

Industrial Design



Because Looks Can Sell

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Chapter 3

Industrial Design – Because Looks Can Sell

3.1 What is an Industrial Design?

To put it simply, an Industrial Design refers to how a product looks.

Sometimes a product manufacturer and designer makes a product to look a certain way – with a certain design, shape and ornament – for the purpose of giving the product an aesthetic appeal.

It is only all too well-known that looks attract and products are no exception. The famous Absolut Vodka is temptingly presented in a clean, classy design by Gunnar Broman from Sweden while Apple's iPod owes its looks to British designer, Jonathan Ive.

Many mineral water brands, too, rely substantially on their bottle designs to distinguish themselves from their competitors. Renowned brands like Glacier, Perrier and Evian all boast their own distinctive designs – with different shapes, sizes and ornaments.



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Therefore, when a product manufacturer wishes to protect their designs from being copied or imitated by their competitors, registering those designs will help them to keep their designs exclusive.

Among products that are commonly registered under Industrial Design are¹:

- Packaging and container
- Articles of adornment
- Furniture
- Electrical appliances
- Stationery and office equipment
- Lighting apparatus
- Household goods

3.2 Why Register Your Designs?

We have discussed briefly in the above that a product's appearance helps to distinguish it from its competitors.

This is especially so when the product is being offered in a saturated market where the competition abounds – with similar products, competitive pricing and quality offerings fighting for a slice of the same target market.

In such a commercial situation, looks are often the deciding factor in a consumer's buying decision – because more often than not, human beings are shallower than they would care to admit!

And the power and influence of first impressions, too, cannot be denied.

A strong example of a company that has successfully banked on the appearance of its products is Apple, with its worldwide best-selling MP3 player, the iPod.

Known for its past sales turmoils, the turning point of Apple has been widely attributed to the phenomenal success of the iPod – so much so that the designer of iPod and other Apple products, Johnathan Ive has been hailed as the man 'credited with helping revitalize Apple's fortunes'²

As of 2007, 100 million units of the sleek-looking gadget had been sold, and an industry analyst attributed Apple's success to their continuous style and design innovation as well as competitive pricing.³

Just like how a beautiful supermodel commands a high pay cheque for runway and advertising appearances, a product's design and appearance add to its commercial value by increasing its marketability – and this alone, is more than enough reason for a company to register their Industrial Designs.

In business, anything that can generate revenue for a company is an asset – and an asset will always require protection!

From a larger perspective, Industrial Design protection also benefits the community as it protects a designer's hard work, promotes fair business practices by preventing imitation and idea theft, and encourages creativity and innovation.

This will also boost the creative industry that will in return benefit the economy as a whole.

3.3 The form and extent of protection for Industrial Designs

To put it simply, the owner of a registered Industrial Design owns the exclusive rights to use it. The registration of Industrial Designs prevents unauthorized third parties from copying, imitating or using the designs for commercial purposes.

This way, the commercial value and market share of the product bearing the registered Industrial Design is preserved.

In Malaysia, the Industrial Design Act 1996 governs the protection of registered designs in this country, which can last up to 15 years with periodic payment of renewal fees.

When a registered Industrial Design is infringed, with sufficient proof its owner can be entitled to remedies such as damages, court injunction to prevent future infringement, and account for profits by the convicted infringer.

The protection for a registered Industrial Design is territorial to the particular country in which it is registered. In Malaysia, the only form of protection for this category of Intellectual Property is via registration under the Industrial Design Act 1996.

Unlike Trademarks, there is no common law protection for Industrial Designs.

Compared to patents, the cost of getting an Industrial Design registered is also relatively low.

3.4 Industrial Design Registration Criteria

Generally, the criterion for a design to be registrable in Malaysia is that it must be “new” at the point the application is filed. This means that as long as the design has yet to be seen anywhere in the country, it will be considered to meet the above criterion.

Because of this, it is very important that you register your designs before showing them to the public – disclosure will rob the item off the novelty.

On the other hand, a design is deemed unregistrable if :

- the aesthetic appearance of the article is not significant, or the design only features on immaterial details
- it is a method or principle of construction
- it is contrary to public order or morality
- it is exclusively concerned with how the article functions
- it is applied on an article which is an integral part of another article, and the features of this article is dependent on its appearance

For international protection, you need to file your Industrial Design in the foreign country in which you seek protection within 6 months from the initial filing date if you wish to enjoy a priority date from your first filing in your country. However, this only applies provided that the country is a member of the Paris Convention Treaty.

3.5 The Industrial Design Landscape in Malaysia

In 1993, the Malaysia Design Council was founded as a think-tank and advisor to promote and encourage innovative Malaysian designs that are of international standards.

Operating under the supervision of Ministry of Science, Technology and Innovation, this Council holds the belief that innovative and creative products sell, and can assist in international market penetration.

Since 1995, the Council has held annual design competitions to recognize quality and innovative designs among Malaysian individuals and companies.

The enactment of the Industrial Design Act 1996 was also aimed at promoting a friendlier design environment in Malaysia – previously, Malaysian designs had to be registered in the United Kingdom under pre-Independence legislation.

With the Industrial Design Act 1996, registration is now less costly and therefore more accessible to more designers.

References:

- 1 'International Designs Bulletin', <http://www.wipo.int/hague/en/bulletin/search-struct.html>
- 2 'iPod designer gets into *Who's Who*', <http://management.silicon.com/itpro/0,39024675,39164938,00.htm?r=2>
- 3 'Analysis: iPod success won't stop at 100 million' <http://www.macworld.com/article/57258/2007/04/ipodanalysis.html>

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