

DESIGN REGISTRATION CHECKLIST



What is Design?

Designs Act, 2000 has been promulgated to protect new or original designs created to be applied or applicable to particular article to be manufactured by Industrial Process or means. Sometimes purchase of articles for use is influenced not only by their practical efficiency but also by their appearance. The important purpose of design Registration is to see that the artisan, creator, originator of a design having aesthetic look is not deprived of his bonafide reward by others applying it to their goods

In most countries, an industrial design needs to be registered in order to be protected under industrial design law as a “registered design”. In some countries, industrial designs are protected under patent law as “design patents”

Industrial design laws in some countries grant – without registration – time- and scope limited protection to so-called “unregistered industrial designs”.

Depending on the particular national law and the kind of design, industrial designs may also be protected as works of art under copyright law.

What is meant by ‘Design’ under the Designs Act, 2000?

‘Design’ means only the features of shape, configuration, pattern or ornament or composition of lines or colour or combination thereof applied to any article whether two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye, but does not include any mode or principle or construction or anything which is in substance a mere mechanical device, and does not include any trade mark, as define in clause (v) of sub-section of Section 2 of the Trade and Merchandise Marks Act, 1958, property mark or artistic works as defined under Section 2(c) of the Copyright Act, 1957.

What is meant by an article under the Designs Act, 2000?

Under the Designs Act, 2000 the "article" means any article of manufacture and any substance, artificial, or partly artificial and partly natural; and includes any part of an article capable of being made and sold separately.

Registration of Design

Effect of Registration:

The Register of Designs is a document maintained by The Patent Office, Kolkata as a statutory requirement. It contains the design number, class number, date of filing (in this country) and reciprocity date (if any), name and address of Proprietor and such other matters as would affect the validity of proprietorship of the design and it is open for public inspection on payment of prescribed fee & extract from register may also be obtained on request with the prescribed fee.

What is a Register of Designs?

The registration of a design confers upon the registered proprietor 'Copyright' in the design for the period of registration. 'Copyright' means the exclusive right to apply a design to the article belonging to the class in which it is registered.

What is an artistic work which is not subject matter of registration?

An artistic work as defined under Section 2(c) of the Copyright Act, 1957 is not a subject matter for registration which reads as follows: "Artistic works" means: -

- A painting, a sculpture, a drawing (including a diagram, map, chart or plan) on engraving or a photograph, whether or not such work possesses artistic quality.
- An work of architecture, and
- Any other work of artistic craftsmanship

Benefits of Design Registration

- Registration of a design confers upon the registered proprietor 'Copyright' in the design for the period of registration
- Legal right to bring an action against those persons who infringe the design right
- Priority Claim under Paris Convention
- Design rights can be transferred, thus creating intangible asset

- **Design Requirements**

Essential requirements for the registration of 'design' under the Designs Act, 2000?

- The design should be new or original, not previously published or used in any country before the date of application for registration.
- The novelty may reside in the application of a known shape or pattern to new subject matter.
- The design should relate to features of shape, configuration, pattern or ornamentation applied or applicable to an article.
- The design should be applied or applicable to any article by any industrial process.
- The features of the design in the finished article should appeal to and are judged solely by the eye. This implies that the design must appear and should be visible on the finished article, for which it is meant.
- Any mode or principle of construction or operation or any thing which is in substance a mere mechanical device, would not be a registrable design. For instance a key having its novelty only in the shape of its corrugation or bent at the portion intended to engage with levers inside the lock associated with, cannot be registered as a design under the Act.
- The design should not include any Trade Mark or property mark or artistic works as defined under the Copyright Act, 1957.

Design Registration Documents

- Form 1 in the prescribed format (as in Schedule-II of the Designs Rules)
- Representations should be prepared as prescribed under Rule 12, 13 and 14 of The Designs Rules and should be submitted duplicate.
- Form-21(Power of authority/General Power of authority) in original(if filed through patent agent/advocates) (as in Schedule-II).If the applicant files copy of General Power of authority (GPA), it should be endorsed with the design application number, with which the original GPA has been filed.
- Form-24 in prescribed format(if small entity status is claimed) (as in Schedule-II)
 - (a) It should be accompanied with evidence of registration under MSME Act, 2006 in case of Indian entities.
 - (b) It should be accompanied with affidavit deposed by the applicant or authorised signatory as Rule 42 of Designs Rules in case of Foreign entities.
- Original Priority document under Rule 15 of The Designs Rules.
- Authenticated English translated copy of the Priority document (if original priority document is other than English)
- Assignment in original (if the applicant of priority application in convention country is different from Indian applicant)

Difference between Trademark & Design

Parameter	Trademark	Design
Definition	rademark is the logo or symbol for trade/business	An industrial design constitutes the ornamental aspect of an article. It may consist of 3D features, such as the shape of an article, or 2D features, such as patterns, lines or color.
Novelty and Innovation quotient	A Trademark can be anything from a word mark, logo to a shape to even a word. It has to be unique	A Design serves a particular purpose and an application. It is not merely a representation. it needs to be novel, unique and innovative.
Protection offered	A Trademark registration is meant to protect the mark that symbolises a business.	A Design registration is meant to protect the design of the product. How it looks and how it works are both protected..
Statutory Acts	A Trademark is protected under the Trademark Act 1999.	A Design is protected under the Design act 2000.
Period of Registration	A Trademark can is initially registered for 10 years, and in theory and be renewed for perpetuity	A Design is registered initially for 10 years and thereafter for a period of 5 more years. Thereafter, it cannot be further renewed

FAQs:

Q. How does a registration of design stop other people from exploiting?

A. Once a design is registered, it gives the legal right to bring an action against those persons (natural/legal entity) who infringe the design right, in order to stop such exploitation and to claim any damage to which the registered proprietor is legally entitled.

Q. Is it possible to re-register a design in respect of which Copyright has expired?

A. No. A registered design, the copyright of which has expired cannot be re-registered.

Q. How one can ascertain whether registration subsists in respect of any design?

A. For ascertaining whether registration subsists in respect of a design, a request should be made to the Patent Office, Kolkata. If the Design number is known, the request should be made together with prescribed fees. Each such request should be confined to information in respect of a single design.

Q. Why is it important for filing the application for registration of design at the earliest possible?

A. First-to-file rule is applicable for registrability of design. If two or more applications relating to an identical or a similar design are filed on different dates only first application will be considered for registration of design.

Q. Can the same applicant make an application for the same design again, if the prior application has been abandoned ?

A. Yes, the same applicant can apply again since no publication of the abandoned application is made by the Patent Office, provided the applicant does not publish the said design in the meanwhile.



**Good Luck
For Your Business**



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