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JOB OFFERS AND ADVERTISEMENTS



MONTHLY CASE LAW OVERVIEW

Trade Mark Law

A sign consisting of two-dimensional decorative patterns affixed to goods such as fabric or paper does not 'consist exclusively of the shape'

[IPPT20190314, CJEU, Textilis v Svenskt Tenn](#)



Trade Mark Law. Article 7(1)(e)(iii) EUTMR (Regulation 207/2009 as amended by Regulation 2015/2424) is not applicable to trade marks registered before the entry into force of the amendment to that Regulation (23 March 2016). Sign consisting of two-dimensional decorative motifs affixed to goods such as fabrics or paper shall does not "consisting exclusively

of the shape " within the meaning of Article 7(1)(e)(iii) CTMR (Regulation 207/2009 prior to its amendment by Regulation 2015/2524). Although, in the main proceedings, the sign under consideration represents shapes which are formed by the external outline of drawings representing, in a stylised manner, parts of geographical maps, the fact remains that, apart from those shapes, that sign contains decorative elements which are situated both inside and outside those outlines.

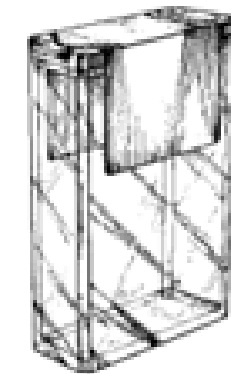
Design Law

Invalidity of the contested design for a box of sweets based on an older trade mark upheld

[IPPT20190306, CJEU, BMB v EUIPO](#)



Design Law. In 2007, BMB filed a design with EUIPO for comfit boxes and containers in Class 09.03 of the Locarno Agreement Establishing an International Classification for Industrial Design. See the image above. The intervener at first instance, Ferrero, filed an application for a declaration of



invalidity of the registered design before EUIPO pursuant to Article 25(1)(c) to (g) of Regulation No 6/2002. In support of its application, Ferrero invoked three earlier rights, including International Registration of a trade mark registered for sweets. See image on the left. The EUIPO granted the application for a declaration of invalidity and the General Court upheld this finding.

In today's judgment, the CJEU finds that the appeal against the General Courts finding that the fact that the contested design is filled with sweets cannot constitute a relevant point of visual comparison - since the contested design is registered merely for the box or container of those sweets - should be dismissed since the appeal amounts in no more than a request for re-examination which the CJEU does not have jurisdiction to undertake. The same goes for the claim that the General Court failed to correctly take into consideration all of the relevant elements in its analysis of the similarity between the signs at issue. Moreover, according to the CJEU, the General Court did not err in law by not taking into consideration a judgment of the tribunal de grande instance de Paris, since this judgment cannot bind the adjudicating bodies of EUIPO in invalidity proceedings.

ITEMS**News*****[IP 10186](#). UN expert criticizes the new Copyright Directive***

United Nations Human Rights: "UN human rights experts David Kaye has urged the European Union to bring its Copyright Directive into line with international standards on freedom of expression. "Europe has a responsibility to modernise its copyright law to address the challenges of the digital age," said the UN's Special Rapporteur on freedom of expression ahead of a critical vote on the Directive. "But this should not be done at the expense of the freedom of expression that Europeans enjoy today." "Article 13 of the proposed Directive appears destined to drive internet platforms toward monitoring and restriction of user-generated content even at the point of upload. Such sweeping pressure for pre-publication filtering is neither a necessary nor proportionate response to copyright infringement online. (...)"The latest version of the proposed Directive, which would include an exemption for relatively new content-sharing providers that have limited penetration in European markets, would not meet the concerns raised by earlier drafts, Kaye added. "Most platforms would not qualify for the exemption and would face legal pressure to install and maintain expensive content filtering infrastructure to comply with the proposed Directive," the expert said. "In the long run, this would imperil the future of information diversity and media pluralism in Europe, since only the biggest players will be able to afford these technologies."

[IP 10188](#). European Parliament votes in favour of the new Copyright Directive

Statement of the European Commission: "Today, the European Parliament voted in favour of the new Copyright Directive designed to bring tangible benefits to citizens, all creative sectors, the press, researchers, educators, and cultural heritage institutions.

Vice-President for the Digital Single Market Andrus Ansip and Commissioner for Digital Economy and Society Mariya Gabriel welcome the outcome in a joint statement:

"We welcome the approval of the Directive on copyright in the Digital Single Market by the European Parliament. This Directive protects creativity in the digital age and ensures that the EU citizens benefit from wider access to content and new guarantees to fully protect their freedom of expression online. The new rules will strengthen our creative industries, which represent 11.65 million jobs, 6.8% of GDP and are worth €15,000 million per year.

Today's vote ensures the right balance between the interests of all players – users, creators, authors, press –

while putting in place proportionate obligations on online platforms.

The Copyright Directive protects freedom of expression, a core value of the European Union. It sets strong safeguards for users, making clear that everywhere in Europe the use of existing works for purposes of quotation, criticism, review, caricature as well as parody are explicitly allowed. This means that memes and similar parody creations can be used freely. The interests of the users are also preserved through effective mechanisms to swiftly contest any unjustified removal of their content by the platforms.

At the same time, the Directive will improve the position of creators in their negotiations with big platforms which largely benefit from their content. Writers, journalists, singers, musicians and actors will find it easier to negotiate better deals with their publishers or producers. The new rules will also allow research organisations, universities, schools, libraries and museums to use more content online. The Directive takes account of new technologies to ensure that researchers can use text and data mining to its full potential.

We thank all parties involved, and particularly the Members of the European Parliament and the Member States for all their efforts to make this crucial reform for the future of Europe possible."

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