

OHIM Invalidation Division 10 november 2014, IEFbe 1044 (Stokke tegen Leanderform)
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OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)

OPERATIONS DEPARTMENT – DESIGNS SERVICE

**DECISION OF
THE INVALIDITY DIVISION
OF 10/11/2014**

**IN THE PROCEEDINGS FOR A DECLARATION OF INVALIDITY
OF A REGISTERED COMMUNITY DESIGN**

FILE NUMBER	ICD 7023
COMMUNITY DESIGN	000579008-0001
LANGUAGE OF PROCEEDINGS	English
APPLICANT	Stokke AS Håhjem 6260 Skodje Norway
REPRESENTATIVE OF THE APPLICANT	Mr. T. Cohen Jehoram De Brauw Blackstone Westbroek N.V. P.O. Box 75084 1070 AB Amsterdam The Netherlands
HOLDER	Leanderform ApS Korshøjvej 1 Virklund DK-8600 Silkeborg Denmark
REPRESENTATIVE OF THE HOLDER	Kromann Reumert Sundkrogsgade 6 DK-2100 København Ø Denmark

The Invalidity Division

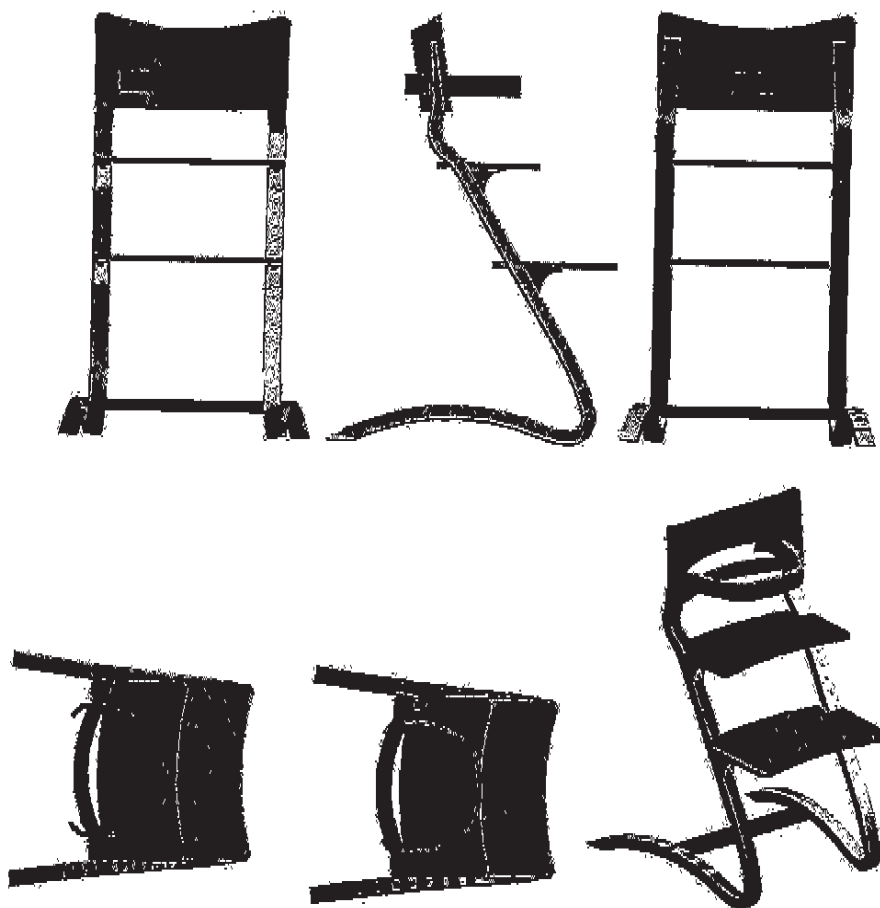
composed of Martin Schlötelburg (rapporteur), Jakub Pinkowski (member) and Ludmila Čelišová (member) took the following decision on 10/11/2014:

1. **The registered Community design n° 000579008-0001 is declared invalid.**
2. **The Holder shall bear the costs of the Applicant.**

I. FACTS, EVIDENCE AND ARGUMENTS

- (1) The Community design n° 000579008-0001 (hereinafter "the RCD") has been registered in the name of the Holder with a date of filing of 24/08/2006. In the RCD, the indication of products reads "chairs". The design was published in the Community Designs Bulletin with the following views:

<https://oami.europa.eu/eSearch/#details/designs/000579008-0001>



- (2) On 07/09/2009, the Applicant filed an application for a declaration of invalidity ("the Application"). The fee for the Application was paid by current account with OHIM.
- (3) The Applicant requests a declaration of invalidity of the RCD on the following grounds:

- challenged Community design does not fulfill the requirements of Articles 4 to 9 of the Council Regulation (EC) n° 6/2002 on Community Designs (hereinafter "CDR")
 - other(s) according to Article 25(1)(c), (d), (e), (f) or (g) CDR.
- (4) As evidence, the Applicant provided, *inter alia*, a leaflet from the Norwegian Design Council dated explaining that a chair called "Tripp Trapp Chair" ("the prior design") is a famous design and has been sold in millions since 1972. The prior design is shown as follows:



- (5) In the reasoned statement, the Applicant claims that the RCD lacks novelty and individual character in view of the prior design known as the "Tripp Trapp Chair", which has been made available to the public since 1972. The Applicant argues that "just like the Tripp Trapp, the RCD looks balanced, and the design of both chairs is transparent but solid at the same time. Both the RCD and the Tripp Trapp chair contain an L-shaped side view (created by the diagonal stands on both sides of the chair) with the thin horizontal elements 'sticking out', they both use the same materials (natural wood, leather strap) and have the same finishing." Therefore, the RCD lacks novelty and individual character in view of the Tripp Trapp design. Furthermore, the Applicant explains that the Tripp Trapp chair is protected by copyrights and trademarks in various member States of the European Union since 1973. The Applicant holds that RCD is also invalid on the grounds of Article 25(1)(e) and (f) CDR because it interferes with the earlier copyrights and trademarks.
- (6) In response to the Applicant's arguments, the Holder points to a decision of the Maritime and Commercial Court of Denmark dated 10/08/2010 in proceedings of alleged infringement of a copyright of the Holder by the Applicant. The Court found that the Holder did not infringe the copyright
- (7) For further details to the facts, evidence and arguments submitted by the parties reference is made to the documents on file.

II. GROUNDS OF THE DECISION

A. Admissibility

- (8) The Application complies with the formal requirements prescribed in the CDR and the Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community designs ("CDIR"), in particular as laid down in Article 28 CDIR. The Application is therefore admissible.

B. Substantiation

B.1 Disclosure

- (9) The Applicant has presented overwhelming evidence that a chair in the form of the prior design has been sold for decades and has received many design awards. The fact and the evidence are not disputed. Hence it is deemed proven that the prior design has been made available to the public prior to the date of filing of the contested RCD within the meaning of Article 7(1) CDR.

B.2 Novelty

- (10) According to Article 5 CDR, the RCD lacks novelty when an identical design has been made available to the public prior to the date of filing of the RCD or the date of priority. Designs shall be deemed to be identical if their features differ only in immaterial details.
- (11) The contested RCD and the prior design both relate to children's chairs. They share at least the following features:
- The chairs consist of a frame and a base, the frame being inclined with respect to the base, forming a slanted L-shape form from the side;
 - the base consists of two parallel, horizontal floor bars, interconnected by a thin metallic black bar;
 - the frame consists of two parallel inclined side posts inclined from the front bottom to the upper back;
 - the two side posts contain multiple fixations (holes in the RCD; grooves in the prior design) that allow the insertion of panels between the posts;
 - two thin, flat rectangular panels serve as a seat and a foot rest which are inserted between the posts;
 - the backrest consists of a panel composed of an upper and a low bar separated in the middle by a gap;
 - a protective waist belt formed by a curved front rail at the same level of the gap of the backrest.
- (12) The RCD and the prior design are different in so far as the posts forming the L-shape are straight in the RCD while they are slightly curved in the prior design. Furthermore, the means of fixation, namely holes in the RCD and grooves in the prior design, are different.
- (13) The shape of the posts is not immaterial detail. Therefore, the RCD and the prior design are not identical within the meaning of Article 5 CDR. The prior design does not form an obstacle to the novelty of the RCD.

B.3 Individual character

- (14) According to Article 6 CDR, the RCD lacks individual character if the overall impression produced on the informed user is the same as 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 RCD or the date of the priority claimed. In assessing individual character of the RCD, the degree of freedom of the designer in developing the design shall be taken into consideration.
- (15) It is apparent from Recital 14 in the preamble to the CDR that, when assessing whether a design has individual character, account should be taken of the nature of the product to which the design is applied or in which it is incorporated, and in particular the industrial sector to which it belongs (see judgment of 22 June 2010, T-153/08, 'Communications equipment', para. 43).
- (16) According to the case-law, an 'informed user' within the meaning of Article 6 CDR is neither a manufacturer nor a seller of the products in which the designs at issue are intended to be incorporated or to which they are intended to be applied. An informed user is particularly observant and has some awareness of the state of prior art, that is to say the previous designs relating to the product in question that have been disclosed on the date of filing, or the priority date, of the contested design (see judgments of 9 September 2011, T-10/08 and T-11/08, 'Internal combustion engine', para. 23; and of 18 March 2010, T-9/07, 'Metal rappers', para. 62, confirmed by judgment of 20 October 2011, C-281/10, para. 54).
- (17) The status of 'user' implies that the person concerned uses the product in which the design is incorporated, in accordance with the purpose for which that product is intended (see judgments of 22 June 2010, T-153/08, 'Communications equipment', para. 46; and of 9 September 2011, T-10/08 and T-11/08, 'Internal combustion engine', para. 24).
- (18) The qualifier 'informed' suggests that, without being a designer or a technical expert, the user knows the various designs which exist in the sector concerned, possesses a certain degree of knowledge with regard to the features which those designs normally include, and, as a result of his interest in the products concerned, shows a relatively high degree of attention when he uses them (see judgments of 20 October 2011, C-281/10 P, 'Metal rappers', para. 59; and of 22 June 2010, T-153/08, 'Communications equipment', para. 47).
- (19) However, that factor does not imply that the informed user is able to distinguish, beyond the experience gained by using the product concerned, the aspects of the appearance of the product which are dictated by the product's technical function from those which are arbitrary (see judgment of 22 June 2010, T-153/08, 'Communications equipment', para. 48).
- (20) Therefore, an informed user is a person having some awareness of the existing designs in the sector concerned, without knowing which aspects of that product are dictated by technical function (see judgment of 22 June 2010, T-153/08, 'Communications equipment', para. 49).

- (21) The contested RCD is registered for children's chairs. Therefore, the informed user to be taken into account is someone wishing to seat children in a highchair who, for example, needs to purchase one and who has become informed on the subject of children's chairs by browsing through catalogues of, or including, children's chairs, visiting the relevant stores, downloading information from the Internet, etc. (see, by analogy, decision of 18 September 2007, R 250/2007-3, 'tavoli'). Though the informed user is familiar with children's highchairs, he will not however be aware of the technical aspects of a highchair, such as whether the slant of a highchair with two posts logically follows from the interplay of forces, the technical function of metal rods, or the means (holes or grooves) to carry the entire plates which are not supported at the front or back his dictated by function and that the seat and footrest need to have a certain thickness to carry weight of a baby up to adult (see decision of the Boards of Appeal, R952/12-3, 17 October 2013).
- (22) The designer's degree of freedom in developing his design is established, inter alia, by the constraints of the features imposed by the technical function of the product or an element thereof, or by statutory requirements applicable to the product. Those constraints result in a standardisation of certain features, which will thus be common to the designs applied to the product concerned (see judgments of 9 September 2011, T-10/08 and T-11/08, 'Internal combustion engine', para. 32; and of 18 March 2010, T-9/07, 'Metal rappers', para. 67).
- (23) The greater the designer's freedom in developing the challenged design, the less likely it is that minor differences between the designs at issue will be sufficient to produce a different overall impression on an informed user. Conversely, the more the designer's freedom in developing the challenged design is restricted, the more likely minor differences between the designs at issue will be sufficient to produce a different overall impression on an informed user. Therefore, if the designer enjoys a high degree of freedom in developing a design, that reinforces the conclusion that the designs which do not have significant differences produce the same overall impression on an informed user (see judgment of 9 September 2011, T-10/08 and T-11/08, 'Internal combustion engine', para. 33).
- (24) The degree of freedom of a designer of children's highchairs is limited only in so far as the product must have the form of a seat, the child must be secure and as safe as possible while seated in it and it must comply with the relevant safety standards, such as the absence of any slots, holes, open ended slots in which a child's finger or flesh can be trapped, the protection of edges or corners, which can be rounded, plastic coated or folded. Therefore, the designer has a high degree of freedom in developing the design in the use of the materials, the manner in which the chair can be adapted to the height and age of a child, in the form and the configuration of the elements making up the chair, and how the safety features are incorporated. Furthermore, the presence of the grooves is not mandatory since adjustment can be achieved by different means, such as for example a sliding mechanism on the posts or the legs of the chair (see decision of the Boards of Appeal, R952/12-3, 17 October 2013).
- (25) The Holder argues that the overall impression produced by the challenged design is different from that produced by the earlier design. It claims that even slight differences must be taken into consideration in the assessment of the

individual character of the designs at issue. In that connection, it submits a detailed analysis of those designs and concludes that the features of those designs are not identical and that, therefore, the overall impressions that the designs at issue produce are different.

- (26) Despite the curvature of the side posts in the RCD, the form is more akin to an inverted number '7' than to the letter 'S'. The overall impression produced by the side posts, which both incline backwards to form an inverted '7' is the same. The side view of a highchair is the most visible, and the base the least visible, in normal use of a highchair placed before a table.
- (27) Moreover, the arrangement of the seat and the footrest plates in a stair like manner between the side posts, especially apparent viewed from the side, is the same in the design of both the prior design and the RCD.
- (28) The curved shape of the front rail, the purpose of which is to ensure a child's safety, which can assured by another form, is identically adopted in the RCD.
- (29) The details relied on by the Holder cannot have any impact on the overall impression produced on an informed user by the two highchairs represented by the designs at issue. An informed user will be guided by the basic structures alone and not by differences in the details, namely the means for achieving adjustability such as holes (in the RCD) or grooves (in the prior design) which do not produce different overall impressions on him.
- (30) For the above reasons, the Invalidity Division finds that the overall impression produced on an informed user by the challenged design does not differ from that produced by the earlier design of the prior design with the higher upper backrest.

C. Conclusion

- (31) The RCD is declared invalid on the ground of Article 25(1)(b) CDR in conjunction with Article 6 CDR, due to lack of individual character.
- (32) In view of the above conclusion, it is unnecessary to examine the other grounds of invalidity invoked by the Applicant, in particular Article 25(1)(e) and Article 25(1)(f) CDR.

III. Costs

- (33) Pursuant to Article 70(1) CDR and Article 79(1) CDIR, the Holder bears the fees and costs of the Applicant.
- (34) The costs to be reimbursed by the Holder to the Applicant are fixed to the amount of 750 Euro, composed of 400 Euro for the costs of representation and 350€ for the reimbursement of the invalidity fee.

IV. RIGHT TO APPEAL

- (35) An appeal shall lie from the present decision. Notice of appeal must be filed at the Office within two months after the date of notification of that decision. The notice is deemed to have been filed only when the fee for appeal has been paid. Within four months after the date of notification of the decision, a written statement setting out the grounds of appeal must be filed (Article 57 CDR).

THE INVALIDITY DIVISION

Martin Schlötelburg

Jakub Pinkowski

Ludmila Čelišová

