

Disclosure of earlier designs in RCD invalidity proceedings

(Article 7 CDR)

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Elisabetta FERRARO
20/09/2022

PROGRAMME

50'
Presentation

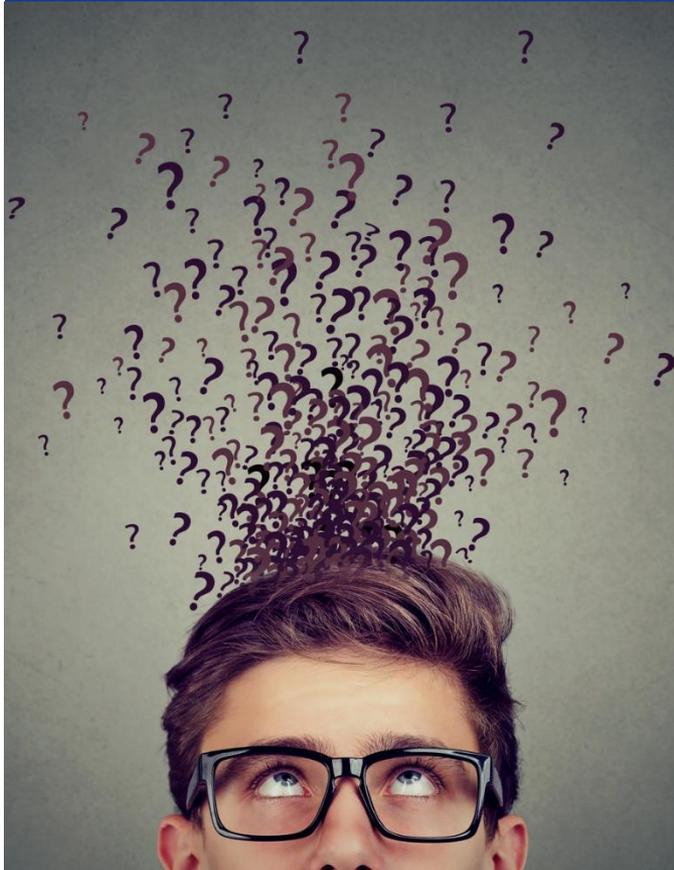
1. GENERAL PRINCIPLES
2. ESTABLISHING THE EVENT OF DISCLOSURE
 - The prior invoked design
 - The sources of disclosure
3. EXCEPTIONS
 - The safeguard clause
 - The grace period

10'
Questions and answers

1

GENERAL PRINCIPLES

GENERAL PRINCIPLES



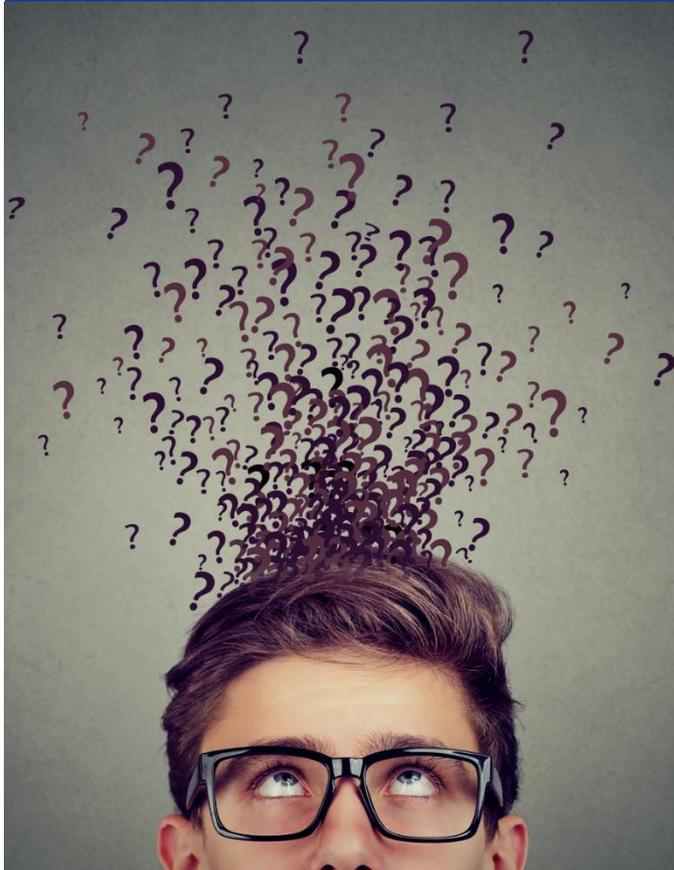
Art. 25 CDR - Grounds for invalidity

1. A Community design may be declared invalid only in the following cases:

[...]

b) if it does not fulfil the **requirements of Articles 4 to 9;**

GENERAL PRINCIPLES



Art. 25 CDR - Grounds for invalidity

1. A Community design may be declared invalid only in the following cases:
[...]

b) if it does not fulfil the **requirements of Articles 4 to 9**;

Art. 4 CDR - Requirements for protection

A design shall be protected by a Community design to the extent that it is **new** and has **individual character** [...]

GENERAL PRINCIPLES – Novelty, Art. 5 CDR

	What	Before the date...
Unregistered community design	No identical design disclosed	...on which the design for which protection is claimed has first been made available to the public
Registered community design		... of filing of the application for registration of the design for which protection is claimed (or of the priority date)

GENERAL PRINCIPLES – Individual character, Art. 6 CDR

	What	Before the date...
Unregistered community design	Different overall impression from any design disclosed	...on which the design for which protection is claimed has first been made available to the public
Registered community design		... of filing of the application for registration of the design for which protection is claimed (or of the priority date)

GENERAL PRINCIPLES – Preliminary steps

Step 1 – Art. 7 (1) CDR

The **invalidity applicant** must **prove the event of disclosure**

GENERAL PRINCIPLES – Preliminary steps

Step 1 – Art. 7 (1) CDR

The **invalidity applicant** must **prove the event of disclosure**

Step 2 – Art. 7(1 - second half), (2) and (3) CDR

The **holder** of the contested Community design can **claim an exception to disclosure**

(14/03/2018, T-651/16, Footwear, EU:T:2018:137, § 48).

2

ESTABLISHING THE EVENT OF DISCLOSURE

ESTABLISHING THE EVENT OF DISCLOSURE – The prior invoked design

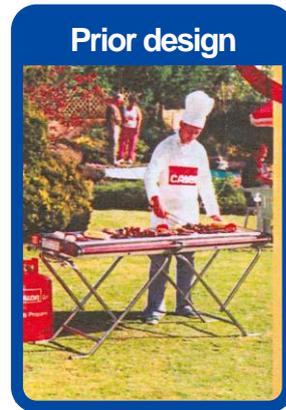
It is **immaterial** whether or not an ‘**earlier design**’ within the meaning of Article 3(a) CDR **enjoys or enjoyed legal protection** (as a design, trade mark, copyright work, patent, utility model or otherwise)

(21/05/2015, T-22/13 & T-23/13, UMBRELLAS, EU:T:2015:310, § 24).

ESTABLISHING THE EVENT OF DISCLOSURE – The prior invoked design

Should be **identified** and **reproduced precisely** and **in its entirety**

(21/09/2017, C-361/15 P& C-405/15 P, Shower drains, EU:C:2017:720, § 65).



10/03/2008, R 586/2007-3, Barbecues

ESTABLISHING THE EVENT OF DISCLOSURE – The prior invoked design



ESTABLISHING THE EVENT OF DISCLOSURE – The prior invoked design



Is it reproduced precisely ?

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M Audio Trigger Finger
MIDI Controller

Reviews Software ALL

Published in SOS September 2009
Print-friendly version
Share of 0.0...

The Trigger Finger is clearly intended for those of us who prefer hitting to clicking when it comes to percussion, but, as we discover, there's much more to it than that...

Nicholas Howland

Some clever stick once said that attaching a keyboard to early synthesizers was probably one of the worst things anyone ever did. I think their point was that as an interface, a piano keyboard simply wasn't versatile enough to exploit the creative potential of the new technology.

I'm not sure I agree wholeheartedly with that statement — it was probably made by someone unaware of the fact that their band's keyboard player had more musical knowledge in their little finger than all the other members put together. But one belief I would carry a card for is that keyboards and drum sounds don't make for a particularly happy mix. Not only does it seem so much more intuitive to trigger a percussion sound with a percussive action, it's physically a lot easier to get the right kind of dynamics by hitting a surface with a stick or drumming your fingers on a pad than it is to try pressing keys on a keyboard.

That's certainly the vein of thought that has led to the launch of M Audio's new Trigger Finger, a USB/MIDI control surface designed primarily for software-based musicians to tap out rhythms and trigger percussion loops. Its main attribute is a four-by-four matrix of finger-sized, velocity sensitive pads — similar to the arrangement you'd find on Akai's MPC range of sampling rhythm workstations. But the Trigger Finger goes much further than just being a set of disembodied drum machine pads. With eight assignable knobs, four sliders and a high degree of overall programmability, it offers the level of general MIDI parameter control that you would normally expect to find on a controller keyboard, potentially making it a very versatile member of any musician's MIDI studio.



Photos: Mark Ewing

From systems to software, from microphones to monitors...

Scan Pro Audio has it all covered.

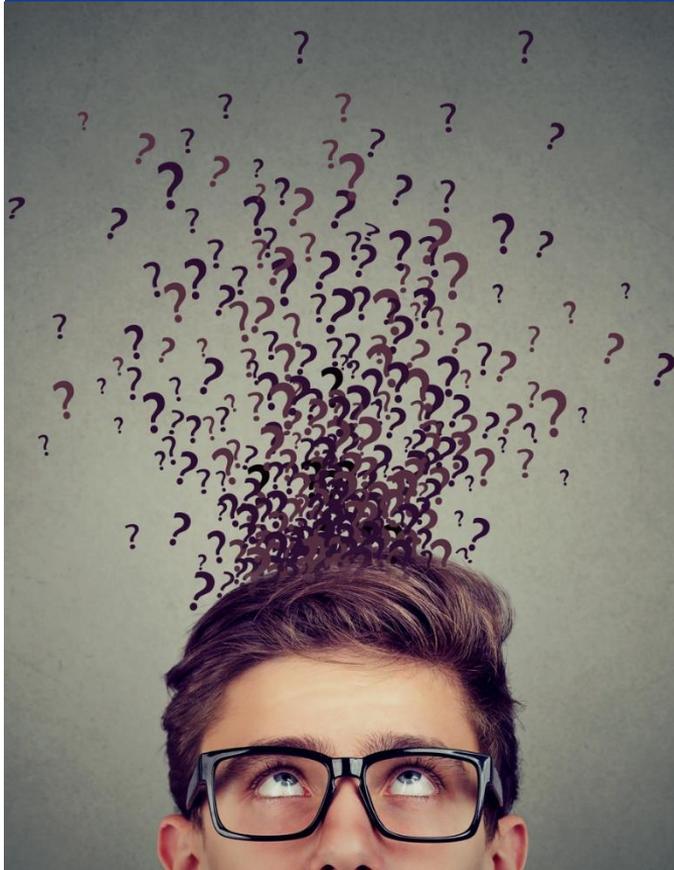


ESTABLISHING THE EVENT OF DISCLOSURE – The prior invoked design

Is it reproduced **precisely** ?



ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure



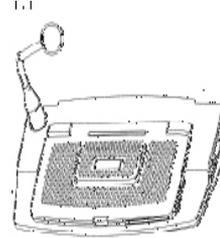
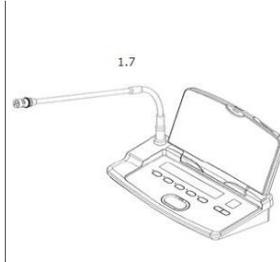
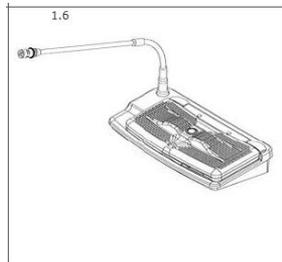
Art. 7 CDR – Disclosure

For the purpose of applying Articles 5 and 6, a design shall be deemed to **have been made available to the public** if it has **been:**

- **published following registration;**
- **exhibited;**
- **used in trade;**
- **or ‘otherwise disclosed’ [...]**

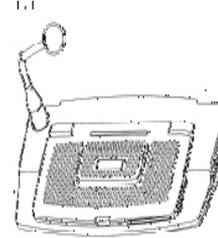
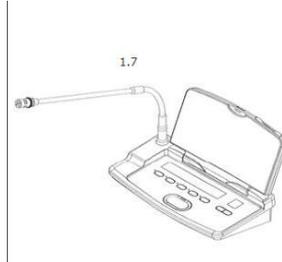
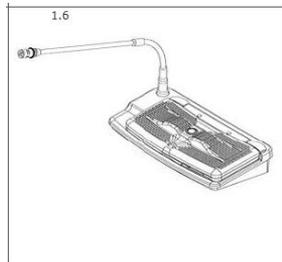
ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure

Evidence are **not conclusive in themselves**, may yet contribute to establishing the event of disclosure **in combination with other items** (22/06/2010, T-153/08, EU:T:2010:248, *Communications equipment*)



ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure

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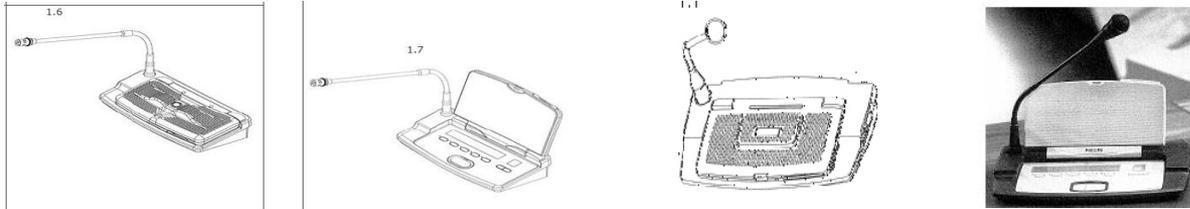


Disclosure **anywhere in the world**

(14/03/2018, T-651/16, *Footwear*, EU:T:2018:137, § 67)

ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure

Evidence are **not conclusive in themselves**, may yet contribute to establishing the event of disclosure **in combination with other items** (22/06/2010, T-153/08, EU:T:2010:248, *Communications equipment*)



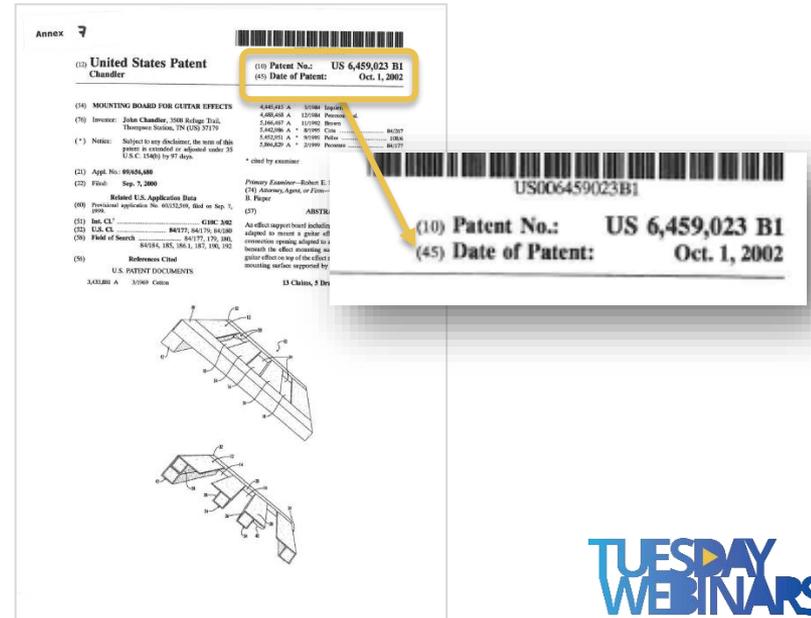
Disclosure **anywhere in the world**

(14/03/2018, T-651/16, *Footwear*, EU:T:2018:137, § 67)

Evidence **not in the language of the proceedings** must be **translated** within 2 months

ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure – Official publications

Official publication: the date of publication can also be identified by the reference to the relevant **INID code**



ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure

Exhibitions: Exhibiting a design at a trade fair exhibition

ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure

Exhibitions: Exhibiting a design at a trade fair and exhibition

Evidence: any document able to prove that the design has been exhibited in the fair (a list of participants, a plan of stands, leaflets, pictures...)

ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure

Use in trade:

Disclosure of a design can be the result of use in trade even where there is no proof that the products in which the earlier design is incorporated have actually been produced or put on the market

(21/05/2015, T-22/13, UMBRELLAS, ECLI:EU:T:2015:310, § 36).

ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure

Use in trade:

Disclosure of a design can be the result of use in trade even where there is no proof that the products in which the earlier design is incorporated have actually been produced or put on the market

(21/05/2015, T 22/13 & T 22/13, UMBRELLAS, ECLI:EU:T:2015:310, § 36).

It may be sufficient that the products were offered for sale in catalogues *(22/10/2007, R 1401/2006 3, ORNAMENTACIÓN, § 25)*, imported from a country outside the European Union *(14/06/2011, T 68/10, Watches, EU:T:2011:269, § 31-32)* or were the object of an act of purchase between two European operators *(09/03/2012, T 450/08, Phials, EU:T:2012:117, § 30-45).*

ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure

Use in trade:

Disclosure of a design can be the result of use in trade even where there is no proof that the products in which the earlier design is incorporated have actually been produced or put on the market

(21/05/2015, T 22/13 & T 22/13, UMBRELLAS, ECLI:EU:T:2015:310, § 36).

It may be sufficient that the products were offered for sale in catalogues *(22/10/2007, R 1401/2006 3, ORNAMENTACIÓN, § 25)*, imported from a country outside the European Union *(14/06/2011, T 68/10, Watches, EU:T:2011:269, § 31-32)* or were the object of an act of purchase between two European operators *(09/03/2012, T 450/08, Phials, EU:T:2012:117, § 30-45).*

Evidence: catalogues (also extracts), invoices...

ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure

Otherwise disclosed: Invoices

Evidence 3 *924 15A/8*

Faktura VAT Nr 72/08/2008
ORYGINAL
Pogwizdów Nowy 14-08-2008

Sprzedawca: [redacted] Nabywca: [redacted]
Adres: [redacted] Adrs: [redacted]
NIP: 813-30-93-967 NIP: 817-20-35-201

Sposób płatności: gotówka Termin płatności: -

Lp.	Nazwa	Ilość	J.m.	Cena netto	Wartość netto	Stawka VAT	Kwota VAT	Wartość brutto
1	Druk i opracowanie katalogu WHITE w języku Czeskim	5 000	szk.	0,16 zł	4 000,00 zł	22%	880,00 zł	4 880,00 zł
RAZEM:				4 000,00 zł	X	880,00 zł	4 880,00 zł	
W tym:				4 000,00 zł	22%	880,00 zł	4 880,00 zł	

Razem do zapłaty: 4 880,00 zł

Słownie: cztery tysiące osiemset osiemdziesiąt złotych, 00/100 groszy

po rozłożeniu / after unfolding
šíř./hl./výš.
width/length/height
860/1850/770

Evidence 2

Katalog NÁBYTKU

NOVINKA 2008

supravu jednotlivých segmentů
ch. Lze je přizpůsobit do každého

The system provides a possibility of making arrangements from individual pieces available in many sizes. You can match them with every type of interior.

segmenty / units

WHITE

A ROOM furniture catalogue

po rozložení / after unfolding
šíř./hl./výš.
width/length/height
860/1850/770

ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure from Internet

CP10 Common Practice –

Criteria for assessing disclosure of designs on the internet

(https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/News/cp10/CP10_en.pdf)

Evidence:

SCREENSHOTS

IMAGES

PRINTOUTS VIDEOS

...hyperlinks?

ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure from Internet

WEBSITES

Evidence: Printout or a Screenshot

URL address + representation of the earlier invoked design + relevant date



ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure from Internet

Boxes & Baskets – Rinascente <https://www.rinascente.it/en/list/casa-e-design/design-e-accessor...>

Menu Find something to buy **RINASCENTE**  

 Driade Love, Container	 Alessi Circus Marcel ...	 Hay Bead Basket	 Hay Colour Crate S
€15,00	€20,00	€189,00	€18,80
 Hay Colour Crate M	 Hay Paper Paper Bin	 Hay Bead Basket W...	 Puebco Hanging Tool S...
€82,00	€23,70	€400,00	€99,00
 Puebco Glass Tube Wit...	 Puebco Woven Woode...	 Danese Citera, large b...	 Iittala Kuru Ceramic B...

2 of 4 13/10/2021, 09:48

Hay Bead Basket With Handle - Rinascente.it <https://www.rinascente.it/en/item/hay-bead-basket-contentore...>

Menu Find something to buy **RINASCENTE**  

Home & Design > Design & Accessories > Boxes & Baskets

Save 



Hay Bead Basket With Handle

€189,00

Red Basket Weave One Size

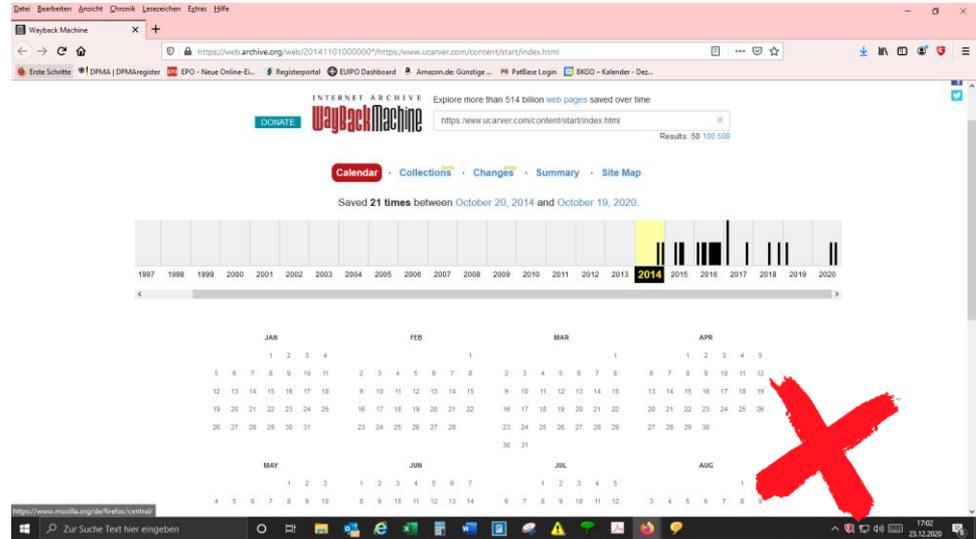
Details

Brand: Hay
Composition: wool
Diameter: 40 cm
Height: 27 cm
Item code: 508461
Product reference: 21461150

1 of 4 13/10/2021, 09:50

ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure from Internet

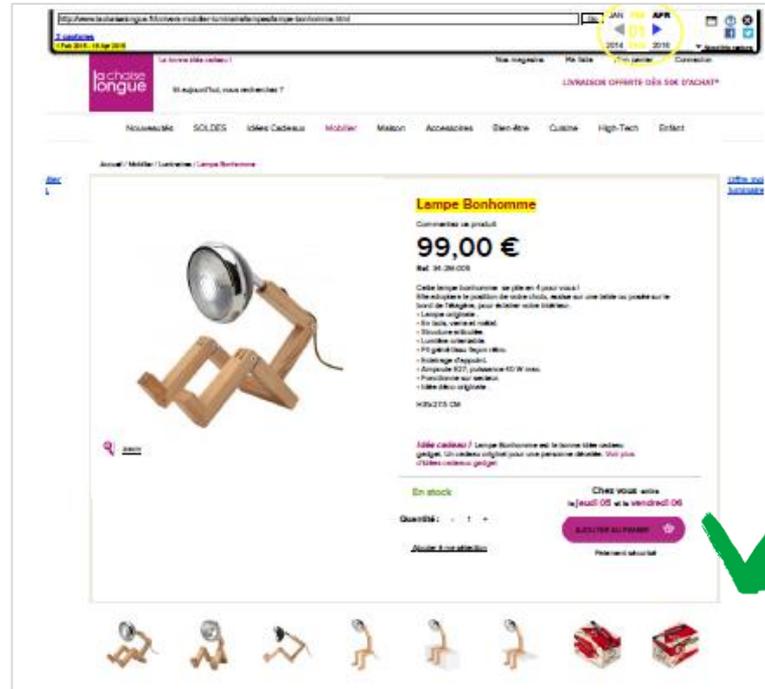
WEBSITE ARCHIVING SERVICES - «WayBack Machine»



ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure from Internet

WEBSITE ARCHIVING SERVICES - «WayBack Machine»

Evidence: URL address + screenshot showing the earlier invoked design + relevant date



ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure from Internet

AMAZON

Evidence: printouts showing the earlier design + URL address visible in the printout + product information (ASIN + date of first availability)

Product information		Additional Information	
Technical Details		ASIN	B08Z8C3479
Package dimensions	10.6 x 10.6 x 7.3 centimetres	Delivery information:	We cannot deliver certain products outside mainland UK (Details). We will only be able to confirm if this product can be delivered to your chosen address when you enter your delivery address at checkout.
Package Weight	0.28 Kilograms	Item model number	DCSPK-2
Item Weight	80 Grams	Batteries	1 Lithium Polymer batteries required. (included)
Brand	Lincom	Date First Available	17 Mar. 2021
Colour	Pink	Customer Reviews	3.7 out of 5 stars 179 ratings
Part number	DCSPK-2	Best Sellers Rank	21,795 in Electronics & Photo (See Top 100 in Electronics & Photo) 124 in All-in-One Digital Cameras
Zoom Type	Digital Zoom		
Effective still resolution	30 MP		




ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure from Internet

AMAZON

Digital camera 2.7K 48MP camera Vlogging camera 4x digital zoom... <https://www.amazon.co.uk/Digital-camera-Vlogging-digital-YouT...>

Deliver to **Spain** Electronics & Photo

All Best Sellers Gift Ideas Customer Service Music New Releases Today's Deals PC & Video Games Books Vouchers Kindle Books

Electronics Best Sellers Deals Phones & Accessories TVs & Home Cinema Camera & Photo Audio & HIFI Computers & Accessories

Camera & Photo > Digital Cameras > All-in-One Digital Cameras



Digital camera 2.7K 48MP camera Vlogging camera 4x digital zoom camera for YouTube

Brand: Lincom 179 ratings

EUR 65²⁵

Note: This item is eligible for **FREE Click and Collect** without a minimum order subject to availability. Details

Colour Name: Pink

EUR 79.30

EUR 65.25

Brand: Lincom
Model number: DCSPK-2
Photo sensor technology: CMOS
Effective resolution: 30 MP

See more

EUR 65²⁵

EUR 6.59 delivery **Wednesday, August 17**. Details

Or fastest delivery **Tuesday, August 16**. Order within 2 hrs 41 mins. Details

Deliver to Spain

In stock.

Quantity: 1

Add to Basket

Buy now

Secure transaction

Dispatches from Amazon
Sold by Hemo Tech EU

Return policy: Returnable within 30 days of receipt
Add gift options

Add to List

Have one to sell?
Sell on Amazon

Roll over image to zoom in

Digital camera 2.7K 48MP camera Vlogging camera 4x digital zoom... <https://www.amazon.co.uk/Digital-camera-Vlogging-digital-YouT...>

Audio: Built-in microphone and speaker
PC interfaces: USB2.0, Win XP/Vista/win7 and above; MAC (OS 10.4.11 only supported) MSDC
Automatic shut-down: 1min/5min/5min/OFF
Power Supply: BL-5B Lithium battery 3.7V (750mAh)
Product Size (L x W x H) : 97x27.5x90.3mm/3.82"x1.08"x2.37inch
Product Weight: approx. 85g /3oz

Package Contents:
1 x 30.0MP Digital Camera
2 x BL-5B LITHIUM battery
1 x 32 GB SD Card
1 x Lanyard rope
1 x USB Cable
1 x Camera Cloth Bag
1x User manual

Product information

Technical Details

Package dimensions	10.6 x 10.6 x 7.3 centimetres
Package Weight	0.28 Kilograms
Item Weight	80 Grams
Brand	Lincom
Colour	Pink
Part number	DCSPK-2
Zoom Type	Digital Zoom
Effective still resolution	30 MP

Additional information

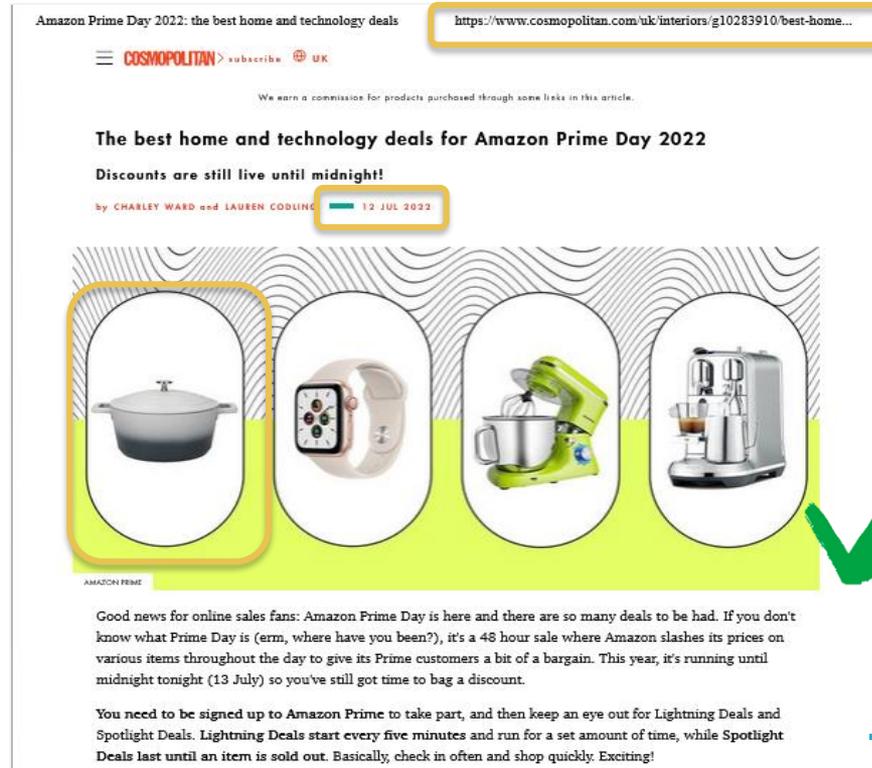
ASIN	B0828C1479
Delivery information:	We cannot deliver certain products outside mainland UK (Details). We will only be able to confirm if this product can be delivered to your chosen address when you enter your delivery address at checkout.
Item model number	DCSPK-2
Batteries	1 Lithium Polymer batteries required. (included)
Date First Available	17 Mar. 2021
Customer Reviews	179 ratings
Best Sellers Rank	3.7 out of 5 stars 21,795 in Electronics & Photo (See Top 100 in Electronics & Photo) 124 in All-in-One Digital Cameras
Warranty & Support	Amazon.com Return Policy: Regardless of your statutory right of withdrawal, you enjoy a 30-day right of return for many products. For



ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure from Internet

ARTICLES

Evidence: printouts showing the earlier design + URL address visible in the printout + date of publication



Amazon Prime Day 2022: the best home and technology deals <https://www.cosmopolitan.com/uk/interiors/g10283910/best-home-...>

COSMOPOLITAN > subscribe @ UK

We earn a commission for products purchased through some links in this article.

The best home and technology deals for Amazon Prime Day 2022

Discounts are still live until midnight!

by CHARLEY WARD and LAUREN CODRIG 12 JUL 2022



AMAZON PRIME

Good news for online sales fans: Amazon Prime Day is here and there are so many deals to be had. If you don't know what Prime Day is (erm, where have you been?), it's a 48 hour sale where Amazon slashes its prices on various items throughout the day to give its Prime customers a bit of a bargain. This year, it's running until midnight tonight (13 July) so you've still got time to bag a discount.

You need to be signed up to Amazon Prime to take part, and then keep an eye out for Lightning Deals and Spotlight Deals. Lightning Deals start every five minutes and run for a set amount of time, while Spotlight Deals last until an item is sold out. Basically, check in often and shop quickly. Exciting!

ESTABLISHING THE EVENT OF DISCLOSURE – The prior invoked design



ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure from Internet

Will this evidence on disclosure of an earlier design be accepted?



ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure from Internet

SOCIAL MEDIA

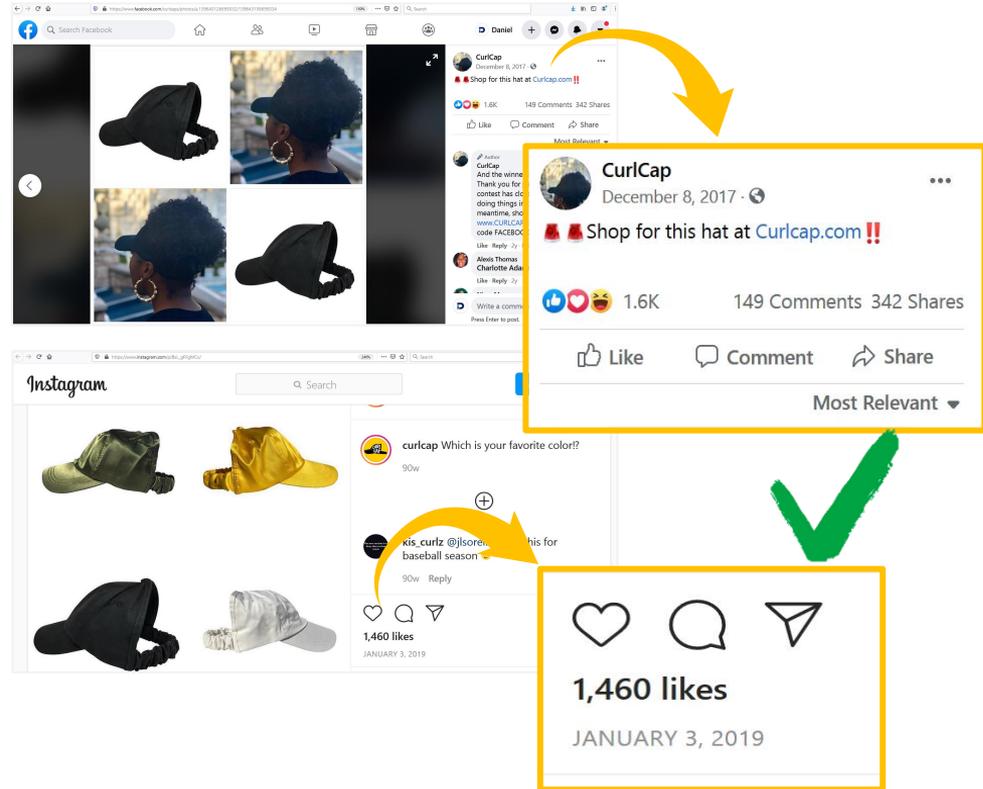
Evidence: printouts or screenshots showing a clear image of the relevant design + URL address + date of publication + any other relevant information (the ‘popularity’ indicators, views, likes...)



ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure from Internet

SOCIAL MEDIA

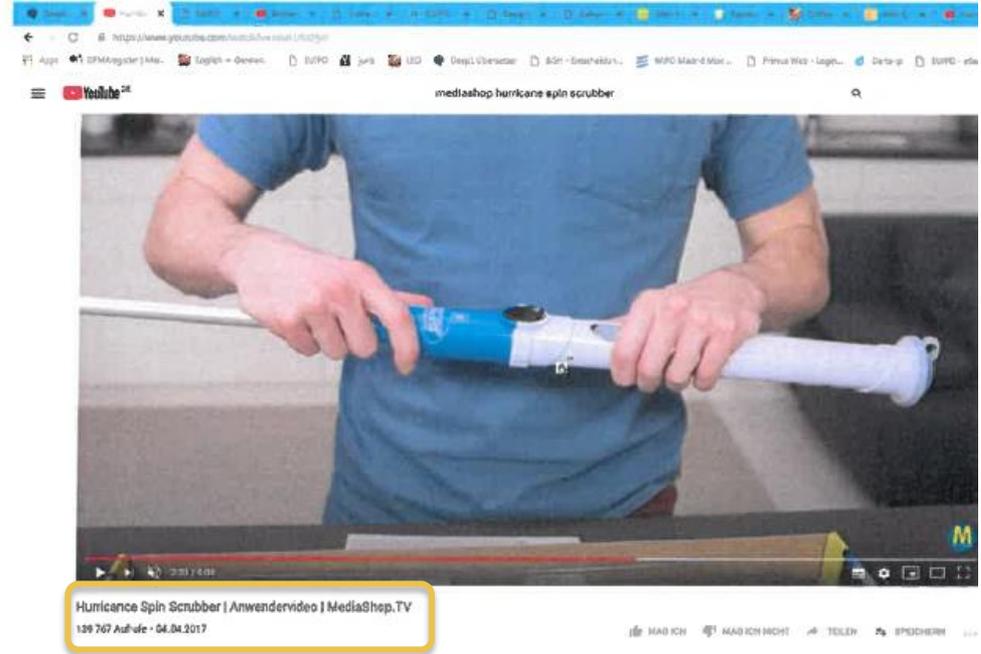
Evidence: printouts or screenshots showing a clear image of the relevant design + URL address + date of publication + any other relevant information (the ‘popularity’ indicators, views, likes...)



ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure from Internet

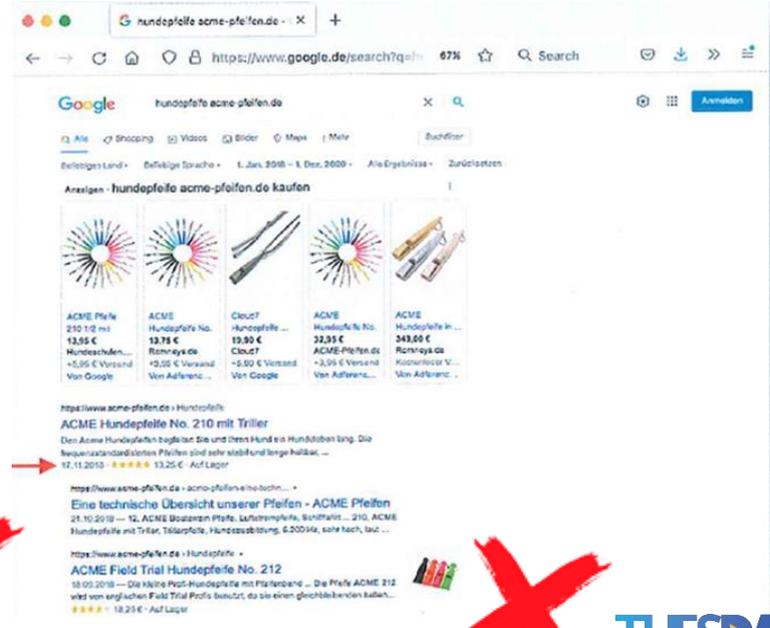
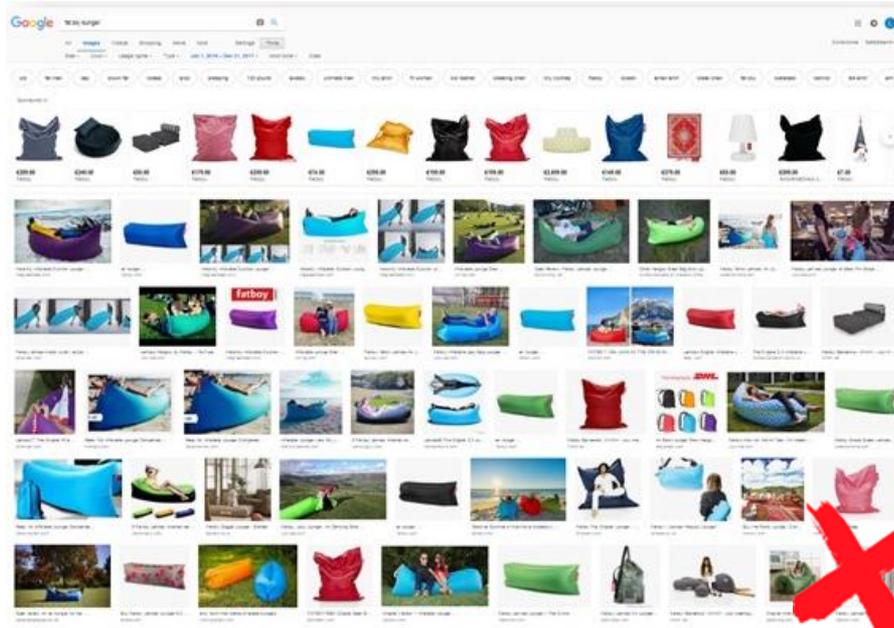
YOUTUBE

Evidence: printouts or screenshots showing a clear image of the relevant design + URL address + date of publication of the video + any other relevant information (the ‘popularity’ indicators, views, likes...)



ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure from Internet

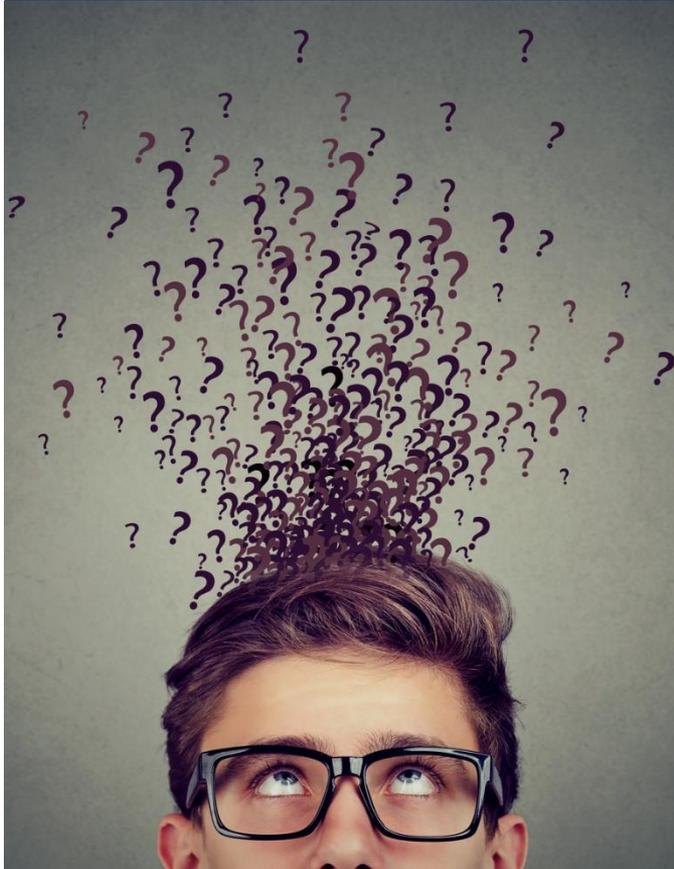
Google search list



3 EXCEPTIONS



EXCEPTIONS – Safeguard clause



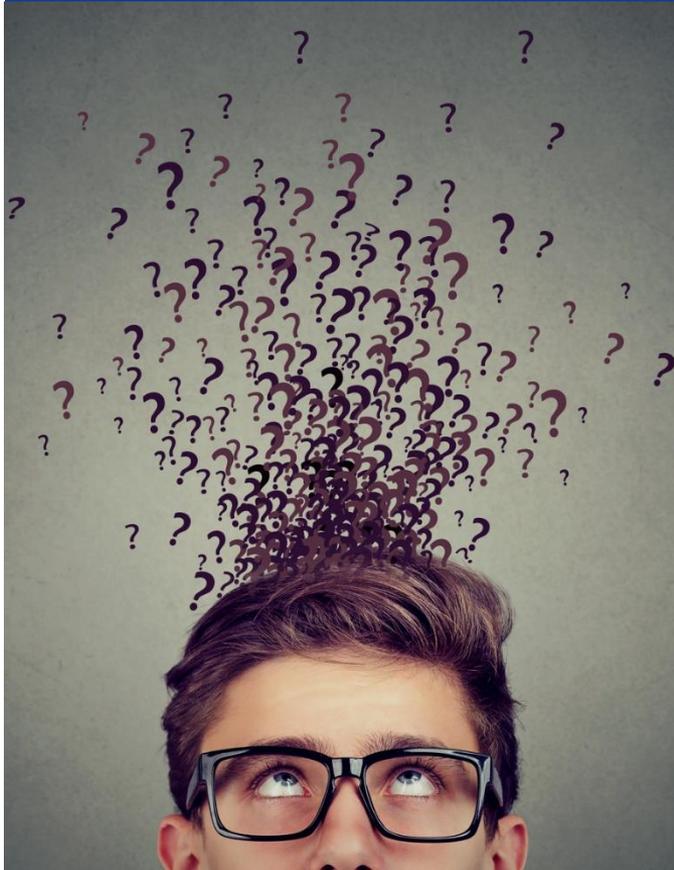
Art. 7 (1) CDR

1. [...] except where these events could not reasonably have become known **in the normal course of business** to the **circles specialised** in the **sector concerned**, operating within the Community [...].

EXCEPTIONS – Safeguard clause



EXCEPTIONS – Grace period

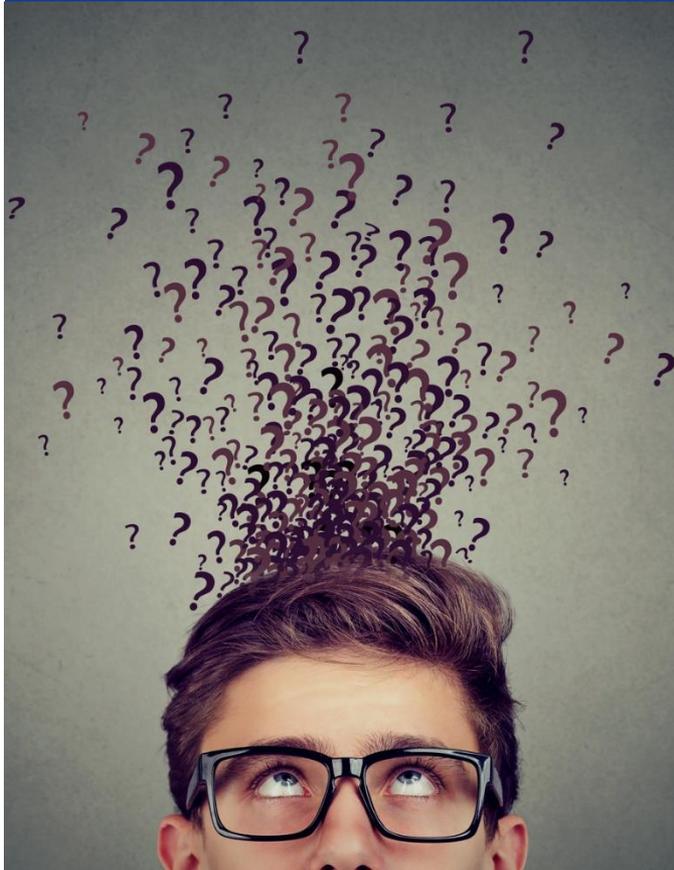


Art. 7 (2) CDR

Disclosure of the Community design within **12 months** preceding **the date of filing** or the **priority** date of the contested Community design will not be taken into consideration if it was made by:

- the **designer**, or
- its **successor in title**

EXCEPTIONS – Grace period



Art. 7 (2) CDR

Disclosure of the Community design within **12 months** preceding **the date of filing** or the **priority** date of the contested Community design will not be taken into consideration if it was made by:

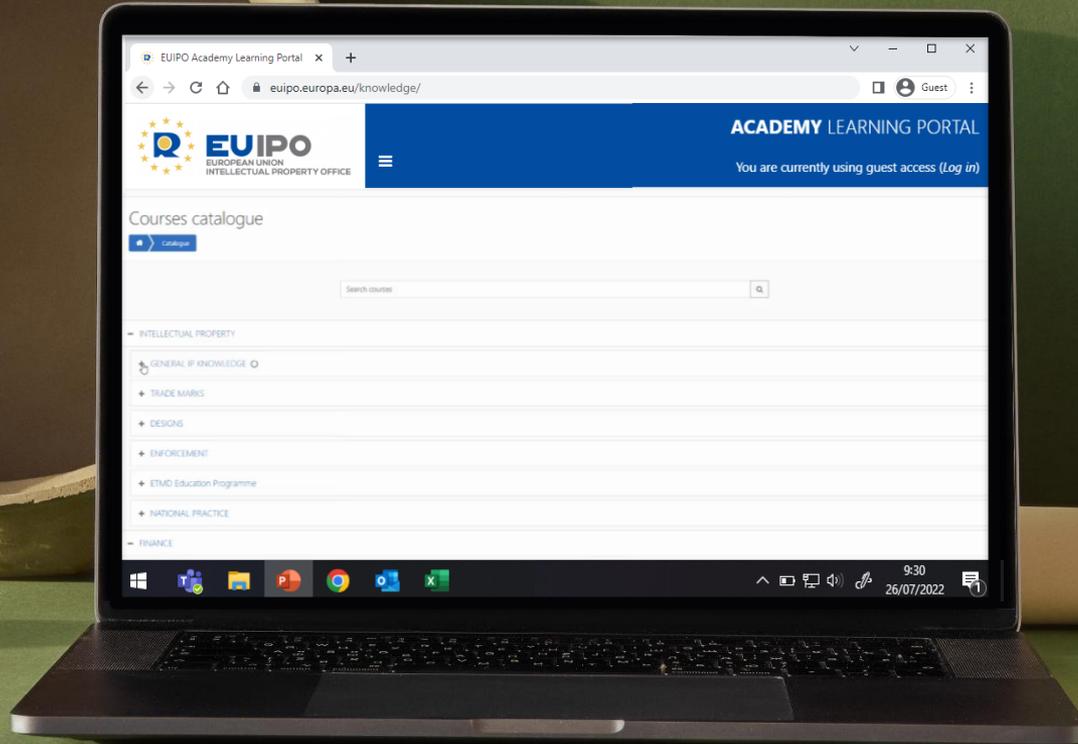
- the **designer**, or
- its **successor in title**

The **holder must therefore establish** that it is either:

- the creator of the design upon which the application is based, or
- its successor in title



Keep in touch with EUIPO Academy





EUIPO

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INTELLECTUAL PROPERTY OFFICE

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THANK YOU



Jessica Norma LEWIS
Operations Department



Elisabetta FERRARO
Operations Department