

THE POWER OF DESIGN FOR MARKETING SUCCESS

IP AND BUSINESS



It is not surprising that consumers attach particular importance to the visual appeal of shoes and clothes they buy, or the look and style of gadgets or cars. The appearance of an article certainly counts in making a first impression on a customer, and often plays a decisive role in the final decision to buy or not. Smart businesses take note of changing consumer tastes and choices in order to develop and deliver better products, both in functional and aesthetic terms. Design, therefore, makes a critical contribution to overall corporate business strategy and success.

Effective use of design adds value to a product by creating variety in a world of commodities. Attractive designs help in differentiating between competing products and also in customizing and segmenting the market for a particular product, ranging from ordinary items such as locks, cups and saucers to potentially expensive items such as watches, jewelry and cars. Creating higher perceived value through aesthetically pleasing industrial designs helps build trust and lasting customer relationships which translate into higher market share, better prices and bigger profits.

Many companies have successfully redefined their brand image through strong focus on product design. Most senior managers recognize that design excellence brings stronger brand recognition and better profitability. Forward-

looking businesses create and choose appropriate trade names and logos to protect their corporate identity, brand image and the resultant competitive advantage, and also devote attention, in equal measure, to the creation and management of distinctive designs as part of their corporate strategy for identity and brand management.

Design Management Basics

First and foremost, diligent design management requires cost-effective protection of valuable designs to prevent the look of the product from becoming a commodity and freely imitated in less expensive look-alike products. This entails timely registration of new, novel, or original designs at the national or regional design office.

The terms “design”, “industrial design” or “design patent”, when used in intellectual property law and practice, have a specific connotation. In most cases they refer to the **visual appeal** – that is, the features of **shape, configuration, pattern or ornament**, or any combination of these features – of a finished article made by hand, tool or machine, as



opposed to functional features which may be protected by other types of intellectual property rights, such as patents, utility models or trade secrets. In many countries, the requirement of **visual appeal** of an article of manufacture or handicraft has been modified to that of **perceptible features** of appearance, and the rule of novelty has been replaced or supplemented by an individuality requirement.

Designs may be two or three-dimensional. Examples of two-dimensional designs are textile, wallpaper and carpet designs, and of three-dimensional ones are the shape of a toy, package, car, electrical appliance, mobile phone, piece of furniture or the shape and ornamentation of kitchenware. In certain circumstances, the features constituting a design may be the color, texture or material of an article. In some countries, computer icons have recently been protected as industrial designs.

Legal Options for Protection

Good design strategy must compare the various alternatives for protecting industrial designs, as there are different legal ways to prevent unscrupulous competitors from unauthorized copying. Legal options may include one or more of the following: protection under industrial design law, copyright law, trademark law – as a two or three-dimen-

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sional mark – and under unfair competition law. In some countries, the protection of these different laws may be mutually exclusive, in others it is cumulative to varying degree. It is advisable to seek expert advice.

Industrial design issues affect various types of business decision. For example, the type of protection and its cost or effectiveness may affect:

- ⇒ which details should be disclosed to the designer, especially when the designer is employed by a contractor;
- ⇒ whether to undertake design development entirely in-house, to contract or commission an outside agency or to do it jointly;
- ⇒ timing of the initial use of a new design in advertising, marketing or public display in an exhibition;
- ⇒ if and when to seek or continue to maintain design registration;
- ⇒ if and when to initiate action against unauthorized/infringing acts of competitors, counterfeiters or importers;
- ⇒ if and when to license or partially assign a design; and
- ⇒ if and when to register the design in other markets for export or for exploring the potential of entering into strategic business alliances, joint ventures, setting up wholly owned subsidiaries, etc.



Nature of Design Right

Most countries require registration of an industrial design as a condition for protection. Registration gives an absolute right that excludes all others from using the design for making, importing for trade or business or selling any article in respect of which the design is registered, and to which the design or a design not differing substantially from it has been applied. This right is for a limited period of time and subject to renewal. The maximum term of protection is 10 to 25 years, depending on national legislation. In many countries, an industrial design cannot be registered as such if it has been used or published before applying for design registration.

Only the owner of a design, namely the creator/author (or depending on the legislation and the context, his employer) or his successor in title, may apply for and obtain registration for an industrial design. If a number of persons have worked

together to create a design, then they must file for registration as joint owners – unless all of them are working under contract or on commission. While the application must be filed with the office competent for the country or region for which protection is sought, the Hague Agreement Concerning the International Deposit of Industrial Designs offers the possibility of obtaining protection for industrial designs in a number of countries through a single deposit made with WIPO. For more information on the Hague Agreement, please visit <http://www.wipo.int/hague>.

Basic information for filing an industrial design application and the possibility, where available on request, of the deferred publication of a design, which may be critically important for marketing fashion articles such as textiles, clothing or jewelry, can be obtained from the respective national or regional office. Hiring the services of a qualified agent is advisable for fully unleashing the power of a design in marketing, sales and other business transactions, including its valuation as an intangible asset.



For more information on various practical aspects of the IP system of interest to business and industry, please visit the website of the SMEs Division at www.wipo.int/sme.

The next article in IP and Business will discuss the role of intellectual property in protecting trade secrets.