

Press Release from June 2013

## **German Federal Supreme Court: BARDEHLE PAGENBERG and Hennes & Mauritz prevail over design infringement accusation**

On June 6, 2013, the German Federal Supreme Court issued an order denying any grounds for admitting an appeal of CORPACK GmbH, Germany, against a decision of the Munich Appeal Court which had held that H & M Hennes & Mauritz B.V. & Co. KG, Germany, did not infringe the claimant's Community design (Case I ZR 152/12).

The underlying Community design, representing the shape of a cosmetic container, is registered on behalf of CORPACK. Both the Munich District Court and the Munich Appeal Court found the design-in-suit valid but not infringed due to (1) a narrow scope of protection of the design right and (2) sufficient differences between the asserted and the accused design.

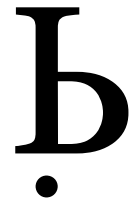
Under German law, whether two designs have the same or a different overall impression must be determined by the trial judge (in second instance by the appeal court). The Supreme Court will only verify whether the trial judge referred to and applied the correct legal concepts, whether general rules of logic and practice have not been infringed and whether all relevant circumstances have been taken into account. Similarly, competence for determining the scope of protection of the asserted design is likewise largely located in the sphere of the trial judge, according to the Federal Supreme Court.

In dismissing the so-called "non-admittance" appeal filed by CORPACK by simple order, without any reasons, the Supreme Court obviously did not find any deficiencies in the decisions issued by the lower instances. These had largely relied on former case law of the Federal Supreme Court, notably the "Writing Utensils" case. These precedents were challenged by CORPACK in their appeal to the Supreme Court – unsuccessfully as it now turned out.

**BARDEHLE  
PAGENBERG**

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**Loth & Spuhler** (Munich):

Dr. Oliver Kopf (Attorney-at-Law)

Federal Supreme Court (1st Civil Senate):

**Professor Dr. Joachim Bornkamm** (Presiding Judge)