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INTELLECTUAL PROPERTY RIGHTS: A THOROUGH STUDY OF INDUSTRIAL DESIGN

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Abstract:

Industrial plan is a course of configuration applied to actual items that are to be made by large scale manufacturing. It is the inventive demonstration of deciding and characterizing an item's structure and provisions, which happens ahead of the assembling or creation of the item. Conversely, fabricate comprises simply of rehashed, frequently mechanized, replication, while make based plan is a cycle or approach where the type of the item is controlled by the item's maker to a great extent simultaneous with the demonstration of its creation. Industrial Design (ID) is the skilled act of planning items, Gadgets, Articles and Administrations utilized by a great many individuals all throughout the Planet Consistently. Industrial planners ordinarily center around the actual appearance, usefulness and manufacturability of an item, however they are frequently engaged with undeniably really during an Improvement Cycle. All of this eventually stretches out to the generally enduring worth and experience an item or administration accommodates end-clients.

Each item that you communicate with consistently in your home, office, everyday life setting is the aftereffect of a plan cycle. During this interaction, horde choices are made by a industrial planner (and their group) that are pointed toward working on your life through first rate plan.

Keywords: Design, Publication, shape, Article etc.**Introduction**

A design is something which is applied to an article and isn't simply the article. An article to which the design is to be applied should be something which is to be conveyed to the buyer as a completed decent. The structures a lot are not articles inside the meaning of design. Be that as it may, convenient construction or models which are sold as completed articles might be topic for enrollment of design.

Purchasers are affected by the presence of the article in their decision. At the hour of procurement, individuals are drawn in by a design which has a creative legitimacy. Many individuals indiscriminately picked the article which grabs their attention by appearance. A few articles with a specific design mat draw in the general population and entire stock might be sold on the lookout. A few learned people accomplish difficult work by putting a lot of thought, time and cost to discover a design for a specific article which will expand deals.

There are four germane features to an industrial design. They are figure, configuration, pattern and ornament. The shape and configuration denote to the form of an article and is typically three dimensional in nature. Pattern and ornament are decorative key features ordinarily applied to the superficial of the article and they are of two – dimensional.

The design refers to features of shape which appeal to the eye and should be judged solely by the eye and not by any functional considerations. A Design in order to be registered must be both Novel and Unique and not earlier published. The words ‘New’ or ‘Original’ involves the idea of novelty either in the Form, Shape or Ornament itself. In deciding the questions of originality or novelty evidence of expert in the trade is permissible. The design for registration should not be printed earlier. Publication may be of two types –

1. Publication in Prior Documents, and
2. Publication by Prior Use.

Definition of “Design”

“Design” means only the features of shape, Configuration, Pattern, Ornament or Composition of lines or colors applied to any Article whether in two Dimensional or Three dimensional or in both forms, by any industrial Process or means, whether Physical, Mechanical or Combined, which in the Finished Article appeal to and are judged exclusively by the eye; but does not include any manner or code of creation or anything which is in material a mere mechanical device, and does not comprise any trade mark as distinct in clause (v) of sub-section (1) of section 2 of the trade and merchandise marks Act, 1958 (43 of 1958) or property mark as defined in section 479 of the Indian Penal Code.

Importance of Industrial Design

The discussion makes it clear that an industrial design must achieve the following vital conditions, to be protected under the law. They are

1. **It must be applied to articles** - a design is something which is applied to an article and not the article itself. An article to which the design is been applied must be something which can be delivered to the purchaser or customer as a finished article. Therefore, buildings and structures like a hotel or a petrol filling station cannot be considered as articles within the definition of the design. On the other hand, movable structures which can be sold as finished articles may be the subject matter for registration as design. Eg., models of buildings and structures, and toys etc.
2. **Appeal to the eye** - All shapes or configurations or patterns are not enough capable of being registered. For the purpose of registration it should be eye appealing and should be judged solely by the eye and not by any functional considerations. There must be a special, strange, distinctive, important or striking appearance- something which catches the eye.¹
3. **Novelty and originality**- A design, for the purpose of registration must be both original and new. It should not earlier publish in India. It should be substantially different from pre-existing designs that are applied to the class of article for the purpose of registration. The introduction of ordinary trade variance into an old design cannot make it new or original. In deciding the question, the question of novelty or originality, the evidence of experts in the trade is admissible.

¹ Hello mineral water pvt. Ltd., vs. Thermoking California pure, 2000 PTC 177 (Delhi)

4. No prior publication-: An application for registration of a design should be for a new or original design. It should not be previously published in India
5. Presumption of originality-: Where the statement of novelty Filed by the petitioner was in respect of form, Configuration and Surface pattern mainly the beamed side of the container. The novelty was not claimed either in relationship to the proportion of shape or in the color used. Therefore difference in the proportion of the container and the difference in color between the petitioner's containers.

Registration of designs

1. Who can apply for Registration? – An application for registration of a design² can be filed by any person requesting to be the proprietor of any original design, not previously registered in India. For this purpose, the proprietor of new or original design must be-
 - ii) Either the author of the design; or
 - iii) Any other person who acquired the design or the right to put on the Design to any article; or
 - iv) Person on whom such rights have changed
2. Contents of application- The application filed should be accompanied by four copies of the design duly signed by the applicant. It should state the class in which the design is to be applied. It may be renowned that there are 31 modules, each consisting of many sub classes stated in third schedule of the 2000 Act. A design may be recorded in not more than one class and, in case of distrust As to the Class in which a Design ought to be Registered, the Controller may agree the question.³
3. Statement of novelty – Statement of novelty should be included on the representation of a design as per the act in order to specify the claim. This will enable quicker examination and provide a more detailed defense. The claim will protect the overall visual appearance of the design as described in the representation of design.
4. Prohibition of registration of certain designs- Generally, a design which
 - a) Is not new or original; or
 - b) Has been disclosed to the public anywhere in India; or
 - c) Is not significantly distinguishable from known designs or mixture of Known Designs; or
 - d) comprises or Contains outrageous or like matter;
 Shall not be listed under the act.
5. Acceptance of application- If the controller finds that there is no objection to the Design being Registered⁴, he takes into thought and accepts the Registration of the claim.
6. Objection- If the controller finds an objection in the consideration of the application, a statement of these objections should be sent to the applicant or his agent in writing. Unless the applicant or agent removes those objections within one month or applies for a hearing, the applicant will be deemed to have withdrawn his application.⁵

² Sections 43 to 46 of the Designs Act of 1911 dealt with the same.

³ Sec. 5(3) of the 2000 Act.

⁴ Under rule 39 of the old Rules and Rule 17 of the new Rules

⁵ Under rule 40 of the old Rules and Rule 18 of the new Rules

7. Decision of controller- After hearing the applicant and his agent with regard to the objection raised, the controller should take a decision and communicate the same in writing to the applicant. This provision helps the applicant to appeal to the central government.
8. Certificate of registration- A certificate for registration should be granted by the controller to the proprietor of the design, when the design is registered.
9. Effect of registration- After the registration of a design, the proprietor of the design will be entitled to the following rights:-
 - a) The right to exclusive use of the design i.e. the copyright in the design; and
 - b) The right to protect the design from piracy.
10. Cancellation of design- At any time after the registration of a design, any person interested in it may present a petition to the High Court for the Termination of the Registration of a design- on the following grounds-
 - a) that the Design has been Earlier registered in India or
 - b) That it has been Published in India, Previous to the date of Registration; or
 - c) That the Design is not a Novel or Unique design.

Rights Granted To “Design” Holders

The law vests certain rights in the proprietors of the registered designs.

1. Copyright in designs- one exclusive right confer on a design is called “copyright in design”. Mostly the industrial or products designs are the subject matter of registration under the designs act. Therefore the exclusive right to use the design or the so called copyright⁶ in design is not absolute and in subject to certain conditions. In order to exercise such a right, the proprietor has to ensure that:-
 - i) When the process of registration is complete, then the articles, on which the design is applied, must carry the word “registered” or “RD” along with the registration number. However, this condition is waived in the case of textiles goods or lace where it is practically difficult to imprint the Word; and
 - ii) The Design functional to the Article must be the one which has been Registered by the Controller.
2. Right to protect the design form piracy- Infringement of a copyright or in a design is called as piracy of a design. Any person responsible for the infringement of copyright of the design will be liable for the fine, apart from the liability to pay damages.⁷
3. Instance of piracy of design:- some of the instances of piracy of design are as under:-
 - unauthorized application of the registered design to other articles, for sale
 - any fraudulent imitation of the design
 - without consent of proprietor, any obvious imitation of the design.
 - without the consent of the registered proprietor, importing an article and selling it along with the registered design
4. **Infringement of pirated design-** where the a plaintiff engaged in manufacturing, marketing and selling of shoes and soles known as article 887 which has distinctive shape, design

⁶ Section 11 of the Act of 2000

⁷ Section 53 of the Act of 1911 & sec. 21 of the act of 2000

configuration and surface pattern originated by the plaintiff and the defendants have also started manufacturing and selling the shoes Bearing the alike Shape, Design, Features and Surface pattern in obvious imitation of the plaintiff's design, the plaintiff obtained and interim injunction against the respondent. However the defendant submitted that the plaintiff himself is the operator of the registered design of M/s Bata Ltd., which was widely published and in use prior to the plaintiff's registration. After being satisfied that the defendant contention was correct, the court vacated the injunction order granted in favor of the plaintiff

5. Fraudulent and obvious imitation: - Imitation is the only common factor between the two. In the fraudulent imitation, the limitation has been made with the intention to deceive Another Individual with the Information that what is being done is in Destruction of others Right.
6. Obvious imitation- obvious⁸ means something which, as soon as you look at it, strikes one at one as being so like the original design, the Registered Design, as to be almost uniqueAnd obvious imitation is something which is very close to the original design, the similarity to Unique Design.

Conclusion

The law relating to protection of layout designs is new in India in comparison to that relating to industrial designs. However, as the situation obtains at present, it may be safely said that the Indian law in the field of protecting the rights of owners as well as registered users of designs- whether industrial designs or layout designs—is in agreement with the international standards. This, we should note, is certainly a good sign for the future of trade and commerce in India.

⁸ Dunlop Rubber co. Ltd. Vs. Golf Ball Development Ltd ,(1931) XLVIII 268