

Alicante, 30/04/2018

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**Notification to applicant of a decision**

*Invalidity number:*  
*Contested registered Community*  
*design:*

**ICD 000010298**  
**001431829-0006**

Please see the attached decision, which ends the abovementioned invalidity proceedings. It was taken on **30/04/2018**.



**Ludmila ČELIŠOVÁ**

Enclosures (excluding the cover letter): 12 pages

**INVALIDITY No ICD 10 298**

**Mystic Products Import & Export, SL**, Carrer Guifre N° 689, Badalona 08918, Spain (applicant), represented by **Isern Patentes y Marcas, S.L.**, Avenida Diagonal, 463, 2° piso, 08036 Barcelona, Spain (professional representative), and

**Koopman International B.V.**, Distelweg 88, 1031 HH Amsterdam, Netherlands (applicant), represented by **Merkenbureau Knijff & Partners B.V.**, P.O. Box 5054, 1380 GB Weesp, Netherlands (professional representative)

a g a i n s t

**Tinnus Enterprises, LLC**, 3429 18th Street, Plano, Texas, United States of America (holder), represented by **Gill Jennings & Every LLP**, The Broadgate Tower, 20 Primrose Street, London EC2A 2ES, United Kingdom (professional representative).

On 30/04/2018, the Invalidation Division takes the following

**DECISION**

1. The application for a declaration of invalidity is upheld.
2. Registered Community design No 001431829-0006 is declared invalid.
3. The holder bears the applicants' costs, fixed at EUR 750 for each applicant, EUR 1500 in total.

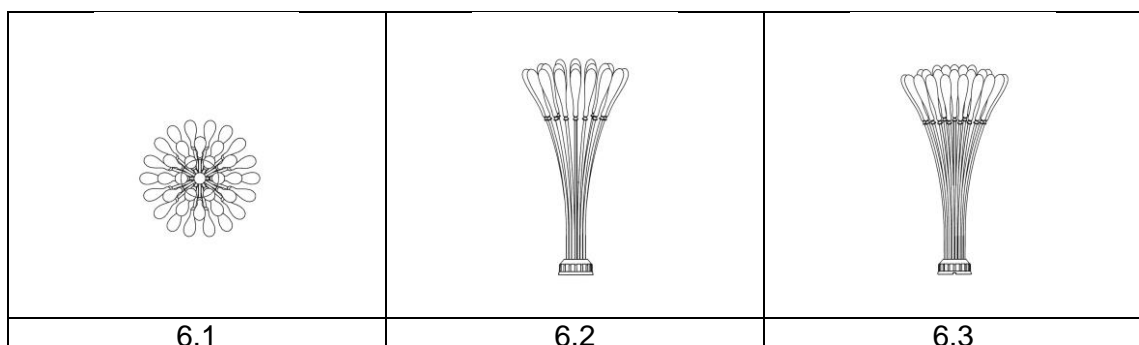
**REASONS**

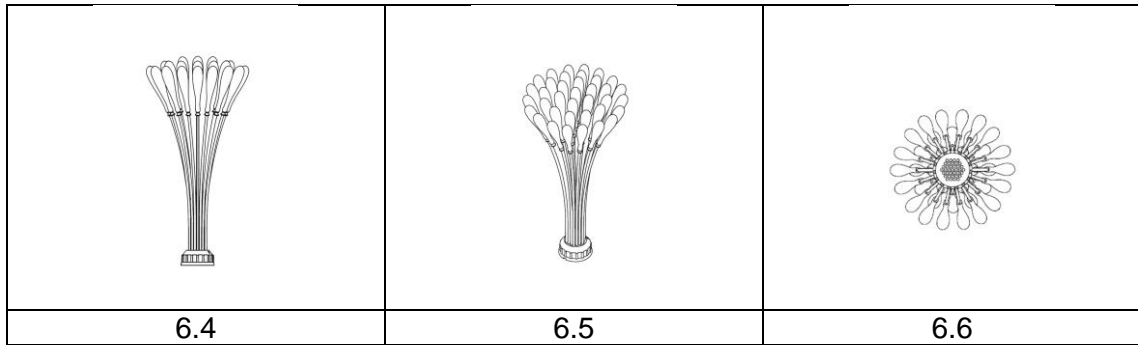
The applicants filed applications for a declaration of invalidity (the application) against Community design No 001431829-0006 (the RCD). The RCD was filed and registered in the holder's name on 10/03/2015.

The following product is indicated in the registration:

23-01 *fluid distribution equipment.*

The registration contains the following images:





Please note that the images in this document are not necessarily to scale.

The applicants invoked Article 25(1)(b) CDR in conjunction with Article 4(1) CDR and Article 8 CDR.

### **SUMMARY OF THE PARTIES' ARGUMENTS**

The first applicant, Mystic Products Import and Export, S.L. (hereinafter 'Mystic'), claimed, inter alia, that all the features of the design had been chosen only with technical considerations in mind and that therefore the design was excluded from protection by virtue of Article 8(1) CDR. An indication of the technical character of the design was that anyone, with the aid only of a verbal description of the product as presented in the evidence, could draw a depiction of the product that would contain all the elements of and be substantially identical to the contested design, because no creative endeavour had gone into the design. If the product was innovative, it was because it provided a technical solution, however solely by aggregating elements known from the state of the art. Such a product should be protected by patenting it – as the design holder had attempted to do – and not by a design registration. The contested design would prevent others from using that purely technical solution, which was contrary to the purpose of design law.

The following features of the contested design were, according to the applicant, solely dictated by their technical function:

- the housing with an opening and a number of holes;
- a number of hollow tubes attached to the housing;
- a number of inflatable balloons connected to the ends of the tubes;
- a number of fasteners fixing the balloons to the tubes.

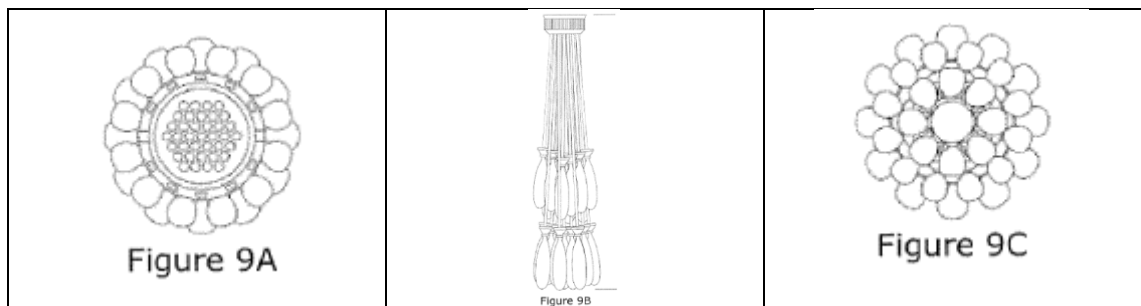
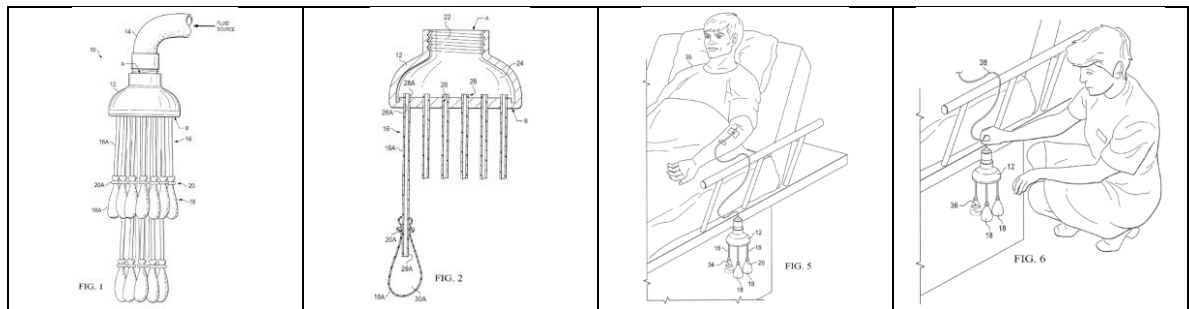
All those features were necessary for the technical solution to the question of how to fill a number of inflatable balloons at the same time (for children's water fights). The holder presented the product on the internet as 'Bunch O Balloons': 'a hose attachment with 37 pre-connected balloons that automatically tie themselves once filled with water ... The way it works is that the uninflated balloons have been pulled over 37 straws. Around the neck of each balloon, there is a tiny, tight rubber band securing the balloon onto the straw. The straws feed into a single head that can be attached to a hose for filling. This allows for all of the balloons to simultaneously fill with water. You can then stop the hose and shake the balloons gently to release them into your arsenal.' The same description was used in the holder's EU patent application for the same product.

In support of its observations, the applicant submitted:

- A printout from the website [www.arstechnica.com](http://www.arstechnica.com), showing an article entitled 'Bunch O Balloons will revolutionize water fights' and subtitled 'The product fills multiple balloons with water simultaneously', published on 27/07/2014 with the following image:



- European patent application EP 3 005 948 A2, filed in the name of the RCD holder on 03/10/2015, and published on 13/04/2016. The application contains, inter alia, the following depictions of the technical solution:



In response to Mystic's application, the RCD holder submitted, inter alia, the following arguments.

The images in the contested design registration depict the design in a top-down view (6.1), side views (6.2 to 6.4), a perspective view (6.5) and a bottom-up view (6.6). The images show that the design is made up of four components: a housing, multiple straws, an uninflated balloon at the end of each straw and a ring around the neck of each balloon just at the opening of the balloon.

According to the holder, the four components give the product a relatively simple appearance; however, notwithstanding that, each component has its own features and details that add character to the appearance of the product. In particular, the housing is a squat cylinder with a diameter greater than its length. It has an outer rim and a centre section. A number of circular features, holes, are arranged in the centre section of the housing. The arrangement of the holes is one of many configurations that could have been chosen to achieve a close tessellation of the holes. However, it is also an

aesthetically pleasing arrangement, as the hexagonal shape of the array mirrors the hexagonal arrangement of the holes within the array. There is no technical reason for the shape of the housing. Its shape, however, contributes to the overall appearance of the component, giving it a utilitarian look.

The straws are curved, all of the same length. The straws are significantly longer than the length of the housing. They are otherwise devoid of features. This makes the product look long, thin and simple. The major aspects of the appearance of the straws are their length and their arrangement with the gently curve outward from where they join the housing, keeping the straws close together at one end and more open at the opposing end are principal contributing factors to the overall long and graceful appearance of the product as a whole. The straws would be capable of achieving the purpose of transporting fluid from the housing to each of the balloons regardless of their length. Accordingly, the length of the straws is not important to enable them to fulfil this purpose. The designer chose the length of the straws and size of the balloons to keep the balloons to assist in establishing the overall appearance of the product.

The balloons are all uninflated and are a uniform, rather than varying, size and shape. The openings of the balloons are each about as wide as the main body of one of the balloons in their uninflated state. In that state, the balloons are about a third of the length of the straws and about three times the length of the housing. This adds to the long and thin look of the product, since it extends the length of the product without increasing the width by the same amount. The group of balloons appears organised and tidy. The designer chose the shape and size of the balloons and decided that all the balloons should be the same size and shape. This choice was part of the design process, and it contributes to the appearance of this component and to the overall appearance of the product as described above.

The rings are each a single band on the neck of each balloon. The thickness of each ring is relatively large in proportion to its width. This makes the ring appear thick and substantial. The rings were chosen by the designer over the alternatives for a particular reason. This reason is that the single, thick band is tidy and simple, whereas another ring with a thinner band or more than one band would look more rudimentary, sloppy and less professional. Therefore, while the rings may have been used primarily to perform a function, their appearance also been considered. Thus, aesthetic considerations came into play when choosing the rings.

According to the holder, the applicant's substantiation of its invalidity request by a comparison of the features shown in the European patent application has no legal basis because statements of invention in a patent application are intended to reflect the language of a patent claim, which is general, whereas a design registration shows a particular embodiment of an invention. The correct approach is to carefully consider each feature of the design independently, and to consider whether the appearance of that feature could have been decided based on aesthetic reasons instead of or as well as its technical function.

The argument that the wording of the patent application proves the technical character of the design because it would suffice to enable someone to draw the design has no legal basis either. Moreover, the verbal description can include not only technical matters but also aesthetic ones. The applicant's allegation that the design registration is an attempt by the holder to monopolise a technical solution – that is, that the design would prevent others from using the purely technical solution presented by that design – assumes that the product can take only one form. However, in the present case, multiple forms of the product related to the RCD can be envisaged. The RCD in question was filed in a multiple application with nine other designs, due to the difference

in appearance of the different forms, even though each form is intended to be used in the same way.

Besides the essential features identified above, the product has a special appearance that results from the combination of all those features. The intended purpose of the product is to facilitate a water balloon fight among children. The purchaser will most likely be the children's parents, or the children themselves. The simple appearance of the product is beneficial in this respect because the impression conveyed is that it will be simple to use. Its long, thin appearance makes the product aesthetically pleasing, as it has a relatively graceful shape that is neat and tidy, rather than short, stubby and messy. This increases the consumer's confidence in the product, for example by reassuring a parent that the product will work and not be a waste of money. These aesthetic qualities are entirely independent of the technical purpose of the product. They add to the visual appeal and desirability of the product, not its functionality. This shows that the designer of the product was considering the aesthetic nature of the product's design during its development, not only how it was to function. The appearance of the product shown in the RCD, overall and in its details, gives the impression that the product is well designed.

Therefore, in summary, none of the essential features of the RCD has an appearance dictated solely by technical function. Accordingly, neither the RCD as a whole nor any of the features of the RCD contravenes Article 8(1) CDR, and therefore the RCD should not be invalidated on the ground that its features are dictated solely by technical function.

In its rejoinder, Mystic submitted that the European patent application shows the same views contained in the challenged design registration. Each single element of the RCD performs a technical function, allowing all of them together to fill water balloons simultaneously. Even though the same result could be achieved if some of the elements were excluded or modified, the visual aspect of any such device would still be the result of its technical function. The circular shape of the housing was selected because the majority of hoses and taps to which the housing would be applied are circular, and therefore this feature was solely dictated by the product's technical function. There are no aesthetic considerations involved in choosing the shape of hollow tubes or in attaching them to the housing, and they are absolutely necessary to convey the fluid from the housing to the balloons. No aesthetic considerations were involved in choosing the shape of balloons. The elastic bands around the balloons are barely visible, and therefore no aesthetic considerations lay behind their choice.

In its rejoinder, the holder agreed with the applicant that the correct approach to considering the derogation under Article 8(1) CDR was to conduct an objective assessment of whether aesthetic considerations, regardless of the aesthetic quality of the result, could have been taken into account by the designer of the contested design. The applicant, however, had completely ignored the facts that the product was intended for children and that the market for children's toys was highly competitive and therefore products in that market needed to have an appealing appearance.

The second applicant, Koopman International B.V. (hereinafter 'Koopman'), claimed that all or at least several important features of the contested designs were solely dictated by their technical function, and that therefore the RCD should be declared invalid or at least its protection limited. Koopman cited from the holder's patent application and concluded that 'it is beyond doubt that the only consideration that can possibly have gone through mind of the designer of the product was the need to design a product that would perform a technical function, namely, to fill as many water balloons at a time to gain time'. As regards the features of the design, the applicant argued that:

- the housing is annular because it is designed to be screwed onto a water tap;
- the tubes have an elongated shape and are flexible to allow the balloons to occupy more space as they are filled with water;
- the elastic bands connect the tubes to the balloons and also close the balloons when they are filled with water and become detached from the tubes;
- the balloons are standard-shaped water balloons.

It also argued that at least the following features should be excluded from protection:

- the outside of the annular housing being marked with small ridges, because they are present to enable the user to get a better grip;
- the fact that the outer tubes flex more than the inner tubes, because this allows more balloons to be attached;
- the different lengths of the tubes, because this allows more balloons to be filled by providing more space for them.

Koopman submitted the same European patent application by the holder cited above.

After filing the invalidity application, Koopman declared that it had been accused of infringing the contested design before the district Court of The Hague and, pursuant to Article 54 CDR, it requested to join the invalidity proceedings initiated by Mystic.

The Office allowed the joining of the cases pursuant to Article 33 CDIR and will deal with both the applications as one set of proceedings pursuant to Article 32(1) CDIR. The Office forwarded Koopman's application to the RCD holder to enable it to submit its observations.

In response, the holder argued, *inter alia*, as regards the features pointed out by the applicant, that the contested design registration included only static images, and that therefore the flexibility or otherwise of the straws ('tubes' in the applicant's submissions) could not be determined or considered a feature of the design. The balloons shown in the registration are all in an uninflated state, and therefore their shape (described by the applicant as the standard shape of water balloons) cannot be determined or considered a feature of the design either.

The holder reiterated that using the wording of its patent application to compare the invention with the appearance of the features of the same product protected by virtue of its Community design registration was not a correct approach. The detailed description in the patent application focuses on the technical interaction of the features of the invention and so is intended to address the function and technical requirements of the structure, but not its appearance. Therefore, the details discernible in the design are omitted. If the applicant's approach were adopted, all registered designs of products subject to parallel patent claims would wrongly be invalidated. Instead, all the features of the design should be considered independently. The fact that some of the features of the design are as described in the patent application cannot lead to the conclusion that the design is solely dictated by its technical function, since it may also include aesthetic features.

Furthermore, the holder repeated the assessment of the design's features that it submitted in response to Mystic's application, as set out above.

**ARTICLE 25(1)(b) CDR IN CONJUNCTION WITH ARTICLE 8(1) CDR****Features solely dictated by their technical function pursuant to Article 8(1) CDR**

Article 8(1) CDR denies protection to those features of a product's appearance which are solely dictated by its technical function.

According to a recent Court of Justice judgment, Article 8(1) CDR must be interpreted as meaning that, in order to determine whether the features of appearance of a product are exclusively dictated by its technical function, it must be established that the technical function is the only factor which determined those features, the existence of alternative designs not being decisive in that regard (judgment of 08/03/2018, C-395/16, DOCERAM, EU:C:2018:172, § 32).

According to the Advocate General, the provision under Article 8(1) CDR is an exception, which means that it should be interpreted strictly (opinion of the Advocate General of 19/10/2017, C-395/16, DOCERAM, EU:C:2017:779, § 30), '[f]inding a balance between protecting innovation and creativity and safeguarding fair and profitable competition for all Community undertakings' (opinion of the Advocate General of 19/10/2017, C-395/16, DOCERAM, EU:C:2017:779, § 38).

As regards the assessment itself, the Advocate General stated that '[i]t is essential ... that the competent authorities are able to decide on the basis of assessment criteria which are not subjective, but are neutral and without any risk of partiality'. The assessment should be conducted not only having regard to the design concerned itself, but also in the light of all the circumstances surrounding the choice of its features of appearance, bearing in mind the evidence provided by the parties, regardless of the subject or the nature of that evidence. The Advocate General added also that '[i]t is not impossible that criteria which, in [his] view, cannot in themselves show that features of appearance of a product have been dictated solely by its technical function within the meaning of Article 8(1) of Regulation No 6/2002, such as the subjective intention of the designer or the existence of alternative forms, may nevertheless be included in the body of specific evidence which [the competent authorities] must take into consideration in order to form their own opinion regarding the application of that provision' (opinion of the Advocate General of 19/10/2017, C-395/16 DOCERAM, EU:C:2017:779, § 66 and 67; confirmed in the judgment of 08/03/2018, C-395/16, DOCERAM, EU:C:2018:172, § 37).

Furthermore, the case-law provides some guidelines as regards the assessment itself.

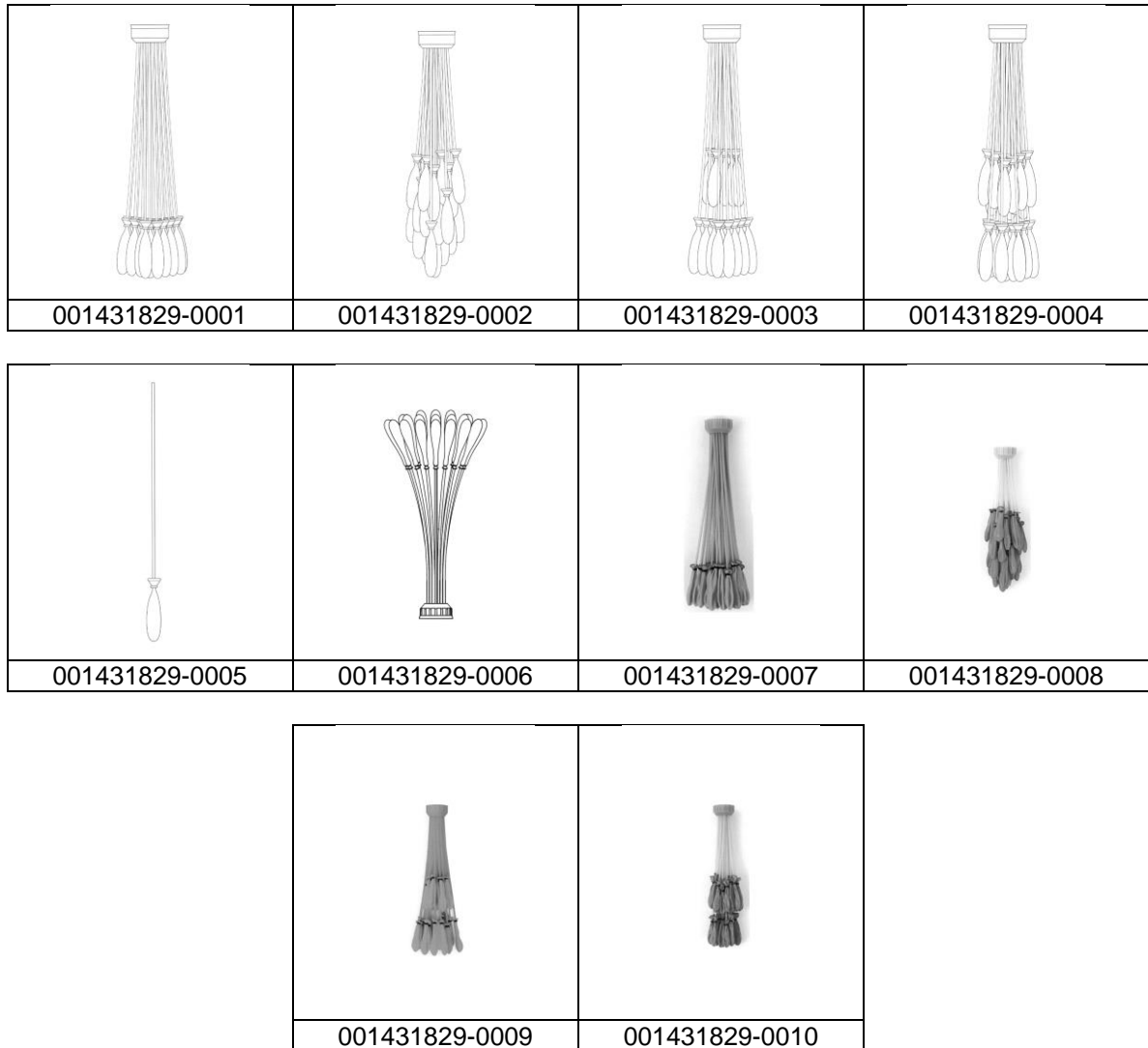
The fact that a particular feature of a product's appearance is denied protection by Article 8(1) CDR does not mean that the whole design must be declared invalid, pursuant to Article 25(1)(b) CDR. The design as a whole will be invalid only if all the essential features of the appearance of the product in question were solely dictated by its technical function (decision of 29/04/2010, R 211/2008 3, Fluid distribution equipment, § 36).

In order to determine whether the essential features of the appearance of the product into which the contested Community design will be incorporated are solely dictated by the technical function of the product, it is first necessary to determine what the technical function of that product is. The relevant indication in the application for registration of the design (Article 36(2) CDR) should be taken into account, but also, where necessary, the design itself, insofar as it makes clear the nature of the product, its



intended purpose or its function (judgment of 18/03/2010, T-9/07, Metal rappers, EU:T:2010:96, § 56).

Although the present invalidity proceedings concern solely the validity of registration No 001431829-0006, bearing in mind all circumstances and the arguments of the parties, it is not irrelevant to show the whole multiple registration that the holder applied for, to better understand the designs of the *fluid distribution equipment*, for which the protection is sought:



The holder argued in its submissions that this multiple registration proves that no monopoly over a technical solution had been granted, as the multiple registration suggests many other alternatives.

The practice of the Office has been driven by the case-law of the second instance, which rejected the test based on the multiplicity of forms theory. The Court of Justice, supporting the opinion of the Advocate General in this regard, rejected the multiplicity of forms theory as the sole factor for the application of Article 8(1) CDR stating that 'if the existence of alternative designs fulfilling the same function as that of the product concerned was sufficient in itself to exclude the application of Article 8(1) of Regulation No 6/2002, a single economic operator would be able to obtain several registrations as a Community design of different possible forms of a product incorporating features of appearance of that product which are exclusively dictated by its technical function. That

would enable such an operator to benefit, with regard to such a product, from exclusive protection which is, in practice, equivalent to that offered by a patent, but without being subject to the conditions applicable for obtaining the latter, which would prevent competitors offering a product incorporating certain functional features or limit the possible technical solutions, thereby depriving Article 8(1) of its full effectiveness' (decision of 29/04/2010, R 211/2008 3, Fluid distribution equipment, § 28; decision of 14/04/2014, R 1772/2012 3, Game cartridges, § 19; opinion of the Advocate General of 19/10/2017, C-395/16 DOCERAM, EU:C:2017:779, § 40 and 41; judgment of 08/03/2018, C-395/16, DOCERAM, EU:C:2018:172, § 30).

It looks like this is precisely what is at issue in the present case. At least four designs of the holder's multiple registration above show possible alternatives to achieve a single technical solution (not leaving many other alternatives free). The straw and balloon configurations which appear in them are different ways of enabling a large number of balloons to be filled with water at once. By obtaining registration for these forms, the holder does not leave its competitors many options to achieve the same effect.

As stated in the previously quoted case law, the existence of alternative forms as a sole factor should not result in the automatic rejection of the application of the provisions of Article 8(1) CDR but other objective circumstances relevant to the case should be taken into consideration (judgment of 08/03/2018, C-395/16, DOCERAM, EU:C:2018:172, § 38).

The Invalidity Division believes that such a relevant circumstance might be the fact that all the alternative forms presented in the present case enjoy protection by virtue of registration as Community designs, like the contested design, and therefore should be disregarded as alternatives left free for competitors.

Furthermore, it seems that the right approach requires the purely technical features of the product to be distinguished from those driven by the design process, since, according to the opinion of the Advocate General in the previously mentioned case, the exclusion laid down in Article 8(1) CDR is motivated mainly by the absence of creative influence on the part of the designer over the appearance of the product, since only added value stemming from intellectual effort independent of that function justifies design protection. It is therefore necessary to look at the contested design objectively and, based on the available evidence, conclude if, apart from the technical solution embodied in the product, a design effort or visual enhancement is apparent from the registration. In view of the Invalidity Division, the contested design does not show it and the holder failed to prove such a design effort.

The contested RCD relates to *fluid distribution equipment*, as specified in the product indication. It is not necessary to describe the design much here, as it has been introduced by the parties sufficiently: the product consists of a housing that can be attached to a standard water distribution facility such as a water tap or a garden water hose. The water is distributed via multiple straws (tubes) attached to the housing via holes and the final destination of the water is in the inflatable balloons attached to the far ends of the straws (tubes) with an elastic band. It is further understood from the evidence that once sufficient water is in the balloons, the weight of the water allows the balloons to be detached from the straws and the elastic band closes the opening of the balloons so that the water is kept inside the balloons, which can be subsequently used in a water fight.

As is apparent from the promotional article submitted by Mystic and not contested by the holder, from the holder's submissions, from its patent application and also from the nature of the product itself, the product related to the RCD is intended to serve the

purpose of entertaining children by facilitating a water balloon fight. It is therefore a product, as correctly pointed out by the holder, that is intended for public use – first by parents or older children, distributing water using the equipment to the inflatable balloons, and later by the participants in the water fight, using the filled balloons. However, neither the evidence submitted nor the registration suggests features of the product other than utilitarian ones. It can be understood that the appearance of the product is of little marketing interest. With regard to the intended use of the product, the Community design registration and the promotional article focus solely on its performance.

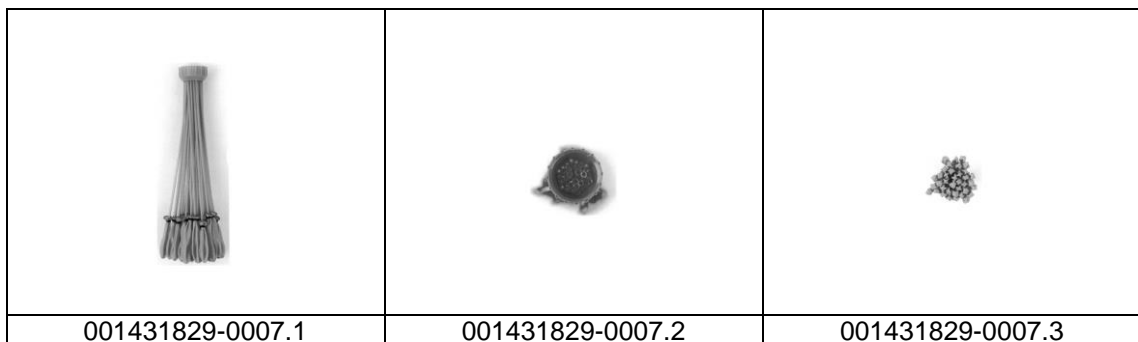
Furthermore, as regards the nature of the product, it is intended as a single-use, disposable product. It is not durable and therefore it has limited aesthetic value. The product is purchased with the aim of using it to distribute water via the housing and the straws to the balloons. The balloons themselves will be disposed of once thrown in the water fight. As the author of the promotional article submitted by Mystic emphasises, the balloons are made of biodegradable material, which allows them to be broken down quickly. Once the balloons are used, they become waste. The rest of the equipment, the straws and the housing, unless a new batch of balloons is purchased for use with it, will be disposed of as well. In any case the article does not mention that the equipment can be reused and its low price (USD 15) rather suggests that it is intended as a single-use product. Even the holder emphasises the utilitarian appearance of the product, intended to appeal to potential customers. It seems logical that, with regard to a product that is intended to be used once and then disposed of, the users' main interest would be not aesthetic – as it might be if they were investing in something durable – but rather utilitarian. Even though, one could imagine that some aesthetic aspects, such as different balloon colours, the decoration of the balloons, or the use of decorative bands could add to the aesthetic value to the product, these are outside the scope of this assessment, as the contested design seeks protection solely for the product's form or shape.

As reasoned above, the arguments that the design was driven also by the considerations to enhance its appearance, whereas the product is intended to be used once and then disposed of, and whereas it seeks protection solely for its form, are not convincing. The holder did not submit any supporting evidence for its statements on the designer's involvement, for instance, relating to the design process.

In addition, both the applicants referred to the holder's parallel application for a patent for a technical solution, one of the embodiments of which (figures 9A to 9C of the patent document cited above) corresponds visually to the contested Community design. They claim that all the essential features of the design were intended to achieve the purpose of the product and that no aesthetic considerations were taken into account. The holder countered that the general language of the patent application intentionally excluded any mention of aesthetic features, which are not patentable, and that the sole purpose of the patent application is to describe and protect a technical solution. Therefore, the wording of the patent application cannot be taken as proof of a lack of aesthetic considerations in the creation of the contested design.

The Invalidity Division agrees with the holder on the point that each instrument of protection, namely the European patent and the registered Community design, targets different aspects of the product; however, this does not mean that the specifications in the patent application and the examples of the embodiments of the solution cannot be taken into account when the technical nature of a product related to a contested design is assessed.

The holder claims that the arrangement of the holes for placing the straws in the housing was chosen intentionally to give the housing a tidy, organised look. According to the patent application, the openings or holes are configured in an array allowing the tubes to be arranged in concentric circles. This description suggests the neat arrangement with the advantage that it allows a greater number of straws (tubes) to be attached. The form of the housing is that of a simple, common hose connector or threaded tap connector. The size of the housing, which in reality corresponds to the size of a common tap or hose, will not allow the user to 'appreciate' the arrangement of the holes as it will be rather negligible due to its size. It should be noted that, for the end user, the arrangement of the straws and balloons will be perceived merely as a bunch of straws and balloons with no particular pattern, as is apparent from RCD No 001431829-0007 in the same multiple registration, showing the actual product:



In the view of the Invalidity Division, therefore, the effort of the designer in arranging the holes for the straws was driven more by the need to place a certain number of holes in the housing rather than by aesthetic considerations, which do not have a substantial impact on the overall appearance of the product.

The holder's argument that the balloons were intentionally chosen to be of the same size to give the product a neat look can also be argued *a contrario* to say that different sizes and shapes of balloon would create an unusual, special look that would be more appealing to the targeted users (children) than the austere and uniform look of the contested design. The same could be said in relation to the elastic bands, which could have created an unusual look departing from a norm. Therefore the arguments of the holder in this part are not convincing either.

The Invalidity Division does not see any enhancement of the appearance of the product protected by virtue of the Community design compared with the austere embodiment presented in the patent application (where any aesthetic references that could be an obstacle to the patentability of the invention are omitted). The embodiment in the patent document is almost identical to the design registration. If the effect of protection by virtue of the patent and the design registration differ, the difference should be apparent also in the claims in both. The design comprises standard features available on the market: the housing, which is a standard tap or hose extension; the straws, which, according to the holder, lack any features other than being fairly long; and the simple bands around the commonly commercialised inflatable balloons.

Under these conditions and in the light of the evidence submitted by the parties, the Invalidity Division concludes that all of the RCD's essential features have been chosen with the aim of designing a product that performs a function. None of those features has been chosen for the purpose of enhancing the product's appearance.

The RCD holder has failed to present convincing arguments supported by convincing evidence to show the opposite.

## **CONCLUSION**

The contested RCD is declared invalid pursuant to Article 25(1)(b) CDR for being excluded from the protection pursuant to Article 8(1) CDR insofar as it is solely dictated by technical function.

Since the application is fully successful on this ground, there is no need to examine the other ground invoked, namely Article 25(1)(b) CDR.

## **COSTS**

According to Article 70(1) CDR, the losing party in invalidity proceedings must bear the fees and costs incurred by the other party.

Since the holder is the losing party, it must bear the invalidity fees as well as the costs incurred by each applicant in the course of these proceedings.

According to Article 70(1) CDR and Article 79(7)(f) CDIR, the costs to be paid to each applicant are the costs of representation, which are to be fixed on the basis of the maximum rate set therein (EUR 400), and the costs of the invalidity fee (EUR 350).



### **The Invalidation Division**

Gailė SAKALAITĖ

Ludmila ČELIŠOVÁ

Michele M.  
BENEDETTI-ALOISI

According to Article 56 CDR, any party adversely affected by this decision has a right to appeal against this decision. According to Article 57 CDR, notice of appeal must be filed in writing at the Office within two months of the date of notification of this decision. Furthermore, a written statement of the grounds of appeal must be filed within four months of the same date. The notice of appeal will be deemed to have been filed only when the appeal fee of EUR 800 has been paid.

The amount determined in the fixing of costs may only be reviewed on request. According to Article 79(4) CDIR, such a request must be filed within one month from the date of notification of this fixing of costs and will be deemed to have been filed only when the review fee of EUR 100 has been paid (Annex to CDFR, paragraph 24).