

UK Registered Designs Law - UK Court Highlights Importance of Design Ownership Issues

UK registered designs law was significantly amended in December 2001 to harmonise it with other states of the EU. Several new concepts were introduced, whose effect has been open to debate in the absence of any judicial consideration of them. A recent case, *Woodhouse v Aquila*, decided by Judge Fysh in the Patents County Court, has dealt with some of these. The case concerned street lighting and Woodhouse's registered design showed a lantern and a bracket supporting it on a pole, the pole being excluded from the registration. Aquila sold some lanterns very similar, together with alternative brackets of varying degrees of similarity, to the registration.

Firstly, it was decided that the registered design was invalid in any event, because the original applicant had not itself created the design, commissioned it nor taken assignment of it. A false declaration of ownership of the design had thus been made on the application form. This illustrates the importance of ensuring that an application is correctly made by someone who is entitled to the design. Despite this conclusion, the Judge went on to consider and pronounce on infringement aspects.

Infringement of a registered design is judged by whether the alleged infringement produces, on the "informed user" an overall impression which is not different from that given by the registration. Who is the "user" and how "informed" is he? It was decided that he would be the person at whom the design was directed, in this case a member of an urban development team who was primarily interested in the appearance of street furniture.

In considering whether Aquila's products could be regarded as being covered by the registered design, the judge held that the lantern alone could not be considered to give the same overall impression as the registration, nor could the lantern with a bracket of different appearance. The case, therefore, highlighted the necessity to register all important parts of an assembly which have an independent existence in design terms, and the pitfalls associated with initial ownership of designs, in general.