

European Community Design

Based upon the new Regulation on the Community Design, which came into force recently, it is now possible to obtain legal protection for designs throughout Europe (EU).

1. Advantages of the European Community Design

The European Community Design offers the designer an effective legal instrument for the protection of his/her creative designs.

The European Community Design especially offers the following advantages:

1.1 Uniformity

Provided is a uniform and exclusive protective right for industrial designs for the entire European Union.

1.2 Low Costs

Due to the uniform application procedure it is possible to register a European Community Design at relatively low cost for all states of the European Union.

1.3 Priority

The applicant is able to claim the priority of an already existing national design.

1.4 Freedom of choice concerning the form of protection

The European Community Design Regulation offers the designer the option of choosing between two forms of protection, namely the protection by a non-registered Community Design or by a registered Community design.

1.5 Multiple Application

In order to save costs, the applicant may combine several designs of one class in order to form one multiple application for obtaining a registered Community Design.

1.6 Deferment of Publication

When filing a Community Design application it is possible to defer the publication of the registered Community Design by 30 months, in order to delay notice by potential competitors resulting in a competitive advantage of the applicant.

1.7 Long Protection Period

A registered Community Design has, upon the multiple renewal thereof, a very long protection period of up to 25 years, as of the filing date.

1.8 Grace Period

Due to the existing grace period it is possible to file an application to be registered within 12 months after the publication of this design.

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2. Different forms of protecting the Community Design

The Regulation on the Community Design distinguishes between two different forms of protection, which take into account the needs of different industries, namely a non-registered Community Design and a registered Community Design.

2.1 Non-Registered Community Design

For all states of the European Union according to the new Regulation a legal protection for a non-registered Community Design is now available.

This protection right is automatically established by the distribution of products for which a design made accessible to the public is used. For establishing protection, the design must be published, exhibited, used on the market, or disclosed in any other way, so that the designers of the relevant market are made aware of it.

The protection period of such a non-registered Community Design is, however, only 3 years and is, therefore, significantly shorter than the protection period of a registered Community Design, which may be legally protected for a period of up to 25 years as of the filing date.

Furthermore, a non-registered Community Design merely entitles the owner to prohibit imitations of the protected design. Use of a design is not considered to be the result of an imitation if the protected design was unknown to the user.

Despite these disadvantages, the non-registered Community Design offers an effective legal protection instrument for all industries which change their range of articles every season, such as in the footwear and clothing industries.

A non-registered Community Design provides legal protection merely by engaging in the above described activities, i.e. without any registration formalities or costs.

2.2 Registered Community Design

A protection right valid throughout Europe with a protection period of up to 25 years may be obtained by means of a single Community Design application filed with the Office for Harmonization in the Internal Market (OHIM). The design according to the application is published by the Office for Harmonization after the registration thereof.

In contrast to the non-registered design, the registered design offers extensive legal protection. The registered Community Design grants the right to prohibit the marketing of any designs where the overall impression is not different from the protected design. The registered Community Design, therefore, grants the owner thereof a right of prohibition without requiring him to prove that the design marketed by the competitor is a result of an imitation of the protected design.

Different forms of protecting the Community Design

The most important differences between a registered and a non-registered European Community Design are shown in the following comparative table.

EUROPEAN DESIGN		
Form of protection	Registered Design	Non-registered Design
Protection Period	max. 25 years as of filing date	3 years as of publication
Scope of Protection	Offers protection against any younger design not differing from the protected design as regards the overall impression	Offers protection against imitations of the design only
Formal Requirements	Registration proceedings necessary	None

Substantive protection requirements for obtaining a European Community Design

3. Substantive protection requirements for obtaining a European Community Design

A design is eligible for protection if it fulfills the following requirements:

- The subject matter itself must be eligible for protection.
- It must be new.
- It must comprise a creative characteristic feature.

3.1 Article eligible for protection

A design is the outward appearance of a product or a part thereof, which results especially from the features of the lines, contours, colors, the design, surface structure and/or the materials of the product itself and/or its ornaments.

3.2 Novelty

A design is considered to be new, if no identical design was made available to the public prior to the applicable evaluation date.

The evaluation date applicable for a non-registered Community design with respect to novelty is the day on which the design was made accessible to the public for the first time.

For a registered design, the applicable evaluation date is the day on which the design application was filed with the Office for Harmonization.

European design protection is possible only if no identical design, or respectively, no design distinctive only in respect of non essential features, was made accessible to the public prior to the evaluation date.

If a designer has already published his design (by mistake), he is able to file an application for the registration of his design within a grace period of 12 months, provided that he does not wish to have only the 3 years' protection offered by a non-registered Community Design.

Since the evaluation date applicable for the examination of novelty for a non-registered Community Design is the day on which the design was made accessible to the public for the first time, the designer should always well document this day.

3.3 Characteristic feature

A design includes a "characteristic feature" when the overall impression it evokes in an informed user differs from the overall impression which another design evokes in said user.

4. Summary

In summary, the new European Community Design Act offers an effective tool for the protection of designs against product piracy in all industries.

Enterprises, for which the design of their products plays a significant role in the sales thereof, such as enterprises in the textile or footwear industries, in the motor vehicle industry, in the furniture industry, as well as jewelry designers and the like, should make use of this legal instrument to protect their products Europe-wide against counterfeiters.