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Series on Intellectual Property Issues: Part 21

What can be registered as an Industrial design?

As a general rule, to be registrable, a design must meet one or more of the following basic requirements, depending on the national law:

- ❑ The design is 'new'. A design is considered to be new if no identical design has been made available to the public before the date of filing of the application for registration.
- ❑ The design is 'original'. A design is considered original if it has been created by the designer independently and is not a copy or imitation of existing designs.
- ❑ The design has 'individual character'. This requirement is met if the overall impression that a design makes on an informed user differs from the overall impression made on such a user by any earlier design (which has been made available to the public).

In the past, protectable design in manufactured products related to elements such as the shape of a shoe, the design of an earring or the ornamentation on a teapot. In today's digital world, however, the scope of protection is gradually expanding to cover more products and different types of design. These now include such elements as electronic desktop icons generated by computer code, typographic typefaces, or the graphic display on computer monitors, home appliances or mobile telephones.

What cannot be protected by industrial design rights?

Designs that are generally barred from registration in many countries include:

- ❑ Designs that do not meet the requirements of novelty, Originality and/or individual character (as explained above).
- ❑ Designs that are considered to be dictated exclusively by the technical function of a product. Such technical or functional design features may be protected, depending on the facts of each case, by other IP rights (e.g. by patents or utility models, or they may be kept as trade secrets).
- ❑ Designs incorporating protected official symbols or emblems (such as the national flag).
- ❑ Designs that are considered to be contrary to public order or morality.

In addition, it is important to note that some countries exclude handicrafts from design protection, because industrial design law in these countries requires that the product to which an industrial design is applied is 'an article of manufacture' or that it is replicated by 'industrial means'.

Depending on the national legislation, there may be further restrictions on what can or cannot be registered as a design. It is advisable to consult an industrial property agent or the relevant national industrial property office.

Traditional designs

Traditional designs, and traditional cultural expressions (expressions of folklore) more generally, are often regarded as 'public domain' by IP laws and cannot be protected. However, contemporary adaptations and interpretations of traditional designs made by individuals can be sufficiently 'Original' and 'new' for industrial design protection. Tradition-based designs have been registered in several countries. The IP protection of contemporary adaptations of traditional designs rewards forward-looking creativity and innovation.

References:

Canadian Intellectual Property Office.

Web page at www.cipo.gc.ca/epic/site/cipointernet-internetopic.nsf/en/Home. An overview of what may not be registered as an industrial design.

Looking Good: An Introduction to Industrial Designs for Small and Medium-sized Enterprises.

WIPO Web page at www.wipo.int/freepublications/en/index.jsp?cat=sme. Fundamentals of industrial design, including what and what may not be considered Industrial design.

This is the 21st issue of the series on Intellectual Property Issues relevant for small and medium sized enterprises. The first issue was published in the World Trade Net Business Briefing of 19 May 2008. Next issue in this series will be published on week 46.