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CJEU: all courts with jurisdiction to order provisional measures are competent to order such measures with regard to RCDs

European Union - [Hoogenraad & Haak, Advertising + IP Advocaten](#)

- **The procurator general at the Supreme Court of the Netherlands made a request for a preliminary ruling concerning the interpretation of Article 90(1) of Regulation 6/2002**
- **At issue was which courts have jurisdiction to order provisional and protective measures in respect of RCDs**
- **The CJEU held that all courts with jurisdiction to order provisional and protective measures in the given member state are also competent to order such measures with regard to RCDs**

The word is out: holders of registered Community designs (RCDs) can go to any court in the Netherlands for preliminary injunction proceedings. This follows from a recent decision ([Case C-678/18](#)) of the Court of Justice of the European Union (CJEU) in response to a reference for a preliminary ruling by the procurator general at the Supreme Court of the Netherlands (*Hoge Raad*).

Background

Under Article 81 of [Regulation 6/2002](#), each member state of the European Union has to designate one or more courts with exclusive jurisdiction to rule on the infringement and validity of RCDs in all proceedings. In the Netherlands, this is the District Court of The Hague, which has a specialised IP chamber.

Under Article 90 of the regulation, an application for provisional and protective measures can be filed in all courts of the member state concerned, *including* the Community design court(s). The Dutch legislator interpreted this article as meaning that the legislator in each member state is given the discretionary liberty to appoint a court that would be *exclusively* competent for preliminary injunction proceedings. Assuming that this was the case, the Dutch legislator again chose the District Court in The Hague.

The case that caused the procurator general of the Supreme Court to lodge an appeal in cassation in the interest of the law and request a preliminary ruling from the CJEU started in 2017. Canadian-based toy manufacturer Spin Master is the holder of an RCD for a toy called 'Bunchems'. Bunchems are small plastic balls with tentacle-like ends that make it easy to link them together; this way, various forms and figures can be created. Spin Master sought a preliminary injunction before the District Court of Amsterdam, claiming infringement of its RCD by the almost identical 'Linkeez', put on the market by High5 Products.

In the preliminary injunction proceedings, High5 Products claimed that the Amsterdam judge did not have jurisdiction to rule on RCDs under Article 81 of the regulation. The Amsterdam judge concluded, however, that she did have jurisdiction to rule on the interim relief submitted before her.

The issue of competence and the broad interpretation of Article 90 raised certain issues, and the procurator general referred the following question to the CJEU:

Must Article 90(1) of [Regulation 6/2002] be interpreted as requiring the mandatory granting, to all courts and tribunals of a member state referred to therein, of jurisdiction to grant provisional and protective measures, or does it leave the member states - in full or in part - free to delegate jurisdiction to grant such measures exclusively to the courts and tribunals which, in accordance with Article 80(1) of Regulation 6/2002, have been designated as courts (of first and second instance) for Community design?

CJEU decision

On 21 November 2019 the CJEU shed light on the matter and declared that Article 90 of the regulation should indeed be interpreted in a broad manner, meaning that *all* courts that have jurisdiction to order provisional and protective measures in the given member state are also competent to order such measures with regard to RCDs. The Community design court appointed on the basis of Article 81 of the regulation (in the Netherlands, the court of The Hague) is not the only competent court to rule on RCDs in preliminary injunction proceedings.

Comment

This decision puts an end to a period of uncertainty, as it is now clear that *any* Dutch court can order provisional and protective measures on the basis of RCDs. There is also good reason to believe that the same applies to EU trademarks, since the competence of the national courts is regulated in a similar manner in [Regulation 2017/1001](#).

Nevertheless, many right holders will probably continue to file suit before the District Court of The Hague, since it is the only court in the Netherlands that can impose a pan-EU injunction.

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