

The Supreme Court allows the imitation of a style with competitive distinctiveness where the imitator discharges the “burden of differentiation” against the risk of association, assessed in light of all the circumstances of the case (*Mr. Wonderful v Ale-Hop*)

1. In its recent judgment of 10 September 2026,¹ the Spanish Supreme Court dismissed the extraordinary appeal for procedural infringement and the cassation appeal lodged by Mr. Wonderful Communication S.L. (**Mr. Wonderful**) against the judgment of the Provincial Court of Valencia, which had upheld the dismissal by the Commercial Court No. 5 of Valencia of its unfair competition claim against Clave Denia, S.A. and Clave Denia Canarias, S.L. (**Ale-Hop**).

2. Relying on Article 11 of Act 3/1991 of 10 January on unfair competition (**LCD**), Mr. Wonderful claimed that Ale-Hop had unfairly imitated its style (drawings endowed with human expressions combined with short messages). Its other claims under the LCD were rejected by the lower courts. Mr. Wonderful did not invoke its registered industrial designs, which the Supreme Court described as “telling”: the LCD cannot create exclusive rights that design law does not confer.

3. The Supreme Court restated its case law that Article 11.1 LCD lays down freedom of imitation as the general rule for business offerings not protected by an exclusive right, so that, absent such a right, imitation is unfair only where the additional circumstances set out in paragraphs 2 and 3 of Article 11 LCD are present. The significance of the judgment lies in the risk of association (Article 11.2 LCD). Following its earlier case law, the Supreme Court accepted that Mr. Wonderful’s designs enjoy “*competitive distinctiveness*” (*singularidad competitiva*), a necessary condition for a risk of association with the imitated offering, and that Ale-Hop came close to them, but held that this is not enough to establish unfairness. Competitors may approach, and even reproduce, another’s offering, provided they discharge the “*burden of differentiation*” (*carga de diferenciación*), that is, provided they take the measures necessary to eliminate the risk of association. Whether they have done so is assessed as a whole, from the perspective of the average consumer and in light of all the relevant circumstances. In this particular case, Ale-Hop’s own brand and the layout of its stores were sufficient, and the Supreme Court declined to substitute its own assessment for that of the Provincial Court.

4. The Supreme Court also rejected the other two grounds. Unfair exploitation of another’s effort requires a significant and unjustified cost saving, which the Supreme Court related to the costs of recreating the offering, which Mr. Wonderful did not prove, rather than to production or marketing costs. Nor was systematic imitation under Article 11.3 LCD proven, either quantitatively (number of products imitated, basis of calculation, period) or as regards its predatory purpose, since Ale-Hop was already using similar designs before Mr. Wonderful existed and numerous competitors offer similar products. Mere coincidence with aesthetic trends widely used in the sector is therefore not enough.

5. In short, the judgment confirms that, under Article 11.2 LCD, the decisive factor is not so much the distinctiveness of what is imitated as the conduct of the imitator: proving that one’s own style is distinctive is not enough if the competitor differentiates itself sufficiently.

¹ Judgment 1408/2026 of the Supreme Court of 10 September 2026, *Mr. Wonderful v Ale-Hop* (ECLI:ES:TS:2026:3682).