

Aldi infringes original Charlotte Tilbury work



Is make-up an 'artistic work' capable of copyright protection? Yes. In a move from a typical passing off case in reaction to a copy-cat, Charlotte Tilbury successfully pursued a copyright infringement claim against Aldi Stores Ltd after Aldi sold a copy of the well-known 'Filmstar Bronze and Glow' make-up palette.

Before the claim of infringement could be dealt with, the Court had to determine whether the make-up palettes were capable of copyright protection.

Copyright is the legal right and protection given to artistic works, and other expressions of ideas. These rights arise automatically and enable an individual or business to restrict unauthorised copying. Copyright was found to be held in both drawings of the 'Starburst Design' on the case of the palette, and the 'Powder Design' graphically embossed into the make-up pans. It was held that each of these drawings were original and, as a result, were capable of copyright protection under the Copyright, Designs and Patents Act 1988.

Aldi was then found to have infringed the copyright enjoyed by the Charlotte Tilbury brand when it used substantial parts of the original drawings without their consent.

The Court found that Aldi's reproduction palette did not need to be identical, in respect of the number of rays embossed in the powder, because it clearly sought to imitate the Charlotte Tilbury palette. This, coupled with Aldi's business model, '*like brands, only cheaper*', marked their intention to copy another brand's work and that it was neither a coincidence nor innocent inspiration.

The case also highlighted the issue of 'fixation' for artistic works. Despite the temporary nature of the linear designs in the powder, due to its ability to be rubbed away, the judge held that copyright protection subsisted in the physical drawing and the reproduction therefore infringed the original work. This sets an interesting



precedent that an artistic work need not be permanent to garner protection.

The case provides valuable guidance and marks a success for other aggrieved brands who feel threatened by the reproduction of their original works and a warning to low-cost copycats who try to claim 'inspiration' for blatant replication.

For further information about your automatic rights in copyright, contact Ian Lindley to see how we can help.

Islestarr Holdings Ltd v Aldi Stores Ltd [2019] EWHC 1473 (Ch)



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