

Community Designs Regulation

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Harrie Temmink

Industrial Property Unit

The Community Designs Regime

- Unified system for a Community Design (CD)
- Registered CD (administered by OHIM, Alicante) and unregistered CD
- CD has a unitary character and equal effect throughout the Community
- CD system exists in parallel with the system of national designs (harmonized by Directive 98/71)

Legal framework CD

- Council Regulation (EC) No 6/2002 on CD
- Commission Regulation (EC) No 2245/02 on implementing rules
- Commission Regulation (EC) No 2246/02 on fees
- OHIM examination guidelines

The law relating to CD

- “Design”: the appearance of the whole or a part of a product
- Requirements for protection
 - novelty: no identical design has been made available to the public
 - individual character: overall impression differs
- Unified invalidity and refusal grounds
- Term of protection
 - unregistered: 3 years
 - registered: 5 years (renewable until 25 years)
- Exclusive right to use design (making, putting on market etc.) and to prevent any third party to use without consent

Main exclusions from protection

- Features of appearance of a product which are solely dictated by its technical function (“from follows function”)
- Items incorporated into product which are not visible during “normal” use of product
- Characteristics of a products’ appearance which have to reproduced in order to allow the product to be mechanically connected to, or placed in, around or against, another product (“must fit” clause), except “modular systems (“Lego clause)
- Designs contrary to public policy or morality

Application of a CD

- Every natural or legal person may apply for a CD
- Presentation design must consist in a graphic or photographic reproduction (up to seven different views possible)
- Indication of classification: Locarno
- Multiple application: unlimited but should be bundling in the same Locarno class
- Right of priority for six months from day of filing
- Fees

Registration of a CD

- Examination OHIM basically:
 - have formal requirements been met?
 - is it a “design?”
 - does design offend public order/morality?
- If conditions for registration are fulfilled CD is entered in the Register (open database)
- Deferment of publication of registered CD for a period of 30 months

Main grounds for invalidity

- CD is not a design
- Requirements for protection are not fulfilled (e.g. novelty, individual character)
- CD is anticipated by a prior unpublished CD or a national design
- CD uses unlawfully distinctive sign (e.g. trade mark)
- CD constitutes unauthorised use of a work protected under copyright
- CD constitutes improper use of items of particular public interest (badges, emblems etc.)
- Partial invalidity is possible

Legal protection: appeal

- Any OHIM decision is subject to appeal within two months which has suspensive effect; a fee must be paid
- Responsible department can rectify or the appeal is remitted to the Board of Appeal
- Board of Appeal exercises full competence of responsible department
- Decisions of Board of Appeal are subject to action before the Court of First Instance (and finally, in appeal, before the ECJ)

Jurisdiction on infringements and validity

- Member States designate Community design courts (CDC) in first and second instance
- CDC has exclusive jurisdiction for
 - (threatened) CD infringements and counterclaims for a declaration of invalidity
 - declarations of non-infringements
 - declarations of invalidity of unregistered CD
- Sanctions in infringements actions and injunctions

More information

- DG MARKT D/2 (Industrial Property)
 - http://europa.eu.int/comm/internal_market/en/indprop/piracy/index.htm
- Office for Harmonization in the Internal Market (Trade Mark and Designs)
 - <http://oami.eu.int/en/default.htm>