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Designer table enjoys protection as work of applied art

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Introduction

Cases concerning infringement of works of applied art have become something of a trend in Sweden. This case, between a high-end furniture designer and a national chain and regarding infringement of a dining table, exemplifies this trend and garnered significant media attention in 2022.[(1)]

The first-instance outcome confirms the current Swedish case law in the area, including the continued relevance of assessing prior art (for further details, see "Questions remain about protection of works of applied art post-Cofemel"). It also dealt with common procedural objections such as how to factor in the tables' technical aspects in the originality assessment and questions of transfer of rights.

Facts

The claimant was a high-end design and furniture company that developed, manufactured and sold interior design products, including a circular "pillar" dining table with a rounded and panelled base (the Palais table). The Palais table had been exhibited and sold since 2017 and had won several awards.

The defendant was a national furniture chain that had subsequently developed, manufactured and sold a highly similar, but not slavishly identical, table (the Cord table). This table was sold at a lower price than the Palais table.

The claimant argued that the Cord table infringed the Palais table and sued for copyright infringement, including claims for an injunction against future sales of the Cord table as well as destruction of infringing tables and publication of the decision.

Decision

The Patent and Market Court identified four main issues in the case:

- Who had designed the Palais table, and had the rights been correctly transferred to the claimant?
- Did the Palais table enjoy copyright protection as a work of applied art by being original (including by assessing the prior art)?
- Did the Cord table fall within the Palais table's scope of protection and thus infringe its copyright?
- Had the Cord table been independently created without knowledge of the Palais table?

First question

As is commonly the case in Swedish copyright litigation, the Court based its assessment of authorship and transfer of rights largely on the witness testimony of the designer of the Palais table. The Court found that the table had been designed by two natural persons and that they had transferred the economic rights that come with possible copyright protection to the claimant. The company thus had the right the bring an action for infringement in the case.

Second question

According to the Swedish Copyright Act, an author who has created a literary or artistic work has copyright to the work, regardless of how the work is expressed. Within the framework of the concept of work falls, among other things, applied art.

As far as the protection of applied art is concerned, the significance of the work's technical function is an important issue. If technical considerations heavily influence the design, the space for original creation can shrink. The Court reiterated the principles laid down by the Court of Justice of the European Union (CJEU) in the *Brompton Bicycle* case[(2)] – namely, that such technical considerations do not necessarily prevent the author from reflecting their personality in the work by giving expression to free and creative choices.

In the present case, the Court found that the technical considerations in the design of a table such as the Palais table did not prevent the authors from reflecting their personality in the work by expressing free and creative choices. The Court, however, found reason to assess the extent to which the finished work – the Palais table – distanced itself from the prior art, in order to assess whether the designers had in fact designed the Palais table in a way that reflected such free and creative choices. This traditional Swedish method of assessing infringement of works of applied art has its detractors (for further details, see "Questions remain about protection of works of applied art post-Cofemel").

According to the Court, the essential design elements of the Palais table differed from the examples of prior art invoked by the defendant and, against this background, the Court found that the designers had made several creative choices in their design of the table, including by using a neat and distinctly bevelled tabletop and a solid base. The Court concluded that the Palais table enjoyed protection as a work of applied art under the CJEU's originality jurisprudence.

Third question

When determining whether the Palais table had been infringed by the Cord table, the Court went on to assess the table's scope of protection and whether the Cord table had infringed it.

The Court found that the Palais table consisted of a combination of two simple shapes, and even if the work distanced itself from other products of the same type that were on the market at the time of the design, the basic shapes and the additional shape elements could be found on several earlier tables. The table's scope of protection was therefore considered to only include tables that showed a "striking similarity" to the Palais table.

Applied to the facts of the case, the Court found that the Cord table exhibited all the form elements of the Palais table and that the two tables were "nearly identical". The only differences between the tables, according to the Court, were the circumferences of their bases and tabletops. The Court thus ruled that the minor deviations between the tables did not take away the impression that they were nearly identical.

Fourth question

Under the circumstances in the case, where the Court had identified a "striking similarity" between the Cord table and the Palais table, the Court found that the defendant had to meet a high bar to show that the Cord table had been independently created without knowledge of the Palais table. The Court's assessment largely came down to an assessment of the invoked witness testimony, where the defendant's representatives claimed to not have known of the Palais table and that they had created the table based on other inspiration.

Based on evidence which showed that the Palais table had won several awards and garnered significant industry attention, the Court appeared to simply not believe the defendant's version of events and did not find it proven that the Cord table had been independently created without knowledge of the Palais table.

The Court thus found fully in favour of the claimants. The case has been appealed and is currently awaiting a decision on leave to appeal.

Comment

Works of applied arts continue to be litigated in Sweden following the *Cofemel*[3] and *Brompton Bicycle* cases. This case shows that the Swedish tradition of giving weight to prior art in cases concerning works of applied art is alive and well, notwithstanding certain critical voices raised in other cases. This practice commonly leads to these cases shaping up to be prior art detective stories where the parties invoke dozens of examples of sometimes undated prior art that needs to be assessed for relevance. This in turn requires significant work and raises the litigation costs for both parties. In the end, the Court simply found that the Cord table was too close to the Palais table to avoid infringement.

As to the Court's assessment of the question of authorship and transfer or rights, the case reiterates the longstanding Swedish tradition that the defendant's blanket claim that the rights have not been correctly transferred is not enough for the burden of proof to swing to the claimant in any significant way. In order to claim that the rights have not been transferred correctly, the defendant needs to invoke some concrete proof in this regard.

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Endnotes

(1) Patent and Market Court, PMT 16606-21. Some of the authors of this article represented the claimant in this litigation.

(2) C-833/18.

(3) C-683/17.