

Ice Cream Wars in the High Court



Whipped out just in time for Christmas and sprinkled with a mouth watering selection of IP rights, the decision of Mr Justice Arnold in *Whitby Morrison v Yorkshire Specialist Vehicles* [2014] EWHC 4242 (Pat) is a timely reminder of the power of both registered and unregistered IP rights. The case was unusual in many respects, notably that it involved a site inspection by Arnold J in Lincoln's Inn of 5 ice cream vans, a picture of which is below.



In this case, three of the Defendants were individuals (2 brothers and their father), and the other Defendant was the company through which they sold ice cream vans. The Defendants had bought an ice cream van from the Claimant and used it as a basis to make their own GRP (glass reinforced plastic) moulds. These were used to make infringing vans, sold under the livery of 'Paradise Ices'.

The judge made findings of unregistered design right infringement, registered design right infringement and trade mark infringement - the latter arising from the Defendants copying a panel which had the Claimant's trade mark embossed in it and putting a picture of this on Facebook.

The key issue at trial was whether the father was jointly liable as a tortfeasor, the Claimant's account being that he was the person with the expertise and money to get the infringing business off of the ground. Arnold J held that the Defendants' account, that the business was run by the sons, was not credible and that the sons were trying to shield their father from any liability. This finding was in part based on the failure by the Defendants to meet their disclosure obligations.

Also of interest to practitioners is the finding that the registered design was infringed, as the market for ice cream vans does not show a large degree of variation in design, with Arnold J holding that the informed user would still notice these differences. The judgment also contains a useful set of comparison photos comparing the registered designs with the real life vans.

[Michael Hicks](#) and [Jonathan Moss](#) of Hogarth Chambers, instructed by **ORJ Solicitors** acted for the Claimants.

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