O/0992/26

REGISTERED DESIGNS ACT 1949

IN THE MATTER OF:

REGISTERED DESIGN NO 6303339

IN THE NAME OF SHENZHEN YISIMEI TECHNOLOGY CO., LTD

IN RESPECT OF THE FOLLOWING DESIGN



AND

AN APPLICATION FOR INVALIDATION (NO 269/24)

BY SU QIAN

BACKGROUND AND PLEADINGS

1. These proceedings concern an application for a declaration of invalidity against Registered Design No. 6303339. On 13 August 2023 ("the relevant date"), Shenzhen Yisimei Technology Co., Ltd ("the registered proprietor") applied for it to be registered. It was entered on the Register on 22 August 2023 and published on 23 August 2023. The product to which the design is intended to be applied is recorded on the Register as *Bumbag; Waist bag*.

2. The main representation of the design is shown below, with the remaining representations set out in [paragraph 12] below:



3. On 31 October 2024, Su Qian ("the applicant") 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 it did not meet the requirements of section 1B of the Act that a registered design must be new and have individual character compared to other designs that have been made available to the public before the relevant date. The applicant claims that the registered design lacks novelty and individual character when compared with five examples of prior art, which were made available to the public on 23 April 2021, 18 April 2023, 16 October 2020, 17 April 2022 and 21 July 2019 respectively. These five items of alleged prior art ("Prior Art 01" – "Prior Art 05") are reproduced in the Annex to this decision.

4. On 27 December 2024, the registered proprietor filed a defence and counterstatement to the application for invalidation, denying the applicant's claims. In particular, it challenges the ability of the applicant to rely on the prior art for reasons I

shall discuss later. It claims that there is very limited design freedom and any differences between the designs will have a significant impact on the informed user.

5. On 5 February 2025, the applicant contacted the Registry to say that they had found some more prior designs and to ask whether these could be filed in evidence. The Registry replied on 18 February 2025, explaining that further designs could be included in the evidence but that, if the applicant wished the hearing officer to use them as the basis for the comparison with the registered design, they would have to make a request to amend their pleadings.

6. On 18 February 2025, the applicant filed the following documents: (a) what they described as an amended statement of case; (b) written submissions; (c) evidence in the form of a witness statement from Su Qian dated 18 February 2025; and (d) Exhibits SQ1 to SQ11 to accompany the witness statement. The first five of these exhibits show the prior art relied on in the original statement of case. Exhibits SQ8 and SQ9 show Prior Art 01 for sale on other e-commerce websites. The listings show earlier "first available" dates than the one given in the original statement of case: 13 March 2019 and 8 June 2019. Exhibits SQ6, SQ7, SQ10 and SQ11 contain further images of waist bags. As the two versions of the statement of case are identical, no additional prior art was introduced by amendment. I shall therefore only use Prior Art 01 to Prior Art 05 as the basis for my comparison of the designs. I shall take Exhibits SQ6, SQ7, SQ10 and SQ11 into account for the purposes of assessing the degree of design freedom.

7. The registered proprietor filed no evidence or submissions.

8. Neither side requested a hearing. I have taken this decision after careful consideration of the papers before me. In these proceedings, the applicant is represented by Mei-Leng Fong and the registered proprietor by Paweł Wowra.

RELEVANCE OF EU LAW

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.

DECISION

10. 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".

11. 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 Contested Design

12. The contested design is shown in the following representations:

Illustration 1



Illustration 2



Illustration 3



Illustration 4



Illustration 5



Illustration 6



13. It is well-established that the determination of what design is actually registered is a matter for the court (or tribunal): see *Sealed Air Limited v Sharp Interpack Limited & Anor* [2013] EWPCC 23, paragraph 20. In my view, these representations are photographs showing six different views of a waist bag: the front, back, top, bottom and two sides respectively. In *Safestand Limited v Weston Homes PLC & Ors* [2025] EWCA Civ 374, Arnold LJ said at paragraph 11 that *"Where, as in the present case, the images are photographs, the design claimed consists of the product features – the lines, contours, colours, shape, texture, materials and/or ornamentation – visible in the photographs."* I shall take account of all these features where relevant.

Prior Art

14. As I have already noted, the applicant's statement of case refers to five earlier designs. The registered proprietor challenges the ability of the applicant to rely on any of these.

15. Prior Art 01, Prior Art 04 and Prior Art 05 were, according to the applicant, disclosed on e-commerce websites. The registered proprietor notes that the listings contain information on the dates that the products were first available but argues that the photographs used on such listings can be changed at any time. It adds that the applicant has not adduced any verified reviews that include photographs of the products. The applicant submits that the printouts from these e-commerce websites should be deemed to be *prima facie* valid. The registered proprietor has provided no explanation as to the process of listing goods or amending listings on the Amazon platform in order to support its criticisms of the applicant's evidence. I note that a similar argument was put forward in *GBL UK Trading Limited v H&S Alliance Ltd*, BL O/374/21, where an appellant alleged that the respondent, despite filing earlier listings, was able to change the images of the products after the original listing date. In that case, the Appointed Person, Mr Martin Howe QC, set out that even though the respondent's evidence of product listings was rather thin and could have been better supported, it was not duly contradicted by the appellant. He was satisfied that, on the balance of probabilities, the respondent's listings were acceptable. In the present case, I note that the registered proprietor has not appropriately contradicted the applicant's evidence. As such, I am prepared, on the balance of probabilities, to accept the applicant's listings as earlier disclosures.

16. The registered proprietor submits that the Chinese-language documents adduced as evidence of the alleged disclosures of Prior Art 02 and Prior Art 03 are not accompanied by certified translations prepared by a competent translator. Consequently, it argues, their contents cannot be verified. The documents are extracts from the Chinese design register. The applicant has filed a witness statement from Mei-Leng Fong, dated 31 October 2024, in which they declare that they are well acquainted with both the Chinese and English languages and are well qualified to provide accurate English translations of the documents for Prior Art 02 and Prior Art 03. They confirm that they carried out the translations and that they are accurate to the best of their knowledge. The applicant submits that this is sufficient to enable me to take account of the translations. I agree. The registered proprietor has not sought to cross-examine Mei-Leng Fong on their witness statement.

17. I consider that listings on e-commerce websites and publications by intellectual property offices are capable of constituting disclosures. For the reasons given above, I accept on the evidence before me that these designs were disclosed before the relevant date. In any event, for reasons that will become clear later in my decision, nothing will turn on this. The registered proprietor has not claimed that any of the examples of prior art would be exempt disclosures under section 1B(6). I therefore accept that they are prior art on which the applicant may rely.

Individual Character

18. 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]

> "(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

[1] This case concerned a Registered Community Design ("RCD"), but the same law applies to UK registered designs.

(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."

19. I also bear in mind the comments of HHJ Birss QC (as he then was), sitting as a Deputy Judge of the Patents Court, in *Samsung Electronics (UK) Ltd v Apple Inc* [2012] EWHC 1882 (Pat):

"58. 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."[2]

20. The relevant sector is waist bags, also known as bum bags.

The informed user

21. In *Samsung*, the judge 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);

[2] Although the judge made these comments in the context of an alleged infringement, they are still relevant in a case of alleged invalidity.

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 [i.e. the products] 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)."

22. The informed user is a member of the general public who has the attributes outlined in the case law quoted above. I see no reason why the informed user would not be in a position to conduct a direct comparison of the designs in issue.

Design freedom

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

"34. … 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)."

24. In its counterstatement, the registered proprietor argues that certain features of a waist bag are dictated by technical function and so the designer enjoys very little design freedom. It submits that waist bags must be of an appropriate shape and size that they can be worn on the waist and feature straps to enable the bag to be worn securely. In addition, they will be expected to include a zip or other means of closing the bag. While the applicant agrees that the waist bags must contain a strap and a "bag body", it submits that these are the only constraints upon the designer. The body of the bag may, in its view, come in a variety of shapes, colours and sizes, and pockets may be placed in different positions.

25. The correct approach to considering the role of design freedom was summarised by HHJ Melissa Clarke in *Shnuggle Limited v Munchkin, Inc & Anor* [2019] EWHC 3149 (IPEC). She said:

> "32. The court must take the degree of freedom of the designer in developing the design into consideration both in assessing 'individual character' (Article 6(2) of the Regulation) and in assessing the scope of protection (Article 10 of the Regulation). It is important because similarities between products which are attributable to design constraints will be given little significance in the comparison of the overall impressions they produce. Where there is a high level of design freedom, attention is likely to be focused on those parts where there is a greater potential for variability.
>
> 33. His Honour Judge Hacon sitting as a Judge of the High Court in *Cantel Medical (UK) Ltd v ARC Medical Design Ltd* [2018] EWHC 345 (Pat) discussed the designer's degree of design freedom, setting out the key points to consider:
>
> i) The constraints imposed by the technical function of the product or the statutory requirements;
>
> ii) Similarities between the designs of corresponding parts of two products which are attributable to design constraints will be given little significance in the comparison of the overall impressions they produce;
>
> iii) Where there are at least some elements in respect of which the designer had a high level of design freedom, attention is likely to be focused on those parts with their greater potential for variability. Similarities cannot be explained away by design restraints and will tend towards the view that overall impressions do not differ, whereas differences will lead towards the opposite conclusion;
>
> iv) Finally, when comparing the design in question to the design corpus, HHJ Hacon in *Cantel* explains at [169] that:

a) A design which is markedly different will confer a greater scope of protection;

b) Little or no weight should be given to common features."

26. I agree that the presence of a strap that goes around the waist is a constraint imposed by the technical function of the product. In addition, I consider that the adjustability of the strap is also a constraint imposed by technical function, as the bag will need to be worn securely by differently-sized users. However, the designer has some degree of choice over the way in which the strap is adjusted, for example, through a metal slider, D rings, or hook and loop fasteners. It is conceivable that aesthetic considerations could play a part in this choice.

27. Exhibit SQ6 contains the results of a Google image search for "waist bag" with the date range of *"before 12 August 2023"*, i.e. the day before the relevant date. I reproduce a selection of the images below:







28. Given the label of the image from GearJunkie (the second image in the top row), I consider that the search has produced some results from after the relevant date. However, evidence of design freedom may also come from later designs, as Arnold J (as he then was) said in *Dyson* at paragraph 37: *"If a wide variety of designs was*

produced after the registered design, that is evidence that the designer of the registered design had not been constrained to design the product in the way that he had." I note here that the registered proprietor has not made any submissions on this evidence.

29. What these, and the other images in the exhibit, show is that all the bags have a strap, even where they are worn around the torso like a sling. The straps are shown to be close-fitting so I consider it reasonable to infer that they are adjustable. This evidence supports my view that these are constraints imposed by the technical function of the product. The bags themselves come in a variety of different colours, shapes and sizes, even within the constraint that they must be comfortably worn on the waist. Some bags (such as the Under Armour bag in the first image) appear to be rigid in construction, while others, such as the bag next to it, are more squashy. Some bags are relatively flat to the body (see the first image in the second row), while others are more bulky (see the second image in the third and fourth rows). Zips appear to be commonly used to secure pockets, the number and position of which vary from bag to bag. The designer also has a choice over the materials used. These are all features over which there is a reasonable degree of design freedom.

Overall impression

30. I shall first compare the contested design with Prior Art 01. The registered proprietor made its most detailed comparison in relation to Prior Art 01, while asserting that the differences between the contested design and Prior Art 02 to Prior Art 05 were even greater. I reproduce the views of Prior Art 01 below:







31. The arrows visible in the third image form part of the website interface and not the disclosed design.

32. Both bags have black straps that are fastened with a clasp and include a slider to enable the length of the strap to be adjusted. I need to determine whether the colour of the strap and the appearance of the clasp and slider are solely dictated by technical function. In *DOCERAM GmbH v CeramTec GmbH*, Case C-395/16, the Court of Justice of the European Union said that:

> "25. It follows that, under the system laid down by Regulation No 6/2002, appearance is the decisive factor for a design (judgment of 21 September 2017, *Easy Sanitary Solutions and EUIPO v Group Nivelles*, C-361/15 P and C-405/15 P, EU:C:2017:720, paragraph 62).
>
> 26. Such a finding supports an interpretation of Article 8(1) of Regulation No 6/2002 according to which that provision excludes from the protection

conferred by that regulation a case in which the need to fulfil a technical function of the product concerned is the only factor determining the choice by the designer of a feature of appearance of that product, while considerations of another nature, in particular those related to its visual aspect, have not played a role in the choice of that feature.

27. Finally, such an interpretation of that provision is supported by the objective pursued by Regulation No. 6/2002.

28. It is clear from recitals 5 and 7 that that regulation aims to create a Community design which is directly applicable in each Member State which is protected in one area encompassing all Member States, encouraging the innovation and development of new products as well as investment in their production by offering enhanced protection for industrial design.

29. As regards, in particular, Article 8(1) of Regulation No 6/2002, read in the light of recital 10 thereof, that provision intends to prevent technological innovation from being hampered by granting design protection to features dictated solely by a technical function of a product.

30. As the Advocate General stated in points 40 and 41 of his Opinion, if the existence of alternative designs fulfilling the same function as that of the product concerned was sufficient in itself to exclude the application of Article 8(1) of Regulation No 6/2002, a single economic operator would be able to obtain several registrations as a Community design of different possible forms of a product incorporating features of appearance of that product which are exclusively dictated by its technical function. That would enable such an operator to benefit, with regard to such a product, from exclusive protection which is, in practice, equivalent to that offered by a patent, but without being subject to the conditions applicable for obtaining the latter, which would prevent competitors offering a product incorporating certain functional features or limit the possible technical solutions, thereby depriving Article 8(1) of its full effectiveness.

31. In light of the foregoing, it must be held that Article 8(1) of Regulation No 6/2002 excludes protection under the law on Community designs for

features of appearance of a product where considerations other than the need for that product to fulfil its technical function, in particular those related to the visual aspect, have not played any role in the choice of those features, even if other designs fulfilling the same function exist."

33. While the existence and adjustability of the strap are technical constraints, other considerations are, in my view, likely to have influenced the choice of colour. In the case of the form of the slider and the clasp, it is my view that no other considerations other than the need for that product to fulfil its technical function are likely to have influenced the choice of those features. However, even if I am wrong in this, I consider that these features of the design will be of less weight in the overall impression of the design than the shape and colour of the bag, as they will be less visible when the product is used.

34. The front views of both designs are shown below:

Contested design



Prior Art 01



35. Both bags are black and open at the top with a metallic grey zip. There is also a front pocket, again with a metallic grey zip. Other views show that each of the bags contains a further pocket on the back. Both bags appear to be longer than they are tall.

36. The applicant submits that in both designs "*the connecting portions"* between the body of the bag and the strap are D-shaped and tapered towards the carrying strap. I have magnified the details and indicated with arrows the parts to which the applicant is referring.

Contested design



Prior Art 01



37. I do not agree with the applicant that the indicated part of Prior Art 01 is a part that connects the body of the bag with the strap. In my view, it is part of the bag itself. This is shown more clearly in the following representation:



38. In the contested design, the shape of the body of the bag is roughly cuboid. With the width of the back being the same as that of the front (leaving aside the connecting portions). This can be seen from a side view:



39. In contrast, the front of Prior Art 01 is noticeably narrower than the back and the sides are straight, with the strap joined directly to the back of the bag.

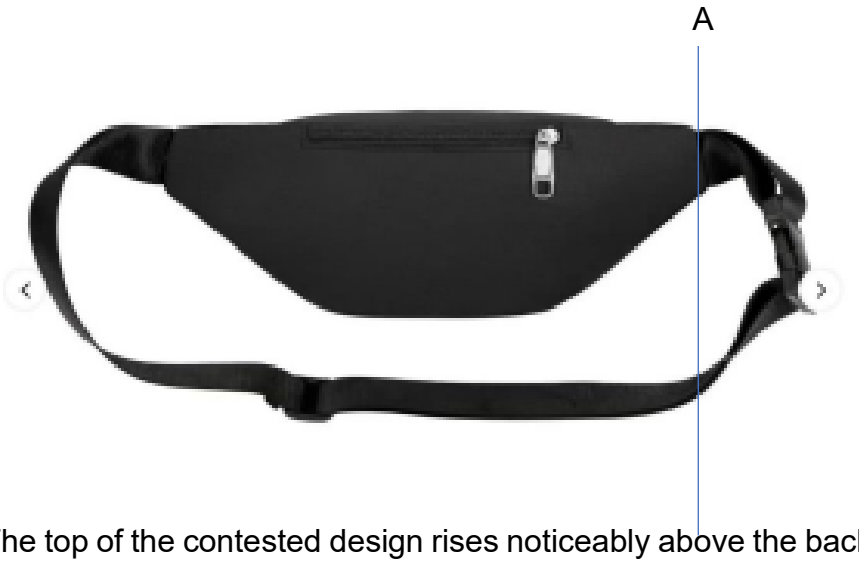
40. Further differences between the designs can be observed on examination of the back views of the respective designs:

A

Contested design



Prior Art 01



41. The top of the contested design rises noticeably above the back panel. In contrast, the top of Prior Art 01 is almost flat and any rise above the back panel is slight. The bottom of the bag in the contested design forms a gentle semi-oval, with the side of the bag sloping away from an imaginary vertical line marked at A in the above image. In contrast the sides of Prior Art 01 form a straight diagonal line with the same vertical line. These sides fall down before rounding gently into a horizontal base. While the back of the bag will not be visible when it is worn, the informed user will pay attention to this view when they put the bag on or fill or empty the rear pocket.

42. In my view, these are significant differences that create a different overall impression on the informed user. I find that the contested design has individual character when compared with Prior Art 01.

43. I shall now turn to Prior Art 02. The registered proprietor has not provided detailed submissions on the remaining prior art. It merely asserts that the differences between the contested design and the other prior art are greater than the differences between the contested design and Prior Art 01. Prior Art 2 is grey and the bag has a visible woven texture, while the contested design is black and the surface is untextured. The zips of the contested design are contrasting in colour, being a metallic grey against black. On the other hand, the colour of the zips of Prior Art 02 is the same or very similar to that of the material of the bag.

Contested design





Prior Art 02





44. Both bags are roughly cuboid with an opening at the top and a pocket on the front and back. However, another view of Prior Art 02 shows that there is a further opening or pocket at the bottom of the bag. The position of the strap in this view, when compared with its position in the representations shown above, leads me to conclude that this is a view of the bottom:



45. It can also be seen on the side view:

Contested design



Prior Art 02



46. Both designs contain D-shaped portions joining the bag to the strap. However, as can be seen from the representations above, the respective lengths of those D-shapes differ between the designs. In the contested design, the wider part of the D-shaped portion extends from the top to the bottom of the back panel of the bag, while in Prior Art 02 it is shorter, extending from a point below the top of the back of the bag to a point above the middle of the back.

47. In my view, the differences between the respective designs are sufficient to give the contested design individual character over Prior Art 02.

48. I can deal with Prior Art 03 fairly quickly. I accept that both bags are black with two zips visible on the front but there are important differences. Notably, the side views show that the bag is significantly flatter against the body than the contested design.

Contested design



Prior Art 03





49. This is a significant difference that, in my view, has a noticeable effect on the overall impression of each of the designs. The applicant draws my attention to two pockets on the front of the respective bags and submits that, although the narrower pocket is the lower pocket in Prior Art 03 and the higher in the contested design, this change of position is immaterial. The feature described as the top “pocket” on the contested design appears instead to be the main zipped opening of the bag. The applicant also refers to D-shaped connecting portions between the bag and the carrying strap. The arrow points to the particular part highlighted in the applicant’s submissions:



50. The informed user will see that there is a white patch on each of these portions, which, along with the red zips, also make a significant contribution to the overall impression of Prior Art 03. Given these differences, which outweigh any similarities, I find that the contested design has individual character over Prior Art 03.

51. There is only a single view for Prior Art 04 and I reproduce it below, along with the corresponding representation for the contested design:

Contested design



Prior Art 04



52. Both bags are black, with a top opening and a pocket on the front. In my view, the bags have different shapes. I have already found that the contested design is cuboid. In other words, the base of the bag is the same in length as the top and the sides are roughly straight. On the basis of what I can see in the single image of Prior Art 04, the base of the bag is narrower than the top. Together with the highly visible gold-coloured zips and rectangular decoration with rounded ends, this feature produces a different overall impression on the informed user. The applicant submits that the golden decoration should be excluded from the comparison of the product. This is because they say that the decoration is in fact a name tag on which the trade mark or product name would be inscribed. In the applicant's view, it is purely dictated by the function of identifying the origin of the product. However, identifying the commercial origin of a product is not a technical feature of that product, and so I consider that the position and appearance of this label may be taken into account in my comparison. I find that the contested design has individual character when compared with Prior Art 04.

53. As with Prior Art 04, there is just a single image for Prior Art 05.



54. In my view this has a similar shape to Prior Art 04, with a shorter base than top. I had found this to be a difference with the contested design. I note also that the top of the bag does not appear to rise above the back panel, as it does in the contested design. The position of the label showing the brand name also differs: it is on the front of Prior Art 05 but on the side of the contested design. Towards the right of the bag (looking from the front), there is a hole with a white border and an inset piece that allows very thin objects, such as earphone wires, to be held securely. The applicant argues that this earphone hole is purely functional. However, the simple fact that a part of a product has a function does not in itself mean that it was chosen purely for technical reasons. I consider that the inset holding the earphone wire in place is likely to have been chosen for purely technical reasons, namely, holding the wire securely while still allowing it to be drawn up from the body of the bag. Aesthetic considerations are likely to have had an influence in the choice of a white border. This feature is wholly absent from the contested design. Considering all these differences, which, in my view, outweigh any similarities such as the position of the zips, I find that the contested design has individual character when compared to Prior Art 05.

Novelty

55. Section 1B(2) of the Act states that a design is new 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 earlier design in some material respect, even if some or all of the design features, if considered individually, would not be."

56. 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 the differences are material and therefore I find that the contested design is new when compared with each of Prior Art 01 to Prior Art 05.

CONCLUSION

57. The application to invalidate the contested design is unsuccessful. Therefore, subject to a successful appeal. Registered Design No. 6303339 remains registered.

COSTS

58. The registered proprietor has been successful and is entitled to a contribution towards its costs in line with the scale set out in Tribunal Practice Notice No. 1/2023. The registered proprietor filed nothing after the counterstatement, and I award £350 for considering the application and statement of case and preparing the counterstatement. The registered proprietor incurred no official fees.

59. I therefore order Su Qian to pay Shenzhen Yisimei Technology Co., Ltd the sum of £350. 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.

60.

Dated this 5th day of November 2026

Clare Boucher

For the Registrar

ANNEX

Prior Art 01

Disclosed on 23 April 2021 on www.ubuy.tg.







Prior Art 02

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