



HIGH COURT OF AUSTRALIA

Public Information Officer

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POLYAIRE PTY LTD v K-AIRE PTY LTD, KEMALEX PTY LTD, RICHARD KEMPLEY
COLEBATCH, BRUCE VICTOR BENFIELD, K-AIRE SALES PTY LTD, K-AIRE
WHOLESALE PTY LTD, CONNECT AIRE PTY LTD AND ACN 079 795 814 PTY LTD

K-Aire had infringed copyright of a new kind of air-conditioning outlet, even though some of the design features had been changed, the High Court of Australia held today.

Polyaire, a South Australian manufacturer and seller of air-conditioning components, had a registered design for a new grille, which directs the flow of air from the air-conditioning unit into a room. It brought proceedings against K-Aire and the other respondents for infringement of its design. In the SA Supreme Court, Justice Anthony Besanko held that the respondents' outlet director was a fraudulent imitation of Polyaire's design. After a K-Aire grille, known as KA1, appeared on the market, Polyaire complained, and a different grille, KA2, appeared in its place.

Justice Besanko held that both KA1 and KA2 were fraudulent imitations. He found that industrial designer Andrew Rogers, whom Mr Colebatch asked to design an air-conditioning outlet for Kemalex, had reason to suspect that any outlet director produced by Polyaire was subject to a registered design. Mr Colebatch wanted certain features that were part of Polyaire's design. Justice Besanko found that KA1 was not distinctly different from Polyaire's grille. KA1 lacked a chamfered lip and vertical ribs on the outside of the frame but a snap-fit mechanism, control bars and the blade ends including the spigots had been copied.

K-Aire successfully appealed to the Full Court of the Federal Court. (Under the *Design Act* 1906, repealed 12 months ago, appeals lay to the Federal Court from a "prescribed court" which included the Supreme Court.) Polyaire then appealed to the High Court.

The appeal turned on the construction of section 30(1)(a) in the *Design Act* which deemed that a person infringed a registered design if, without permission, they applied the design or any fraudulent or obvious imitation of it to any article in respect of which the design is registered. As Justice Besanko found no obvious imitation in KA1 and KA2 it was necessary for him to decide whether there was nevertheless a fraudulent imitation. The Court upheld Justice Besanko's judgment that there had been copying of features giving the Polyaire design its distinctive appearance. It held that fraudulent imitation could include a copy with significant differences but which have been made merely to disguise the copying. The Court unanimously allowed the appeal.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*