Case C-749/24

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

29 October 2024

Referring court:

Hof van beroep te Brussel (Belgium)

Date of the decision to refer:

8 October 2024

Appellant:

Van Ratingen NV

Respondent:

Versuni Holding BV, legal successor to Koninklijke Philips NV

Subject matter of the main proceedings

This request is being made as part of proceedings to decide whether the multifunctional convection oven of Ratingen NV infringes the Community designs representing the design of the Airfryer fryer of Versuni Holding BV.

Subject matter and legal basis of the request

In this request for a preliminary ruling based on Article 267 TFEU, the referring court asks questions concerning the relevant point in time at which the assessment of the overall impression on the part of the informed user should take place in order to compare the Community designs invoked with the allegedly infringing products. If that is to be done at the date of infringement, the referring court further questions whether saturation of the state of the art and whether or not the holder of the Community design takes action against imitations are relevant to that assessment.

Questions referred for a preliminary ruling

1. Is Article 10 of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs to be interpreted as meaning that the comparison between the registered design and the allegedly infringing design from the point of view of the informed user must be made at the date on which the application for registration is filed (or, if priority is claimed, from the date of priority), or at the date of infringement?

2. In the latter case, could any market saturation at the date of infringement, if established, be such as to make the informed user more sensitive to minor differences between the registered Community design and the allegedly infringing designs?

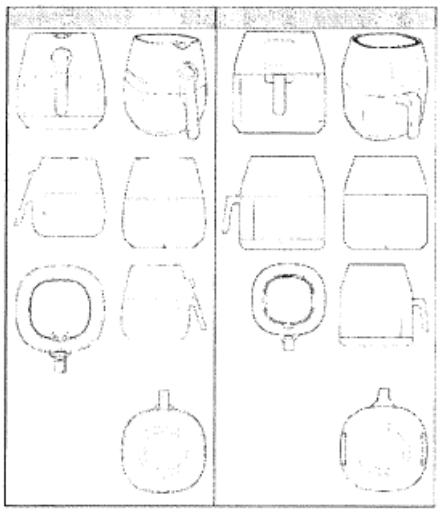
3. In answering this question, is it relevant whether, and to what extent, the holder of the registered Community design has consistently acted to safeguard the exclusive nature of its design?

Provisions of European Union law relied on

Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs, Article 10

Succinct presentation of the facts and procedure in the main proceedings

1 Koninklijke Philips NV ('Philips') has marketed various hot-air fryers under the brand 'Airfryer'. Since 2010, it has held several registrations for the design of the Airfryer fryer, including Community Design No 001654591-0001 and Community Design No 001656521-0001:



2 Van Ratingen NV ('Van Ratingen') is a Belgian family company that imports, distributes and manufactures small electrical household appliances. In May 2016, it launched a multifunctional convection oven for preparing snacks, the 'SnackTastic'. It is available in three different versions, namely designs No 4701, No 4702 and No 4703, shown below from left to right:

The appliances are produced in China. According to Van Ratingen, design No 4701 is based on a Chinese design registered with the Chinese design authority in 2012.

3 On 24 January 2017, Philips served formal notice on Van Ratingen for allegedly infringing its design rights and copyrights by importing, offering and selling the SnackTastic appliances. Van Ratingen contested that notice on 3 February 2017.

4 Following that, on 23 February 2017, Philips summoned Van Ratingen to appear before the President of the Nederlandstalige rechtbank van koophandel te Brussel (Brussels Commercial Court (Dutch-speaking)), sitting in proceedings for interim relief. Philips essentially submitted cease-and-desist, recall and information claims against Van Ratingen for alleged infringements of its design rights or copyrights.

5 In a judgment dated 28 December 2017, the judge hearing the application for interim relief ruled that Van Ratingen's SnackTastic appliances infringed Philips' exclusive design rights. Among other things, Van Ratingen was asked to stop producing and offering those appliances for sale immediately.

6 Van Ratingen appealed against that judgment to the Hof van beroep te Brussel (Brussels Court of Appeal), the referring court. During the proceedings before that court, Philips transferred all its intellectual property rights, including the Community designs at issue, to Versuni Holding BV ('Versuni'), which continued the proceedings.

The essential arguments of the parties in the main proceedings

7 **Versuni** claims that Van Ratingen has infringed the two Community designs in question within the meaning of Article 19(1) of Regulation No 6/2002 by offering, putting on the market, importing, exporting, using and/or stocking the SnackTastic appliances in question.

8 It argues that the comparison between a registered Community design and an allegedly infringing design from the point of view of the informed user must be made at the date on which the application for registration was filed or, if priority is claimed, at the priority date of the Community design invoked.

9 The scope of protection of a Community design is governed by Article 10 of Regulation No 6/2002. Paragraph 2 of that article provides that, in assessing the scope of protection, the degree of freedom of the designer in developing his or her design is to be taken into consideration. Versuni also cites the importance of the difference between the Community design and the existing design corpus, that is, the designs that were made available to the public before the date on which the application for registration was filed.

10 In that context, Versuni stresses that the Airfryer is a revolutionary design with its own original character that was new at the time of registration. The scope of protection conferred on the registered Community design by that registration is immutable. Therefore, the comparison between another product and the Community design in the context of an infringement assessment cannot take into consideration other infringing products available on the market at the time of the assessment.

11 The case-law of the General Court on saturation of the state of the art in the context of a validity analysis (see, inter alia, judgment of 16 February 2017, *Antrax* v *Vasco*, T-828/14 and T-829/14, EU:T:2017:87) does not apply in the context of an infringement assessment. Even if this were the case, such saturation should be assessed at the date on which the application for registration of the Community design invoked was filed, or the date of priority if applicable.

12 Versuni claims to have been aware of the rapid emergence of rivals after it was the first to launch a hot-air fryer with the distinctive minimalist design of the Airfryer. It states that it has consistently and firmly taken action against imitation products unless they clearly conveyed a different overall impression. In that context, it also argues that, unlike in trade mark law, there is no such thing as design dilution and no provision in Regulation No 6/2002 in that regard. Nor can there be any question of forfeiture of rights on the part of Philips/Versuni.

13 **Van Ratingen** argues that the assessment in terms of the informed user should be made at the time of the alleged infringement, taking into account all the circumstances known and relevant at that time.

14 It also refers to Article 6 of Regulation No 6/2002, which defines the individual character of the Community design as a requirement for the validity of the Community design. That article uses the same notion of ‘overall impression’ as Article 10(1) of the regulation, which defines the legal scope of protection for designs. It infers that a legally valid new design by definition cannot infringe an earlier design right. Whether a new design is legally valid must be assessed at the time of application or priority of the new design. Consequently, the overall

impression in the case of a possible infringement must also be assessed at the time of the alleged infringement.

15 The design freedom which, pursuant to Article 10(2) of Regulation No 6/2002, also determines the scope of protection, does not preclude the fact that protection of the Community design is also determined by other factors, such as the existence of numerous similar designs that became available on the market after the priority date.

16 Van Ratingen argues that, given the saturation of the state of the art at the date of infringement, the informed user is more sensitive to differences between conflicting designs, and therefore a slight difference alone is sufficient for a different overall impression and therefore precludes infringement. It thus refers to the case-law of the General Court in Joined Cases T-828/14 and T-829/14, cited above, where, in paragraph 55, similar considerations concerning the saturation of the state of the art in the context of an assessment of the individual character of a Community design are set out. It advocates application by analogy when assessing infringement, with the reference date for such an assessment being the date of infringement.

17 Van Ratingen also argues that the scope of protection of a Community design diminishes if the holder does not make the necessary efforts to exclude imitations from the market. Referring to the Court's judgment of 27 April 2006 (C-145/05, *Levi Strauss* v *Casucci*, EU:C:2006:264, paragraphs 30-31), it emphasises that the requirement of attentiveness exists not only in the field of (EU) trade marks, but also in other areas of EU law, when a litigant relies on a right derived from that legal order.

Succinct presentation of the reasoning in the request for a preliminary ruling

18 The referring court considers that the parties disagree as to when the assessment of the overall impression on the part of the informed user should take place in infringement proceedings. Article 10 of Regulation No 6/2002 gives no clear guidance in that regard.

19 It also notes further disagreement as regards, first, the consequences of saturation of the state of the art which arose after the date on which the application for registration of a Community design was filed and, second, the situation in which the holder of the Community design is accused of a lack of care in enforcing its rights.

20 The referring court considers that a further interpretation of Article 10 of Regulation No 6/2002 on those points is necessary before it can proceed to the resolution of the dispute and accordingly refers the above-mentioned questions to the Court of Justice for a preliminary ruling.