

**O/0949/25**

**REGISTERED DESIGNS ACT 1949 (AS AMENDED)**

**IN THE MATTER OF**

**REGISTERED DESIGN NO. 90033027930001**

**IN THE NAME OF GRAVITY BRANDS LIMITED**

**AND**

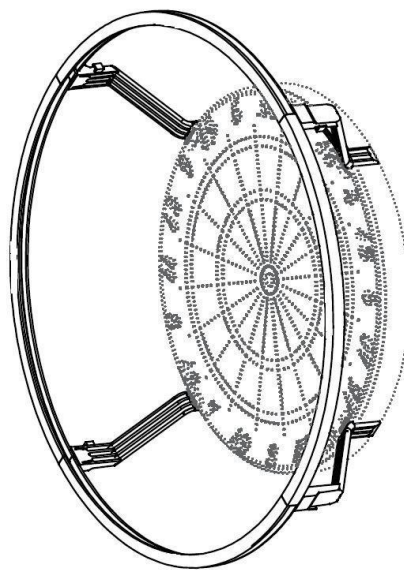
**AN APPLICATION FOR A DECLARATION OF INVALIDITY**

**UNDER NO. 165/23 BY CYEELIFE SPORTS CO., LTD**

## Background and pleadings

1. Registered design number 90033027930001 stands in the name of Gravity Brands Limited (“the proprietor”). The design is a re-registered design, created from an existing registered Community design pursuant to Schedule 1A, paragraph 1, of the Registered Designs Act 1949 (“the Act”). It therefore has the same application and registration dates as the original registered Community design, namely 12 July 2016 (“the relevant date”).

2. An illustration of the registered design is shown below:



3. The design registration has the product indication “dartboards (accessories for -), illumination devices” and is registered as lighting apparatus in class 26, sub-class 05 of the Locarno classification.

4. On 4 August 2023, Cyeelife Sports Co., Ltd (“the applicant”) applied for the registration of the design to be declared invalid under s. 1B and s. 11ZA(1)(b) of the Act. The applicant says that the contested design is not new, nor does it have individual character, compared to a design made available on [www.amazon.co.uk](http://www.amazon.co.uk) on 16 December 2015.

5. The proprietor filed a defence and counterstatement. The proprietor does not dispute that the product relied upon by the applicant is identical to the registered

design, or that it was disclosed as claimed. However, it says that the designer of the light is an individual named Garry Plummer who designed the product in the course of his employment for a company called Target Sports Ltd. The proprietor asserts that the disclosure was made by the designer or his successor in title and is an exempted disclosure under s. 1B(6)(c) of the Act.

6. Both parties filed evidence with their pleadings but not otherwise. A hearing was requested and held before me, by videoconference, on 11 September 2024. The proprietor was represented by Alex Beattie of Forresters IP LLP. The applicant chose not to attend the hearing, nor did it file written submissions in lieu. It has been represented throughout by Marcin Ociepka.

## **Evidence**

### Applicant's evidence

7. The applicant's statement of case, made under a statement of truth, is signed by Marcin Ociepka. Under rule 21 of the Registered Design Rules 2006, any evidence it contains is therefore Marcin Ociepka's evidence. The evidence shows a "Target Darts Corona Vision Dartboard Lighting System" for sale on amazon.co.uk. The "date first available" is given as 16 December 2015. The images on the website are too small to make out clearly but the statement of case includes enlarged images, which appear to correspond to the website print. One of these is shown below:



### Proprietor's evidence

8. There are three witnesses for the proprietor. Alex Beattie is the proprietor's representative and he signed the counterstatement. As the counterstatement is made under a statement of truth, its contents are Mr Beattie's evidence. Mr Beattie says that the proprietor, Gravity Brands Ltd, is owned and controlled by Elysian Holdings Ltd. Elysian Holdings Ltd also owns and controls a company called Target Sports Ltd. Mr Beattie says that Target Darts is a trading name of Target Sports Ltd and that the light shown in the Amazon print is offered for sale by this company. Mr Beattie further states that the light was designed by Garry Plummer in the course of his employment by Target Sports Ltd and that Mr Plummer was named as the designer in the original application for an EU design registration. He encloses a copy of the application form and its acknowledgement by the EUIPO which confirms this.

9. Mr Beattie further explains that the proprietor holds certain assets within the group of companies, including registered intellectual property rights. For this reason, the application for the contested design was filed in the proprietor's name.

10. There is also a witness statement from Chris Kearney, who has been the Commercial Director of Target Sports Ltd since 2012. Mr Kearney also gives evidence that Elysian Holdings Ltd owns and is the holding company for both Target Sports Ltd and the proprietor, and that the proprietor owns the registered intellectual property rights in the group. It is Mr Kearney's evidence that on 6 June 2016 he instructed Forresters to apply for the contested design in the name of the proprietor. He says that the design was created by Garry Plummer. Mr Kearney states that Target Darts is a trading name used by Target Sports Ltd. He confirms that the light ring shown on the Amazon print relied upon by the applicant was created and offered for sale by Target Sports Ltd and that the design was created by Garry Plummer.

11. The proprietor's third witness is Garry Plummer. Mr Plummer says that he joined Target Sports Ltd in 1985. In 1997 he became managing director and in January 2021 he became chairman, a position he continues to hold. He says that he has been involved in the design and development of many different products for Target Sports Ltd. Mr Plummer says that in 2015 he created a design for a light ring, to be fixed to a dartboard to illuminate the board during play. He says that he has seen a screenshot

of a light ring offered for sale on amazon.co.uk (which is exhibited and corresponds to the screenshot relied upon by the applicant) and he confirms that this is the light ring which he designed.

## **The law**

12. 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.”

13. Section 1B of the Act, so far as is relevant, reads 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.

(8) [...].”

14. 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. This is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

15. The proprietor admits that the product shown in the applicant's evidence is the same as the registered design. There is also no dispute that the product was first disclosed on 16 December 2015. However, the proprietor claims that the disclosure is exempt because it was made by the designer or his successor in title within the twelve months before the date on which the application for the contested design was made. Accordingly, it says that the disclosure falls within s. 1B(6)(c) and does not destroy the novelty or individual character of the contested design.

16. The applicant relies on a single disclosure. It has not challenged any of the proprietor's evidence. The proprietor's evidence is that the light ring in question was designed by Garry Plummer in the course of his employment for Target Sports Ltd. The proprietor relies on the provisions of s. 2 of the Act, which read:

“2—(1) The author of a design shall be treated for the purposes of this Act as the original proprietor of the design, subject to the following provisions.

[...]

(1B) Where a design is created by an employee in the course of his employment, his employer shall be treated as the original proprietor of the design.

[...]

(3) In this Act the “author” of a design means the person who creates it.”

17. Accordingly, Target Sports Ltd is the original proprietor of the design under s. 2.

18. There is, however, a difference in the language used in s. 2 on the one hand, which refers to the “author of a design” and the “original proprietor”, and s. 1B(6)(c) on the other, which refers to “the designer, or any successor in title of his”. Target Sports Ltd is not the “author” of the design, nor does s. 2(1B) expressly state that the employer is deemed to be the “designer” where the design is created by an employee in the course of their employment; rather they are the “original proprietor”. If the “designer”

and the “original proprietor” are not by virtue of s. 2(1B) taken to be one and the same, this creates a difficulty with s. 1B(6)(c), because the latter does not expressly provide for use during the grace period by the “original proprietor”; nor do any of the other subsections.

19. The EU Regulation 6/2002 under which the contested design was originally registered in the EU and which had direct effect in the UK, sets out the exempted disclosures at Article 7(2) in essentially the same terms as the Act:<sup>1</sup>

“2. A disclosure shall not be taken into consideration for the purpose of applying Articles 5 and 6 and if a design for which protection is claimed under a registered Community design has been made available to the public:

(a) by the designer, his successor in title, or a third person as a result of information provided or action taken by the designer or his successor in title; and

(b) during the 12-month period preceding the date of filing of the application or, if a priority is claimed, the date of priority.”

20. The Regulation also provides at Article 14 that the right to a Community design shall vest in an employer if the design was created by an employee in the execution of his duties or on instructions from his employer, unless it is otherwise agreed or specified under national law.

21. In *Sphere Time v OHIM*, T-68/10, ECLI:EU:T:2011:269, the General Court held that the objective of Article 7(2) “is to offer a creator or his successor in title the opportunity to market a design, for a period of 12 months, before having to proceed with the formalities of filing”.

22. The provisions at s. 1B(6) of the Act were introduced to implement Directive 98/71/EC, which includes, at Article 6(2), the same exemptions to disclosure in terms which are substantially identical to Article 7(2) of the Regulation. Given the identity of language, it appears to me that the intention underlying the Regulation, the Directive

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<sup>1</sup> Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs.

and the Act can be taken to be the same in all three pieces of legislation and that the intention is that spelled out by the General Court in *Sphere Time*.

23. As a matter of principle, there is no obvious reason why it would be desirable to allow a designer or their successor in title to market a design without incurring the costs of registration and to benefit from the grace period but restrict the ability of an “original proprietor” to do the same. In fact, preventing the “original proprietor” from relying on the exemptions in the grace period would have a widespread detrimental effect, affecting any business on whose behalf its employees create designs. It seems improbable that this was the intention of the legislature. The Act is clear that the employer is “the original proprietor”, thus being the entity in which the rights in the design vest and which has the benefit of being able to use and enforce the design against third parties. I note that, although the Regulation allows for exceptions, the *prima facie* position under Article 14 is also that the rights in the design vest in the employer. It would be a nonsense if the “original proprietor” could not avail itself of the defences available. It therefore appears to me that the “original proprietor” should also be taken to be the “designer”, at least so far as the exemptions at s. 1B(6) are concerned. If that is wrong, the “original proprietor” is at least a successor in title of the designer by virtue of the operation of s. 2(1B).

24. Consequently, I find that the Target Sports Ltd is the original proprietor of the design. The disclosure was made by Target Sports Ltd, under its trading name of Target Darts. It was therefore a disclosure under s. 1B(6)(c) by the designer, or at the very least by the designer’s successor in title. The disclosure was made on 16 December 2015. That is less than twelve months before the application date of 12 July 2016 and falls within the grace period permitted. The disclosure is an exempted disclosure under s. 1B(6)(c) and does not destroy the novelty of the contested design.

25. The proprietor floated a defence based on s. 1B(6)(d) in its skeleton argument. This was not pleaded and there was no application to amend the pleadings, so I do not need to consider it.

## **Conclusion**

26. The application for a declaration of invalidity is rejected. Subject to appeal, the design will remain registered.

## **Costs**

27. The proprietor has been successful and is entitled to an award of costs. Although the proprietor's evidence was filed with its counterstatement, I will make a separate award for filing evidence, though below the scale since it was very light and the applicant filed no evidence other than the limited evidence with its statement of case. I award costs to the proprietor, calculated as follows:

|                                                            |        |
|------------------------------------------------------------|--------|
| Considering the application and filing a counterstatement: | £400   |
| Filing evidence:                                           | £400   |
| Preparing for and attending a hearing:                     | £800   |
| Total:                                                     | £1,600 |

28. I order Cyeelife Sports Co., Ltd to pay Gravity Brands Ltd the sum of £1,600. This sum should 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.

**Dated this 9<sup>th</sup> day of October 2025**

**Heather Harrison**

**For the Registrar**