

BL O/1003/25

REGISTERED DESIGNS ACT 1949 (AS AMENDED)

**IN THE MATTER OF REGISTERED DESIGN No. 6274888 IN THE NAME OF
FURNEO LIMITED**



AND

**THE APPLICATION FOR INVALIDATION THERETO (No. 0291/24)
BY PROSPERO MEUBLE SP. Z O.O.**

Background and pleadings

1. Furneo Limited (“the proprietor”) filed application no. 6274888 for a registered design (“the contested design”) for “extending dining table” in Class 06, Sub class 03 of the Locarno Classification (tables and similar furniture) on 11 April 2023 (“the relevant date”). The design was registered with effect from that date and is depicted in the four representations shown below.



2. The registration specifies the following disclaimer:

“no claim is made for the colour shown, no claim is made for the material shown.”

3. On 22 November 2024, Prospero Meble SP. Z O.O. (“the applicant”) requested that the registered design be declared invalid under Section 1B/11ZA(1)(b) of the Registered Designs Act 1949 (as amended) (“the Act”), which requires that a

registered design be new and have individual character. The claim is as follows (verbatim):

“Design No. 6274888 is class 06-FURNISHING, however, it does not meet the conditions necessary for registration. In order to obtain design protection, Furheo Limited has not search the EUIPO database, where this design was previously registered. The condition of new models and individual character is also not met. The number of the design registered in 2018 is 005866233 – 0001 (euipo), the creator and owner is PROSPEPO MEDEL SP. Z O.O., CEO-Klandia Rabieja , This is a violation of my property rights.”

4. The English language version of the Registered Community Design (“RCD”) certificate was attached to the application for invalidation, to which I will refer later in this decision.¹ This design is also registered for a table. It was the only evidence filed by the applicant.

5. A notice of defence and counterstatement was filed by the proprietor on 8 January 2025, denying the ground.² The counterstatement lists the alleged differences between the claimed prior art and the contested design, to which I will refer later in this decision.

6. Both parties filed written submissions, rather than evidence during the evidence rounds. The applicant is represented by its CEO, Klaudia Rabiega. The proprietor is represented by Albright IP Limited. Neither party opted to be heard and neither filed written submissions in lieu of a hearing. I make this decision after careful consideration of all the papers filed.

¹ The document filed with the applicant’s statement of case constitutes evidence in accordance with rule 21(1)(a) of the Registered Designs Rules 2006 (as amended).

² Form DF19B and counterstatement.

Decision

7. Section 11ZA of the Act provides the capacity for a registered design to be invalidated on the ground that it was not new or that it did not have individual character on the date on which it was filed (section 1B). Section 11ZA(1)(b) reads:

“(1) The registration of a design may be declared invalid

(a)...

(b) on the ground that it does not fulfil the requirements of sections 1B to 1D of this Act...”

8. Section 1B reads:

- “(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 condition 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 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)

(9)”.

9. The RCD was filed on 10 December 2018 and published on 21 December 2018, before the filing date of the contested design. Registering a community design at the European Union Intellectual Property Office clearly constitutes a disclosure that could reasonably have become known to persons carrying on business in the UK and the European Economic Area and specialising in the sector concerned. The proprietor has not claimed that any of the exceptions in section 1B(6) apply. The RCD is prior art upon which the applicant may rely. The RCD shows a single image:



10. For reasons which will become clear, I will concentrate on whether the contested design had individual character at the relevant date. 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 contested design.

11. 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.

12. In *Safestand Ltd v Weston Homes PLC & Ors* HHJ Hacon, sitting as a judge of the High Court, set out at [237] the approach to the assessment of whether a design has individual character:³

“(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,

³ [2023] EWHC 3250 (Pat)

(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 designs 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.”

13. The sector is the market for tables, especially dining tables.

14. The next consideration is the informed user. HHJ Birss QC (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) observed that:⁴

“ ... 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.”

15. HHJ Birss QC also gave the following detailed summary of the characteristics of the informed user:

“33. The designs are assessed from the perspective of the informed user. The identity and attributes of the informed user have been discussed by the Court of Justice of the European Union in *PepsiCo Inc v Grupo Promer Mon Graphic SA* (C-281/10 P) [2012] FSR 5 at [53]-[59] and also in *Grupo Promer*

⁴ [2012] EWHC 1882 (Pat)

Mon Graphic SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (T-9/07) [2010] ECR II-981; [2010] ECDR 7, (in the General Court from which PepsiCo [2012] FSR 5 was an appeal) and in Shenzhen Taiden Industrial Co Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (t-153/08), judgment of June 22, 2010, not yet reported.

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* [2012] FSR 5 at [54] referring to *Grupo Promer* [2010] ECDR 7 at [62]; *Shenzhen* (T-153/08) at [46]);

ii) However, unlike the average consumer of trade mark law, he is particularly observant (*PepsiCo* at [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* at [59] and also [54] referring to *Grupo Promer* [2010] ECDR 7 at [62]);

iv) He is interested in the products concerned and shows a relatively high degree of attention when he uses them (*PepsiCo* at [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* at [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* [2012] FSR 5 at [59]).”

16. The informed user in the present proceedings is a member of the public with an interest in tables, especially dining tables. The informed user will be reasonably attentive to dimensional, construction and aesthetic requirements. There do not appear to be any special circumstances which would mean that the informed user does not conduct a direct comparison of the designs.

17. As the case law states, the informed user will have knowledge of the design corpus. This means that they will be aware of current trends in the design of tables. This factor can be significant if a contested design were markedly different from what has gone before and so is likely to have a greater visual impact: see *The Procter & Gamble Company v Reckitt Benckiser (UK) Limited*.⁵ Beyond the two parties' designs, there is no evidence to tell me what the design corpus looked like at the relevant date, but I bear in mind my own general knowledge of the appearance of tables.

18. The point of a table, especially a dining table, is that people can sit at it and eat and drink from plates, bowls and glasses etc which are placed upon the table. The top of the table must therefore reach a height to allow this to be done comfortably. There must be room underneath for a chair, wheelchair or bench seat to be pulled in and room for people's legs or wheelchairs to fit. The table-top must be supported in some way, such as by legs or a central column. The table-top must be flat to prevent what is placed upon it from sliding off. Beyond these constraints, there is a large degree of design freedom. Table-tops may be round, oval, rectangular, square, hexagonal or have a wavy outline, and so on. The legs may be angular to the top, at 90 degrees, have corners or be rounded and may vary in number, with plain or decorative feet. Tables can vary considerably in size, may extend or be of the gate-leg variety with drop-leaf ends, and may be made of a variety of materials. The tops and the legs may be carved, inlaid, plain or patterned.

⁵ [2008] FSR 8 Paragraph 35(ii).

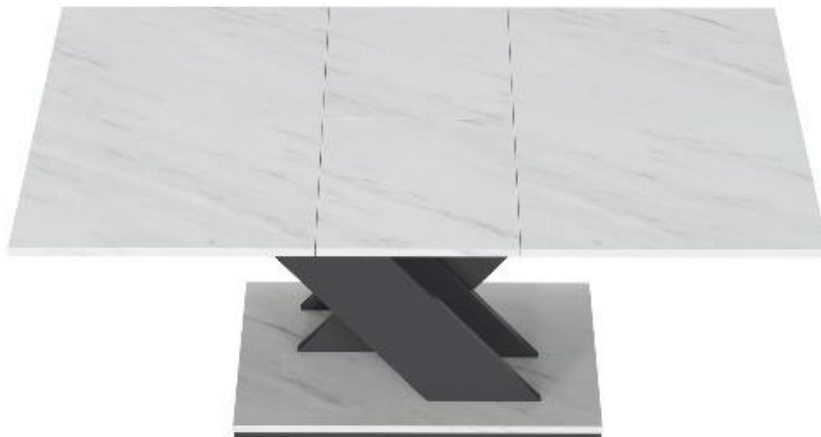
Comparison of the prior art and the contested design

19. Although the proprietor submits that colour and material are points of difference, as colour and material in the contested design have been disclaimed, these form no part of the comparison. I have focused on the following two images of the contested design which give the clearest representation of its key features. Both parties' designs appear to consist of computer-generated images. I understand the dotted lines in the contested design to indicate that the table-top consists of three pieces, a conclusion supported by the description of the design as an extending dining table.

Prior art



Contested design



20. The similarities between the parties' designs are:

- both are tables with rectangular tops, in three sections, which appear to extend in roughly equal proportions to either side of the leg structure;
- the middle section of the table-top is narrower than the sections either side. The proportions of the sections in each design appear very similar;
- both have a smaller rectangular flat piece between the top and the start of the legs which appears to be of a very similar depth;

- the legs in both designs are angled from one end of the table top towards the other end of the table, crossing in their middle and they end at a rectangular plinth which has a double skin;
- the leg angles appear the same or very similar;
- looking at the first contested design image, one leg in each design consists of a single-planked leg and the other of a double-planked leg; although looking at the representation of the contested design in the round, because of the second image, there are clearly two double-planked legs. I say more below about this, particularly in relation to whether there are two double-planked legs in the prior art.

21. The differences are:

- the legs in the first image of the contested design comprise one with two planks with a space between them going from top-right to bottom-left behind the other leg which appears as a single plank going from top-left to bottom-right. In the prior art, the double-planked leg goes from top-right to bottom-left, but in front of the single-planked leg which goes from top-left to bottom-right;
- the triangular gap at the top of the legs where they meet the underside of the table-top is smaller in the contested design;
- the width of the flat side of the leg planks appears to be greater in the contested design;
- the pointed ends of the double-planked legs are parallel in the contested design but are slightly offset in the prior art;

22. As set out earlier in this decision, the only evidence filed by the applicant was the English-language version of the RCD with the application for invalidation (Form DF19A). I have also reproduced the entirety of the applicant's pleadings at the beginning of this decision. The proprietor's counterstatement set out where it considered the differences to lie between the two parties' designs. The first point made by the proprietor in its counterstatement was this:

“Firstly, the registration has four legs in the form of two sets of two legs, with the legs in each set being aligned with one another and at a contrasting angle to the other set. This is distinct to the prior art which only has three legs, with one set of two aligned legs and a third singular leg at a contrasting angle to this set. This is clearly indicated in the images shown below.”

23. The defence and counterstatement was served on the applicant on 13 January 2025. In its covering letter, the Tribunal invited the applicant to file evidence or submissions within six weeks, giving some general guidance as to how to file evidence; in particular:

“If evidence is filed it must be in the form of either a Witness Statement, Statutory Declaration, Affidavit or Statement of Case. This is in accordance with Rule 21(1)(a). Submissions are written arguments by a party to support its case or comment on the other side’s evidence. Submissions are not facts and if a party wishes to rely on facts they must be presented as evidence.

[...]

...any evidential material that you wish to be considered by the Hearing Officer must be clearly set out and presented in, or as, an exhibit to a witness statement, statutory declaration or affidavit.”

24. On 15 January 2025, the applicant filed documentation which comprised a letter from Ms Rabiega, dated 14 January 2025, and copies of notices of listing removals from Amazon and ebay. These were not in evidential form. The Tribunal wrote to the applicant on 21 January 2025 pointing out that the documentation must be filed either as a witness statement, statutory declaration, affidavit or statement of case. The letter pointed out that what had been supplied comprised written submissions and that the attachments were evidence and must be filed in the correct format. The letter again informed the applicant that “submissions are not facts and if a party wishes to rely on facts they must be presented as evidence.” A link to the evidence guidance part of the website of the Intellectual Property Office was given in the letter.

25. On 24 January 2025, Ms Rabiega sent an email to the Tribunal which said:

“I have sent information that is a counterargument to the explanations given by Furneo Limited.

Please assess the situation based on the arguments I am talking about in the letter sent.”

26. Attached was a further copy of Ms Rabiega’s letter dated 14 January 2025, in which she begins that she is writing in response to a letter dated 8 January 2025 from the proprietor. The Amazon and ebay documents were not attached to this version of the letter. 8 January 2025 was the date on which the proprietor filed its defence and counterstatement which means that the letter filed by the applicant responded to the counterstatement. On 30 January 2025, the Tribunal acknowledged the receipt of the written submissions received on 24 January 2025. After some to-ing and fro-ing regarding copying of this correspondence to the proprietor, which it is unnecessary to detail here, the Tribunal again confirmed receipt of written submissions on 14 February 2025.

27. In the applicant’s written submissions filed on 24 January 2025 (and dated 14 January 2025), the applicant makes the following points, with my emphasis:

“The alignment of the leg indicated by Furneo Limited does not create an individual character, but is a counterfeit of our design after a small modification.

The photo of the design submitted by us is at an angle and the legs in it are symmetrical, also 4. Someone who assessed it knows our design and knows exactly what it looks like. There is no possibility of reserving a colour scheme in both registers because it is about reserving a design. It does not matter whether ours is single color or has more than one colour, it is the outline of the design, graphic representation.

There is no significant difference in the fact that the designs have different scaling and angles. Additionally, Furneo Limited blocked the sale of my

products marked with the design: euipo no 005866233-0001 to my recipient from the UK market on Amazon.co.uk and ebay.com.

The logical error made by Furneo Limited is that once they claim that our design threatens them and block the sale of our client. Claiming that it is identical and infringes their property rights (which is not true, because we have a design registration from 2018 and we should have the right to sell our products on the UK market). In the second case, when we have evidence that our design was first to be introduced to the market and reserved, they defend themselves by talking about the differences in both designs.”

28. In these submissions, the applicant claims that the legs in the prior art also have two planks (making four legs in two sets of two). This submission contains facts (the number of legs) but has not been filed as evidence, despite the warnings given by the Tribunal in its letters of 13 January 2025 and 21 January 2025. The only evidence which the applicant has filed is the single representation of the table in the RCD.

29. In *Framery Oy v European Union Intellectual Property Office (EUIPO)*, T-373/20, the General Court of the European Union said (my emphasis):

“23. It should be noted that, as regards the assessment of disclosure for the purposes of Article 7 of Regulation No 6/2002, it is not apparent from that regulation that the representation of the earlier design at issue must include views reproducing it from all possible angles, so long as that representation allows the shape and the features of the design to be identified (see, to that effect, judgment of 29 April 2020, *Bergslagernas Järnvaru v EUIPO – Scheppach Fabrikation von Holzbearbeitungsmaschinen (Wood-splitting tool)*, T-73/19, not published, EU:T:2020:157, paragraph 42 and the caselaw cited).”

30. Although this judgment was given on 30 June 2021, after the departure of the UK from the EU, I find it of persuasive value.

31. I show below an enlarged version of the prior art:



32. I have pointed two arrows at two reflections. The reflection to the right is clearly the reflection of the rear plank. But there is another reflection to the left of that. It cannot be a reflection from the double-planked leg because it is in the wrong place. It must be a reflection from another plank in the rear leg; i.e. the rear leg is also a double-planked leg (as set out by Ms Rabiega). The angle of the computer-aided design image has simply obscured the other plank; just as has happened in the first image of the contested design. The angle of that image only shows a single plank, whereas the second image of the contested design shows two double-planked legs: obviously, in the same design. In my view, the double reflection/shadowing in the prior art allows the shape and the features of the design to be identified; i.e. the formation of the rear leg. Interpretation of this representation, which is not the type of design in which informed users are likely to have specialised knowledge and are better able to interpret the representation than the court, is a matter for me, not for the informed user: see *Sealed Air Limited v Sharp Interpack Limited & Anor*, [2013] EWPCC 23, at paragraph 20 and *Safestand Ltd v Weston Homes PLC & Ors*, at paragraph 187.

33. The appearance of table legs is an important aesthetic choice and the designs both share two angled, parallel, double-planked legs. I acknowledge that there are some differences; i.e. the triangular gap at the top of the legs where they meet the underside of the table-top, the width of the flat side of the leg planks appears to be

greater in the contested design, and the slightly offset ends to the legs where they meet the base plinth. However, these differences are small enough to be considered minimal. I bear in mind the weight and the high degree of similarity of components of the respective designs; i.e. the table top, the formation of the legs, the proportions of the tops and the base plinth. Balancing those features with the large degree of design freedom which the proprietor had at the relevant date leads me to conclude that the contested design does not produce a different overall impression on the informed user compared to the prior art. I find that the proprietor's design did not have individual character at the relevant date and is invalid.

34. Outcome: the application for invalidation is successful. Design No. 6274888 is invalid.

Costs

35. The applicant has been successful and is entitled to a contribution towards its costs based upon Tribunal Practice Notice 1/2023. As the applicant is unrepresented, at the conclusion of the evidence rounds the tribunal invited it to indicate whether it intended to make a request for an award of costs and, if so, to complete a pro-forma indicating a breakdown of its actual costs, including providing accurate estimates of the number of hours spent on a range of given activities relating to the prosecution of the invalidation; it was made clear to the applicant that if the pro-forma was not completed "costs, other than official fees arising from the action (excluding extensions of time), may not be awarded". Since the applicant did not respond to that invitation within the timescale allowed (nor has any response been received from the applicant prior to the date of the issuing of this decision), the only cost award it is entitled to is the statutory fee for filing the application for invalidation: £48.

36. I order Furneo Limited to pay to Prospero Meble SP. Z O.O. the sum of £48. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 29th day of October 2025

Judi Pike

For the Registrar,

The Comptroller-General