

INVALIDITY No I 127 676

Crocs, Inc., Broomfield, United States (applicant), represented by **Fieldfisher (Belgium) LLP**, L'Arsenal, Boulevard Louis Schmidtlaan 29 box 15, 1040 Brussels, Belgium (professional representative)

a g a i n s t

FLAMEshoes Slovakia s. r. o., Kružlov, Slovakia (holder).

On 07/11/2025, the Invalidity Division takes the following

DECISION

1. The application for a declaration of invalidity is upheld.
2. Registered EU design No 015073207-0001 is declared invalid.
3. The holder bears the costs, fixed at EUR 750.

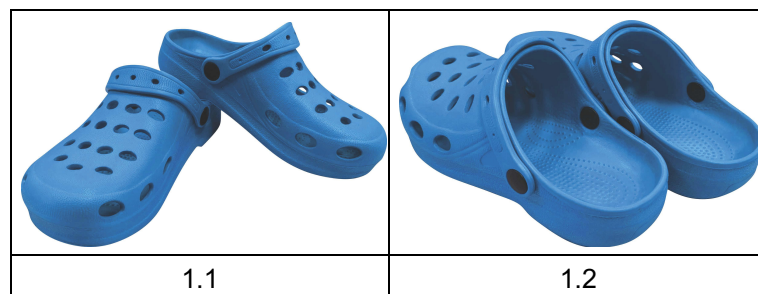
REASONS

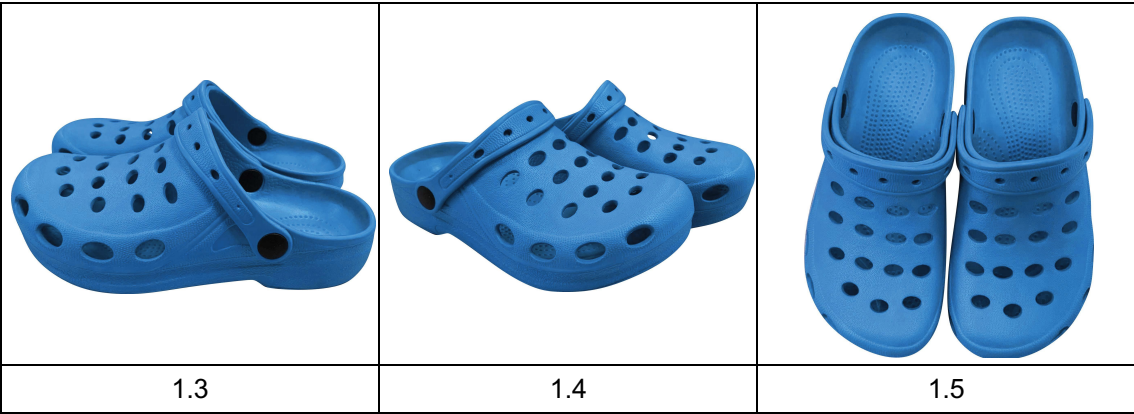
The applicant filed an application for a declaration of invalidity ('the application') against EU design No 015073207-0001 ('the contested design'). The contested design was filed on 16/09/2024 and registered in the holder's name.

The following products are indicated in the registration:

02-04 *Shoes.*

The registration contains the following views:





The applicant invoked Article 25(1)(b) of the European Union design regulation (EUDR) in conjunction with Article 4(1) EUDR and Article 6(1)(b) EUDR.

Preliminary remark

As from 01/05/2025, Regulation (EC) No 6/2002 has been amended. and Regulation (EC) No 2246/2002 has been repealed by Regulation (EU) No 2024/2822. Implementing regulation (EC) No 2245/2002 has been amended by Implementing Regulation (EU) No 2025/73. All the references in this decision to the EUDR and the European Union design implementing regulation (EUDIR) shall be understood as references to the Regulations currently in force, except where expressly indicated otherwise.

SUMMARY OF THE PARTIES' ARGUMENTS

The applicant argued that the contested design lacked individual character since the overall impression it produced on the informed user did not differ from the overall impression produced on that user by earlier Registered EU design 015001456-0001, published on 14/11/2022, therefore before the filing date of the contested design (16/09/2024).

In support of its observations, the applicant submitted extracts of the EU design registration No 015001456-0001 for Mules, Beach shoes (Exhibit 2), published on 14/11/2022 in the *EU Designs Bulletin* with the following views:





The holder argued that the applicant had not demonstrated that the design had been published by placing products in the ordinary course of trade, nor that it had been published at exhibitions or on the Internet. In its view, the prior design could not be considered to be known since it had only been published in the context of the registration of the design by the registration office. Furthermore, publication did not constitute disclosure within the meaning of Article 7 EUDR. Consequently, the application for declaration of the invalidity of the design should be dismissed.

The applicant rebutted that publication of an earlier design in the bulletin of any intellectual property office worldwide constitutes an event of disclosure (21/05/2015, T-22/13 & T-23/13, Umbrellas, EU:T:2015:310, § 37). Furthermore, exhibit 2 consists of a printout of the prior design taken from the EUIPO database which includes the publication date (14/11/2022). This confirms that the prior design was published under Articles 48 and 50 EUDR, and this therefore confirms that it was disclosed 12 months prior to the filing of the contested design.

LACK OF INDIVIDUAL CHARACTER PURSUANT TO ARTICLE 6 EUDR

According to Article 6(1)(b) EUDR, a registered EU design must be considered to have individual character if the overall impression it produces on the informed user differs from the overall impression produced on that user by any design that has been made available to the public before the filing date of the application for registration of the design for which protection is claimed or, if priority is claimed, the priority date. Article 6(2) EUDR states that, in assessing that individual character, the designer's degree of freedom in developing the design must be taken into consideration.

a) Disclosure pursuant to Article 7 EUDR

For the purpose of applying Articles 6(1)(b) EUDR, a design will be deemed to have been made available to the public if it has been published following registration or otherwise, or exhibited, used in trade or otherwise disclosed, before the contested design filing date or, if a priority is claimed, before its priority date, except where these events could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the European Union.

In principle, the onus is on the applicant to prove that a design has been disclosed. It is deemed to have been made available within the meaning of Article 7(1) EUDR if the applicant has proved the events constituting disclosure. It is for the party challenging the disclosure to rebut that presumption by establishing to the requisite legal standards that the circumstances of the case could reasonably have prevented the disclosure events

from becoming known in the normal course of business to the circles specialised in the sector concerned, operating within the European Union (21/05/2015, T-22/13, Umbrellas, EU:T:2015:310, § 26; 21/05/2015, T-23/13 Umbrellas, EU:T:2015:310, § 26; 14/03/2018, T-651/16, Footwear, EU:T:2018:137, § 47).

The applicant submitted a copy of EU design registration No 015001456-0001 from the Office's designs database. The date of publication of the design registration in the *EU Designs Bulletin* (14/11/2022) is prior to the contested design's filing date. This is sufficient evidence of the disclosure of the design invoked and depicted in the registration within the meaning of Article 7(1) EUDR.

Contrary to the holder's assertion, and as the applicant argued, publication of a prior design in the Office bulletin indeed constitutes disclosure within the meaning of Article 7(1) EUDR (16/06/2014, R 1287/2013-3, Lights, § 19).

Since the date precedes the contested design's filing date (16/09/2024), the design invoked by the applicant and depicted in the document is deemed to have been made available to the public within the meaning of Article 7(1) EUDR.

b) Comparison of the prior and contested designs

According to case-law, assessing the individual character of an EU design is, in essence, the result of a four-step examination. That examination consists in determining, firstly, the sector to which the products in which the design is intended to be incorporated or applied to belong; secondly, the informed user of those products in accordance with their purpose and, with reference to that informed user, their degree of awareness of the prior art and their level of attention when comparing the designs, directly if possible; thirdly, the designer's degree of freedom in developing their design; and, fourthly, the outcome of the comparison of the designs at issue, taking into account the sector in question, the designer's degree of freedom and the overall impressions produced on the informed user by the contested design and by any earlier design which has been made available to the public, taken individually (13/06/2019, T 74/18, Informationstafeln für Fahrzeuge, EU:T:2019:417, § 66, and the case-law cited therein).

The sector concerned and the informed user

To determine the sector to which the product of the contested design belongs (and hence the informed user and the degree of freedom of the designer in developing the design), it is appropriate to look at the design itself to specify the nature, intended purpose or function of the product. Taking the design itself into account may make it possible to better determine the product concerned within the wider category of products indicated in the registration (18/03/2010, T-9/07, metal rappers, EU:T:2010:96, § 56).

The informed user is a legal fiction and the interpretation of that concept must be that the status of 'user' implies that the person concerned uses the product in which the design is incorporated, according to the purpose for which that product is intended. The qualifier 'informed' suggests that, without being a designer or a technical expert, the user is familiar with the various designs that exist in the sector concerned, possesses a certain degree of knowledge about the features which those designs normally include and, as a result of their interest in the products concerned, pays a relatively high degree of attention when they use them (18/10/2018, T-368/17, Electrically operated lifting column, in particular for tables, EU:T:2018:695, § 26 and the case-law cited therein).

In the present case, the products incorporating the contested design are *shoes* and specifically, considering the design itself, the contested design is intended to be applied to clogs.

Therefore, the informed user, without being an expert or producer, is a person who is familiar with the clogs available on the market during the relevant period before the contested design's filing date, mainly because of their own experience or interest in these products.

The designer's freedom

The greater the designer's freedom in developing the contested design, the less likely it is that minor differences between the conflicting designs will be sufficient to produce a different overall impression, and vice versa (09/09/2011, T-10/08, Internal-combustion engine, EU:T:2011:446, § 33). This factor does not determine, however, how different they have to be. It only moderates the assessment of the individual character of the contested design (10/09/2015, T-525/13, Sacs à main, EU:T:2015:617, § 35), including the weight to be given to certain features or elements in the overall impression.

The designer's freedom is limited in particular as regards those features imposed by the technical function of the product or an element thereof, or by statutory requirements, resulting in a standardisation of certain features (18/03/2010, T-9/07, metal rappers, EU:T:2010:96, § 67), which thus apply to all designs intended for use in the products concerned.

However, the fact that the intended purpose of a product requires the presence of certain features does not automatically imply a limitation of the designer's freedom (14/06/2011, T-68/10, Watches, EU:T:2011:269, § 69).

The designer's degree of freedom when developing clogs is high. It is only restricted insofar as their shape must follow foot ergonomics, incorporating a robust sole and an upper cover to ensure firmness, postural stability, comfort, safety and protection for the toes and the foot and, if applicable, a heel strap fixed to the upper cover. Further technical constraints or statutory requirements applicable to the products in question that could limit the designer's freedom are not apparent and have not been put forward by the parties. The designer is free to choose, *inter alia*, the material, colour, patterns, and decorative elements, as well as the presence, number, size, shape, and position of the holes (09/01/2023, R 68/2022-3, Shoes, § 31; 14/09/2015, R 336/2014-3, Footwear, § 17).

The overall impression.

The comparison of the overall impressions conveyed by the designs must be synthetic and cannot be limited to a purely analytical comparison of a list of similarities and differences (13/06/2017, T-9/15, Dosen [für Getränke], EU:T:2017:386, § 79). It must be an all-inclusive comparison, allowing the overall impression produced by the design at issue to be determined in a sufficiently precise manner (14/06/2011, T-68/10, Watches, EU:T:2011:269, § 73).

The individual character of a design results from a different overall impression from the viewpoint of the informed user with reference to the existing design corpus, considering that those differences are sufficiently noticeable as to produce a different overall impression, and discarding the differences that do not affect the overall impression (07/11/2013, T-666/11, Felino balzante, EU:T:2013:584, § 29).

The very nature of the informed user implies that, so far as possible, they make a direct comparison between the prior design and the contested design (18/10/2012, C-101/11 P, Ornamentación, EU:C:2012:641, § 54; 18/10/2012, C-102/11 P, Ornamentación, EU:C:2011:236, § 54).





Prior design



Contested design

The two designs at issue concern blue foam clogs featuring a rounded, closed toe, perforated upper, and a pivoting heel strap fixed by a circular rivet. At first glance, their silhouette, proportions and configuration appear to be identical. Both show the same overall massing, with a bulbous front, slightly elevated heel, and a similar strap positioned at the same location, giving rise to a nearly indistinguishable overall character.

The configuration and precise spacing of the ventilation perforations on the upper is also identical, with the same number of holes and their distribution across the toe area. In addition, the straps seem to have a similar width, and the circular button/rivet attaching the strap is also the same in size / proportions and positioning. The detailing and finish are also very similar. The toe outline likewise appears identical, too.

The identical global silhouette, arrangement (including strap articulation), perforated upper concept, and comparable proportions convey the same overall impression on the informed user. The shared colour further reinforces the sense of equivalence.

In light of the foregoing, it is concluded, from the standpoint of the informed user, and taking into account the designer's freedom in the contested design and the other circumstances of the case as set out above, that the overall impression conveyed by the contested design does not differ from that conveyed by the prior design. As a result, the contested design lacks individual character within the meaning of Article 6(1)(b) EUDR.

CONCLUSION

The facts and evidence submitted by the applicant support the grounds for invalidity under Article 25(1)(b) EUDR in conjunction with Articles 4(1) and 6(1)(b) EUDR. Therefore, the application is upheld, and the contested design is declared invalid.

COSTS

According to Article 70(1) EUDR, the losing party in invalidity proceedings must bear the fees and costs incurred by the other party.

Since the holder is the losing party, it must bear the invalidity fee as well as the costs incurred by the applicant in the course of these proceedings.

According to Article 70(1) EUDR and Article 79(7)(f) EUDIR, the costs to be paid to the applicant are the costs of representation, which are to be fixed on the basis of the maximum rate set therein, and the costs of the invalidity fee.



The Invalidity Division

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According to Article 56 EUDR, any party adversely affected by this decision has a right to appeal against this decision. According to Article 57 EUDR, notice of appeal must be filed in writing at the Office within two months of the date of notification of this decision. Furthermore, a written statement of the grounds of appeal must be filed within four months of the same date. The notice of appeal will be deemed to have been filed only when the appeal fee of EUR 720 has been paid.

The amount determined in the fixing of costs may only be reviewed on request. According to Article 79(4) EUDIR, such a request must be filed within one month from the date of notification of this fixing of costs and will be deemed to have been filed only when the review fee of EUR 100 has been paid (Annex (14) to EUDR).