

V. Summary

The analysis presented above shows some of the advantages and disadvantages of Art. 25(1)(e) CDR as ground for invalidation of a Community design. The basic advantage from the perspective of the owner of a sign seeking protection is that it allows him for recourse to many legal regulations in order to invalidate the design, which may include Community and national, harmonised and independent legal grounds, as depicted on the example of German law. Thereby the scope of protection for distinctive signs against the Community design proves broad and flexible.

On the other hand, even though most of those grounds are part of well established national systems, their application in a Community context remains unclear. In spite of Art 25(1)(e) CDR referring to “right to prohibit use” which would suggest the application of all national rules, it is doubtful that national procedural rules could be applied in OHIM. Furthermore, the legal uncertainty associated with the admissibility and scope of defences against the claim for infringement results in a relatively infrequent application of that ground for invalidation.

Often the owners of prior distinctive signs are more interested in obtaining injunctions against use of the design than in invalidating it. The decision of the CJEU³³⁷ not requiring an invalidation of a Community design before an injunction against its use can be issued will not result in a rise of design invalidations and more frequent application of Art 25(1)(e) CDR.

On the whole, the applicability of Art. 25(1)(e) CDR as ground for invalidation of a Community design remains relatively less attractive for the holders of prior signs, who more often avail themselves of the ground for invalidation provided in Art. 25(1)(b) CDR. Nevertheless, a further development of case-law might create incentives for a more frequent application of infringement as ground for invalidation of a Community design.

³³⁷ CJEU Case C-488/10 – *Celaya Emparanza y Galdos Internacional S.A. v Proyectos Integrales de Belizamientos S.L.*, Feb. 16, 2012, available at: http://curia.europa.eu/jcms/jcms/j_6/ under the case number.

