

# Game for a dispute – enforcing Community Registered Designs against manufacturers of accessories

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- Nintendo seeks to enforce Community Registered Design against manufacturer of Wii accessories
- When can a supplier of un-branded accessories use images of goods protected by a Community Registered Design?
- Can a national court grant EU-wide relief against infringers?

## What's it about?

As the proprietor of various Community Registered Designs (**CRDs**) relating to accessories for its Wii game consoles, Nintendo issued infringement proceedings against the defendants, BigBen Interactive SA, the French parent, and its German subsidiary, BigBen Interactive GmbH. Together these companies form part of one of Europe's largest distributors of video game accessories, many of which are compatible with the Wii console.

In an attempt to avoid parallel proceedings in two separate jurisdictions, Nintendo elected to have its claim heard in Dusseldorf. Before ruling definitively on the claim, the German court referred certain points of law to the ECJ, including 1) can a national court grant sanctions which apply across the EU, extending beyond the countries in which the supplier and customer are located? 2) can a business depict a product relating to a CRD in connection with the lawful sale of accessories intended to be used with those products?

## Why does it matter?

On the first question, the ECJ held that sanctions and remedies set out in Community Design Regulation (6/2002/EC) (the **Regulation**) could be granted on an EU-wide basis and were not restricted to those countries specifically in the supply chain between the French and German companies. It was clear that the Regulation intends to protect the owners of CRDs across the whole of the EU.

On the second question, the ECJ was required to consider the scope of the "citation" exemption to CRD infringement under Article 20(1)(c) of the Regulation. This provides that a CRD is not infringed where reproduced "*for the purpose of making citations [...] provided that such acts are compatible with fair trade practice and do not unduly prejudice the normal exploitation of the design, and that mention is made of the source*". The ECJ held that the citation exemption did apply where a business lawfully offers for sale accessories designed to be used with the goods corresponding to the CRD, in order to explain or demonstrate the use of those accessories.

## What next?

This ruling demonstrates the broad scope of the Regulation, together with the courts' continued efforts to strike a balance between ensuring that sanctions for infringements of CRDs have teeth throughout the EU without hampering healthy competition (in this case, with a particular focus on the market for accessories).

[Nintendo Co Ltd v BigBen Interactive GmbH and another \(Case C-25/16\) EU:C:2017:724](#)

For further information on this or any other IP related matter please contact [Andrew Bayley](#) on 0161 934 6436