

Beyond product safety and technical constraints; challenges of “standardized” or “Common” design features

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Clarifying concepts

*The designer's degree of freedom in developing his design is established, inter alia, by the constraints of the features imposed by the technical function of the product or an element thereof, or by statutory requirements applicable to the product. Those constraints result in a **standardisation** of certain features, which will thus be **common** to the designs applied to the product concerned.*

[T-9/07, Metal rappers. Par 67, *inter alia*]

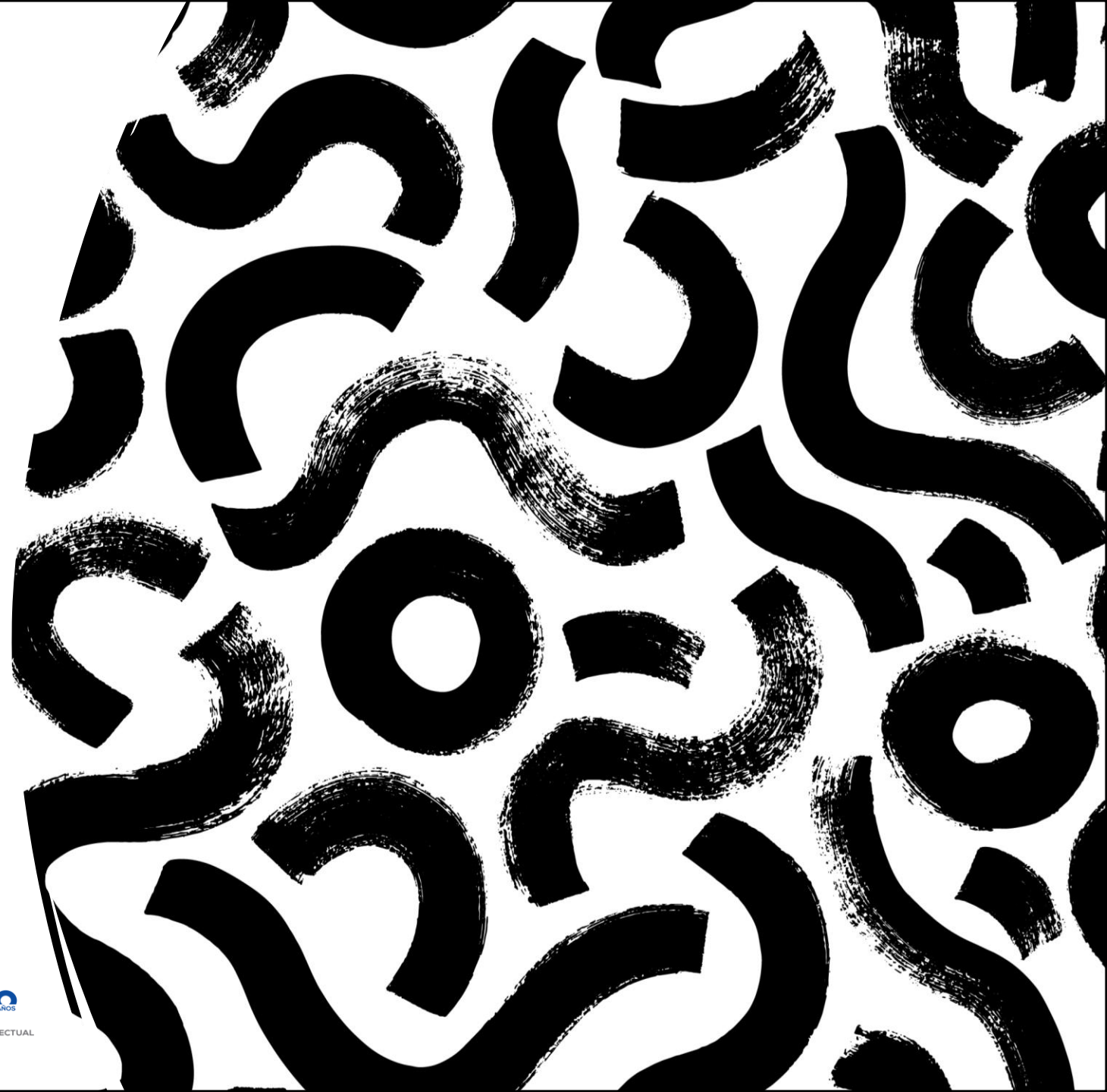


(i) The fact

(ii) The law

Article 6 Individual character

1. A design shall be considered to have individual character if the **overall impression** it produces on the **informed user** differs from the overall impression produced on such a user by any design which has been made available to the public [...]
2. In assessing individual character, the **degree of freedom of the designer** in developing the design shall be taken into consideration.



(ii) The law: Freedom of the designer



Source of the picture: Apple

❑ Objective assesment: choice vs requirement

	FREEDOM LIMITATION	CONSIDERED IN COMPARISON?
FUNCTIONAL	Yes	Yes, but minor importance
STATUTORY RESTRICTIONS	Yes	Yes, but minor importance

(iii) The “beyond”

Are there any **other** potential reasons behind a standardization of features?

- Aesthetics?

	FREEDOM LIMITATION	CONSIDERED IN COMPARISON?
TREND	No	Yes

[22/06/2010, T-153/08, Communications equipment, par.58]

[06/03/2020, R 323/2019-3, Flowerpots, par.26]



Source of the picture: Pinterest



(iii) The “beyond”

A market expectation

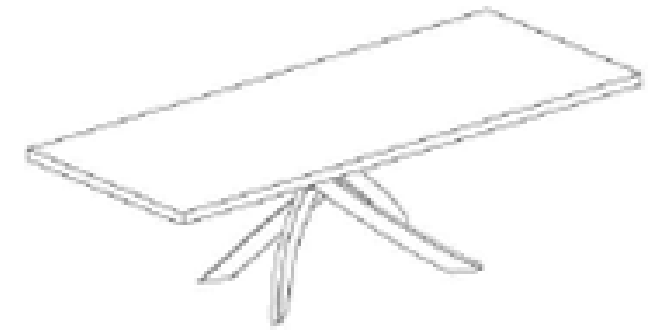
	FREEDOM LIMITATION	CONSIDERED IN COMPARISON?
MARKET EXPECTATION	No	Yes, but minor importance

[18/03/2010, T-9/07, Metal rappers]

[25/04/2016, R 3012/2014-3, Tobacco boxes, par.39]

	FREEDOM LIMITATION	CONSIDERED IN COMPARISON?
FUNCTIONAL	Yes	Yes, but minor importance
STATUTORY RESTRICTIONS	Yes	Yes, but minor importance
TREND	No	Yes
MARKET EXPECTATIONS	No	Yes, but minor importance

(iv) To sum up



Decision of EUIPO of 24/05/2018 in Invalidation Proceeding no. 10372

Source of the pictures: EUIPO

The fact (again)



(v) Means of evidence

- Notorious facts

[22/06/04, T-185/02, Pícaro, par.28 to 31, mutatis mutandis]

- Market surveys

- Catalogues

- Statements

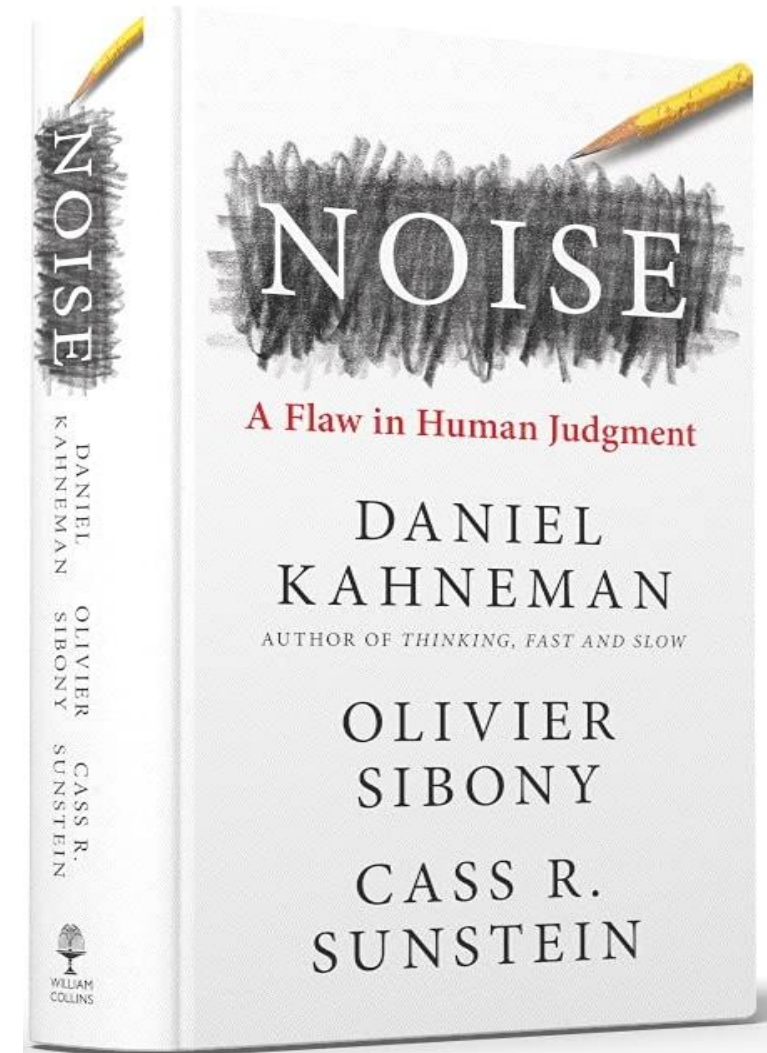
- Other

[06/03/2020, R323/2019-3, Flowerpots]



(vi) a final **suggestion**?

We might not have a rule, but we do have a standard.



“ Less importance should be given to the common because attention is focused on the un-common.