



What you need to know about Industrial Design in Kenya

By Geoffrey S. Ochieng'



An industrial design is any composition of lines or colours or any three dimensional form whether or not associated with lines or colours, provided that such composition or form gives a special appearance to a product of industry or handicraft and can serve as pattern for a product of industry or handicraft.

Industrial designs are provided for under Industrial Property Act 2001 and are concerned only with the outward appearance of articles; defined by their shape, configuration, pattern or ornament.

An industrial design does not protect the method of construction or the function of the article. The legal protection of industrial designs, serves the important function of protecting one of the distinctive elements by which manufacturers achieve market success. The creator is rewarded for the effort, which

has produced the industrial design, the legal protection accorded therefore serves as an incentive to the investment of resources in fostering the design element of production.

Conditions for registration

- I. An industrial design is only registrable if is new and has not been disclosed to the public prior to its application for registration.
- II. The industrial design should not be contrary to public order or morality.

Elements of an industrial design

For any industrial design to present an accurate and complete picture of the design to be registered the representations thereof must embody two characteristics:

I. A series of the view of the article

The representations should consist of a sufficient number of different views of the article so as to leave no doubt about the precise features of shape, configuration, pattern and/or ornament for which protection is sought. To register a set of articles there must be views of all the different articles in the set. In most cases the most significant views are often those that show the article in perspective.

II. Statement of Novelty

This is the quality of being new, original and unusual. Each set of representations must include, on the front of the first sheet, a statement which clearly identifies the novel features of the design in terms of; "Shape", "configuration", "pattern" and/or "ornament". These features that can be protected by design registration and the Statement of Novelty must not include any description of the use of the article, its features, its advantages or methods of construction.

Applications to register the pattern or ornaments of a design to be applied to textile articles, wallpaper or lace should be filed without a Statement of Novelty as such articles are entitled to the protection of their features of pattern and ornament only.



Registration

An application for registration of an industrial design should contain:

1. a completed application form - Form IP 27.
2. two identical specimens of the design.
3. drawings, photographs or other graphic representations of the article embodying the industrial design and an indication of the kind of products for which the industrial design is to be used.
4. the prescribed application fee.
5. where the applicant is not the creator, the request must be accompanied by a statement justifying the applicant's right to the registration of the industrial design.
6. a power of attorney, where the applicant is represented by an agent or is a foreigner;

Once the application is received, the registry undertakes the task of examining the design to determine if it is new and original. If in the affirmative, the Registry will publish the application in Industrial Property Journal or the Kenya Gazette as notice to the public to allow interested parties to raise their objections.

The timeline for objection is 60 days from date of publication. If no objection is raised, the design is registered as an Industrial Design and a certificate of registration is issued.

The registration of industrial designs confers exclusive rights for a period of 5 years from the date of registration.

Designs that cannot be registered as industrial designs

The following do not meet the criteria for registration:

- I. Works of sculpture, architecture, painting, engraving, enameling, embroidery, photography and any other design of purely artistic nature.
- II. Designs which consist solely in a change in the colour of already known designs.
- III. Designs whose features correspond to or are determined by functions to be performed by the products.

Rights conferred by registration

Registration of an industrial design confers upon its registered owner the right to preclude third parties from the following acts:

- I. Reproducing the industrial design in the manufacture of a product.
- II. Importing, offering for sale and selling a product reproducing the protected industrial design
- III. Stocking of such a product for the purposes of offering for sale or selling it.

A registered design is a property, which like any other business commodity, may be bought, sold, hired or licensed.

AIP Advocates has a vibrant Intellectual Property Law Unit within the firm that is eager to answer any of your queries on IP law