



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

OPERATIONS DEPARTMENT – DESIGNS SERVICE

**DECISION OF
THE INVALIDITY DIVISION
OF 30/07/2013**

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

FILE NUMBER
COMMUNITY DESIGN
LANGUAGE OF PROCEEDINGS

ICD 8868
002044180-0001
English

APPLICANT

DSN Marketing Ltd
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United Kingdom

HOLDER

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REPRESENTATIVE OF THE HOLDER

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The Invalidity Division,

composed of Martin Schlötelburg (rapporteur), Jakub Pinkowski (member) and Ingeborg Mendieta Vetter (member) took the following decision on 30/07/2013:

1. **The registered Community design n° 002044180-0001 is declared invalid.**
2. **The Holder shall bear the costs of the Applicant.**

I. FACTS, EVIDENCE AND ARGUMENTS

- (1) The Community design n° 002044180-0001 (hereinafter “the RCD”) has been registered in the name of the Holder with a date of priority of 08/02/2012. In the RCD the indication of products reads “cases for portable computers”. The RCD was published in the Community Designs Bulletin with the following views:

http://oami.europa.eu/bulletin/rcd/2012/2012_120/002044180_0001.htm



- (2) On 09/08/2012, the Applicant filed an application for a declaration of invalidity contesting the validity of the RCD (“the Application”).

- (3) Using the Office's form the Applicant indicated as grounds for invalidity that the "challenged Community design does not fulfil the requirements of Articles 4 to 9 CDR¹".
- (4) In the reasoned statement the Applicant claims that a design identical to the contested RCD was disclosed before the priority date of the contested RCD. Therefore, the contested RCD lacks novelty.
- (5) As evidence, the Applicant provides *inter alia* the following documents:
- A copy of an [offer n° B004M4OVG4](#) by Targus on amazon.co.uk of a "Targus rotating case for iPad 2". The offer is dated as "date first available: 4 Feb 2011". The following photos in the offer show the design of the rotating case ("Targus design"):



¹ Council Regulation (EC) No 6/2002 on Community designs

- A screenshot of a [video on Youtube.com](#) about the “Targus 360-Degree iPad 2 Case-Stand”. The video is dated as “uploaded on 21 Mar 2011” and includes the following image:



- (6) In his response to the Application, the Holder argues that “the Internet can make it difficult to establish the actual date on which information was made in fact available to the public.” The Holder argues that in an offer on amazon.co.uk the date of first availability is not necessarily the date of the last modification of the page or the date of posting the photo on the page. The Holder demonstrates that photos could be changed on amazon.co.uk without changing the date of first availability. Furthermore, the Holder claims that he himself has disclosed the design of the contested RCD on 10/02/2011 and that the Targus design is a copy of the design of the RCD.
- (7) For further details of the facts, evidence and arguments submitted by the parties, reference is made to the documents on file.

II. GROUNDS OF THE DECISION

A. Admissibility

- (8) The indication of the grounds for invalidity in the Application is a statement of the grounds on which the Application is based within the meaning of Article 28(1)(b)(i) CDIR². Furthermore, the Application complies with Article 28(1)(b)(vi) CDIR, since the Application contains an indication of the facts, evidence and arguments submitted in support of those grounds. The other requirements of Article 28(1) CDIR are fulfilled as well. The Application is therefore admissible.

² Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No. 6/2002 on Community designs.

B. Substantiation

B.1 Disclosure

- (9) The evidence provided by the Applicant proves that the Targus design was disclosed on 04/02/2011 in a photo included in the offer n° B004M4OVG4 on amazon.co.uk.
- (10) Although it seems to be possible to change a photo included in an offer on amazon.co.uk without changing the dates of this offer, there is no evidence that the photo in the offer n° B004M4OVG4 was changed indeed.
- (11) In contrast, there is undisputed evidence for the facts that
- the offer n° B004M4OVG4 is available to the public since 04/02/2011,
 - said offer includes a photo, and
 - said offer concerns a "Targus rotating case for iPad 2".
- Furthermore, there is undisputed evidence for the fact that
- the video about the "Targus 360-Degree iPad 2 Case-Stand" was uploaded to YouTube on 21/03/2011.
- (12) These facts would only be compatible with the Holder's position, if the Targus design had changed in the six weeks between the Amazon offer in February 2011 and the YouTube video in March 2011. Only such a change could justify a doubt that the design shown on YouTube is not the same as the design shown before on amazon.co.uk. However, it is highly unlikely (and not even alleged by the Holder) that such a change has happened because the period of six months is very short and in spring 2011 the Targus design has just been introduced on the market.
- (13) It follows inevitably from the fact, evidence and arguments on file that in February and March 2011 a rotating case for an iPad 2 was put on the market by Targus. This case was shown on amazon.co.uk on 04/02/2011 and explained on YouTube on 21/03/2011.
- (14) Due to the disclosure on amazon.co.uk on 04/02/2011 the Targus design was made available to the public more than 12 months prior to the date of priority of the contested RCD.

B.2 Novelty

- (15) According to Article 5 CDR, the contested 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.
- (16) The prior Targus design and the contested RCD both concern cases for portable computers, in particular cases for the iPad 2. It is not disputed by the parties and anyway obvious from the evidence on file that the prior Targus design is identical to the contested RCD.
- (17) In view of the prior Targus design, the contested RCD lacks novelty.

C. Conclusion

- (18) The evidence provided by the Applicant supports the ground of Article 25(1)(b) CDR. The contested RCD is declared invalid due to lack of novelty.

III. COSTS

- (19) Pursuant to Article 70(1) CDR and Article 79(1) CDIR, the Holder shall bear the costs of the Applicant.
- (20) 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

- (21) 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

Martin Schlötelburg

Jakub Pinkowski Ingeborg Mendieta Vetter

