



## Brochure Designs

Designing and marketing products in a plurality of shapes and looks are an essential characteristic of our economy. The development and realization of a new embodiment of a product as a rule requires considerable investments. A company that has developed a new, characteristic look for a product will therefore be very keen on protecting the exclusive character of their product designed in that particular way.

A drawing or design is considered to be the appearance of a product or a part thereof that is new and has an individual character. Eligible for protection are two-dimensional products, for instance patterns and designs on wall paper, textile, etc. and three-dimensional products, for instance the

design of domestic appliances, toys, packaging materials, furniture, etc.

## **Technical features**

Excluded from design protection is anything required for achieving a technical effect. Protection in that respect can be obtained by means of a patent.

## **The Design**

Designing and marketing products in a plurality of shapes and looks are an essential characteristic of our economy.

If it regards products with a totally different function of use (air planes or washing machines for instance), then the difference in appearance is self-evident. Confusion will not be possible in those cases.

In case of products of the same type, the difference in design however is a much less self-evident matter. As these products have the same function of use, they will generally show a great mutual similarity and the products of the one company will often distinguish themselves from those of another in small details only.

Nonetheless there will always be question of differences in outer appearance of similar products of different companies. This product appearance may be decisive for the commercial success. After all in many cases the design will be the leading argument in the decision whether or not to buy a product.

## **Exclusiveness**

The development and realisation of a new embodiment of a product as a rule requires considerable investments.

A company that has developed a new, characteristic look for a product will therefore be very keen on protecting the exclusive character of their product designed in that particular way.

## **Protection**

The Benelux Convention for Intellectual Property offers the opportunity to protect the design of a product, but the entrepreneur will then need to register the product developed by him with the Benelux Office for Intellectual Property (BOIP). Disclosing the product in question sooner may harm the scope of protection (consider optional patent protection or filing abroad). This will have to be looked at on a case by case basis.

## **Benelux**

### **The registration procedure**

In order to invoke protection pursuant to the Benelux Convention for Intellectual Property the design needs to be registered with the Benelux Office for Intellectual Property (BOIP). This can be done by means of an application for design protection in the Benelux, but also by means of a so-called international registration via the World Intellectual Property Organisation (WIPO) in Geneva.

Our patent attorneys and design experts will be able to advise you in that respect and perform all registration formalities for you.

Each design for which the registration in the Benelux is applied for, is – when the formalities are complied with – entered into the register without delay.

The Benelux Office for Intellectual Property (BOIP) does not verify whether the design has a function of use, whether the design is new nor whether it has already been registered by another person.

Imitation of a product that can be protected as a drawing or design, can only be acted against on the basis of the stipulations of the Benelux Convention for Intellectual Property. Registration therefore is indispensable in order to invoke protection.

### **What is required for a registration with BOIP?**

If our office takes care of the registration, the following will have to be submitted to us:

- \* the full details of the applicant
- \* title or name of the design to be registered
- \* 5 photos or drawings of the design to be registered, depicted against a neutral background.

(Dimensions 16x14 cm at the most and at least 4x4 cm. For an international registration we need 5 photos or drawings of the design to be registered. Dimensions 16x16 cm at the most and at least 3x3 cm.)

### **Term of validity**

The registration of a design will initially be valid for 5 years and can subsequently be extended by periods of 5 years. The maximum term of protection in the Benelux is 25 years.

I do not want to renew or the maximum term of protection has been reached. What then?

For designs registered in the Benelux in principle a cumulative copyright protection is possible. It is up to the court to decide whether a certain design is protected by copyright; usually this question will only be answered in infringement proceedings. Often it will be difficult to predict whether copyright protection will be awarded.

## **Europe**

### **European Community Design**

The European Community Design offers the opportunity to register a design at relatively low cost for all member states of the European Union.

### **Two types of Community Designs**

- a. Registered Community Design
- b. Unregistered Community Design

The broadest type of protection with the most extensive term of protection (25 years) is afforded by the registered community design. This therefore seems to be the most important type.

### **What can be a design?**

According to European legislation a design is the appearance of a product or a part of it. A product is considered to be any industrial or handicraft object including among others parts, packagings, graphic symbols and typefaces. Many elements therefore can fall under this broad definition. The protection of a community design extends to the application of such a design on various products.

### **Requirements for protection?**

In order to be protected as community design, a design should be new and have a certain individual character.

### **Protection registered Community Design**

The term of protection of a registered community design is 25 years at the most. A registration is valid for 5 years and can each time be extended by 5 years until the maximum of 25 years of protection has been reached.

### **Simple registration procedure**

The registration procedure is only administrative. During the registration procedure the Community Design Office (the same office as the Community Trademark Office) does not examine novelty and/or individual character of the design applied for, but it proceeds to registration when the administrative requirements have been complied with. It is possible however that at a later stage a third party, who is of the opinion that the design does not comply with the legal

requirements, claims nullity of a registered community design.

### **Multiple applications possible**

It is possible to apply for registration of several designs by means of one so-called multiple design application. This will lead to a reduction of costs.

### **Protection**

A registered community design affords the owner the exclusive right to use the design and to prevent third parties (that he did not give permission) from using the design. Use is particularly understood to mean the manufacturing, offering, marketing, importing and exporting or use of a product in which the design is incorporated.

### **Relatively low costs**

The costs for filing and registering depend on a number of circumstances, but the costs involved in the registration are relatively low considering the number of countries in which protection is obtained. For a further estimate of costs please contact us.

### **Unregistered Design**

When a design does comply with the requirements of protection, but has not been registered there is still the possibility of protection as an unregistered community design. The protection of an unregistered community design is limited as regards time and scope. The term of protection is only three years as from the moment that the design was first made available to the public within the territory of the European Union. In day-to-day practice an unregistered community design is only protected against direct copying. What the possibilities are will have to be looked at on a case by case basis.

## International

In addition to or instead of filing a Benelux application it is possible to file an international application. This is an application on the basis of an international agreement, the "Hague Agreement". Based on this agreement design protection can be obtained in several countries simultaneously by means of only one single international application.

By filing an international application, the applicant is able to obtain a bundle of national design rights in a number of designated countries, based on one single application. The content and the scope of these design rights will each time be assessed on the basis of the national legislation of each of the countries for which protection was applied for by the applicant.

The possibility to file an international application for design registration is open only to subjects of the countries that are party to the Hague Agreement. Subjects in this case also include all those who have their place of residence or business in one of the countries that are party to the agreement.

The accession of the European Union (EU) increased the importance of the international design registration. In addition to the EU a great many other countries have acceded for which an application for an international design registration can be filed.

In those countries that are not party to the agreement for an international design registration an individual national application can be filed, naturally in as far as the national legislation of the country in question provides for this option.

We will be happy to discuss the options, countries and tariffs with you.