following images of different harnesses bearing different strap placements in the registered proprietor’s evidence:¹⁰



37. In addition, the registered proprietor argued that there is no requirement on the straps to have clasps. In support of this, the registered proprietor argued that that harness may be a *step through harness*. In making this argument, the proprietor refers to the same evidence that I have reproduced this immediately above. While

¹⁰ See page 23 of JK9.

I note that these images are undated, I accept that step through harnesses for dogs are likely to have existed prior to the relevant date and, therefore, do not consider it necessary that the straps of a harness must contain of clasps or clips.¹¹ As for handles, I note that the applicant's position is that this applies to large dogs. While I accept that larger dogs would be harder to control or restrain without a handle, it is not an essential function of a harness. Such a feature would be beneficial to control a large dog, for example. However, I am not convinced that it is necessary for the control of smaller breeds of dogs. On this point, I refer to the images shown at paragraph 36 above, none of which show harnesses with any identifiable handle. Lastly, I accept that there must be points on the harness for securing a lead. In terms of the location of the latter two functions, I am of the view that their essential function dictates that they need to be easily accessible and at a point that offer the best and safest point of control. I consider to this to be top of the harness.

38. I turn now to the applicant's argument that harnesses must have high visibility elements for low light environments and must contain areas to inform the public of the nature or purpose of the dog. While noted, I disagree that these are essential functions. I appreciate that high visibility elements would be of benefit, however, they are not essential to the function of the actual harness itself. The same applies to areas that are used to inform the public of the purpose of the dog. It may be the case that a harness may have an area that contains the wording 'POLICE' (for police dogs, for example) or the name of the dog. However, this is not an essential function of the harness itself and, plainly, a harness would be operational without such a feature.

39. Beyond the constraints I have discussed above, the designer has freedom to choose a number of configurations for the design. This includes the following:

- a. colour of the harness;
- b. the shape of the harness;

¹¹ I appreciate that harnesses are likely to use clips or clasps as the quickest and easiest means of securing and releasing the straps but this is not essential.

- c. the texture of the harness, which will have an impact upon the appearance of the product;
- d. the arrangement and positioning of straps;
- e. the presence of areas/panels to demonstrate the purpose of the dog or information such as the dog's name (for customisable harnesses, for example);
- f. whether the harness appears to be made from a single piece or whether it appears to be constructed from the combination of different sections;
- g. the type and position of any clips, clasps or other securing methods on the harness together the precise appearance of any clips or clasps used; and
- h. whether the harness has visibility features (such as reflectors or the ability to glow in the dark) and, if so, where they are located.

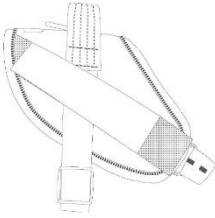

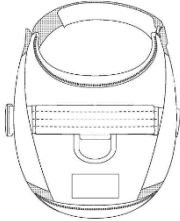



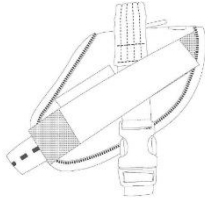

Comparison of the designs

40. The representations of the contested design are line drawings showing the design from different angles. As for the prior art, the images that have been filed are photographs. Generally, where the representations of a design are photographs, the design claimed consists of all those features that can be seen in the photographs. This gives some difficulty to the applicant's case and I will discuss this further below.

41. As I have mentioned above, the last photograph shown in the prior art appears to be a different design from the one that is the primary focus of the photographs provided. As a result, I have two comparisons to make. In terms of my approach, I will proceed to consider the first harness shown in the prior art (I will refer to this as the 'first prior art') and will then move to consider the harness shown in the last photograph (which I will refer to as the 'second prior art').

The first prior art

42. In the table below I show the contested design alongside the first prior art relied upon.

The contested design	The first prior art
	
	
	
	

43. I note that the parties have provided extensive comment in respect of the differences and similarities between the designs. Despite the extent of these comments, the parties' positions are relatively straight forward (and expected) in that the applicant contends that the differences between the designs are insufficient to give the contested design an individual character whereas the registered proprietor's position is that they do. While I do not intend to repeat the detailed comments and comparison of the parties here, I can confirm that I have given them due consideration in making my decision.

44. As alluded to above, the fact that the first prior art is a series of photographs causes some difficulties for the applicant. I say this because in considering the photographs provided, the only clear images I have of the harness are from its left-hand side. I note that an image from the right is shown (being the first image encountered of the first prior art in the above table). However, this is of the harness in use on a dog and it is not sufficiently clear. Further, while the following image of the front end of the harness is shown, this appears to be cropped so the only point I can see is the strap:



45. Lastly, I have no clear representation of the rear of the harness.

46. The features that the informed user would note as being in common between the two designs are as follows:

- a. The presence of a vertical strap underneath the harness that runs up its side and over the top of the harness.

- b. The presence of a handle on top of the harness.
- c. The presence of a ring immediately behind the aforementioned handle for affixing a lead.
- d. The presence of a clip on the strap on the left-hand side of the harness.
- e. While the right-hand side of the first prior art is not available, the images show that, like the contested design, the vertical strap is adjusted via a device on the right-hand side.

47. The features that the informed user would note as being different are set out below. For illustrative purposes I have sought to crop, invert and rotate the design/photographs in order to highlight any point of emphasis more accurately.

- a. While no front-on image of the first prior art is provided, the body of the harness in the first prior art appears to be a wider and flatter shape when compared to the one in the contested design, which appears to have a taller and more rounded body:

The contested design:



The first prior art:



- b. The shape of the rear part of the harnesses differ in that the contested design appears to have a more gradual outward curve as opposed to the first prior art's more vertical upward turn followed by a sharper curve towards the rear of the harness (in the below images, I have sought to highlight this point by including a red circle to demonstrate the point):

The contested design:

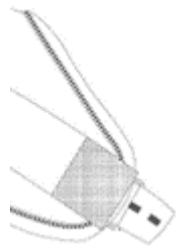


The first prior art:

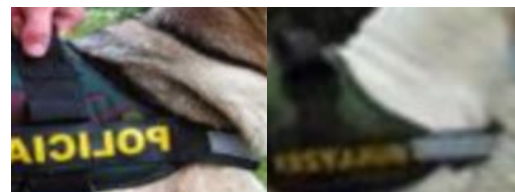


- c. While there is no top-down view of the first prior art, it appears that the shape of the front part of the harnesses differ. The contested design appears more 'rounded' with a steeper angle down towards the lower part of the harness when compared to the first prior art:

The contested design:

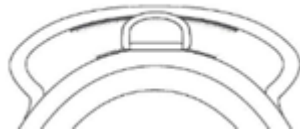


The first prior art:



- d. While sitting at the top of both designs, the shape of the handle on the harnesses appears to be different in that the first prior art shows a flatter handle when compared to the contested design. An example of this is shown below, however, the clarity of this point is not particularly clear due to the limited nature of the images of the first prior art.

The contested design:

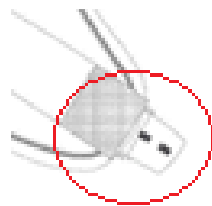
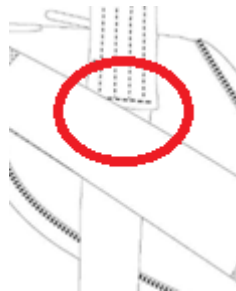


The first prior art:



- e. Proportionally, the straps appear thicker in the first prior art when compared to the straps of the contested design. Further, the straps in the contested design are narrower than the band on the body of the harness, to which it is attached. In the first prior art, the straps are the same width as the bands on the body of the harness. In the below images, I have sought to demonstrate this point by including a red circle for illustrative purposes only:

The contested design:



The first prior art:



- f. The angle of the front strap differs in that the first prior art's strap is roughly horizontal whereas the contested design's front strap is off-set at a steeper downward angle.
- g. The side panelling of the body of the harness is horizontal in the first prior art but is off-set at a steeper downward angle in the contested design.

Additionally, the panel appears to consist of different design elements and, further, the panel in the contested design includes no wording whereas the first prior art shows wording in a foreign language.

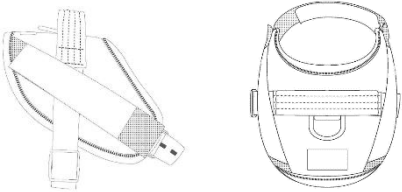

- h. The earlier right consists of an additional loop in its strapping to accommodate the placement of a flashlight. This is not present in the contested design.

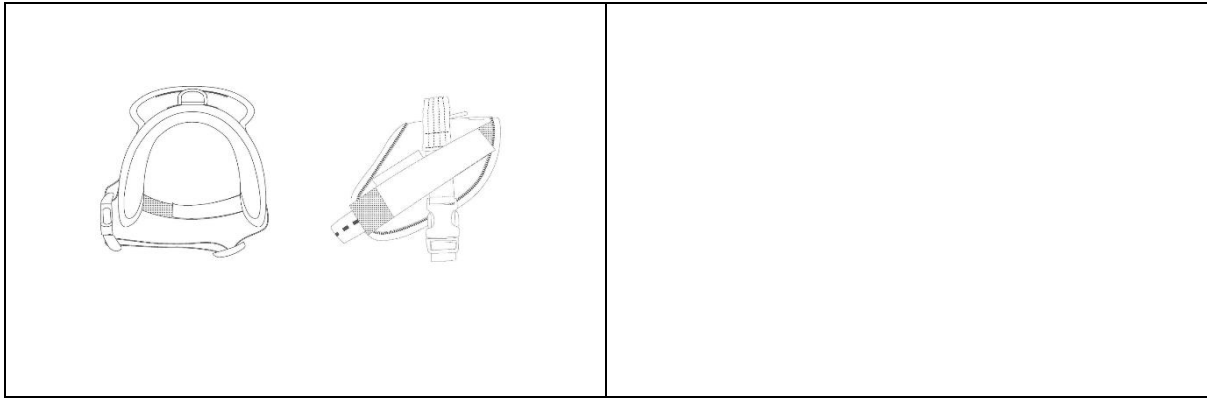
48. While the points of similarity between the designs are noted, it is my view that the difference in shapes of the harnesses together with the different angles used for the straps make a significant contribution to the overall impression of the contested design. Additionally, the missing feature of a loop for a flashlight will be noticed by the informed use and will be considered a useful feature. Its absence in the contested design will be noticed and this contributes to my finding that there is a difference in the designs' overall impressions. In my view, the differences between the designs outweigh the similarities and so I find that the contested design possesses its own individual character when compared with the first prior art.

49. I will now proceed to consider the contested design against the second prior art.

The second prior art

50. In the table below I show the contested design alongside the second prior art relied upon.

The contested design	The second prior art
	



51. Upon closer inspection of the second prior art, it is my view that it consists of three separate harnesses. While separate, the harnesses are the same type, with the only difference coming in their labelling. The harness to the left appears to be a version of the harness for use on police dogs, the middle harness appears for general use and the right harness appears to be for use on dogs used for medical purposes (such as dogs used for tracking survivors of large-scale accidents or carrying medical supplies, for example).

52. In comparing the above designs, I note that they both have a point for attaching leads, presumably at the back of the harness in the second prior art.¹² Aside from that, I consider that the harnesses have considerable and numerous points of difference. Firstly, the harness in the second prior art does not appear to have a handle. Secondly, the body of the harnesses are shaped entirely differently. The harnesses also differ in that the second prior art only has one strap that appears to extend roughly horizontally from the body of the harness and around the chest of the dog. In the contested design, this strap is off-set at a more downward angle. Additionally, the strap in the second prior art is a lot thinner than that in the contested design and, further, it appears to have a different type of clasp/clip than that shown in the contested design. Thirdly, the second prior art does not have a vertical strap. Lastly, the second prior art has no panelling on its side.

¹² I say presumably on the basis that the second prior art does not show the harness on a dog but given its placement, it is reasonable to infer that it sits at the back.

53. Taking all of the above into account, I find that the differences between the designs outweigh the similarities and so I find that the contested design possesses its own individual character when compared with the second prior art.

Novelty

54. 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 prior art in some material respect, even if some or all of the design features, if considered individually, would not be.”

55. 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 contested design will be considered new when compared with both the first and second prior art relied upon by the applicant.

CONCLUSION

56. The application to invalidate the contested design is unsuccessful and Registered Design No. 90016557210001 is hereby permitted to remain registered.

COSTS

57. The registered proprietor has been successful and is entitled to a contribution towards the costs of these proceedings. As set out above, I do not consider that the behaviour of the applicant is such that it warrants the granting of off-scale costs.

As such, I am of the view that the costs awarded to the registered proprietor should be in line with the scale of costs set out in Tribunal Practice Notice No. 1/2023.

58. In the circumstances, I award the registered proprietor the sum of £1,250 as a contribution towards its costs. The sum is calculated as follows:

Considering the application of invalidity and preparing a counterstatement in response:	£300
Preparing evidence:	£600
Written submissions:	£350
Total:	£1,250

59. I therefore order Richard Ward to pay JULIUS-K9 Zrt. the sum of £1,250. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings if the appeal is unsuccessful.

Dated this 31st day of January 2025

A COOPER
For the Registrar