



Trunki sends rival packing in time for summer

The Claimant's product, the Trunki suitcase, was propelled to fame as 'the one that got away' from Dragons' Den. The now iconic ride-on children's suitcase is used by around 20% of children aged 3-6. The Dragons refused to invest, partly because according to Peter Jones, the Trunki could be copied "within 7 days". Some 7 years after leaving the show empty handed the High Court has held that the Trunki has pan-European protection under its 2003 Community registered design ("CRD"). The case is *Magmatic Limited v PMS International* and the judgment can be accessed [here](#).

The Defendant's infringing product, known as the 'Kiddee Case', whose design was admittedly inspired by that of Trunki, was held by Arnold J to infringe Magmatic's CRD, which depicted the overall shape of the Trunki. Arnold J went on to hold that the Kiddee Case also infringed 4 UK unregistered design rights which dealt with specific parts of the Trunki, namely the lock, tow strap and inside retaining straps.

The judgment provides useful guidance on the extent of prior disclosures under the obscure disclosures exception in Article 7(1) of Council Regulation 6/2002/EC on Community Designs (the burden of proving which fell on the party seeking to rely on the exception). One issue in the case was whether or not an early concept design known as the 'Rodeo' which was entered into a small 1998 student design competition by the designer, Rob Law, could be cited as prior art on the grounds that it would not have become known in the normal course of business to those specialising in the sector concerned.

Arnold J held that the Rodeo was a prior disclosure but that the relative obscurity of the Rodeo ensured that it did not form part of the design corpus of which the informed user would be aware. The design corpus therefore consisted solely of adult clamshell suitcases, from which the Trunki was quite different. Further, the evidence of the

development of the Trunki and the Kiddee Case demonstrated that the designer of a child's ride-on suitcase has considerable design freedom. This meant that as the Trunki was the first product of its type, the CRD is entitled to a broad scope of protection compared to a design in a more crowded design field.

Arnold J acknowledged that were it not for the Rodeo, he would have had little hesitation in saying that the Kiddee Case produced the same overall impression as the CRD. In the event he concluded that the Kiddee Case was closer than the Rodeo because it shared the slimmer, sculpted, sophisticated, modern appearance with animal-like features – these not being present in the Rodeo. The CRD was therefore held to be valid and infringed.

Another issue at trial was whether the colouring of the Kiddee Case was a factor which could lead to a different overall impression. Arnold J confirmed that where a design such as the one in issue is not registered in colour, it is only the shape that should be considered and the colouring on any alleged infringing product should be ignored. The judgment usefully contains an annex showing pictures of the CRD, the Trunki made to that design and the Kiddee Case. The trial was heard on an expedited basis due to the main selling season leading into the summer holidays, with the order for expedition being made in March 2013.

The successful Claimant was represented by [Michael Hicks](#) and [Jonathan Moss](#) of **Hogarth Chambers** on behalf of **Briffa**.

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