

AI in design: legal essentials

Sergio Rizzo
Member of the Boards of Appeal - EUIPO

epda LIVE FLASH
24 March 2026

Part I

Setting the issues





The *European Union Intellectual Property Office (EUIPO)* is an EU agency based in Alicante, Spain.



EUIPO is responsible for managing:

- EU trade marks (EUTMs)

PRADA



- Registered EU designs (EUDs)

- Geographical indications (GIs) for craft and industrial products

- European and international cooperation in the field of intellectual property (IP)

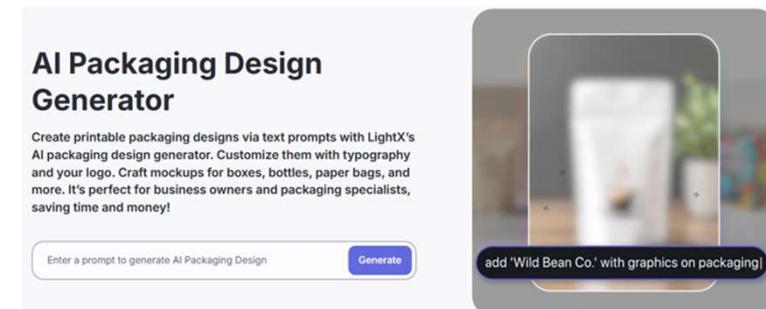
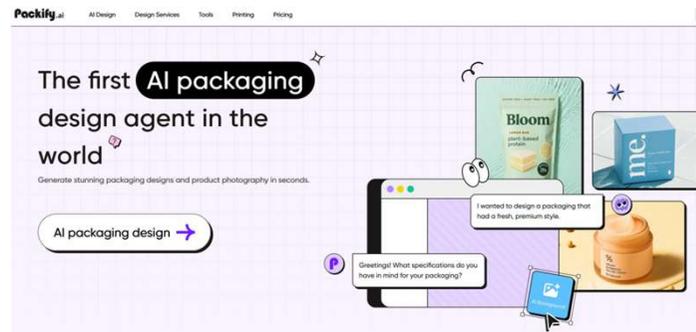
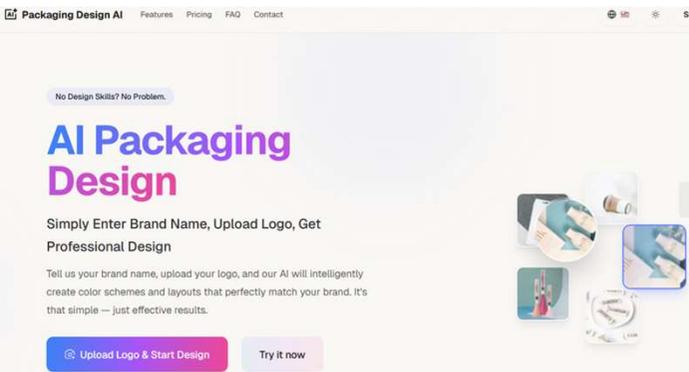
- European Observatory on Infringements of IP Rights

Why this session matters

- AI now embedded in packaging workflows
- Clients ask: 'Who owns it? Is it safe? Can we register it?'
- EU institutions and case-law are rewriting the rules

Three big questions

- Can AI assisted designs be protected?
- Who owns and authors AI supported work?
- What are the legal risks...and how to mitigate them?



How AI is used in packaging today

Generative ideation (moodboards, concepts)

Structural and material variants

Colour/texture/label exploration

Quick mock ups & virtual prototyping

.....



Five legal tensions



1. Human authorship vs AI generation
2. AI output similarity & infringement risks
3. Dataset legality (training data)
4. Protecting AI-assisted designs
5. Transparency, confidentiality & data protection

Key principle in the EU

The EU IP system is **human-centric**

- Only humans can be authors
- Purely machine generated content \neq protectable
- AI is a tool, not a rights holder



Part II

What can be registered as an EU Design?





EU design protection: essentials

Protects the **appearance** of:

- Lines & contours
- Colours & textures
- Shape & structure
- Surface decoration
- Including packaging & get up

"Design" means

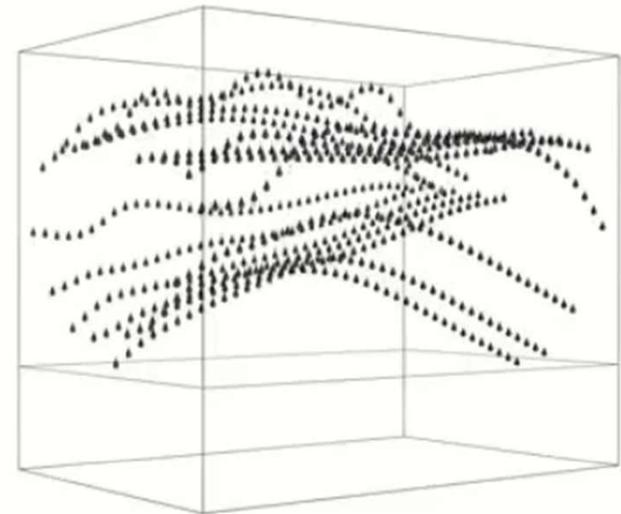
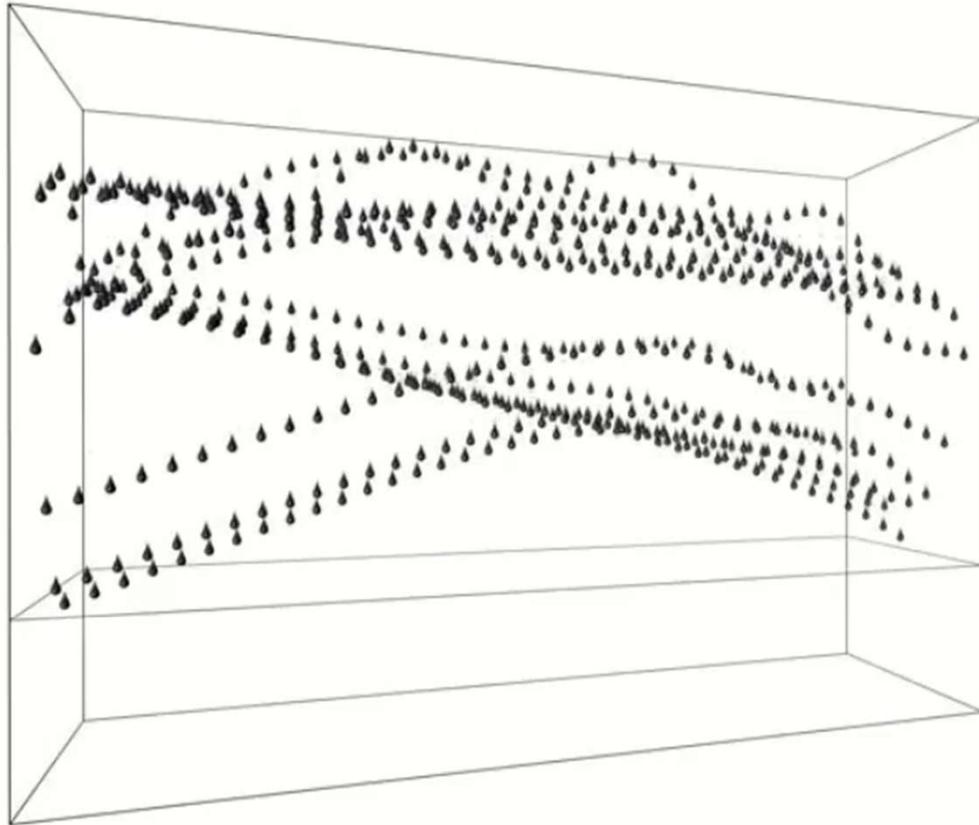
the appearance of a product or part thereof resulting from the characteristics, in particular the lines, contours, colours, shape, surface structure and/or materials, of the product itself and/or its decoration, including movement, transitions or any other type of animation of these characteristics.

Definition of “product”

"Product" means

any industrial or handcrafted object, other than computer programmes, **regardless of whether it is incorporated into a physical object or rendered in non-physical form**, including:

- a) **packaging**, assortments of items, the arrangement of objects in space intended to create an indoor or outdoor environment, and components intended to be assembled to form a complex product;
- b) graphic works or symbols, logos, surface decoration patterns, typefaces and graphical user interfaces;







Requirements for protection (EU designs)

New: the design must not have been disclosed prior to the date of filing of the application for registration (except for a 12-month grace period for disclosures made by the owner).



Individual character: it must produce an overall impression that is different from earlier designs (according to the 'informed user').



The appearance must **not** be dictated solely by technical requirements.



Not contrary to **public policy**: the design must not be offensive or illegal.

Important: AI does not change these tests

Quick reminder: novelty vs individual character





Benefits for packaging designers

- Shape + graphics protected
- Quick, cost effective registration
- Prevents copycats across EU
- Stronger client confidence



AI doesn't diminish these protections, as long as your creative involvement is clear

AI assisted designs: registrable?

YES — if human creative choice exists:

Protection depends on:

- Human shaping the concept
- Human selecting among variations
- Human editing / curating
- Final aesthetic controlled by a person

NOT registrable:

- Designs produced with no significant human involvement
- Fully autonomous AI outputs

Munich District Court, 13 February 2026 (142 C 9786/25)

- A ‘work’ exists only where the output reflects free and creative human choices
- AI must function as a tool, not as the creative instrument
- Lengthy, iterative or complex prompts do not suffice if creative decisions are ultimately left to the AI

Conclusions:

- ✓ ***Human influence must dominate the output to such an extent that the result can be regarded as the author’s own original creation***
- ✓ ***Human creative direction must be visible, dominant and documentable***

Risk: purely AI generated outputs

- If 100% AI-generated → no author
- Without an author → no ownership
- Without ownership → no valid design registration
- Without rights → no exclusivity

Human involvement must be genuine and properly documented

Securing protection when using AI

Document creative contribution

Clearly record the purpose and vision behind the creative work for protection and clarity

Track variants and paths

Keep track of different design versions and selection paths to preserve creative evolution (“we chose this because...”)

Show manual editing steps

Highlight manual changes made by designers to emphasize personal contribution in the work

Record final aesthetic decisions

Document final design choices to secure ownership and maintain human fingerprints in the work

Keep visible human fingerprints

Example

Initial autonomous AI output → **not protectable**

(prompt: 'Create a black-and-white design of a perfume bottle, isolated on a plain background')



2nd version after some designer's contribution → **protectable?**

Final version after several designers' refinements → **protectable**



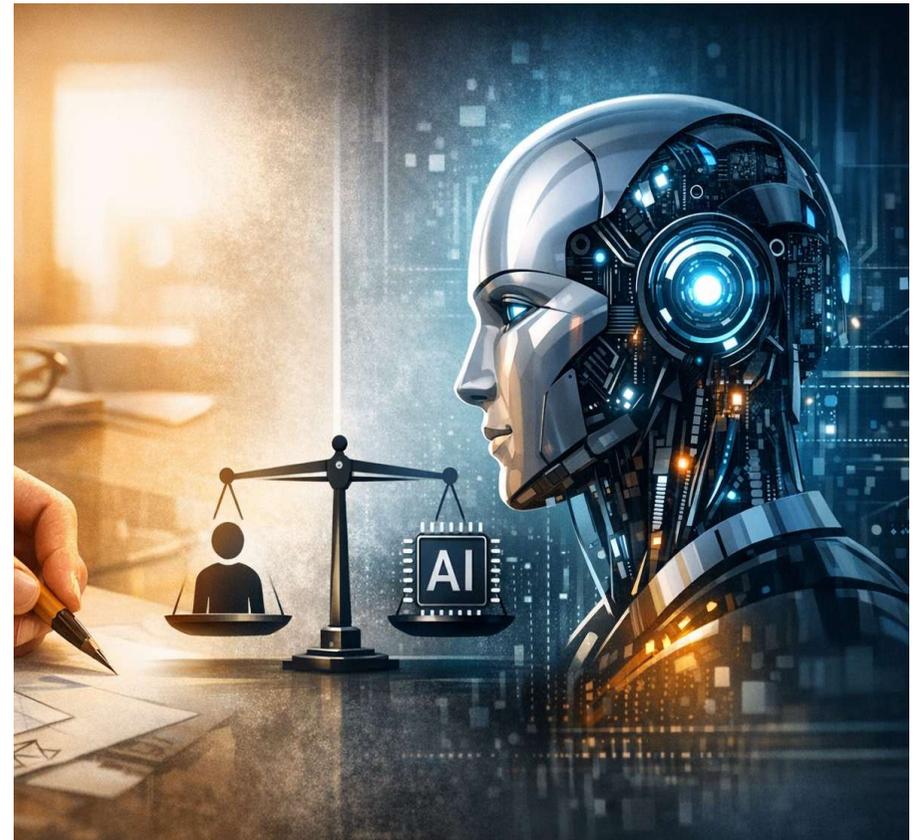
Part III

**Authorship, liability,
contracts, data, future...**



Authorship recap

- ✓ **Only humans = authors**
- ✓ **AI alone ≠ author**
- ✓ **AI assisted works = OK, if human creative choices exist**
- ✓ **Keep internal evidence of decisions**



Copyright ownership

If human creativity is **present**:

- Your agency owns copyright
- You can assign or license to the client
- You can enforce against copycats

If human creativity is **absent**:

- Output is public domain
- You cannot claim exclusivity
- Clients may lose protection

Making the human role visible protects both you and your client

Liability for infringement

AI increases speed...but also risk:

- If AI-assisted output infringe on existing IP rights, you are liable
- Clients become liable when they commercialize infringing designs
- AI providers generally avoid liability unless training practices were unlawful

Mitigation: human editing + similarity checks

Contractual clauses designers should now include

1. **Transparency**: we use AI tools in parts of the process
2. **Human authorship warranty**
3. **Ownership** clause: rights vest in the agency
4. **Non infringement commitment** with reasonable checks
5. **Limitation of liability** for unforeseeable AI artefacts
6. **Data protection** clause
7. **No-input-to-public-AI** clause

Sample AI-related contract clauses (illustrative examples only)

Transparency clause

'The Agency may use artificial-intelligence tools at specific stages of the creative process (including ideation, variation generation and internal prototyping). AI tools support the workflow but do not replace human expertise, judgement or authorship. The Client may request information on the stages where such tools have been used'.

Reasonable non-infringement commitment

'The Agency shall exercise reasonable skill and care to ensure that the Deliverables do not knowingly infringe third-party intellectual-property rights. This includes reasonable similarity checks and the use of legally compliant AI tools. The Agency does not warrant that the Deliverables will never resemble existing works, and the Client accepts that absolute certainty cannot be guaranteed'.

Human authorship guarantee

'The Agency warrants that all Deliverables incorporate meaningful human creative choices and reflect human authorship under applicable EU copyright and design law. No Deliverable consists solely of autonomous machine-generated output'.

Data protection (GDPR + EU AI Act)



Do not upload into public AI tools:

- Client confidential information
- Unreleased packaging designs
- Brand guidelines
- Sensitive product data

Inputting these into a public AI could breach confidentiality agreements or even lose trade secret protection

Use enterprise / closed models only

Transparency obligations (EU)

- No need to label packaging as “AI generated”
- Duty applies only to synthetic images of real persons (“deepfakes”)
- Obligation is B2B (client transparency), not B2C (consumer)

Future EU developments

Expected trajectory:

- Clearer copyright rules for AI assisted works
- Transparency and traceability obligations for training datasets
- Growth of legally licensed image and design datasets
- Full entry into force of EU Design Reform (Phase II)

What designers/agencies should do now

Define a Responsible AI workflow

Establish workflows that ensure AI is used ethically and responsibly across all projects

Use only compliant, controlled AI tools

Employ AI tools that comply with regulations and maintain control over AI outputs

Document human contribution

Keep records of human oversight and decision-making in AI processes to ensure accountability.

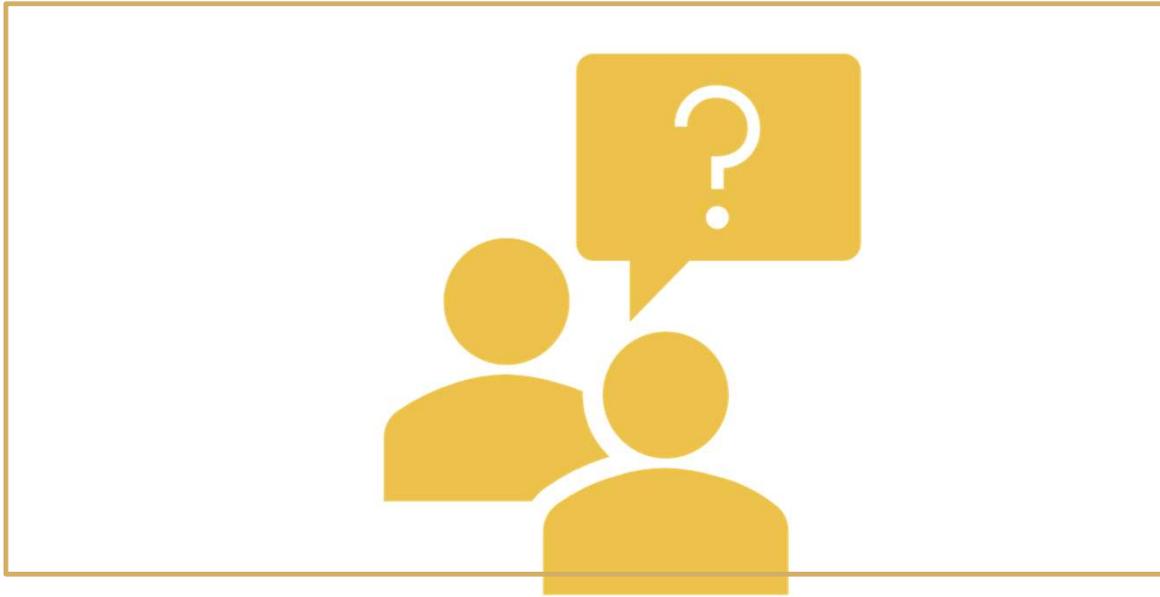
Update Contracts and Training

Regularly update contracts and train design teams on AI ethics and best practices

Key takeaways

- AI is a **tool** — creativity and protection still depend on you
- AI assisted designs are protectable
- Fully AI-generated designs are not
- Liability sits primarily with the agency
- Clear processes = safer work + happier clients







Sergio RIZZO
Boards of Appeal
EUIPO



www.euipo.europa.eu

 [@EU_IPO](https://twitter.com/EU_IPO)

 [EUIPO](https://www.linkedin.com/company/euipo)

 [EUIPO.EU](https://www.facebook.com/EUIPO.EU)

Thank you!