



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 109/19

Luxembourg, 12 September 2019

Judgment in Case C-683/17

Cofemel - Sociedade de Vestuário, SA v G-Star Raw CV

Copyright protection may not be granted to designs on the sole ground that, over and above their practical purpose, they produce a specific aesthetic effect

Designs must constitute the expression of original works if they are to qualify for such protection

The Supremo Tribunal de Justiça (Supreme Court, Portugal) has before it a dispute between Cofemel – Sociedade de Vestuário, SA ('Cofemel') and G-Star Raw CV ('G-Star'), two companies which are both active in the sector of design, production and sale of clothing. The dispute concerns compliance with copyright claimed by G-Star, which accuses Cofemel of producing and selling jeans, sweatshirts and t-shirts copying some of its own designs.

The intellectual property protection ensured by EU law benefits, inter alia, works whose authors are granted, under the directive on copyright,¹ the exclusive right to authorise or to prohibit reproduction, communication to the public and distribution. In parallel, other acts of secondary EU law² ensure specific protection for designs.

Against that background, the Supremo Tribunal de Justiça states that the Código do Direitos de Autor e dos Direitos Conexos (Portuguese Code on Copyright and Related Rights) includes designs in the list of works which may qualify for copyright protection, but does not explicitly clarify what conditions must be satisfied if a particular subject matter, serving a practical purpose, is in fact to qualify for such protection. Since there is no unanimity in Portuguese case-law and legal theory, the Supremo Tribunal de Justiça asks the Court of Justice, in essence, **whether the directive on copyright precludes provisions of national legislation whereby that protection is granted if a specific condition is satisfied, namely that designs must, over and beyond their practical purpose, produce a specific aesthetic effect.**

By its judgment today, the Court answers that question in the affirmative.

In that regard, the Court recalls, first, its settled case-law that **any original subject matter constituting the expression of its author's own intellectual creation can be classified as a 'work', within the meaning of the directive on copyright.**

Further, the Court states that a body of acts of secondary EU law establish a specific protection for designs, while providing that that specific protection may apply in combination with the general protection ensured by the directive on copyright. **Consequently, a design may, in a particular case, also be classified as a 'work'.**

That said, the Court states that **the protection of designs, on the one hand, and copyright protection, on the other, pursue different objectives and are subject to distinct rules.** The purpose of the former is to protect subject matter which, while being new and distinctive, is functional and liable to be mass-produced. Further, the former protection is applicable for a limited time, ensuring a return on the investment necessary for the creation and production of that subject

¹ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001, L 167 p. 10). (1)

² Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs (OJ 1998 L 289, p. 28), (9) and Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ 2002 L 3, p. 1). (12)

matter without thereby excessively restricting competition. For its part, the protection attached to copyright, the duration of which is significantly greater, is reserved to subject matter that merits being classified as works. In that context, **the grant of protection, under copyright, to subject matter that is already protected as a design must not undermine the respective objectives and effectiveness of those two sets of rules, which is why the cumulative grant of such protection can be envisaged only in certain situations.**

Last, the Court explains that **the aesthetic effect that may be produced by a design does not constitute a factor that is relevant to the determination, in a particular case, of whether that design can be classified as a ‘work’, since such an aesthetic effect is the product of an intrinsically subjective sensation of beauty experienced by each individual who may look at the design in question.** That classification does, however, require it to be demonstrated that, first, **there exists a subject matter which is identifiable with sufficient precision and objectivity,** and, second, **that subject matter constitutes an intellectual creation reflecting the freedom of choice and personality of its author.**

Consequently, **the circumstance that designs produce, over and above their practical purpose, a specific aesthetic effect, does not, in itself, entail that such designs can be classified as ‘works’.**

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.

Unofficial document for media use, not binding on the Court of Justice.

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

Press contact: Jacques René Zammit ☎ (+352) 4303 3355