

AUSTRALIAN DESIGN REGISTRATIONS (Designs Act 2003)

SCOPE OF PROTECTION

The Designs Act provides for the registration of designs. A “design” is defined as the overall appearance resulting from one or more visual features of a product. A visual feature includes the shape, configuration, pattern and ornamentation of a product. The protection afforded by a design registration relates wholly to the appearance of a product and not to its function or principle of operation. A design has been said to be something that must be judged wholly by the eye and thus a registered design is infringed only by a product, which is substantially similar in overall appearance to that for which the design is registered.

REGISTRABLE DESIGNS

A design is a registrable design if it is new and distinctive when compared with the prior art base for the design, as it existed before the priority date of the application. The prior art base comprises any designs that were previously:

- used in Australia; or,
- published in a document anywhere in the world

For a design to be considered “new”, there must be an absence of an identical prior design, whilst to be considered “distinctive” a design must not be similar in overall impression to a prior design. The design must create an overall impression that is not “the same or substantially similar” to any existing designs. Minor or insignificant changes are ordinarily considered to be non-distinguishing.

APPLICATION AND REGISTRATION PROCEDURES

A design application may be in respect of:

- One design in relation to one product; or
- One design that is a common design in relation to more than one product; or
- More than one design in relation to one product; or
- More than one design in relation to more than one product, if each product belongs to the same Locarno Agreement class.

Upon the filing of an application for a design, the application undergoes a formalities check by the Australian Designs Office. Upon passing the formalities check, the application proceeds to registration or publication depending upon what is requested by the applicant. This is a relatively quick procedure, with the timeframe between the filing of the application and the subsequent registration or publication of the design being of the order of a few months. However, it is to be noted that infringement proceedings in respect of a design registration cannot be commenced until such time as the design has been certified, as discussed below.

General Information – Australian Designs

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General

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CERTIFICATION

A request for certification of a design registration can be made at any time and by a person. Upon the filing of a request for certification, the Australian Designs Office conducts a search of earlier design literature with a view to assessing the newness and distinctiveness of the design. The Examiner may raise objections ranging from relatively minor matters through to more substantive issues based on registrability issues. If the design registration successfully passes examination and is accepted by the Examiner, a Certificate of Examination is issued and the registration is deemed to be certified.

TERM

The initial term of a design registration is five years from the filing date of the Australian application in which the design was first disclosed. Subject to the payment of a renewal fee by the end of the initial five-year period, a design registration has a maximum term of 10 years.

ENFORCEMENT

Infringement is the unauthorised “use” in Australia of an identical design or one that is substantially similar in overall impression to the registered design. Infringement proceedings can only be brought after a registration has been examined and certified as valid.