
EUROPEAN UNION**JURISDICTION OF COMMUNITY DESIGN COURTS IN MATTERS INVOLVING PRELIMINARY INJUNCTIONS**

The EU Court of Justice recently issued a decision on 21 November 2019, in case C-678/18, which we consider as extremely relevant and having the potential to change certain practices in relation to jurisdiction in proceedings involving preliminary injunctions.

Indeed, according to EU Regulation 6/2002 on Community designs (CDR), Member States have designated in their respective territories' Community design courts to perform the functions assigned to them by the CDR. In Spain, this jurisdiction is assigned to the Commercial Courts of Alicante and the Alicante Regional Court, while in the Netherlands it is assigned to the Court of Appeal in The Hague.

In the proceedings leading up to the decision in question, the company SPIN MASTER, as a holder of a Community design protecting the appearance of a toy, filed an

application for a preliminary injunction against the Dutch company HIGH 5, on the grounds that HIGH 5 was infringing its rights. The application was filed before the Court of Amsterdam. HIGH 5 pled a lack of jurisdiction of the Court of Amsterdam, claiming that Court of The Hague held jurisdiction.

As the Court of Amsterdam maintained its jurisdiction, the Procurator General of the Netherlands brought an appeal "in the interest of the law" before the Supreme Court of said country, which in turn refers to the EU Court of Justice for a preliminary ruling to clarify the scope and interpretation of Article 90(1) of CDR no. 6/2002.



On 21 November 2019, the EU Court of Justice has issued a decision that may significantly modify something that seemed indisputable up until now, not only in connection with Community designs but also concerning European Union trademarks.

First and foremost, the CJEU holds (paragraph 40 of the decision) that in Article 90(1), the creation of Community design courts in each State was intended to establish specialization of the courts with jurisdiction in order to assist the development of uniform interpretation of the applicable laws.

However, the court holds (paragraph 41 of the decision) that even though this interpretation is entirely justified in the case of court proceedings, the substance of which concerns infringement or invalidity actions, the exercise of the rights conferred by a design must be enforced in an efficient manner throughout the territory of the European Union; and in the case of a request for provisional measures or a preliminary injunction, the requirements of proximity and efficiency should prevail over the objective of specialization.

For this reason, it is considered that the national courts with jurisdiction to hear these matters in relation to purely national registrations of each Member State, shall also hold jurisdiction to hear cases concerning preliminary injunctions for Community designs given the aforementioned objective of greater proximity and efficiency. Nonetheless, the ECJ insists that this interpretation shall only apply in the case of preliminary injunctions, and such measures shall have only a national scope, the effects of which cannot be extended to other Member States.

Finally, **this same solution would have to be applied hereinafter** in matters concerning European Union trademarks, insofar as Article 131(1) of the EUTMR is equivalent to Article 90(1) of the CDR.