



Press and Information

Court of Justice of the European Union

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Judgment in Case C-345/13
Karen Millen Fashions Ltd v Dunnes Stores

In infringement actions, an unregistered Community design must be presumed to be valid if its holder indicates what elements give it its individual character

The individual character must be assessed by reference not to a combination of features drawn from a number of earlier designs, but by one or more individual designs made available to the public previously

The Regulation on Community designs¹ provides that a design (whether registered or not) is to be protected at EU level to the extent that it is new (not made available to the public previously) and has individual character (the overall impression it produces on the informed user differs from that produced by any design which has been made available to the public previously).

In 2005, Karen Millen Fashions (KMF), a company incorporated under the law of England and Wales which carries on the business of producing and selling women's clothing, designed and placed on sale in Ireland a striped shirt (in a blue and a stone brown version) and a black knit top. Examples of those garments were purchased by representatives of Dunnes Stores, an Irish retail chain, from one of KMF's Irish outlets. Dunnes subsequently had copies of the garments manufactured outside Ireland and put them on sale in its Irish stores in late 2006.

In January 2007, KMF commenced proceedings in the Irish courts, seeking to have Dunnes restrained from using its unregistered designs, and damages for the unauthorised use of the designs at issue.

Dunnes states that, as KMF has failed to prove the individual character of the designs at issue, it is not the holder of an unregistered Community design. Dunnes further states that the individual character of a design must be assessed by reference not only to one or more individual designs made available to the public previously, but also by a combination of features taken in isolation and drawn from a number of earlier designs. Thus, according to Dunnes, a new design cannot have individual character, since it is merely an amalgam of specific features or parts of earlier designs.

The Supreme Court (Ireland), before which the appeal in the case was brought, asks the Court of Justice, first, whether the individual character of the designs at issue fall to be assessed solely by reference to one or more earlier designs or also by reference to a combination of features taken in isolation and drawn from a number of earlier designs. The Irish court also asks whether the right holder is obliged to prove that his design has individual character or whether it is sufficient for him merely to indicate what constitutes the individual character of the design.

In today's judgment, the Court holds, first of all, that **the individual character of a design** for the purposes of protection under the regulation **must be assessed by reference to one or more specific, individualised, defined and identified designs from among all the designs which have been made available to the public previously**. Consequently, that assessment cannot be conducted by reference to a combination of features taken in isolation and drawn from a number of earlier designs.

¹ Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ 2002 L 3, p. 1).

Secondly, the Court observes that, in infringement actions, the regulation introduced establishes a **presumption of validity of unregistered Community designs** so that, in such actions, the right holder of an unregistered Community design is not required to prove that it has individual character. The right holder need only indicate what constitutes the individual character of that design, that is to say, indicates what, in his view, are the element or elements of the design concerned which give it its individual character. The defendant may nevertheless contest the validity of the design at issue.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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