



**OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET  
(TRADE MARKS AND DESIGNS)**

OPERATIONS DEPARTMENT – DESIGNS SERVICE

**DECISION OF  
THE INVALIDITY DIVISION  
OF 06/11/2013**

**IN THE PROCEEDINGS FOR A DECLARATION OF INVALIDITY  
OF A REGISTERED COMMUNITY DESIGN**

<b>FILE NUMBER</b>	ICD 000008840
<b>COMMUNITY DESIGN</b>	001898206-0001
<b>LANGUAGE OF PROCEEDINGS</b>	English
<b>APPLICANT</b>	CORTEFIEL, S A Avda del Llano Castellano, 51 28034 Madrid Spain
<b>REPRESENTATIVE OF THE APPLICANT</b>	CLARKE, MODET Y CIA., S.L. Rambla Méndez Núñez, 12, 6° A E-03002 Alicante Spain
<b>HOLDER</b>	GMC Toy's Field Inc. 4 F. Yanai Bldg., 3-1-3 Kuramae, Taito-ku 1110051 Tokyo Japan
<b>REPRESENTATIVE OF THE HOLDER</b>	MICHALSKI - HÜTTERMANN & PARTNER PATENTANWÄLTE Neuer Zollhof 2 D-40221 Düsseldorf Germany

## The Invalidity Division

composed of Ludmila Čelišová (rapporteur), Michele M. Benedetti-Aloisi (member) and Martin Schlötelburg (member) took the following decision on 06/11/2013:

- 1. The registered Community design n° 001898206-0001 is declared invalid.**
- 2. The Holder shall bear the costs of the Applicant.**

### I. FACTS, EVIDENCE AND ARGUMENTS

- (1) The Community design No 001898206-0001 (“the RCD”) has been registered in the name of the Holder with the date of filing of 29/07/2011. In the RCD, the indication of products reads “purses” and the design is represented in the following views published in the Community Designs Bulletin: ([http://oami.europa.eu/bulletin/rcd/2011/2011\\_174/001898206\\_0001.htm](http://oami.europa.eu/bulletin/rcd/2011/2011_174/001898206_0001.htm))



1.1



1.2



1.3



1.4



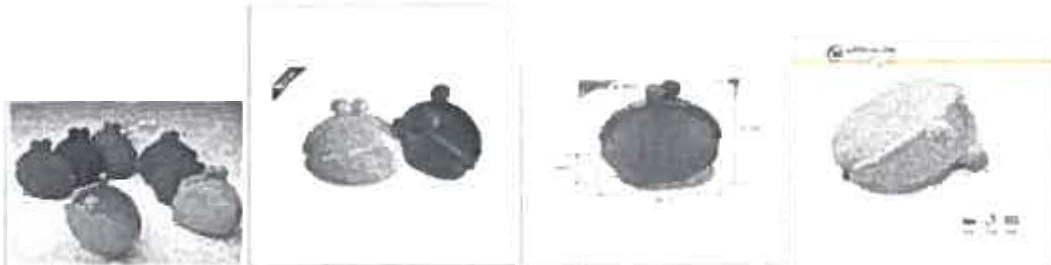
1.5



1.6

- (2) On 09/07/2012, the Applicant filed an application for a declaration of invalidity (“the Application”).
- (3) The Applicant requests a declaration of invalidity of the RCD on the grounds of Article 25(1)(b) Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (hereinafter “CDR”).
- (4) As evidence, the Applicant provides:
- copy of Chinese design patent no. ZL 2011 3 0069385.4, filed in the name of Yang Chaoshun, at the State Agency of Intellectual Property Rights of the People’s Republic of China on 06/04/2011, and published on 14/09/2011.

- extracts from internet pages [www.tradevv.com](http://www.tradevv.com) and [www.b2bage.com](http://www.b2bage.com) containing several offers of Chinese manufactures for purchase of silicon purses. Some of the offers are dated January 2010, January 2011 or May 2011. With the offers there are thumbnail images of the products shown as follows:



- copies of four orders made by women'secret CORTEF.COMMERCIAL,S.A., Switzerland at WENTWORTH INDUSTRIAL COL, LTD., Hong Kong on 19/07/2010 and invoices to these orders concerning articles "Z GAFAS2 RUBBER3" article numbers 5294592, 5294576, 5294584, 5294606; and a sheet titled "Rubber purses F/W 10-11" showing the articles of the same numbers;
- copies of three purchase orders made by women'secret CORTEF.COMMERCIAL,S.A., Switzerland at JIANGSU SUNSHINE DONGSHENG I/E CO., from 18/05/2011 to 27/10/2011 for articles "Monederos 3 totem round rubber purses" no. 5296102; a sheet without a title showing the article of the same number; and a photograph of packaging women'secret with a rubber purse inside the transparent packaging, with a label containing the article no. 5296102-11-01, colour 11 blue (hereinafter the prior design) as follows:



- (5) In its reasoned statement, the Applicant claims that the contested RCD is not new, because identical or almost identical designs were made available to the public before the date of filing of the contested RCD. The prior designs and the contested RCD are identical as regards the essential features, namely, their shapes, contours and at least in one case the colour. The RCD also lacks

individual character with respect to the prior designs, and for any of the reasons it should be invalidated.

- (6) In the reply to the Application, the Holder submits that the evidence of the Applicant does not prove disclosure of any prior design and the Applicant's claim is unfounded. The Chinese design patent was published after the date of filing the RCD and does not constitute the obstacle to the novelty of the RCD. The images of the goods on the internet pages [www.tradevv.com](http://www.tradevv.com) did not have to be disclosed on the indicated dates because at least in one case they show an article of the Holder which was made available to the public later. As proof of it the Holder submits a licence contract and internal company documentation on the development of the licenced product. The internet disclosures are not reliable and they should be disregarded. The provided purchase orders and invoices do not refer to the same articles as shown, because they are issued on 100% silicon or rubber articles while the shown articles contain metallic parts.
- (7) For further details to the facts, evidence and arguments submitted by the parties, the reference is made to the documents on file.

## **II. GROUNDS OF THE DECISION**

### **A. Admissibility**

- (8) The Application complies with the formal requirements prescribed in the CDR and the Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community designs (hereinafter "CDIR"), in particular as laid down in Article 28 CDIR. The Application is therefore admissible.

### **B. Substantiation**

#### **B.1 Disclosure**

- (9) According to Article 7 (1) CDR for the purpose of applying Articles 5 and 6, a prior design shall be deemed to have been made available to the public if it has been published following registration or otherwise, or exhibited, used in trade or otherwise disclosed, before the date of filing of the application for registration of the contested design, except where these events could not reasonably have become known in the normal course of business to the circles specialized in the sector concerned, operating within the Community.
- (10) The Chinese design patent was published after the date of filing of the RCD therefore it was not disclosed in compliance with the Article 7(1) CDR and cannot be taken into consideration in the test of novelty and individual character of the contested RCD.
- (11) Further, the Applicant submits extract of internet pages [www.tradevv.com](http://www.tradevv.com) which provide public space for placing producers' offers.
- (12) As a matter of principle, disclosures derived from the internet form part of the prior art. Information disclosed on the internet is considered to be publicly

available as of the date the information was posted. The Holder, however, raises a concrete objection of credibility regarding the date of disclosure of products displayed on the pages. The Holder claims that the image could not be displayed on the indicated date because at that time the product shown in the image was only under the development. The Holder submits the internal documentation supporting its argumentation.

- (13) In general the contents of advertising pages frequently changes. The changes may concern about the textual information or images. The date provided with the advertisement may refer to the posting the textual information, image or both. The Applicant does not provide any clarification, neither regarding the dates of posting the information on the internet pages, nor on the history of the images. In the absence of any further information how the advertisements are managed on the provided internet pages, there are some reasonable doubts about the disclosures.
- (14) Furthermore, features of a prior design which are not of a sufficient quality, allowing all the details to be discerned in the representation of the prior design, cannot be taken into consideration for the purpose of Articles 5 and 6 CDR (decision of 10/03/2008, R586/2007-3, 'Barbecues', para. 23-26). With the exception of the enlarged image, which credibility is subjected by the Holder, all the other images showing alleged prior designs are of poor quality and insufficient size to allow comparison of the prior and contested designs.
- (15) The same quality and size are the alleged prior designs shown in the extracts of internet pages [www.b2bage.com](http://www.b2bage.com). As the Office is limited to the evidence on file, and it cannot verify on its own the information on provided internet pages, it cannot do the appropriate comparison of the designs. The Applicant failed to prove disclosure of designs on above said internet pages.
- (16) The copies of four orders made by women'secret CORTEF.COMMERCIAL,S.A., Switzerland at WENTWORTH INDUSTRIAL COL, LTD., Hong Kong and invoices to these orders. The orders contain numbers of articles which were subject of the transaction. The same numbers appear in a separate sheet titled "Rubber purses F/W 10-11". This document, however, does not contain any information of its origin. The document does not contain any indication it is a part of a company's documentation, a production catalog or any other formal document. Thus it does not prove without reasonable doubts that the product items, which are indicated in it, are the same as those which were subject of the transaction. Moreover, the purchase orders refer to "Gafas" [glasses in Spanish] collection but not purses as indicated in the sheet.
- (17) Out of three, two orders of women'secret CORTEF.COMMERCIAL,S.A., Switzerland at JIANGSU SUNSHINE DONGSHENG I/E CO. were made after the date of filing of the RCD and they are disregarded. The third order is dated 18/05/2011, which is before the date of filing of the RCD. The order is made for the article of the same number as shown on a separate sheet delivered together with the orders, however, this document does not contain any information of its origin, therefore does not prove the disclosure of the article indicated in the order.
- (18) The transparent packaging, according to the provided photo, contains a blue purse. A label on the packaging bears the same article number as the above said order and the packaging has a sign reading "women's secret" on it. The

article was thus subject of a commercial transaction before the date of filing of the RCD. The prior design is deemed to be disclosed in compliance with article 7(1) CDR.

## **B.2 Novelty**

- (19) According to Article 5 CDR the RCD lacks novelty when an identical design has been made available to the public prior to the date of filing of the RCD. Designs shall be deemed to be identical if their features differ only in immaterial details.
- (20) The RCD and the prior design both relate to a purse. The RCD, as shown in the registration, has the same shape, the same material combination and very similar colour as the prior design shown in the disclosure. The designs do not differ in the sense of Article 5 CDR. The prior design therefore constitutes the obstacle to the novelty of the RCD.

## **C. Conclusion**

- (21) The facts and evidence provided by the Applicant proved the ground for invalidity of Article 25(1)(b) CDR in conjunction with Article 5 CDR. The RCD is declared invalid.

## **III. Costs**

- (22) Pursuant to Article 70(1) CDR and Article 79(1) CDIR, the Holder bears the fees and costs of the Applicant.
- (23) The costs to be reimbursed by the Holder to the Applicant are fixed to the amount of 750 Euro, composed of 400 Euro for the costs of representation and 350 Euro for the reimbursement of the invalidity fee.

## **IV. Right to Appeal**

- (1) An appeal shall lie from the present decision. Notice of appeal must be filed at the Office within two months after the date of notification of that decision. The notice is deemed to have been filed only when the fee for appeal has been paid. Within four months after the date of notification of the decision, a written statement setting out the grounds of appeal must be filed (Article 57 CDR).

### **THE INVALIDITY DIVISION**

**Ludmila Čelišová**

**Michele M. Benedetti-Aloisi**

**Martin Schlötelburg**

