

Editorial

Protection for Vehicle Spares

The problem that lay at the heart of the 1988 reforms of the law on design protection has recently received judicial consideration. The Registration Designs Appeal Tribunal has considered the registrability of designs for certain spare parts for cars and trucks, with the notable finding that the law before 1988 did most, if not all, of what the reforms were designed to achieve.

The Tribunal had several applications by the Ford Motor Company Ltd and FIAT Iveco, the Italian truck maker (which in the UK is in a joint venture with Ford) before it. Some of the designs were for body panels, some for mirrors, some for wheels and wheel trims, and one for a seat.

The "must match" exception, introduced into the Registered Designs Act 1949, was specifically intended to prevent the monopolisation of the replacement body panel market by the vehicle manufacturers. Readers might recall that it was a Monopolies and Mergers Commission report on the licensing activities of the Ford Motor Company Ltd that inspired many of the changes. Ford was refusing to licence replacement panel makers to produce replacement panels (or repair panels, parts designed to replace only these portions of larger panels that were particularly susceptible to rust) and this it considered an anti-competitive practice. The MMC found itself unable to stop the practice, but instead sowed the seeds for a change in the law.

It now seems that Ford never had anything to licence. Designs can be registered if they are for articles, and any part for an article is included if it is made and sold separately. Judicial consideration of those words has been scarce, but the Tribunal held that designs for parts that enjoy no market independent of the complex product of which they form part do not qualify. If the car (or truck) was not sold in the first place there would be no demand for replacement parts, and they cannot therefore be said to be sold separately.

The same cannot be said of such items as wheels, steering wheels and seats. They could be marketed

separately: they are capable of use in a variety of vehicles, and designs for them can be registered provided they meet other criteria in the 1949 Act.

So the 1988 must match exception, the policy underlying which was analysed by the Tribunal with the aid of *Hansard*, following the *Pepper v Hart* doctrine, has apparently added nothing to the pre-existing legal position.

The controversy over protection of vehicle spares in the UK has been replicated in Europe, with the debate on the Commission's green paper proposals for a Community design regulation and a harmonising directive. Now the Commission has published its reconsidered proposals, moulded with the views of the UK replacement parts industry in mind: and it appears to provide only three years' protection for spare parts from

the time the complex product is first marketed. Will it ever be possible to state with certainty that a design for a spare part is not (or will not shortly become) registrable?

Peter Groves

A fuller casenote will appear next month.