



INDUSTRIAL DESIGNS



OFFICE FREYLINGER
PATENT AND TRADEMARK ATTORNEYS



INDUSTRIAL DESIGNS

The appearance of a product is often its best sales argument and buyers are often drawn to eye-pleasing products.

All products or software that have a new appearance and produce an impression, different from known ones, may be protected.

WHY PROTECT THE APPEARANCE?

The appearance of a product is a valuable sales argument, in that it has the ability to promote sales or encourage customers to buy the product again. The appearance thus creates a financial value that must be protected.

For software, the ergonomics of the screens is indispensable and also represents a considerable investment, which must be defended.

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 materialise the rights to the appearance of a product or screen 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..

PROTECTED DESIGN RIGHTS

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. They cannot protect hidden parts of a product.

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. It is however recommended to register the

design as soon as possible to avoid being confronted to third party rights obtained prior to filing, particularly on similar designs.

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.

DESIGN RIGHTS

In Europe, there are two types of design rights: the unregistered design right and the registered design right. The unregistered design right protects a creation as from its first publication or market introduction. 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 registered design provides protection not only against deliberate copies, but also against confusingly similar designs using a single simple registration procedure.

It is generally possible to protect a series of designs concerning the same type of product or representation in a single "multiple" application.

A publication of the application can be postponed up to 30 months. This allows protecting the design without disclosing current or future commercial developments.

The first protection period is 5 years. This is renewable for successive 5-year periods, up to a maximum of 25 years.

Please contact us for additional information or documentation.

OFFICE FREYLINGER ASSISTS YOU WITH

- determining whether a design can be registered
- carrying out searches to establish existing prior rights
- handling applications up to registration
- advising on possible infringement, drafting and engaging infringement and cancellation proceedings before the offices and the specialised design courts
- all other aspects relating to your design and other intellectual property rights

This brief introduction is simplified and must not be taken as a definitive statement of the law or practice. Every effort has been made to ensure that the information contained in these pages is correct. However, not every detail of the law is covered. © OFFICE FREYLINGER | 03.2019

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