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DESIGN LAW IN INDIA

Designs under the Indian Designs Act, 2002 refer to creative activity resulting in the ornamental or formal appearance of a product and thus the "Design Right" refers to a novel or original design that is accorded to the proprietor of a validly registered design. The essential purpose of design law is to promote and protect the design element of industrial production. It is also intended to promote innovative activity in the field of industries. The existing legislation on industrial designs in India is contained in the New Designs Act, 2000 and the present legislation is aligned with the changed technical and commercial scenario and made to conform to international trends in design administration.

FAQ –

1. Meaning of Design

Under Indian laws, the term Design means "features of shape, configuration, pattern or ornament or composition of lines or color or combination thereof applied to any article whether two dimensional or three dimensional or 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 any thing which is in substance a mere mechanical device, and does not include any trade mark, property mark or artistic works as defined under Section 2(c) of the Copyright Act, 1957".

2. Object of registration of Designs?

The object is to protect new or original designs so created to be applied or applicable to particular article to be manufactured by Industrial Process or means. The purpose 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.

3. Essential requirements for the registration of 'design' –

- (1) The design should be new or original, not previously published or used in any country. The novelty may reside in the application of a known shape or pattern to new subject matter.
- (2) The design should relate to features of shape, configuration, pattern or ornamentation applied or applicable to an article by any industrial process. Thus, designs of industrial plans, layouts and installations are not registerable under the Act. Similarly, the designs of artistic nature like painting, sculptures and the like which are not produced in bulk by any industrial process are excluded.
- (3) 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.
- (4) Any mode or principle of construction or operation or any thing which is in substance a mere mechanical device, would not be registerable design. However, when any design suggests any mode or principle of construction or mechanical or other action of a mechanism, a suitable disclaimer in respect



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there of is required to be inserted on its representation, provided there are other registerable features in the design.

4. Register of Designs

The Register of Designs is a document maintained by The Patent Office containing full details of the Design registered and is open for public inspection on payment of prescribed fee.

5. Benefits of registration and its duration

The registration of a design confers upon the proprietor 'Copyright' in the design for the period of registration. 'Copyright' here means the exclusive right to apply a design to the article belonging to the class in which it is registered. The duration of protection is initially ten years from the actual date of filing of the application further extendable for 5 years, but in cases where claim to priority has been allowed the duration is ten years from the priority date i.e. date of making an application in the reciprocal country. A registered design, the copyright of which has expired cannot be re-registered

6. Piracy of a Design

Piracy of a design means the application of a design or its imitation to any article belonging to class of articles in which the design has been registered for the purpose of sale or importation of such articles without the written consent of the registered proprietor. Publishing such articles or exposing terms for sale with knowledge of the unauthorized application of the design to them also involves piracy of the design.

7. Cancellation of Registered Design

The registration of a design may be cancelled at any time after the registration of design on any of the following grounds:

1. The design has been previously registered in India, or
2. It has been published in India or elsewhere, prior to date of registration, or
3. The design is not new or original, or
4. Design is not registerable, or
5. It is not a design under Clause (d) of Section 2.

8. Transfer of the ownership right

The transfer of the created rights created in the design registered is permissible through a written assignment / agreement.

9. Meaning of Priority Claim

India is one of the countries party to the Paris Convention so the provisions for the right of priority are applicable. On the basis of a regular first application filed in one of the contracting state, the applicant may within the six months apply for protection



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in other contracting states; latter application will be regarded as if it had been filed on the same day as the first application.

10. Lapse and restoration of Designs

Restoration of the lapsed design due to non-payment of extension fee within prescribed time is permissible. A registration of design will cease to be effective on non-payment of extension fee for further term of five years if the same is not paid before the expiry of original period of 10 years. However, new provision has been incorporated in the Act so that lapsed designs may be restored.

Check List of Information and Documents required for making application of Design Registration –

1. Full Name, Address & Nationality of the applicant
2. Name of the Article to which a design is applied
3. Photograph, tracings or other representations of the article to be registered as Design
4. Power of Attorney
5. Certified copy of the Convention application in case priority date is claimed.
6. Detail of convention Country