

Joined Cases T-83/11 and T-84/11 Antrax It Srl v OHIM (with The Heating Company (THC) as an intervening party) (13 November 2012)

The General Court has overturned a decision of OHIM's third Board of Appeal concerning two Registered Community Designs for radiators owned by Antrax It Srl in relation to which applications for declarations of invalidity had been filed by The Heating Company (THC) on the basis of earlier German design registrations and an international design registration covering Benelux, France and Italy which it argued invalidated these two registrations.

At the General Court, Antrax appealed against the decision of the Board of Appeal, which had stated that the designs were invalid due to their lack of individual character. OHIM had ruled that the differences between Antrax's radiator designs and those of THC were not sufficient to create a different overall impression, and that Antrax's radiator designs were therefore invalid, as they did not have individual character. Antrax argued that the differences between the designs were sufficient for the designs to have different overall impressions. In addition, Antrax argued that whilst the degree of design freedom available to the designer was an important consideration, here there was a great deal of design freedom in relation to radiator pipes, and therefore that it was not a pertinent consideration.

The General Court discussed the definition of the informed user, the design freedom of the designer, and whether the saturation of the existing design corpus would influence the perception of the informed user, in determining whether, from the viewpoint of the informed user, the two designs created a different overall impression, had individual character, and therefore were valid designs.

The informed user:

The General Court confirmed that the informed user is a user of a product who pays particular attention to the product's design. This is due to the individual in question having personal experience of that design and product sector. With regard to radiators, an informed user would be someone who purchased the products for installation in their home, and would have the opportunity to visit specialist shops, read reviews, and would be up to date with the trends and general characteristics of products available on the market.

It was also stated that the informed user, however, would not be able to distinguish between the elements of a design dictated by technical function and those which were arbitrary aesthetic design features.

Design Freedom:

The General Court confirmed that the technical function of a design would put constraints upon the freedom available to the designer. Therefore, the greater the design freedom available, the less that minor differences between designs would be likely to create different overall impressions.

In this particular case Antrax claimed that there was a low degree of design freedom. However, the General Court confirmed that Antrax could not demonstrate that this was the case, through evidence of either technical or regulatory constraints imposed on the dimensions or design of the product, which were the relevant factors in determining the available design freedom.

In fact, the court found that using different dimensions and diameters of radiator piping would be possible and practical. The issue here was that, whilst there were not any particular regulatory or technical restraints upon the design of the radiators, there were more standard designs which were commonly used as they were more commercially successful, and the existing design corpus was therefore saturated.

Saturation of the existing design corpus

A key consideration made by the General Court was the perception of the informed user, and the pertinence of the saturation of the existing design corpus. The General Court established that this could clearly have an impact upon how the informed user would view product design. If the prior art really was saturated, and most of the designs for the products, whilst not being constrained in terms of technical or regulatory reasons, were limited to specific designs due to the fact that certain shapes were more commercially successful, the perception of the informed user would be different. Essentially, the informed user would be more perceptive to differences between the designs, and the overall global impression created by the designs may be perceived as different, and therefore the later design would have the requisite individual character.



Unfortunately, whilst the Board of Appeal had explicitly discussed this matter, it had not dealt with it in its decision and therefore the General Court was procedurally unable to determine on this matter.

As such, the General Court overruled the OHIM Board of Appeal decision, in that it could not be demonstrated whether the designs had a different overall impression or not, as the perception of the informed user could not be determined. They therefore found that the two designs in question were valid.

Clearly the informed user's perception of a design is affected by the nature of the available prior art in relation to that specific design and product, and whether the design field is crowded. Even though there may be no technical or regulatory constraints upon the design of a product, it is clear that the viewpoint of the informed user is strongly affected by the state of the prior art available, a more commercially important consideration.

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