

Bags of guidance on Community Registered Designs

- ▶ EU General Court rejects invalidity proceedings for Community Registered handbag design
- ▶ Court examines key elements of a Community Registered Design (CRD)

What's it about?

Yves Saint Laurent (**YSL**) had filed an application for a CRD in the class of "handbags". H&M Hennes (**H&M**) filed an application to invalidate the design, claiming that it had no "individual character", invoking an earlier H&M design as "prior art" in support. H&M's application for invalidity was rejected and it unsuccessfully appealed that rejection. The EU General Court has now rejected a further appeal from H&M.

Why does it matter?

The court examined the law on validity of CRDs and, in particular, the requirement that a design must have "individual character" and create a "different overall impression" on the "informed user" (this is the notional person who compares the design in question with the previous design) to any design made available to the public before the date of filing for the relevant application.¹

The court proposed that a four stage process should be followed in examining whether a design has individual character:

- ▶ Determine what the relevant design sector is
- ▶ Identify the informed user and their degree of awareness of previous designs
- ▶ Establish the designer's degree of freedom, as the greater the degree of freedom of a designer, the less likely minor differences will convey a different overall impression
- ▶ Assess the outcome of the comparison of the designs by taking into account both the first and third bullet point above and the overall impression made on the informed user compared to any earlier designs made available to the public

The court also gave guidance on how to identify the "informed user". This was held to be a particularly observant user, as a result of either his or her personal experience or extensive knowledge of the sector in question (although the informed user need not be an expert). In this, case the informed user was said to be an informed woman who was interested, as a possible user, in handbags.

After applying these tests, the court held that the overall shape, structure and finish of the YSL bag was sufficiently different to that of the H&M bag and therefore dismissed H&M's appeal.

Now what?

The judgment of the court can be used as a helpful guide to the assessment of the individual character of CRDs.

[*H&M Hennes and Mauritz v OHIM, Cases T 525/13 and T 526/13*](#)

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YSL design:

¹ Articles 4(1) and 6 of Regulation No. 6/2002 on Community Designs



