

O/0561/25

REGISTERED DESIGNS ACT 1949

IN THE MATTER OF:

REGISTERED DESIGN NO. 6333488

IN THE NAME OF

UUMAIMA LTD

AND

AN APPLICATION FOR INVALIDATION NO. 176/24

BY MARY ZHANG

Background and pleadings

1. Registered design no. 6333488 stands in the name of Uumaima Ltd (“the Proprietor”). The design was applied for on 15 December 2023, registered on 27 December 2023 and published on 28 December 2023.
2. The design is depicted in the following representations (which I shall refer to collectively as the contested design):



3. The product in which the design is embodied is indicated to be a *garden waste bag*. The design is registered as applying to *packaging and containers for the transport or handling of goods* in class 9 and *bags, sachets, tubes and capsules* in subclass 5 of the Locarno classification system.

4. On 18 July 2024, Mary Zhang (“the Applicant”) applied to invalidate the registered design under section 11ZA(1)(b) of the Registered Designs Act 1949 (“the Act”), on the grounds that the design was not new and did not have individual character as required by section 1B of the Act. The Applicant claims that the contested design was first made available to the public to purchase on the Amazon website before its application date and particularly on 12 April 2022, 27 July 2017, 19 March 2021 and 9 September 2022 respectively. In support of its claim, it filed several screenshots of printouts from Amazon UK showing listings of “heavy duty garden bags” and representations of the same. I have only reproduced below those pages that are most relevant:

12 April 2022 Listing

Heavy Duty Garden Bags - 272 Litre - 3 Industrial Handles & - Garden/Green Sacks - Reusable

RAM ONLINE Store

4.5 out of 5 stars (651 ratings)

£12.99

FREE delivery Monday, 22 July on your first order to UK or Ireland. Details

Or fastest delivery Tomorrow, 19 July. Order within 3 hrs 3 mins. Details

Deliver to Belfast BT15 1

In stock

Quantity: 1

Add to Basket

Buy Now

Other sellers on Amazon

About this item

- The Ram Pack Of 3 Garden Refuse BAGS
- These garden waste bags heavy duty with handles include a flexible bin bag hoop that allows bag to stand upright on its own. Four handles on each collapsible garden bag make it easier to dump its contents into a collection facility or burner.
- 272Litre
- Created these compost and yard waste centralisers with strong 150 gsm polypropylene (PP) woven fabric which is dirt, water, and tear resistant. The four handles on each collapsible garden waste bag pop up and are double stitched for many seasons of yard work.

Additional details

Small Business

This product is from a small and medium business brand based in the

Customer ratings by feature

Feature	Rating
Value for money	4.6
Easy to use	4.5
Manoeuvrability	4.4
Sturdiness	4.3

See all reviews

Report an issue with this product

RAM ONLINE

Building ways to work and play. Fascinating tools, toys and home DIY solutions for sophisticated, modern living.

Looking for specific info?

Search in reviews, Q&A...

Product information

Technical Details

Product Dimensions	30 x 25 x 10 cm; 150 g
Scent	Unscented
Batteries required	No
Included components	Waste bag
Item weight	150 Grams

Additional Information

ASIN	B09W57X396
Item model number	509045950235
Date First Available	17 April 2022
Customer Reviews	4.5 out of 5 stars 651 ratings
Best Sellers Rank	2,003 in Garden (See Top 100 in Garden)
	13 in Garden Waste Bags

Feedback

Would you like to tell us about a lower price? --

Product description

Ram® Heavy Duty Garden Waste Bags - 272 Litre - 3 Sacks - Industrial Handles & Fabric - Garden/Green Waste Sacks - Reusable

Compare with similar items

	This Item	Recommendations		
	Add to Basket	Add to Basket	Add to Basket	Add to Basket
Price	£12.99	£15.99	£22.99	£12.99
Delivery	—	Get it as soon as Saturday, Jul 20	Get it as soon as Saturday, Jul 20	Get it as soon as Saturday, Jul 20
Customer Ratings	4.5 651	4.7 381	4.7 381	4.8 2,495
Manoeuvrability	4.4	4.7	4.7	4.8
Sturdiness	4.3	4.7	4.7	4.8

9 September 2022 Listing

amazon.co.uk Deliver to Belfast BT13 1 [Sign in](#) [Your Account](#) [Your Orders](#)

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Phones to fit your lifestyle

Gardening > Garden Transportation > Garden Waste Bags

Singwong Garden Waste Bags 500L x 2 Heavy Duty Garden Bags, Reusable Garden Sacks with Handles, Ideal for Collecting Garden Waste, Plant waste grass and Leaves (500L)

£16.99 (8.50 / count)

FREE Returns

Colour Name: 500L

Unit count: 2.0 count

Recommended Garden uses for product

Material: Heavy Duty

Features: Reusable

See more

About this item

- Large Size: 80cm(31") x 100cm(39") - 500 Liters - The bulky sack proves to be particularly useful in the case of bulky materials such as branches or branches.
- Durable Material: The waste bag is made of strong polypropylene (PP) woven fabric. Environmentally friendly, lightweight, durable, tear-resistant and water-repellent.
- 4 Handles: Our garden bag has 4 handles on each side. This means you can always transport or unload our bag without the hassle of turning it around.
- Stable: The flexible hoop at the top adds to keep the bag open, which helps to fill and easy to empty. NOTE: The product does not come with the hoop installed. It needs installation.
- Good folding: If the bags are not in use, you can fold them small, since there are no bulky spring-loaded springs.

See more product details

Customer ratings by feature

Lightweight: 4.2

Manoeuvrability: 4.0

FREE delivery: Monday, 12 July on your first order to UK or Ireland. Details

Or faster delivery: Saturday, 10 July Order within 19 hrs, 28 mins. Details

Deliver to Belfast BT13 1

In stock

Quantity: 1

Add to Basket

Buy Now

Dispatches from: Amazon

Sold by: Sun and Tools

Returns: Refundable within 30 days of receipt

Secure transaction

Payment: ☐ Add gift options

Add to List

Manufacturer:	Singwong	ASIN:	B080R317W8
Product Dimensions:	45 x 45 x 76 cm; 1.04 kg	Customer Reviews:	4.3 1,323 ratings
Item model number:	SWUKPP	Best Sellers Rank:	4.3 out of 5 stars
Size:	2 count (Pack of 1)		111 in Garden (See Top 100 in Garden)
Colour:	500L	Date First Available:	9 Sept. 2022
Material:	Polypropylene	Warranty & Support:	Amazon.com Return Policy: Regardless of your statutory right of withdrawal, you enjoy a 30-day right of return for many products. For exceptions and conditions, see Return details.
Included Components:	polypropylene fabric	Feedback:	Would you like to tell us about a lower price?
Batteries included?	No		
Batteries Required?	No		
Item Weight:	1.04 kg		

Looking for specific info?

Search in reviews, Q&A...

Product description

Make your gardening work much easier.

- Each bag comes with a flexible stiffener strip that fits into a "tunnel" in the rim of the bag to keep it open.
- Once you have fast this stiffener into position and opened out the bottom of the bag in its full circular shape it find it is best to stop inside, slide the rim with your hands and open up the bottom with your feet, the bag will retain enough of a cylindrical shape for you to shovel or pour debris into it without having to hold it up or open.
- As the bag becomes about half full, you may well find it advisable to pick it up by the rim in both hands and give it a shake to make use of the full volume.
- The garden bag can be folded to save space when storing.

WARNING:

If you are filling the bag with dense material (gravel, soil or wet leaves) you will find it impossible to lift or carry the full (or nearly full) bag unaided. Protect the bag from direct sunlight, as Ultra-Violet radiation seems to degrade and weaken the material.

Specifications:

Material: 100% Polypropylene Fabric (PP)
Product Size: 80 x 100 cm (31 x 39)
Capacity: 500L

Package List:

2 x Garden waste bag

Compare with similar items

This Item	Recommendations		
Singwong Garden Waste Bags 500L x 2 Heavy Duty Garden Bags, Reusable Garden Sacks.	Somelure Garden Waste Bags 500L x 2 Heavy Duty Garden Bags, Reusable Garden Sacks.	ANKO Garden Waste Bags 500L x 2 Heavy Duty Garden Bags, Reusable Garden Sacks.	LONEXCEL Garden Waste Bags 500L x 2 Heavy Duty Garden Bags, Reusable Garden Sacks.
Add to Basket	Add to Basket	Add to Basket	Add to Basket
Price: £16.99	-13% £13.99	£14.99	£7.99
Delivery: —	—	Get it as soon as Saturday, Jul 20	—

27 July 2017 Listing

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Phones to fit your lifestyle

Gardening > Garden Transportation > Garden Waste Bags

FLORA GUARD 3-Pack 272L Garden Waste Bags - Heavy Duty Garden Bags with Handles, Garden Sacks Reusable

£22.99 (7.66 / count)

FREE Returns

Size Name: 1 count (Pack of 3)

Unit count: 3.0 count

Recommended Garden Waste uses for product

Material: Recyclable, Heavy Duty

Features: Reusable

See more

About this item

- DURABLE: Garden waste bag made from UV-treated polypropylene tarpaulin.
- LARGE CAPACITY: Overhead storage container bag holds up to 272L of garden waste for maximum yield clean-up with minimal effort.
- VERSATILE: Use for collecting weeds, grass clippings, other types of yard waste.
- EXTRA LARGE: Set of 3 garden bags - 272L of maximum capacity (each bag) - height 30" Diameter 26" - Maximum weight of 1200kg per bag. Including a flexible hoop to increase stability and keep bag open, which help to fill and easy to empty.
- COLLAPSIBLE: This 26 inch wide and 30 inch tall garden bag folds down to a compact 1.5 inches for space saving storage.

See more product details

Customer ratings by feature

Lightweight: 4.7

Durability: 4.4

Manoeuvrability: 4.4

Value for money: 4.4

See all reviews

☐ Report an issue with this product

Free delivery options

See if you're eligible for free delivery. Increase size

FREE delivery: Monday, 12 July on your first order to UK or Ireland. Details

Or faster delivery: Saturday, 10 July Order within 19 hrs, 28 mins. Details

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In stock

Quantity: 1

Add to Basket

Buy Now

Dispatches from: Amazon

Sold by: Sun and Tools

Returns: Refundable within 30 days of receipt

Secure transaction

Payment: ☐ Add gift options

Add to List

Open the folded waste bag

Open the mouth of the bag and tidy it up

Put the support tape through the small mouth of the bag

Support tape makes the mouth of the bag less deformable

WATERPROOF AND WEAR-RESISTANT

Waterproof and moistureproof

Easy installation

material thickening

Wear-resistant and scratch resistant

Specifications:

Item Type: Garden Waste Bags

Material: pp woven fabric, tear-resistant, water-repellent

Huge Capacity: 3*272L

Package List:

3 x Garden Waste Bags

Rubber Strip

Product information

Manufacturer:	FLORA GUARD	ASIN:	B074B8TG1W
Part Number:	SPACK Garden Bag	Customer Reviews:	4.5 2,136 ratings
Product Dimensions:	40 x 26 x 14 cm; 1.15 kg	Best Sellers Rank:	4.5 out of 5 stars
Manufacturer reference:	SPACK Garden Bag		11,295 in Garden (See Top 100 in Garden)
Size:	1 count (Pack of 3)	Date First Available:	27 July 2017
Colour:	Green	Warranty & Support:	Amazon.com Return Policy: Regardless of your statutory right of withdrawal, you enjoy a 30-day right of return for many products. For exceptions and conditions, see Return details.
Material:	Polypropylene	Feedback:	Would you like to tell us about a lower price?
Item Package Quantity:	1		
Batteries included?	No		
Batteries Required?	No		
Item Weight:	1.15 kg		

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Phonons to fit your lifestyle

Gardening | Garden Transportation | Garden Water Bags

Roll over storage to zoom in

VIROSA EXTRA VALUE Garden Waste Bags 120L | PACK of 3 | 176cm, D45 cm | Ideal for Large Amounts of lightweight Garden Waste | Reusable Waterproof Refuse Sack with Handles

Brand: **VIROSA**
4.6 ★★★★★ | 173 ratings

Currently unavailable.
We don't know when or if this item will be back in stock.

Delivery to Belfast BT13 1

[Get to List](#)

Size Name: 120 Litre - 3 Sacks

120 Litre - 3 Sacks 1 option from £14.99	272 Litre - 3 Sacks 1 option from £17.99
--	--

Brand VIROSA

Capacity 120 litres

Recommended uses for product Garden Waste

Material features Recyclable

[Customer Reviews](#)

[See more](#)

About this item

- QUALITY** - Excellent quality garden waste bags, these have been produced using prime quality materials. Featuring four sturdy carrying handles (two at the top and two at the bottom) that are reinforced with double stitching webbing to ensure easy handling of large amounts of garden waste.
- MULTIPLE USES:** Are you looking for a large size bag to put all your garden waste? A bag that is suitable for indoors and outdoors? Our bags are made of environmental friendly polypropylene material that is suitable to store anything from leaves, grass, stems, soil and shrubs. Some people even use these bags for laundry and to store garden tools.
- EASY TO HANDLE:** Each bag comes with a black plastic flexible hoop. This adds stability and keeps the bag open, makes it easier to fill and empty it. Also, thanks to their comfortable long handles, the bags can be easily carried from place to place.
- SIZE:** Each of the Large garden bags measures with height of 75cm and diameter of 45 cm.
- YOU WILL RECEIVE:** 3 Individual Large garden waste bags measuring at height of 75cm and diameter of 45cm.

[See more product details](#)

Customer ratings by feature


Sturdiness: ★★★★★ 4.7

4.6
 4.6


Massachusetts, US
 Report an issue with this product

Free delivery option
 Get it you're eligible for free delivery.
[Discover more](#)


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ZPico 120L Heavy Duty Large Garden Waste Bag
 Reusable Removable 5 Gardening Gloves, Rubbish Bags, Garden Rollie Hose
★★★★★ 1043
\$11.49 (\$1.75/unit)
 Get it as soon as **Thursday, Jul 25**
 FREE Delivery by Amazon




Garden Mix® 272L Large Reusable Green Heavy Duty Garden Rollie Sack Bag with Handles Shower Proof Tear Resistant...
★★★★★ 117.39
 Get it as soon as **Wednesday, Jul 24**
 FREE Delivery by Amazon Only 1 left in stock.



ALUFSTAR Premium Pack of 4 Waterproof Large Strong Round Garden Rubbish Bags - Sack for Rubbish Green Tear Resistant...
★★★★★ 25
\$7.95 (\$1.99/unit)
 FREE Delivery




3 x 500L Garden Waste Bags, Waterproof Heavy Duty Large Rubbish Sacks with Handles Foldable and Reusable (3)
★★★★★ 10
\$15.01 (\$5.00/unit)
 Get it as soon as **Monday, Jul 22**
 FREE Delivery by Amazon




Muskat Garden Waste Bags, 500L x 3 Garden Bags Heavy Duty with Handles, Reusable Garden Sacks, Foldable...
★★★★★ 70
\$20.99 (\$7.00/unit)
 Get it as soon as **Monday, Jul 22**
 FREE Delivery by Amazon Only 1 left in stock.


What other items do customers buy after viewing this item?




Rain® Heavy Duty Garden Waste Bags • 272 Liter • 5 Sacks - Industrial Handles & Fabric • Garden/Green Waste Sacks • Reusable Green Sacks • Reusable
★★★★★ 112.99




Singaporean Heavy Duty Garden Bags 500L x 2 Heavy Duty Garden Bags, Reusable Garden Sacks with Handles, Model for...
★★★★★ 133
Get Best Price in Garden Home Shop
\$16.99 (\$8.49/unit)
 FREE Delivery by Amazon



Garden Waste Bags - 120 Liter - 1 to 5 Sacks - PREMIUM GRADE - Industrial fabric and handles • Heavy Duty...
★★★★★ 35
\$12.99 (\$4.00/unit)
 Get it as soon as **Saturday, Jul 20**
 FREE Delivery by Amazon Only 11 left in stock.



ADHRETT 3 x 500L Garden Waste Bags (#94 cm, 067 cm) Large Garden Bags with Handles, Waterproof Rubbish Refuse Sacks...
★★★★★ 2.5k
\$17.99 (\$6.00/unit)
 Get it as soon as **Monday, Jul 22**
 FREE Delivery by Amazon



3 Sacks Garden Waste Bags, 500L x 3 Garden Waste Sacks Reusable, Industrial, Fabric and Handles...
★★★★★ 113
\$14.99 (\$5.00/unit)
 Get it as soon as **Monday, Jul 22**
 FREE Delivery by Amazon

Product information		Additional Information	
Manufacturer	VIBOSA	ASIN	B0CJZYTBK4
Part Number	1456799	Customer Reviews	4.6 ★★★★★ = 173 ratings out of 5 stars
Product Dimensions	25 x 30 x 14 cm, 1.1 kg	Best Sellers Rank	21,441 in Garden (See Top 100 in Garden)
Item model number	1456799		#88 in Industrial Waste Sacks (See Top 100 in Industrial Waste Sacks)
Size	120 Liter - 5 Sacks	Date First Available	19 Mar. 2021
Colour	Green	Warranty & Support	
Material	Plastic		
Shape	Circular		

5. The Proprietor filed a counterstatement to the application on 8 October 2024, denying the Applicant's claims. In particular, it states that its design is indeed new and possesses individual character that distinguishes it from prior designs as referenced by the Applicant. The Proprietor's design is said to introduce "significant differences in structure, functionality and visual elements compared to the designs cited as evidence". Further, the unique features are said to establish the novelty and individual character of its product in regards:

- the stitching pattern on handles;
- double layered bottom handles; and
- larger plastic loop tunnel with extended length.

6. Both parties filed evidence. The Proprietor filed evidence in chief consisting of the witness statement of Ubaidullah Hanif dated 20 December 2024, accompanied by two exhibits. The Applicant filed evidence in reply consisting of the witness statement of Mary Zhang dated 5 February 2025, accompanied by one exhibit. Neither party requested a hearing. I have taken this decision after a careful consideration of the papers before me.

Relevance of EU Law

7. 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.

Evidence

8. As noted, the Applicant filed a number of documents with its application for invalidity. I have already outlined these documents and provided screenshots of the representations relied upon earlier in my decision, which are produced as a vehicle for exhibiting the details of the products claimed to be prior art. As the Form DF19A contains a statement of truth signed by Ms Zhang, I am able to treat these documents as evidence. Consequently, I will consider this evidence as Ms Zhang's evidence in chief.

9. The Proprietor filed evidence consisting of the witness statement of Ubaidullah Hanif dated 23 September 2024. Mr Hanif is the Managing Director of the Proprietor. Mr Hanif states that the registered design introduces significant differences in structure, functionality and visual elements compared to the designs produced in evidence by the Applicant. These unique features are said to establish the novelty and individual character of the Proprietor's product. Mr Hanif outlines what he sees as the key distinctions, which are as follows:

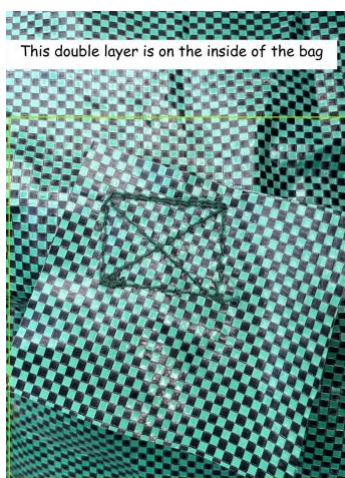
(i) Stitching Pattern on Handles

The stitching on the handles is said to follow a unique pattern that is not present in the designs submitted in evidence. The stitching is said to be both a visual and functional element that sets the design apart by creating a distinct aesthetic and it also adds durability to the product which is not featured in the other designs. An image of the stitching is produced as reproduced below:



(ii) *Double layered bottom handles*

A key innovation in the registered design is the double layer feature on the bottom handles. It is said that this specific improvement not only strengthens the product but also provides a unique tactile feel to the user, enhancing the product's functionality. None of the designs referenced by the Applicant in the Amazon listings, offer this feature. The double layer enhances and contributes to the overall distinctiveness of the product.



(iii) *Larger Plastic Loop Tunnel with Extended Length*

The plastic loop tunnel in the registered design is larger than those found in the products referenced by the Applicant. The loop tunnel measures 5 cm in length compared to the 4.5cm tunnel size commonly seen in other designs including those cited in the Applicant's evidence. The modification improves the usability of the product particularly in terms of flexibility and user comfort and visually distinguishing it from prior designs.



10. The Applicant filed evidence in reply from Ms Mary Zhang dated 5 February 2025. The witness statement does nothing more than attach an exhibit consisting of images showing garden waste bags with the same features in appearance as the registered design which is said to prove that the registered design is not novel and lacks individuality. The Applicant produces the following chart displaying images of the representation of the registered design as against the prior art relied upon:

Deisgn Comparison Chart					
	Design Number: 6333488	B09XR5TXJN	Asin: B08DR317W8	B07498TGHW	B08ZJNTBX4
Date First Availa ble	15 Dec. 2023	12 April 2022	9 Sept. 2022	27 July 2017	19 Mar. 2021
Image 1					
Image 2					
Image 3		No image			No image
Image 4					No image
Image 5		No image	No image	No image	No image

11. Ms Zhang states that the comparison pictures show that the garden garbage bags have the same features in appearance proving that the registered design is not “novel and lacks personality”. Ms Zhang goes on to undertake a comparison of the features of the respective designs as she sees them. She states that:

- they are cylindrical, like a bucket and are made of green woven fabric.

- They have two green and red striped fabric handles on the top and bottom side
- They need to put a plastic loop on the top to fix the mouth of the garden waste bag into a round shape.

12. Ms Zhang states that the differences outlined by Mr Hanif regarding the stitching pattern, double layered bottom handles, and larger plastic loop tunnel with extended length are too minor to warrant changing the overall design or creating a new different design. Further none of the five images of the registered design as registered, show the unique handle stitch pattern design, the double layer stitching at the bottom nor detailed information about the length of its loop tunnel as claimed. In any event it is said that the stitching pattern relied upon in the registered design is the same as that produced by the July 2017 design.

Decision

13. 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”.

14. 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.

[...]”

15. The relevant date is the application date of the registered design namely 15 December 2023.

Prior Art

16. In order to be considered prior art, the designs relied upon will need to have been disclosed prior to the relevant date and must not be excluded disclosures under section 1B(6). In *Senz Technologies BV v OHIM*,¹ the General Court (‘GC’) held that:

“A design is therefore deemed to have been made available once the party relying thereon has proven the events constituting disclosure.”

17. The Applicant has relied on designs claiming that they were made available to the public prior to the relevant date on www.amazon.co.uk (“Amazon”) namely on 27 July 2017, 19 March 2021, 12 April 2022 and 9 September 2022. Whilst the screenshots themselves are undated they show that the goods relied upon by the Applicant were first made available on the Amazon UK website at these dates. The burden then shifts to the Proprietor to show that the disclosure event claimed by the Applicant could not have reasonably become known in the normal course of business to the circles specialised in this sector considered in the geographical area of the UK and the European Economic Area. The Proprietor has not sought to challenge these listings or made such a claim. I find, therefore, that the listing of the goods on Amazon by the Applicant constitutes a disclosure. Given that the dates of these listings are all dates earlier than the date on which the Proprietor filed its application to register the registered design and none of the exemptions under section 1B(6) apply, the designs produced by the Applicant are acceptable prior art.

¹ Joined cases T-22/13 and T-23/13, paragraph 26.

Novelty and Individual Character

18. Section 1B(2) of the Act states that a design has novelty if no identical design or no design differing only in immaterial details has been made available to the public before the relevant date. In *Shnuggle Limited v Munchkin, Inc & Anor* [2019] EWHC 3149 (IPEC), HHJ Melissa Clarke, sitting as a Judge of the High Court, said:

“‘Immaterial details’ means ‘only minor and trivial in nature, not affecting overall appearance’. This is an objective test. The design must be considered as a whole. It will be new if some part of it differs from any earlier design in some material respect, even if some or all of the design features, if considered individually, would not be.”¹

19. Further Section 1B(3) of the Act 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 therefore need to assess the similarities and differences and decide upon their impact on the overall impression of the design.

20. A design may be “new”, but still lack the necessary “individual character” compared to the prior art. This depends on whether the overall impression it produces on the informed user differs from the overall impression produced on such a user by the prior art. As HHJ Birss QC (as he then was) pointed out in *Samsung Electronics (UK) Ltd v Apple Inc* [2012] EWHC 1882 (Pat), “*The scope of protection of a Community registered design clearly can include products which can be distinguished to some degree from the registration.*” The same applies to a comparison of the overall impression created by a registered design compared to the prior art.

21. The approach to carrying out an assessment of individual character was helpfully summarised by HHJ Hacon, sitting as a Judge of the High Court, in *Safestand Ltd v Weston Homes PLC & Ors* [2023] EWHC 3250 (Pat) at [237]:

“(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 design 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 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."

22. I also bear in mind HHJ Birss' further comments in *Samsung Electronics (UK)* as aforesaid, namely "*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.*"

Comparison of the Designs

23. Mr Hanif describes the differences between the registered design and the prior art and provides images of these differences by way of illustration. These consist of

images of stitching on the handles, a double layer feature on the bottom handles and a greater depth loop tunnel measuring 5 cm. However, as raised by the Applicant it is the representations of the registered design on the register that show what is protected that is key and not those images filed as part of the Proprietor's counterstatement or in evidence. In *Magmatic Ltd v PMS International Ltd*, [2016] UKSC 12, the Supreme Court held that (my emphasis):

“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 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.”



24. Given that the features described by the Proprietor in evidence do not form part of the registered design and are not shown in the representations of the design on the register, I do not take these into account. I will, therefore, compare the prior art against the registered design as per the representations as they appear on the register and not those produced by Mr Hanif in evidence.

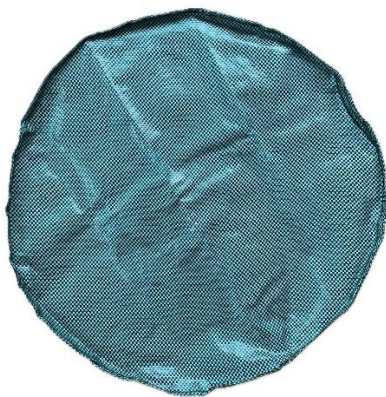
25. The Applicant has produced a comparison chart (as reproduced earlier at paragraph 10) which sets out representations of the prior art relied on in evidence as against the representations of the registered design as they appear on the register.

However, in *PulseOn Oy v Garmin (Europe) Limited* [2019] EWCA Civ 138, Floyd LJ said:

“14. ... The comparison must be with the overall impression of each design relied on from the prior art ‘considered individually’, and not by ‘a combination of features taken in isolation and drawn from a number of earlier designs’: see Case C-345/13 *Karen Millen Fashion Ltd v Dunnes Stores* [2016] ECDR 13 at [23]-[25].”

26. Consequently, I shall proceed to undertake the comparison (as per the table below) against the design dated 27 July 2017, as this appears to represent representations of the clearest and closest design. I shall only return to consider the other designs relied upon by the Applicant if it becomes necessary to do so.

Registered Design	The Prior Art
	



27. In my view the designs share the following attributes:

- They are both cylindrical in shape.
- They both include two handles positioned at either side of the bag at the top and a lower handle positioned at the bottom of the bag.
- The designs show that each is self-supporting but also collapsible when the plastic cable is extracted.
- They each include a loop tunnel within which a plastic cable is inserted running along the circumference of the container/bag.
- The material from which the respective bags are made have a woven appearance.
- The material of the handles of the respective designs is green and red striped material.

28. The respective designs differ as follows:

- the size and proportions (litreage and height).
- I have no images of the underside or the overhead view of the prior art in which to make a comparison and to form a view.

The informed user and the sector concerned

29. The sector is the market for collapsible containers/bags, namely garden waste bags. The informed user is a member of the general public who wishes a collapsible container to collect garden waste. The informed user is a knowledgeable, observant user, possessing the type of characteristics as set out in the case law.² They show a reasonable degree of attention when using the products and are aware of the range of designs available for these products and the features that are normally included in them.

The Design Corpus and Freedom of the Designer

30. In *Dyson Ltd v Vax Ltd*, [2010] FSR 39, Arnold J (as he was then) stated that:

² *Samsung Electronics* as aforesaid

“... 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).”³

31. The images of the designs produced by both parties show cylindrical containers with handles either side of the container and at the bottom of the bag. They each also contain a loop tunnel feature through which a plastic cable runs in order to give the container structure and stability i.e. to ensure that the opening of the container remains open and does not collapse. Whilst the bags/containers shown in evidence appear to be made out of the same material they could be in a variety of materials with different features of appearance.

32. I take from the examples that the designer had the freedom to decide the dimensions, litreage and shape of the bag. I notice that all the containers claimed as prior art are cylindrical whereas there are some listings of alternative products shown in evidence by the Applicant which are square. The placing of the handles appears to be governed by practical considerations. There is some freedom, however regarding their actual and precise position. Nevertheless, the designer of a garden waste bag is to some degree constrained as to the shape and construction of the bag to the extent that they must be of a certain minimum size in order to be fit for purpose i.e. to collect garden waste, but still be not so large that they cannot be lifted comfortably for emptying. Further, it appears to be a requirement that the bags should be able to stand on their own so that they can be filled and collapsible so that they can be easily stored when not in use. There will of course be design freedom in so far as the material used, colour, surface decoration, overall size, length, number and position of the handles and the depth of the loop tunnel, provided it is more than a minimum depth to be able to comfortably run a cable.

Overall impression

33. I have already listed the features of the registered design earlier in my decision and those features which are in common and which differ to the prior art. Whilst the proportions of the registered design appear to differ to that of the prior art and is sufficient to prevent the designs from being identical I am satisfied that the difference

in size makes a smaller contribution to the overall impression of the respective designs than the colour, shape and appearance of the material of the bag and its handles. Therefore, I consider that the difference in size will not affect the overall appearance of the product. Whilst I had no images of the underside view of the prior art in which to make a comparison, the informed user is likely to put less weight on the underside of the bag as this will not be seen in use.³

Finding

34. I bear in mind that some of the similarities between the designs arise by virtue of their function and purpose, for example, the handles and the loop tunnel through which a plastic cable is inserted. These are all features which are essential for the goods to achieve their function and purpose. I shall therefore give these less weight in my assessment. They are similar in colour and appearance of the material of the bag itself and of the handles. The respective designs are different in so far as their overall size. I am satisfied, that the differences in design will not create different overall impressions on the average consumer. Consequently, I consider that the registered design does not have individual character when compared with an earlier design. Given this finding it is unnecessary for me to compare the other designs as relied upon by the Applicant as this will not affect the outcome or place it in any better position.

Final Remarks

35. Even if I had found that the difference in size and proportions would be noticed by the user making it novel, this would not assist the Proprietor, because I would still not find that the registered design had individual character for the reasons already outlined. The invalid action would still, therefore, succeed.

Conclusion

36. The application for invalidation is successful. Design registration number 6333488 is hereby declared invalid.

³ Para 237(4)(e) of *Safestand* as aforesaid.

Costs

37. As the Applicant has been successful, she is entitled to an award of costs. As the Applicant is unrepresented, the Litigants in Person (Costs and Expenses) Act 1975, the Civil Procedure Rules Part 46 and the associated Practice Direction applies, which sets the amount payable to litigants in person at £19 per hour. In order to make a claim under this provision the Applicant was invited to complete a pro forma with details as to the time spent on each activity associated with the proceedings. The pro forma was sent to Ms Zhang under cover letter dated 25 February 2025 directing that the proforma was to be completed and returned by 25 March 2025. To date no form has been received from Ms Zhang. Consequently, I make no award as to costs, other than to award the official fee of £48 for bringing the proceedings.

38. I order Uumaima Ltd to pay Mary Zhang the sum of £48. 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 23rd day of June 2025

L Davies

For the Registrar,

The Comptroller-General