



Reports of Cases

Case T-57/16

Chanel SAS

v

European Union Intellectual Property Office

(Community design — Invalidity proceedings — Registered Community design representing ornamentation — Earlier design — Ground for invalidity — No individual character — Product at issue — Degree of freedom of the designer — No different overall impression — Article 6 and Article 25(1)(b) of Regulation (EC) No 6/2002)

Summary – Judgment of the General Court (Fourth Chamber), 18 July 2017

1. *Community designs — Appeals procedure — Action before the EU judiciary — Jurisdiction of the General Court — Direction issued to the Office @ Direction addressed to the Office — Not included*
(Council Regulation No 6/2002, Art. 61(3) and (6))
2. *Community designs — Ground for invalidity — No individual character — Design not giving the informed user a different overall impression from that produced by the earlier design — Criteria for assessment*
(Council Regulation No 6/2002 Arts 6 and 25(1)(b))
3. *Community designs — Ground for invalidity — No individual character — Design not giving the informed user a different overall impression from that produced by the earlier design — Criteria for assessment — Creative licence*
(Council Regulation No 6/2002, Arts 6(2) and 25(1)(b))
4. *Community designs — Ground for invalidity — No individual character — Design not giving the informed user a different overall impression from that produced by the earlier design — Assessment — Contested design registered as ornamentation without information of the products to which that ornamentation is intended to be applied — Consequences — Obligation on the Board of Appeal to identify the product to which the contested design is intended to be applied — None*
(Council Regulation No 6/2002, Art. 36(2))
5. *Community designs — Appeals procedure — Action before the EU judiciary — Jurisdiction of the General Court — Re-evaluation of the facts in the light of evidence produced for the first time before it — Not included*
(Council Regulation No 6/2002, Art. 61)

6. *Community designs — Ground for invalidity — No individual character — Design not giving the informed user a different overall impression from that produced by the earlier design — Account taken of the overall impression with regard to the way the product is used*

(Council Regulation No 6/2002, Arts 6(1) and 25(1)(b))

7. *Community designs — Ground for invalidity — No individual character — Design not giving the informed user a different overall impression from that produced by the earlier design — Representation of an ornament*

(Council Regulation No 6/2002, Arts 6 and 25(1)(b))

1. See the text of the decision.

(see para. 17)

2. See the text of the decision.

(see paras 27, 28)

3. See the text of the decision.

(see paras 29-32)

4. In order to ascertain the product in which a contested design is intended to be incorporated or to which it is intended to be applied, the relevant indication in the application for registration of that design should be taken into account, but also, where necessary, the design itself, in so far as it makes clear the nature of the product, its intended purpose or its function.

In the present case, the contested design, registered as ornamentation in Class 32 of the Locarno Agreement Establishing an International Classification for Industrial Designs, does not provide any information with regard to its intended purpose or function. Furthermore, the Chanel monogram is registered in respect of a very large number of products and the contested design is registered as ornamentation, without any information regarding the products to which that ornamentation is intended to be applied. It follows that, in the present case, it was not possible to establish the sector to which the products in which the design was intended to be incorporated or to which it was intended to be applied belong or to compare it with that of the Chanel monogram.

Consequently, the Board of Appeal was right in finding that the product to which the contested design was intended to be applied was ornamentation. The Board of Appeal was not required to identify the product to which that ornamentation was intended to be applied.

(see paras 41-44)

5. See the text of the decision.

(see para. 49)

6. See the text of the decision.

(see para. 52)

7. The contested design which has remarkable similarities with the Chanel monogram lacks individual character under Article 6 of Regulation No 6/2002 on Community designs. That contested design may be perceived, to a certain extent, as a creation inspired by the idea of the Chanel monogram, particularly because the choice of the contested design was not in any way determined by any considerations and because its designer did not sufficiently differentiate that design from the Chanel monogram. Consequently, for the purposes of determining whether the designs at issue produce a different overall impression, it must be held that the informed user will perceive those designs as a whole. Even though there are differences between the central parts of the two designs, which are unlikely to be noticed by the informed user because it is possible to use the contested design with a 90 degree variation in orientation and in various sizes, the fact remains that the overall impression is not different, since the outer parts, which considerably determine the outline and overall impression produced by the designs at issue, are highly similar and almost identical.

In the light of the similarities between the designs at issue, the great degree of creative freedom cannot but reinforce the fact that those designs do not produce a different overall impression. Moreover, the contested design is ornamentation in Class 32 of the Locarno Agreement Establishing an International Classification for Industrial Designs and such ornamentation may be applied to a wide range of products, which makes it almost impossible to determine in advance how that ornamentation will be used. That therefore reinforces the necessity for a meticulous analysis of the overall impressions produced by the designs at issue.

(see paras 55, 56, 58, 59)