

HOWREY^{LLP}

**International Symposium on
Industrial Designs**

Buenos Aires, 20 and 21 March 2007

David Stone

Chair, Designs Team, MARQUES
(Association of European Trade Mark
Owners) and Partner, Howrey LLP

European Union



History

- **Initial proposal in 1993**
- **Directive to EU Members States – 12 October 1998**
- **Directive implementation deadline – 28 October 2001**
- **Regulation commenced – 6 March 2002**
- **OHIM accepted filings from 1 January 2003**

- **Regulations:** **directly applicable throughout the EU**

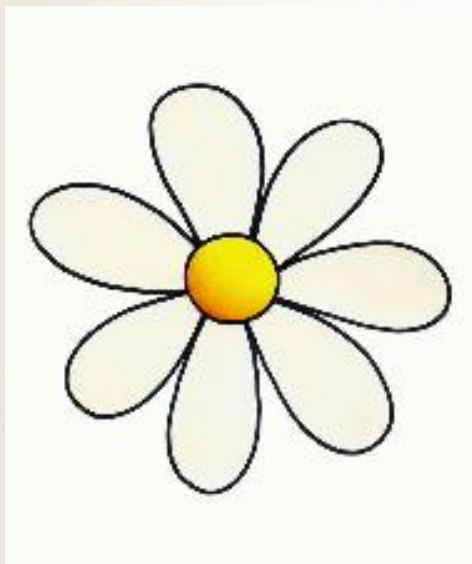
- **Directives:** **require members states to comply by enacting national legislation**

Design

- **“The appearance of the whole or part of a product resulting from the features of, in particular, the lines, contours, colours, shapes, textures and /or materials of the product and/or its ornamentation”**
- **Includes parts of a complex product (if visible whilst the product is in use)**
- **Logos, font, packaging, but not computer programmes**
- **No test of ornamentality / aesthetics**



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Not Protected

- **Designs solely dictated by their technical function**
- **Interconnection**
- **Designs contrary to public policy/morality**
- **Computer programs**
- **Spare parts (at Community level)**

Registered Community Design

- **Up to 25 years (5 + 5 + 5 + 5 + 5)**
- **Protects any design which does not produce a different overall impression on the informed user**
- **Exclusive right to make, offer, put on the market, import, export or use of a product in which the design is incorporated or to which it is applied**
- **Protects against any use, not just copying**

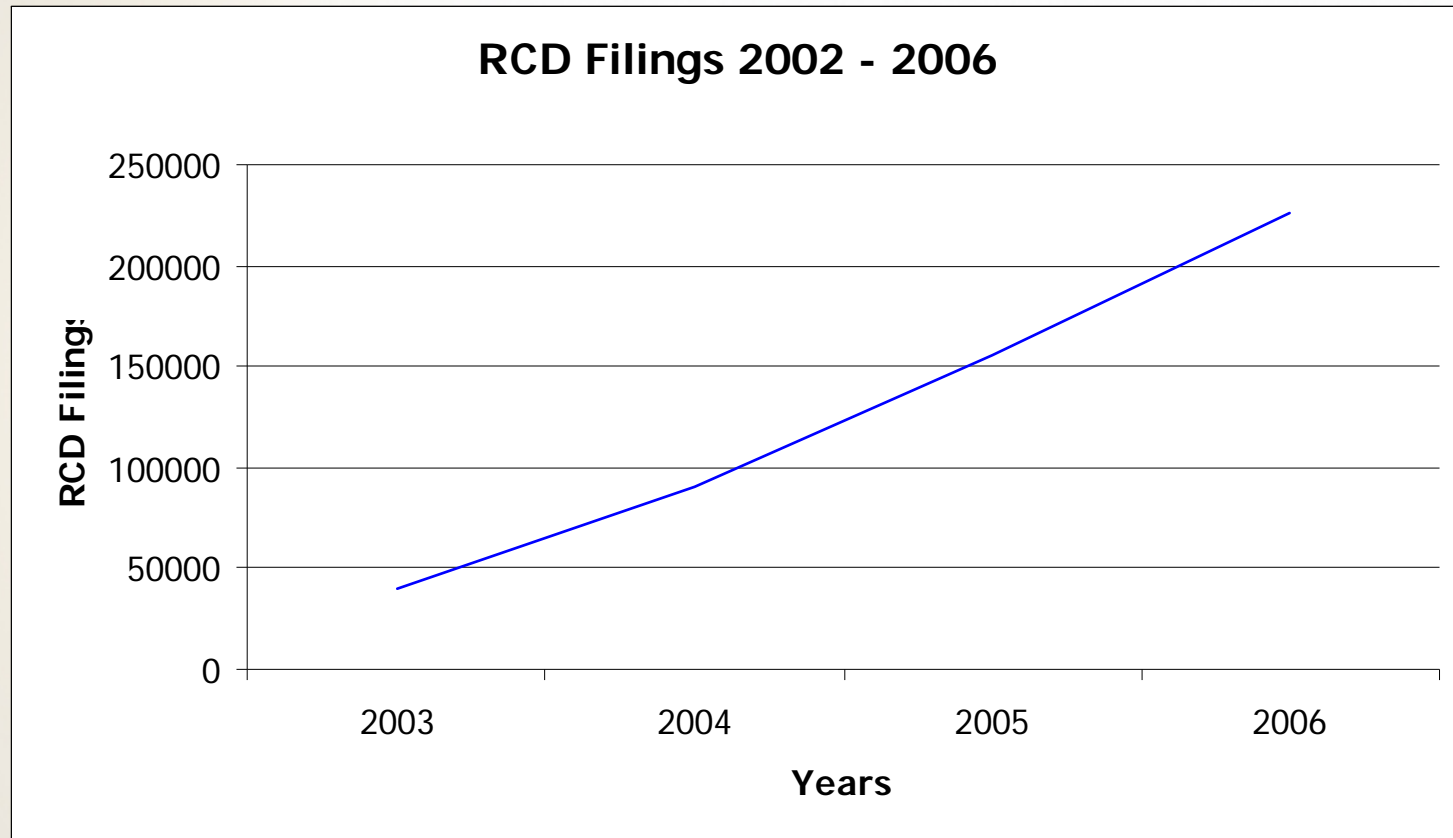
Unregistered Community Designs

- **No requirement for registration**
- **Lasts for three years**
- **Only protects from copying, not independent creation**

Advantages

- **Inexpensive (approximately €500, less if more filed at once)**
- **Quick – registered within 2 months**
- **No examination on relative grounds**
- **EU-wide injunctions against infringers**

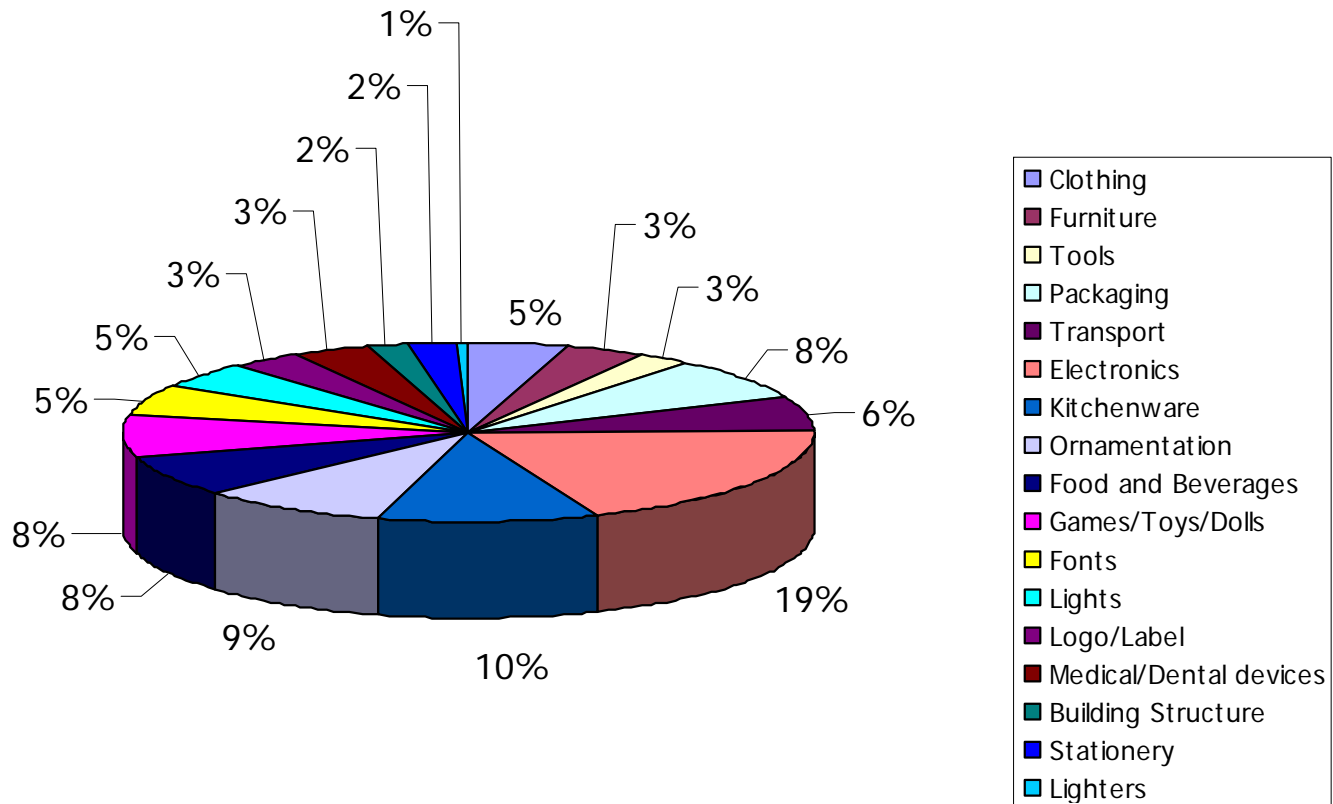
RCD Filings at OHIM



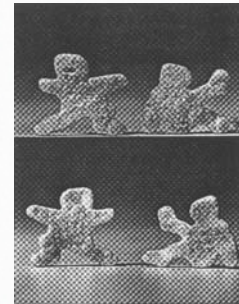
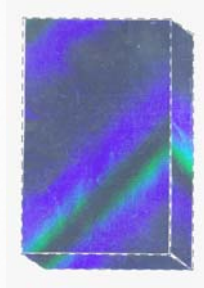
Total filings by Country of Applicant

	Country	Number of Filings (to 31 Dec 2006)		Country	Number of Filings (to 31 Dec 2006)
1.	Germany	54,497	19.	Portugal	1,541
2.	Italy	34,961	20.	China	1,060
3.	United States of America	20,673	21.	Czech Republic	1,059
4.	France	18,665	23.	Australia	997
5.	United Kingdom	16,861	24.	Ireland	945
6.	Spain	15,287	25.	Turkey	781
7.	Netherlands	8,097	26.	Canada	727
8.	Japan	8,072	27.	Luxembourg	502
9.	Switzerland	5,891	28.	Hungary	402
10.	Austria	5,283	29.	Slovakia	258
11.	Denmark	5,154	30.	Slovenia	212
12.	Sweden	4,410	29.	Latvia	103
13.	Belgium	4,329	30.	Greece	90
14.	Hong Kong	2,895	31.	Cyprus	71
15.	Poland	2,285	32.	Lithuania	61
16.	Korea	2,070	33.	Estonia	48
17.	Taiwan	1,966	34.	Romania	35
18.	Finland	1,874			

Industries



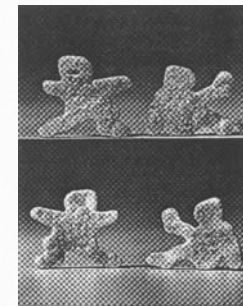
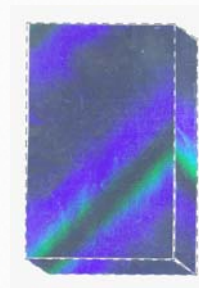
Which of these are registered trade marks and which are registered designs?



Designs



Trade Marks

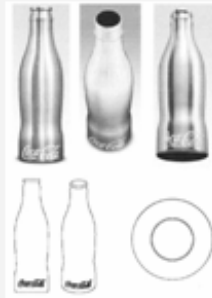


Community Trade Mark

Intel Corporation, CTM No. 3707891 in Class 38



The Coca-Cola Company, CTM No. 4554994 in Class 32



Apple Computer Inc, CTM No. 4545695 in Classes 9, 28, 38, 41 and 42



Registered Community Design

Intel Corporation, RCD No. 94909-0002 for logos



The Coca-Cola Company RCD No. 389101-0001 for bottles



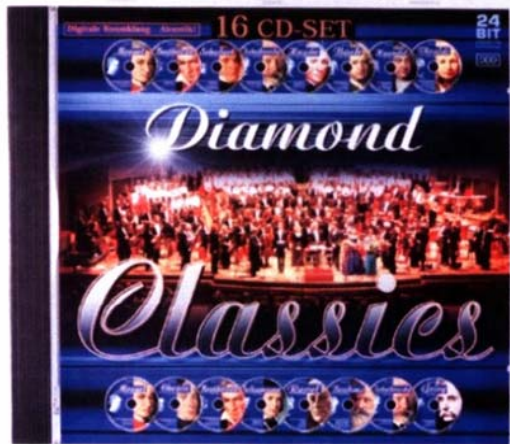
Apple Computer Inc, RCD 487228-0003 and 450796-0001 for electronic goods



Example of Album Art and Book Covers

Album Art

Hans Gabler, RCD No. 26208-0002



Book Cover

Art & Craft, SIA, RCD No. 382494-0002



Validity

- **“New” – differs in material details from designs previously made available to the public**
- **“Individual Character” – overall impression produced on the informed user differs from impression produced by any design made available to the public**

- **Many RCDs are likely to be invalid**

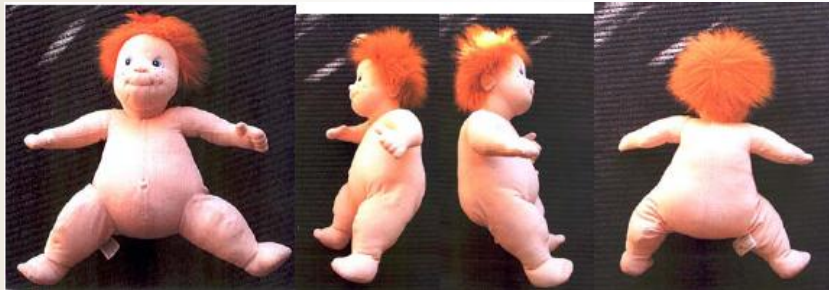


Worldwide Novelty

- **“Made available to the public” – published exhibited, used in trade or otherwise disclosed except where those events could not reasonably become known in the normal course of business to those specialized in the sector, operating in the EEA**

Validity

- **ICD 000000479**

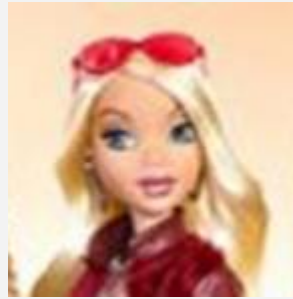


RCD



Earlier design

Mattel My Scene

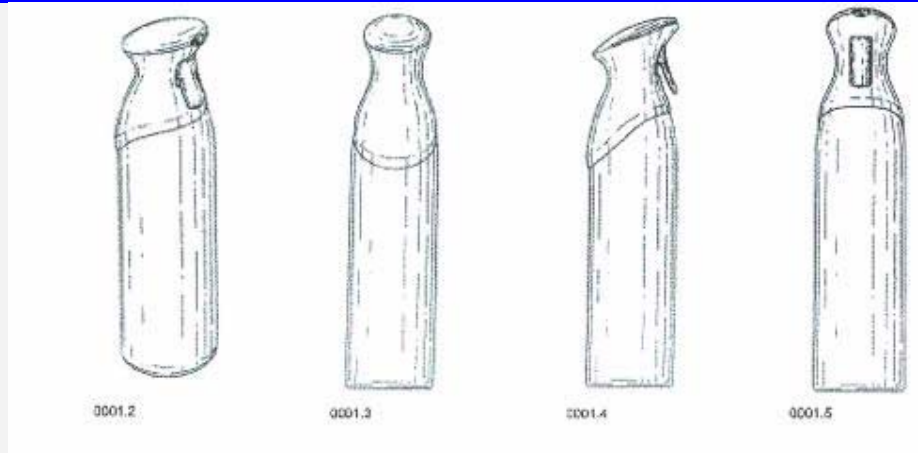


Simba Toys My Style



These images were taken from the Internet as no images were provided in the order.


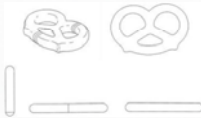





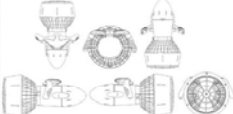
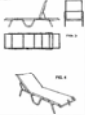



The Procter & Gamble Company – RCD No. 97969-0001



Reckitt Benckiser – Air Wick Odour Stop



Decision Chart

<i>Date of Decision</i>	<i>Decision no.</i>	<i>RCD no.</i>	<i>Applicant</i>	<i>Earlier Right</i>	<i>RCD Owner</i>	<i>RCD</i>	<i>Ground</i>	<i>Result</i>
20/09/2005	ICD 000000388	000150206- 0002	Leng-D'or, S.A.		CROWN CONFECTIONERY CO., LTD.		Art. 25(1)(b)	RCD invalid
20/09/2005	ICD 000000396	000039847- 0001	Servicios de Distribucion e Investigacion SL		PARMANDAND (H.K.) LTD.		Art. 25(1)(d)	RCD invalid
27/10/2005	ICD 000000362	000063714- 0003	C. Josef Lamy GmbH		Sanford, L.P.		Art. 25(1)(b) (e)	Invalidity application rejected
01/12/2005	ICD 000000867	000225073- 0001	Ampel 24 Vertriebs- GmbH & Co KG		Daka Research Inc.		Art. 25(1)(b)	RCD invalid
13/12/2005	ICD 000001055	000294145- 0001	Indecasa, S.A.		Juan Antonio Ramirez Franco		Art. 25(1)(b)	Invalidity application rejected
13/12/2005	ICD 000001071	000298179- 0001	Indecasa, S.A.		Juan Antonio Ramirez Franco		Art. 25(1)(b)	Invalidity application rejected

Other Issues

- Spare parts
- Community vs National rights
- Hague system

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