



 **IPKey**

SOUTHEAST ASIA

# The Legal framework of the Community Design in the EU

Sophia BONNE  
Jakarta 13<sup>th</sup> August 2018

[www.ipkey.eu](http://www.ipkey.eu)



Funded by the European Union



Directed by the European Commission, IP KEY is implemented by the European Union Intellectual Property Office (EUIPO)



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# The Legal framework of the Community Design in the EU

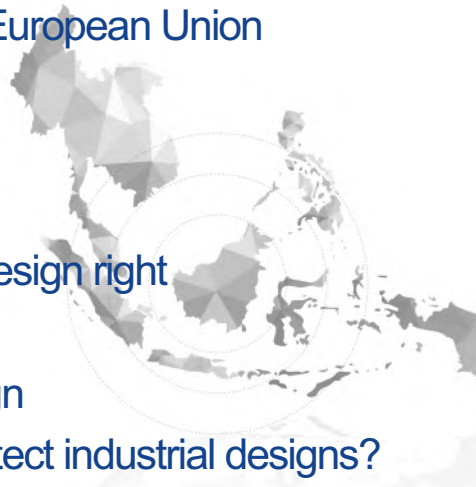
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Sophia BONNE  
Jakarta 13th August 2018



1. What is a design?
2. Design protection in the European Union
3. Advantages RCD
4. Procedure for registration
5. Correct registration
6. The requirements for a design right
7. Relation to other IP rights
8. The added value of design
9. Why is it important to protect industrial designs?
10. Design Europe Awards



# 1. What is a design?

- The appearance of a product
- An intellectual property right

Protection by publication or registration



RCD number: 001730045-0001



RCD number: 002186023-0005



## 2. Design protection in the EU

### National

- Registration at the national Offices of your choice

### International

- Unregistered Community Design (UCD)
  - Through disclosure
- Registered Community Design (RCD)
  - Through filing at the EUIPO
- International registration using the Hague System
  - Through filing at the WIPO, designating the countries of member countries
  - EUIPO is a member and can be designated
  - Equivalent to an RCD



## 2. Design protection in the EU

### Registered Community Design

**Start at filing date**

**Duration**

5 years, renewable up to a maximum of 25 years

**Protection**

Against identical or similar subsequent designs

**Fees**

To be paid at filing

**Possibility of deferment**

Keeping the design secret while assuring the filing date

### Unregistered Community Design

**Start at disclosure date**

**Duration**

3 years, not renewable

**Protection**

Against copying

**No fees**

**No possibility of deferment**



## 3. Advantages of an RCD

1. Protection across the European Union
2. Easy to file online
3. File and communicate in any of 23 EU languages
4. Affordable fees, discounts for additional designs in a multiple application.
  - > One design = € 350,-
  - > Design 2 – 10 = € 175,- per design
  - > Design 11+ = € 80,- per design





## 4. Procedure for registration

1. Filing at EUIPO
2. Examination
3. Registration (option of deferment)
4. Publication

- 70% of all RCD are registered within 10 days and with Fast Track in 2 days!



## 4. Procedure for registration

### RCD EXAMINATION

#### Filing date

- Identification of the applicant
- Graphical representation of the design
  - ✓ Neutral background
  - ✓ Sufficient quality



## 4. Procedure for registration

### RCD EXAMINATION

#### Other formalities

- Graphical representation of the design (not affecting the filing date)
- Indication of product / classification
- Priority
- Fees



## 5. Correct filing of an RCD



## 5. Correct filing of an RCD

[Home](#) > [Designs](#) > [Route to registration](#) > [Apply now](#) > **Design filing tips & best practices**

### Design filing tips & best practices

We have put together a series of tips so that when you file for a registered Community design you can avoid making mistakes that may result in a deficiency.

Deficiencies happen when the application has formal mistakes, such as when you forget to pay, or when your design images do not comply with certain requirements for registration. Formal mistakes are very often easy to avoid and, according to our experience, they mostly happen at three different stages of the online application process.

<https://euipo.europa.eu/ohimportal/en/web/guest/design-filing-tips-best-practices>



## 5. Correct filing of an RCD

- The design must be represented on a **neutral background**

Filing date!



**Wrong** ❌

Alien objects can be seen in the image.



**Correct** ✅

The design has a neutral background.



## 5. Correct filing of an RCD

- All views must correspond to one and the same design

Design 1 / View 1



Design 1 / View 2



Wrong ❌

Design 1 / View 1



Design 2 / View 1



Correct ✅



## 5. Correct filing of an RCD

- **Extra elements** that are not part of the design, such as explanatory notes, numbers or arrows, should not be included



**Wrong** ❌

Design view with text, symbols and indications.



**Correct** ✅

Design view uploaded on its own.  
Extra information can be added in the description field





## 6. The requirements for a design right

### Two fundamental conditions

- Novelty
- Individual character

An RCD can be invalidated on application to the Office



prior design

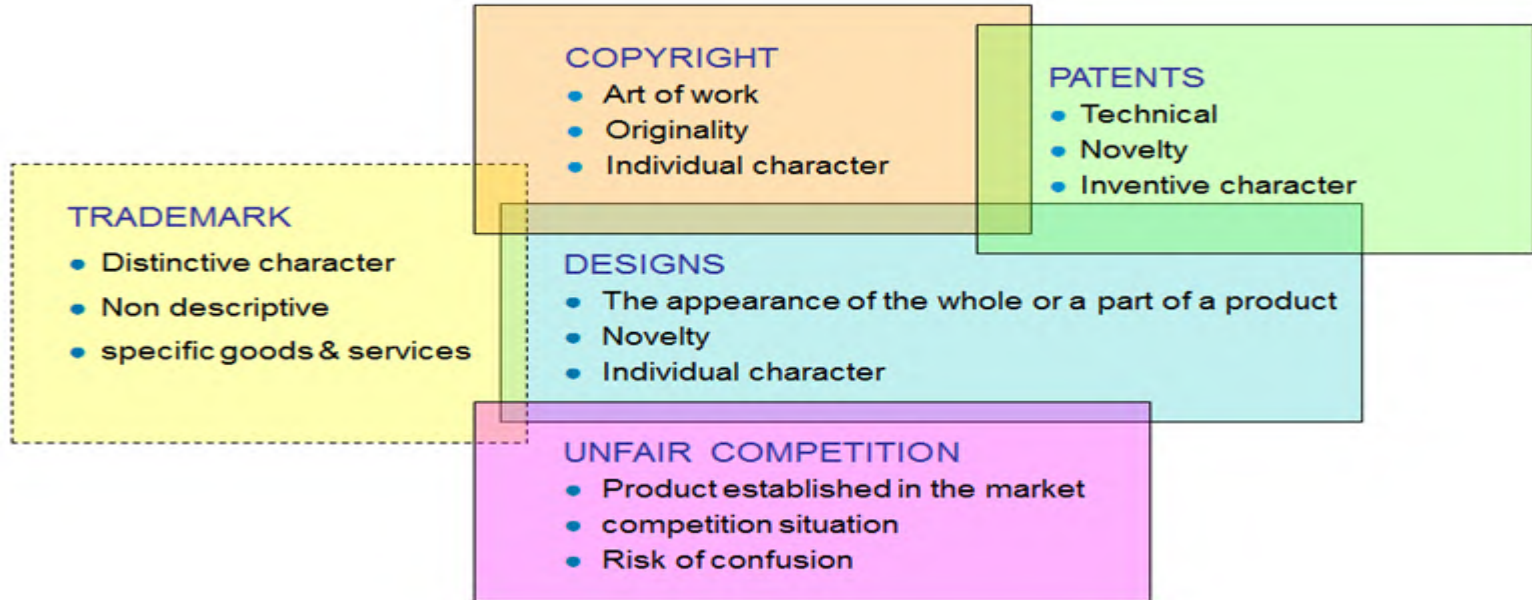


202155-0007

Decision of the Invalidity Division of 2 July 2007 (ICD 3309)

**Invalidated**

# 7. Relation to other IP Rights



# TRADEMARKS AND DESIGNS – THE OVERLAP - SHAPES

RCD application No 5 221 536: granted

& **Examples of successful cumulative applications**

EUTM application No 000 607 114: granted

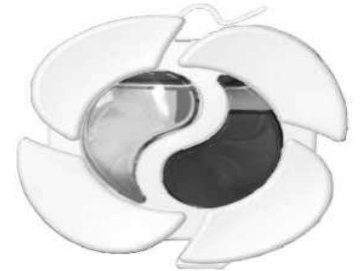
Indication of products: Bottles  
Class 9.1 (Eurolocarno)



RCD application No 000 531 793 : granted

&

EUTM application No 5 194 741 : granted



Indication of products: Containers  
Class 09.03 (Eurolocarno)

# TRADEMARKS AND DESIGNS – THE OVERLAP - SHAPES

## Examples of unsuccessful cumulative applications

RCD Application No 000 291 067: granted

&

EUTM Application No 4 273 439: rejected

Indication of products:

Automatic gambling machines

Class 21.03 (Eurolocarno)

RCD Application No 000 181 466: granted

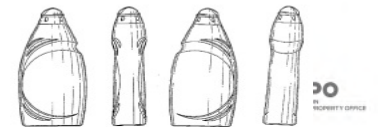
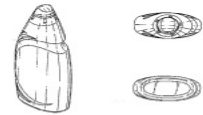
&

EUTM Application No 4 174 074 : rejected

Indication of product:

Bottles

Class 9.1 (Eurolocarno)

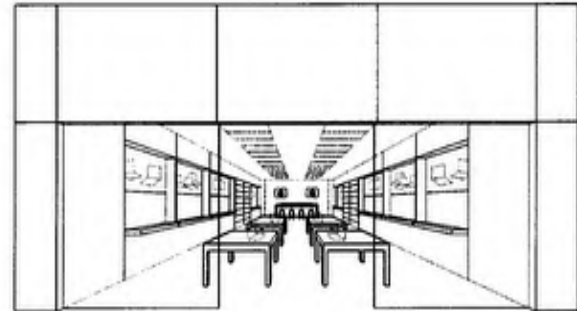
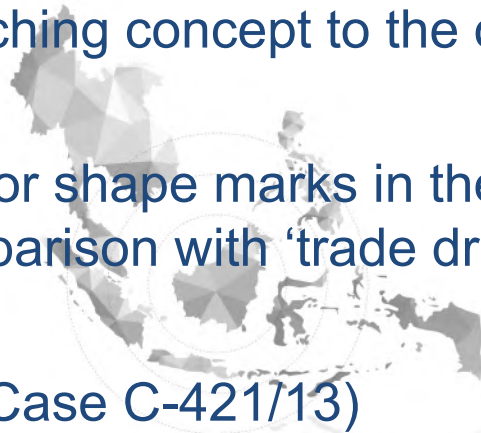


## 7. Relation to other IP Rights - Trade dress Protection

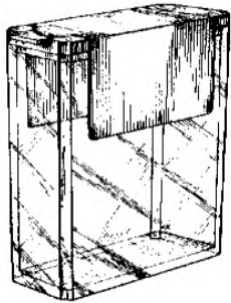


## 7. Relation to other IP Rights- Trade dress Protection

- The term trade dress is not used by CJEU's case law as there is no EU definition or matching concept to the one provided by US law.
- Cases are relevant for shape marks in the sense that they may be of interest for a comparison with 'trade dress':
  - Apple' Judgment (Case C-421/13)



# 7. Relation to other IP Rights- Trade dress Protection



Earlier Trade mark  
 1210944

W01210944 - tic tac [- info](#)



Trade mark information		Owner information
Trade mark number	1210944	Owner ID number
Type	Figurative	Owner name
Designation date	19/02/2014	FERRERO S.P.A.
Registration date	19/02/2014	Representative information
Nice Classification	30	Representative ID num...
Trade mark status	IR accepted	Representative name
Basis	IR	Last publication
Reference		23/06/2015 M.3.1



View 1	View 2	View 3
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000826680-0001 RCD

## 8. How RCDs contribute to create economic value?





## 9. Why it is important to register industrial Designs?

- **Driver of innovation and growth**
- **Generate 12% of all jobs in EU**
- **Key role in the competitiveness**
- **Great design is a prerequisite for success**



## 10. Design Europa Awards

# DesignEuropa Awards

**Industry and small/emerging companies categories**

**The DesignEuropa Awards are organised by the European Union Intellectual Property Office, which is the trade marks and designs office of the European Union.**

Registered Community designs (RCDs), which are all registered at the Office, have been providing design protection at EU level since their introduction in 2003.

The aim of the awards is to raise awareness of the design protection system in the EU and to promote design as a valuable intellectual property right that underpins our economy and supports jobs.





# THANK YOU

 @IPKey\_EU



<b>Presentation</b>		
<b>Status</b>	DRAFT / APPROVED	
<b>Approved by owner</b>	-	
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0.1	DD/MM/YYYY		
0.1	DD/MM/YYYY		
0.1	DD/MM/YYYY		