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## Criminal sentence handed down for possession of handbags infringing Robin Ruth Group's design

Spain - [Grau & Angulo](#)

- In 2013 defendant signed settlement agreement undertaking not to infringe any design owned by Robin Ruth Group
- In 2014 police found handbags infringing Robin Ruth Group's design in defendant's warehouse
- Court found that both subjective and objective elements of crime were present

On 11 October 2018 the Trial Court Number 1 of Arenys de Mar sentenced the defendant for committing a crime against intellectual property, as set out in Article 273.3 of the Spanish Criminal Code. The case related to the infringement of a Community design consisting of the name of a city written several times in a particular typography, with one of the words highlighted in a different font size.

### Background

In August 2014, following a criminal complaint filed by the owner of the design (the Robin Ruth Group), the police found 240 handbags infringing that design in the defendant's warehouse.

Of crucial importance was the fact that, in May 2013, the defendant signed a settlement agreement with the Robin Ruth Group following the seizure of hundreds of products infringing other designs owned by the Robin Ruth Group, whereby the defendant undertook not to infringe either those designs or any other design owned by the same holder in the future.

### Decision

The court acknowledged that a crime had been committed, since both the subjective and objective elements of crime were present.

With regard to the objective element of crime, it was proved that the defendant possessed and introduced the infringing products into trade. The court, following the criteria set out by the Appeal Court of Barcelona in its judgment dated 25 May 2018, stipulated that the "introduction into trade" is, apart from distribution, "any conduct in which the protected object is put within the reach of third parties (including instances when nobody claims or purchases the object)". In short, "the objects have been placed in a way that makes them available to third parties, who are interested in purchasing them".

With regard to the products, the court relied on expert reports and affirmed that the report drafted by the police provided more credibility, given that a judgment must be objective and neutral. Such report found that the differences existing between the products were aimed at masking the fact that they were copies and that the seized products made the same general impression as the original ones.

Further, the court held that the criminal intention (subjective element) resulted from the contradictions between the defendant's cross-examination and the documentary evidence (signed agreement) included in the case, as well as the defendant's silence when faced with certain questions from both the private prosecutor and the public prosecutor.

The court, in accordance with the Appeal Court's aforementioned judgment, confirmed that the legal right protected in criminal offences against IP constitutes:

*the right to use or exploit exclusively an intellectual property right which derives from the official register (...) or the protection guaranteed by the warning of the criminal regulation of the power to prevent third parties from carrying out acts reserved for the owner of such right.*

The judgment is currently pending appeal by the defendant.

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### TAGS

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