

JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

22 April 2026 (*)

(European Union design – Invalidity proceedings – Registered EU design representing a shoe – Ground for invalidity – Failure to comply with the requirements for protection – Article 25(1)(b) of Regulation (EC) No 6/2002 in the version prior to Regulation (EU) 2024/2822 – No individual character – Article 6 of Regulation No 6/2002)

In Case T-228/25,

Crocs, Inc., established in Broomfield, Colorado (United States), represented by H. Haouideg, M. Berger, N. Hadjadj, lawyers, and J. Guise, Solicitor,

applicant,

v

European Union Intellectual Property Office (EUIPO), represented by J. Ivanauskas, acting as Agent,

defendant,

the other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court, being

Gor Factory, SA, established in Fortuna (Spain), represented by C. Giner Mas, lawyer,

THE GENERAL COURT (Sixth Chamber),

composed of P. Škvařilová-Pelzl, President, D. Kukovec and R. Pezzuto (Rapporteur), Judges,

Registrar: V. Di Bucci,

having regard to the written part of the procedure,

having regard to the fact that no request for a hearing was submitted by the parties within three weeks after service of notification of the close of the written part of the procedure, and having decided to rule on the action without an oral part of the procedure, pursuant to Article 106(3) of the Rules of Procedure of the General Court,

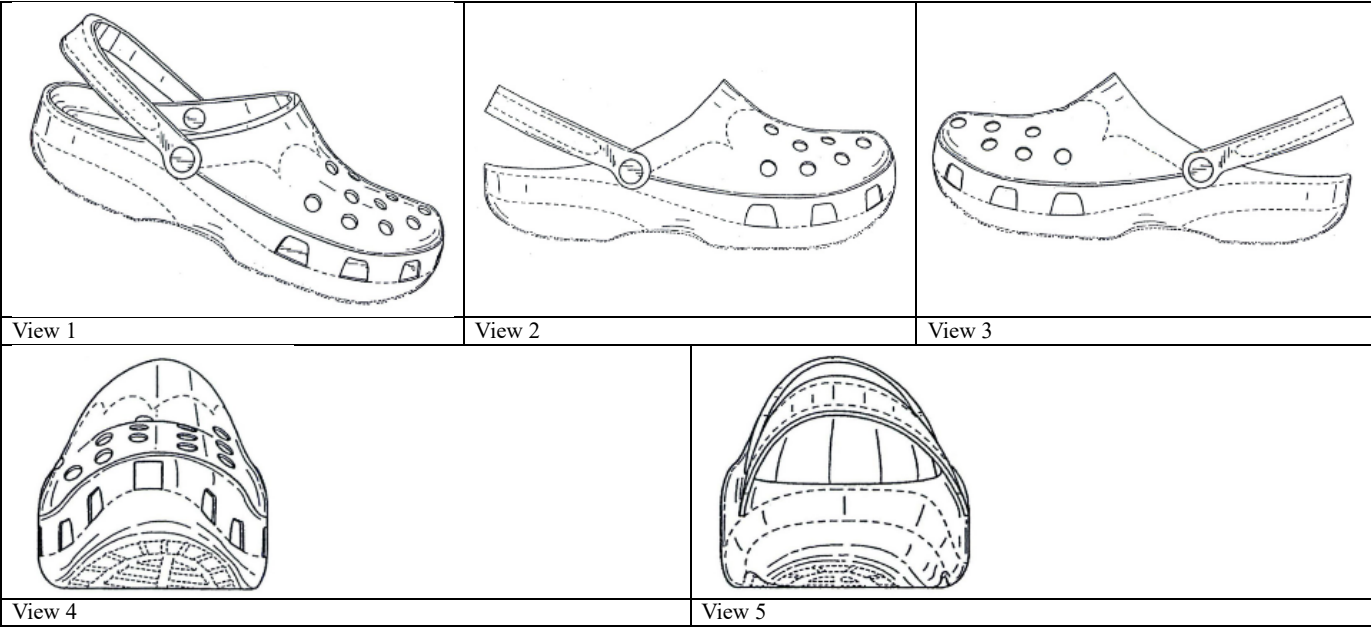
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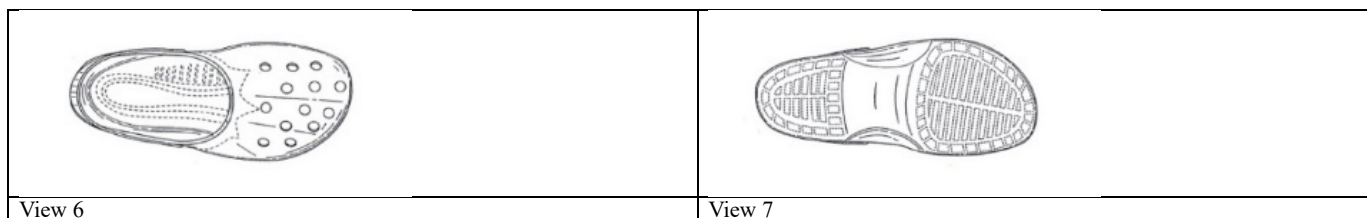
Judgment

- 1
- By its action under Article 263 TFEU, the applicant, Crocs, Inc., seeks the annulment and the alteration of the decision of the Third Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 5 February 2025 (Case R 590/2024-3) (‘the contested decision’).

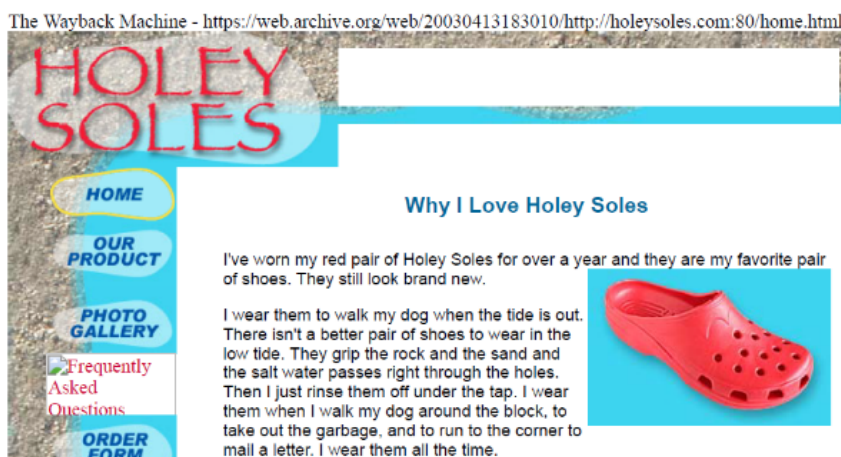
Background to the dispute

- 2
- On 24 October 2022, the intervener, Gor Factory, SA, filed with EUIPO an application for a declaration of invalidity of the EU design registered following an application filed on 22 November 2004, which is represented in the following views:





- 3 The products to which the design, invalidity of which was sought, is intended to be applied fall within Class 02-04 within the meaning of the Locarno Agreement of 8 October 1968 Establishing an International Classification for Industrial Designs, as amended, and correspond to the following description: 'Footwear'.
- 4 The ground relied on in support of the application for a declaration of invalidity was that set out in Article 25(1)(b) of Council Regulation (EC) No 6/2002 of 12 December 2001 on European Union designs (OJ 2002 L 3, p. 1), in the version prior to the entry into force of Regulation (EU) 2024/2822 of the European Parliament and of the Council of 23 October 2024 (OJ L, 2024/2822), read in conjunction with Articles 4 and 6 of that regulation. In that context, the intervener claims that the contested design lacked individual character as regards the design of the 'Holey Soles' clogs, represented as follows:



- 5 By decision of 22 January 2024, the Invalidity Division upheld the application for a declaration of invalidity on the ground that the contested design had no individual character within the meaning of Article 6 of Regulation No 6/2002.
- 6 On 19 March 2024, the applicant filed a notice of appeal with EUIPO against the decision of the Invalidity Division.
- 7 By the contested decision, the Third Board of Appeal dismissed the appeal brought against the decision of the Invalidity Division. First, it found that the prior design had been made available to the public, within the meaning of Article 7(1) of Regulation No 6/2002, on 13 and 14 April 2003, before the date of priority claimed in respect of the contested design, namely 28 May 2004, on account of its US design patent application (No 29/206 427). Secondly, it found that the products at issue were 'footwear, in particular, clogs'. Thirdly, it found that an informed user is one who pays a relatively high degree of attention when using those products. Fourthly, it found that the designer's degree of freedom in respect of clogs was high. Fifthly, it found that the contested design lacks individual character, since, when it was compared with the prior design, the designs at issue produced the same overall impression on an informed user and it was not possible for what difference did exist to offset their similarities.
- 8 Accordingly, the Board of Appeal found that it was not necessary to determine the novelty of the contested design.

Forms of order sought

- 9 The applicant claims, in essence, that the Court should:
- annul and alter the contested decision;
 - in the alternative, annul the contested decision and refer the case back to EUIPO;
 - order EUIPO to pay the costs.
- 10 EUIPO contends that the Court should:
- dismiss the action;
 - order the applicant to pay the costs in the event that a hearing is convened.

- 11 The intervener contends, in essence, that the Court should:
- dismiss the action;
 - make ‘an award of costs in favour of the successful [p]arty’.

Law

The jurisdiction of the General Court to hear the second part of the second head of claim

- 12 As regards the second part of the applicant’s second head of claim, it must be noted that that head of claim requests that the Court refer the case back to EUIPO. In that regard, it is sufficient to recall that, according to settled case-law, in an action before the EU judicature against a decision of a Board of Appeal of EUIPO, EUIPO is required, under Article 72(6) of Regulation 2017/1001, to take the measures necessary to comply with judgments of the EU judicature. Accordingly, it is not for the Court to issue directions to EUIPO, but for EUIPO to draw the appropriate inferences from the operative part and grounds of the judgments of the EU judicature (see judgment of 11 July 2007, *El Corte Inglés v OHIM – Bolaños Sabri (PiraÑAM diseño original Juan Bolaños)*, T-443/05, EU:T:2007:219, paragraph 20 and the case-law cited, and order of 25 June 2019, *Eaglestone v EUIPO – Eaglestone (EAGLESTONE)*, T-82/19, not published, EU:T:2019:484, paragraph 18 and the case-law cited). It follows that the second part of the applicant’s second head of claim must be rejected on the ground of lack of jurisdiction, as EUIPO, in essence, submits.

Substance

- 13 In support of the present action, the applicant relies on a single plea in law, alleging infringement of Article 6 of Regulation No 6/2002.
- 14 First, the applicant criticises the Board of Appeal for making an error of assessment in concluding, in paragraph 27 of the contested decision, that the designer’s degree of freedom was, in the present case, high.
- 15 Secondly, the applicant claims that the Board of Appeal made an error of assessment since it did not, for the most part, take into account, when comparing the overall impressions produced by the designs at issue, the ‘contribution made to the individual character’ by the distinctive heel strap of the contested design.
- 16 EUIPO, supported by the intervener, contests the applicant’s arguments.
- 17 According to Article 6(1)(b) of Regulation No 6/2002, a registered EU design is to 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 before the date of filing the application for registration or, as is the case here, if a priority is claimed, before the date of priority.
- 18 Article 6(2) of Regulation No 6/2002 further provides that, in assessing that individual character, the degree of freedom of the designer in developing the design is to be taken into consideration.
- 19 It is apparent from the structure of Article 6(1)(b) of Regulation No 6/2002, that the assessment of the individual character of an EU design is the result, in essence, of a four-stage examination. That examination consists in deciding upon, first, the sector to which the products in which the design is intended to be incorporated or to which it is intended to be applied belong; secondly, the informed user of those products in accordance with their purpose and, with reference to that informed user, the degree of awareness of the prior art and the level of attention to the similarities and the differences in the comparison of the designs; thirdly, the designer’s degree of freedom in developing his or her design, the influence of which on individual character is in inverse proportion; and, fourthly, taking that degree of freedom into account, the outcome of the comparison, direct if possible, of the overall impressions produced on the informed user by the contested design and by any earlier design which has been made available to the public, taken individually (see judgment of 13 June 2019, *Visi/one v EUIPO – EasyFix (Display holder for vehicles)*, T-74/18, EU:T:2019:417, paragraph 66 and the case-law cited).
- 20 It is in the light of those principles that it is necessary to examine whether, in the present case, when assessing the individual character of the contested design, the Board of Appeal made an error of assessment, first, as regards the designer’s degree of freedom and, secondly, as regards the comparison of the overall impressions of the designs at issue.

Preliminary observations

- 21 At the outset, it must be noted that, as is stated in paragraph 22 of the contested decision, the prior design was made available to the public, within the meaning of Article 7(1) of Regulation No 6/2002, on 13 and 14 April 2003, before the date of priority claimed in respect of the contested design, namely 28 May 2004, which is not disputed.
- 22 In addition, as is apparent from paragraphs 23 and 24 of the contested decision, first, the sector concerned by the designs at issue is that of footwear, and, more specifically, clogs, and, secondly, an informed user of clogs ‘pays a relatively high degree of attention when using [clogs]’, which is not disputed.

The designer’s degree of freedom

- 23 The applicant criticises the Board of Appeal for making an error of assessment in concluding, in paragraph 27 of the contested decision, that, in respect of clogs, the designer’s degree of freedom was high. In its view, that degree of freedom was medium at best.
- 24 In particular, the applicant argues that the approach adopted by Board of Appeal in the contested decision is inconsistent since, while it is true that the clog designer has a certain degree of freedom, that degree remains nevertheless constrained by the fundamental features of a clog, namely the round shape, open back and relatively flat sole.
- 25 According to the case-law, the designer’s degree of freedom in developing a design is defined on the basis, in particular, of constraints linked to the features imposed by the technical function of the product or an element thereof, or by statutory requirements applicable to the product to which the design is applied. Those constraints result in a standardisation of certain features, which will thus be common to the designs applied to the product concerned (see judgment of 13 November 2012, *Antrax It v OHIM – THC (Radiators for heating)*, T-83/11 and T-84/11, EU:T:2012:592, paragraph 44 and the case-law cited).
- 26 The influence of the factor relating to the designer’s degree of freedom on individual character varies according to a rule of inverse proportionality. Thus, the greater the designer’s freedom in developing a design, the less likely it is that minor differences between the designs at issue will be sufficient to produce a different overall impression on an informed user. Conversely, the more the designer’s freedom in developing a design is restricted, the more likely it is that minor differences between the designs at issue will be sufficient to produce a different overall impression on an

informed user. In other words, if the designer enjoys a high degree of freedom in developing a design, that reinforces the conclusion that the designs which do not have significant differences produce the same overall impression on an informed user and, accordingly, the contested design does not display an individual character. Conversely, if the designer has a low degree of freedom, that reinforces the conclusion that the sufficiently marked differences between the designs produce a dissimilar overall impression on an informed user and, accordingly, the contested design displays individual character (see judgment of 13 June 2019, *Display holder for vehicles*, T-74/18, EU:T:2019:417, paragraph 76 and the case-law cited).

- 27 In the present case, in paragraph 27 of the contested decision, the Board of Appeal found that, in respect of clogs, the designer's degree of freedom was high since it was only restricted in so far as their shape had to follow foot ergonomics, incorporating a robust sole and upper cover to ensure firmness, postural stability, comfort, safety and protection for the toes and the foot and, if applicable, a heel strap fixed to the upper cover. According to the Board of Appeal, further technical constraints or statutory requirements applicable to the products in question that could limit the designer's freedom were not raised by the parties to the invalidity proceedings. In addition, it found that the clog designer was free to choose, inter alia, the material, colour, patterns and decorative elements, as well as the presence, number, size, shape and position of the holes and cutouts.
- 28 In that regard, it should be borne in mind that the fact that a product requires the presence of certain features does not necessarily imply restricted freedom of design, where there is scope for variations in the shape, size or positioning of those features and in the overall appearance of the product itself (see judgment of 12 March 2025, *deluxe holding v EUIPO – Piffany Copenhagen (Electric candles)*, T-1158/23, not published, EU:T:2025:250, paragraph 35 and the case-law cited).
- 29 Accordingly, even if the features identified by the Board of Appeal, referred to in paragraph 27 above, had become common in designs applied to clogs, they have no bearing, as the Board of Appeal correctly found in paragraph 27 of the contested decision, on the high degree of freedom which clog designers enjoy as regards the material, colour, patterns and decorative elements, as well as the presence, number, size, shape and position of the holes on the upper and side surfaces of those designs.
- 30 The degree of the designer's freedom is considered to be high or very high by the EU Courts where various configurations could be imagined for the same product, where the product may be made in a very wide variety of shapes, colours or materials, where the description of the product concerned is very wide, containing no detail as to its type or its functionality, or where the constraints of a functional nature concerning the presence of certain essential elements are not liable to affect to a significant extent the form or overall appearance of the product, which may take various forms and be arranged in various ways (see judgment of 13 June 2019, *Display holder for vehicles*, T-74/18, EU:T:2019:417, paragraph 79 and the case-law cited).
- 31 Accordingly, the Board of Appeal did not make an error of assessment by finding, in paragraph 27 of the contested decision, that, in respect of clogs, the designer's degree of freedom is high.

The comparison of the overall impressions

- 32 According to settled case-law, the individual character of a design results from an overall impression of difference or lack of 'déjà vu', from the point of view of an informed user, in relation to any previous presence in the design corpus, without taking account of any differences that are insufficiently significant to affect that overall impression, even though they may be more than insignificant details, but taking account of differences that are sufficiently marked so as to produce dissimilar overall impressions (see judgment of 17 May 2018, *Basil v EUIPO – Artex (Bicycle baskets)*, T-760/16, EU:T:2018:277, paragraph 77 and the case-law cited).
- 33 In that regard, it should be borne in mind that the comparison of the overall impressions produced by the designs at issue must be synthetic and may not be limited to an analytic comparison of a list of similarities and differences. That comparison must take as a basis the characteristics disclosed in the contested design and must relate solely to the characteristics protected, without taking account of the characteristics, in particular technical features, excluded from the protection. The comparison must relate to the designs, in principle, as registered, and the applicant for a declaration of invalidity cannot be required to produce a graphic representation of the prior design, comparable to the representation in the application for registration of the contested design (see judgment of 13 June 2019, *Display holder for vehicles*, T-74/18, EU:T:2019:417, paragraph 84 and the case-law cited).
- 34 Where the similarities between the designs at issue concern constraints of the features imposed by, inter alia, the technical function of the product or of an element of the product, those similarities will have only minor importance in the overall impression produced by those designs on an informed user (see judgment of 30 June 2021, *Framery v EUIPO – Smartblock (Transportable building)*, T-373/20, not published, EU:T:2021:400, paragraph 66 and the case-law cited).
- 35 Moreover, differences will be insignificant in the overall impression produced by the designs at issue where they are not sufficiently pronounced to distinguish the goods at issue in the perception of an informed user or to offset the similarities found between those designs (see, to that effect, judgment of 18 March 2010, *Grupo Promer Mon Graphic v OHIM – PepsiCo (Representation of a circular promotional item)*, T-9/07, EU:T:2010:96, paragraphs 77 to 84).
- 36 Finally, in the assessment of the individual character of a design, account must also be taken of the point of view of an informed user. According to settled case-law, an informed user is particularly observant and has some awareness of the state of the prior art, that is to say the previous designs relating to the product in question that had been disclosed on the date of filing of the contested design, or, as the case may be, on the date of priority claimed (see judgment of 29 October 2015, *Roca Sanitario v OHIM – Villeroy & Boch (Single control handle faucet)*, T-334/14, not published, EU:T:2015:817, paragraph 18 and the case-law cited).
- 37 In addition, despite the relatively high level of attention of an informed user, the latter will not notice the minor differences which may exist between the designs at issue (see judgment of 12 March 2025, *Electric candles*, T-1158/23, not published, EU:T:2025:250, paragraph 59 and the case-law cited).
- 38 In the present case, as is apparent from paragraph 34 of the contested decision, the Board of Appeal found that the designs at issue depicted a clog with the exact same shape, featuring a thick sole and a rounded closed toe cap. In addition, it found that those designs coincided not only as regards the features of their shape, but also as regards the identical arrangement of circular holes on the upper surface of the upper cover and the trapezoidal cutouts on the front and side. In those circumstances, in the Board of Appeal's view, those designs produced, on an informed user, the same overall impression.
- 39 The applicant disputes that finding by submitting, in the first place, that, in paragraphs 28 to 39 of the contested decision, the Board of Appeal infringed the principle set out in paragraph 35 of judgment of 19 June 2014, *Karen Millen Fashions* (C-345/13, EU:C:2014:2013), under which, in essence, in the assessment of the individual character of the design, the assessment of the overall impression produced on an informed user must be carried out not on the basis of a combination of features taken in isolation and drawn from a number of earlier designs but on the basis of one or more earlier designs, taken individually.
- 40 According to the applicant, the Board of Appeal compared the designs at issue by implicitly regarding the prior design as a 'composite' element of the contested design, without taking into account the heel strap present in the latter design.

- 41 In that context, it should be borne in mind that, according to the case-law, the comparison of the overall impressions produced by the designs at issue must, in principle, relate to those designs as registered and, consequently, as they appear in the register (see judgment of 12 March 2025, *Electric candles*, T-1158/23, not published, EU:T:2025:250, paragraph 63 and the case-law cited).
- 42 In that regard, as is apparent from paragraph 31 of the contested decision in particular, the Board of Appeal has, in accordance with the case-law cited in paragraph 39 above, assessed the overall impression produced by the designs at issue by comparing the contested design, taken individually, to the prior design, also taken individually. It is for this reason that it is able to find, in paragraph 34 of that decision, that those designs have essentially the same features, namely, first, exactly the same shape, featuring a thick sole, and, secondly, a rounded toe cap with multiple circular holes on its upper surface, and trapezoidal cutouts on the front and side. Those designs differ, as is noted in paragraph 36 of that decision, only by the presence of a heel strap in the contested design.
- 43 In the light of the foregoing, the Board of Appeal cannot be meaningfully criticised as having assessed the overall impression that each of the designs at issue produced on an informed user on the basis of a combination of isolated elements.
- 44 In the second place, the applicant criticises the Board of Appeal for not taking into account, when comparing the overall impressions produced by the designs at issue, the ‘contribution made to the individual character’ by the distinctive heel strap of the contested design.
- 45 First, as has been observed in paragraph 43 above, the Board of Appeal carried out an assessment of the overall impression produced by each of the designs at issue. In particular, in paragraphs 32, 33, 36 and 37 of the contested decision, it acknowledged that those designs differed only as regards the heel strap depicted in the contested design. It noted that that heel strap was located at the back of the clog and connected to the upper cover, on either side, by circular rivets or fasteners.
- 46 Secondly, the Board of Appeal correctly found, in paragraph 36 of the contested decision, that the heel strap in question was not, on its own, capable of outweighing the similarities between the designs at issue referred to in paragraph 42 above. Indeed, that board made no error by finding that, while an informed user would certainly notice that strap, it was nevertheless an element of lesser importance given the overall identical shape of those designs. Therefore, it was also correct to find that an informed user might regard the contested design as an alternative version of the prior design and, consequently, that strap as a minor variation of the same clog depicted by those designs. Such a finding is all the more necessary since, as has been observed in paragraph 27 above, the presence of the strap in question is an incidental feature. In the light of those considerations, such a strap may therefore be classified as a minor difference within the meaning of the case-law cited in paragraph 37 above.
- 47 Thirdly, it must be found that, contrary to what the applicant claims, the Board of Appeal did not find that the contested design did not produce a different overall impression on the ground that the heel strap lacked individual character. As has been noted in paragraph 38 above, that Board of Appeal reached that conclusion on account of the fact that the designs at issue coincided in respect of all other features. In those circumstances, the Board of Appeal did not make an error of assessment in paragraph 37 of the contested decision where it concluded that the presence of that strap in the contested design was not sufficient, in accordance with the case-law cited in paragraph 35 above, to offset the similarities between the designs at issue and, accordingly, produce, on an informed user, a different overall impression.
- 48 In the light of the foregoing, the applicant is not justified in criticising the Board of Appeal for not taking into account, when comparing the overall impressions produced by the designs at issue, the ‘contribution made to the individual character’ by the heel strap in question.
- 49 In the third place, the applicant criticises the Board of Appeal for not having sufficiently taken into account, when assessing the individual character of the contested design, the designer’s freedom. In its view, the addition of the heel strap in question resulted from the exercise of broad creative design freedom in the development of that design, of such a type as to affect the overall impression produced by that design and give it individual character.
- 50 According to the applicant, first, out of many conceivable heel straps, the clog designer chose to adopt a chunky, slightly tapered strap with rolled edges. Secondly, that designer decided to attach that strap to the upper cover by means of a rivet, rather than a buckle or button. Thirdly, the designer chose to use a large rivet which filled the entire rounded end of the strap, even though most rivets used in clothing and footwear designs are relatively small. Fourthly, the exercise of broad creative design freedom is also borne out by the fact that the contested design, unlike the prior design, includes a distinctive heel strap and is recognised globally by the shape of that strap. In that respect, the renown and the iconic nature of the contested design is attested by the inclusion, by the Design Museum in London (United Kingdom), of the shoe depicted by that design in a work entitled ‘Fifty Shoes that Changed the World’.
- 51 It should be stated, in that regard, that the designer’s degree of freedom is a factor which makes it possible to moderate the assessment of the individual character of the contested design, rather than an independent factor which determines how different two designs have to be for one of them to be able to rely on individual character (judgment of 10 November 2021, *Eternit v EUIPO – Eternit Österreich (Building panels)*, T-193/20, EU:T:2021:782, paragraph 59).
- 52 The factor relating to the freedom of the designer cannot on its own determine the assessment of the individual character of a design, but it is, however, a factor which has to be taken into consideration in that assessment (judgment of 10 September 2015, *H&M Hennes & Mauritz v OHIM – Yves Saint Laurent (Handbags)*, T-525/13, EU:T:2015:617, paragraph 35).
- 53 As is apparent from the considerations set out in paragraphs 25 to 31 above, the Board of Appeal, in paragraph 27 of the contested decision, correctly took account of the fact that, in respect of clogs, the designer’s degree of freedom was high. In addition, in the light of the identity of all of the features of the designs at issue with the sole exception of the heel strap in question, that board correctly found that the freedom exercised in respect of that strap was not sufficient to call into question its finding that the contested design did not produce a different overall impression.
- 54 Lastly, the applicant’s argument based on the alleged inclusion of the shoe depicted by the contested design in the work in question is not capable of altering the conclusion of the Board of Appeal in paragraph 40 of the contested decision in so far as it concerns the overall impressions produced, on an informed user, by each of the designs at issue.
- 55 Such a fact, even if it were proved, gives no indication as to the overall impression produced by the contested design on an informed user in the present case. That fact is not, therefore, a relevant factor for the assessment of the individual character of the design in the light of the requirements of Article 6 of Regulation No 6/2002 (see, by analogy, judgment of 10 April 2024, *M&T 1997 v EUIPO – VDS Czymr Kowalik (Door and window handles)*, T-654/22, EU:T:2024:223, paragraph 53 (not published) and the case-law cited).
- 56 In addition, since, in accordance with Article 6 of Regulation No 6/2002, the individual character of a design is assessed by comparing the overall impressions produced by the designs at issue on an informed user and by taking account of the designer’s freedom, the criteria relating to the design process of the contested design, the commercial success of the products depicted by that design, the renown those products have acquired among amateurs in the sector concerned and the contribution of the contested design to the sector concerned are not among those taken into account for the purpose of assessing the individual character of a design (see, to that effect, judgment of 25 April 2013, *Bell & Ross v OHIM – KIN (Wristwatch case)*, T-80/10, not published, EU:T:2013:214, paragraph 146).

- 57 In the light of all the foregoing considerations, the applicant is not justified in criticising the Board of Appeal for not having taken into account, when assessing the individual character of the contested design, the exercise of broad creative design freedom as regards the addition of the heel strap in question.
- 58 In the fourth place, the applicant criticises the Board of Appeal for not examining which features of the product in question are most important for an informed user and, therefore, incorrectly determined what they were. In its view, the heel strap in question must be regarded as the most important feature as regards the use of those products by such a user, who will give it significant consideration.
- 59 The applicant highlights that an informed user who puts on the clog, to which the contested design is applied, is likely to use their hand to fit the strap in question to the heel in question and, potentially, adjust the position of that strap, which will not be the case for the clog to which the prior design is applied.
- 60 In that regard, it should be borne in mind that the overall impression produced on an informed user by a design must necessarily be determined in the light of the manner in which the product in question is normally used. In that context, account must be taken of the fact that the attention of the informed user is focused rather on the most visible and most important elements when using the product (see, to that effect, judgment of 13 June 2019, *Display holder for vehicles*, T-74/18, EU:T:2019:417, paragraph 91).
- 61 In addition, the importance of the visible features of the product is assessed on the basis of their impact not only on its appearance, but also on the ease with which it can be used (see judgment of 10 April 2024, *Door and window handles*, T-654/22, EU:T:2024:223, paragraph 50 and the case-law cited).
- 62 As regards, first, the applicant's argument that the Board of Appeal arbitrarily set aside the heel strap at issue, even though it was a feature of the design which was important for an informed user, it must be observed that that argument is based on an incorrect reading of the contested decision. As is apparent from paragraph 36 of that decision, the Board of Appeal expressly states that that strap would not be ignored by such a user, but stated that it was of lesser importance than the overall identical shape of the designs at issue and that, for that reason, the heel strap was not capable of outweighing, on its own, the similarities between those designs.
- 63 Secondly, as regards, more specifically, the applicant's argument that the Board of Appeal did not take into account the fact that the heel strap in question would be regarded, by an informed user, as the main feature of the contested design as regards the use of the clog to which that design is applied, it should be recalled that, as is apparent from paragraph 27 above, the main feature of the clogs, which explains the incorporation of a robust sole and upper cover, is to ensure, inter alia, firmness, postural stability, comfort and protection for the toes and the foot. As is noted in paragraph 46 above, a heel strap attached to the upper cover of a clog is only ever incorporated in an incidental manner. Moreover, the assessment carried out by the Board of Appeal in paragraph 27 of the contested decision is expressly accepted by the applicant who acknowledges, in paragraph 17 of the application, that the fundamental features of a clog are 'the round shape, open back and relatively flat [sole]'.
- 64 In those circumstances, the applicant is not justified in criticising the Board of Appeal for having found, in paragraph 36 of the contested decision, that the attention of an informed user would be drawn mainly by a thick sole and rounded toe cap. In fact, those are among the most visible and most important elements, within the meaning of the case-law cited in paragraph 60 above, as regards the use of the products at issue.
- 65 While it is true, as the applicant submits, that the presence of the heel strap in the contested design is intended to prevent feet from slipping and that it is likely to be manipulated when someone puts on or takes off the clog, it is nevertheless not capable, on account of its incidental nature, of prevailing over the considerations set out in paragraph 64 above.
- 66 It follows that the applicant is not justified in criticising the Board of Appeal for not having taken into account its argument that the heel strap would be regarded, by an informed user, as the main feature of the clog made according to the contested design as regards the use of that product.
- 67 In those circumstances, the applicant is also not justified in criticising the Board of Appeal for not carrying out a rigorous assessment of all of the features of the contested design.
- 68 In the light of all of the foregoing considerations, the Board of Appeal did not make an error of assessment by concluding, in paragraph 40 of the contested decision, that the contested design lacked individual character in relation to the prior design.
- 69 Furthermore, the applicant cannot call into question that conclusion by referring to a decision of the United States Patents and Trademarks Office. It must be noted that the EU design regime is an autonomous system with its own set of objectives and rules peculiar to it; it applies independently of any national system (see judgment of 9 February 2017, *Mast-Jägermeister v EUIPO (Beakers)*, T-16/16, EU:T:2017:68, paragraph 53 and the case-law cited), and, *a fortiori*, independently of that of a third country.
- 70 The legality of decisions of the Boards of Appeal must accordingly be assessed solely on the basis of Regulation No 6/2002, as interpreted by the EU judiciary, and not on the basis of national decisions (see judgment of 4 July 2017, *Murphy v EUIPO – Nike Innovate (Electronic wristband)*, T-90/16, not published, EU:T:2017:464, paragraph 72 and the case-law cited), and, *a fortiori*, not on the basis of decisions taken by authorities located outside of the European Union.
- 71 It follows from all of the foregoing that the single plea in law must be rejected as unfounded and, accordingly, the applicant's first head of claim and the second part of the applicant's second head of claim must be rejected. Consequently, the action must be dismissed in its entirety.

Costs

- 72 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.
- 73 Since the applicant has been unsuccessful, it must be ordered to pay the costs incurred by the intervener, in accordance with the form of order sought by the intervener. By contrast, since EUIPO has applied for the applicant to be ordered to pay the costs only in the event that a hearing is convened, EUIPO must, in the absence of a hearing, be ordered to bear its own costs.

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby:

1. **Dismisses the action;**
2. **Orders Crocs, Inc. to pay the costs incurred by Gor Factory, SA;**

3. Orders EUIPO to bear its own costs.

Škvařilová-Pelzl

Kukovec

Pezzuto

Delivered in open court in Luxembourg on 22 April 2026.

V. Di Bucci

L. Truchot

Registrar

President

* Language of the case: English.