

How to ensure the protection of the appearance of a product ?

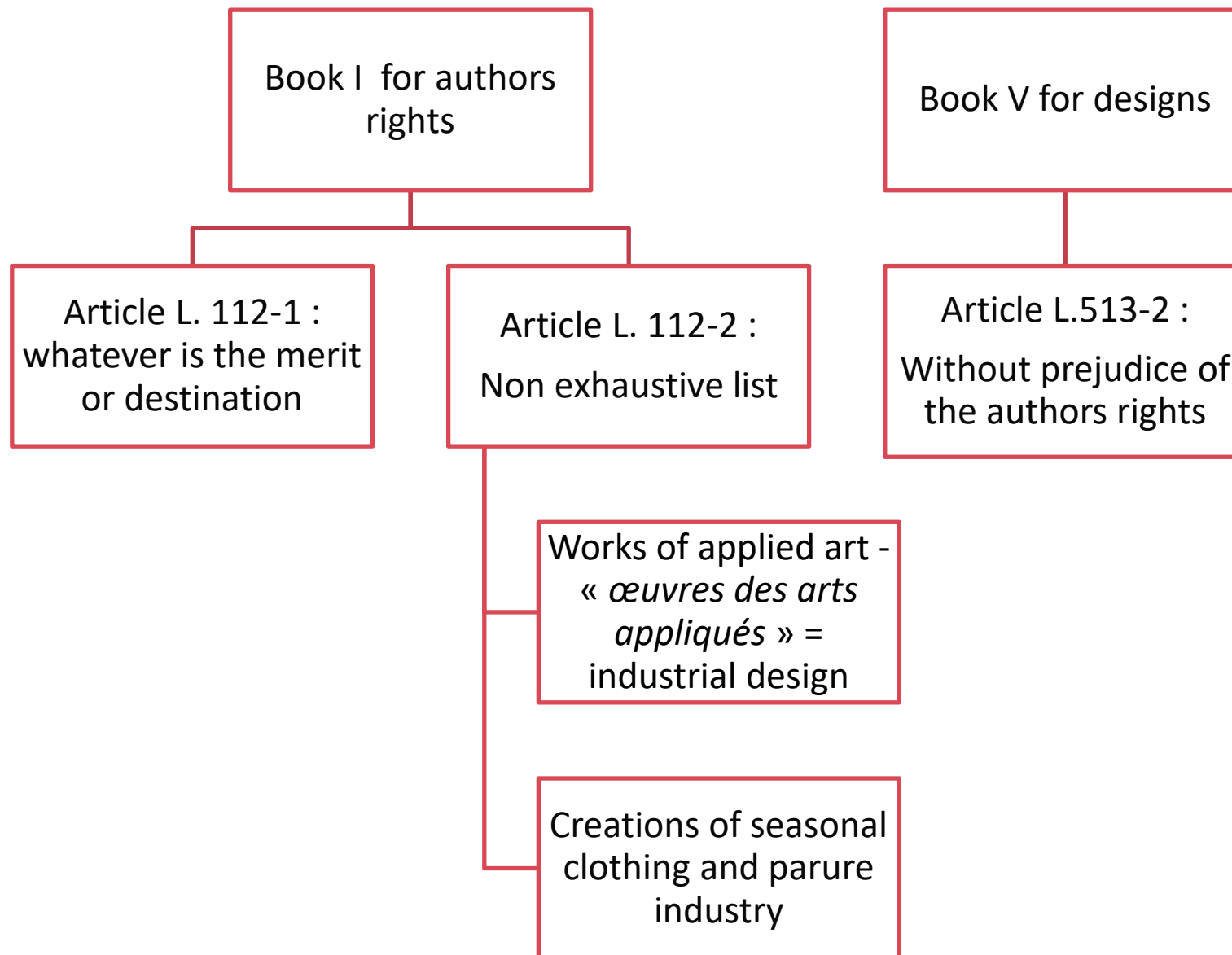
Mrs Eléonore Gaspar

Venice, March 31, 2023

www.dtmv.com

Preliminary comments

➤ Cumulative protection in France



1. Author rights

➤ CJEU, June 11, 2020, C-833/18:

*“(...) the copyright protection provided for therein applies to a product whose shape is, at least in part, necessary to obtain a technical result, where that product is an original work resulting from intellectual creation, in that, through that shape, its author expresses **his creative ability in an original manner by making free and creative choices in such a way that that shape reflects his personality**, which it is for the national court to verify, bearing in mind all the relevant aspects of the dispute in the main proceedings.”*



1. Author rights

➤ Paris Court of Appeal, June 4, 2019



RIMOWA suitcase



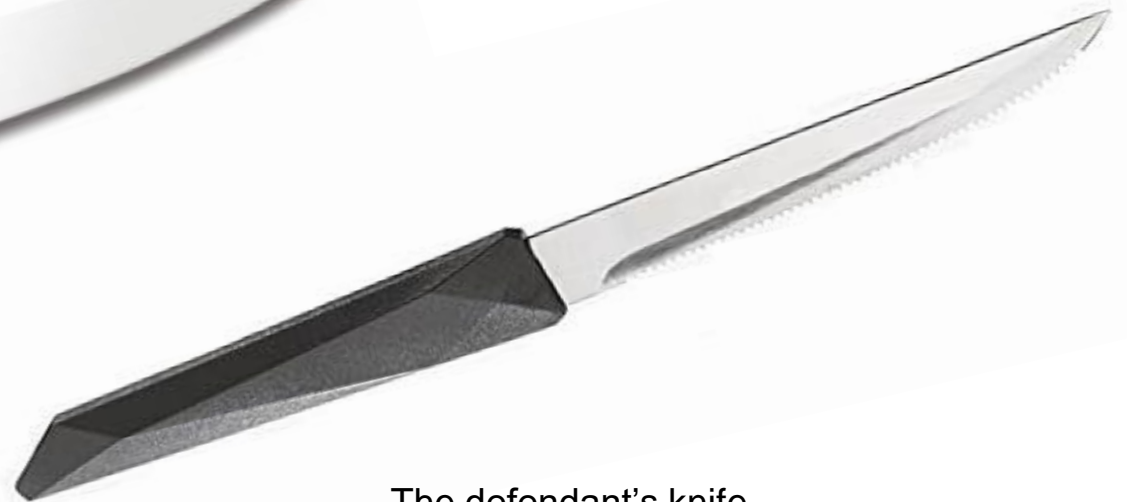
The defendant's suitcase

1. Author rights

- Paris Court of Appeal, April 15, 2022



The plaintiff's knife



The defendant's knife

1. Author rights

- Paris Court of Appeal, January 20, 2023



The bracelet

1. Author rights

➤ Paris Court of Appeal, February 15, 2022



The bracelets in question



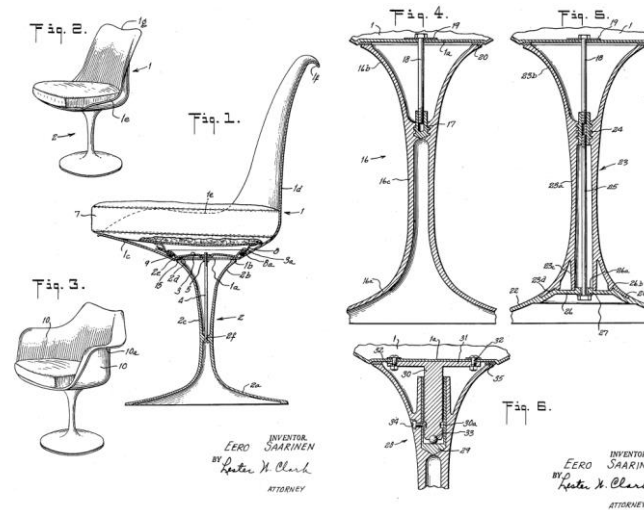
Examples of Brazilian woven bracelets

1. Author rights

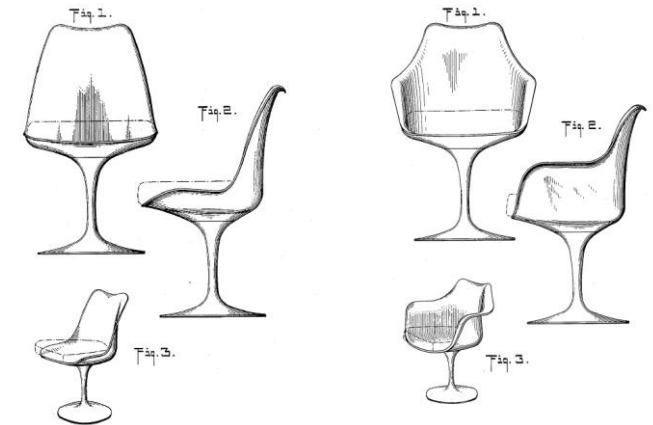
➤ French Supreme Court, October 7, 2020



TULIP chair and armchair



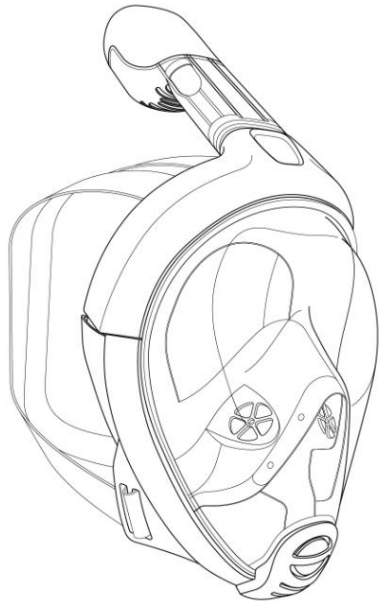
The US patent n° 2939



The US patent designs
n° 181.945 and 181.946

2. Designs

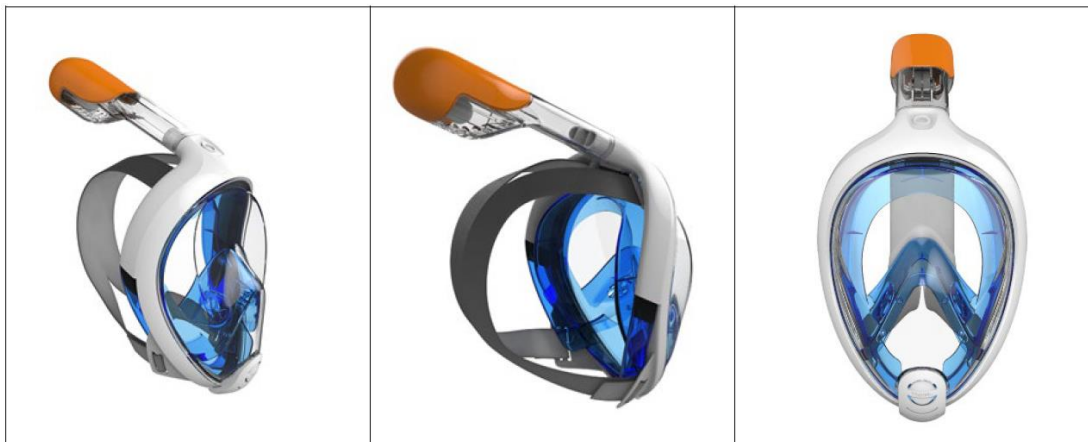
- Paris Court of Appeal, January 28, 2022
- EUIPO July 19, 2022



The plaintiff's mask Community design (n° 002526699-0001) ”



The defendant's mask

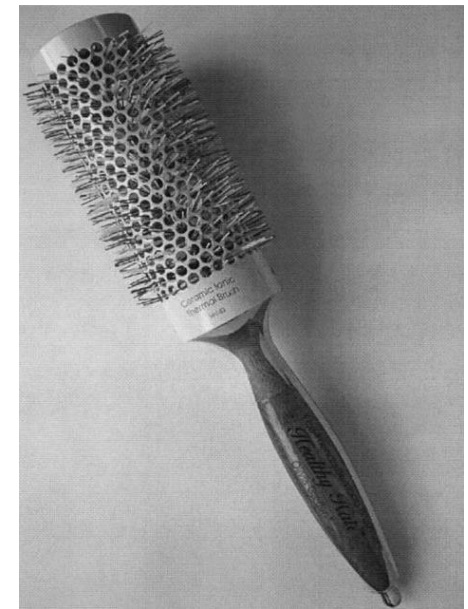


2. Designs

➤ Paris Court of Appeal, June 19, 2020



Thermal brush Community design
(n° 001188783-0002)



Prior thermal brush designs (n° 000380381-0002 and 000874664-0006)

Cumulative protection

- Conditions for protection :
 - Authors rights : originality
 - Designs : Novelty and proper/individual character
- Conditions for infringement
 - Authors rights : reproduction of original characteristics
 - chance encounter / « *rencontre fortuite* »
 - Registered design : same general impression
 - Non registered design : only the copy
- Assessment by the courts
 - Some confusion between the conditions
 - but separate assessment for each IP right

Cumulative protection

➤ Paris Court of Appeal, June 29, 2021



The plaintiff's ring



Community design
n° 002379511-0002

3. Trademarks

- European General Court, July 14, 2021, Case T-488/20,



The lipstick

The relevant public with a medium to high level of attention will be surprised by this easily memorable shape and will perceive it as significantly diverging from the norm and habits of the lipstick industry capable of indicating the origin of the goods concerned.



3. Trademarks

- Paris Court of appeal, June 15, 2022



3D trademark n° 3311926



3. Trademarks

- Paris Court of appeal, February 11, 2022
- EU General Court, December 14, 2022



3D trademark
n° 4549865



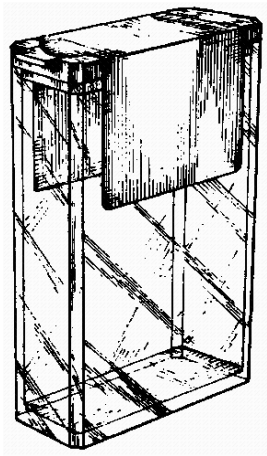
3D trademark
n° 001801166



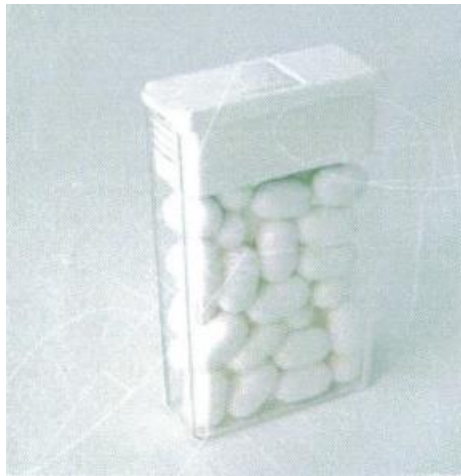
potato chips

3. Trademarks

➤ TIC TAC - FERRERO



FR 405.177



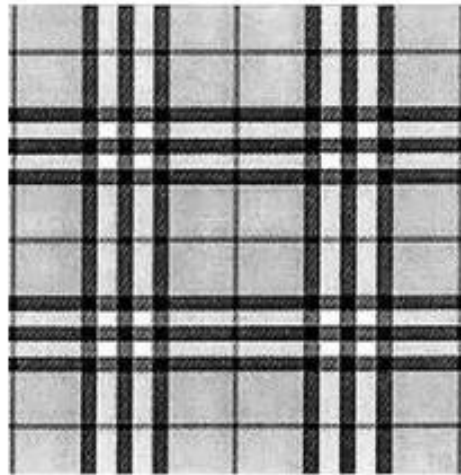
FR 07.3.485.937



TIC TAC PRODUCTS

3. Trademarks

➤ Paris Court of Appeal, January 29, 2019



The plaintiff's trademarks (EU :
n° 000377580 ; FR : n° 1510937)

The defendant's products

4. Unfair competition and parasitism

➤ Paris Court of Appeal, June 15, 2022



The plaintiff's jewelry (collection "Happy Diamonds")



The defendant's jewelry (collection "Dancing Diamonds")

4. Unfair competition and parasitism

➤ Paris Court of Appeal, February 1, 2022



The plaintiff's collections

The defendant's collections

4. Unfair competition and parasitism

➤ Paris Court of Appeal, February 15, 2023



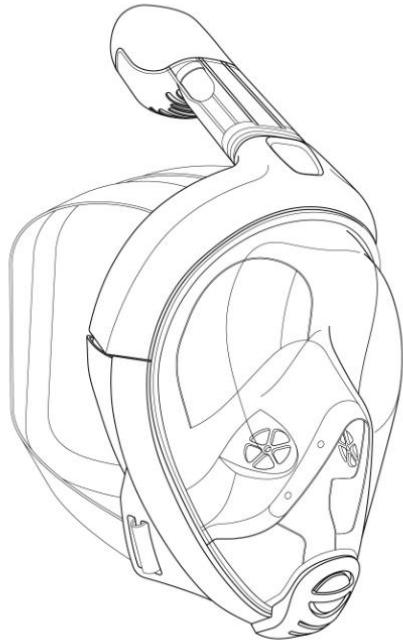
The plaintiff's design (EU : n° 2109439-0001 ; International : n° DM/080502), glasses, and advertising poster



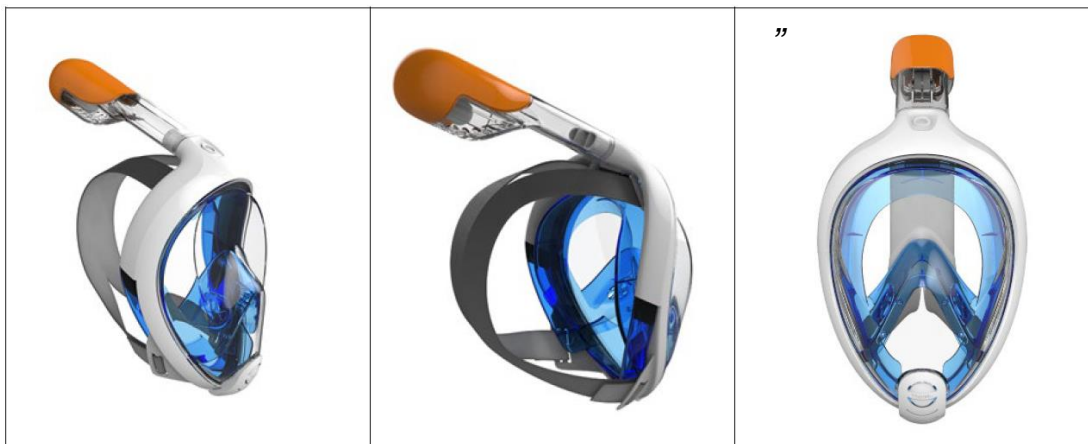
The defendant's glasses

4. Unfair competition and parasitism

➤ Paris Court of Appeal, January 28, 2022



The defendant's mask



4. Unfair competition and parasitism

- Paris Court of appeal, June 15, 2022



3D trademark n° 3311926



4. Unfair competition and parasitism

- Paris Court of appeal, June 1, 2022



5. Designations of origin

- Court of Justice of the European Union, December 17, 2020
- Paris Court of appeal, November 18, 2022



Morbier



Montboissié

6. Plurality of protections

➤ Court of Cassation, July 1, 2008

- ❖ Several trademarks (n° 95564538, 95587225, 92440690 and 92440946)



The plaintiff's perfume bottles
(Le Mâle and Classique)



- ❖ A design (n° 942417 – Le Mâle bottle)



- ❖ Author rights (Classique bottle)

6. Plurality of protections

➤ Court of Cassation, July 1 2008



The plaintiff's perfume bottles
(Le Mâle and Classique)



The defendant's perfume bottles

6. Plurality of protections ?

- Court of Appeal of Lyon, March 16, 2023



The plaintiff's perfume bottles
(Le Mâle and Classique)



The defendant's perfume bottles

CONCLUSION ?

- Authors rights
- Designs
- Trademarks
- Unfair competition and parasitism



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Intellectual Property Law (trademarks, designs, copyrights)

Audiovisual Law

Unfair competition and parasitism

The logo for DTMV Avocats is centered on the slide. It features the letters 'DTMV' in a bold, black, sans-serif font, with a red diagonal slash on the 'V'. Below this, the word 'AVOCATS' is written in a smaller, red, sans-serif font, flanked by two small black dots. The background is a light gray gradient with several large, semi-transparent decorative shapes: a red semi-circle with vertical lines on the left, a large light blue semi-circle behind the logo, a smaller light blue circle below it, and a red abstract shape on the right.

DTMV
· AVOCATS ·

Thank you for your attention.