



OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)
Operations Department Designs Service

**DECISION OF
THE INVALIDITY DIVISION
OF 15/03/2012**

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

FILE NUMBER ICD 8399
COMMUNITY DESIGN 000512983-0002
LANGUAGE OF PROCEEDINGS English

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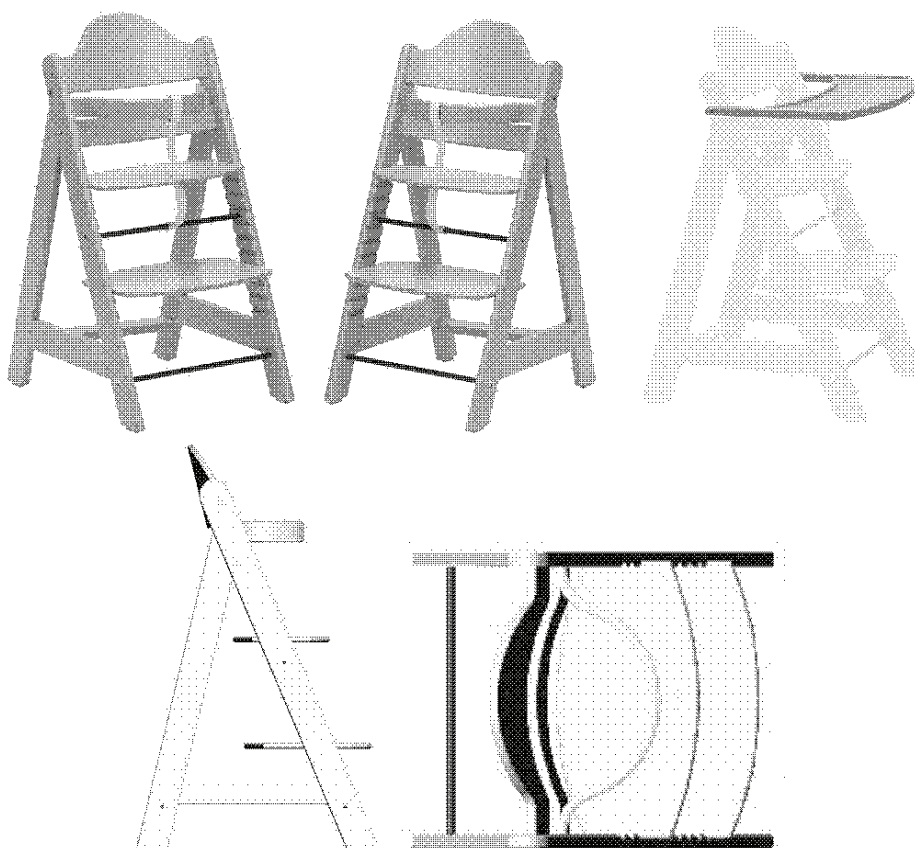
composed of Martin Schlötelburg (rapporteur), Jakub Pinkowski (member) and Natalie Pasinato (member) took the following decision on 15/03/2012:

1. **The registered Community design n° 000512983-0002 is declared invalid.**
2. **The Holder shall bear the costs of the Applicant.**

I. FACTS, EVIDENCE AND ARGUMENTS

- (1) The Community design n° 000512983-0002 (hereinafter “the RCD”) has been registered in the name of the Holder with a date of filing of 13/04/2006. In the RCD, the indication of products reads “children’s chairs”. The design was published on 08/08/2006 in the Community Designs Bulletin in the following views:

http://oami.europa.eu/bulletin/rcd/2006/2006_090/000512983_0002.htm



- (2) On 25/03/2011, 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 copy of an extract from the shopping guide of the association "Que Choisir", dated May 1995, which shows the "Tripp Trapp Chair" ("the prior design") as follows:



- (5) In the reasoned statement, the Applicant holds 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 1974. In particular, the Applicant argues that "the only differences between the contested [RCD] and the design of the Tripp Trapp chair are the fact that the bottom horizontal front bar in the side view of the contested chair has been moved up from the ground in comparison to the bottom horizontal front bar in the side view of the Tripp Trapp chair, and that an additional supporting vertical front bar in the side view of the contested chair has been added". The Applicant argues that the RCD constitutes an unauthorized use of the Tripp Trapp Chair because (a) said prior design is protected under copyright law "all over Europe as a work of applied art", namely in Denmark and Germany, and the Applicant is entitled to its commercial exploitation and (b) the prior design has also been registered as a three-dimensional trademark in several European countries, namely Denmark, prior to the filing date of the contested RCD.
- (6) In response to the Applicant's arguments, the Holder argues that the features that characterize the prior design are dictated by the technical function of the product and, therefore, "the designer [of the RCD] had no choice but to include these features when creating the RCD". In support of his argument, the Holder points out that a patent for the Tripp Trapp chair was granted in various countries and expired in or around 1992. Furthermore, the Holder argues that "the overall impressions of the RCD and the Tripp Trapp chair greatly differ, as the most commanding characteristic of both chairs are the side support beams", which in the prior design adopts a "leaning L shape", while in the RCD, an A shape. In response to the grounds of invalidity based on Article 25(e), the Holder insists that "given that the RCD does not use the leaning 'L' design, there is no reason to believe a likelihood of confusion or association to exist between the RCD and the Tripp Trapp chair". Finally, the Holder argues that copyright protection "does not extend further than the cursive L-shape characterizing the side view" of the chair and that "since the RCD and Tripp Trapp chair also do not produce the same overall impression,

there is no reason for the RCD to be found to infringe on the Tripp Trapp chair's 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 prior design was published on a shopping guide of the association "Que Choisir" on May 1995 and hence was 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 two parallel front posts that are inclined towards the back;
 - the two front posts contain multiple horizontal running grooves on the insides that allow the sliding of panels into the grooves;
 - two thin, flat rectangular panels serve as a seat and a foot rest, which are slid into the grooves;
 - two parallel, horizontal bars that run from the front to the back;
 - the backrest consists of two cross bars of similar width separated by a gap; the top cross bar having the same curved shape;
 - a protective waist belt formed by a curved beam at the same level of the gap of the backrest;
 - a thin metallic black bar connects the two front side posts at the bottom;
 - a wood-like bar connecting the two rear side posts;
 - the frame, the base, the backrest, the seats, the footrest and the waist belt have a natural wood-like colour.
- (12) The RCD and the prior design are different as regards to at least the following features:
- the RCD has two rear side posts (or legs) that are straight;
 - the two horizontal bars of the RCD, which connect the front and rear side posts, are raised from the floor;
 - a thin metallic black bar connects the two front side posts at the middle;

- the two flat rectangular panels of the RCD exhibit round edges while the prior design are squared.
- (13) The differences between the RCD and the prior design are not immaterial details. 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) The informed user is familiar with the basic features of the products to which the contested RCD relates, namely children's chairs. The informed user is aware that the degree of freedom of the designer is limited by technical constraints because chairs must provide a raised seating surface, a stable, supporting structure (such as legs) and a backrest. Furthermore, children's chairs in particular are subject to standardized safety norms imposed by national and regional authorities (for instance, the height of the backrest). However, in spite of these technical and safety limitations, the designer of children's chairs still has a considerable degree of freedom as regards to, for instance, the shape and size of the backrest, the seat and other features.
- (16) The prior design known as "Tripp Trapp chair" is characterized by a bookshelf-like construction of the frame, consisting of two parallel inclined posts, and two thin, flat rectangular panels that serve as a seat and a foot rest which are slid into the grooves of the posts. Like a book shelf, this construction allows the easy adjustment of the heights of the panels. However, there is no need to adopt the same shape and dimensions of the different components of the bookshelf-like construction (such as the panels and the side posts) of the prior design in order to fulfil the technical function of adjusting the height of the seat and the foot rest.
- (17) The RCD has therefore taken over the same design features that characterize the bookshelf-like construction of the prior design. The only difference between both the RCD and the prior design regards the A-shape appreciated from the side view of the RCD. However, this difference is insignificant because the overall impressions produced by both designs are not determined by their side views but by the common design features of the bookshelf-like construction that are appreciated mainly from the front view. As a result, the RCD fails to produce a different overall impression from the overall impression produced by the prior design.
- (18) The overall impressions produced on the informed user by the RCD and the prior design are therefore the same and hence the RCD lacks individual character within the meaning of Article 6 CDR.

C. Conclusion

- (19) 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.
- (20) 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

- (21) Pursuant to Article 70(1) CDR and Article 79(1) CDIR, the Holder bears the fees and costs of the Applicant.
- (22) 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

- (23) 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

Natalie Pasinato

