

EU WIDE PROTECTION FOR DESIGNS

In December 2001, a new Regulation was adopted by the Council of the European Union. The Regulation deals with both Registered and Unregistered Design Rights and will enable designs to be protected throughout the EU.

What is a design?

A design is defined as the appearance of a product or of some of its parts. The features that constitute the design are the lines, contour, colour, shape, texture, material or ornamentation.

Unregistered Community Design Right

The provisions for obtaining an Unregistered Community Design Right came into force on 6 March 2002. The right comes into existence automatically once products incorporating the design are made available to the public.

The right will last for three years and will enable the owner of the right to prevent competitors from copying the design anywhere within the EU. Although the term of protection is relatively short, it will be particularly useful for products such as clothes and shoes where the designs often change every year.

Any product, whether or not it has aesthetic appeal, will be able to benefit from this right.

Registered Community Design Right

The provisions relating to Registered Community Design Right are expected to come into force early in 2003. In order for a product to benefit from this right it must have *eye appeal*. This means that it must be aesthetically pleasing.

The right will enable the owner to prevent competitors from putting a design on the market that does not create a different overall impression. In other words, the owner is able to exclude all later creations that give the same overall impression without having to prove that the later creations are based on copies of the Registered Design.

The right will extend across the whole of the EU, and it will no longer be necessary to file registered design applications in each country of interest. Instead, only a single application is required. The simplification of the process of obtaining registered design protection within the EU should lead to significant cost savings.

Registered Designs will be protected for an initial period of five years and will be renewable up to four times, therefore providing a maximum of 25 years of protection.

How can I benefit from the Registered Community Design Right?

It is expected that it will be possible to file applications for registered community designs early in 2003. There is no certainty at present as to when the provisions will come into force. However, it is possible that a national design application filed in the second half of this year will serve as a priority application for a community design application. If the new provisions are introduced when expected, this will result in an early cost savings benefit.

National Rights

Existing (national) rights will be unaffected; their scope will still be national, rather than EU-wide. It will still be possible to seek national design registrations, as an alternative to (or as well as) a Community Registration.

Action/Further Update

No action is required at present. We will advise you when we know the date on which the Registered Community Design Right provisions come into force.

Please contact Helen Johnstone for further information.

The information in this Newsletter was correct at the date of release. More up to date information is available by contacting Eric Potter Clarkson. All comments contained here are of a general nature and full professional advice should be sought on any specific problem. Please note that all our Newsletters can be found on our website at www.eric-potter.com.