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REGISTERED DESIGN RIGHTS IN SINGAPORE: WHAT RIGHTS DOES THE LAW OF DESIGN CONFER?

▪ Introduction to Law of Design in Singapore

The objective of the Registered Design regime confers legal protection for designs applied to articles. The Registered Designs Act interprets a design as the “*features of shape, configuration, pattern or ornament applied to an article by any industrial process*”. Thus, the law of design recognises both creative and artistic character of an industrial design. Since the introduction of this legislation in 2000, the Registry of Designs has seen a steady increase in the number of local applicants, particularly in the field of jewellery design, with 6 local-based jewelers dominating the top 10 local applicants ending year 2008. Most of the designs filed in Singapore relate to consumer electronic products, automobile designs, furniture designs, cosmetic products (bottles and packaging) and luxury goods.

▪ Registrable Designs

A design is registrable if it is new and capable of being industrially applied, i.e. the design can be reproduced more than 50 copies industrially.

▪ The Criterion of “New”

The criterion of “new” in the Act is somewhat similar to the novelty criterion under the patent regime. The threshold to be met is a worldwide standard. A design is not new if it is the same or substantially the same as any prior design registrations or publications in Singapore or elsewhere, before the date of application for registration. Nevertheless, there are provisions that disregard certain disclosures in specific circumstances, and it follows that such disclosures shall not destroy the novelty of the design.

▪ Unregistrable Designs

There are however, exceptions to what can be registered, despite the design satisfying the registrability criteria. These exceptions include:

- The Functionality Exception – The article must not be solely dictated by function
- The “must match” Exception – The article must not be dependent upon the appearance of another article of which the article is intended to form an integral part
- The “must fit” Exception – The design must not enable the article to be connected to, or placed in, around or against, another article so that either article must perform its function

- A method or principle of construction, which works with the functionality exception to exclude manufacturing processes.

If the publication of a design registration or the use of it would be contrary to public order or morality, the design shall be refused for registration. Rights that are more appropriately conferred under other IP regimes, and are specifically excluded from the law of design include computer programs and layout-designs.

There are also certain articles that are precluded from protection under the law of design per se. These articles are:

1. Work of sculpture (other than casts or models used or intended to be used as models or patterns to be multiplied by any industrial process)
2. Wall plaques, medals and medallions
3. Printed matter primarily of a literary or artistic character, including book jackets, calendars, certificates, coupons, dress-making patterns, greeting cards, labels, leaflets, maps, plans, playing cards, postcards, stamps, trade advertisements, trade forms and cards, transfers and similar articles

▪ Rights in a Registered Design

A design registration gives the owner the exclusive right to make in, or import into Singapore

- a) For sale or hire;
- b) For use for the purpose of trade or business;
- c) To sell, hire, or offer or expose for sale or hire, in Singapore, any article in respect of which the design is registered and to which that design or a design not substantially different from it has been applied.

▪ Duration and terms of a Registered Design

Upon acceptance for registration, the date of registration shall be as of the date of application for registration. A design registration is valid for an initial period of 5 years, and may be further extended before expiry of the initial period, for a further second and third period up to a maximum of 15 years.

▪ Copyright – Design Law Interface

Like the law of copyright, the law of design confers protection of artistic works. However, a designer needs to be mindful of his requirements and the protection sought, as he is will not be allowed to claim dual rights.

This is clearly stipulated in the Registered Designs Act. Where a registered design was at the time it was registered, a corresponding design to an artistic work protected under the Copyright Act, the rights conferred by the Registered Designs Act expires if the copyright protection ends before expiry of the registration. The Registered Designs Act is not to be taken as a means for copyright owners to prolong their rights.

Likewise, once a copyright owner has made the decision to industrially exploit his rights under the Registered Designs Act, rights under the Copyright Act are no longer enforceable.

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