

Court of Justice EU, 16 February 2023, *Monz v Büchel*

Underside of a saddle



DESIGN LAW

Visibility of a design (underside of a saddle) which constitutes a component part of a complex product (bicycle) during normal of use of that complex product (article 3 Designs Directive)

- The requirement of ‘visibility’ must be assessed in the light of a situation of normal use of that complex product, so that the component part concerned, once it has been incorporated into that product, remains visible during such use.
- To that end, the visibility of a component part of a complex product during its ‘normal use’ by the end user must be assessed from the perspective of that user as well as from the perspective of an external observer, and that normal use must cover acts performed during the principal use of a complex product as well as acts which must customarily be carried out by the end user in connection with such use, with the exception of maintenance, servicing and repair work.

49 As regards, first, the question whether the ‘normal use’ of a complex product corresponds to the use intended by the manufacturer of the component part, to that intended by the manufacturer of the complex product or to the customary use of that product by the end user, it must be stated at the outset that, in accordance with Article 3(4) of Directive 98/71, that provision covers the ‘normal use’ of the complex product by the end user.

50 In that regard, although the German-language version of Article 3(3) and (4) of Directive 98/71 uses, as a criterion of the visibility of a component part incorporated into a complex product, ‘use in accordance with its intended purpose’ (‘bestimmungsgemäße Verwendung’), other language versions of those same provisions, such as the English version (‘normal use’), the French version (‘utilisation normale’), the Italian version (‘la normale utilizzazione’), the Spanish version (‘la utilización normal’) and the Dutch version (‘normaal gebruik’), indicate that the component part

incorporated in a complex product must remain visible during the ‘normal’ or ‘customary’ use of that product.

51 It should be noted that, as the European Commission pointed out, in essence, in its written observations, the normal or customary use of a complex product by the end user corresponds, as a general rule, to a use consistent with the intended purpose of the complex product, as intended by the manufacturer or designer of that product.

52 That said, as the Commission noted, in essence, with regard to the concept of ‘normal use’, the EU legislature intended to refer to the customary use of the complex product by the end user, in order to exclude the use of that product at other stages of trade and thus to prevent circumvention of the visibility condition. The assessment of the ‘normal use’ of a complex product, within the meaning of Article 3(3)(a) and (4) of Directive 98/71, cannot therefore be based solely on the intention of the manufacturer of the component part or of the complex product.

53 As regards, second, the question of what use of a complex product by the end user constitutes ‘normal use’ within the meaning of Article 3(4) of Directive 98/71, it is necessary to note at the outset that the fact that that provision does not specify what type of use of such a product is covered by that concept and refers, generally, to the use of such a product by the end user supports a broad interpretation of that concept.

54 In that regard, as the Advocate General stated in point 38 of his Opinion, in practice, use of a product in its principal function often requires various acts which may be performed before or after the product has fulfilled that principal function, such as the storage and transportation of that product. As a result, it must be held that ‘normal use’ of a complex product, within the meaning of Article 3(4) of Directive 98/71, covers all those acts, with the exception of those expressly excluded by that paragraph 4, namely acts relating to maintenance, servicing and repair work.

55 Accordingly, ‘normal use’, within the meaning of Article 3(4) of Directive 98/71, must cover acts relating to the customary use of a product as well as other acts which may reasonably be carried out during such use and which are customary from the perspective of the end user, including those which may be performed before or after the product has fulfilled its principal function, such as the storage and transportation of that product.

Source: [ECLI:EU:C:2023:105](#)

Court of Justice EU, 31 March 2010

(E. Regan, D. Gratsias, M. Ilešič (Rapporteur), I. Jarukaitis and Z. Csehi)

JUDGMENT OF THE COURT (Fifth Chamber)

16 February 2023 (*)

(Reference for a preliminary ruling – Intellectual property – Design – Directive 98/71/EC – Article 3(3) and (4) – Conditions for obtaining protection for a component part of a complex product – Concepts of ‘visibility’ and ‘normal use’ – Visibility of a component

part of a complex product during normal use of that product by the end user)

In Case C-472/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Federal Court of Justice, Germany), made by decision of 1 July 2021, received at the Court on 2 August 2021, in the proceedings

Monz Handelsgesellschaft International mbH & Co. KG v

Büchel GmbH & Co. Fahrzeugtechnik KG,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, D. Gratsias, M. Ilešič (Rapporteur), I. Jarukaitis and Z. Csehi, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Monz Handelsgesellschaft International mbH & Co. KG, by C. Rohnke and T. Winter, Rechtsanwälte,

– Büchel GmbH & Co. Fahrzeugtechnik KG, by M. Pilla, Rechtsanwalt,

– the European Commission, by E. Gippini Fournier, J. Samnadda and T. Scharf, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 September 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3(3) and (4) of Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs (OJ 1998 L 289, p. 28).

2 The request has been made in proceedings between Monz Handelsgesellschaft International mbH & Co. KG ('Monz') and Büchel GmbH & Co. Fahrzeugtechnik KG ('Büchel') concerning an application for a declaration of invalidity of a registered national design filed by Büchel.

Legal context

European Union law

Directive 98/71

3 Recital 12 of Directive 98/71 states:

'... protection should not be extended to those component parts which are not visible during normal use of a product, or to those features of such part which are not visible when the part is mounted, or which would not, in themselves, fulfil the requirements as to novelty and individual character; ... features of design which are excluded from protection for these reasons should not be taken into consideration for the purpose of assessing whether other features of the design fulfil the requirements for protection.'

4 Article 1 of that directive, entitled 'Definitions', states: 'For the purpose of this Directive:

(a) "design" means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation;

(b) "product" means any industrial or handicraft item, including inter alia parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs;

(c) "complex product" means a product which is composed of multiple components which can be replaced permitting disassembly and reassembly of the product.'

5 Article 3 of that directive, entitled 'Protection requirements', provides as follows:

'1. Member States shall protect designs by registration, and shall confer exclusive rights upon their holders in accordance with the provisions of this Directive.

2. A design shall be protected by a design right to the extent that it is new and has individual character.

3. 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.

4. "Normal use" within the meaning of paragraph 3(a) shall mean use by the end user, excluding maintenance, servicing or repair work.'

6 Article 5 of that directive, entitled 'Individual character', provides, in paragraph 1 thereof, as follows:

'A design shall be considered to have individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public before the date of filing of the application for registration or, if priority is claimed, the date of priority.'

Regulation (EC) No 6/2002

7 Recitals 9 and 12 of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ 2002 L 3, p. 1) read as follows:

'(9) The substantive provisions of this Regulation on design law should be aligned with the respective provisions in Directive [98/71].

...

(12) Protection should not be extended to those component parts which are not visible during normal use of a product, nor to those features of such part which are not visible when the part is mounted, or which would not, in themselves, fulfil the requirements as to novelty and individual character. Therefore, those features of design which are excluded from protection for these reasons should not be taken into consideration for the purpose of assessing whether other features of the design fulfil the requirements for protection.'

8 Article 4 of that regulation, entitled 'Requirements for protection', provides:

'1. A design shall be protected by a Community design to the extent that it is new and has individual character.

2. 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.

3. “Normal use” within the meaning of paragraph 2(a) shall mean use by the end user, excluding maintenance, servicing or repair work.’

German law

9 Paragraph 1(4) and Paragraph 4 of the Gesetz über den rechtlichen Schutz von Design (Law on the legal protection of designs) of 24 February 2014 (BGBl. 2014 I, p. 122), in the version applicable to the dispute in the main proceedings (*the DesignG*), transpose Article 3(3) and (4) of Directive 98/71.

10 Paragraph 1 of the DesignG, entitled ‘Definitions’, states in subparagraph 3 that a complex product is a product composed of several components which can be replaced permitting disassembly and re-assembly of the product. According to subparagraph 4, ‘normal use’ is defined as use by the end user, excluding maintenance, servicing or repair work.

11 Paragraph 4 of the DesignG, entitled ‘Components of complex products’, provides that a design applied to or incorporated in a product which constitutes a component part of a complex product is to be considered to be new and to have individual character only if the component part, once it has been incorporated into the complex product, remains visible during normal use of that product and to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and individual character.

The dispute in the main proceedings and the questions referred for a preliminary ruling

12 Monz, a company incorporated under German law, is the holder of the design, registered since 3 November 2011 at the Deutsches Patent- und Markenamt (German Patent and Trade Mark Office, Germany) (*the DPMA*) for the products ‘saddles for bicycles or motorcycles’. That design is registered with a single representation showing the underside of a saddle as follows:



13 On 27 July 2016, Büchel, a company incorporated under German law, filed an application with the DPMA for a declaration of invalidity of the design at issue in the main proceedings, claiming that it did not meet the requirements for legal protection as a design under Paragraph 4 of the DesignG. It argued, in particular, that that design applied to a saddle, which is a component part of a complex product such as a ‘bicycle’ or a ‘motorcycle’, was not visible during normal use of that product.

14 By decision of 10 August 2018, the DPMA rejected that application for a declaration of invalidity, holding that there were no grounds for excluding the design at issue in the main proceedings from protection under Paragraph 4 of the DesignG. According to the DPMA, although the bicycle saddle to which that design is applied is indeed a ‘component part of a complex product’, that component part nevertheless remains visible during normal use of that complex product. The DPMA took the view that normal use of such a product also covers ‘the disassembly and reassembly of the saddle for purposes other than maintenance, servicing or repair work’, the latter being included in an exhaustive list of uses excluded from that concept, within the meaning of Paragraph 1(4) of the DesignG.

15 Following an action brought by Büchel against that decision before the Bundespatentgericht (Federal Patent Court, Germany), that court, by decision of 27 February 2020, declared the design at issue in the main proceedings invalid on the ground that it did not meet the requirements of novelty and individual character. According to that court, under Paragraph 4 of the DesignG, only component parts which remain ‘visible, as component parts of the complex product, after they have been mounted/incorporated in it’ are automatically eligible to benefit from the legal protection of designs. Conversely, a component part which is visible only as a result of or at the time of its separation from a complex product cannot be regarded as satisfying the condition of visibility and cannot, therefore, benefit from that protection. In addition, that court considered only riding a bicycle and getting on and off a bicycle to be normal use within the meaning of Paragraph 1(4) of the DesignG. According to that court, during such use, the underside of the saddle is not visible either to the end user or to a third party.

16 Monz brought an appeal on a point of law against that decision before the Bundesgerichtshof (Federal Court of Justice, Germany), the referring court. That court considers that the outcome of the dispute in the main proceedings depends on how the concepts of ‘visibility’ and ‘normal use’, within the meaning of Article 3(3) and (4) of Directive 98/71, are to be interpreted.

17 The referring court states, first of all, that it shares the view of the Bundespatentgericht (Federal Patent Court) that, in accordance with the Court’s case-law, resulting in particular from [the judgment of 20 December 2017, *Acacia and D’Amato* \(C-397/16 and C-435/16, EU:C:2017:992, paragraph 64\)](#), a bicycle is a complex product and the saddle is a component part of that product.

18 The referring court considers that, for the purpose of resolving the dispute before it, it is necessary to determine, in the first place, whether the requirement of ‘visibility’ of a component part, once it has been incorporated into the complex product, during ‘normal use’ of that product must be assessed by taking into account certain conditions of use of that product or certain observer perspectives or, on the contrary, only the objective possibility of recognising the design applied to the component part integrated in the complex product.

19 In that regard, the referring court states that, on the one hand, the Bundespatentgericht (Federal Patent Court) concluded that it would be necessary for the component part to remain visible to the end user or to a third party during normal use by the end user of the complex product in which that component part is incorporated. On the other hand, the applicant in the main proceedings claimed that it is sufficient, in order for the design to be protected, that it can be identified when the component part to which it is applied is integrated in the complex product. It is therefore irrelevant whether the design can easily be observed from a particular ‘perspective’.

20 In that context, the referring court raises the question of the interpretation of Article 3(3) and (4) of Directive 98/71, taking the view that the purpose of those provisions cannot be clearly deduced from that directive.

21 That court takes the view, inter alia, that the contention that a manufacturer who sees no benefit in visibly presenting a design has no interest in invoking the protection of that design is too simplistic, given that the design holder, the manufacturer of the component part and the manufacturer of the complex product are not necessarily one and the same.

22 Furthermore, it observes that, according to doctrine, that provision runs counter to the principle that a design’s eligibility for legal protection must already be established at the time of registration of the design concerned.

23 According to the referring court, those considerations support a strict interpretation of Article 3(3) and (4) of Directive 98/71.

24 However, that court considers that, although the meaning in everyday language of the word ‘visible’ suggests an objective comprehension referring to the possibility of identifying something, it cannot be inferred from the words ‘normal use’ that particular forms of observation of the complex product are excluded.

25 In the second place, it is necessary to determine the criteria which are relevant for the purpose of assessing the ‘normal use’ of a complex product by the end user, within the meaning of Article 3(4) of that directive.

26 In that regard, the question arises, in particular, whether, in the context of such an assessment, account should be taken of the use desired by the manufacturer of the component part or of the complex product or only of the customary use of the complex product by the end user.

27 The referring court considers that the definition of ‘normal use’ in Article 3(4) of Directive 98/71 may be understood as meaning that, for the EU legislature, any use by the end user of the complex product is, as a matter of principle, normal use, subject to the exceptions set out in that provision.

28 As regards the criterion of the use intended by the manufacturer of the component part or of the complex product, that court states that its application would, in its view, make it possible to avoid exclusion from legal protection for designs since the use of the complex product by end users would be irrelevant, while at the same time referring to its reservations with regard to that criterion mentioned in paragraph 21 above.

29 In the third place, the referring court asks whether only the principal use of the complex product is decisive or whether other uses of that product must, where appropriate, be taken into account.

30 In that regard, that court is in favour of a broad interpretation of Article 3(4) of Directive 98/71, in order to minimise the effects of Article 3(3) of that directive, which is considered by legal writers to be contrary to the logic of the system of design protection, and to avoid greater inequality of treatment between holders of designs covering component parts of complex products and the holders of other designs.

31 In those circumstances, the Bundesgerichtshof (Federal Court of Justice) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is a component part incorporating a design a “visible” component within the meaning of Article 3(3) of [Directive 98/71] if it is objectively possible to recognise the design when the component is mounted, or should visibility be assessed under certain conditions of use or from a certain observer perspective?’

(2) If the answer to Question 1 is that visibility under certain conditions of use or from a certain observer perspective is the decisive factor:

(a) When assessing the “normal use” of a complex product by the end user within the meaning of Article 3(3) and (4) of [Directive 98/71], is it the use intended by the manufacturer of the component part or complex product that is relevant, or the customary use of the complex product by the end user?’

(b) What are the criteria for assessing whether the use of a complex product by the end user constitutes a “normal use” within the meaning of Article 3(3) and (4) of [Directive 98/71]?’

The questions referred

32 By its two questions, which it is appropriate to examine together, the referring court asks, in essence, first, whether Article 3(3) and (4) of Directive 98/71 must be interpreted as meaning that the requirement of ‘visibility’, laid down in that provision, that is to be met in order for a design applied to or incorporated in a product which constitutes a component part of a complex product to be eligible to benefit from the legal protection of designs, must be assessed on the basis of certain conditions of use of that complex product or only the objective possibility of recognising the design

applied to the component part as integrated in the complex product and, second, what the relevant criteria are for determining the ‘normal use’ of a complex product by the end user.

33 Those questions are raised in proceedings arising from the application made by Büchel for a declaration that the design at issue in the main proceedings is invalid on the ground that it cannot benefit from legal protection as a design since the bicycle saddle, as a component part of a complex product such as a ‘bicycle’ or ‘motorcycle’, is not visible during normal use of that complex product.

34 It must be stated at the outset that, in the present case, the saddle of a bicycle or motorcycle constitutes a component part of a complex product, within the meaning of Article 3(3) of Directive 98/71, a bicycle or motorcycle constituting, in itself, a complex product within the meaning of Article 1(c) of that directive. A saddle may be replaced permitting disassembly and re-assembly of the bicycle or motorcycle and, without it, that complex product could not be subject to normal use (see, by analogy, [judgment of 20 December 2017, Acacia and D’Amato, C-397/16 and C-435/16, EU:C:2017:992](#), paragraphs 64 to 66).

35 It should be borne in mind, in the first place, that, under Article 3(3) of Directive 98/71, read in the light of recital 12 thereof, a design applied to or incorporated in a product which constitutes a component part of a complex product is to be considered to be new and to have individual character only if the component part, once it has been incorporated into the complex product, remains visible during normal use of that product (point (a)) and the visible features of the component part fulfil in themselves the requirements as to novelty and individual character (point (b)).

36 Article 3(3) of Directive 98/71 thus lays down a special rule relating specifically to designs applied to or incorporated in a product which constitutes a component part of a complex product within the meaning of Article 1(c) of Directive 98/71.

37 Next, it is important to bear in mind that, in accordance with Article 1(a) of Directive 98/71, it is the appearance of the whole or part of a product which is the subject matter of the legal protection for designs under that directive.

38 In the context of the design protection provided for by Regulation No 6/2002, the Court has already held that appearance is the decisive element of a design and that the fact that a characteristic of a design is visible constitutes an essential feature of that protection (see, to that effect, [judgments of 21 September 2017, Easy Sanitary Solutions and EUIPO v Group Nivelles, C-361/15 P and C-405/15 P, EU:C:2017:720](#), paragraphs 62 and 63, and [of 28 October 2021, Ferrari, C-123/20, EU:C:2021:889](#), paragraph 30).

39 As regards, in particular, designs incorporated into a product which constitutes a component part of a complex product, the Court has stated that, in order for the appearance of the component part of a complex product to be protected as a design, it must, by definition, be visible and defined by features which constitute its particular appearance, namely by particular

lines, contours, colours, shapes and texture. That presupposes that the appearance of that component part cannot be completely lost in the product as a whole (see, to that effect, [judgment of 28 October 2021, Ferrari, C-123/20, EU:C:2021:889](#), paragraphs 49 and 50).

40 In that regard, it must be held that those principles are applicable to the design protection system provided for by Directive 98/71.

41 Thus, Article 3(3)(a) of Directive 98/71 requires that, in order for a component part incorporated into a complex product to be eligible for protection as a design, that component part must remain visible during normal use of that product. Moreover, in accordance with recital 12 of that directive, protection should not be extended to those component parts which are not visible during normal use of a product, or to those features of such part which are not visible when that part is mounted, or which would not, in themselves, fulfil the requirements as to novelty and individual character.

42 That limitation of the legal protection of designs to the visible features of the component part concerned is explained by the fact that the appearance of that component part derives exclusively from those features.

43 Such an interpretation is supported by the broad logic of Directive 98/71 and by the objective pursued by Article 3(3) of that directive. Indeed, the protection of designs under that directive applies only to the characteristics which determine the appearance of the whole or part of a product. A visible component part necessarily contributes to the appearance of the complex product (see, by analogy, [judgment of 20 December 2017, Acacia and D’Amato, C-397/16 and C-435/16, EU:C:2017:992](#), paragraph 73).

44 Furthermore, it is clear from the wording of Article 3(3)(a) of Directive 98/71 that, in order to benefit from the legal protection of designs, the component part, once it has been incorporated into the complex product, must remain visible ‘during normal use’ of that product.

45 It follows that an assessment in abstracto of the visibility of the component part incorporated into a complex product, unconnected to any practical situation of use of the product, is not sufficient to allow a component part to benefit from protection as a design under Directive 98/71. In that regard, it is necessary to clarify that Article 3(3) of Directive 98/71 nevertheless does not require a component part that is incorporated into a complex product to remain fully visible the whole time that the complex product is being used.

46 As the Advocate General stated in [points 33 and 34 of his Opinion](#), the visibility of a component part incorporated into a complex product, within the meaning of Article 3(3) of Directive 98/71, read in conjunction with Article 3(4) thereof, cannot be assessed solely from the perspective of the end user of that product. In that regard, the visibility of such a component part to an external observer must also be taken into consideration.

47 In the second place, it must be borne in mind that, under Article 3(4) of Directive 98/71, the concept of ‘normal use’ of a complex product is defined as ‘use by the end user, excluding maintenance, servicing or repair work’. According to that definition, ‘normal use’

corresponds to use by the end user. It expressly excludes uses by the end user which form part of the maintenance, servicing or repair of the complex product.

48 In that regard, it must be determined whether the concept of ‘normal use’ of a product by the end user, within the meaning of Article 3(4) of Directive 98/71, corresponds to the use intended by the manufacturer or designer of the component part, to that intended by the manufacturer or designer of the complex product or to the customary use of the complex product by the end user.

49 As regards, first, the question whether the ‘normal use’ of a complex product corresponds to the use intended by the manufacturer of the component part, to that intended by the manufacturer of the complex product or to the customary use of that product by the end user, it must be stated at the outset that, in accordance with Article 3(4) of Directive 98/71, that provision covers the ‘normal use’ of the complex product by the end user.

50 In that regard, although the German-language version of Article 3(3) and (4) of Directive 98/71 uses, as a criterion of the visibility of a component part incorporated into a complex product, ‘use in accordance with its intended purpose’ (‘bestimmungsgemäße Verwendung’), other language versions of those same provisions, such as the English version (‘normal use’), the French version (‘utilisation normale’), the Italian version (‘la normale utilizzazione’), the Spanish version (‘la utilización normal’) and the Dutch version (‘normaal gebruik’), indicate that the component part incorporated in a complex product must remain visible during the ‘normal’ or ‘customary’ use of that product.

51 It should be noted that, as the European Commission pointed out, in essence, in its written observations, the normal or customary use of a complex product by the end user corresponds, as a general rule, to a use consistent with the intended purpose of the complex product, as intended by the manufacturer or designer of that product.

52 That said, as the Commission noted, in essence, with regard to the concept of ‘normal use’, the EU legislature intended to refer to the customary use of the complex product by the end user, in order to exclude the use of that product at other stages of trade and thus to prevent circumvention of the visibility condition. The assessment of the ‘normal use’ of a complex product, within the meaning of Article 3(3)(a) and (4) of Directive 98/71, cannot therefore be based solely on the intention of the manufacturer of the component part or of the complex product.

53 As regards, second, the question of what use of a complex product by the end user constitutes ‘normal use’ within the meaning of Article 3(4) of Directive 98/71, it is necessary to note at the outset that the fact that that provision does not specify what type of use of such a product is covered by that concept and refers, generally, to the use of a product by the end user supports a broad interpretation of that concept.

54 In that regard, as the Advocate General stated in [point 38 of his Opinion](#), in practice, use of a product in

its principal function often requires various acts which may be performed before or after the product has fulfilled that principal function, such as the storage and transportation of that product. As a result, it must be held that ‘normal use’ of a complex product, within the meaning of Article 3(4) of Directive 98/71, covers all those acts, with the exception of those expressly excluded by that paragraph 4, namely acts relating to maintenance, servicing and repair work.

55 Accordingly, ‘normal use’, within the meaning of Article 3(4) of Directive 98/71, must cover acts relating to the customary use of a product as well as other acts which may reasonably be carried out during such use and which are customary from the perspective of the end user, including those which may be performed before or after the product has fulfilled its principal function, such as the storage and transportation of that product.

56 In the light of the foregoing considerations, the answer to the questions referred is that Article 3(3) and (4) of Directive 98/71 must be interpreted as meaning that the requirement of ‘visibility’, laid down in that provision, that is to be met in order for a design applied to or incorporated in a product which constitutes a component part of a complex product to be eligible to benefit from the legal protection of designs, must be assessed in the light of a situation of normal use of that complex product, so that the component part concerned, once it has been incorporated into that product, remains visible during such use. To that end, the visibility of a component part of a complex product during its ‘normal use’ by the end user must be assessed from the perspective of that user as well as from the perspective of an external observer, and that normal use must cover acts performed during the principal use of a complex product as well as acts which must customarily be carried out by the end user in connection with such use, with the exception of maintenance, servicing and repair work.

Costs

57 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

Article 3(3) and (4) of Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs

must be interpreted as meaning that the requirement of ‘visibility’, laid down in that provision, that is to be met in order for a design applied to or incorporated in a product which constitutes a component part of a complex product to be eligible to benefit from the legal protection of designs, must be assessed in the light of a situation of normal use of that complex product, so that the component part concerned, once it has been incorporated into that product, remains visible during such use. To that end, the visibility of a component part of a complex product during its ‘normal use’ by the end

user must be assessed from the perspective of that user as well as from the perspective of an external observer, and that normal use must cover acts performed during the principal use of a complex product as well as acts which must customarily be carried out by the end user in connection with such use, with the exception of maintenance, servicing and repair work.

OPINION OF ADVOCATE GENERAL

SZPUNAR

delivered on 8 September 2022 (1)

Case C-472/21

Monz Handelsgesellschaft International mbH & Co. KG
v

Büchel GmbH & Co. Fahrzeugtechnik KG

(Request for a preliminary ruling from the Bundesgerichtshof (Federal Court of Justice, Germany))

(Reference for a preliminary ruling – Intellectual property – Registered design – Directive 98/71/EC – Article 3(3) and (4) – Conditions for protection of a component part of a complex product – Concepts of ‘visibility’ and ‘normal use’ – Novelty and individual character – Visibility of a component part of a complex product during normal use of the latter)

Introduction

1. The necessary conditions for protection of a design in EU law are its novelty and its individual character. The situation becomes more complicated, however, where the product to which the design in question is applied constitutes a component part of a complex product. In that case, protection is granted only on the condition that, first, the component, once it has been mounted, remains visible during use of the complex product of which it forms part and, second, its visible parts have the required features of novelty and individual character. These additional conditions have been introduced in order to avoid monopolisation, through the law relating to designs, of the production and marketing of spare parts for complex products, particularly in the motor vehicle sector. (2)

2. Nonetheless, the necessary conditions for protection of designs applied to component parts of complex products apply in all sectors and it is often difficult in practice to interpret the concepts of ‘visibility’ and ‘normal use’ of the product correctly. This interpretation is the subject matter of the present case.

Legal context

European Union law

3. Under Article 1 of Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs: (3)

‘For the purpose of this Directive:

(a) “design” means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation;

(b) “product” means any industrial or handicraft item, including inter alia parts intended to be assembled into a complex product, packaging, get-up, graphic symbols

and typographic typefaces, but excluding computer programs;

(c) “complex product” means a product which is composed of multiple components which can be replaced permitting disassembly and reassembly of the product.’

4. Article 3(3) and (4) of that directive provides:

‘3. 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.

4. “Normal use” within the meaning of paragraph (3)(a) shall mean use by the end user, excluding maintenance, servicing or repair work.’

German law

5. Paragraph 1(4) and Paragraph 4 of the Gesetz über den rechtlichen Schutz von Design (Law on the legal protection of designs) of 24 February 2014, (4) in its version applicable to the dispute in the main proceedings (‘the DesignG’), transpose Article 3(3) and (4) of Directive 98/71 essentially verbatim. However, the words ‘bestimmungsgemäße Verwendung’, which are employed to refer to ‘normal use’ in the German version of that directive, and therefore in the DesignG, seem to result in a stricter interpretation than is suggested by other language versions of the directive.

Factual background to the dispute, procedure in the main proceedings and questions referred for a preliminary ruling

6. Monz Handelsgesellschaft International mbH & Co. KG (‘Monz’), a company governed by German law, is the holder of design No 40 2011 004 383-0001, registered at the Deutsches Patent- und Markenamt (German Patent and Trade Mark Office; ‘DPMA’) since 3 November 2011 for the products ‘saddles for bicycles or motorbikes’. The design is registered with the following single representation showing the underside of a saddle:



7. On 27 July 2016, Büchel GmbH & Co. Fahrzeugtechnik KG (‘Büchel’), which is also a company governed by German law, lodged an

application with the DPMA for a declaration of invalidity of the contested design, claiming that it did not meet the necessary conditions for protection as to novelty and individual character. It asserted that the design was excluded from protection under Paragraph 4 of the DesignG on the ground that, as a component part of a complex product such as a ‘bicycle’ or a ‘motorcycle’, it was not visible during normal use.

8. By decision of 10 August 2018, the DPMA rejected the application for a declaration of invalidity, holding that there were no grounds to exclude the contested design from protection under Paragraph 4 of the DesignG. In its view, although it was true that the design applied for in relation to ‘saddles for bicycles [or] motorbikes’ was a ‘component part of a complex product’, that component nevertheless remained visible during normal use of that complex product. The DPMA considered that normal use also covered ‘the disassembly and reassembly of the saddle for purposes other than maintenance, servicing or repair work’, especially since Paragraph 1(4) of the DesignG contains ‘an exhaustive list of non-normal uses for the purposes of Paragraph 4 of the DesignG, designed as an exception and, as such, to be interpreted strictly’. (5) The DPMA held that it followed from that provision that ‘any use by the end user which is not maintenance, servicing or repair work ... therefore constitutes normal use’.

9. Following an objection lodged by Büchel against that decision, the Bundespatentgericht (Federal Patent Court, Germany) declared the contested design invalid, by decision of 27 February 2020, on the ground that it did not satisfy the requirements of novelty and individual character. According to the Bundespatentgericht, under Paragraph 4 of the DesignG, only components which remain ‘visible, as component parts of the complex product, after they have been mounted/incorporated in it’ are automatically eligible for design protection. Conversely, a perspective which arises only because or when the component part of a complex product is detached cannot establish visibility such as to preclude exclusion from protection under Paragraph 4 of the DesignG. The Bundespatentgericht considered only riding a bicycle and getting on and off a bicycle as normal use for the purposes of Paragraph 1(4) of the DesignG. In its view, during such uses, the underside of the saddle is not visible either to the end user or to another person. Monz has brought an appeal against that decision before the referring court.

10. In those circumstances, the Bundesgerichtshof (Federal Court of Justice, Germany) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is a component part incorporating a design a “visible” component within the meaning of Article 3(3) of [Directive 98/71] if it is objectively possible to recognise the design when the component is mounted, or should visibility be assessed under certain conditions of use or from a certain observer perspective?’

(2) If the answer to Question 1 is that visibility under certain conditions of use or from a certain observer perspective is the decisive factor:

(a) When assessing the “normal use” of a complex product by the end user within the meaning of Article 3(3) and (4) of [Directive 98/71], is it the use intended by the manufacturer of the component part or complex product that is relevant, or the customary use of the complex product by the end user?

(b) What are the criteria for assessing whether the use of a complex product by the end user constitutes a “normal use” within the meaning of Article 3(3) and (4) of [Directive 98/71]?’

11. The request for a preliminary ruling was received at the Court on 2 August 2021. Written observations were submitted by the parties to the main proceedings and by the European Commission. No hearing was held.

Analysis

12. It should be recalled that the court of first instance in the main proceedings declared the design at issue invalid, holding that normal use of a bicycle consists in riding it and, secondarily, getting on and off it, situations in which the underside of the saddle is not normally visible, contrary to the requirement laid down in the provisions of German law that transpose Article 3(3) of Directive 98/71.

13. It is in the light of this assessment that the questions referred for a preliminary ruling should be understood. The referring court wishes to ascertain whether the court of first instance correctly held, first, that only the visibility of a component part of a complex product in a situation of use of such a product should be taken into account (first question) and, second, that only the use of that product in its principal function, in this case to travel while seated on the bicycle, is relevant (second question).

The first question

14. By its first question, the referring court asks, in essence, whether Article 3(3) of Directive 98/71 must be interpreted as meaning that, for a design applied to or incorporated in a product which constitutes a component part of a complex product to be eligible for protection, it is sufficient that the component is visible in abstracto or whether the component must be visible in the situation of normal use of that complex product.

15. Article 3(3)(b) of Directive 98/71 also requires the visible features of the component part to fulfil in themselves the requirements as to novelty and individual character. Although the questions referred do not expressly raise this aspect, it is nevertheless implied. It is clear in the main proceedings that the point at issue is the visibility of the underside of a saddle, the area to which the design at issue is applied. Furthermore, under Article 7 of that directive, a design right does not subsist in designs whose appearance is solely dictated by its technical function. However, that does not seem to be the case here. In any event, no such objection appears to have been raised in respect of the design at issue in the main proceedings.

16. It should be noted as a preliminary point that, as the referring court observes, the court of first instance correctly classified saddles for bicycles and motorbikes as ‘component parts of a complex product’ within the meaning of Article 3(3) of Directive 98/71.

17. Furthermore, the court of first instance rightly criticised the decision of the DPMA in so far as the DPMA considered it sufficient for the underside of a saddle to be visible when it was mounted and unmounted on a bicycle. Article 3(3)(a) of Directive 98/71 clearly states that it is ‘once it has been incorporated into the complex product’ that the component part must remain visible. This means that the visibility of the component part when it is mounted or unmounted should not be taken into account, regardless of whether such acts are customary in the context of the use of a product.

18. Turning to the question referred for a preliminary ruling, the wording of Article 3(3)(a) of Directive 98/71 is not as clear as it might appear at first sight. As *Monz* asserts in its observations, that provision requires that the component part, once it has been incorporated into the complex product, ‘remains’ (6) visible during normal use of the latter. This wording could be interpreted as meaning that it is sufficient that, after the component part in question has been mounted in the complex product, that component part is not completely covered such that it could be seen, even only in theory and irrespective of the (possibly unusual) perspective that would have to be adopted to that end. Thus, only designs applied to component parts the visibility of which necessitates acts which do not come under normal use of a product, including its unmounting, would be excluded from protection under that directive.

19. However, this interpretation conflicts with the wording of the second part of Article 3(3)(a) of Directive 98/71, according to which the component part in question must be visible ‘during’ (7) normal use of the complex product. As the referring court and the Commission both observe, correctly in my view, this expression excludes cases where the component is visible only in situations that do not arise during normal use of the product in question.

20. Furthermore, as the Commission observes in essence, in accordance with Article 1(a) of Directive 98/71, the object of the protection of designs under the directive is the appearance of the whole or a part of a product. If parts intended to be incorporated in a complex product themselves constitute products, in accordance with Article 1(b) of the directive, they enjoy protection only if they are visible after such incorporation. It is therefore the appearance of the component part in the complex product that is the object of protection. However, it is difficult, in my view, to refer to the appearance of a product if, once it has been incorporated into a complex product, that product, even if it is not completely covered and hidden from view, is visible only in rare and unusual situations in the light of the normal use of that complex product.

21. On the basis of these considerations, I propose that the answer to the first question referred for a preliminary ruling should be that Article 3(3) of Directive 98/71 must be interpreted as meaning that, for a design applied to or incorporated in a product which constitutes a component part of a complex product to be eligible for protection under that directive, the component in

question must be visible in the situation of normal use of that complex product.

22. Consequently, the crucial element in the present case is the interpretation of the concept of ‘normal use’ within the meaning of Article 3(4) of Directive 98/71, which is the subject of the second question.

The second question

23. By its second question, the referring court asks, in essence, whether Article 3(4) of Directive 98/71 must be interpreted as meaning that the words ‘normal use’ refer only to the use of the complex product in its principal function (8) or whether they refer to all situations which may reasonably arise during use of such a product by the end user. (9)

24. This question reflects the conclusions of the court of first instance, which classified riding a bicycle and, secondarily, getting on and off the bicycle as ‘normal use’. According to that court, the underside of the bicycle’s saddle is not visible in these situations, with the result that a design applied to this area is not visible during normal use within the meaning of Article 3(3) of Directive 98/71.

25. It is true that this kind of approach, and stricter still, has been adopted by the General Court in its rare judgments concerning the interpretation of Article 4(2) of Regulation (EC) No 6/2002, (10) which is the equivalent of Article 3(3) of Directive 98/71 in the EU design protection system. The General Court considers that, in assessing the visibility of a component part of a complex product, only the perspective of the end user of that complex product during use in its principal function should be adopted. (11)

26. When applied to saddles for bicycles, this approach would produce the undesirable result that no design applied to a saddle could enjoy protection, since during the principal use of a bicycle, when it is being ridden, the saddle is fully covered by the part of the user’s body that is used for sitting, except for the underside of the saddle, which nevertheless remains invisible in any case.

27. Being aware of this result, the court of first instance in the main proceedings included getting on and off the bicycle in the concept of ‘normal use’. However, it excluded, *inter alia*, storing and transporting the bicycle from that concept, as acts taking place before and after use of the bicycle. This reasoning is not convincing because if only riding a bicycle is considered ‘normal use’, getting on and off the bicycle is also an act taking place before or after normal use in the same way as storing and transporting it. The distinction between these acts therefore seems arbitrary.

28. It seems to me, however, that this approach produces too narrow a definition of ‘normal use’ within the meaning of Article 3(4) of Directive 98/71, unjustifiably limiting the protection of designs applied to component parts of complex products.

29. It is widely acknowledged that the *raison d’être* of the specific EU legislation on the protection of designs applied to component parts of complex products lies in the concern to avoid monopolisation, through the law relating to designs, of the market in spare parts. That legislation has, however, been heavily criticised by

academic writers (12) for constituting an unjustified limitation of the protection granted to designs applied to component parts of complex products compared with the protection granted to designs applied to other products.

30. This criticism is not unfounded. Designs applied to products that are not intended to be incorporated into complex products are protected whether or not they are visible 'during normal use'. A design, defined as the appearance of the whole 'or a part of a product', (13) may enjoy protection for designs applied to parts of products which are not visible during use of the product in its principal function, such as the soles of shoes or the lining of a jacket. (14)

31. It is true that monopolisation of the market in a product by means of design rights constitutes abuse which must be avoided as far as possible. This result can be achieved in particular through the requirements as to novelty and individual character to be fulfilled by a design, as provided for in Article 3(2) of Directive 98/71. On the other hand, Article 3(3) of that directive should be interpreted, in my view, so as not to limit unduly the protection of designs applied to spare parts. The scope of such limitation arising from that provision depends to a great extent on the interpretation of the concept of 'normal use'.

32. Under Article 3(4) of Directive 98/71, 'normal use' refers to use by the end user, excluding maintenance, servicing or repair work. Evidently, this implies, first and foremost, use. The unmounting or destruction of a product does not constitute use of it. It is with this qualification in mind that the reasoning below should be read.

33. First, while this concise definition makes reference to the end user, I think that it is wrong to infer from this, as the General Court did in the judgments cited in point 25 of this Opinion, that the visibility of a component part of a complex product must be assessed only from the perspective of the end user of the product. Use 'by the end user' describes only the situations in which such visibility must be assessed, to the exclusion of those which are unconnected with the end user, such as manufacture, sale and, potentially, destruction or recycling at the end of the product's life. Along similar lines, Article 3(4) of Directive 98/71 expressly excludes maintenance, servicing and repair work from the concept of 'normal use', as acts which are performed in the period of use of a product by its end user but are often carried out by others.

34. Consequently, although Article 3(3) of Directive 98/71, read in conjunction with Article 3(4) of that directive, requires that the component part of a complex product is visible during use of the product by its end user, that provision cannot be understood as requiring that component part to be visible to the end user. Account must also be taken of visibility to other observers. After all, if the design is intended to attract purchasers for products, it is also through its capacity to allow those purchasers to impress others. (15)

35. Furthermore, if the perspective of the end user were decisive, it would be necessary to determine precisely who is the end user. While this may be relatively simple

in the case of a product like the bicycle, it could prove much more difficult in other situations. To take one example, who is the end user of a bus: the driver, the passengers, the staff of the transport company operating the bus? All these people have a different perspective and different components of the bus may be visible to them, in particular during use of the bus in its principal function, namely during the journey.

36. Similarly, the concept of 'end user' of a complex product referred to in Article 3(4) of Directive 98/71 should not be confused with the concept of 'informed user' referred to in Article 5(1) of that directive. (16) The latter concept refers to the notional person who serves as a benchmark in assessing the individual character of a design, whereas the concept of 'end user' is merely a hypothetical figure for whom the complex product including a component part to which a design has been applied is intended. The ability of the end user to distinguish the individual character of that design, and therefore his capacity as an informed user, are immaterial here.

37. Lastly, consideration of the perspective of the end user alone logically implies that the concept of 'normal use' should be understood as covering only the use of a product in its principal function. In other situations of use of a product, the user does not adopt a different perspective from others. As I will show below, there is just a little justification for such a narrow interpretation of the concept of 'normal use' as for adopting the perspective of the end user alone.

38. Second, in my view, it is wrong, as the Commission also observes, to assimilate normal use of a product with the principal function for which the product is intended. In practice, use of a product in its principal function often requires various acts which can be performed before or after the product has fulfilled its principal function, such as storage and transportation of the product. Where the product is a means of transport, there are the additional acts of getting on/in and getting off/out, as well as loading and unloading baggage and goods.

39. There is nothing in the wording of Article 3(4) of Directive 98/71 to suggest that such acts should be excluded from the concept of 'normal use'. Quite the contrary, the definition of the concept in that provision simply mentions 'use by the end user'. There is no need to look for an additional characteristic of use for it to be classified as 'normal'. All acts likely to be performed by the end user of a product in the context of his use of the product must therefore fall under the concept of 'normal use', except for those which are expressly excluded. (17)

40. Nor does the objective of Article 3(3) of Directive 98/71 militate in favour of excluding acts other than those relating to the principal function of the product from the concept of 'normal use'. The objective is to avoid the monopolisation, through the law relating to designs, of the market in spare parts which are invisible once incorporated into the complex product, in so far as any design applied to such a part does not contribute to the appearance of the complex product, or does so only very little. However, the appearance of a product is

shown not only during its use in its principal function, but also when acts are performed prior to and subsequent to that use and in connection with it. Including such acts in the concept of ‘normal use’ does not therefore call into question the objective of avoiding monopolisation of the market.

41. Third and lastly, although Article 3(4) of Directive 98/71 expressly excludes maintenance, servicing and repair work from the concept of ‘normal use’, that exclusion must not be given too broad an interpretation in my view. Some maintenance-related acts in particular are an intrinsic part of the use of certain products. Washing and cleaning spring to mind in the first place. In my view, it would go against all logic to exclude washing and cleaning from the concept of ‘normal use’, especially because regular cleaning is essential for the use of some products. (18) In the second place, there are acts of routine maintenance normally carried out by the end user of a product, which are often also essential for use, such as replacing consumables and operating fluids, inflating vehicle tyres or filling the fuel supply of products with a combustion engine. In the third place, there is the elimination of minor faults, such as paper jams in a printer. All these acts are essential to the use of a product by the end user and must therefore be included in the concept of ‘normal use’.

42. On the other hand, the acts excluded from that concept are acts performed supplementary to the use of the product, such as technical inspection, periodic maintenance or proper repair. (19) These acts are normally carried out not by the end user of the product but by specialists and may require a complex product to be partially disassembled or observed from an unusual angle, revealing components which normally remain invisible during use of the product. These two characteristics justify the exclusion of such acts from the concept of ‘normal use’.

43. In assessing the visibility of a component part of a complex product, acknowledging the perspective of persons other than the end user of the complex product alone and including in the concept of ‘normal use’ acts other than the use of a product in its principal function alone permits account to be taken of perspectives that are just as relevant in revealing the appearance of a product as that adopted by the user during use of the product in its principal function. Not only is this result, in my view, consistent with the wording and the objective of Article 3(3) and (4) of Directive 98/71, I also consider it to be fully justified. If a design applied to the underside of the sole of a shoe is eligible for protection under the directive, (20) I cannot see why a design applied to the underside of a bicycle saddle, as in the present case, could not be. The only reason that could justify this difference is that the saddle can be unmounted from the bicycle, (21) whereas the sole cannot be detached (as easily) from the shoe.

44. It is true that such a broad interpretation of the concept of ‘normal use’ encompasses almost all situations of use of a product, except for those entailing its disassembly if that is not part of normal use. One might well ask, therefore, whether it would be easier to

give an answer to the first question along the lines of an assessment in abstracto of the visibility of the component part to which a design is applied, unconnected to any practical situation of use of the complex product in question.

45. I acknowledge that the difference is primarily conceptual. It nevertheless does have practical consequences in so far as either interpretation would alter the burden of proof on the person seeking protection for a design applied to a component part of a complex product. Furthermore, a component part of a complex product, although visible in absolute terms because it is not covered, may not be visible in any situation of normal use of that product. (22) In addition, as I noted in the analysis of the first question, the interpretation mentioned in the preceding point would run counter to the wording of Article 3(3) of Directive 98/71.

46. I therefore propose that the answer to the second question should be that Article 3(4) of Directive 98/71 must be interpreted as meaning that the words ‘normal use’ refer to all situations which may reasonably arise during use of a complex product by the end user.

Conclusion

47. In the light of all the above considerations, I propose that the Court answer the questions referred for a preliminary ruling by the Bundesgerichtshof (Federal Court of Justice, Germany) as follows:

(1) Article 3(3) of Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs

must be interpreted as meaning that

in order for a design applied to or incorporated in a product which constitutes a part of a complex product to enjoy protection under that directive, the component in question must be visible in the situation of normal use of that complex product.

(2) Article 3(4) of Directive 98/71

must be interpreted as meaning that

the words ‘normal use’ refer to all situations which may reasonably arise during use of a complex product by the end user.

SOURCES

1 Original language: French.

2 The motor vehicle sector is characterised by high prices for spare parts and relatively high levels of damage caused by traffic accidents. The spare parts market in the sector is therefore especially lucrative.

3 OJ 1998 L 289, p. 28.

4 BGBl. I, p. 122.

5 These are acts of maintenance, servicing or repair work, which are excluded from the concept of ‘normal use’ under Article 3(4) of Directive 98/71.

6 The same is true, inter alia, in the Spanish (‘sigue siendo’), German (‘bleibt’), French (‘reste’), Italian (‘rimane’) and Polish (‘pozostaje’) versions.

7 And, inter alia, in the Spanish (‘durante’), German (‘bei’), French (‘lors’), Italian (‘durante’) and Polish (‘podczas’) versions.

8 In the light of the explanations given in the request for a preliminary ruling, this is how I understand the words ‘use intended by the manufacturer of the component part or complex product’, which the referring court uses in the second question.

9 ‘Customary use’ in the words of the second question.

10 Council Regulation (EC) of 12 December 2001 on Community designs (OJ 2002 L 3, p. 1).

11 See judgments of 9 September 2011, Kwang Yang Motor v OHIM – Honda Giken Kogyo (Internal combustion engine) (T-10/08, not published, EU:T:2011:446, paragraphs 21 and 22); of 9 September 2011, Kwang Yang Motor v OHIM – Honda Giken Kogyo (Internal combustion engine) (T-11/08, not published, EU:T:2011:447, paragraphs 21 and 22); of 14 March 2017, Wessel-Werk v EUIPO – Wolf PVG (Suction nozzles for a vacuum cleaner) (T-174/16, not published, EU:T:2017:161, paragraph 30); and of 14 March 2017, Wessel-Werk v EUIPO – Wolf PVG (Suction nozzles for a vacuum cleaner) (T-175/16, not published, EU:T:2017:160, paragraph 30).

12 See Hasselblatt, G.N., in Hasselblatt, G.N. (ed.), Community Design Regulation (EC) No 6/2002. A Commentary, C.H. Beck, Munich, 2015, p. 62 and the literature cited.

13 Article 1(a) of Directive 98/71.

14 As these parts are not detachable, they are not considered to be component parts of complex products within the meaning of Article 1(c) of Directive 98/71.

15 To ‘show off’, to use the colloquial expression.

16 It is this error that the General Court seems to have made in its judgments of 14 March 2017, Wessel-Werk v EUIPO – Wolf PVG (Suction nozzles for a vacuum cleaner) (T-174/16, not published, EU:T:2017:161, paragraph 30), and of 14 March 2017, Wessel-Werk v EUIPO – Wolf PVG (Suction nozzles for a vacuum cleaner) (T-175/16, not published, EU:T:2017:160, paragraph 30), making reference to ‘normal use by an informed end user, within the meaning of Article 4(2)(a) and (3) of Regulation No 6/2002, of a vacuum cleaner or vacuum cleaner suction nozzle for cleaning purposes’.

17 Namely maintenance, servicing and repair work.

18 A lawnmower or a coffee machine, to give just two examples.

19 It should nevertheless be noted that the use of designs applied to spare parts used for the purpose of the repair of complex products is the subject of a special provision, the ‘repair clause’, contained in Article 14 of Directive 98/71, while a similar clause is also included in Article 110 of Regulation No 6/2002.

20 See, for example, the Community designs registered by the European Union Intellectual Property Office (EUIPO) under Nos 001918400-0001 and 008434088-0003.

21 This fact activates the requirement of visibility under Article 3(3) of Directive 98/71.

22 I am thinking in particular of the underside of a motor vehicle chassis, which can be observed only by adopting an unusual perspective during normal use.