



Role of Copyright in the Protection of Design

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ABSTRACT

Protection of public health is a prime responsibility of the government and they do so by controlling the multiplicity of different, overlapping, intellectual property rights. The scope to protect the design has only been limited from traditional times. As a result of recent up gradation interaction between legislative changes harmonising in the term of protection for copyrights is to change based upon the decision taken by the government as per the consequences in the practice of designs legislation. The situation and the significance of design protection were discussed in this article.

Keywords: Copyright, Design, Protection, Intellectual property right.

INTRODUCTION

Regulatory affairs encompass a variety of disciplines and job responsibilities, which starts during the product development, its manufacture and continue till the product is widely available for use. An individual who ensure regulatory compliance and prepare submission as well as those whose main job function is clinical regulatory affair professionals¹. The consumers are provided with numerous alternatives for any single product. This has made the Indian consumers more selective. Present days, the producers have to not only prove their products reliability but they also have to satisfy the aesthetic appetite of the consumers². The producers spend huge capital in developing innovative design for catching the recognition of consumers by enhancing the appearance of their products.

DESIGN PROTECTION

The rationale for design protection is from US Supreme court's decision in the case, Gorhan MFG.Co.V. White, in which the court ordered that the essential rationale for design law are that the design right may enhance the design "saleable value", "may enlarge the demand for it", and may be a "meritorious service to public"³. Design protection will play an important role in the product development and in the marketing, increasing the competition of manufacturer or the vendor of the product. Hence it is necessary to protect design so as to reward the designer's creativity and to encourage future contribution⁴.

International treaties of design and their copyright interface

The Berne convention by article 2(1), mandate the protection of works of applied art as an example of artistic works. However by Article 2(7) it goes on to allow countries freedom to determine the extent of the application of their laws to works of applied and industrial

designs and models as well as the conditions under which such works⁵, designs and models shall be protected subject only to article 7(4). Berne convention provides that making an article to a design which is an artistic work does not infringe copyright in that artistic work if such artistic work has been exploited with the consent of copyright owner by being made by an industrial process and sold, if done more than 25 years after such exploitation and sale.

Articles 2(7) and 7(4) of the Berne convention make it clear that the obligation to protect works of applied art by copyright applies only is so for as such works are regarded under national laws as artistic works⁶.

Design protection in India

In India, the law of designs was governed by the Designs Act 1911. Since the enactment of the Design Act 1911, considerable progress has been made in the field of science and technology. Hence the legal system for the protection of industrial required to be made more efficient in order to ensure effective protection to registered designs. It was also essential to promote design activity in order to promote the design element in an article of production⁷. The Design Act 2000 replaced the Act of 1911 and it aims at protecting the designs in India and bringing the Indian law at par with International law.

The new act come into existence on 25/5/2000 and it consolidates and amends that related to the design protection. It appears and makes awareness in the field of science and technology which has taken place since the enactment of the old Act in 1911. 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 goods⁸.



COPYRIGHT IN DESIGNS

The established order to design protection by means of copyright is however now at risk. When a design is registered, the proprietor of the design shall have copyright in the design for ten years from the date of registration. A further extension of 5 years in the term can be obtained by making an application to the controller in the prescribed manner along with the prescribed fee if the application is made before expiring of the original term. The right is like a monopoly right given under the Patent act. There is an overlap of protection given to designs under both the designs act and the copyright act. But the copyright given in designs is not just copyright but monopoly rights⁸. It confers on the owner a right to protect the design from piracy through legal action.

If a design is capable of being registered under the Designs Act has not been so registered it will still have copyright under the Copyright Act. However, if the design pertains a commercially produced article, the copyright in the design under the Copyright Act ceases to exist, when such article has been reproduced more than fifty times by an industrial process by the owner of the copyright.

PROHIBITION OF REGISTRATION OF DESIGN

Design has been prohibited on the basis of not new or not original, design that has been published/disclosed to the public, not significantly distinguishable from known designs and comprises scandalous or obscene matter. Copyright and design gets overlap: there will be works that are both protectable under copyright law as well as under design law. Indian law has tried to resolve this by the provision of Section 15(2), copyright Act 1957⁹. Section 15(2), Copyright Act, 1957 states that copyright does not subsist in design registered under designs act. Design capable of being registered, but which has not been so registered copyright shall cease as soon as any article to which the design has been applied more than fifty times by an industrial process¹⁰. The registration of a design confers the period of registration. Copyright means the exclusive right to apply the design in respect of the article for which it is registered.

Design	Copyright
Complete monopoly	Only protects against copying
Registration to claim protection	Automatic protection
Novelty and Originality	No requirement for novelty
10 plus 5 years	Life of author+60 years
Only in respect of goods registered for	Is not goods specific

CONCLUSION

An individual design is the ornamental or aesthetic aspect of an article; it may consist of three dimensional feature such as shape or surface, 2-dimensional features such as pattern, lines or colours. The Act protects shape, not function; it does not protect even the functional shape. A rationale basis for the protection of design is reward the designer's creativity and to provide incentives for future contributions however, a balance must be maintained between such reward and the longterm goal of promoting composition within a market based memory.

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