



Press and Information

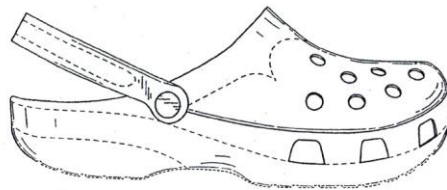
General Court of the European Union  
**PRESS RELEASE No 31/18**  
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Judgment in Case T-651/16  
Crocs, Inc. v EUIPO

## **The General Court confirms the cancellation of registration of Crocs' design because it was made available to the public before its registration**

An EU Regulation provides that a Community design is to be protected to the extent that it is new and has individual character.<sup>1</sup> A design will not be regarded as new if, inter alia, it has been made available to the public during the 12-month period preceding the period of priority claimed,<sup>2</sup> except where the disclosure could not reasonably have become known to the circles specialised in the sector concerned, operating within the EU.<sup>3</sup>

On 22 November 2004, Western Brands LLC filed an application for registration of the following footwear design with the European Union Intellectual Property Office (EUIPO),<sup>4</sup> claiming the priority of a US design patent application filed on 28 May 2004.



On 8 February 2005, the design was registered as Community design. On 3 November 2005, the Community design was transferred to Crocs.

In 2013, Gifi Diffusion, a French company, filed an application for a declaration of invalidity of the design with EUIPO, claiming that it lacked novelty. Gifi maintains that the design had been disclosed prior to 28 May 2003, that is to say prior to the 12-month period preceding the date of priority claimed (i.e. the date of filing of the application for a US design patent).

By decision of 6 June 2016, EUIPO declared the design invalid, finding that it had been disclosed prior to 28 May 2003 and, therefore, lacked novelty. According to EUIPO, disclosure took place by means of (i) display on Crocs' website (ii) exhibition at a boat show in Fort Lauderdale, Florida (United States); and (iii) the fact that the clogs to which the design had been applied were available for sale.

Crocs lodged an appeal against that decision before the General Court of the European Union. In particular, the company submits that the website disclosures of the design concerned events which

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

<sup>2</sup> Article 7(2)(b) of the regulation.

<sup>3</sup> Article 7(1) of the regulation.

<sup>4</sup> At the time, the Office was still known as the Office for Harmonisation in the Internal Market.

could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the EU.

By today's judgment, **the General Court dismisses the action brought by Crocs and confirms EUIPO's decision.**<sup>5</sup>

The General Court notes, with regard to whether or not the design had been disclosed prior to 28 May 2003, that Crocs does not dispute the correctness of the three disclosure events established by EUIPO.

In that regard, the General Court finds that there is no requirement for the events constituting disclosure to have taken place within the EU. **Accordingly, the General Court rules that EUIPO made no error in finding that with the three disclosure events, at least taken as a whole, the contested design had been made available to the public prior to 28 May 2003.**

In addition, the General Court finds that **Crocs failed to demonstrate that the three disclosure events established by EUIPO could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the EU** (that is to say professionals in the trade and manufacture of footwear).

The General Court notes, in particular, that Crocs failed to establish, to the requisite legal standard, that it was not possible for shoe manufacturers operating outside the United States to find its website and that the Fort Lauderdale Boat Show had not become known to those professionals, given that it was an international fair and that the exhibition of the clogs in question had been a smashing success. Moreover, the General Court points out that the clogs were put on sale in a large number of American states and that it was therefore unlikely, given the importance for the EU market of commercial trends on the US market, that it went unnoticed by the circles specialised in the sector concerned, operating within the EU.

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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 European Union 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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*Unofficial document for media use, not binding on the General Court.*

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

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<sup>5</sup> Today the General Court also delivered its judgment in Case [T-424/16](#) Gifi Diffusion v EUIPO, in which Gifi applied for annulment of the refusal of its application for a declaration of invalidity of a Crocs' footwear design. Gifi argues that the design lacks novelty, inter alia, on account of prior disclosure of identical designs. Gifi submitted evidence in that respect, in particular pictures of 27 similar designs to Crocs' design. In that judgment, the General Court annuls EUIPO's decision on account of its failure to express a view in its decision on 6 designs invoked by Gifi without stating the reasons for that failure.