

Sweet justice for owner of community registered designs

- Supplier of cake moulds accused of infringing the Community Registered Designs of a competitor
- Summary judgment awarded – infringing designs did not produce a different overall impression from the claimant's Community Registered Designs
- No real prospect of finding that any prior art to narrow the scope of the design monopoly

What's it about?

Karen Davies Sugarcraft Ltd ("**KDS**") is a supplier of cake-making products, including cake icing moulds, and is the owner of two Community Registered Designs ("**CRDs**") for moulds to create icing that has the appearance of lace. Mr Croft also supplies cake moulds – via a website and on eBay. KDS claimed that certain of Mr Croft's products infringed its CRDs and sought summary judgment in the Intellectual Property Enterprise Court.

A CRD provides the owner with a 25-year monopoly right, and protects the 2D and 3D aspects of the design.

Why does it matter?

In determining whether to grant summary judgment, the court is required to assess whether the defendant has no real prospect of successfully defending the claim. In this case, the court had to determine whether the moulds that were alleged to infringe incorporated a design that did not produce on the informed user a different overall impression from that created by the Claimant's CRD.

The judge on this occasion found that he could reach a view on this issue through the eyes of the informed user (i.e. a notional person who would be familiar with the design area in question), and did not require the benefit of expert evidence. The judge did not, however, have any information presented to him on the subject of whether there was any prior art in relation to the moulds such as to affect the scope of the design monopoly conferred by the CRDs.

Crucially, in his view, the defendant's moulds were so close to the Claimant's designs that the prospect of there being prior art that would narrow the scope of each of the Community Registered Designs to the point of no infringement was "*Micawberism and fanciful*".

Now what?

This judgment is likely to be good news for owners of CRDs, in that no expert evidence was required in order for the court to grant summary judgment. Rather, the judge felt able to himself reach a view as if through the eyes of the informed user.

Karen Davies Sugarcraft Ltd v Croft [2015] EWHC 2035 (IPEC), 9 June 2015

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