



OFFICE FREYLINGER
PATENT AND TRADEMARK ATTORNEYS



INDUSTRIAL DESIGNS

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The appearance of a product is often its best sales argument and buyers are often drawn to eye-pleasing products. All products that have a new appearance and produce an impression, different from known ones, may be protected.

WHY PROTECT THE DESIGN OF A PRODUCT?

If the appearance of a product is its selling point, the appearance is valuable, in that it has the ability to promote sales or encourage customers to buy the product again. The appearance thus creates a financial value. Furthermore, if others can use identical or similar images or shapes, they may draw customers away from the original products.

ADVANTAGES OF INDUSTRIAL DESIGNS

One of the advantages is to materialize the rights to the appearance of a product and to therefore protect its value. By obtaining a right opposable to third parties, it will be possible to apply for injunctions to stop the infringement of design rights and to obtain a seizure of goods or other sanctions such as damages.

DESIGN RIGHTS

There are two types of design rights: the unregistered design right and the registered design right. An unregistered design right protects a creation as from its first publication or first disclosure on the market. Such a right is however limited to three years and confers a protection against deliberate copy only. It will therefore be necessary to prove the rights on the design and to prove that the infringing party did have knowledge of the original design.

REGISTERED DESIGN RIGHTS

The advantage of the registered design is to provide a protection not only against deliberate copies, but also against confusingly similar designs. Registering the design will provide a stronger and more efficient way to acquire a monopoly right on the design and to prevent any third party from manufacturing and/or commercialising copies of the registered design or confusingly similar products.

TERM OF PROTECTION FOR REGISTERED RIGHTS

The maximum duration of protection is 25 years; the first protection period lasting 5 years and being renewable for successive 5-year periods.

SERIES OF REGISTERED DESIGNS

It is possible to cover a series of designs in a single “multiple” application. These designs need not be related, but must belong to the same family of products. This “multiple” application is very useful for protecting product lines, a series of 3-D models, toys, cartoon characters, etc.

CRITERIA FOR PROTECTION

The designs that can be protected have to be visible to the end user. This covers the lines, contours, colours, shape, texture and/or materials of a product or its ornamentation. For example, a new form of packaging or a new texture applied to a product can be protected. The designs protect only the appearance and cannot be used to protect, for example, hidden parts of a vehicle, such as couplings, or designs, which are solely dictated by the product’s technical function.

NOVELTY

A design has to be new. If it has already been disclosed, it will nevertheless be possible to obtain a registered design, provided that the application for registration is filed within 12 months after the first disclosure. However attractive it may seem to defer filing until the commercial success of the design is proven, it is highly recommendable to register the design as soon as possible. This will avoid any uncertainty on the rights resulting from third parties’ creations during this 12-month “grace period”.

OWNER OF THE DESIGN RIGHT

It is presumed that the applicant is the owner of a design right. If the creator of the design is an employee, the rights on the design are automatically transferred to the employer. If the design results from a contract with an external party, an assignment of the rights must be secured by written agreement.

OFFICE FREYLINGER PROPOSES TO:

- determine whether a design can be registered;
- carry out searches to establish existing prior rights;
- handle applications up to registration;
- advise on possible infringement, draft and engage infringement and cancellation proceedings before the offices and the specialised design courts;
- help you in all other aspects relating to your design and other intellectual property rights.

Please contact us for additional information or documentation.