

O/0464/26

**REGISTERED DESIGNS ACT 1949**

**IN THE MATTER OF:**

**REGISTERED DESIGN NOS. 6383665, 6383666, 6383667 & 6383668**

**IN THE NAME OF ELISSA MOAR**

**IN RESPECT OF THE FOLLOWING DESIGNS:**



**AND**

**APPLICATIONS FOR INVALIDATION (NO 0311/24, NO 0312/24,  
NO 0313/24 & NO 0314/24) BY  
GREENCROFT SHETLAND LTD**

## BACKGROUND AND PLEADINGS

1. Registered Design Nos. 6383665, 6383666, 6383667 and 6383668 (“the contested designs”) stand in the name of Elissa Moar (“the registered proprietor”). All designs have application dates of 8 August 2024 (“the relevant date”) and were published on 16 August 2024.

2. The design numbered 6383665 (“the first contested design”) is registered as applying to a ‘garden ornament’ and is depicted in the following representations:



3. The design numbered 6383666 (“the second contested design”) is registered as applying to a ‘garden ornament’ and is depicted in the following representations:



4. The design numbered 6383667 (“the third contested design”) is registered as applying to a ‘garden ornament’ and is depicted in the following representations:





5. Lastly, the design numbered 6383668 (“the fourth contested design”) is registered as applying to an ‘indoor and outdoor ornament’ and is depicted in the following representations:



6. On 29 November 2024, Greencroft Shetland Ltd (“the applicant”) applied for the contested designs to be invalidated under section 1B of the Registered Designs Act 1949 (“the Act”), on the grounds that they lacked novelty and did not have individual character. Section 1B has effect in invalidation proceedings through section 11ZA(1)(b) of the Act. By virtue of relying on this ground, the applicant claims that the contested designs closely resemble the applicant’s own earlier designs, being 4035281, 6048885 and 6048886, which were granted registration on 13 May 2013, 6 December 2018 and 30 November 2018, respectively. In respect of their publication dates, it is noted that the applicant’s designs were, respectively, published on 13 March 2014, 7 December 2018 and 1 December 2018, respectively.
7. The registered proprietor filed counterstatements to the applications for invalidation on 10 January 2025. The registered proprietor makes a number of comments as to the origin of her planter business and the intention behind it. While noted, these are not relevant to her defence. In respect of the claims against her, I can glean from her comments that she argues that there are clear differences between all of the designs at issue. Further, in discussing the nature of her work, she referred to house-shaped planters and explained that while they may have the same purpose, they are unique in their designs and overall look.
8. Both parties filed evidence in chief and both parties also elected to file written submissions alongside their evidence. Neither side requested a hearing and both parties filed written submissions in lieu of the same. I have taken this decision after a careful consideration of the papers before me. In these proceedings, the applicant is represented by Taylors Solicitors and the registered proprietor represents herself.
9. 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**

10. The applicant's evidence came in the form of the witness statement of Ms Kate Holt dated 19 May 2025. Ms Holt is the director of the applicant and her statement is accompanied by one exhibit, being 'KH-1'. Ms Holt's evidence was adduced in order to discuss the history of the applicant's business and to discuss the similarities between the designs. As for the proprietor, she filed evidence via a witness statement in her own name dated 12 June 2025. It is accompanied by one exhibit, being 'Exhibit 1'. The purpose of the proprietor's evidence is to simply introduce a visual comparison between the designs.

11. While I do not intend to discuss the entirety of the parties' evidence here, I note that, as above, they both include a discussion surrounding the comparison of the designs. While these are noted, they constitute submissions as opposed to evidence of fact. For the avoidance of doubt, the assessment of the designs is one that I must make based on my own impression of them whilst taking into account the various principles set out throughout this decision.

## **PRELIMINARY ISSUE**

12. In the applicant's final written submissions, it makes reference to a claim that the applications for the contested designs were submitted in bad faith. This is on the basis that Ms Holt's evidence discusses the fact that, within 24 hours of the applicant contacting the registered proprietor, she applied for the contested designs. This claim is irrelevant to the proceedings because there is no provision for bad faith claims in invalidations against Registered Designs. The registered proprietor was entitled to seek to protect her designs but only to the extent that they were new and had individual character, which is the assessment that will form the basis of this decision. For the avoidance of doubt, I will say no more about this point.

## DECISION

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 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.

[...]

## Prior Art

15. The applicant relies on three of its own designs as the basis for its prior art. These are as follows:

Design no. 4035281

Registration date: 2 May 2014

Publication date: 13 May 2014

Indication of product: Planter to hold soil in the shape of a croft house

Illustrations:



Disclaimer: No claim is made for the colour/s or materials shown.

("the first prior art")

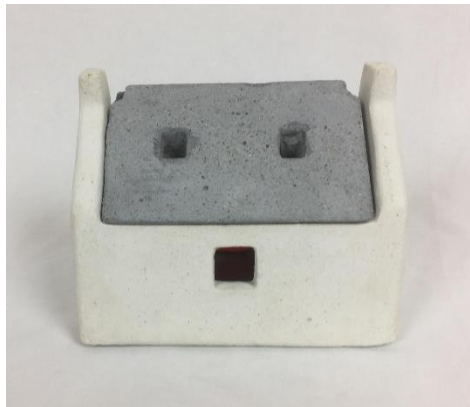
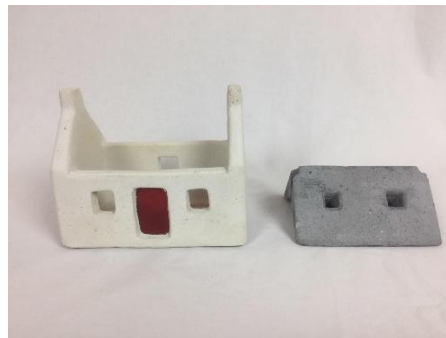
Design no. 6048885

Registration date: 27 November 2018

Publication date: 7 December 2018

Indication of product: Croft house / cottage shaped candle holder

Illustrations:



Disclaimer: No claim is made for colours or material shown.  
("the second prior art"); and

Design no. 6048886

Registration date: 27 November 2018

Publication date: 1 December 2018

Indication of product: Mini croft house / cottage planter with turf roof

Illustrations:



Disclaimer: I make no claim for the colours or materials of construction.  
("the third prior art").

16. In considering the above designs (which I will collectively refer to as 'the prior designs'), it is noted that the applicant's second design pertains to a different classification of products than that of the contested designs (the prior art sits in class 26, sub class 1 whereas the contested designs sit in class 11, sub class 2). It can, therefore, be said that the sector concerned for the applicant's second design and the contested designs differ. While this may be the case, this is not a point that is relevant here. I say this because in the case of *Easy Sanitary Solutions*

*BV v EUIPO*, Cases C-361/15 P and C-405/15 P, the Court of Justice of the European Union (“CJEU”) set out that:

“96. ... The fact that the protection granted to a design is not limited only to the products in which it is intended to be incorporated or to which it is intended to be applied must therefore mean that the assessment of the novelty of a design must also not be limited to those products alone. Otherwise, as the General Court pointed out in the same paragraph, the subsequent registrations of a Community design, which would be obtained despite the earlier disclosure of an identical design intended to be incorporated into a different product or to be applied to such different product, would allow the holder of that subsequent registration to prohibit the use of that same design for the product that was the subject of the earlier disclosure, which would be an absurd result.”

17. In respect of the date of disclosure of the above designs, it is noted that the applicant submitted that its designs were all disclosed on the applicant’s Facebook page on various dates, namely 5 May 2014, 30 November 2018 and 13 May 2018 for the first, second and third designs, respectively. While noted, this is not borne out in evidence. That being said, the lack of evidence regarding this point is irrelevant because the prior designs relied upon are, themselves, registered designs. In accordance with section 1B(5)(a) of the Act (reproduced above), a design is considered as being made available to the public if it has been published (whether following registration or otherwise) before the relevant date. The prior designs relied upon in these proceedings are registered designs which have publication dates prior to the relevant date meaning that they are capable of being relied upon in these proceedings.

18. In addition to the above, it is noted that none of the exceptions set out in section 1B(6) are applicable here. As a result, I am satisfied that all of the prior designs shown above are capable of being relied upon as the basis for the present invalidation application.

## Individual Character

19. I will begin with the question of whether the contested designs have individual character. 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 design.

20. The approach to carrying out an assessment of individual character was helpfully summarised by HHJ Hacon, sitting as a Judge of the High Court, in *Safestand Ltd v Weston Homes PLC & Ors* [2023] EWHC 3250 (Pat) at [237]:

“(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,

(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 design 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.”

21. I also bear in mind the comments of HHJ Birss (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):

“How similar does the alleged infringement have to be to infringe? Community design rights are not simply concerned with anti-counterfeiting. One could imagine a design registration system which was intended only to allow for protection against counterfeits. In that system only identical or nearly identical products would infringe. The test of ‘different overall impression’ is clearly wider than that. The scope of protection of a Community registered design clearly can include products which can be distinguished to some degree from the registration. On the other hand 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.”<sup>1</sup>

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<sup>1</sup> Paragraph 58

### The sector concerned

22. In its submissions regarding the sector concerned, the applicant made reference to the case of *Green Lane Products Ltd v PMS International Group Ltd* [2008] EWCA Civ 358. It appears to me that this was put forward as it means that the sector concerned is the sector from which the prior art came as opposed to the sector from which the contested design came. While noted, the case cited refers to the issue of whether a disclosure 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 EEA and specialising in the sector concerned.

23. The sector concerned for the purposes of the individual character assessment is the sector of the contested design. This is on the basis that my assessment is to focus on the informed user of the set of products for which invalidation is now being sought. As a result, I find that the sector concerned is that of garden ornaments and indoor and outdoor ornaments (for the fourth contested design only).

### The informed user

24. In *Samsung*, HHJ Birss (as he then was) gave the following description of the informed user:

“33. ... The identity and attributes of the informed user have been discussed by the Court of Justice of the European Union in *PepsiCo v Grupo Promer* (C-281/10 P) [2012] FSR 5 at paragraphs 53 to 59 and also in *Grupo Promer v OHIM* [2010] EDCR 7, (in the General Court from which *PepsiCo* was an appeal) and in *Shenzhen Taiden v OHIM*, case T-153/08, 22 June 2010.

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* paragraph 54 referring to *Grupo Promer* paragraph 62, *Shenzhen* paragraph 46);
- ii) however, unlike the average consumer of trade mark law, he is particularly observant (*PepsiCo* paragraph 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* paragraph 59 and also paragraph 54 referring to *Grupo Promer* paragraph 62);
- iv) he is interested in the products concerned and shows a relatively high degree of attention when he uses them (*PepsiCo* paragraph 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* paragraph 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* paragraph 59).”

25. The informed user is a member of the public who buys and uses garden ornaments and indoor and outdoor ornaments. They may also be professional users such as landscapers or interior decorators (for the fourth contested design) who select products on behalf of their clients. The informed user will pay attention to both aesthetic features of the product and the materials used. I consider that they will

display a relatively high degree of attention when selecting the products due to the importance of their appearance to the end user. As such, I see no reason why they should not be able to conduct a direct comparison of the designs in issue.

### Design freedom

26. In *Dyson Ltd v Vax Ltd*, [2010] FSR 39, Arnold J (as he was then) stated that:

“... design freedom may be constrained by (i) the technical function of the product or an element thereof; (ii) the need to incorporate features common to such products; and/or (iii) economic considerations (e.g. the need for the item to be inexpensive).”<sup>2</sup>

27. The applicant argues that design freedom is wide in the sectors concerned and that the designer may choose to design a garden ornament to resemble an elephant, a classic car or a rocket ship. The applicant does raise further points as to the nature of the opening of the design and the fact that the ‘house design’ could include a hinged roof. I disagree with the latter point insofar as it relates to a garden ornament in the nature of a flower pot as by covering the top of the pot, it would restrict sunlight from getting to the plant and would block any view of the plant which, in my view, is a necessary feature of the ornament in this context. That being said, I do agree with the applicant’s submissions more generally in that there are, plainly, a wide range of different design choices that go into making planters such as their style, size, shape and placement of openings. The only points that I consider as being something that is required to fulfil the product’s function (when used as a plant or flower pot) is that the designer must ensure that the ornament is capable of containing soil within it and that there is an opening to allow access to the soil or plants placed within it.

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<sup>2</sup> Paragraph 34.

28. To confirm, beyond the constraints I have discussed above, the designer has freedom to choose a number of configurations for the design. This includes the following:

- a. the shape and style of the product;
- b. the size of the product;
- c. the texture of the product, which will have an impact on its appearance; and
- d. whether the product is made from a single compartment or whether it is constructed from a combination of different sections.

### Comparison of the designs

29. The representations of all of the designs before me are photographs of each design, often from multiple angles. In the applicant's first design, however, there are two photographs but they appear to be the same image, the only difference being the inclusion of text in the second image confirming that no claim is made to the colour or material shown. Generally, where the representations of a design are photographs, the design claimed consists of all those features that can be seen in the photographs. This may present problems for the applicant because, as will be seen below, its images do not include photographs from certain angles that limits my impression of the overall designs.

30. As set out above, the prior designs all include disclaimers in respect of the colours and materials used. As such, the colours and materials used have no impact upon the comparisons I must make below.





31. I note that I have submissions from both parties in respect of the same. Where I deem it relevant to do so, I will discuss those submissions further. However, for the avoidance of doubt, I can confirm that regardless of whether the submissions are mentioned or not, I have taken them all into consideration.

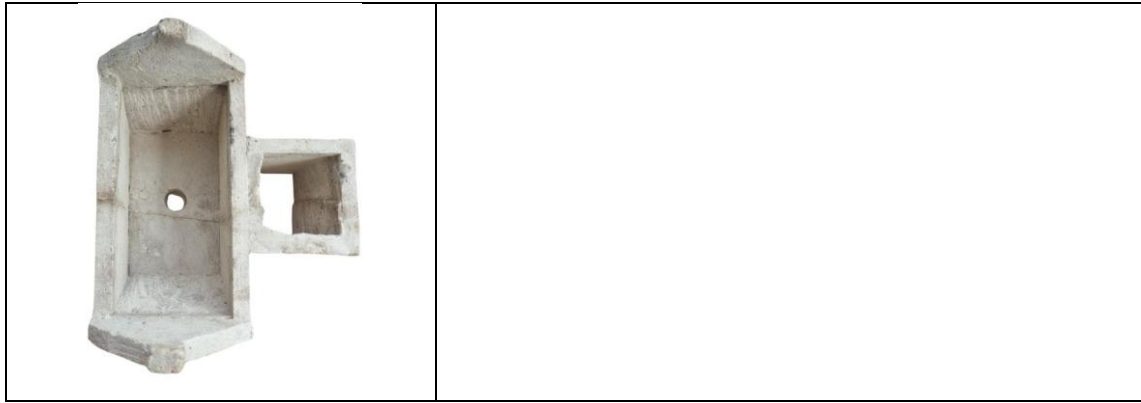
32. In comparing the designs at issue, I will take the approach of assessing the contested designs separately. In doing so, I will also assess each of those designs

against the three examples of prior art separately. After each comparison, I will make a finding as to whether the contested design has its own individual character when compared to the prior art, or not.

*The first contested design*

33. In the table below I show the first contested design alongside the first prior art relied upon.

The contested design	The first prior art
	
	
	



34. The features that the informed user would note as being in common between the two designs are as follows:

- a. The designs appear in the shape of a house, both of which feature a front door as well as two windows either side of the centre object (be that a porch or a door).
- b. Neither of the house designs have a roof but instead have large openings where a roof would be.
- c. Both designs have side walls that extend upwards from the main structure of the house in a triangular shape, the tips of which appear as though they are designed in a way to replicate the shape of a chimney.

35. The features that the informed user would note as being different are as follows:

- a. The proportions of the designs differ on the basis that prior art appears to be flatter and wider than the contested design.
- b. The side section that extends up beyond the main section is proportionately larger in the prior art than the equivalent section in the contested design.
- c. The contested design features a porch that significantly protrudes from the main body of the house.
- d. While the chimney aspects of the designs are noted, the chimneys in the prior art are taller and thinner when compared to the contested design. Further, they have chimney caps on them which are not present on the contested design.

- e. The windows and door of the prior art appear to be sunk into the surface of the design itself whereas the windows and door in the contested design have an embossed effect. In respect of the windows, it is also noted that they are represented by a frame/border as opposed to the entirety of the windows themselves.
- f. The rear of the contested design has a line down its middle. I cannot see the design of the rear of the prior art to enable me to determine whether this feature exists.
- g. The middle of the bottom of the inside section of the contested design includes a hole. In the absence of any image to the contrary, I cannot assume that the prior art includes or does not include this feature.

36. I wish to deal firstly with the fact that both designs are modelled on the appearance of a house. The parties discuss the fact that the designs are based on a style of cottage used in the Shetland Isles (known as a 'peenie hoose'). While noted, I find that the informed user would attribute the designs as being simply one storey houses. Whether they recognise the type of house is not relevant. Simply, the question is whether the designs give the same overall impression or not. On this point, I consider it necessary to set out that while the informed user will notice the use of a house as a point of similarity between the designs, it does not mean that they possess the same overall impression. I say this because while there is a wide range of real-world inspiration upon which to base a garden ornament or an indoor/outdoor ornament, the use of a house is not so remarkable or compelling that it automatically results in a shared overall impression.

37. In my view, the informed user will pay attention to the designs as wholes. They will not necessarily scrutinise every point of difference in detail as, for example, they may not necessarily notice the hole in the bottom of the contested design or the line on its back. However, other points of difference will clearly be noticed, such as the different overall shapes/proportions of the design and the large porch element of the contested design. In respect of the latter point, it is noted that the applicant's evidence argues that this does not alter the overall impression from an open-roofed croft house. While I agree that the design will still be viewed as an open-roofed

house despite the presence of the porch, I am of the view that it is a prominent feature of the contested design that takes its character away from being one that is the same as the prior art. Overall, I find that the cumulative impact of all of the points of difference discussed above will create a different overall impression across the two designs. As a result, I find that the first contested design possesses its own individual character when compared with the first piece of prior art.

38. In the table below I show the first contested design alongside the second prior art relied upon.

The contested design	The second prior art
	
	



39. The features that the informed user would note as being in common between the two designs are that they both appear in the shape of a house which feature a front door as well as two windows either side of the centre object (be that a porch or a door). Both designs have side walls that extend upwards from the main structure of the house in a triangular shape, the tips of which appear as though they are designed in a way to replicate the shape of a chimney. Lastly, while the prior art includes a roof, this appears to be removable and, when removed, both designs share the fact that they do not have roofs but instead, have large openings where a roof would be.

40. The features that the informed user would note as being different are as follows:

- a. The prior art includes a roof. The contested design does not. It is noted that the evidence of the applicant argues that the design protects the product with or without a roof. While the roof appears to be removable, it is included in every image of the design so is a feature that I must consider.
- b. The contested design features a porch that significantly protrudes from the main body of the house.
- c. The windows of the prior art appear as holes through the front of the design whereas the windows on the contested design are not. Instead, they are represented by an embossed border/frame.
- d. The door in the prior art appears to be a hole whereas the door of the contested design protrudes out with an embossed effect.
- e. The rear of the contested design has a line down its middle whereas the rear of the prior art has a centralised window in the form of a hole.
- f. The middle of the bottom of the inside section of the contested design includes a hole. In the absence of any image to the contrary, I cannot assume that the prior art includes or does not include this feature.
- g. In contrast to the rougher and more rugged look of the contested design, the prior art appears to be smoother in terms of the surface and its edges.

41. The points I made at paragraph 36 above in respect of the nature of the designs being houses are applicable here. Taking a similar approach to the assessment I made at paragraph 37 above, I find that while the points of similarity between the designs are noted, the cumulative nature of all differences and prominent nature of others will all combine to form a different overall impression. In respect of the more prominent points of difference, I refer to the protruding porch element and the fact that, while it may be removable, the roof is a significant feature of the prior art. As a result, I find that the first contested design possesses its own individual character when compared with the second piece of prior art.

42. In the table below I show the first contested design alongside the third piece of prior art relied upon.

The contested design	The third prior art
	
	



43. Much like the comparison with the prior designs already discussed above, both of these designs contain features that the informed user would note as being in common between them. Both appear in the shape of a house which feature a front door as well as two windows either side of the centre object (be that a porch or a door). The designs have side walls that extend upwards from the main structure of the house in a triangular shape, the tips of which appear as though they are designed in a way to replicate the shape of a chimney. Lastly, while the prior art includes a roof, this appears to be removable and, when removed, both designs share the fact that they do not have roofs but instead, have large openings where a roof would be.

44. The features that the informed user would note as being different are as follows:




- a. The doors and windows of the prior art appear to be relatively small when compared to the size of the windows and door of the contested design.
- b. The prior art has a removable roof that appears to be made of grass, be that natural or artificial. The contested design does not. It is noted that some of the illustrations of the prior art here do not include the roof but it is present in others so is, therefore, a point of difference.
- c. The contested design features a porch that significantly protrudes from the main body of the house.
- d. While the chimney aspect of the designs is noted, the chimneys in the prior art include 'chimney caps'.
- e. The windows in the prior art are painted black and while the use of colour has been disclaimed, the windows themselves are sunk into the surface of the design. The windows on the contested design are represented by an embossed border/frame.
- f. The door of the prior art is sunk into the surface of the house whereas the door on the contested design protrudes out with an embossed effect.
- g. Above the door in the prior art is a small horizontal line akin to a beam above a door. It is not clear whether this is sunk into the surface or embossed but, regardless, it is a point of difference.
- h. The side view of the prior art shows that the main body of the product is raised from the ground. Taking the representations as a whole, I come to the view that the product is supported by two shallow plinths running the length of the front and back of the house.
- i. The rear of the contested design has a line down its middle whereas the rear of the prior art has a centralised window.
- j. In contrast to the rougher and more rugged look of the contested design, the prior art appears to be smoother in terms of the surface and its edges.

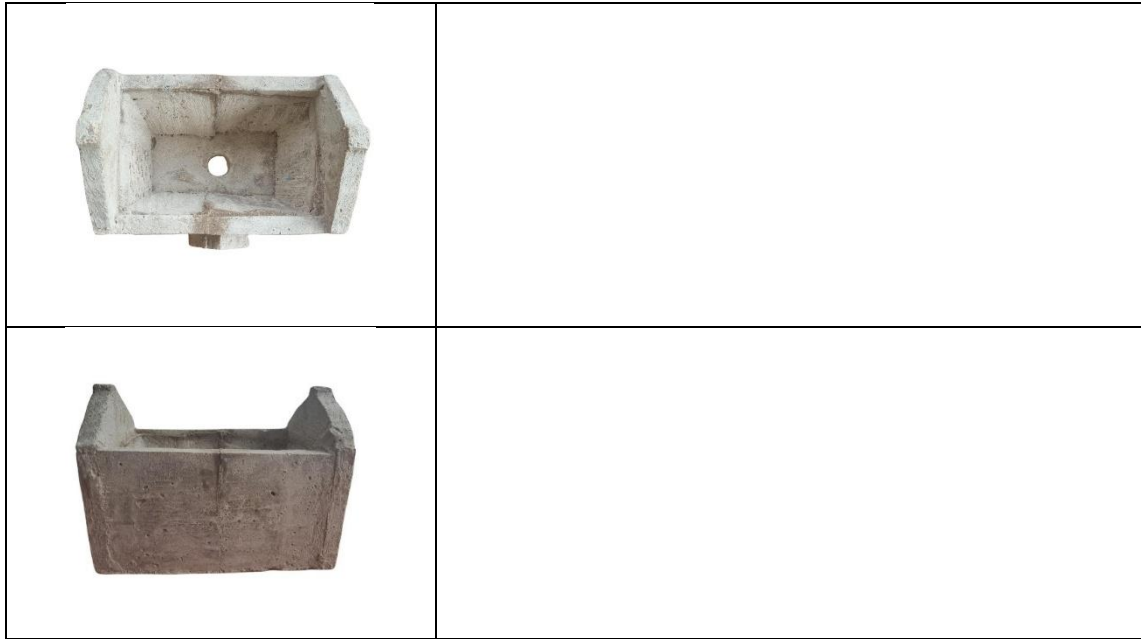
45. The points I made at paragraph 36 above in respect of the nature of the designs being houses are applicable here. At paragraph 37 above, I stated that the informed user will pay attention to the designs as wholes and that they would not necessarily scrutinise every point of difference in detail. However, as was also the case at paragraph 37 above, there are other points of difference that will clearly be

noticed. In the present case, this includes the presence of a roof in the prior art and the large porch element of the contested design. While I appreciate that the designs will both be viewed as modelled after houses, I find that the cumulative impact of all of the points of difference as well as the impact of the prominent points of difference will combine to create a different overall impression across the two designs. As a result, I find that the first contested design possesses its own individual character when compared with the third prior art.

*The second contested design*

46. In the table below I show the second contested design alongside the first prior art relied upon.

The contested design	The first prior art
	
	



47. The features that the informed user would note as being in common between the two designs are that they both appear in the shape of a house with two windows, one on either side of the object in the centre (be that a door or a porch). Further, neither of the designs have a roof and, in place of this, they both contain a large opening. Both designs have a section of the sides that extends upwards in a triangular shape from the main structure of the house. The tips of these sections appear as though they are designed in a way to replicate the shape of a chimney.

48. The features that the informed user would note as being different are as follows:

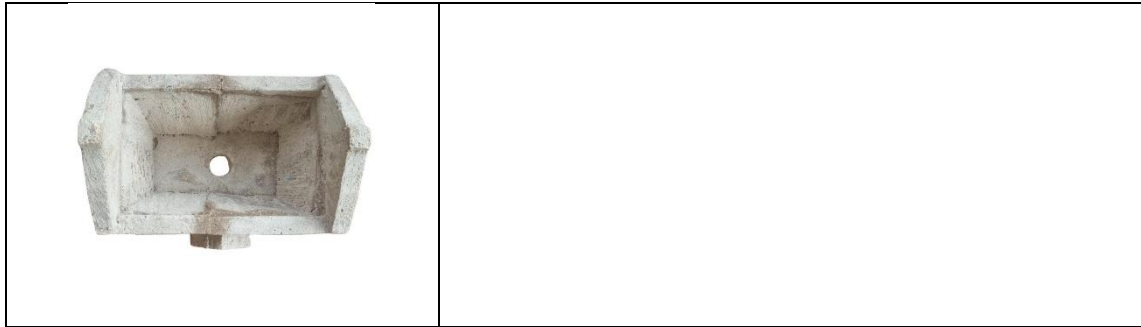
- a. The proportions of the designs differ on the basis that prior art appears to be flatter and wider than the contested design.
- b. The sections to either side of each design that extend up beyond the main section are proportionately larger and steeper in the prior art than the equivalent section in the contested design. This is clearly demonstrated by the side-view image of the contested design.
- c. The contested design features a shallow slope-roofed porch that protrudes from the main body of the house.

- d. The prior art includes a door sunk into the surface of the design and while a porch is present in the contested design, it does not actually appear to feature a door.
- e. While the chimney aspects of the designs are noted, the chimneys in the prior art are taller and thinner, and have chimney caps on them.
- f. The windows of the prior art appear to be sunk into the surface of the design as opposed to being represented by an embossed frame/border effect on the contested design.
- g. The image of the side of the contested design appears to show that its shape is a more angled pentagon, as opposed to the seemingly more standard pentagon in the prior art.
- h. The rear of the contested design is blank. There is no image of the prior art to allow me to view its rear to determine whether it includes any features or if it is also blank.
- i. The middle of the bottom of the inside section of the contested design includes a hole. In the absence of any image to the contrary, I cannot assume that the prior art includes or does not include this feature.

49. The points I made at paragraph 36 above in respect of the nature of the designs being houses are applicable here. While the contested design here differs from those compared above, I consider that the overall outcome is similar. In short, I appreciate that the points of similarity between the designs would be noted, but it is my view that the differences will not go unnoticed, particularly given their cumulative nature and the prominence of the contested design's features, such as its porch and overall shape. Overall, I consider that the informed user will view the designs as carrying their own, distinct, overall impressions. As a result, I find that the second contested design possesses its own individual character when compared with the first prior art.

50. In the table below I show the second contested design alongside the second prior art relied upon.

The contested design	The second prior art
	
	
	





51. The features that the informed user would note as being in common between the two designs are that they both appear in the shape of a house which feature two windows either side of the centre object (be that a porch or a door) and a chimney on either side. Once the roof is removed, the 'house section' of the prior art includes an opening at its top, being the same area that is open on the contested design. The features that the informed user would note as being different are as follows:

- a. The prior art includes a roof. The contested design does not. It is noted that the evidence of the applicant argues that the design protects the product with or without a roof. While the roof appears to be removable, it is included in every image of the design so is a feature that I must consider.
- b. The contested design features a shallow slope-roofed porch that protrudes from the main body of the house.
- c. The prior art includes a door sunk into the surface of the design and while a porch is present in the contested design, it does not actually appear to feature a door.
- d. The windows of the prior art appear as holes through the front of the design whereas the windows on the contested design are represented as embossed borders/frames.
- e. The rear of the prior art has a centralised window in the form of a hole whereas the rear of the contested design is blank.
- f. The image of the side of the contested design appears to show that its shape is a more angled pentagon, as opposed to the seemingly more standard pentagon in the prior art.

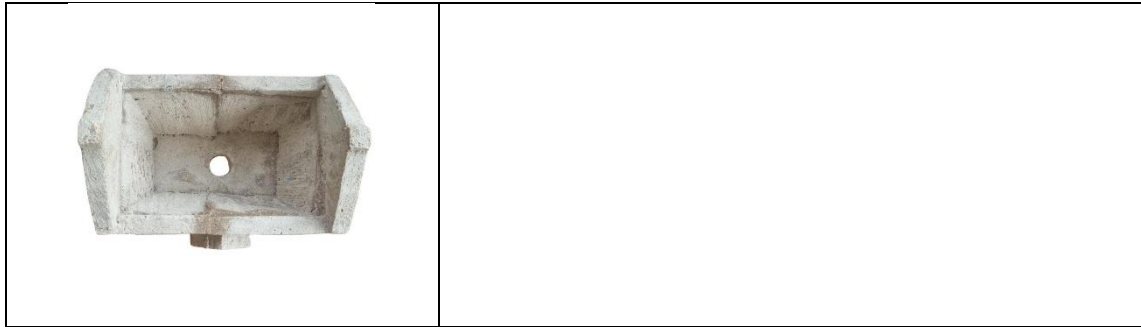
- g. The middle of the bottom of the inside section of the contested design includes a hole. In the absence of any image to the contrary, I cannot assume that the prior art includes or does not include this feature.
- h. In contrast to the rougher and more rugged look of the contested design, the prior art appears to be smoother in terms of the surface and its edges.

52. The points I made at paragraph 36 above in respect of the nature of the designs being houses are applicable here. Taking all of the above into account and following a similar approach to that taken with regard to the findings at paragraph 49 above, I find that while the points of similarity between the designs will be noted, the differences will not go unnoticed. Instead, it is my view, the differences are just too numerous and the prominent features of the protruding porch element and the overall shape of the contested design will, plainly, impart it with a different overall impression when compared to the prior art. As a result, I find that the second contested design possesses its own individual character when compared with the second prior art.

53. In the table below I show the second contested design alongside the third prior art relied upon.

The contested design	The third prior art
	





54. The features that the informed user would note as being in common between the two designs are that they both appear in the shape of a house which feature two windows either side of the centre object (be that a porch or a door). When the roof of the prior art is removed, the prior art includes an opening at its top, being the same area that is open on the contested design. The features that the informed user would note as being different are as follows:

- a. The prior art has a removable roof that appears to be made of grass, be that natural or artificial. The contested design does not. It is noted that some of the illustrations of the prior art here do not include the roof but it is present in others so is, therefore, a point of difference.
- b. The doors and windows of the prior art appear to be relatively small when compared to the size of the windows and door of the contested design.
- c. The contested design features a shallow slope-roofed porch that protrudes from the main body of the house.
- d. The prior art includes a door sunk into the surface of the design and while a porch is present in the contested design, it does not actually appear to feature a door.
- e. The windows in the prior art are painted black and while the use of colour has been disclaimed, the windows themselves are sunk into the surface of the design. The windows on the contested design are represented by an embossed border/frame.
- f. Above the door in the prior art is a small horizontal line akin to a beam above a door. It is not clear whether this is sunk into the surface or embossed but, regardless, it is a point of difference.

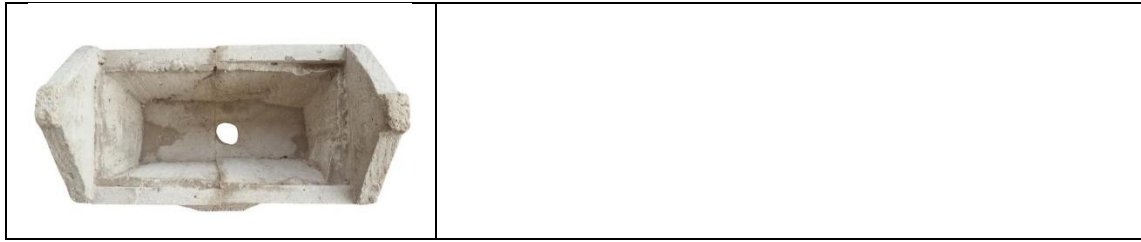
- g. The rear of the contested design is blank whereas the rear of the prior art has a centralised window.
- h. The side view of the prior art shows that the main body of the product is raised from the ground. Taking the representations as a whole, I come to the view that the product is supported by two shallow plinths running the length of the front and back of the house.
- i. The image of the side of the contested design appears to show that its shape is a more angled pentagon, as opposed to the seemingly more standard pentagon in the prior art.
- j. The middle of the bottom of the inside section of the contested design includes a hole. In the absence of any image to the contrary, I cannot assume that the prior art includes or does not include this feature.
- k. In contrast to the rougher and more rugged look of the contested design, the prior art appears to be smoother in terms of the surface and its edges.

55. The points I made at paragraph 36 above in respect of the nature of the designs being houses are applicable here. Considering all of the points of similarity and difference, I accept that the points of similarity between the designs will not be ignored. However, the differences between the designs are numerous with some of them being what I consider to be prominent points of difference. For example, the porch in the contested design, the roof on the prior art and the window on its rear are, in my view, points of difference that the informed user will immediately notice. Overall, I find that the differences all combine to contribute to the finding that when the designs are viewed by the informed user, they will carry different overall impressions. As a result, I find that the second contested design possesses its own individual character when compared with the third piece of prior art.

#### *The third contested design*

56. In the table below I show the third contested design alongside the first prior art relied upon.

The contested design	The first prior art
	
	
	
	




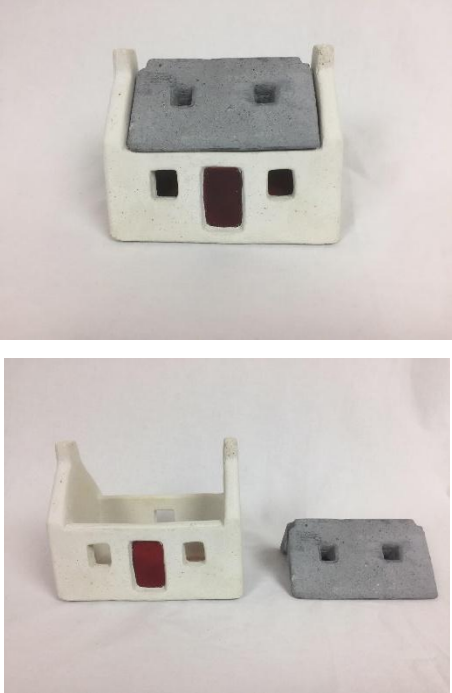
57. The features that the informed user would note as being in common between the two designs are that they both appear in the shape of a house with a door, two windows either side of the door and two chimneys. Neither of the house designs have a roof and, instead, have large openings at their tops. The features that the informed user would note as being different are as follows:

- a. The proportions of the designs differ on the basis that prior art appears to be flatter and wider than the contested design.
- b. The contested design features what appears to be a protruding door as opposed to the door in the prior art which is sunk into the surface of the design.
- c. Above the door in the contested design is a protruding beam-like feature and below it is a protruding step-like feature.
- d. While the chimney aspect of the designs is noted, the chimney in the prior art is taller and thinner when compared to the more squat-like chimney in the contested design. Further, the chimneys in the prior art include chimney caps.
- e. The bottom of the front of the contested design has a small ridge along it.
- f. The windows and door of the prior art are sunk into the surface of the design as opposed to the windows in the contested design being highlighted simply by an embossed border/frame.
- g. The rear of the contested design has a vertical line whereas no image of the rear of the prior art is provided. In the absence of any image to the contrary, I cannot assume that the prior art includes or does not include this feature
- h. The middle of the bottom of the inside section of the contested design includes a hole. In the absence of any image to the contrary, I cannot assume that the prior art includes or does not include this feature

58. The points I made at paragraph 36 above in respect of the nature of the designs being houses are applicable here. In comparing these two designs, I appreciate

that the points of similarity between the designs will be noticed by the informed user. However, as has already been the case throughout my decision so far (and following similar reasons set out above), I find that the cumulative nature of the differences is such that they will offset any point of similarity. Further, there are points of difference that will be more prominent than others, such as the overall shape of the designs and the door, beam and step aspect of the contested design. I consider that the informed user will see the two designs as being unique designs with different overall impressions that just so happen to be modelled after houses. As a result, I find that the third contested design possesses its own individual character when compared with the first prior art.

59. In the table below I show the third contested design alongside the second prior art relied upon.

The contested design	The second prior art
	



60. The features that the informed user would note as being in common between the two designs are that they both appear in the shape of a house with a door, two windows either side of the door and two chimneys. When the roof of the prior art is removed, it has a large opening at its top, being the same area that is open on the





contested design. The features that the informed user would note as being different are as follows:

- a. The prior art includes a roof. The contested design does not. It is noted that the evidence of the applicant argues that the design protects the product with or without a roof. While the roof appears to be removable, it is included in every image of the design so is a feature that I must consider.
- b. The windows of the prior art appear as holes through the front of the design whereas the windows on the contested design are not. Instead, they appear to be highlighted by embossed borders/frames.
- c. The door in the prior art is a hole whereas the door of the contested design protrudes out with an embossed effect.
- d. The beam and step-like element that sit above and below the door of the contested design, respectively, are not present in the prior art.
- e. The rear of the contested design has a vertical line whereas the rear of the prior art has a centralised window.
- f. The middle of the bottom of the inside section of the contested design includes a hole. In the absence of any image to the contrary, I cannot assume that the prior art includes or does not include this feature.
- g. In contrast to the rougher and more rugged look of the contested design, the prior art appears to be smoother in terms of the surface and its edges.

61. The points I made at paragraph 36 above in respect of the nature of the designs being houses are applicable here. I consider that these two designs are closer in their overall impressions than those designs I have compared above. That being said, I still consider that their overall impressions differ. I say this because when the informed user is considering the designs, they will not be subjecting them to minute scrutiny but the level of attention will be sufficient enough to allow them to notice the difference in features, especially at the front of the designs. Further, the informed user will plainly notice that one design has a roof and the other does not. Lastly, when viewing the rear of the designs, the appearance of a window in the prior art will not go unnoticed either. As a result, I find that the third contested

design possesses its own individual character when compared with the second prior art.

62. In the table below I show the third contested design alongside the third prior art relied upon.

The contested design	The third prior art
	
	



63. The features that the informed user would note as being in common between the two designs are that they both appear in the shape of a house with a door, two windows either side of that door and two chimneys on the side walls of the house design. Additionally, above the doors in both designs is a beam like embellishment. If the roof of the prior art is removed, both designs feature openings at their tops. The features that the informed user would note as being different are as follows:




- a. The doors and windows of the prior art appear to be relatively small when compared to the size of the windows and door of the contested design.
- b. The prior art has a removable roof that appears to be made of grass, be that natural or artificial. The contested design does not. It is noted that some of the illustrations of the prior art do not include the roof but it is still present in the design so is, therefore, a point of difference.
- c. While the chimney aspect of the designs is noted, the chimneys in the prior art include 'chimney caps'.
- d. The windows in the prior art are painted black and while the use of colour has been disclaimed, the windows themselves are sunk into the surface of the design. The windows on the contested design are represented by an embossed border/frame.
- e. The door of the prior art is sunk into the surface of the design of the house whereas the door on the contested design protrudes out with an embossed effect.
- f. The contested design features an embossed step whereas the prior art does not.
- g. The side view of the prior art shows that the main body of the product is raised from the ground. Taking the representations as a whole, I come to the view that the product is supported by two shallow plinths running the length of the front and back of the house.
- h. The rear of the contested design has a line down its middle whereas the rear of the prior art has a centralised window.
- i. In contrast to the rougher and more rugged look of the contested design, the prior art appears to be smoother in terms of the surface and its edges.

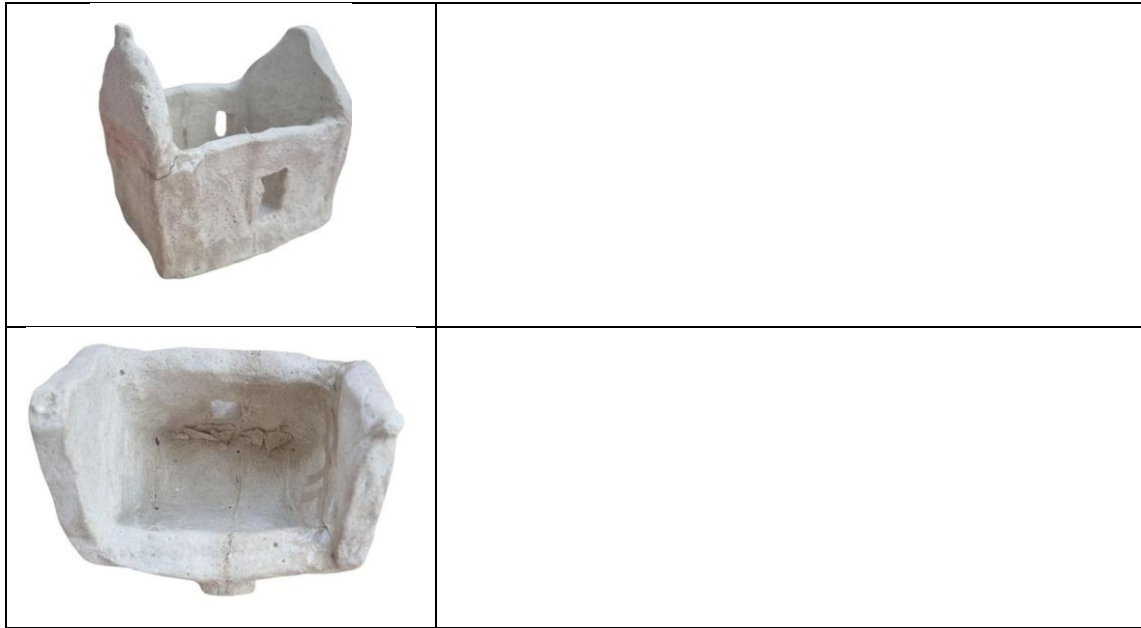
64. The points I made at paragraph 36 above in respect of the nature of the designs being houses are applicable here. In considering these designs, it is my view that they represent the closest comparators across all of the designs that I have considered so far. I say this because (1) the protruding door in the contested design is not as prominent and (2) both designs feature a beam feature above their doors. That being said, I do not consider that this automatically results in the designs

having the same overall impression. As above, there are a number of differences and, whilst the similar beam effect is noted, it does not offset these points. For example, the difference to the rears of the designs, the fact that the prior art has a roof and the differences in the way in which the doors and windows are presented will not be overlooked simply because both designs have a beam effect above their doors. It is my view that, when taking the designs as wholes, the informed user will consider that the points of difference work together to create a different overall impression across each design. As a result, I find that the third contested design possesses its own individual character when compared with the third prior art relied upon by the applicant.

*The fourth contested design*

65. In the table below I show the fourth contested design alongside the first prior art relied upon.

The contested design	The first prior art
	
	



66. The features that the informed user would note as being in common between the two designs are that they both appear in the shape of a house with a door and two windows either side of that door. Neither of the house designs have a roof and both have a section of the sides that extends upwards from the main structure of the house. The features that the informed user would note as being different are as follows:



- a. The overall shapes of the designs differ in that the contested design is more in line with a cube shape whereas the prior art is a cuboid.
- b. The contested design features what appears to be a protruding door with a rounded top whereas the door in the prior art is sunk into the surface of the design. From the images provided, and when considering their placement in contrast with the door, it appears as though the windows in the contested design sit higher than their counterparts in the prior art.
- c. The contested design includes one chimney, albeit not an overly prominent one. The prior art includes two prominent chimneys with chimney caps.
- d. The windows of the prior art appear to be sunk into the surface of the design as opposed to the windows in the contested design being holes.
- e. The rear of the contested design has a window at its centre whereas no image of the rear of the prior art is provided. In the absence of any image to the

contrary, I cannot assume that the prior art includes or does not include this feature

- f. While both designs include an opening at their tops, the contested design's opening appears squarer than the rectangular opening in the prior art
- g. In contrast to the rougher and more rugged look of the contested design, the prior art appears to be smoother in terms of the surface and its edges.

67. The points I made at paragraph 36 above in respect of the nature of the designs being houses are applicable here. While the points of similarity between the designs are noted, it is my view that the differences I have discussed above will not go unnoticed, particularly the styling of the doors/windows and, the overall shape and proportions of the contested design when compared to the prior art. I consider that the informed user will view the differences as creating different overall impressions across these designs. As a result, I find that the fourth contested design possesses its own individual character when compared with the first prior art.

68. In the table below I show the fourth contested design alongside the second prior art relied upon.

The contested design	The second prior art
	



69. The features that the informed user would note as being in common between the two designs are that they both appear in the shape of a house with a door and two windows either side of that door and one on their rears (all windows appear as holes). Both have a section of the sides that extends upwards from the main structure of the house. The prior art includes a roof but, when removed, the design

includes an opening at its top, being the same area that is open on the contested design. The features that the informed user would note as being different are as follows:

- a. The overall shapes of the designs differ in that the contested design is more in line with a cube shape whereas the prior art is a cuboid.
- b. The prior art includes a roof. The contested design does not. It is noted that the evidence of the applicant argues that the design protects the product with or without a roof. While the roof appears to be removable, it is included in every image of the design so is a feature that I must consider.
- c. The door in the prior art is a hole whereas the door of the contested design protrudes out with an embossed effect.
- d. From the images provided, and when considering their placement in contrast with the door, it appears as though the windows in the contested design sit higher than their counterparts in the prior art.
- e. The contested design includes one chimney, albeit not an overly prominent one. The prior art includes two prominent chimneys.
- f. While both designs include an opening at their tops, the contested design's opening appears squarer than the rectangular opening in the prior art.
- g. In contrast to the rougher and more rugged look of the contested design, the prior art appears to be smoother in terms of the surface and its edges.

70. The points I made at paragraph 36 above in respect of the nature of the designs being houses are applicable here. While the points of similarity between the designs are noted, it is my view that the differences I have discussed above will not go unnoticed. In short, I see no scenario where the informed user would consider the designs as carrying the same overall impression, particularly in light the difference in overall stylings of the designs. Ultimately, I find that when viewed as wholes, the numerous differences all work together to contribute to the contested design being bestowed with a different overall impression to that of the prior art. As a result, I find that the fourth contested design possesses its own individual character when compared with the second prior art.

71. In the table below I show the fourth contested design alongside the third prior art relied upon.

The contested design	The third prior art
	
	



72. The features that the informed user would note as being in common between the two designs are that they both appear in the shape of a house with a door and two windows either side of that door and one on their rears. Both have a section of the sides that extends upwards from the main structure of the house. The prior art includes a roof but, when removed, the design includes an opening at its top, being the same area that is open on the contested design. The features that the informed user would note as being different are as follows:

- a. The overall shapes of the designs differ in that the contested design is more in line with a cube shape whereas the prior art is a cuboid.
- b. The prior art includes a roof made of grass (be that natural or artificial). It is noted that some of the illustrations of the prior art here do not include the roof but it is present in others so, therefore, is a point of difference.
- c. The door in the prior art is sunk into the surface of the design and painted. Even ignoring the use of a different colour, the contested design features what appears to be a protruding door with a rounded top.
- d. From the images provided, and when considering their placement in contrast with the door, it appears as though the windows in the contested design sit higher than their counterparts in the prior art.

- e. The windows in the prior art are painted black and while the use of colour has been disclaimed, the windows themselves are sunk into the surface of the design. The windows on the contested design are represented by holes.
- f. The contested design includes one chimney, albeit not an overly prominent one. The prior art includes two prominent chimneys with chimney caps
- g. While both designs include an opening at their tops, the contested design's opening appears squarer than the rectangular opening in the prior art.
- h. In contrast to the rougher and more rugged look of the contested design, the prior art appears to be smoother in terms of the surface and its edges.

73. The points I made at paragraph 36 above in respect of the nature of the designs being houses are applicable here. While the points of similarity between the designs are noted, I do not consider that the informed user would believe that they possess the same overall impression. In short, I find that, collectively, the points of difference all contribute to a differing overall impression across the designs. I consider this to particularly be the case when you factor into account the prominent differences in stylings, not only of the windows and doors but the overall look of the contested design. As a result, I find that the fourth contested design possesses its own individual character when compared with the third prior art.

## **Novelty**

74. Section 1B(2) of the Act states that a design has novelty if no identical design or no design differing only in immaterial details has been made available to the public before the relevant date. In *Shnuggle Limited v Munchkin, Inc & Anor* [2019] EWHC 3149 (IPEC), HHJ Melissa Clarke, sitting as a Judge of the High Court, said:

“26. ‘Immaterial details’ means ‘only minor and trivial in nature, not affecting overall appearance’. This is an objective test. The design must be considered as a whole. It will be new if some part of it differs from any prior art in some material respect, even if some or all of the design features, if considered individually, would not be.”

75. As I found that the differences between the designs at issue were sufficient to create a different overall impression on the informed user, it follows that these details are material and so the contested designs will be considered new when compared with the prior designs relied upon by the applicant.

## **CONCLUSION**

76. The applications to invalidate the contested designs are unsuccessful. As such, Registered Designs numbered 6383665, 6383666, 6383667 and 6383668 are hereby permitted to remain registered.

## **COSTS**

77. The registered proprietor has succeeded in defending the applications in their entirety. Despite being entitled to recover her costs, the registered proprietor confirmed in her submissions in lieu of a hearing that she did not wish to seek the costs of these proceedings. In light of this, I make no order as to costs.

**Dated this 1<sup>st</sup> day of June 2026**

**A COOPER**

**For the Registrar**