

**IN THE HEARINGS AND MEDIATION DEPARTMENT OF THE
INTELLECTUAL PROPERTY OFFICE OF SINGAPORE**

[2023] SGIPOS 3

Registered Design Application No. 30202008442T

**IN THE MATTER OF A REGISTERED DESIGN IN THE
NAME OF**

CHEN & PARTNERS (S) PTE. LTD.

... Registered Owner

AND

AN APPLICATION FOR REVOCATION THERETO BY

SOON AILING

... Applicant

**REGISTRAR'S DECISION UNDER REGISTERED
DESIGNS RULE 48(4)**

Soon Ailing
v
Chen & Partners (S) Pte. Ltd.

[2023] SGIPOS 3

Registered Design Application No. 30202008442T
Principal Assistant Registrar Ong Sheng Li, Gabriel
20 December 2022

6 January 2023

Principal Assistant Registrar Ong Sheng Li, Gabriel:

Introduction

1 For reasons that will become clear shortly, this decision is necessarily very brief. It concerns an application by Soon Ailing (the “Applicant”) to revoke a registered design in the name of Chen & Partners (S) Pte. Ltd. (the “Registered Owner”). The design in issue, Application No. 30202008442T, was registered on 14 September 2020 in Class and Subclass 10-07 for “*Customized Watch Bezel*” (“442T”). A copy of the registration certificate for 442T can be found at Annex A to this decision.

Ground of objection: lack of novelty

2 On 24 February 2021, the Applicant filed for the revocation of 442T on the basis that “*the design was not, at the date of its registration, new*” under s 27(1) read with s 5(2) of the Registered Designs Act 2000 (“RDA”).

3 Section 5(2) RDA states that:

A design for which an application for registration is made is not to be regarded as new if it is the same as a design —

(a) registered in respect of the same or any other article, non-physical product or set of articles and non-physical products pursuant to a prior application; or

(b) published in Singapore or elsewhere in respect of the same or any other article, non-physical product or set of articles and non-physical products before the date of the firstmentioned application,

or if it differs from such a design only in immaterial details or in features which are variants commonly used in the trade.

4 Central to the Applicant’s case on the alleged lack of novelty was the fact that the Applicant had, on 4 November 2019, been entered as the registered owner of a similar design bearing “*an uncanny likeness and resemblance*” under Application No. 30201907269R (“269R”), also registered in Class and Subclass 10-07, for “*Watch case*”. Essentially, the Applicant’s point was that 442T could not be regarded as new having regard to 269R. A copy of the registration certificate for 269R can be found at Annex B to this decision.

Registered Owner’s failure to file evidence

5 Initially, the Registered Owner was represented by Invictus Law Corporation. The Registered Owner filed a counter-statement through its counsel on 24 June 2021. In it, the Registered Owner denied all the allegations set out in the Applicant’s statement of grounds. Critically however, after receiving the Applicant’s evidence (which had been duly filed and served by the Applicant on 31 December 2021 in accordance with the relevant deadline), the Registered Owner did not file or serve its evidence (which was due on 30 March 2021) in support of 442T. For completeness, I should also record that on 25 March 2021, a few days prior to that deadline, Invictus Law Corporation wrote in to inform that they were no longer representing the Registered Owner.

Effect of Registered Owner's failure to file evidence

6 Rule 43(2) of the Registered Designs Rules ("RDR") provides, under the heading "Evidence in support of registration", as follows:

If the registered owner does not file or serve any evidence in accordance with paragraph (1), he shall, unless the Registrar otherwise directs, be deemed to have admitted to the facts alleged by the applicant in his application for revocation.

7 To my mind, the effect of r 43(2) RDR in this case is simple and straightforward. It is clear and unambiguous from the Applicant's statement of grounds that the key allegation is that 442T is not "new". The Applicant's statutory declaration sets out in its evidence in support of its pleaded case that 442T was not new at the date of its registration (14 September 2020). By failing to file evidence, the Registered Owner is deemed to have admitted to the facts alleged by the Applicant. The deeming provision means that this case must necessarily be treated differently from typical cases which reach the hearing stage where the initiating party must necessarily bear the burden of proving the facts it alleges. (See *Aramara Beauty LLC (dba Glow Recipe) v Sinchen Group Pte. Ltd.* [2022] SGIPOS 18 ("Aramara"), a case which dealt with a similar deeming provision in the context of a trade marks dispute.)

8 Whether a design should be regarded as new within the meaning of s 5(2) RDA is necessarily a question of evidence. A design is either novel or it is not (by reason of it being "*the same*" as an earlier registered or published design within the parameters of the provision or if it "*differs from such a design only in immaterial details or in features which are variants commonly used in the trade*"). Whether or not this is so depends on the facts. The Registered Owner has nothing to counter the Applicant's evidence that 442T is not "new". That being the case, I see no reason why the registration should be retained.

Conclusion

9 Given the sequence of events, I do not think it necessary or meaningful to delve into the substance of the Applicant's case beyond what I have described in outline above. Like my learned colleague who decided *Aramara*, I must caution that the outcome did not result from a strict weighing of the Applicant's evidence against the alleged facts set out in the pleadings. There was no robust argument and presentation of the parties' best cases before me. (For completeness, having regard to the circumstances, directions were given for this case to be decided on the papers without an oral hearing.) Whether the result may or may not have been different if the Registered Owner had filed evidence in support of 442T is irrelevant. The point is that the Registered Owner had the opportunity to file evidence and did not do so.

10 I accordingly order that 442T be revoked with effect from 14 September 2020 (that is, its original registration date) and award the Applicant the costs of this action.

Ong Sheng Li, Gabriel
Principal Assistant Registrar

Y S Chung Law Corporation for the Applicant
Registered Owner unrepresented (w.e.f. 25 March 2021)



**REPUBLIC OF SINGAPORE
REGISTERED DESIGNS ACT (CHAPTER 266)
CERTIFICATE ISSUED UNDER SECTION 18**

DESIGN NUMBER : 30202008442T

DATE OF REGISTRATION : 14 September 2020

TO : CHEN & PARTNERS (S) PTE. LTD.

I HEREBY CERTIFY that under the provisions of the Registered Designs Act, your name has been entered in the Register as proprietor of the above Design Number as from 14 September 2020 in Class and Subclass 10-07 in respect of the following:

Customized Watch Bezel

**DATE OF ISSUE OF
CERTIFICATE** : 22 September 2020



Mrs. Rena Lee
Registrar of Designs
Singapore

Registration is for a period of 5 Years and may be renewed at the expiration of this period and upon the expiration of each succeeding period of 5 Years.

STATEMENT OF NOVELTY : Novelty resides in the Shape and Configuration as shown in the Representation(s).
Novelty resides in the Pattern and Ornamentation as shown in the Representation(s).

DISCLAIMER : -

NO. **IMAGE(S)**

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**REPUBLIC OF SINGAPORE
REGISTERED DESIGNS ACT (CHAPTER 266)
CERTIFICATE ISSUED UNDER SECTION 18**

DESIGN NUMBER : 30201907269R

DATE OF REGISTRATION : 04 November 2019

TO : SOON AILING

I HEREBY CERTIFY that under the provisions of the Registered Designs Act, your name has been entered in the Register as proprietor of the above Design Number as from 04 November 2019 in Class and Subclass 10-07 in respect of the following:

Watch case

**DATE OF ISSUE OF
CERTIFICATE** : 07 November 2019



Daren Tang Heng Shim
Registrar of Designs
Singapore

Registration is for a period of 5 Years and may be renewed at the expiration of this period and upon the expiration of each succeeding period of 5 Years.

STATEMENT OF NOVELTY : Novelty resides in the Shape and Configuration as shown in the Representation(s).
Novelty resides in the Pattern and Ornamentation as shown in the Representation(s).

DISCLAIMER : -

NO. **IMAGE(S)**

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