



OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)
OPERATIONS DEPARTMENT – DESIGNS SERVICE

**DECISION OF
THE INVALIDITY DIVISION
OF 14/03/2012**

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

FILE NUMBER	ICD 8402
COMMUNITY DESIGN	000512983-0005
LANGUAGE OF PROCEEDINGS	English
APPLICANT	Stokke AS Håhjem 6260 Skodje Norway
REPRESENTATIVE OF THE APPLICANT	Plesner Amerika Plads 37 2100 Copenhagen Denmark
HOLDER	Dellice Holding Ltd. 5, Costi Palama street – Office Suite 201 1096 Nicosia Cyprus
REPRESENTATIVE OF THE HOLDER	Kneppelhout & Korthals N.V. P.O. Box 546 3000 AM Rotterdam Netherlands

The Invalidity Division

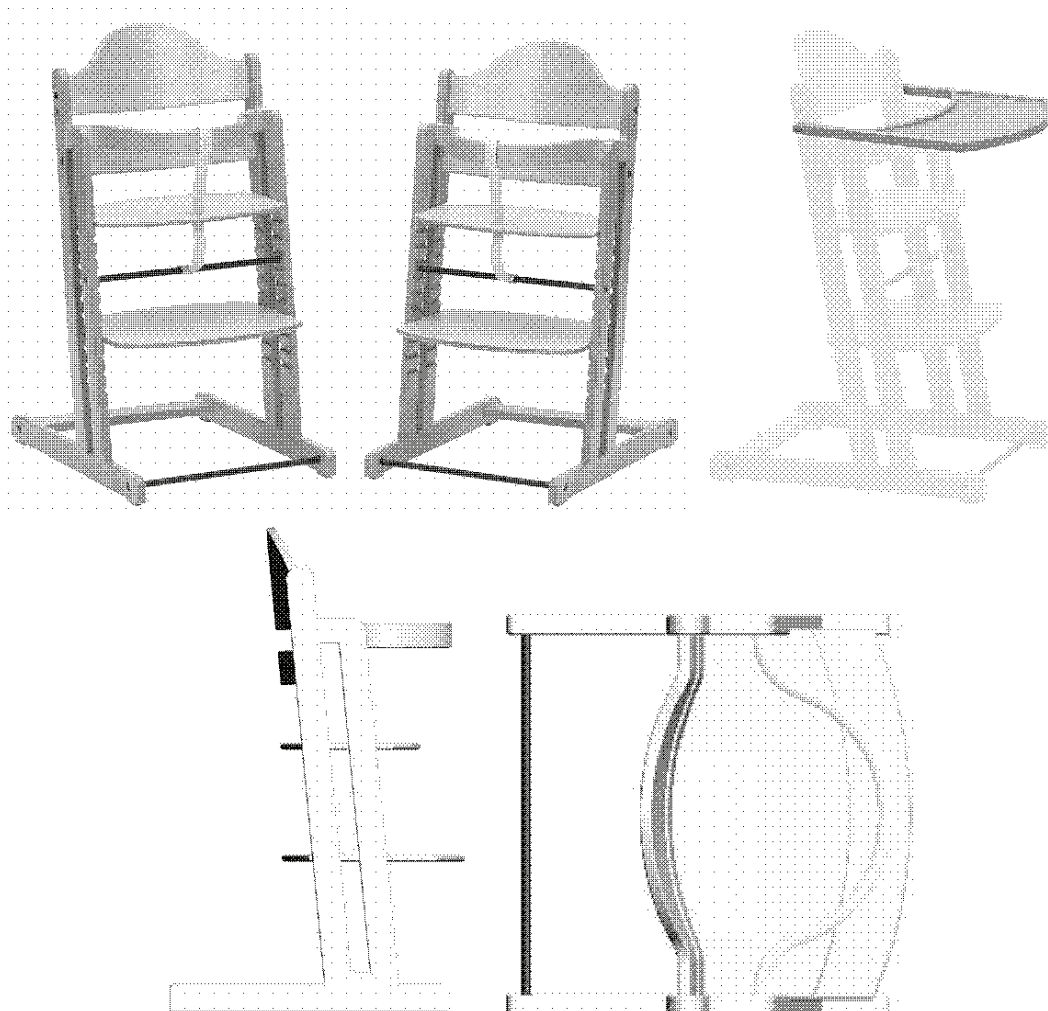
composed of Martin Schlötelburg (rapporteur), Jakub Pinkowski (member) and Natalie Pasinato (member) took the following decision on 14/03/2012:

1. **The registered Community design n° 000512983-0005 is declared invalid.**
2. **The Holder shall bear the costs of the Applicant.**

I. FACTS, EVIDENCE AND ARGUMENTS

- (1) The Community design n° 000512983-0005 (hereinafter “the RCD”) has been registered in the name of the Holder with a date of filing of 13/04/2006. In the RCD, the indication of products reads “children’s chairs”. The design was published on 08/08/2006 in the Community Designs Bulletin in the following views:

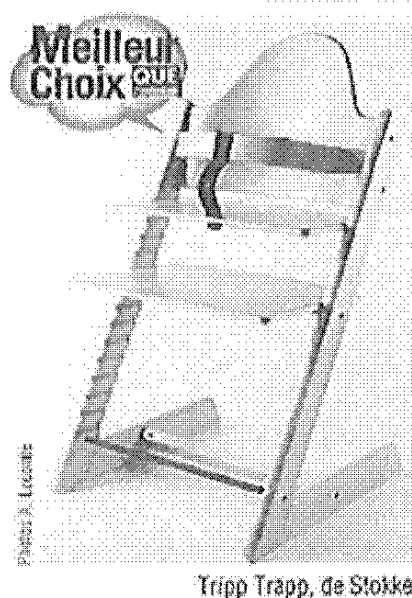
http://oami.europa.eu/bulletin/rcd/2006/2006_090/000512983_0005.htm



- (2) On 25/03/2011, the Applicant filed an application for a declaration of invalidity (“the Application”). The fee for the Application was paid by current account with OHIM.
- (3) The Applicant requests a declaration of invalidity of the RCD on the following grounds:

- challenged Community design does not fulfill the requirements of Articles 4 to 9 of the Council Regulation (EC) n° 6/2002 on Community Designs (hereinafter "CDR")
- other(s) according to Article 25(1)(c), (d), (e), (f) or (g) CDR.

(4) As evidence, the Applicant provided, *inter alia*, a copy of an extract from the shopping guide of the association "Que Choisir", dated May 1995, which shows the "Tripp Trapp Chair" ("the prior design") as follows:



- (5) In the reasoned statement, the Applicant holds that the RCD lacks novelty and individual character in view of the prior design known as the "Trip Trapp Chair", which has been made available to the public since 1974. The Applicant argues that "the only difference between the design of the contested chair and the design of the Tripp Trapp chair is the fact that the contested chair has two vertical front bars in the side view which has been moved slightly backwards in comparison to the vertical front bar in the side view of the Tripp Trapp chair". In addition, the Applicant holds that the RCD constitutes an unauthorized use of the prior design because (a) said prior design is protected under copyright law "all over Europe as a work of applied art", namely in Denmark and Germany, and the Applicant is entitled to its commercial exploitation and (b) the prior design has also been registered as a three-dimensional trademark in several European countries, namely Denmark, prior to the filing date of the contested RCD.
- (6) In response to the Applicant's arguments, the Holder argues that the features that characterize the prior design are dictated by the technical function of the product and, therefore, "the designer [of the RCD] had no choice but to include these features when creating the RCD". In support of his argument, the Holder points out that a patent for the Tripp Trapp chair was granted in various countries and expired in or around 1992. Furthermore, the Holder argues that "the overall impressions of the RCD and the Tripp Trapp chair greatly differ, as the most commanding characteristic of both chairs are the side support beams", particularly because the frame of the RCD exhibits "a reverse TT with prolonged legs in both directions" rather than a slanted L-shape. In response to the grounds of invalidity based on Article 25(e), the Holder insists that "given that the RCD does not use the leaning 'L' design, there is no reason to believe a likelihood of confusion or association to exist between the RCD and the Tripp Trapp chair". Finally, the Holder

argues that copyright protection “does not extend further than the cursive L-shape characterizing the side view” of the chair and that “since the RCD and Tripp Trapp chair also do not produce the same overall impression, there is no reason for the RCD to be found to infringe on the Tripp Trapp chair’s copyright”.

- (7) For further details to 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 Application complies with the formal requirements prescribed in the CDR and the Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community designs (“CDIR”), in particular as laid down in Article 28 CDIR. The Application is therefore admissible.

B. Substantiation

B.1 Disclosure

- (9) The prior design was published on a shopping guide of the association “Que Choisir” on May 1995 and hence was made available to the public prior to the date of filing of the contested RCD within the meaning of Article 7(1) CDR.

B.2 Novelty

- (10) According to Article 5 CDR, the RCD lacks novelty when an identical design has been made available to the public prior to the date of filing of the RCD or the date of priority. Designs shall be deemed to be identical if their features differ only in immaterial details.
- (11) The contested RCD and the prior design both relate to children’s chairs. They share at least the following features:
- The chairs consist of a frame and a base, the frame being inclined with respect to the base;
 - the frame consists of two parallel inclined side posts inclined from the front bottom to the upper back;
 - the base consists of two parallel, horizontal floor bars, interconnected in the front by a thin metallic black bar;
 - the two side posts contain multiple horizontal running grooves on the insides that allow the sliding of panels into the grooves;
 - two thin, flat rectangular panels serve as a seat and a foot rest, which are slid into the grooves;
 - the backrest consists of two cross bars of similar width forming a gap between them; the top cross bar having a curved shape;
 - a protective waist belt formed by a curved beam at the same level of the gap of the backrest
 - the frame, the base, the backrest, the seats, the footrest and the waist belt have a natural wood-like colour.
- (12) The RCD and the prior design are different as regards to at least the following features:

- the RCD exhibits two parallel double side posts anchored at the middle front of the horizontal floor bars
 - the two flat rectangular panels of the RCD exhibit round edges while the prior design are squared.
 - the RCD has a thin metallic black bar that connects both side posts at the middle while the prior design has only one at the bottom front.
- (13) The differences between the RCD and the prior design are not immaterial details. Therefore, the RCD and the prior design are not identical within the meaning of Article 5 CDR. The prior design does not form an obstacle to the novelty of the RCD.

B.3 Individual character

- (14) According to Article 6 CDR, the RCD lacks individual character if the overall impression produced on the informed user is the same as the overall impression produced on such a user by any design which has been made available to the public before the date of filing of the RCD or the date of the priority claimed. In assessing individual character of the RCD, the degree of freedom of the designer in developing the design shall be taken into consideration.
- (15) The informed user is familiar with the basic features of the products to which the contested RCD relates, namely children's chairs. The informed user is aware that the degree of freedom of the designer is limited by technical constraints because chairs must provide a raised seating surface, a stable, supporting structure (such as legs) and a backrest. Furthermore, children's chairs in particular are subject to standardized safety norms imposed by national and regional authorities (for instance, the height of the backrest). However, in spite of these technical and safety limitations, the designer of children's chairs still has a considerable degree of freedom as regards to, for instance, the shape and size of the backrest, the seat and other features.
- (16) The prior design known as "Tripp Trapp chair" and the RCD are both characterized by a bookshelf-like construction of the frame, consisting of two parallel inclined posts, and two thin, flat rectangular panels that serve as a seat and a foot rest which are slid into the grooves of the posts. Like a book shelf, this construction allows the easy adjustment of the heights of the panels. However, there was no need for the designer of the RCD to adopt the same shape and dimensions of the different components of the bookshelf-like construction (such as the panels and the side posts) in order to fulfil the technical function of adjusting the height of the seat and the foot rest.
- (17) The RCD has therefore taken over the same design features that characterize the bookshelf-like construction of the prior design. The only difference between both designs is the double "T" that is only visible from the side view of the RCD. However, this difference is insignificant because the overall impressions produced by both designs are not dominated by their side views but by the common design features of the bookshelf-like construction that are appreciated mainly from the front view. As a result, the RCD fails to produce a different overall impression from the overall impression produced by the prior design.
- (18) The overall impressions produced on the informed user by the RCD and the prior design are therefore the same and hence the RCD lacks individual character within the meaning of Article 6 CDR.

C. Conclusion

- (19) The RCD is declared invalid on the ground of Article 25(1)(b) CDR in conjunction with Article 6 CDR, due to lack of individual character.
- (20) In view of the above conclusion, it is unnecessary to examine the other grounds of invalidity invoked by the Applicant, in particular Article 25(1)(e) and Article 25(1)(f) CDR.

III. Costs

- (21) Pursuant to Article 70(1) CDR and Article 79(1) CDIR, the Holder bears the fees and costs of the Applicant.
- (22) 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€ for the reimbursement of the invalidity fee.

IV. RIGHT TO APPEAL

- (23) 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

Natalie Pasinato

