



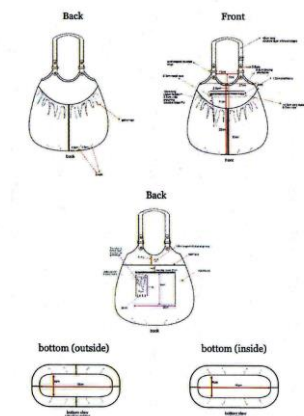
## **The General Court dismisses the actions brought by H&M against the registration of two Yves Saint Laurent bag designs**

According to the Regulation on Community designs,<sup>1</sup> registered designs are to be considered to have individual character if the overall impression they produce on an informed user<sup>2</sup> differs from the overall impression produced on such a user by any design made available to the public before the date of filing the application for registration. The individual character of a design is to be assessed by taking into consideration the degree of freedom of the designer in developing the design concerned.

In 2006, the Office for Harmonisation in the Internal Market ('OHIM') authorised the registration of two Community designs of the French company Yves Saint Laurent ('YSL'), which were intended to be applied to 'handbags':



In 2009, H&M Hennes & Mauritz ('H&M') filed with OHIM two applications for a declaration of invalidity in respect of the designs registered by YSL, on the ground that they had no individual character. In support of its application, H&M invoked this earlier design:



<sup>1</sup> Council Regulation (EC) No 6/2002 of 12 December 2001 (OJ 2002 L 3, p. 1).

<sup>2</sup> The informed user is a user who is particularly observant, either because of his personal experience or his extensive knowledge of the sector in question. That 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.

Following the rejection of its applications for a declaration of invalidity, H&M filed two notices of appeal with OHIM, which were rejected by decisions of 8 July 2013. Within the context of the examination of the individual character of the YSL designs, OHIM took the view that, although the YSL and H&M designs have features in common, the differences as regards the shape, structure and surface finish play a decisive role in the overall impression produced by those bags. In that regard, OHIM found that the degree of freedom of the designer was high, but that, in that particular case, it did not, from the point of view of the informed user, cancel out the significant differences which differentiated the two bags at issue.

H&M sought annulment of the decisions of OHIM before the General Court.

In today's judgments, the **Court dismisses the actions of H&M**.

Unlike H&M, the Court considers that the assessment of the designer's degree of freedom does not constitute a preliminary and abstract step in the comparison of the overall impression produced by each of the designs at issue. The Court confirms that the factor relating to the freedom of the designer does not on its own determine the assessment of the individual character of a design. However, that factor is a factor which has to be taken into consideration because it makes it possible to moderate that assessment.

As regards the comparison of the overall impressions produced by the two bags at issue, the Court notes that, according to the decision of OHIM, the YSL bags differ from the H&M bag as to three features which decisively influence their overall visual appearance, namely the overall shape, structure and surface finish of the bag. The Court confirms OHIM's assessment that the YSL designs thus produce an overall impression on the informed user which is different from that produced by the H&M design. The Court holds that the differences between the designs at issue are significant<sup>3</sup> and that the similarities<sup>4</sup> between them are insignificant in the overall impression which they produce. In the case of the YSL designs, the impression produced would be that of a bag design characterised by classic lines and a formal simplicity whereas, in the case of the H&M design, the impression would be that of a more 'worked' bag, characterised by curves and a surface adorned with ornamental motifs. The Court points out that the straps and the handle of the designs of the two marks manifestly lend themselves to different uses inasmuch as the YSL designs represent a bag to be carried solely by hand, whereas the H&M design represents a bag to be carried on the shoulder.

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**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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*The full text of the judgments ([T-525/13](#) & [T-526/13](#)) is published on the CURIA website on the day of delivery.*

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<sup>3</sup> In particular, in its decisions of 8 July 2013, OHIM considered that the body of the YSL designs has a perceptibly rectangular shape, which gives the impression of a relatively angular object. By contrast, in the body of the H&M design, its silhouette is dominated by an impression of roundness. Next, OHIM took the view that the body of the YSL designs looks as if it is made from a single piece of leather, whereas the front and back of the H&M design are divided into three sections by seams. Lastly, OHIM stated that the surface finish of the YSL designs is totally smooth (with the exception of two faint seams at the lower corners), whereas the surface of the H&M design is covered with pronounced and raised decorative motifs.

<sup>4</sup> The features that are common to the bag designs are their upper contour and the presence of a handle in the form of a strap or straps attached to the body by a system of rings reinforced by rivets. In its decisions of 8 July 2013, OHIM stated in particular that the way in which those rings are used in the bags at issue is very different in that, unlike the H&M design, they are very visible and let light through in the YSL designs, this being a detail which would be obvious to the informed user.

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