FORRESTERS
Clear direction

Innocent Infringement of European Community Designs is Out of Fashion, says the High Court

In a recently published case relating to designer handbags, the English High Court has ruled that European Community design law does not allow an infringer to run a defence of "innocent infringement", with a view to reducing the damages or award of profits payable.

The case - an application for summary judgment - involved a dispute between the owners of the "Jimmy Choo" brand and a retailer based in London's famous Oxford Street, and concerned the claimant's well-known "Ramona" bag. Whilst the defendants denied any infringement at all, either of registered or unregistered Community design right, the judge had no difficulty in finding infringement, and even went so far as to conclude that actual copying must have occurred, in view of the striking similarities between the bags in dispute.

The case then moved onto the question of the financial remedies to which the claimant might be entitled. In short, the defendants argued that their infringement was innocent, and that their exposure to any damages/profits payment should be reduced, or removed completely. However, the judge, after a careful review and comparison of the relevant UK and European legislation, concluded that there was nothing in European Community law that made this defence available. He did note, with some surprise, that it was hard to see why the UK and European laws had been drafted so differently, but commented that "that, it seems to me, is precisely what the legislature has done."

In consequence, the owners of the "Jimmy Choo" brand were entitled to an inquiry into damages or, if they so chose, an account of the defendants' profits for infringement of their registered and unregistered rights.

The message for European design owners is thus clear, in that there can be significant advantages in seeking European Community registrations for important designs.

If you could like further information on this case, or indeed on any aspect of UK/European IP Law, please feel free to [contact us](#).