

Protecting your designs

In the 21st century designers are acutely aware that plagiarism is easier than it has ever been before. A new design can be dissimilated within seconds by the click of a mobile phone camera, a new post on a blog or a website accessed around the world. It is no wonder that designers are wary to exhibit their work before first ensuring that their intellectual property rights are covered. Some who work in the creative industries say that there's little point in trying to stop others from copying you. In fact various intellectual property rights can be available to protect the creators of original work.

While it is well known that copyright automatically subsists in literary, artistic and musical works, industrial designers may not be aware of the additional range of design rights available to protect products that have a unique visual appearance. In fact there is a dual system of both unregistered and registered design rights.

Unregistered design right is similar to copyright in that it arises automatically for an original design relating to a three-dimensional shape or configuration. Design rights last for either 10 years after products made to that design are first marketed, or else 15 years from creation of the design, whichever is earlier. Unregistered design rights can be useful for protecting short-lived products. Designers can rely on these rights at any time while they are in force, even if they had not been aware of the protection available, and take action against copyists to stop them and/or claim compensation. No registration fees are payable as the rights arise automatically.

However, like copyright, to enforce your design right you need to prove that copying took place so designs created independently are exempt. Also, unregistered design right in the UK cannot protect two-dimensional designs such as surface patterns or ornamentation. There is therefore a limit to the protection available from unregistered design rights alone.

Designers who market new products based on their unique appearance should consider the value of applying for a design registration to give them exclusive rights. A design registration can cover all visual aspects of a product, both 2D and 3D, including the shape, lines, contours, colours, texture, materials and ornamentation. Importantly, registered design rights provide protection for any product giving the same overall visual impression as the registered design, regardless of whether or not it is an exact copy or even whether or not it was made with knowledge of the protected design. This means that you can potentially stop others from marketing products that look similar to yours, so that the unique impact of your design is not diluted. Where sales are based on the appearance of a product, designers should look at incorporating the cost of design registration into their business plan.

A benefit of design registration is that the initial registration lasts for five years but can be renewed up to a maximum of 25 years, usefully covering the lifespan of many products. Both UK and European-wide registrations are available and in both cases an application can be delayed up to 12 months from the first public disclosure of the design so that you have an idea of the commercial value of the design before applying.

Advertisement of a design registration, for example by displaying the registration number, can be a potent deterrent to would-be copyists. The existence of a design registration is often enough on its own to stop others from copying, as they will not want the expense of defending themselves from legal action.



In addition to providing you with protection for your own products, design registrations can be a lucrative business asset. You may seek to sell your design registration outright or to license it for a royalty fee, potentially giving you a regular source of income. The value of such transactions could far outweigh the registration costs. Moreover, without a design registration look-alike products could be marketed legally as soon as your unregistered design rights have lapsed. Design registrations can therefore help you to maximise revenue, e.g. up to an additional 15 years, in return for your creative investment.

There is also a benefit to society if you register your designs, as they will be published and become available in a searchable database. The public can therefore see the latest developments in design technology and know which designs can be used freely once the registrations have ceased. Rather than encouraging plagiarism, such freedom of information has in fact become part of the lifeblood of modern creative industries.

You may wish to seek advice from a specialist patent and design attorney if you are interested in applying for a design registration. Further help and information is also available from the Intellectual Property Office.

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