



Dyson in a spin over lost appeal!

Dyson has lost its case against Vax regarding its design rights in its DC02 vacuum cleaner.

What happened?

Dyson claimed that its registered design for the DC02 cleaner was being infringed by Vax's design for the Mach Zen cleaner. The Court of Appeal acknowledged that Dyson's design warranted broad protection, but it dismissed the appeal, concluding that the Mach Zen design produced a different overall impression to Dyson's design.

Why?

In order to gain design right protection, a design must be "new" and have "individual character," i.e. an element of novelty. Once this has been proven, a third party design will infringe the original design unless it gives a "different overall impression". The Court's key task was therefore to consider whether the impression given by the Mach Zen was sufficiently different from Dyson's design. The Court treated this as a straightforward question which came down to what the Court "could see with its own eyes". The Court also emphasised that the "informed user" was not the same person as the average consumer of trade mark law, but someone who "knows the various designs which exist in the sector concerned" without being a technical expert.

The Court also reminded us that those parts of a design which are dedicated solely to a design's technical function cannot be protected by registration. Dominant features of both cleaners included the angle of the cylinder; the size and position of the wheels and use of a transparent bin, all of which were deemed to be necessary technical features of the products and could not therefore be taken into account in considering whether or not there had been an infringement of Dyson's design. The judge considered that the transparency of the bin was the best technical means of determining whether the bin was full and was therefore a technical requirement rather than a product of creative design. The technical nature of the cleaners and the Court's conclusion that many of the designs distinctive features arose from technical necessity led the Court to conclude that these similarities were not significant.

Taking the above observations into account the Court determined that Vax had not breached Dyson's design right; Vax's machine gave a "different overall impression," saying that the Dyson' design was "smooth, curving and elegant" whereas Vax's design was "rugged, angular and industrial". The judge emphasised the importance of designs such as Dyson's, which, when it was registered in 1994 represented a significant departure from traditional vacuum designs and stated that it deserved broad protection, but nonetheless concluded that no infringement had occurred. Dyson has been ordered to pay Vax's costs of almost £200,000.

What does this mean?

This judgement emphasises the high threshold designers must meet in order to bring a successful action for design right infringement and the even higher costs of litigation when they fall short of that threshold. This is another in a string of cases where despite obvious visual similarities Courts have been reticent to find design right infringement.

This case has also demonstrated that the Court's broad interpretation of what is technical can leave very little of the remaining design to enforce. Courts will look at each element of the legal test as well as the design and will reject as irrelevant those elements for which creative freedom is restricted by technical necessity.

Designers could be forgiven for questioning the value of registering their designs given the clear difficulties of enforcing their rights against third parties. However, whilst taking an infringement action to full trial can be costly, there is nonetheless clear value in obtaining a registered design. There are many more cases of infringement (or alleged infringement) which settle before Court action is seriously contemplated, based on the strength of registered design rights. Registrations remain inexpensive to obtain in the EC and ultimately remain the key means of protecting your design.

For further information please get in touch with:



Rachael Parman
+(44) (0)1865 813606
rachael.parman@manches.com or your usual Manches retail contact

This briefing note is intended merely to provide a summary of the law in this area and is not a comprehensive guide. It is not intended to provide legal advice for specific cases. The law and practice in this note is stated as at November 2011.