

When the world's famous pop star leads to the invalidation of a Community design registered by an international footwear manufacturer

A registered Community design protects the appearance of a product, resulting from its features, in particular, the lines, contours, colors, shape, texture and/or materials of the product itself and/or its ornamentation and grants to its owner exclusive rights in all EU countries thanks to a single registration.

The European Union Intellectual Property Office (**EUIPO**) allows online applications to register such a Community design.

Pursuant to article 25 of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs, as amended, a Community design (the “**Regulation**”) may be declared invalid on several grounds, including the lack of novelty and of individual character (article 25 point 1, b).

Indeed the Regulation states in its article 4 that “*a design shall be protected by a Community design to the extent that it is new and has individual character.*”



A design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and to have individual character:

(a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter; and

(b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and individual character. (...)”

So, it is to understand that any applicant can request the invalidity of a registered Community design, namely when an earlier design that is identical or that produces the same overall impression has been made available to the public before the date of filing of the application for registration of the Community design.

On July 26, 2016, the footwear manufacturer registered a Community design represented by seven views of a sports shoe and an applicant requested the invalidity of the said registered Community design to the EUIPO, no less than three years later! (July 22, 2019).

On August 11, 2022, the EUIPO invalidated the registered Community design for sports shoes registered by the footwear manufacturer, on the ground of an early disclosure, by the pop star of the shoe design, representing the registered Community design.

EUIPO indeed noted in its decision, that the pop star had worn the shoes showing an earlier design with the same features as the registered design, twelve months before the application for registration was filed.

In these circumstances, EUIPO considered that the said earlier design had been made public and the EUIPO decision was confirmed by the European union court (Tribunal de l'Union Européenne) which decided, in a judgement rendered on March 6, 2024, that the early disclosure leads to the cancellation of the registered Community design.

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(Photo credit: Valerie Linari)