

O/0878/25

REGISTERED DESIGNS ACT 1949

IN THE MATTER OF:

REGISTERED DESIGN UNDER NO 6224600

IN THE NAME OF PURRFECTS LIMITED

IN RESPECT OF THE FOLLOWING DESIGN:



AND

**AN APPLICATION FOR INVALIDATION (NO 0294/24) BY
SHENZHEN ZHONGDIAN UNITED COMMUNICATIONS CO. LTD**

BACKGROUND AND PLEADINGS

1. Registered Design under number 6224600 (“the contested design”) stands registered in the name of Purrfects Limited (“the proprietor”). It has an application date of 8 August 2022 (“the relevant date”), has a grant date of 4 September 2022 and was published on 5 September 2022.
2. The design is registered as applying to a ‘dog anti gulp bowl’ and is depicted by the following representations:



3. On 22 November 2024, Shenzhen Zhongdian United Communications Co. Ltd (“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 is not new as it is identical to six prior designs that were disclosed to the public prior to the contested design’s filing date. In addition, the applicant claims that the contested design lacks individual character since its overall impression on the informed user does not differ from the prior designs relied upon. Attached to the application is evidence that shows the alleged earlier designs and their availability to the public. I will discuss this where appropriate.
4. The proprietor filed a counterstatement to the application for invalidation on 14 January 2025. The proprietor argues that the applicant has failed to provide adequate evidence in support of its claim that the contested design was not novel or lacked individual character. In short, the proprietor claims that the documents filed by the applicant (1) do not constitute proof of prior public availability of the cited designs, (2) their authenticity and relevance is not verified and (3) the applicant has failed to demonstrate that any design sharing the same individual character as the contested design was available to the public prior to 8 August 2022, being the filing date of the contested design. As such, the proprietor maintains that the contested design is valid and requests that the application be dismissed in its entirety.
5. Neither party filed anything during the evidence rounds and I note that no hearing was requested and that neither party filed 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 is represented by Monyin Lin Chien whereas the proprietor is unrepresented.
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

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. While the applicant did not file evidence in chief, it did file a range of documents alongside its request for invalidation. Given that the application for invalidation includes a sworn statement of truth that is signed by an individual, it constitutes evidence of fact in accordance with Rule 21(1)(a) of the Registered Designs Rules 2006. On this point, I note that the statement of truth was signed by the applicant's representative, being Monyin Lin Chien on 22 November 2024. The application was accompanied by a statement which, itself, was accompanied by six enclosures. While I will refer to these enclosures throughout this decision simply as Enclosure 1 through 6, I note that they are unpaginated meaning that it is somewhat difficult to directly refer to specific points in the evidence. However for clarity, I will refer to the page numbers of the overall document before me, which is made up of 75 pages with the Enclosures beginning on page 19. For the avoidance of doubt, any and all reference to page numbers throughout this decision is a reference to the overall page numbers of that document.
8. I will discuss the applicant's evidence in further detail where necessary below.

DECISION

9. 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”.

10. 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

11. As set out above, there are six prior designs relied upon. As above, the proprietor has raised a number of issues with the evidence of the applicant in its own counterstatement. I consider it necessary to discuss these at this point. They are as follows:

- a. The date on which the product is shown as being first available is fundamentally flawed. In respect of this point, the proprietor claims that it is common practice for Amazon listings to be updated or modified after their creation, including changes to the products, its design and accompanying images. As such, it is claimed that the Amazon listings *could* have undergone significant alterations and the applicant has provided no evidence to demonstrate that the designs shown in the listings provided were present when the listings were first created;
- b. The proprietor argues that it has been unable to verify the legitimacy of the listings and that, in the absence of corroboration from Amazon, the listing should be deemed unreliable and insufficient; and
- c. It is becoming increasingly common for UK business to face invalidation requests based on questionable evidence. It is claimed that this tactic undermines the integrity of the intellectual property system and imposes an undue burden on legitimate rights holders. The proprietor claims that the applicant's approach follows this trend and, as such, it has failed to meet the burden of evidence required under section 1B of the Act.

12. Aside from the comments in its counterstatement, the proprietor has not filed any direct challenge to the evidence filed (by way of its own evidence) in respect of the Amazon listing. In addition, the proprietor has provided no explanation as to the process of listing goods or amending listings on the Amazon platform in order to support such an allegation. On this point, I note that a similar argument to that of the proprietor was put forward in the case of *GBL UK Trading Limited v H&S Alliance Ltd*, BL O/374/21, wherein an Appellant alleged that a Respondent, despite filing pre-dated listings, was able to change the designs of the products

after the fact and have those changes reflected in the pre-dated listings. In that case, Mr Martin Howe Q.C., sitting as the Appointed Person, set out that even though the Respondent's evidence of product listings was rather thin and could have been better supported, it was not duly contradicted by the Appellant. It was, therefore, established that, on the balance of probabilities, the Respondent's listings were acceptable. In the present case, I note that the proprietor has failed to appropriately contradict the applicant's evidence. As such, I do not consider that the comments in its counterstatement have any bearing here. That being said, it does not simply follow that I must accept the evidence filed as validly constituting the existence of prior disclosure of prior art. In short, I am still required to conduct an assessment on the balance of probabilities. Having considered the evidence in detail, I have come across an issue that appears to contradict a number of the listings shown via the applicant's Enclosures. I will discuss this further below.

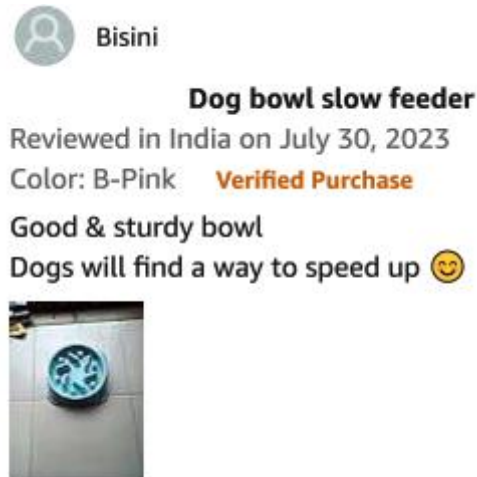
13. In considering the Amazon listings provided, I have found there to be some inconsistencies amongst the images shown of the products. I say this not only because of the images shown for the listings themselves but the fact that a number of images have been posted alongside dated reviews that show products of a slightly different nature.

14. In the first Amazon product listing, the product is shown in the main listing image as follows:¹



¹ Page 19

15. While there are no images in the listing itself that contradict the above image, I note that a verified customer posted a review on 30 July 2023 which included an image of the product received. This image is as follows:²



16. This image, whilst small, shows a dog feeding bowl which differs slightly from the above image taken from the listing itself. While the review is dated after the relevant date for these proceedings, it is dated before the application for invalidity and clearly indicates that, since the product was first listed on Amazon (being 9 May 2019), it has been changed.

17. In addition to the above, in the body of the actual listing itself, the second Amazon listing shown shows the following images:³



² Page 27

³ Pages 30 and 32

18. Like the first listing above, the second listing also includes two reviews wherein customers have posted images of the product received. The first image is from a review from a verified customer in the UK on 6 July 2023 and the second is from a verified customer in the Netherlands on 13 September 2023. These images are reproduced respectively below.⁴



R Harvey

Bowl arrived not as described

Reviewed in the United Kingdom on 6 July 2023

Colour Name: PINK **Verified Purchase**

Bowl arrived with a gaping hole in the middle. With insert. I've had to keep it as threw all the packaging when my dog will just chomp the middle of it



Leonie

Snel kapot

Reviewed in the Netherlands on 13 September 2023

Colour Name: GREEN **Verified Purchase**

Snel geleverd. Tot nu toe 1x gebruikt. Het idee is leuk op en nam een hap uit de bak.



19. Again, these images show slightly different products to those that have been primarily relied upon as prior art. Despite being posted after the relevant date, they do indicate a change in the listing since it was first posted on 15 September 2020.

⁴ I have reproduced two images in respect of the first image as the image itself is shown slightly larger at the top of the review section. For these images, see pages 36, 37 and 38

20. While I do not intend to reproduce further images demonstrating this point, I will simply state here that the above issue is also applicable to the products shown at Enclosures 4, 5 and 6.

21. As a result of the above, I am of the view that the listings shown at Enclosures 1, 2, 4, 5 and 6 are not sufficiently clear as to what goods were actually sold when the products were first listed or at the relevant date. I say this on the basis that their inconsistent nature is such that they give rise to reasonable questions as to their reliability. In light of this, and without anything further from the applicant, I am of the view that these listings are not suitable to give rise to a finding that these designs constitute the valid disclosure of prior art. They are, therefore, of no assistance to these proceedings.

22. All the above being said, I note that the third listing at Enclosure 3 only shows one image, being the following:⁵



23. While I have expressed my doubts as to all other listings, this finding cannot reasonably be taken to mean that I must take the same approach to the entirety of the applicant's evidence. I must, instead, take each listing on its own merits.

24. In respect of this listing, there is nothing before me (either from the proprietor or the applicant itself) to suggest that this was not the product that was sold at any

⁵ Page 41

time since the listing was first available, which is shown as 29 March 2021.⁶ In saying this, I rely on what I have said at **paragraph 12** above regarding the lack of any contradictory evidence proving otherwise. Therefore, despite all I have said about the applicant's other listings and bearing in mind what was said in the case of *GBL UK* (cited above), I have no reason to doubt the accuracy of the present listing.

25. I note that this listing is shown as having been accessed via Amazon.co.uk. It appears to have been accessed by a Chinese-based user as the page indicates that the product is deliverable to China. I also note that the page confirms that the product was offered for sale by Amazon US and that it would also be dispatched from Amazon US.

26. Given that the product listing was accessed via Amazon.co.uk, it is clear that the disclosure of this product was within the UK. Even if I am wrong on this point (and that the disclosure was in the US, being where the product is located), it still constitutes a valid disclosure. I say this in reliance upon the case of *H. Gautzsch Großhandel GmbH & Co KG v Münchener Boulevard Möbel Joseph Duna GmbH*, Case C-479/12 wherein the Court of Justice of the European Union set out that even if disclosure had not taken place within the European Union, it may still be deemed to have been made available to the public in the European Economic Area ('EEA'). On this point, I do not consider that a disclosure via a national Amazon listing is in any way an obscure disclosure. I say this because, as far as I understand it, users are able to navigate foreign countries' Amazon listings, especially given that Amazon is a popular global e-commerce website that is available and accessible worldwide. In order to demonstrate this point, I remind myself that, as above, this webpage shows goods shipped from Amazon US to China and that it was found via a search on Amazon.co.uk. Clearly, such a webpage is available to persons carrying on business in the UK and the EEA. Therefore, I am of the view that, without anything to prove otherwise, the first

⁶ Page 42

offering for sale of the product via Enclosure 3 on 29 March 2021 constitutes a disclosure of the prior art in accordance with section 1B(5) of the Act.

27. As set out above, the printout shows that the product was first available for sale on 29 March 2021 and, as such, it was plainly disclosed more than 12 months before the relevant date. None of the exceptions set out under section 1B(6) of the Act apply to the present case and, 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.

Individual Character

28. I will begin with the question of whether the contested design has 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.

29. 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 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."

30. 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.”⁷

The sector concerned

31. The sector concerned is that of dog food bowls.

The informed user

32. 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

⁷ 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)."

33. The informed user is a member of the public who buys and uses dog feeding bowls. The informed user exhibits all the traits set out in the case law cited above. I see no circumstances or particular characteristics of the products that would make it impractical or unusual for the informed user to conduct a direct comparison of the designs in issue.

Design freedom

34. In *Dyson Ltd v Vax Ltd*, [2010] FSR 39, Arnold J (as he was then) stated, at paragraph 34, 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).”




35. Neither party has made any argument as to the design freedom in respect of the products at issue. To fulfil the product’s function, it must be able to be used as a receptacle for dog food that is capable of being eaten from by a dog. Further, the product must be of a certain level of durability to retain its shape whilst it is eaten from by a dog. While I do not consider that the products are constrained by any specific shape or size, the product is one that is aimed at encouraging a dog to eat at a slower pace, meaning that there must be something in the shape and size of the design to impede easy consumption of the food. This is likely to come in raised elements within the hollow of the bowl, but there is design freedom regarding the number, shape and configuration of these elements. As such, while there may be some limits on account of manufacturing capability or costs, there remains a significant scope for design freedom for these goods. Most significantly, the designer may choose any of the following:

- a. the colour of the dog bowl;
- b. the shape of the dog bowl;

- c. the size of the dog bowl; and
- d. the nature of the elements aimed to slow the consumption of food.

Comparison of the designs

36. The representations of the contested design are images of the product. There are five images in total, each one showing the product at different angles. As for the prior art, this is made up of a single photograph taken from an Amazon listing. As such, it is not possible to view the differing angles of the prior art.
37. In the table below, I show the images of the contested design alongside the prior art relied upon.

The contested design	The prior art
	
	



38. The contested design has the following features:

- a. The base of the bowl is a rounded square with the sides of the bowl making a circle. Further, the overall internal section (being the part where the food is placed) is circular;
- b. As the rounded square element of the external section of the bowl raises to the circular shape, the bowl has a small ridge;
- c. A number of raised 'columns' sitting within the internal section of the bowl, seven of which are oval shaped columns with six longer, flatter columns arranged in a circle;
- d. On the underside of the bowl, the reverse section of the columns discussed above are shown and it can be seen that they are hollow; and

- e. Four black pads on the bottom of the bowl, placed equidistant along the flat edges of the rounded square shape;

39. While the prior art is only shown in one image, you can plainly make out that the interior section of the bowl consists of identical features to those shown in the above images of the contested design. Both designs have the same number of oval columns and the same number of flatter columns, all of which appear to be placed in the same locations. In addition, while I cannot make out the other side of the prior art, it appears to me that they share the same shapes, being a square external base with a circular inner bowl. Further, both designs consist of a small ridge along their bottom edges. While the lack of images for the prior art means that I am unable to determine whether the angle of the outer edge of the bowl matches that of the contested design, I am of the view that, even if it does differ, it is something that is likely to be overlooked, especially in light of the identical nature of the interior section of the bowl.

40. As there is no image of the underside of the prior art, it is not possible to determine if the columns are hollow in the same way as shown in the contested design. In respect of the bottom, while the image is not shown, I note that the description of the listing sets out that the product has four rubber 'anti-slip' feet on its bottom. In addition to this, I can make out that the prior art does include a pad on its underside, which I have highlighted as follows:



41. I am of the view that the identity of the top side of the bowls is such that the contested design does not possess an individual character when compared with the earlier design. In reaching this finding, I appreciate that the designs differ in colour. However, this is not sufficient to outweigh the contribution of the identical

elements to the overall impression of the design. Further, I remind myself that the lack of images from the underside of the prior art means that the undersides of the designs may differ. On this point, I remind myself of point 6 of *Cantel* (cited above) wherein HHJ Hacon set out that the informed user may, in some cases, discriminate between elements of the respective designs, attaching different degrees of importance to similarities or differences. While noted, I do not consider that the present case is one where users will discriminate between any potential differences in the underside of the designs. I say this because the user will pay more attention to the inside of the bowl than to what it looks like from underneath. This is on the basis that the inside of the bowl is where the food will be placed and the underside will, instead, be out of view. As such, I do not consider that the potential difference in the underside of the designs is sufficient to overcome the identity of their top sides.

Novelty

42. 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.”

43. On the basis that the use of colour is more than minor and trivial, the difference in colour between the designs may be sufficient for the contested design to have novelty. That being said, given what I have said in respect of the individual character above, this has no effect on the outcome of my decision as I have found that the contested design lacks individual character which is sufficient by itself to result in the present application being deemed successful.

CONCLUSION

44. The application to invalidate the contested design is successful. Therefore, Registered Design (UK) under no 6224600 is hereby invalidated with effect from its application date, being 8 August 2022.

COSTS

45. The applicant has been successful and it is, therefore, entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances, I award the applicant the sum of £448 as a contribution towards its costs. The sum is calculated as follows:

Preparing an application of invalidity and considering the counterstatement in response:	£400
Official fee:	£48
Total:	£448

46. I therefore order Purrfects Limited to pay Shenzhen Zhongdian United Communications Co. Ltd the sum of £448. 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 September 2025

A COOPER

For the Registrar