

O/0934/25

REGISTERED DESIGNS ACT 1949

IN THE MATTER OF:

REGISTERED DESIGN NO 6240536

IN THE NAME OF SHENZHEN QINGXIYUE ELECTRONIC COMMERCE CO., LTD

IN RESPECT OF THE FOLLOWING DESIGN



AND

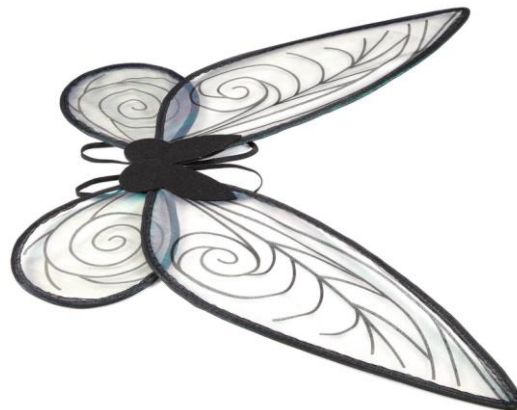
AN APPLICATION FOR INVALIDATION (NO 201/23)

BY XIYA WANG

BACKGROUND AND PLEADINGS

1. Registered design no. 6240536 stands in the name of Shenzhen Qingxiyue Electronic Commerce Co., Ltd (“the registered proprietor”). The design was applied for on 1 November 2022 (“the relevant date”), registered on 24 November 2022 and published the following day. The indication of product is given as *Fairy Wings for Fancy Dress*.

2. The design is depicted in the following representations:





3. The following disclaimer was entered on the register: “*No claim is made for the colour shown*”.

4. On 13 October 2023, Xiya Wang (“the applicant”) applied for the registered design to be invalidated 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 “*almost identical products*” were available to the public before the relevant date. The applicant relied on two designs.

5. The first of these is Registered Design No. 6238811, which was filed on 24 October 2022, registered on 14 November 2022 and published on 15 November 2022. The applicant in these proceedings is the registered proprietor of this earlier design. The indication of product is given as *Haberdashery and clothing accessory*. I reproduce two of the representations below:



6. This registered design was not published until two weeks after the relevant date. Consequently, it does not qualify as an earlier design under the provisions of section 1B of the Act. Section 11ZA(1A) states that a registered design may be declared invalid if it is not new or does not have individual character when compared to a design which was made available to the public after the relevant date, but is protected as from a date before the relevant date. This ground has not been pleaded, but, as will be seen, nothing turns on this point.

7. The second design is a product that the applicant claims was sold on Amazon on 22 May 2022:



8. The registered proprietor filed a counterstatement to the application for invalidation on 30 November 2023, denying the applicant's claims that the contested design is not new and does not have individual character when compared with Registered Design No. 6238811. In particular, it claims that there are differences in the shape of the wings and the colours of the two registered designs. It does not address the second design relied on by the applicant.

9. Neither side requested a hearing. I have taken this decision following a careful consideration of the papers.

10. In these proceedings, the applicant has been represented by Isabelle Bertaux. The registered proprietor was initially represented by Way Insight IP Services Ltd and then by Huanhua Liang.

PROCEDURAL ISSUES

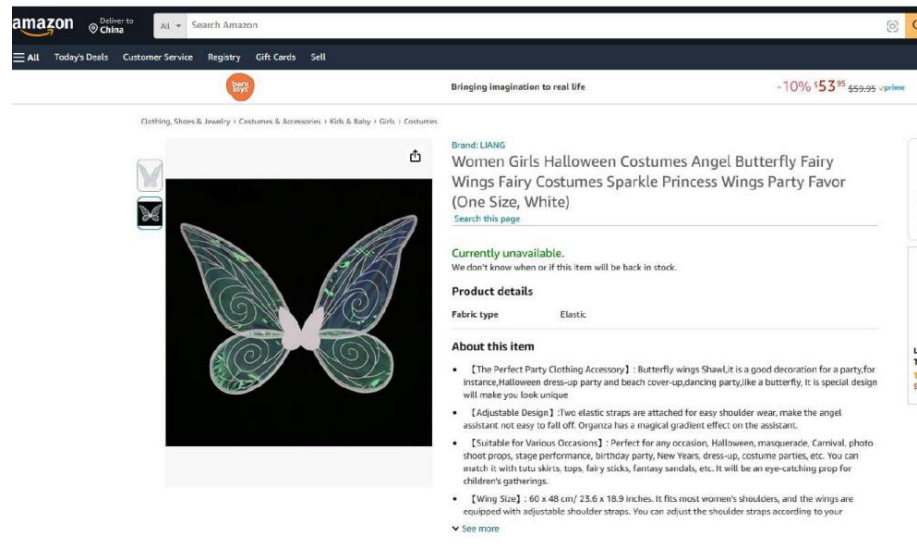
11. When the counterstatement was served on the applicant, it was given a period of six weeks to file evidence or submissions. The deadline was 11 January 2024. No evidence or submissions were filed by this date and so the Tribunal wrote to the registered proprietor on 23 January 2024, saying that it was considered that the evidence and submissions filed with the application form were sufficient for the case to continue. It then gave the registered proprietor a deadline of 5 March 2024 to file any evidence or submissions.

12. On 21 February 2024, the registered proprietor filed a document that it described as its “*evidence defence document*”. Evidence must be filed under cover of a witness statement and the document filed did not meet the requirements. For example, it did not give the full name and address of the witness, was not signed and did not include a statement of truth. The Tribunal therefore wrote to the registered proprietor on 13 March 2024, giving a period of 14 days in which to file the evidence in an admissible format. A second deadline was set of 22 May 2024. No amended evidence was received and so on 6 June 2024 the Tribunal wrote to the parties closing the evidence rounds and giving them the opportunity to request a hearing or have a decision taken on the basis of the papers.

13. On 19 June 2024, the registered proprietor requested a hearing. It also said that it had filed the relevant evidence before the second deadline and submitted an email that was dated 16 May 2024 17:34:03 and to which refiled evidence was purported to be attached. Following this, it also submitted the automated email response from the Tribunal which was sent on 16 May 2024 17:34:36. The Tribunal therefore gave the registered proprietor a deadline of 4 July 2024 to refile the amended evidence.

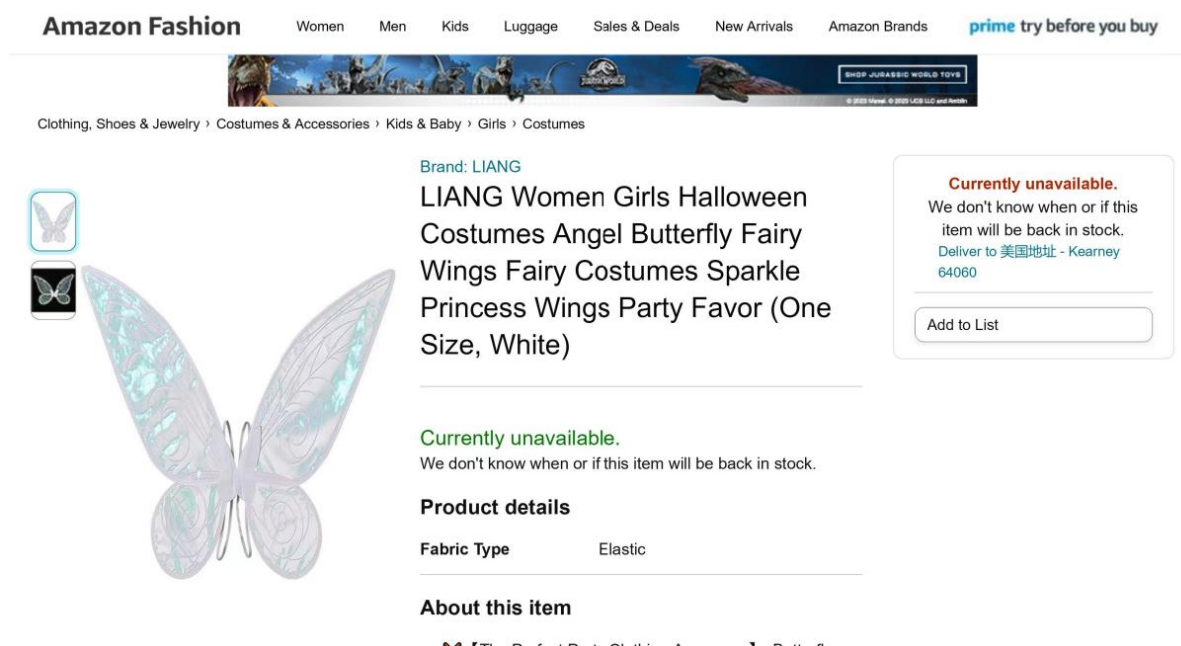
14. On 29 June 2024, the registered proprietor filed a witness statement from Yang Lee, Managing Director of Shenzhen Qingxiyue Electronic Commerce Co. Ltd since 2020. Their witness statement is dated 28 June 2024 and is a vehicle for attaching 6 exhibits:

a) Exhibit YL1 is a screenshot from Amazon showing fairy wings on what appears to be Amazon.com (the prices are in dollars). Yang Lee says that this is the registered proprietor's Amazon sales page. The listing states that the product was first available on 20 April 2022;



b) Exhibit YL2 contains screenshots of an email from Amazon Services to GuangZhou CuiLiKeJi YouXianGongSi dated 20 April 2022 confirming that *Women Girls Halloween Costumes Angel Butterfly Fairy Wings Costumes Sparkle Princess Wings Party Favor (One Size, White)* had been listed and would be visibly for sale “in a few minutes”;

c) Exhibit YL3 contains a screenshot of the product listing:



d) Exhibit YL4 consists of a screenshot from the “Manage Inventory” section of Amazon. It shows that the product depicted in the listing above was first offered for sale on 20 April 2022;

e) Exhibit YL5 includes screenshots of the legal entity documentation of the Amazon trader, GuangZhou CuiLiKeJi YouXianGongSi;

f) Exhibit YL6 is a copy of the authorisation letter issued to GuangZhou CuiLiKeJi YouXianGongSi, confirming their authority to sell the product worldwide. This document contains an image of the product which corresponds with the third representation of the contested design.

15. The evidence was admitted and the applicant given the opportunity to file evidence in reply, which it did not do.

16. When the matter came to me for a decision, I became aware that the proprietor had not addressed the second design relied upon by the applicant. The position under the Civil Procedure Rules (“CPR”) is that where a defendant fails to deal with an allegation it is taken to be admitted: see Rule 16.5(5). The procedure in this Tribunal is not governed by the CPR. Guidance is provided by a series of Tribunal Practice Notices (“TPN”) and TPN 1/2000 covers all proceedings before the Comptroller, including those related to registered designs. It states that:

“23. In their counterstatement, the defendant must state:

- which of the allegations in the statement they deny and why (and if they intend to put forward an alternative version of events, what that version is);
- which of the allegations in the statement they are unable to admit or deny but require the claimant to prove;
- which of the allegations in the statement they admit.

24. The purpose of the counterstatement is to narrow down the field of dispute, because the claimant will not need to prove any allegations which the defendant admits. Whilst in the past counterstatements have sometimes been very sketchy, that is no longer acceptable. If a counterstatement leaves uncertainty about what is and is not in dispute, it is inadequate. Thus, the counterstatement must deal specifically with every allegation in the statement. (Indeed, any allegation not dealt with is generally deemed to be admitted by the defendant.) ...”

17. Where a defence does not address some of the allegations made by the applicant for invalidation, it is the usual practice of the Tribunal to inform the proprietor of that fact. On this occasion, this was not done.

18. It appears from the evidence filed by the proprietor that it is claiming that it made the contested design available prior to the date of the Amazon screenshot relied on by the applicant, but within the 12 month “grace period” allowed to the designer by section 1B(6) of the Act. In my view, this is a defence that should have been raised at the pleadings stage.

19. Rule 19(3) of the Registered Designs Rules 2006 gives the Registrar wide case management powers. These may include the seeking of clarifications from a party to proceedings and the amendment of any pleadings. A similar issue was considered in a trade mark case by Professor Phillip Johnson, sitting as the Appointed Person. In *SKYCLUB Trade Mark*, BL O/044/21, he held that the Hearing Officer had been wrong to proceed on the basis that various issues that had not been addressed in the defence were actually in dispute between the parties. He said:

“18. As the Court of Appeal made clear in *Magdeev v Tssvetkov* [2019] EWCA Civ 1802, [26 to 28] a court cannot proceed to consider something requiring an application without a formal application being made. Rule 62(1)(e) [of the Trade Marks Rules 2008] provides that the Hearing Officer may allow a statement of case to be amended, but such an amendment requires an application to be made first. While the Hearing Officer would have been perfectly entitled to invite a party to apply to amend its statement of case, it is not open to the Hearing Officer to amend it unilaterally.”

20. I see no reason why the same should not apply in registered designs cases. I did not consider that it was open to me to proceed on the basis set out in the proprietor’s evidence. The Tribunal therefore wrote to the proprietor on 27 August 2025 asking whether it wished to make an application to amend the pleadings. It was given a period of 14 days to respond and informed that if no response was received, the claim based on the second design relied on by the applicant (i.e. the one in the Amazon screenshot) would be deemed to be admitted. No response was received.

21. It is therefore deemed that the proprietor has admitted that the contested design is not new and does not have individual character when compared with the design disclosed in the Amazon screenshot reproduced in paragraph 7 above.

OUTCOME

22. Subject to a successful appeal, Registered Design No. 6240536 is declared invalid.

COSTS

23. The applicant has been successful and is entitled to a contribution towards its costs, in line with the scale set out in TPN No. 2/2016. I award the applicant the sum of £248 as a contribution towards the costs of the proceedings. The sum is calculated as follows:

£200 for preparing a statement and considering the other side’s statement;

£48 to cover the official fee for filing the application.

£248 in total

24. I order Shenzhen Qingxiyue Electronic Commerce Co., Ltd to pay Xiya Wang the sum of £248. 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 2nd day of October 2025

**Clare Boucher
For the Registrar,
The Comptroller-General**