



**DECISION  
of the Third Board of Appeal  
of 18 April 2011**

In Case R 2105/2010-3

**Patrón Spirits International AG**

Quaistr. 11  
CH-8200 Schaffhausen  
Switzerland

Applicant / Appellant

represented by MARKS & CLERK LLP, 5th Floor, 14 South Parade, UK-LS1 5QS  
Leeds, United Kingdom

APPEAL relating to a decision of the Department for Designs and Register on  
Community Design No 1 722 257-0001

**THE THIRD BOARD OF APPEAL**

composed of Th. Margellos (Chairperson), M. Bra (Rapporteur) and  
H. Salmi (Member)

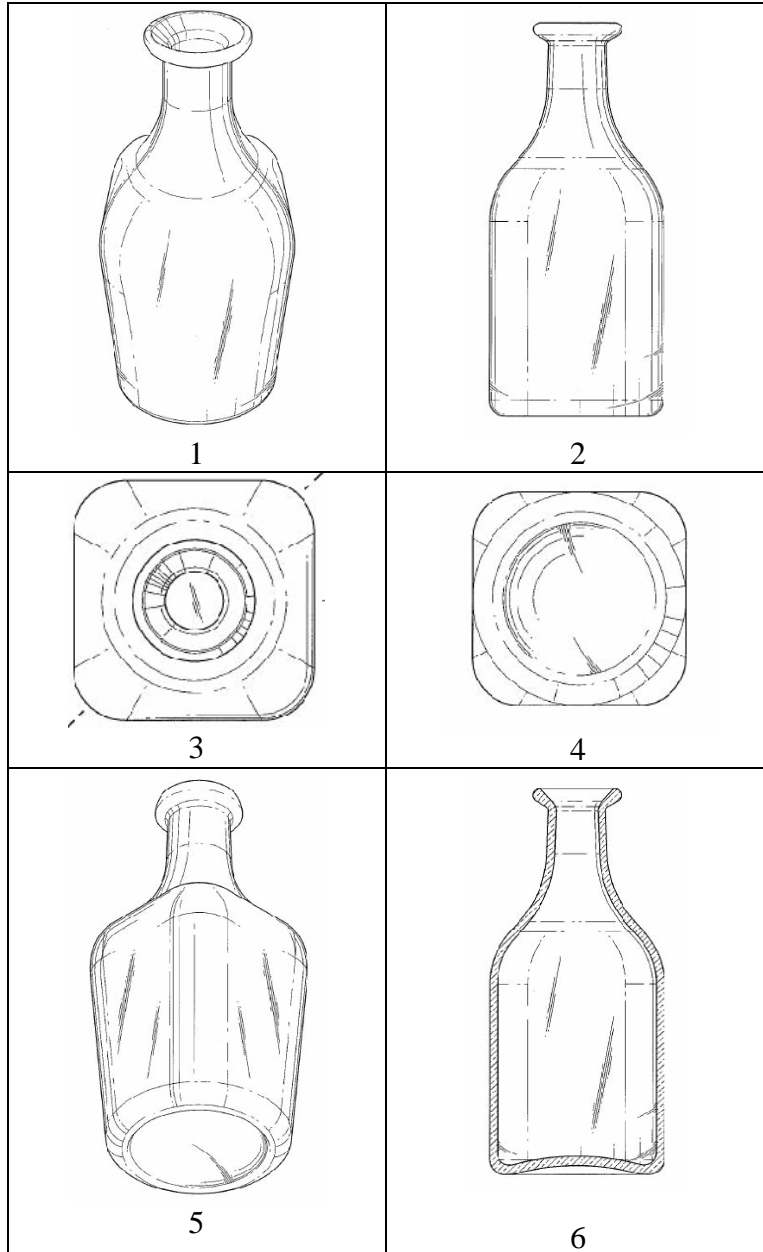
Registrar: P. López Fernández de Corres

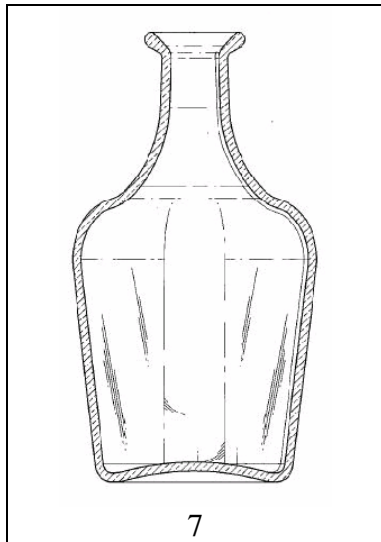
gives the following

## Decision

### Summary of the facts

- 1 On 21 June 2010, Patrón Spirits International AG (hereinafter ‘the applicant’) filed an application to register the following design represented in seven views:





- for the following products in the Locarno Classification 9: Bottles.
- 2 On 22 June 2010, the examiner of the Designs Department informed the applicant that its application had the following deficiencies or missing elements:
    - The representation of the design is deficient because it does not conform to the provisions set out in Article 4(1)(c) CDIR as it contains numbers and symbols which are clearly not part of the design. The applicant is invited either to submit the same view where these additional elements have been deleted or to withdraw the view No 3, with a deadline for submission of 22 August 2010.
    - The representation of the design is deficient as the views do not relate to the same design/product. The applicant is invited either to divide the views into 2 separate designs, namely one for views No 1, 3, 4, 5 and 7 and one for views No 2, 3 and 6, or to withdraw views. In case of dividing the views, the applicant is also invited to pay the additional fees for each additional design which will amount to EUR 525 for the entire application. The deadline for submission is set at 22 August 2010.
    - The applicant was informed that no further reminder would be sent.
  - 3 On 2 July 2010, the applicant filed additional documents including an amended view No 3. It denies that the product consists of two separate designs and requests to allow the application as originally filed. Its arguments may be summarised as follows:
    - The design of the bottle has two flat sides and two sides where the bottle appears to widen towards the neck. This effect is due to the fact that the bottle has a circular cross section at the bottom which evolves into a square cross section with flat sides at the top of the bottle.

- 4 On 31 August 2010, the examiner took the following decision (hereinafter ‘the contested decision’):
  - As the second of the deficiencies set out on 22 June 2010 has not been remedied within the time-limit set, the Office will reject the application.
- 5 On 26 October 2010, the applicant filed an appeal against the contested decision, together with the statement of grounds.

### **Grounds of appeal**

- 6 The applicant requests the Board to review the contested decision and to allow the registration of the contested application either in its entirety or as two separate designs. Its arguments may be summarised as follows:
  - The examiner’s reasons for his conclusion that the application consists of two different designs are not sufficiently specified. Following a discussion with the examiner, the conclusion is based on the fact that the sides of the bottle as shown in view No 2 and 6 seem to be parallel, whereas the sides as shown in view No 1 and 7 appear to converge towards the bottom of the bottle.
  - The bottom of the bottle is round (see view No 4) while the shoulder of the bottle is square (see view No 3). The diameter of the circular base is equal to each of the four sides of the shoulder of the bottle.
  - View No 1 is a perspective view of the bottle taken from above, No 2 is a side view, No 3 is an aerial view, No 4 is a base view, No 5 is a perspective view taken from below, No 6 is the front view and No 7 is a perspective view. The sides of the bottle are parallel when viewed from the front, back, left or right side, but converge when viewed at a 45 degree rotation from the front, back, left or right side.
  - The applicant submitted pictures of the bottle taken from the same position as each of the views submitted in the application in order to show the effect of the bottle changing from round to square. The pictures correspond exactly to the views submitted initially and therefore prove that the application consists only of one design.
  - The views submitted in the application were accepted under US Design Application No 29/352,764 as being part of a single design.

### **Reasons**

- 7 The appeal complies with Articles 55 to 57 CDR and Article 34 CDIR. It is, therefore, admissible.

- 8 The Board is to examine whether the seven views provided by the applicant relate to the same design.
- 9 The examiner found that views No 1, 3, 4, 5 and 7 belong to one design and that views No 2, 3 and 6, belong to another.
- 10 The views No 3 and 4, respectively an upper view and a base view, clearly show a round bottom but a square (with trimmed corners) shoulder, where the diameter of the circular base is equal to each of the four sides of the shoulder. It is tangible that views No 3 and 4 belong to the same bottle.
- 11 Furthermore, the round bottom and square shoulder of the bottle result in the sides of the bottle being seen as parallel when viewed from the front, back, left or right side – as shown in views No 2 and 6 – or as convergent when viewed at a 45 degree rotation from either the front, back, left or right side – as shown in views No 1, 5 and 7. This unusual phenomenon might explain the examiner's finding that the views belong to different bottles, yet the Board finds that the views perfectly portray the representation of the design.
- 12 The seven views submitted thus belong to one and the same design.
- 13 The second deficiency claimed by the examiner in its communication of 22 June 2010, subject of the present appeal, is therefore repealed and the Community Design application allowed to proceed for further processing.

**Order**

On those grounds,

THE BOARD

hereby:

- 1. Annuls the contested decision;**
- 2. States that the seven views of the application belong to the same design;**
- 3. Remits the application to de Designs Department for further processing.**

Th. Margellos

M. Bra

H. Salmi

Registrar:

P. López Fernández de Corres