

“INFORMED USER” IN DESIGN LAW AND SOME PROBLEMS IN PRACTICE – 2003

The differences in the design which is escaped a normal user's notice is regarded since it is evaluated whether the design has an individual character or not with the eye of the informed user. However, immaterial details would not be regarded because this evaluation could not be made with the eye of an expert.

The law maker may respectively choose the following persons in determining the person who decides whether a design has an individual character: a) an ordinary person in society who has medium level intelligence, b) concerned user, c) informed user, d) Expert (designer). This sequencing shows sequencing from inattentive persons to attentive persons.

It is a right approach to prefer the eye of the enlightened user who makes a higher level evaluation instead of the eye of an ordinary customer/buyer since the disputes relating to design has a more complex system compared to the disputes regarding trademark and unfair competition. Having said this, it would have been truer if “*the eye of concerned user*” which has more objective features and gives better responses to the necessities of the practice has been chosen.