Browne Jacobson

UK court clarifies copyright protection for "works of artistic craftsmanship"

28 January 2025 Nick Smee and Shania Hussain

WaterRower (UK) Ltd v Liking Ltd [2024] EWHC 2806 (IPEC)

In this highly anticipated decision, the Intellectual Property Enterprise Court (IPEC) of England and Wales, considered what qualifies as a "work of artistic craftsmanship" under s.(4)(1)(c) of the Copyright, Designs and Patents Act 1988 (CDPA) and whether designs with functional purposes are eligible for copyright protection under UK law. In doing so the UK court has articulated in very clear terms the significant degree of separation that exists between the test mandated by UK statute and the EU's approach to copyright subsistence. This has significant consequences particularly for the protection of functional items, with the UK taking a much more restrictive approach to that of the CJEU in Cofemel.

The claimant, WaterRower, claimed that several of its high-end water resistance rowing machine designs were each works of artistic craftsmanship within s.4(1)(c) of the CDPA and that the defendant, Liking Limited's (trading as TOPIOM) rowing machine infringed this copyright. However, on November 11, Judge Campbell-Forsyth, held that WaterRower's rowing machine, which blends function and style, did not qualify for copyright protection as a "work of artistic craftsmanship", under UK copyright law. Interestingly, given the alleged infringements occurred prior to the (Brexit-related) Retained EU Law Act 2023, the judge found that the UK criteria for works of artistic craftsmanship were irreconcilable with the EU test for copyright subsistence and in contravention of the Infosoc Directive.

What is a "work of artistic craftsmanship"?

In contrast to the European approach, the UK permits copyright protection for specified categories of work. The UK has also been much more restrictive in its protection of industrial designs, which have been considered eligible for protection as unregistered or registered designs (providing a shorter period of protection) rather than copyright, with the exception of "works of artistic craftsmanship". Defining what a "work of artistic craftsmanship" actually is has caused the UK courts no end of head scratching. From the leading House of Lords decision in Hensher (concerning furniture) and also Lucasfilm (storm trooper helmets), the court has found this type of work extremely difficult to define, to the extent that the judge in this case found it necessary to draw upon 11 'threads' from the earlier caselaw in order to try to make his assessment.

The court's decision

Despite plenty of evidence that the claimant's product was widely recognised as having strong aesthetic appeal, the court concluded that the WaterRower is not a work of artistic craftsmanship, and therefore not entitled to copyright protection. Although the creator of the WaterRower could have been considered a 'craftsman', it was held (applying Hensher and Bonz) that he had not intended to create a work of art - a creation which has "an artistic justification for its own existence". In effect he was deemed a craftsman, but not an 'artistic craftsman' and therefore failed an aspect of the test.

Broader implications from WaterRower v Liking

This case illustrates the difficulty in assessing whether an industrial item is a "work of artistic craftsmanship" and therefore benefits from UK copyright protection. It seems unlikely that the UK courts will provide a revised test anytime soon. However, a key takeaway from this decision is that a work of artistic craftsmanship needs more than just "craftsmanship" and recognition of its aesthetic appeal or merit; it

must also be considered a work of art. The creator's intention is among the important factors. That said, we strongly expect WaterRower to appeal the findings in this respect, so watch this space!

The ruling also illustrates the very clear differences between the UK and EU approaches to copyright subsistence, and that it is more challenging for designers of 3D items to rely on copyright protection in England and Wales, compared to seeking such protection in the EU, where the bar for copyright to subsist is lower. Therefore, it is advisable for UK designers to file design registrations for their 3D creations to obtain some protection.

Contact

Nick Smee

Partner

nick.smee@brownejacobson.com

+44 (0)330 045 2122

Shania Hussain

Trainee Solicitor

shania.hussain@brownejacobson.com

+44 (0)330 045 1018

Related expertise

Services

Copyright and related rights

Intellectual property

Intellectual property claims