

brief guide to designs

From an Intellectual Property perspective a design consists of the appearance of a product or a part of a product. It can include the lines, contours, colours, shape, texture or materials of the product or its decoration.

It includes, for example, the shape of a product or packaging, the decoration applied to a product or the appearance of a graphic symbol.

Some Design Rights arise automatically while others must be registered to provide protection. The differences between these rights in the UK and the European Union (EU) are outlined below.

UK Registered Design

A UK Registered Design will protect the appearance of a product or part of a product. It can include the lines, contours, colours, shape, texture or materials of the product, its decoration or any combination of these.

It is the design itself which is protected by registration, not the product to which it is applied. Examples of designs which can be protected include packaging, containers and labels

It is also possible to file applications in respect of two dimensional “graphic symbols”. A logo brand could qualify as a graphic symbol so Registered Designs can be an effective complement to your registered Trade Mark protection in respect of brand identities which incorporate a design element. In order to be registrable a design must be novel and have individual character.

These standards are assessed in the context of

designs publicly disclosed before the filing date of the Registered Design in question.

An exception to the novelty requirement is that there is a 12 month grace period for filing applications in respect of designs which have been disclosed by the designer. This enables test marketing before making the application but may prevent you obtaining valid Design Registrations in foreign countries, particularly outside the EU, as many do not allow any disclosure prior to filing.

It is possible to include more than one design in a single application and costs are reduced for any subsequent designs included in the same application.

Registered Community Design

The basics of a Registered Community Design are similar to those outlined in relation to UK Registered Design.

However, the protection given by a Registered Community Design extends to all 28 member states of the EU. It is a cost effective way of obtaining protection throughout Europe.

In addition, with a Registered Community Design, it is possible to include more than one design in a single application and costs are reduced progressively as the number of designs included is increased. This is another cost effective feature of the Community system.

There is a 12 month grace period to allow for test marketing before applying for protection.

Unregistered UK Design Right

This right comes about automatically when an item is made to a particular design or a document is created which consists of a record of the design, as long as the designer is a national of the EU or of a non-EU country offering reciprocal protection to UK nationals.

Only original designs which are not common place in their field qualify for UK Unregistered Design protection and there are specific exclusions to designs consisting of certain features, such as surface decoration; or elements which enable the article to match another item, such as a spare part.

A Design Right allows you to stop anyone from copying the shape or configuration of the article, but does not give you protection for any two-dimensional aspects of your design, for example surface decoration.

Protection is limited to the United Kingdom and lasts either for 10 years after the first marketing of articles that use the design, or 15 years after creation of the design - whichever is earlier.

For the last 5 years of that period the design is subject to a Licence of Right; this means that anyone is entitled to a licence to make and sell products to the design.

How can we help you?

We can advise you on all aspects of Design Law from clearance to registration and enforcement. As well as how to use Design Law to best protect your Trade Marks.

Once you have made a decision on the best strategy for you we can implement appropriate design filings in all design jurisdictions around the world and take care of all registration and maintenance requirements.

Unregistered Community Design Right

This is a right which comes about automatically, coming into effect only after the design has been made available to the public in the EU. Providing protection for the appearance of the whole or part of a product, i.e. any industrial or handicraft item, including typefaces and graphic symbols.

There is no restriction as to the nationality of the designer in relation to Unregistered Community Design rights, so non-EU nationals are entitled to enforce such rights.

In order to qualify for protection the design must be novel and possess individual character which means it must produce a different overall impression from any design which has already been made available to the public.

There are limitations to the protection given in respect of certain features of the product designed, for example features dictated by function or elements which enable the article to match another item, such as a spare part.

An unregistered Community design protects a design for a period of three years from the date on which the design was first made available to the public within the EU.

An unregistered Community design confers on its holder a right to prevent copying.

Unlike unregistered design rights in the UK, a Community unregistered design protects surface decoration.

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