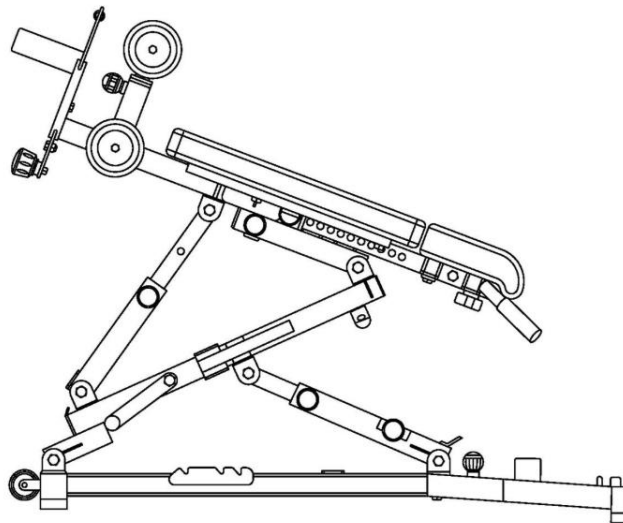


O/0042/25

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

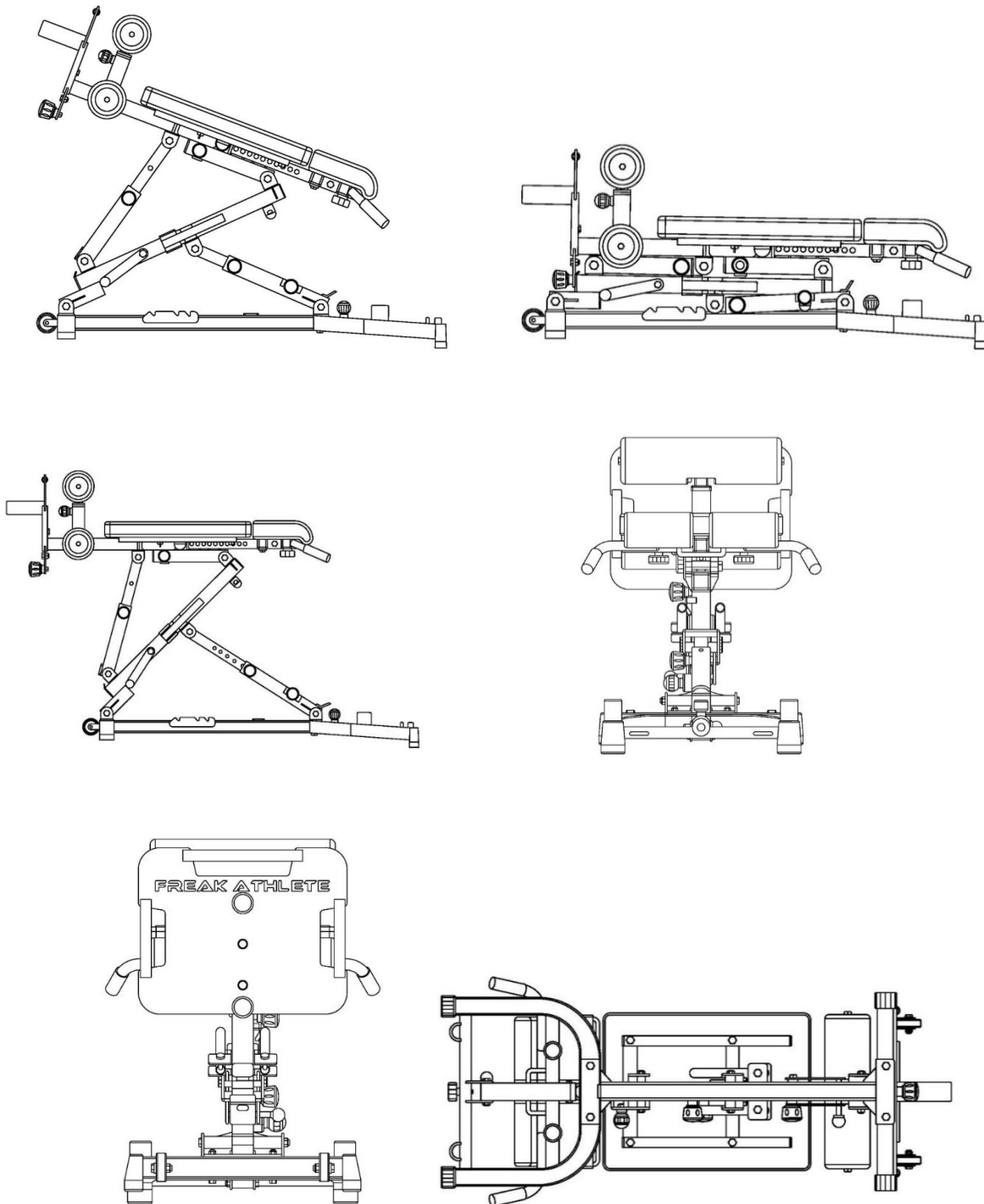
**IN THE MATTER OF REGISTERED DESIGN NO. 6369721  
IN THE NAME OF FREAK ATHLETE ESSENTIALS LLC  
IN RESPECT OF THE FOLLOWING DESIGN:**

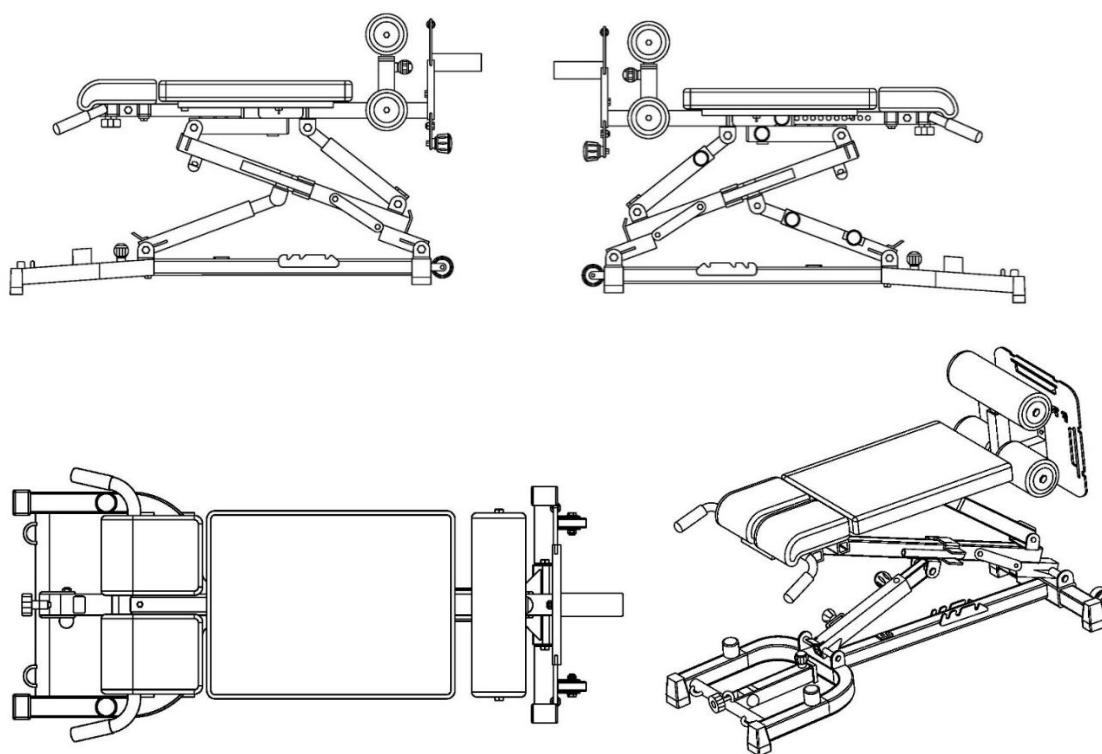


**AND  
AN APPLICATION FOR INVALIDATION (NO 244/24)  
BY SLANTBOARD LIMITED**

## Background and pleadings

1. Freak Athlete Essentials LLC (hereinafter 'FAE') filed application number 6369721 to register the design shown on the front cover of this decision, described as 'fitness equipment'. The filing date was 3 June 2024 (the relevant date). The design was registered on 18 July 2024 and is depicted in the ten representations below:





2. On 28 October 2024, Slant Board Limited (hereinafter 'SBL')<sup>1</sup> made an application 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 registered design is not new and does not possess individual character because it advertised and made sales in the UK of a bench having a substantially identical design in April 2024.

3. In support of the claim, SBL provides proof of sales of two 'Nordic Benches', attached to an ammended statement of grounds dated 28 October 2024.

4. The first, described as a '6 in 1 Nordic Bench', was sold on 12 April 2024 and was delivered to an address in Dover. It appeared in the listing, as follows:

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<sup>1</sup> The applicant describes itself as both SlantBoard and Slant Board. I will use the latter throughout this decision, where I need to refer to the applicant in full.



5. The second, described as a 'Multi Nordic Bench', was sold on 14 April 2024 and was delivered to an address in Powys. It appeared in the listing, as follows:

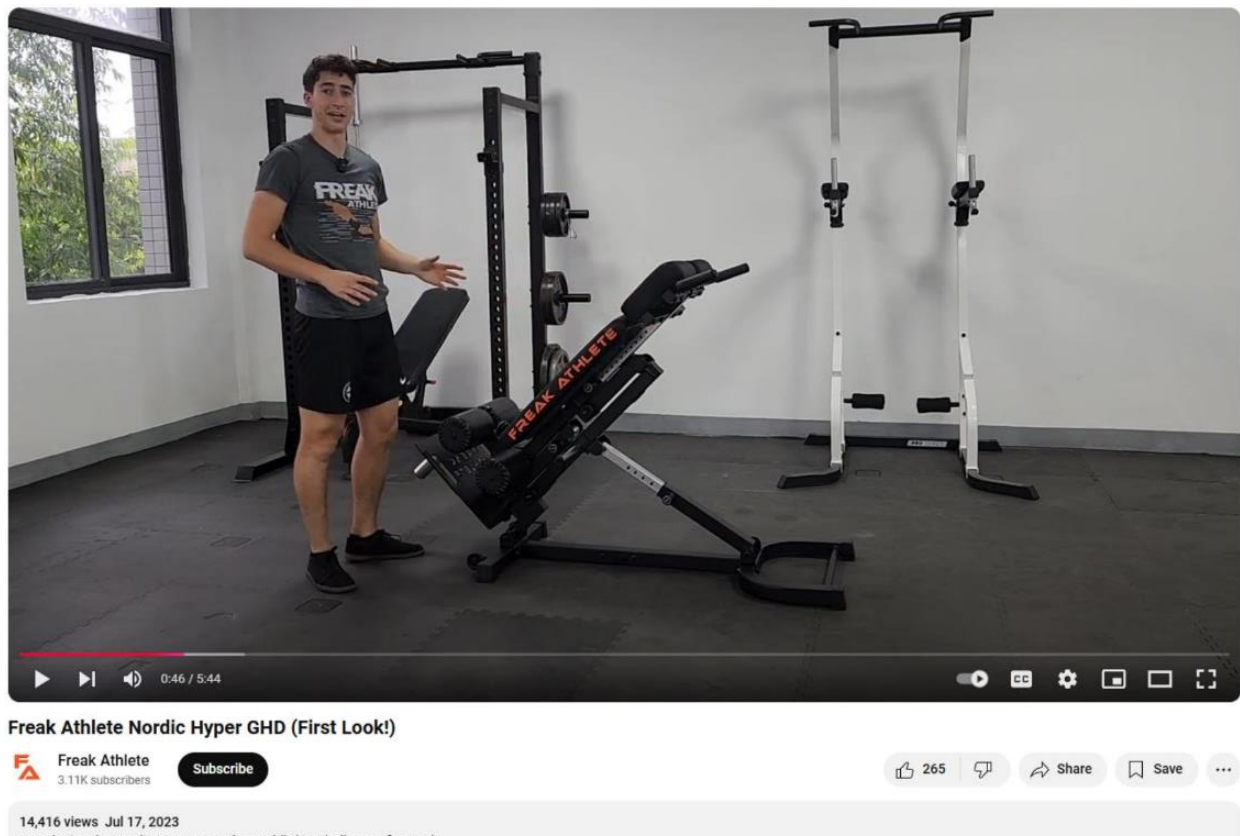


6. SBL's statement of grounds includes the following:

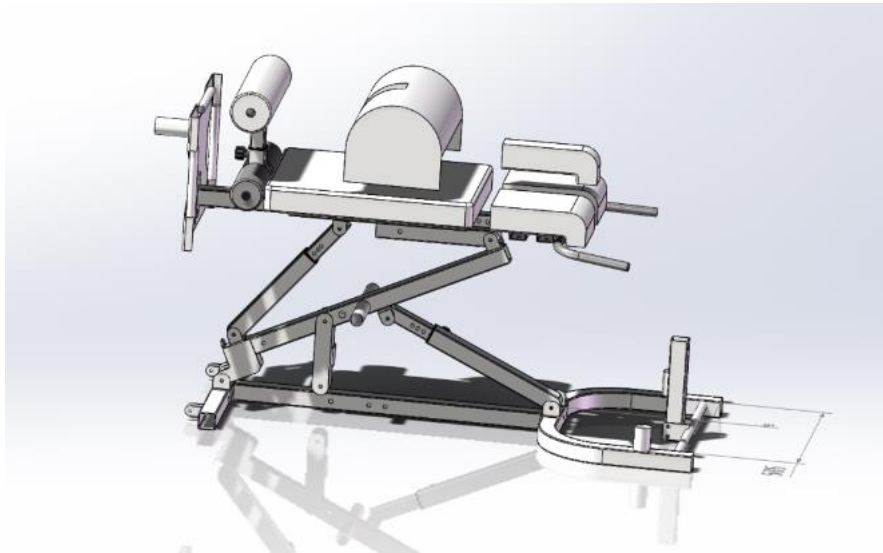
*"Two of the SlantBoard benches were sold in the UK on 12<sup>th</sup> and 14<sup>th</sup> April 2024. See exhibit attached which clearly shows sales to the public on these dates.*

*From a design perspective, we believe that the SlantBoard Nordic benches are substantially identical to those covered by [the contested design].”*

7. FAE filed a counterstatement, in which it accepted that SBL first sold a design identical to the contested design on 12 April 2024. However, it claims that it disclosed its own product on its YouTube channel on 17 July 2023 (within the 12-month grace period allowed under section 1B(6)(d) of the Act). FAE provided a screen shot of the YouTube disclosure, as follows:



8. SBL filed a witness statement from Niska Yang, the Sales Manager at Aegis Fitness Equipment Co. Ltd., SBL’s Chinese manufacturer. It is dated 17 March 2025 and confirms that Aegis manufactured fitness equipment, including an adjustable Nordic bench for SBL for the UK market. The following CAD drawing is attached:



9. The final paragraph of the witness statement reads:

*““We produced samples of these products and shipped them to the UK on 20 November 2023. The samples were approved and on this basis we granted permission for these designs to be registered in the UK by Slant Board Ltd.”*

10. FAE filed evidence in the form of a witness statement from Yogesh Taxak, with six exhibits. I will refer to these as necessary in the decision. The statement is dated 13 March 2025. Yogesh Taxak is the director of FAE and ‘Head of Product’ and states that the FAE product was designed by him and two others and was first made available to the public on 17 July 2023 on YouTube. The relevant exhibit is the same as that shown in paragraph 7, above.

11. SBL represent themselves. FAE is represented by Albright IP.

12. The parties did not request a hearing. Both parties filed submissions in lieu of a hearing. I make this decision after careful consideration of the papers filed.

## **The law**

13. 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”.

14. Section 1B of the Act 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 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 consideration.

(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) – (e) ...

(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) ...

### **Preliminary issue**

15. On 18 December 2024 the tribunal consolidated this case with 246/24. While writing this decision and having considered both cases, I find them unsuitable to be written as one decision, as they relate to two very different designs. I will write these decisions separately, and will publish them at the same time.

16. I also note that both parties have made reference to other documents being available on request. It is for the parties to decide how to run their case and to supply their evidence and submissions during the relevant time periods as outlined by the tribunal.

### **FAE’s case**

17. In its counterstatement, FAE says:

*“The above referenced design (FAE’s design) was filed on 3 June 2024.  
[SBL] first sold an identical design on 12 April 2024.  
These facts are not disputed.”*



18. And:

*“SBL have sourced an identical product, save for branding, from China during April 2024, which was then sold in the UK on 12 April 2024...”*

19. In its submissions filed on 3 February 2025, FAE repeats the same statements and adds:

*“The SBL disclosures are, in our view, disclosures made in the consequence of information provided or other action taken by the designer or any successor in title of his. The SBL product is such a slavish replica of the FAE product, that the appearance of the SBL product can only have been derived from the FAE disclosure or subsequent FAE disclosures. The SBL product is unambiguously a copy of the FAE design...*

*SBL have copied more than one FAE product. This is not an isolated incident, and thus clearly demonstrates intent on the part of SBL to copy products from the FAE range. The conclusion to be drawn must be that SBL have knowingly (that is, with the knowledge of our client’s earlier disclosures) attempted to source copies of identical products. The circumstantial evidence is overwhelming.”*

20. In its submissions filed in lieu of a hearing, dated 15 July 2025, FAE submits:

*“Applicant’s entire argument rests on the declaration made by Rizhao Aegis Fitness Equipment Co., Ltd (RAFE), in which it is purported that employees of RAFE are the designers of the products advertised by [SBL], and therefore that there is an intermediate and independent disclosure made of identical products to those reflected in design registration...GB6369721.*

*...The products asserted by the applicant as originating from RAFE are so identical in form to those disclosed by FAE on 17 July 2023... that there can be*

*no coincidence; the disclosure relied upon by [SBL] must be as a consequence of information provided by the designer or successor in title (i.e. FAE)."*

21. FAE's case is that SBL disclosed an earlier design identical to its own contested design, but states that this is not a disclosure that defeats its contested design because:

- FAE has its own earlier disclosure of the design, that was made within the 12-month grace period
- and that SBL copied the FAE design

22. Throughout these proceedings FAE has stated that SBL first sold the identical earlier design to the public on 12 April 2024. In its counterstatement filed on 2 December 2024 it also made the following statement:

*"The disclosures relied on by SBL are not deemed made available to the public under s1B(5)."*

23. I find it likely that this statement is made in respect of the other related design invalidation 246/24 that was consolidated with this one, as that case related to prior disclosure of a design, rather than sales of an earlier design. However, for completeness, I find that the two sales of Nordic benches made by SBL on 12 April and 14 April 2024 (shipped to addresses in the UK) constitute disclosures to the public.

24. FAE submits that it has an earlier disclosure on YouTube that defeats SBL's disclosure. The YouTube video (from which a single still image is supplied) is dated 17 July 2023.

25. The design shown in the still from the video is as follows:



26. The registered design does not show the contested design in the position it appears in in the YouTube video, so I will look at several images in order to compare features.

27. It is clear from the case law that what counts for the purpose of design registration is what can be seen.<sup>2</sup> It is the images that make up FAE's registered design that define the scope of the design. In other words, the features that can be seen in the outline drawings that make up the registered design and are reproduced in full at paragraph 1 of this decision define the scope of the registered design.

28. Furthermore, the interpretation of those drawings, and therefore the scope of the design, is a matter for me to determine. This was made clear in *Prospero Meble SP. Z.O.O. v Furneo Limited*,<sup>3</sup> in which Dr Brian Whitehead, sitting as the Appointed Person considered

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<sup>2</sup> See *Samsung Electronics (UK) Ltd v Apple Inc* [2012] EWHC 1882 (Pat), paragraphs 31 and 32 and *Magmatic Ltd v PMS International Ltd*, [2016] UKSC 12, paragraphs 30 and 31.

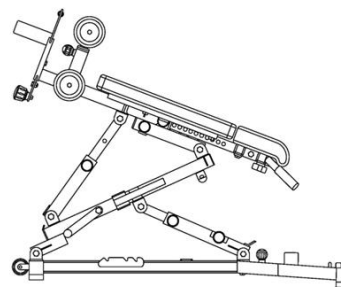
<sup>3</sup> BL O/0024/26

*Framery Oy v European Union Intellectual Property Office (EUIPO)*<sup>4</sup> and *Sealed Air Ltd v Sharp Interpack Ltd*<sup>5</sup> and concluded:

“27. I extract the following propositions from the above: i) it is not necessary that a representation of the prior art includes views from all possible angles, so long as the shape and features of the design can be identified, and ii) it is for the court/Hearing Officer, rather than the informed user, to carry out the identification of the shape and features of the design.”

29. Looking at the design in the stills from FAE’s YouTube video and comparing it with FAE’s registration, there are obvious differences. For example:

30. The side of the bench in the YouTube video features FREAK ATHLETE branding down the side. This is absent from the registration, as shown below:

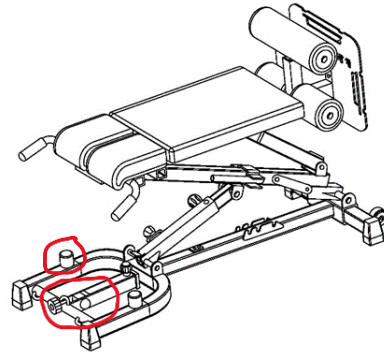


31. The curved stand in the design registration has a central bar running through the middle of the D shape and additional raised cylinders on the top of the D shape. These are not present in the still from the YouTube video.

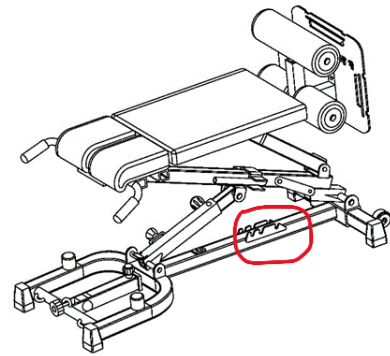
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<sup>4</sup> T-373/20 - The provisions of the Act relied on in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 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 that predate the UK’s withdrawal from the EU.

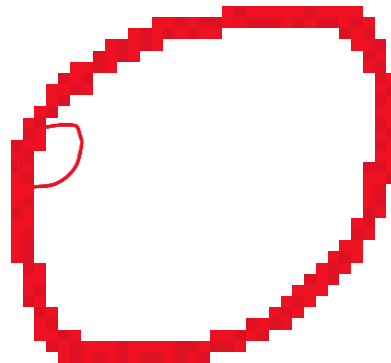
<sup>5</sup> [2013] EWPCC 23



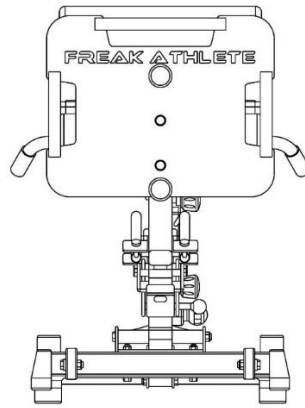
32. The bottom bar of the registered design includes a grooved plate that is not present in the design shown in the YouTube video:



33. The handles shown on the registered design appear to be wider than the tubing on which they sit. This is different from the design in the YouTube image:



34. The branding and structure of the end plate of the bench is different in the YouTube video compared with the registered design. It is not clear if the FREAK ATHLETE lettering in the registered design is applied or cut out of the plate, but in either case it is on a single line with a bar above it. In the design shown in the YouTube still there is no bar at the top of the plate and the lettering is lower and on two lines:



35. These differences taken together are not immaterial and are such that the design shown in the video is not identical to FAE's registered design. Accordingly, I cannot find that the still from the YouTube video is a prior disclosure of FAE's contested design.

36. This means that the only valid disclosure is the sales made by SBL in April 2024 of a design that FAE says is identical to its own design. My own views on this are not relevant, as once an admission is made on a point in proceedings, that point is no longer in issue between the parties and the tribunal may use it as a basis for its decision. This point was recently made in a trade mark appeal decision in which Dr Brian Whitehead, sitting as the Appointed Person, concluded that where one of the parties admitted that competing services were identical, it was not incumbent on the hearing officer to look behind the claim.<sup>6</sup> Whilst that was a trade mark case, there is no reason to treat registered design cases any differently, with regard to admissions in pleadings. It is clear from the Civil Procedure Rules that where a party has made an admission against interest, it must seek permission if it later wishes to resile from it. Had FAE wanted to alter its statement of case, it could have written to the tribunal with a request to amend its pleadings, it did not do so and in fact, reiterated the same points in its submissions filed in lieu of a hearing.<sup>7</sup>

37. The remaining claim made by FAE is that SBL copied its design. It concludes that this is the only way in which a design 'so identical in form' could have been sold by SBL in April 2024. FAE provided a witness statement by Yogesh Taxak, which includes the following:

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<sup>6</sup> See BL O/0096/25, paragraphs 19-21

<sup>7</sup> The Civil Procedure Rules (CPR) also allow a party to amend or withdraw and admission, see CPR 14.2(11).

*“5. Exhibit 3 is a letter submitted by SlantBoard Limited during the invalidation process. I believe this to be a misrepresentation. Based on my knowledge of the business dealings of [FAE] I consider the statement that [RAFE] did anything more than copy the [FAE] design and apply [SBL] branding to be false.”*

38. The burden is on FAE to show that SBL have in fact copied the design subject to these invalidation proceedings, if it wants to rely on such a pleading to defeat SBL’s prior disclosure of a design FAE states is identical to its own. Its evidence takes the form of a witness statement from its own Chinese manufacturer who ‘believes’ that SBL’s witness statement from its Chinese manufacturer, is ‘a misrepresentation’. In addition, FAE’s submissions claim that SBL have not answered their allegations and conclude, from these factors, that ‘the circumstantial evidence is overwhelming’.

39. In addition, FAE filed a ‘chat history’, dated 28 March 2024, which it says took place between Liu Lihau, a representative of FAE’s Chinese manufacturer, Xiamen Jiameihua Fitness Equipment (XJFE) and Nigel Wuwei, SBL’s representative in Shanghai. The conversation is in Chinese and the translation supplied is not an official one. The only identifiable text is ‘Mordic Hyper GHD’. From this, FAE concludes that Mr Wuwei expressly requests that XJFE produce a replica of FAE’s Nordic Hyper GHD. He directs me to the YouTube video for proof that this is the name given to FAE’s design.

40. I cannot draw such a conclusion. There is no evidence that the YouTube video title is a proprietary name used by FAE for its bench design. Furthermore, in the translated conversation (provided by FAE and relied on by then), XJFE’s representative asks Mr Wuwei to provide a photograph of what he is talking about. He posts the following image to the chat:



41. This is clearly not FAE's design, nor does it represent the designs sold by SBL in April 2024. The most obvious difference being that there is no bench section in the centre of the design. Accordingly, this exhibit does not prove an express request by SBL for XJFE to provide a replica of the FAE design.

42. SBL filed a witness statement that supports its case, provided submissions that disagree with FAE's case and states that it is aware that FAE have accepted that SBL's prior disclosure is identical to the contested design. It has reiterated these points throughout the proceedings. I find nothing exceptional in this approach. If FAE wanted to challenge SBL's witness evidence the correct course of action would have been to request cross-examination of the witness in order to test their evidence or provide its own evidence that supported its case. It has not done so.

## **CONCLUSION**

43. Taking account of FAE's case, which is that SBL sold an identical design two months before FAE applied for its contested registered design, and in the absence of any evidence that casts doubt on SBL's disclosure, I am bound to conclude that the earlier publication defeats the contested registered design and it is invalid.

**44. The registered design is invalid and will be cancelled accordingly.**

## **COSTS**

45. The cancellation applicant has been successful and is, in principle, entitled to a contribution towards his costs. As it is unrepresented, at the conclusion of the evidence rounds the Tribunal invited it, in the official letter dated 17 June 2025, to indicate whether it wished to make a request for an award of costs, and if so, to complete a pro-forma including a breakdown of actual costs, including providing accurate estimates of the number of hours spent on a range of given activities relating to the cancellation application; it was made clear to the cancellation applicant that if the pro-forma was not completed then no costs will be awarded. No response was received. Consequently, I make no order as to costs other than the official fee of £48, for filing the cancellation application.



46. I order Freak Athlete Essentials LLC to pay Slant Board Limited 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 22<sup>nd</sup> day of January 2026**

**Al Skilton**

**For the Registrar,**

**The Comptroller-General**