

# EIP



## Design Rights and Video Evidence Wrongs

# ASR Interiors Limited v 1) AWS Trading Limited and 2) Giatalia International Limited

A design rights case that provides an example of the wrong way to give video evidence.

## Background

In 2020, the Claimant a Coventry-based furniture wholesaler ASR Interiors Limited ("ASR") brought a claim for infringement of registered designs against two other furniture wholesalers. The trial against the second defendant was adjourned for Covid-19 related reasons, meaning this judgment concerns the case against the first defendant AWS Trading Limited ("AWS") only.

## Legal Issues

In many ways this was a straightforward case from a legal standpoint.

ASR claimed infringement of their registered designs for several glittery and crystal-encrusted furniture items. For a design to be protected it cannot have been made available to the public before the relevant date.\*AWS's defence was that their products were publicly available prior to the design registrations and therefore their products either did not infringe or invalidated the registrations. They also argued that their

products were insufficiently similar to the designs to infringe them.

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During trial Mr Recorder Douglas Campbell QC (sitting as a High Court judge) considered the designs broadly asking of each:

(a) Does AWS's product produce a different overall impression to that produced by ASR's design?

(b) Were AWS's products made available to the public before the relevant dates in question?

However, the issues did not end there: ASR had initially brought proceedings in relation to five designs, although did not pursue its claim in relation to two of the designs. Whilst ASR accepted that one of the dropped designs was invalid for other reasons, it alleged that AWS had falsified the sales orders that it relied on as evidence of making that design available prior to registration. Given the seriousness of such allegations the trial was held in person and Mr Campbell QC said that the importance of the sales order to the First Defendant's credibility "meant that it was the single biggest issue of fact at the trial".

## How (not) to give evidence

The defence for AWS provided what might be described as chaotic evidence:

Mr Dean, a sales administrator employed by the First Defendant, had provided a witness statement in relation to the disputed sales order but failed to attend for cross-examination, providing no reason (good or bad) for his lack of attendance. The judge gave no weight to his statement.

Mr Singh, the operations manager for the First Defendant, had been permitted to give his evidence via video link and took the unusual approach of attempting to do so whilst simultaneously driving a van, balancing his mobile device on the passenger seat. Once this became apparent, the hearing was immediately stopped until Mr Singh had stopped driving. The second time contact was made, Mr Singh was in a busy and noisy office and when asked to find a quieter location he moved to the office store cupboard. During cross-examination it transpired Mr Singh did not have any of his exhibits with him in the store cupboard and did not appear to know where they were. At that stage counsel for the First Defendant "wisely accepted that the process was not turning out to be a successful one, and indicated that he would simply rely on Mr Singh's statement for such weight as it might be thought to be worth". The judge gave no weight to Mr Singh's statement.

The "belligerent" Mr Yates followed. He was a director of the First Defendant and the

judge was unconvinced by his evidence, finding that he had fabricated the disputed sales order. Perhaps unsurprisingly, he also found that it was “unsafe to rely on anything Mr Yates said which is unsupported by other material”.

Despite arguments put forward by AWS (including that 4 rows of buttons results in a “completely different appearance to the back of the chair” when compared to 3 rows) Mr Campbell QC reached the same conclusion in respect of each design. He held that all the products from AWS produced the same overall impression when compared to the respective ASR designs and moreover that none of these products had been made available to the public before the priority dates of the ASR designs.

Consequently, each of the three designs owned by ASR Interiors had been infringed by AWS and their respective counterclaims for invalidity failed.

## Conclusion

The case provides a stark example of what can go wrong when witnesses have not made appropriate preparations to give evidence remotely. Mr Campbell QC noted that video link evidence is likely to be with us for some time and stated that “Anyone who seeks, and obtains, an order permitting evidence to be given by video link would be well advised to think carefully about how the process of giving evidence will actually happen. At a bare minimum, when the time comes for the video link to be activated the witness should be in a room with all the case papers before him or her and with no distractions. Otherwise the risk is that the evidence which the party seeks to adduce from that witness will not be given properly, or at all, with potentially adverse consequences for that party’s case.”

Written by Rebecca Dolman.

\*s.1B (1) Registered Designs Act 1949 (as amended).