

## EU Trade Secrets Directive.

On 15 June 2016 the “*Directive of the European Parliament and of the Council on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure*” (“EU Trade Secrets Directive”) has been published in the Official Journal of the EU so that it will come into force on 5 July 2016.

Due to a very fragmented, differing and inadequate protection of trade secrets throughout the EU, many undertakings refused to share know how with undertakings of other Member States. Germany, for example, does not have a special statute on the protection of trade secrets but only a set of individual provisions in the Act against Unfair competition as well as in general statutes like the Act on Criminal Law and the Act on Civil Law. In practice, trade secrets are mainly protected by confidentiality agreement secured by contractual penalties for the event of a breach of confidentiality.

As this is adverse to innovations, the EU Trade Secrets Directive seeks to harmonize the protections of trade secrets and thereby support the safe transfer of know how. The Directive provides for a framework of minimum standards that the EU Member States must provide for the protection of trade secrets. The EU Member States will now have to implement the Directive into their national law within two years.

### The definition of “trade secrets” – What is protected?

The Directive provides for a definition of “trade secrets” that corresponds to the definition of Art. 39 (2) of the TRIPS Agreement thereby achieving a harmonization also in relation to non EU Member States that are members to the TRIPS Agreement. Acc. to Art. 2(1) of the Directive, a trade secret is information that

- (a) *is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question,*
- (b) *has a commercial value because it is secret, and*
- (c) *has been subject to reasonable steps, under the circumstances, by the person lawfully in control of the information, to keep it secret.*

The requirement that the information has to be subject to reasonable steps to keep it secret differs from the current situation in Germany which requires only an obvious subjective intention to keep the information secret – and a liberal presumption of such an intention. Insofar, the Directive seems to raise the hurdles for protection as in the future the trade secret holder will have to prove which measures have been taken to keep the information secret. It will be up to the courts (including referrals to the Court of Justice of the EU) to identify the steps that are “reasonable”. Indeed, the Directive permits to provide a higher degree of protection so that the national legislators may keep broader definitions.

Still, it is advisable for undertakings to provide for appropriate measures to handle trade secrets, in particular

- to identify their trade secrets and set up processes for identifying new trade secrets,
- to provide for appropriate contractual confidentiality obligations, also in contracts with third party contractors, and, where necessary, to revise existing employment, cooperation or F&E contracts and general terms and conditions,
- to restrict the access to confidential information,
- to educate their employees as to their confidentiality obligations, and
- to keep records in relation to all these measures,

as it cannot be taken for granted that a definition with less restrictive conditions will be implemented in other EU Member States.

## **The scope of protection of trade secrets – What is prohibited?**

The Directive protects trade secrets against unlawful acquisition, use and disclosure of trade secrets.

The acquisition is unlawful if the trade secret has been acquired

- without the consent of the trade secret holder
- by unauthorised access to, appropriation of, or copying of any documents, objects, materials, substances or electronic files, lawfully under the control of the trade secret holder,
- containing the trade secret or from which the trade secret can be deduced;
- which are under the legitimate control of the person having the control over the trade secret.

The use or disclosure is considered unlawful, if the trade secret has been used or disclosed

- without the consent of the trade secret holder
- by person who has acquired the trade secret unlawfully or is in breach of a confidentiality agreement or contractual or any other duty to limit the use of the trade secret.

### ***“Serious business practice”***

The acquisition of a trade secret is lawful if carried out by a practice that is “in conformity with honest commercial practices” (Art. 3(1)(d)) and unlawful – vice versa – if it is carried out by a conduct that is considered contrary to honest commercial practices (Art. 4(2)(b)).

Thus, the key criterion to draw the line between lawful and unlawful acquisition of a trade secret is the vague legal term “honest commercial practices” which will have to be interpreted by the courts.

### ***“Reverse engineering”***

A practice that is in conformity with honest commercial practices does not only include independent discovery or creation of the information that is subject to the trade secret (Art. 3(1)(a)) but also “reverse engineering” (Art. 3(1)(b), i.e. the acquisition of the trade secret *“by observation, study, disassembly or testing of a product or object that has been made available to the public or that is lawfully in the lawful possession of the acquirer of the information”* (Art. 3(1)(b)).

However, the Directive expressly permits a prohibition of “reverse engineering” by contractual provisions - unless otherwise provided for by the national legislator. It is therefore advisable to provide for respective provisions in contracts with trade agents or importers, or in purchase, project and cooperation agreements.

## *“Whistleblowing”*

Claims for trade secret infringement shall not only be excluded if the trade secret has been acquired, used or disclosed *“for exercising the right to freedom of expression and information acc. to the Charter of Fundamental Rights of the EU”* (Art. 5(b)).

Instead, the Directive shall also ensure that the protection of trade secrets allows “whistleblowing”. Claims for trade secret infringement are therefore excluded if the trade secret has been acquired, used or disclosed *“for revealing misconduct, wrongdoing or illegal activity, if the information has been acquired, used or disclosed for the purpose of protecting the general public interest”* (Art. 5(b)). It is still unclear what kinds of interest in detail are covered by this provision. This requires interpretation by the courts.

### **The claims – What can be requested?**

The set of claims arising from an infringement of a trade secret show its design as a quasi-IP. The holder of the trade secret can request

- the cessation or prohibition of the use or disclosure of the trade secret,
- the prohibition of the production, offering, placing on the market or using of infringing products,
- the prohibition of the import, export or storage of infringing products,
- the destruction, or delivery up to the trade secret holder, of any document, object, material, substance or electronic file containing or embodying the trade secret,
- the recall from the market or destruction of infringing products, and
- the compensation of damages.

Even more, the Directive provides for a claim for publication of the court decision stating the infringement and granting the aforementioned claims.

### **Disclosure in court?**

A key problem remains the requirement to disclose the trade secret to substantiate which information shall not be used or disclosed.

An “in-camera” proceeding providing for a submission of secret document only to the court excluding its forwarding to the infringer or its attorney had been provided for in the draft of the Directive but has been dropped again. Instead, the Directive provides only for a limitation, upon request, of the persons having access to the documents of the court proceedings (Art. 9). However, access of at least one natural person from each party remains mandatory. Even though the Directive obliges the Member States to ensure that the parties and their lawyers are not permitted to use or disclose any trade secret of which they have become aware as a result of the participation in legal proceedings, the access of at least one person to the trade secret will pose a risk.

If you have any questions or if you require more detailed information, please do not hesitate to contact us.

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## Brexit - The implications for trademarks and designs in the EU

### The referendum

On 23 June 2016, the people of the UK voted in a referendum to leave the EU. So far nothing has happened with an immediate effect on trademarks and designs. As a result of the “leave” vote, the UK will have to give notice to withdraw from membership in the EU according to the referendum. Upon the notice, a two year period of negotiations on the future relationship between the UK and the EU will commence. The notice has not been given yet and there is no deadline for it to be given. After the end of the negotiations the agreement will be subject to the same process of ratification as any other international treaty. Only after the UK parliament has ratified the agreement, the UK will actually leave the EU.

In the unlikely event that the negotiations fail and there will be no agreement, the UK will leave the EU without an arrangement regarding the future relationship.

### What's next

Until the definitive “Brexit”, i.e. for at least the next two years, the UK will remain a member state of the EU and nothing will happen to the trademark and design landscape, in particular to the EU Trademarks and Community Designs. As soon as the future relationship between the UK and the EU will become more precise we will inform you.

### Models for the future relationship between the UK and the EU

There are five possible models for the future relationship between the UK and the EU:

#### *European Economic Area (“Norway model”)*

The UK may leave the EU but join, like Norway, the “European Economic Area” (EEA) (and as a precondition thereof the “European Free Trade Association” (EFTA)). In this case, the UK will retain access to the EU Single Market with its four freedoms (the free movement of goods, services, capital and persons). The UK would then no longer be subject to the jurisdiction of the Court of Justice of the EU (CJEU) but of the EFTA Court which tends to refer to the jurisdiction of the CJEU to ensure uniformity of EU and the law of the EEA countries.

Even though the future relationship between the UK and the EU is still completely open, this model may be the most likely model for the UK to leave the EU while maintaining a close and uncomplicated contact with to the EU Single Market.

#### *European Free Trade Association (“Switzerland model”)*

The UK may leave the EU but join (only) the European Free Trade Association that is built upon a series of free trade agreements among its members and other countries but not with the EU. An EFTA membership would therefore not provide the UK with a particular relationship to the EU (as the EEA does). The UK would have to negotiate bilateral agreements with the EU to get access to the EU Single Market on a sector-by-sector basis. The UK would then no longer be subject to the jurisdiction of the Court of Justice of the EU (CJEU), but would most likely – like Switzerland – have a look on the EU law and its interpretation to avoid major discrepancies.

The experience with Switzerland (with its more than 100 bilateral agreements with the EU and the permanent need to update them) shows that this model is very complex.

## ***Customs Union – “Turkey model”***

The UK may leave the EU and enter into a mere customs union with the EU, like Turkey has done it. This would allow the UK to enter the EU Single Market for goods with the mere benefit of not having to pay tariffs; this option would not cover services. The UK would then no longer be subject to the jurisdiction of the CJEU but would most likely – like Turkey – have to harmonize its law to that of the EU as a condition to the customs union.

## ***Free Trade Agreement – “Canada model”***

The UK may leave the EU and negotiate a Free Trade Agreement with the EU – like Canada has done with the “Comprehensive Economic and Trade Agreement” (CETA).

## ***World Trade Organisation – “Rest of the world model”***

Finally, the UK may leave the EU and trade with EU on the basis of the WTO.

## **Some consequences of the Brexit for trademarks and designs**

Many consequences of the Brexit are still uncertain and need to be clarified either by the agreement between the EU and the UK, by the UK legislation or by the courts. These consequences include, in particular:

### ***EU trademarks and Community Designs***

Once the UK has left the EU, EU Trademarks and Community Designs will no longer cover the UK. As the EU Trademarks and Community Designs will continue to exist, they cannot be converted, as suggested by some comments on the Brexit. It is, however, likely that the UK will provide for some mechanism to obtain equivalent national rights, e.g. by re-registering UK trademarks and designs with a seniority / the priority date of the EUTM / CD. New trademarks and designs can then be registered only as national trademarks or designs, or by way of international registrations via the WIPO.

A use of a EUTM only in the UK would no longer maintain its protection.

National UK rights could no longer be a basis to oppose or revoke a EUTM.

As long as the UK joined the EEA, exhaustion of trademarks or design rights would not be an issue as the scope of exhaustion of IP rights following a sale by of with the consent of the right owner within the EEA would include the EU. Without joining the EEA, however, imports from the UK into the EU could be blocked even if sold in the UK by of with the consent of the right owner.

Pan-European injunctions based on EU Trademarks and Community designs could be held to no longer cover the UK.

The Brussels Convention on the Enforcement of Judgements will no longer apply in the UK, but the UK may remain within the equivalent Lugano Convention which is not restricted to EU member states if the UK became member of the European Economic Area.

### ***International registrations***

EUTMs of UK companies without a branch in the EU will no longer be a basis for an international registration under the Madrid Protocol.

## *National trademarks*

The EU Trademark Directive will no longer apply which may lead, over the time, to some divergences in the way in which the UK courts and the courts of the EU member states will interpret the law.

## **Agreements**

A use of a trademark or design in the UK permitted under a license or by a coexistence or cooperation agreement may become infringing if the contractual territory is defined as being the EU. License, coexistence or cooperation agreements may therefore need to be re-negotiated.

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## EU Trademarks: Distinctiveness of a EU Trademark in part of the EU.

In a decision of 1 March 2016 (Case No. 29 W (pat) 33/13) that has been published only recently, the German Federal Patent Court (FPC) held in an intentional divergence from a different ruling of the Court of Justice of the European Union (CJEU) that an increased distinctiveness of a trademark can be invoked in trademark collision cases only if the increased distinctiveness exist in the territory of the trademark collision.

In the underlying case, a trademark “OXFORD CLUB” registered i.a. for “*printed matter, journals, books, loose leaf editions; publication of printed matter*” had been contested by the Oxford University Press on the basis of its EU trademark “OXFORD” registered i.a. for “*books, printed matter, journals, magazines*” which has been registered on the basis of distinctiveness acquired through use and recognition as a trademark.

Because of the differing component “CLUB” of the contested mark, the FPC held that a likelihood of confusion could be stated only if the opposition mark enjoyed at least average distinctiveness.

As a geographic indication, “OXFORD” is without *inherent* distinctiveness for the goods concerned, but it had been registered as having *acquired* distinctiveness. Insofar, the Opponent could have benefitted from the German court practice that attributes, as a rule, *average* distinctiveness to trademarks which have been registered on the basis of acquired distinctiveness while the EUIPO equals acquired distinctiveness only to *minimal* distinctiveness, namely the degree of distinctiveness that is necessary to overcome the lacking inherent distinctiveness.

However, even for the German courts a rule is just a rule and the circumstances of a case may suggest minimal distinctiveness also for a trademark registered on the basis of acquired distinctiveness. In this case, such a circumstance was the lacking evidence of sufficient recognition of “OXFORD” as a trademark *in Germany*.

While an EU trademark may be registered on the basis of acquired distinctiveness only if it has acquired distinctiveness in the entire EU, it is actually not necessary to prove such acquired distinctiveness for each and every member state of the EU when filing the trademark application. Instead, it is possible to a certain extent to extrapolate the existing evidence to blank spots on the EU map if the overall view of the evidence suggests a relevant recognition of the sign concerned as trademark also in the uncovered member states. Anyway: Unless and until respective evidence is filed in the opposition proceedings it remains open whether the Opponent had submitted sufficient evidence to prove the claimed acquired distinctiveness when filing the EUTM, i.e. that the EUTM may have been registered on an insufficient evidential basis. According to the FPC it is therefore necessary to prove in the opposition proceedings that there was the necessary recognition of “OXFORD” particularly in the territory of the trademark conflict, i.e. in this case in Germany. Otherwise, the assumption of an average and not just minimal distinctiveness of the opposition mark is not justified. Such evidence, however, had not been submitted.

The FPC was aware that this may not be in line with the “Iron & Smith/Unilever” decision of the CJEU of 3 September 2015 (C-125/14) in which the CJEU held that

*“if the reputation of an earlier Community trade mark is established in a substantial part of the territory of the European Union which may, in some circumstances, coincide with the territory of a single Member State, it must be held that that mark has a ‘reputation in the [European Union]’, within the meaning of Article 4(3) of Directive 2008/95, and the proprietor of that mark is not required to produce evidence of that reputation in the Member State in which the application for registration of the later national mark, which is the subject of an opposition, has been filed.”*

While this decision had been related to the question whether of a EUTM is well-known it may likewise apply to the assessment of a trademark’s distinctiveness in the context of a likelihood of confusion. Indeed, if only an average distinctiveness can establish a likelihood of confusion, common sense seems to suggest that the average distinctiveness must exist in the territory for which the likelihood of confusion is alleged. In a similar way but prior to the “Iron & Smith/Unilever” decision of the CJEU, the German Federal Supreme Court had already ruled that the reputation of a well-known EUTM can be taken unfair advantage of only in an EU member states where it has the reputation.

Before this background the FPC admitted a further appeal to the German Federal Supreme Court to have it decide

- on the relevant territory, i.e. whether a certain degree of distinctiveness of an EUTM can be invoked only in EU member states in which it exists or also in the other states, or whether the German practice should – to the advantage of the owner of the senior trademark - follow the CJEU decision, and
- on the general degree of distinctiveness of trademarks that have been registered (only) on the basis of acquired distinctiveness, i.e. whether the attribution of average rather than merely minimal distinctiveness to trademarks that have been registered (only) on the basis of acquired distinctiveness is justified also for EUTMs if there is no respective evidence supporting an average rather than merely minimal distinctiveness in Germany, or whether the German practice should – to the disadvantage of the owner of the senior trademark – follow the EUIPO practice.

It is now up to the Oxford University Press to bring this matter to the German Federal Supreme Court.

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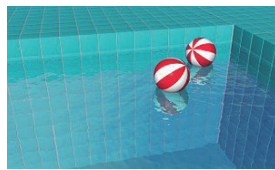


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## German Trademarks: Bad faith does not make a business designation bigger than it is.

In a decision of 15 December 2015 (Case No. I ZB 44/14) that has been published only recently, the German Supreme Court held that trade mark can be cancelled for bad faith only if the “vested right” which it interferes with is protected throughout the whole territory of Germany.



In the underlying case, a trademark “Liquidrom” had been contested as filed in bad faith thereby encroaching on the cancellation applicant’s corresponding business designation “Liquidrom” used for a public swimming bath, sauna and wellness area. The trademark owner had been the tenant of the “Liquidrom” public swimming bath, sauna and wellness area until it got bankrupt. Upon plans to re-open the “Liquidrom”, the trademark owner had participated in a public call for tenders but without success. As a reaction thereto it had registered “Liquidrom” as trademark which, in turn, led to an application for cancellation for bad faith by the operator of the new “Liquidrom”.

The German PTO and the Federal Patent Court confirmed the bad faith application of the trademark and stated that the word “Liquidrom” was protected as a business designation in favor of the cancellation applicant in relation to whom the trademark appeared to be filed in bad faith.

The Federal Supreme Court, however, compared the case to the conventional collision of a trademark with a senior business designation. According to German trademark law – and insofar different from e.g. the EU trademark law – a junior trademark can be cancelled for infringement of a senior business designation only if the business designation is protected throughout Germany in its entirety; a mere “more than local significance” is not sufficient as otherwise the trademark would be cancelled also for a territory in which it does not collide with the business designation. According to the Supreme Court, this shall also apply if the junior trademark had been registered in bad faith.

To forestall possible criticism, the Court emphasizes that the owner of the business designation would still be protected: A use of the trademark in the territory in which the business designation is used could be contested, and an attack of the trademark owner against the use of the business designation could be repelled, as an act of unlawful obstruction according to the Act Against Unfair Competition.

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## Community Designs: CP6 – Common Communication on the Graphic Representation of Designs.

A number of convergence projects have been handled by The European Trade Mark and Design Network in the past. One of them, namely CP6, refers to the Graphic Representation of Designs and a Common Communication was recently published ([see here](#)).

It gives us some very helpful guidance on how to best represent the design when filing it and how to choose the views. This is often a challenging task but of crucial importance for the scope of protection of designs. In infringement proceedings it is often decisive how a design is represented in the registration certificate and it frequently happens that this does not correspond with the product that is actually on the market or with the design that the owner actually intended to protect.

The Common Practice covers a number of different aspects and this is just to name a few:

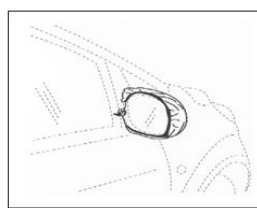
### 1. Visual Disclaimers

Visual disclaimers indicate that protection is not being sought for certain features of the design shown in the representation. There are many different ways to do so varying from broken lines, blurring and color shading to including a boundary to features of the design for which protection is sought and thus making it clear that no protection is sought for what falls outside the boundary. However, visual disclaimers will only be accepted when they are clear and in most cases there is the risk that they are somehow ambiguous. It is also required that the visual disclaimer is shown consistently in all the views where the disclaimer appears.

The CP 6 Communication states that the use of broken lines instead of other types such as color shading is the recommended option for a visual disclaimer when the design is represented by line drawing, for example:



Community design lapsed No. 000030606-0003 (14.03)  
(Key button arrangement for mobile telephones)



BX registered design No. 38212-0001 (12.16) (rearview mirrors)

In other cases, blurring, colour shading or boundaries are acceptable options for visual disclaimers, if applied correctly. For example:

#### Blurring



RCD No. 000244520-0002 (12.15)  
(Tires for vehicle wheels, pneumatic)

#### Colour shading



RCD No. 000910146-0004 (12.08 Automobiles (part of-))

#### Boundaries



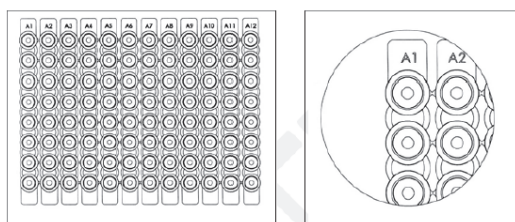
RCD No. 002182238-0002 (26.03)  
(Outdoor lighting)

## 2. Types of Views

In order to disclose the features of a design as completely as possible, applicants are advised to file aspect views of the design (front view, top view, bottom view, right side view, left side view, back view and perspective views). EUIPO recently introduced a new design e-filing tool which enables applicants to upload a 3D CAD file and thereby to produce and chose the different views of the design (see [JONAS IP Report March 2016](#)).

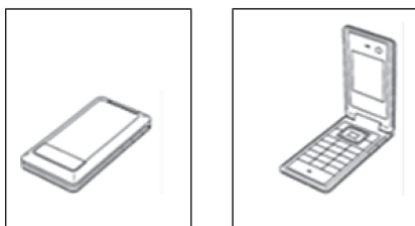
The applicant can further provide additional views in order to better show a certain feature of the designs such views magnifying parts of the design, alternate positions, exploded views, partial views, sectional views or snapshot views of animated designs. It is required that all views belong to the one and the same design, that each view is shown separately and in case of products consisting of several parts that at least one view presents the whole product. For example:

### Views magnifying parts of the design



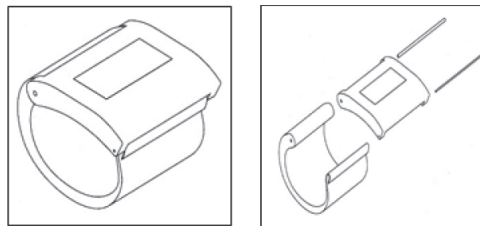
RCD No. 001913690-0002 (24.02) (PCR multi-well plates)

### Alternate positions



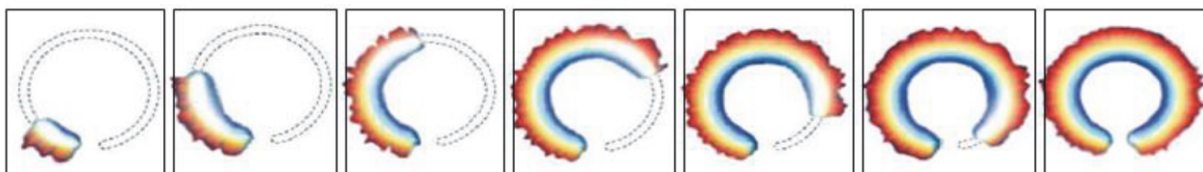
RCD No. 000588694-0012 (14.03) (Mobile phones)

### Exploded views



Croatian registered design No. D20140080 (24.01) (Bracelets with muscle stimulator)

### snapshot views of animated designs



RCD No 2085894-0014 (14.04) (Animated screen displays)

## 3. Visual Formats

The Common Practice further recommends that a design should be represented using only one visual format (drawing or photograph). Where multiple representations of a design are used, each must clearly and obviously relate to the same design and be consistent when comparing the features disclosed. Different formats may often reveal inconsistent features and thus give rise to a legal uncertainty when determining the scope of protection of a design or even lead to the invalidity. For example and as reported (see [JONAS IP Report March 2016](#)), the scope of protection of German design registration for the “Backenzahn”-stool was discussed controversially as it showed both a line drawing and a picture of the stool which appeared to be inconsistent.

## 4. Neutral Background

All participating offices required design applications to be produced on a neutral background but the understanding what a neutral background actually is was very different. For assessing a neutral background the aspects of colors, contrast and shadows should be considered.

According to the Common Practice a single or predominant color in the background is always acceptable if it stands out against the color of the design. For example:

### Acceptable colored background



Austrian lapsed design No. 1747/1999 (01.01) (Ice lolly)

### Unacceptable colored background



CP6 Example (01.01)

When it comes to contrast all parts of the design should have sufficient contrast with the background so that it is clear where the product finishes and the background starts. For example:

### Sufficient contrast



BX registered design No. 38895-00 (25.03) (shed)

### Insufficient contrast



Portuguese lapsed design No. 420-0006 (06.01) (chairs)

Shadows or reflections are acceptable as long as all features of the design remain visible but unacceptable when the subject of protection of the design, in any of the stipulated views cannot be determined in an ambiguous way. For example:

### Acceptable shadows



Danish registered design No. 2013 00069 (12.11)

### Unacceptable shadows



CP6 Example (11.02)

The Common Practice shall be implemented by the participating offices (several national IP Offices and EUIPO) within three months after publication, thus by 15 July 2016. EUIPO implemented most of the Common Practice in the new Examination Guidelines which are available [here](#).

If you have any questions or if you require more detailed information, please do not hesitate to contact us.

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## German Designs – A novelty in design law - Lacking novelty defense requires invalidity proceeding.

In a decision of 16 December 2015 (Case No. 24 U 121/15) that has been published only recently, the Court of Appeal of Berlin held that in court proceedings for design infringement the defense of lacking novelty of the allegedly infringed design always requires that the defendant initiates an invalidity action against the design – even in proceedings for a preliminary injunction.

According to Sec. 39 German Design Act (GDA), a registered design is presumed to be new and to have individual character. Of course, this presumption can be rebutted if the defendant can provide facts and documents that question the novelty or individual character of the design. Until 2014, the defendant could raise the lacking novelty of the – allegedly – infringed design as a defense within the infringement action. This has changed. According to the new Sec. 52a GDA, the defendant may invoke the lack of legal validity of a registered design only by filing a counteraction in the court proceeding for the declaration of invalidity of the design or by filing an application for the declaration of invalidity of the design in a respective PTO proceeding.

In proceedings for a preliminary injunction, however, counteractions are not possible. Furthermore, the urgency of the matter that is a key condition for obtaining injunctive relief seems to exclude a separate PTO proceeding if the defendant tries to defend himself with a lacking novelty of the infringed design. Therefore, the view prevailing in the legal literature and among most of the district courts denied the applicability of Sec. 52a GDA in preliminary injunction proceedings and applied the – rebuttable – presumption of novelty and individual character according to Sec 39 GDA – be it for general legal principles, be it analogous to Art. 90 (2) Community Design Regulation (which expressly allows to raise the invalidity of the registered design as a mere defense in preliminary injunctions proceedings).

In the first decision of a court of appeal on this question, the Court of Appeal of Berlin ruled against this prevailing view as it felt bound by the wording and the statutory system of Sec. 52a GDA which do not distinguish between main actions and preliminary proceedings. To get out of the dilemma following from the urgency of the matter and the requirements of a time consuming invalidity proceeding, the Court of Appeal points out that the invalidity proceedings have to be initiated only, while it is not necessary to wait for the PTO's decision. The initiation of the PTO proceeding itself allows the defendant to raise the invalidity defense also in the court proceeding.

This seems to be formalistic but is a way to comply with the statute, and it may discipline defendants to some extent: In the future, they may raise the invalidity defense only if they can also substantiate an application for the invalidity with proper facts instead of mere allegations as otherwise they will have to bear the costs of the invalidity proceeding.

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## OECD/EUIPO study on global imports of counterfeit and pirated goods.

According to a new study released in April by the OECD and the EU Intellectual Property Office, global imports of counterfeit and pirated goods are worth USD 461 billion and represent around 2.5 % of the global imports.

Read more: [www.oecd.org/industry/global-trade-in-fake-goods-worth-nearly-half-a-trillion-dollars-a-year](http://www.oecd.org/industry/global-trade-in-fake-goods-worth-nearly-half-a-trillion-dollars-a-year).

## JONAS listed in “Deutschlands beste Anwälte 2016” (“Germany’s best lawyers 2016”) ranking.

Again, Karl Hamacher and Dr. Martin Viefhues have been listed among “Germany’s best lawyers 2016” in the category “Intellectual Property” in one of Germany’s leading business journals “Handelsblatt”. The ranking is based on the rating of the US publisher and law firm valuator “Best Lawyers” that has been made exclusively for the “Handelsblatt”. In the underlying peer-to-peer survey, competing lawyers had been asked which firm they would recommend if they could not take over a case for time restraints or a conflict of interests.

Read more: <http://www.handelsblatt.com/gesamtranking-von-best-lawyers-deutschlands-beste-kanzleien-und-anwaelte-2016/13686126.html>