

O/1139/25

REGISTERED DESIGNS ACT 1949

IN THE MATTER OF:

REGISTERED DESIGN NO. 90026398150001

**IN THE NAME OF SJÖSTRAND TRADING AB IN RESPECT OF THE
FOLLOWING DESIGN**



**AND AN APPLICATION FOR INVALIDATION THEREOF UNDER NO. 0316/24
BY GRIND & CO LTD**

Background

1. UK Registered design no. 90026398150001 stands in the name of Sjöstrand Trading AB (“the registered proprietor”). This is a reregistered design, created pursuant to Article 54 of the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community. It has been granted with effect from the application date of 24 February 2015 (“the relevant date”) and was published on 1 April 2015.
2. The design is registered as applying to Coffee makers, Holders of capsules for coffee machines, Espresso coffee machines. The design is depicted in the following representations:



3. The registered proprietor has not added any disclaimers to the registered design.
4. On 2 December 2024, Grind & Co Ltd (“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 fails to fulfil the requirements set forth in section 1B of the Act. The applicant claims the design was not novel and did not hold individual character when compared to a prior design that had been made available to the public by the registered proprietor at the relevant date. This is set out later in this decision.
5. The registered proprietor filed a counterstatement defending its registration. The defence filed relies solely on the exception for disclosures set out under section 1B(6)(a) of the Act, that being that the disclosure relied upon 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. It is submitted that the product itself had not yet been officially launched at the time of the disclosure.
6. Both parties filed evidence in these proceedings.
7. A hearing took place before me on 13 November 2025. The applicant was represented in these proceedings by Mishcon de Reya LLP, and was represented at the hearing by Mr Ed Cronan of 11 South Square. The registered proprietor was represented throughout the proceedings by Barker Brettell LLP, and was represented at the hearing by Mr Philip Colbran of the same.

RELEVANCE OF EU LAW

8. 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

9. The opponent filed its evidence in chief alongside its DF19A. This comprises a witness statement in the name of Georgina Anna Maria Doukanaris, an associate at the applicant's representative firm. The statement is dated 26 March 2025, and introduces a single exhibit, that being Exhibit GAMD1, which shows a webpage capture from www.sjostrandcoffee.se/ dated by the internet archiving site the Wayback Machine as being from 14 September 2013. This provides images claimed to be a disclosure of the registered design.
10. The registered proprietor filed its evidence in the form of three witness statements. The first is from Niklas Gustafsson, the founder of the registered proprietor. The statement is dated 3 June 2025 and goes to the pre and post launch activities of the registered proprietor.
11. The second witness statement is in the name of Philip Colbran, Senior associate at the registered proprietor's representative and its representative at the hearing. The statement is dated 27 May 2025. This introduces four exhibits, namely Exhibit P1, Exhibit P1a, Exhibit P2 and Exhibit P2a. These provide two press releases and their English translations, which also supply information relating to the launch of the coffee machine that is the subject of the registered design. This witness statement also introduces the third witness statement, which is in the name of Cecelia Forslund, also of the registered proprietor's representative. Ms Forslund explains she is fluent in Swedish and English, and she has translated the documents provided at Exhibit P1 and Exhibit P2 from Swedish into English.
12. The applicant filed further evidence in reply to the opponent's evidence by way of two further witness statements. The first is a second statement from Ms Doukanaris dated 1 August 2025. This introduces a single exhibit, that being

Exhibit GAMD2, which provides a number of documents. These include further captures from the same website provided at Exhibit GAMD1, (although I note no images are shown on this page), dating from 31 March 2013. Also included are results from dated Google searches for the website upon which the same website.

13. The second statement provided in the applicant's reply evidence is from Robert Myatt, a professional translator at Global Lingo. This provides a certified translation of Exhibit GAMD1 and GAMD2 at Exhibit RM1. The statement is dated 1 August 2025.

Late evidence

14. The day before the hearing took place, the registered proprietor filed additional evidence, along with a request for this to be admitted into the proceedings. The evidence was said to be in response to the skeleton arguments received on behalf of the applicant. The evidence comprises a further witness statement from Mr Colbran, dated 12 November 2025, and two further exhibits, those being Exhibit P3 and Exhibit P4. These provide "Shopify" as well as "Google Trends" data relating to visits to the website www.sjostrandcoffee.com¹ from 2022, as well as data relating to numbers of searches for the registered proprietor on Google since the beginning of 2013. The statement is dated 12 November 2025.
15. The morning of the hearing, the cancellation applicant filed further evidence in reply to the additional evidence received. This comprised a third witness statement from Ms Doukanaris dated 13 November 2025. The statement introduces Exhibit GAMD3, which contains several documents. These include Google Trends results for search terms "The Registered Designs Act 1949" and "Iain Purvis", as well as for "sjostrand coffee/sjöstrand Coffee". It also includes an article entitled "Google Trends: Understanding the data".

¹ This is different to the website www.sjostrandcoffee.se/ provided in the applicant's evidence.

16. With its evidence in reply to the late evidence, the applicant stated it will not take any objection to the admission of the registered proprietor's late evidence, so long as its own evidence in reply to this is also admitted into the proceedings. With consideration to the lack of prejudice caused to the cancellation applicant by admitting the evidence, on the basis that they take no objection and have already prepared and filed evidence in reply, I explained to the parties at the hearing that I would allow all of the late evidence into the proceedings. The parties made their submissions on that basis.

DECISION

17. Section 11ZA(1)(b) of the Act states that:

“The registration of a design may be declared invalid—

(1) [...]

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

18. 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. ...”

The issues

19. According to section 1B(2) (3) and (7) of the Act, prior art can be relied upon to invalidate a registered design if it had been disclosed to the public prior to the application date of the registered design, unless the exceptions in subsection (6) apply. Subsection (6) provides several exceptions, with 6(a) stating that if the prior art could not reasonably have become known before the relevant date in the normal course of business to persons specialising in the sector concerned and carrying on business in the UK or EEA, this will constitute one of those exceptions.

20. The issues I have to decide in this instance are relatively narrow. It is, in my view, helpful to begin by setting out those issues which have either been agreed or which are undisputed by the parties, those being:

- Images of a product that is either identical to or differs only in immaterial details to registered design no. 90026398150001 were disclosed on the website www.sjostrandcoffee.se/ prior to the relevant date in these proceedings;
- The website referenced above was available to the public on 14 September 2013 and featured the images of the registered design at that date;
- The existence of these images on the publicly available website falls prior to the 12 month grace period identified at section 1B(6)(c) of the Act.

21. The issue therefore left for me to decide in this case is as follows:

- Whether the disclosure of the design on website www.sjostrandcoffee.se/ on 14 September 2013 constitutes a disclosure that falls within the exception of section 1B(6)(a) of the Act, in that it is one that could not

reasonably have become known 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.

Relevant case law/additional legislation

22. In their skeleton arguments and at the hearing, the parties referred me to various pieces of case law relating to the outstanding issue, in addition to various parts of the EU IPO Design Guidelines and the Council Regulation 6/2002/EC of 12 December 2001 on Community designs ("the Council Regulation"). I will outline these briefly below.

23. Mr Cronan for the applicant firstly referred to *Green Lane Products Ltd v PMS International Group Plc* [2008] EWCA Civ 358, stating this sets out the origin of the exception for obscure disclosures under the equivalent provision to 1B(6)(a) in the Council Regulation. Mr Cronan highlighted paragraphs 66-70 in particular. These paragraphs set out that the exception for obscure disclosures came about following lobbying from the textile industry, and it was created to help stem the number of counterfeit products obtaining false certification by stating that the disputed design had already been created in another country. The case explains this was the forerunner for the exception under Article 7, and provides the Commission's explanation for the proposed exception in its 1966 Amended Proposal as follows:

"The Article [6] has furthermore been amended in accordance with the wishes of the European Parliament and the Economic and Social Committee through the introduction of what is commonly known as the "safeguard clause". Its aim is to protect the design industry from claims that a design right is not valid because there was an earlier design in use somewhere in the world where the European industry could not possibly have been aware of it. The intention of this provision is to avoid the situation where design rights can be invalidated by infringers claiming that antecedents can be found in remote places or museums."

24. The case of *Green Lane Products* goes on to explain:

“70. Moreover the exception was clearly conceived as narrow – it was aimed at obscure prior art only: it meant that forging this would not help an infringer.”

25. Mr Cronan also referred me to *Magmatic v PMS* [2013] EWHC 1925 (Pat) (baili), and I note in particular, the following reference made at paragraph 18 of Mr Cronan’s skeleton arguments as below:

“Arnold J further explains at [39] of *Magmatic* that the relevant test is an objective one and at [41] that the “the burden of proving that the exception applies rests on the party relying on the exception”.

26. Going to the issues surrounding the publication of designs on websites, Mr Cronan provided the General Court case of *Crocs, Inc. v European Union Intellectual Property Office (EUIPO)*, Case T-651/16. Both Mr Cronan, and Mr Colbran for the registered proprietor made reference to this case at the hearing, with a view to supporting their own party’s position. Mr Cronan set out the following paragraphs of this case in his skeleton arguments in particular:

“38 In support of the second plea, the applicant claims that the website disclosures of the contested design concerned events which could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the European Union, within the meaning of Article 7(1) of Regulation No 6/2002.

In that regard, the applicant refers to specific parts of the observations that it filed during the proceedings before EUIPO. It recalls, in addition, that it had just been created in 2002, that, at the time, its website was searched only by customers from Florida and Colorado (United States) and that, therefore, it could not reasonably have become known to

circles specialised in the sector concerned, operating within the European Union, given that, first of all, neither the applicant nor the address nor even the existence of its website was known to those circles; secondly, it had not been demonstrated that there were any links to the applicant's website on other websites at the time; and, thirdly, the applicant's website could not be found using search engines either.

...

49 The Board of Appeal took the view, in paragraphs 54 to 58 of the contested decision, that, taken as a whole, Exhibits 10, 16, 17 and 19 to 21 proved that the contested design had been exhibited and used in trade before the relevant period started. First, Exhibits 10, 16 and 17 proved that clogs to which the contested design had been applied had been displayed on the applicant's website at least on 25 November and 13 December 2002.

58 In the first place, it is appropriate to note that, in the application, the applicant focuses on a single one of the three disclosure events found by the Board of Appeal, namely the display on its website of the clogs to which the contested design had been applied, by claiming that its website was not accessible in the normal course of business to the circles specialised in the sector concerned, operating within the European Union.

...

60 It follows that the Court must examine whether, on the basis of facts which must be adduced by the party challenging the disclosure, it was appropriate to consider that it was not actually possible for those circles to be aware of the events constituting disclosure, whilst bearing in mind what can reasonably be required of those circles in terms of being aware of prior art.

61 In that respect, with regard to the applicant's assertion that the only internet users that were likely to find its website were those residing in Florida and Colorado and not shoe manufacturers operating on another continent, suffice it to state that the applicant does not dispute that its website was technically accessible worldwide (see also paragraph 72 of the contested decision).

62 Next, as regards the applicant's assertion, supported by two expert reports, that its website could not be found using search engines by searching the words 'shoe', 'clog' or 'footwear', that assertion does not establish to the requisite legal standard that the applicant's website could not reasonably have become known to the circles specialised in the sector concerned, operating within the European Union. First, it is not apparent from the expert reports that the applicant's website was not included in the results of a search using the applicant's name 'cros'. Secondly, as rightly pointed out by EUIPO, the applicant's website could have become known to the circles specialised in the sector concerned, operating within the European Union, by other means than through a search engine, such as, inter alia, the exhibition at the Fort Lauderdale Boat Show of the clogs to which the contested design had been applied — which, in the applicant's own words on its website, had been a 'smashing success' (paragraph 78 of the contested decision) — or through the clogs' distribution and retail network.

63 Consequently, the arguments put forward by the applicant are not such as to invalidate the Board of Appeal's finding that the applicant failed to show that the display on its website of the clogs to which the contested design had been applied could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the European Union.

...

71 Admittedly, the applicant is right in arguing that it cannot be expected to prove a negative fact. However, far from being required to prove negative facts, the applicant could have adduced positive proof relating, in the present case, for instance, to data showing that, notwithstanding the fact that its website was accessible worldwide, there was no, or very little, actual traffic from users originating in the European Union, or that the Fort Lauderdale Boat Show had not been attended by exhibitors or participants from the European Union , or also that the distribution and retail network for the clogs to which the contested design had been applied was not actually operational and that no order had been placed using that network.”

27. At the hearing, Mr Colbran drew my attention to paragraph 55 of the case above, which reads:

“55 The case-law shows that the question whether events taking place outside the European Union could reasonably have become known to the persons forming part of the circles specialised in the sector concerned is a question of fact; the answer to that question is dependent on the assessment of the particular circumstances of each individual case (judgments of 13 February 2014, *H. Gautzsch Großhandel*, C-479/12, EU:C:2014:75, paragraph 34, and of 21 May 2015, *Umbrellas*, T-22/13 et T-23/13, EU:T:2015:310, paragraph 28).”

28. Within his skeleton arguments, Mr Colbran also directed me to *H Gautzsch Grosshandel GmbH & Co KG v Münchener Boulevard Möbel Joseph Duna GmbH*, C-479/12. He argued that although this is concerned with unregistered Community designs, the opinion of the Advocate General can still be instructive in this matter, and highlighted that in this case the Advocate General indicates that to assess whether a disclosure could reasonably have become known before the relevant date in the normal course of business, one should put oneself in the place of the professionals in question. I also note however, Mr Cronan provided the CJEU’s decision on this case, and submitted that I should treat the Advocate General’s opinion with some care as the CJEU does not

directly follow this, and the CJEU is the binding authority. Mr Colbran did not make much of this case at the hearing.

29. The parties also both referenced various parts of the EU IPO Design guidelines in their submissions at the hearing, sections of which were provided with the applicant's authorities. Whilst these guidelines are not binding on the UK, it was argued by Mr Cronan that these are nonetheless a potentially helpful guide, and Mr Colbran did not appear to disagree with this, rather he referred me himself to other parts of the guidelines provided. In particular, I note the following sections of those guidelines provided:

“5.7.1.3 Exceptions to disclosure

If the event of disclosure is duly established, there is a presumption that the earlier design has been disclosed within the meaning of Article 7(1) EUDR

(14/03/2018, T-651/16 (https://euipo.europa.eu/eSearchCLW/#basic/*/number/651%2F16), Footwear, EU:T:2018:137, § 47; 13/06/2019, T-74/18

(https://euipo.europa.eu/eSearchCLW/#basic/*/13%2F06%2F2019/13%2F06%2F2019/number/74%2F18), Informationstafeln für Fahrzeuge, EU:T:2019:417, § 23; 27/02/2020, T-159/19 (https://euipo.europa.eu/eSearchCLW/#basic/*/number/159%2F19), Furniture, EU:T:2020:77, § 41).

Nevertheless, the holder of the contested European Union design can refute this presumption by proving that any of the exceptions to disclosure provided in Article 7(1) EUDR apply in respect of the event of disclosure.

[...]

Designs deemed not to have been made available to the public

In the context of Article 7(1) EUDR, what matters is whether the ‘circles specialised in the sector concerned’ have had an opportunity to access the design irrespective of the number that actually seized this opportunity and might have encountered the disclosed design. Therefore, there is no quantitative threshold regarding actual knowledge of the disclosure events (14/03/2018, T-651/16 (https://euipo.europa.eu/eSearchCLW/#basic/*/number/651%2F16), Footwear, EU:T:2018:137, § 73).

It must be examined, on the basis of the facts to be adduced by the party challenging the disclosure, whether it is appropriate to consider that it was not actually possible for those circles to be aware of the events constituting disclosure, while considering what might reasonably be required of those circles in terms of being aware of prior art. These facts may concern, for example, the composition of the specialised circles, their qualifications, customs and behaviour, the scope of their activities, their presence at events where designs are presented, the characteristics of the design at issue, such as its interdependency with other products or sectors, and the characteristics of the products into which the design at issue has been integrated, including the degree of technicality of the products concerned. In any event, a design cannot be deemed to be known in the normal course of business if the circle specialised in the sector concerned can only become aware of it by chance (14/03/2018, T-651/16 (https://euipo.europa.eu/eSearchCLW/#basic/*/number/651%2F16), Footwear, EU:T:2018:137, § 56).

“5.7.1.5 Specificities of design disclosures on the internet
[...]

Sources of disclosure on the internet

The internet provides a number of possible sources for disclosure of a design.

Websites are among the most common sources of design disclosure on the internet, in particular those related to e-commerce and social media. Therefore, displaying a product on a website to which the design is applied or in which it is incorporated would generally constitute its disclosure.

Exceptions to the availability to the public

Taking the global nature of the internet into account, in general, online content is available worldwide.

However, due to some restrictions, in particular as to the accessibility or searchability of the information on the internet, it might be considered that an event of disclosure of a design online could not reasonably have become known to the circles specialised in the sector concerned operating within the European Union.

For instance, when assessing an event of disclosure related to the publication of a design on a website, it might be necessary to assess whether that website was technically accessible and the relevant circles were actually able to find the prior art on the internet (14/03/2018, T-651/16

(https://euipo.europa.eu/eSearchCLW/#basic/*/number/651%2F16)

Footwear, EU:T:2018:137, § 61)."

30. As mentioned previously, both parties also referred me to various parts of the Council Regulation referring to Community Designs. Whilst I note that this decision is to be made in accordance with the relevant sections set out within the Act, I note the parties' position that I should consider parts of the Council Regulation as part of the wider legislative scheme. Whilst this decision will be made in accordance with the relevant sections of the Act, I note the law

including the provision for obscure disclosure is harmonised across the EU, and I see no harm in considering the parts of the Council Regulation referred to by the parties and their submissions on the same to the extent they are relevant. In his skeleton arguments, Mr Cronan submitted:

“22. First of all, public disclosure also triggers protection as an unregistered design under Article 11 of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs:

Article 11

Commencement and term of protection of the unregistered

Community design

1. A design which meets the requirements under Section 1 shall be protected by an unregistered Community design for a period of three years as from the date on which the design was first made available to the public within the Community.
2. For the purpose of paragraph 1, a design shall be deemed to have been made available to the public within the Community if it has been published, exhibited, used in trade or otherwise disclosed in such a way that, in the normal course of business, these events could reasonably have become known to the circles specialised in the sector concerned, operating within the Community. The design shall not, however, be deemed to have been made available to the public for the sole reason that it has been disclosed to a third person under explicit or implicit conditions of confidentiality

23. Second, public disclosure triggers a one-year period for filing of a community registered design under Article 7(2):

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.

24. This means that, once a disclosure has been made, a party is entitled to community unregistered design protection for three years, whilst also having one year from the date of disclosure to apply for registration of its own disclosure as a registered design. If it does not, the disclosure becomes prior art against a subsequent community registered design application, even if filed by the designer. A delay in filing a registered design could in principle provide an unfair competitive advantage, by allowing the use of more than one year of unregistered design protection, while also then seeking the full term of registered design protection.”

31. At the hearing Mr Colbran asked me to consider paragraph 20 to the introductory paragraphs to the Council Regulation, which reads:

“(20) It is also necessary to allow the designer or his successor in title to test the products embodying the design in the market place before deciding whether the protection resulting from a registered Community design is desirable. To this end it is necessary to provide that disclosures of the design by the designer or his successor in title, or abusive disclosures during a period of 12 months prior to the date of the filing of the application for a registered Community design

should not be prejudicial in assessing the novelty or the individual character of the design in question.”

32. Mr Colbran argued that the above framework is important on the basis that the applicant’s disclosure on the website prior to the launch of the product cannot be considered as a bona fide intention to test the market, and as such, it should not be considered sufficient to set the grace period running and the disclosure should be considered to fall outside of the spirit of the legislative scheme. I note that neither the reliance on this paragraph of the Council Regulation nor this argument were foreshadowed prior to the hearing.

The relevant sector

33. The sector in question is that concerned with coffee and coffee machines. Mr Cronan submitted this might include competitors and/or investors for example, and I agree with this assessment.

Determination of the issue in accordance with the evidence

34. At the hearing, both parties were seemingly in agreement that it is established that where disclosure is made on a website, the question is not whether a website itself has been accessed, but it is whether it is technically accessible. However, Mr Colbran reiterated that this still needs to be considered in accordance with whether it was reasonable for that website to have become known to those in the sector concerned in the normal course of business. I agree with this and consider it to be consistent with the case law set out in *Crocs*. On this basis, I find it does not particularly matter how many people actually visited the proprietor’s website in September 2013, so long as it was technically accessible, and it would have been reasonable for those in sector to have come become aware of it at that time. However, I do note that as is also set out in the case law in *Crocs*, significant evidence showing that no one accessed the website at the relevant time might help give weight to an argument that it was not reasonable for the site to have become known by those in the relevant sector within the normal course of business.

35. I begin therefore, by considering the inherent nature of the disclosure, that being the evidence of the website provided. This is a public website, on a top-level Swedish domain. I note at this stage that Sweden is a member of the EEA, and where a considerable number of members of the relevant sector are undoubtedly based. The website itself appears to be promoting a coffee machine (albeit one not yet available for sale). There is no argument that the website was not technically accessible at the date of the disclosure. I do not see any obvious reason that a publicly available EEA top level domain website promoting goods relevant to the sector, could not have reasonably become known 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 that sector. There appears to be nothing inherent about the disclosure that renders it obscure in anyway, and as a starting point, it does not appear to fall within the exception set out at section 1B(6)(a) of the Act. That said, it is necessary to consider the evidence in this case as a whole, and consider if this presents me with a reason that the website should be considered to fall within the exception claimed.

36. In the present case, the late evidence filed by the registered proprietor at Exhibit P3 alongside the second witness statement of Mr Colbran, provides numbers relating to visits to a website. However, this evidence relates to a .com website (rather than the .se website), and, as is clear from Mr Colbran's witness statement, provides only the information that was available to the registered proprietor at the time the evidence was filed. It is explained that the registered proprietor does not have access to data relating to visitors to the site on which the disclosure was made at the relevant date. It appears this information has been provided, in Mr Colbran's words "[a]s a gesture of openness", rather than because it really conveys any relevant information relating to visitors or a lack thereof to the website on which the disclosure took place, or anything that may support the registered proprietor's case. I can therefore make no inference from this evidence, and I do not consider it to improve the registered proprietor's position in this instance.

37. The evidence provided at Exhibit P4 to Mr Colbran's statement, relates to the number of times the registered proprietor's business name ("Sjöstrand Coffee and Sjostrand Coffee") was searched dating back to 1 January 2013 worldwide. Both of these pages show no searches were made prior to 2016. Whilst I note this is the name of the business, this is simply one (or two variations of one) search term, and it is not clear whether other search terms may have resulted in the website appearing to those in the relevant sector, which may well have been searched at the relevant time. I note that in *Crocs*, the fact that website was not found though the use of various search terms was not considered sufficient to establish to the requisite legal standard that a website could not reasonably have become known in the relevant sector. Whilst the evidence provided in this case is not quite on all fours with the evidence provided in *Crocs*, which showed that searching particular terms for footwear did not bring up the US site, the principle is largely the same. Even if it is the case that the proprietor's business name was not searched at the relevant date (and I will consider the applicant's evidence which casts doubt on the reliability of this evidence shortly), it does not in any case show whether other search terms that may have brought the website to the attention of the relevant sector were searched. Further, I note that, as Mr Cronan pointed out at the hearing, and as is set out in *Crocs*, it is possible the website might have been found by those in the relevant sector via means other than search engines. However, I do not intend to dwell too heavily on this point, for the reasons set out below.

38. Notwithstanding my findings above, that the Google trend results for the registered proprietor's name are not in and of themselves particularly convincing, I note in any case the applicant's reply evidence on this point does appear to undermine the results provided. I note particularly the article entitled "Google Trends: Understanding the data" provided at Exhibit GAMD3 to the third witness statement of Ms Doukanaris, which explains that "Trends only analyses data for popular terms, so search terms with low volume appear as 0 for a given time period". It is not clear what exactly is meant by "low volume", but I note this is then supported at this exhibit by data for the search term "The Registered Designs Act 1949" which shows no searches for this term in the United Kingdom between 2004 and 2019. I also note on this Google trends

page, one of the “notes” has been expanded and it reads “An improvement to our data collection system was applied from 01/01/2016.” On top of this, I note the applicant’s evidence at this exhibit relating to the searches for the proprietor’s name in the UK. This shows different results to the worldwide search including a spike in searches in March 2014, although I note it still does not conclusively show searches for the term in 2013. However, all of this goes some way to undermining the results provided by the registered proprietor at Exhibit P3, and overall, I find the late evidence filed by the proprietor to therefore have little weight in the circumstances.

39. I also consider the evidence filed by the proprietor during the evidence rounds, and the parties’ arguments relating to the same. I consider firstly, the witness statement from Mr Gustafsson providing information relating to the launch and preparations for launch conducted by the registered proprietor as follows:

“Timeline of Machine Development and Launch

1. **Late Summer 2012:** Development of the machine began, including industrial design, CAD drawings, and sourcing a factory.
2. **2012–2013:** Development phase took a minimum of 1.5 years.
3. **Late 2013:**
 - o An early test batch of machines was produced for quality testing (internal testing only).
 - o The test batch had significant issues, and all machines were returned to the factory for further improvements.
4. **Planned Launch (October 2013):**
 - o Initially, the goal was to launch in October 2013, but this was not feasible due to the issues encountered.
5. **Early 2014:**

- o Major redesigns and component replacements were initiated, including a new pump and additional testing with 7,500 capsules.
- o This redesign and testing phase lasted approximately 8–10 months.

6. Actual Launch (October 2014):

- o The first official sales period began in October 2014.
- o Between October 2014 and April 2015, the company sold approximately 4,500 machines (as noted in the company memorandum during the 2016 listing)."

40. Press articles and translations to the same supporting the timeline above are also provided with Mr Colbran's first witness statement at Exhibit P1 and Exhibit P2. Regarding the website itself, Mr Gustafsson provides the following statement:

"Website Presence

As can be seen from the provided timeline, the product did not launch until October 2014. Before this time, the website www.sjostrand.se was not circulated. No marketing material or PR had been circulated at the date of the web archive citation (September 2013).

I believe that no one would have access to the website when acting "in the normal course of business" prior to launch of the product."

41. I note Mr Cronan made arguments relating to inferences I should make based on the development of the product and business partners gathered as referenced in the press articles from 2016. I do not intend to go into these in detail, but I note at this point I do not find these arguments particularly convincing, considering the material I have been asked to make inferences from is dated well past the relevant date. That said, I also do not find the information relating to the fact that the product had not launched or that the website had not been "circulated" to be persuasive. It is not in dispute that the website was publicly available at the time that the disclosure was made. Further, it is shown by the evidence provided at Exhibit GAMD2 with the second witness statement

of Ms Doukanaris, that it was available through a Google search for sjostrandcoffee.se as far back as 13 January 2013, and that it disclosed the design at least as early as 14 September 2013. As Mr Cronan pointed out at the hearing, the translated version of the website provided at Exhibit RM1 shows that it uses language that appears to talk directly to parties who may be interested in following the journey to development, stating:

“You will be able to order our machine from our webshop which will be open at this address on 1 October 2013. This is also where you will be able to order your capsules – hassle-free, any time you want. Right now, you can enjoy a great deal and find out more about the concept by clicking here.” (on the version disclosing the design on 14 September 2013)

And

“Keep an eye on this page—you’ll be able to follow our journey from idea to finished coffee machine, complete with milk frother and capsules.” (on the earlier version of the website dating from 31 March 2013)

42. I note that, as set out in *Magmatic* the burden is on the registered proprietor to prove the disclosure provided should be considered an exception in accordance with section 1B(6)(a) of the Act. I do not consider the fact that the product had not launched at that time, or that the website had not strictly been “circulated” meets the bar for doing so. It seems to me on the facts of the current case, having considered the evidence filed in its entirety, that despite these factors, it would be perfectly reasonable for someone conducting business in the relevant sector to have come across the website on which the design was disclosed, during the ordinary course of that business. As I do not consider the mark to fall into this exception, the registration must be declared invalid in accordance with section 11ZA(1)(b) of the Act.

43. I do consider for completeness at this point, Mr Colbran’s argument that considering the disclosure of the design was not a bona fide attempt to test the

market, it should not be considered as a disclosure capable of setting the grace period running, and as such it is not a disclosure in the spirit of the legislation. As noted, this argument was premised on the reasoning set out for adopting the Council Regulation, particularly on paragraph 20 as previously set out. However, I dismiss this argument. Firstly, I note that there is nothing about paragraph 20 of the Council Regulation that talks specifically about the launch of a product. An attempt to “test the market” as is referenced in the same, might in my view come in many forms – such as simply garnering public opinion on a proposition for a product in one way or another. I consider that the products display and promotion on a public website could, and in my view should, be considered as testing the market. I do not consider that a disclosure capable of destroying the novelty of a design must be limited to one that coincides with the official launch of a product. Therefore, even if I am to take this paragraph of the Council Regulation as being reflective also of the intention behind the grace period as set out in 1B(6)(c) of the Act, I do not accept this argument. Further, there is nothing in the case law that I am aware of or in the authorities provided in this case that suggests that the proprietor’s intention to test the market with its disclosure is relevant to whether it was reasonable for that disclosure to have become known to the relevant sector within the normal course of business, bar the obvious exception of disclosures where it was the proprietor’s intention for a design to remain confidential. This is clearly not the case here. Finally, I note in any case this argument does not really form the basis of the proprietor’s pleaded case, and it feels a little late to introducing it for the first time in submissions at the hearing, although I note in any case for the reasons previously set out it will not have an impact on my overall findings.

Final remarks

44. The application for the invalidation of design no. 90026398150001 has succeeded in its entirety. Subject to any successful appeal, the registration will be considered invalid.

Costs

45. The applicant has been successful and is entitled to a contribution towards its costs. In the circumstances, I award the applicant the sum of £2048, in accordance with Tribunal Practice Notice 1/2023 as follows:

Official fee:	£48
Preparing and filing the DF19A and considering the DF19B:	£300
Preparing and filing the evidence and considering the evidence (including the late evidence):	£1000
Preparing for and attending the hearing:	£700
Total:	£2048

:

46. I therefore order Sjöstrand Trading AB to pay Grind & Co Ltd the sum of £2048. 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 5th day of December 2025

R. Le Breton
For the Registrar