

# Table of Contents

Abstract	5
Table of Contents	7
Acronyms and Abbreviations	11
I. Introduction	15
II. Distinctive signs, the Community design and the conflict between them	17
A. The notion of a distinctive sign	17
1. Trade Mark	18
a) General remarks	18
b) Trade marks that may conflict with a Community design	20
2. Signs protected under unfair competition law	21
a) General remarks	21
b) Signs protected under unfair competition that may conflict with a Community design	22
3. Company symbols and work titles, §5 MarkenG	23
a) General remarks	23
b) Company symbols that may conflict with a Community design	24
4. Firma (trade name), §17 HGB	25
a) General remarks	25
b) Trade names that may conflict with a Community design	25
5. Names §12 BGB	25
a) General remarks	25
b) Names that may conflict with a Community design	26
B. The notion of a Community Design	26
C. The area of conflict between distinctive signs and the Community design	28
III. Art. 25 (1)(e) CDR as ground for invalidation of a Community design	29
A. Use of a distinctive sign in a subsequent design	29
B. Prior distinctive sign and a subsequent design	30

C.	Right to prohibit the use of a prior distinctive sign	31
1.	The scope of protection of trade marks	31
a)	Use in the course of trade	32
b)	Trade mark use: use affecting the trade mark function	33
c)	Use for goods or services	35
d)	Double identity	36
e)	Likelihood of confusion	38
(1)	Similarity of signs	38
(2)	Similarity of goods or services	40
(3)	Likelihood of confusion	41
(4)	Influence on trade mark functions	43
f)	Protection for trade marks with reputation	43
2.	The scope of protection of distinctive signs under unfair competition law	47
a)	Competition between the products	49
b)	Copying	49
c)	Additional circumstances (§4 No 9 (a)-(c) UWG)	50
(1)	Avoidable confusion as to source	51
(2)	Unfair advantage or damage to reputation	52
(3)	Breach of confidence	53
d)	General assessment and interplay of factors	53
3.	Scope of protection of company symbols and work titles	54
4.	Scope of protection of trade names (Firma)	55
5.	Scope of protection of names	56
D.	The limits of protection of distinctive signs	57
1.	The limits of protection of trade marks	57
2.	Limits of protection of other distinctive signs and statute of limitations	60
IV.	The application of Art. 25(1)(e) CDR and its implications	63
A.	The procedure of invalidation of a Community design	63
1.	Applicant and forum	63
2.	Applicable law and procedural challenges	63
3.	Effect of the invalidation	66
B.	Invalidation of the design or action for infringement of the prior sign?	67
C.	Invalidation based on a prior distinctive sign: novelty, individual character or Art 25(1)(e) CDR?	70

V. Summary 73

List of Works Cited 75

