

Design act 2000

Earlier this Act was governed by the [Design Act, 1911](#). In order to bring the Design Act at par with the International law the enactment of the Design Act, 2000 took place. So, presently the design laws are regulated by the [Design Act of 2000](#). It is an Act to consolidate and amend the law relating to the protection of designs. It was published in the Gazette of India and came into force on 12.05.2000. This Act is a complete code in itself and is statutory in nature. It extends to the whole of India.

Design act 2000 definition

“Design” means features of shape, pattern, configuration, ornament or composition of colors or lines which is applied in three dimensional or two dimensional or in both the forms using any of the process whether manual, chemical, mechanical, separate or combined which in the finished article appeal to or judged wholly by the eye.

What it does not include?

- It does not include any mode of construction or any trademark as defined under clause (v) of sub-section (1) of Section 2 of the [Trade and Merchandise Marks Act, 1958](#).
- It does not include ‘property mark’ as defined in section 479 of the [Indian Penal Code, 1860](#).
- It does not include any artistic work as defined in clause (c) of section 2 of the [Copyright Act, 1957](#).

Origin and development of design act in India

- The origin of the Design Act in India traces back to the British period.
- The first Act that gave privileges and protection to designs was the Patent and Designs Act, 1872. This Act supplemented the Act of 1859 which was passed by the Governor-General of India to protect industrial designs and grant privileges to inventors.
- The Inventions and Designs Act of 1888 repealed this Act of 1872.
- The Act of 1888 was a reflection of the Designs Act of the United Kingdom.
- In the year 1911, the British government enacted a new law in the form of the Patent and Designs Act repealing all the prior legislations.
- In 1930, this Act was amended and the government came up with some changes in the process of registration of designs in which the concept of new and original design changed to the new or original design.

- This legislation used to govern the matters related to both patents as well as designs.
- In 1970, the Patent Act was enacted to deal with the matters of patent specifically. All the provisions regarding patents from this Act were repealed and it continued to deal with Industrial designs till 2000.
- India became a member state of the WTO in the year 1995. Consequently, the Patents and Designs Act of 1911 was repealed and a new act called the Designs Act, 2000 was enacted in compliance with **TRIPS** (Trade-Related aspects of Intellectual Property Rights) to make design laws for the country.
- This new Act was enforced on 11th May 2001.

Salient features of design act 2000

- India is a member of the World Trade Organization's Paris Convention. It has signed the Patent Cooperation Treaty which allows all the signatories of the convention to claim priority rights.
- Under the Act of 2000, Locarno classification has been adopted in which the classification is based only on the subject matter of design. Under the previous provisions, the classification was made on the basis of the material which has been used to make that material.
- The introduction of "Absolute Novelty" makes it possible to judge a novelty on the basis of prior publication of any article. This is applicable in other countries also.
- As per the new law, a design can be restored which was absent in the previous enactment. Now, the registration of a design can be restored.
- The Act allows the district courts to transfer cases to the high courts where the jurisdiction is present. It is possible only in cases where a person is challenging the validity of any registration.
- Laws regarding the delegation of powers of the controllers to other controllers and the duty of examiner are also mentioned in the new Act.
- The quantum of punishment is also enhanced under the Act in case of any infringement.
- The secrecy of two years of a registered design is also revoked.
- Provisions regarding the avoidance of certain restrictive conditions are also there so as to regulate anti-competitive practices in contractual licenses.
- Whenever a license is brought within the domain of public records and that too publicly, the registration is likely to be taken into consideration. Anyone can get a certified copy of it in order to inspect the same.

- The laws regarding the substitution of the application before registering a design are also mentioned in the new enactment.
- Under new provisions, power has been given to district court to transfer cases to the high court where the court is having jurisdiction. This is only possible if the person is challenging the validity of the design registration.
- Incorporates the provisions regarding delegation of powers of the controller to other controllers and duty of examiner.
- Under the new provision, the quantum of punishment is also enhanced in case of infringement.
- It revokes the secrecy of two years of a registered design.
- It contains provisions for the avoidance of certain restrictive conditions so as to regulate anti-competitive practices within contractual licenses.
- The registration is taken into consideration when it is brought within the domain of public records that too physically. Anyone can inspect the records and get a certified copy of it.
- It contains provisions for substitution of the application before registering the design.

Objectives of design act 2000

- The primary objective of the Design Act is to protect the designs.
- The Design Act Of 2000 is an Act to consolidate and amend the law relating to the protection of designs.
- Its main objective is to protect new or original designs from getting copied which causes loss to the proprietor.
- The important purpose of design registration is to see that the creator, originator or artisan of any design is not deprived of his reward for creating that design by others copying it to their goods or products.
- An industrial design helps in drawing a customer's attention and helps in increasing the commercial value of an article. Therefore, helps in expanding its market.
- There are many competitors who adopt evil ways to reduce the competition in the rival groups by exploiting the designs to their advantage. Thus, it is necessary to have laws to safeguard the interests of the owners of these designs. In order to fulfill this objective, the Design Act of 2002 came into existence.

What is design all about?

The term 'Design' under Design Act is defined as :

“Features of shape, any configuration, pattern, ornament or composition of lines or colours which is applied to Two dimensional or three dimensional or in both the forms using any process including manual, chemical or mechanical, separate or combined which in the finished article appeal to or judged solely by the eye.”



It neither includes any mode of construction nor any trademark as defined under clause (v) of sub-section (1) of section 2 of Trade and Merchandise Marks Act, 1958. It even does not includes property mark as defined in section 479 of the Indian Penal Code or any artistic work as defined in clause (c) of section 2 of the Copyright Act, 1957.[\[1\]](#)

With reference to the Design Act, 2000 what are articles?

Under the provisions of Design Act, 2000, any manufactured object is known to be “article”. The object can be of any substance irrespective of artificial or natural. The article must be capable of being made and sold separately.

Essential Requirements for registration

Novelty and originality

A design can be considered for registration only if they are unique. A combination of previously registered design can also be considered only if the combination produces new visuals. In a case ***Hello Mineral Water PVT. LTD. v. Thermoking California Pure***, a design of water dispenser having a cylindrical shape was not considered as new on the grounds that mere shape and form is not sufficient to prove novelty.

Design must be unique, a Prior publication is not acceptable

The design must not be a published one. If the design is already published than the design is not eligible for the publication. There should not be any tangible copy available already in the market if you are seeking registration of the design that is in digital format. Displaying of the design in any fashion show by the creator is the publication of that design. Secret and private use of the design does not amount to the publication and can be used for the experimental purpose.

It was held in ***Kemp and company v. Prima Plastics LTD.*** that disclosure of design by the proprietor to any third person cannot be claimed as publication provided that the disclosure must be in good faith.

Making application of design to an Article

The applicability of the design should be to the article itself. It can be informed of a three-dimensional figure. There are two-dimensional figures also included in this act i.e any painting or any graffiti on the walls or print on the bedsheets.

The design must not be contrary to the order and morality

The design must be registrable under the Design Act, 2000. It must not be prohibited by the Government of India or any institution so authorized. The design must be capable of registering under Section 5 of this act. The design which can cause a breach of peace and may hurt the sentiments of the people may not be allowed to get register.

What is to be considered to register under this Act?

Looking forward to registering a design under Design Act, 2000, one must ensure following features in your design which are:

- The work must be capable of selling and made separately.
- It must be original and new to the market. The plagiarised design will not be considered under this act.
- It should be purely distinguishable from other designs.
- It must not relate to obscenity or any material which is inappropriate.

Rights of the proprietor of the design

When a proprietor applies for the registration of the design he shall automatically get 'copyrights in design' for the period of 10 years from the date of registration. This period can be extended if the proprietor wants to continue with the design. The Design Act should not be confused with the Copyrights act because there are many products which can be registered under both the acts but their remedies cannot be sought in both the acts individually.

Who is entitled to seek Registration?

As per the provisions of Design Act, 2000 any proprietor who is seeking registration of a design which is original and unpublished previously in any country which does not seem to be contrary to any law and order of that country can file an application for registration. A proprietor as per Section 2(j) includes that person who

1. is the author of that design
2. acquired design for a valid consideration and
3. Any person to whom the design has been devolved from the original proprietor.

In case there is more than one author than the design must be applied by the joint authors only.

Locarno classification

Locarno agreement is an agreement as per which the designs are registered under the Act. It classifies goods for the purpose of registering them which helps in Design searches. It divides designs into different classes which are mainly function-oriented.

Procedure for registration of design in India

[Chapter 2](#) of the Design Act deals with the registration of designs and the procedure to be followed for the same. The following steps must be followed:

- An application for the registration shall be made in the patent office in the prescribed form along with the prescribed fee. The class in which the design is to be registered must be specified in the application and the article(s) to which it is to be applied. There are separate applications which need to be filed for each class of article.
- The controller will give the application for examining it so as to check whether the design is capable of being registered or not. If everything seems perfect then the controller will accept the application and proceed further.
- If there is any objection, then the applicant or his agent will be asked to make necessary amendments so as to register the design and nullify the objection.
- If the objection does not get removed within three months after the hearing, the application will be withdrawn and it must be noted that

Application for registration of designs

The application for registration of designs is given under [Section 5](#) of the Design Act, 2000.

- The controller registers a design under this Act after verifying that the design of any person, claiming to be the proprietor, is the new or original design not previously published anywhere and is not against any public policy or morality. Provided that such a design should be capable of being registered under this Act.
- The applications under the Act shall be filed in the Patent Office in the prescribed manner along with the prescribed fee for filling the form.
- The design should be registered in a specific class and not in more than one class. In case of any doubt regarding the class in which the design should be registered, the Controller will decide the matter.
- The controller may even reject any design and not register it. In such a case, the person aggrieved may file an appeal before the High Court.
- If any application is not complete within the prescribed time limit owing to the fault of the applicant then it shall be abandoned.
- A design when registered shall be registered as of the date of the application for registration.

A wide variety of items that can be registered under the Act include cutlery, dresses, etc.

Items that cannot be registered as a design under the Act

- Signs, emblems or flags of any country.
- Size of any article, if changed.
- Structures and buildings.
- Integrated circuits' layout designs.
- Trade variations.
- Any principle or mode of construction of any article such as labels, tokens, cartoons, cards, etc.
- Books, calendars, certificates, jackets, forms-and other documents, greeting cards, maps and plan cards, postcards, leaflets, stamps, medals, dressmaking patterns.
- A mechanical contrivance.
- Workshop alterations of components of an assembly.
- Parts of any article which is not manufactured and sold separately.

Duration of the registration of a design

The total time for which a design can be registered is 15 years. Initially, it was 10 years, which could be extended for another 5 years by paying a fee of Rs. 2000 to the Controller but it should be done before the expiry of that 10 years period. The proprietor of any design may even file an application as soon as the design gets registered for such an extension.

Appeal for cancellation of the registration of a design

The registration of any design can be canceled anytime after it gets registered by filing a petition for such cancellation in [Form 8](#) along with a fee of Rs. 1,500 to the Controller.

The grounds for such cancellation are as follows:

- The design has been already registered in India previously.
- It has been published in India or somewhere else before the date of registration.
- The design is not original or new.
- It is not registrable under the Act.

Entitlement of registration under design act 2000

According to the Design Act of 2000, a proprietor who wants to get his design registered and it is original and is not published previously anywhere in any country and the one which does not seem to be clashing to any law and order of that country, can file an application for getting the design registered. A proprietor includes the persons who:

- Is the author of the design;
- Has acquired the design for a valid consideration and
- Anyone to whom that design has been devolved from the original titleholder.

In case if there is more than one author of the design, then the design must be applied by the joint authors.

Copyright in registered designs

After the registration of a design, the proprietor shall have the copyright of the design for 10 years from the date of registration.

If you want to extend the copyright period for the second period of 5 years then before the expiry of the original said ten years an application must be filed in the Controller's office along with the prescribed fee.

Register of designs

A book named 'Register of Designs' shall be kept at the Patent Office which contains all the details regarding the registered designs such as names, addresses of proprietors of registered designs, notifications and transmissions of designs and other important information. Such register must be maintained wholly or partly on computer diskettes or floppies as may be prescribed.

Importance of Design

A design reflects someone's intellect and creativity which afterward becomes a product. The design of any product makes a long-lasting effect on the consumers' minds. A design helps the consumers to recognize any product. If a design is attractive then it adds value to the business of that product. Thus, in order to protect a design from infringement, it is necessary to get it registered under the Designs Act, 2000. A mechanism has been pre-determined by the government to fulfill this purpose.

It adds value to the product and helps in gaining fair returns on investment. It gives you fair competition in the market.

Infringement of design

Just like any other Intellectual Property, the designs are also prone to infringement and they can also be copied by the competitors or some other person. If a design has been copied then the owner of that design can claim damages and can also apply for an injunction so that the design cannot be used further.

If there arises any question regarding the ascertainment of infringement then the Court will directly look for the design from the point of view of an average customer. In other words, the Court will consider whether there is any confusion which is obvious or some material facts in the minds of the customers regarding the two articles.

Industrial design infringement cases

In [*Disney Enterprises Inc. v. Prime Housewares Ltd.*](#), the international registration of industrial designs became a matter of conflict in India. A Mumbai based company Prime Housewares used to manufacture characters like Mickey Mouse, Donald Duck, etc. a suit was filed by the Disney enterprises for the infringement of their international registered designs.

The court held that the plaintiff's trademark is protected but not the designs under the Indian law. An order was passed by the court for the infringement of the trademark of the enterprises. The Indian company was asked to deliver all the infringing material to the enterprises so that it could not be used further.

Piracy of registered designs

[*Section 22*](#) of the Designs Act, 2000 deals with the piracy of registered designs. According to this section, any obvious or fraudulent imitation of a design which is already registered without the consent of its proprietor is unlawful. It also prohibits the import of any material which closely resembles a registered design.

This section also provides that in case if a civil suit is brought against any piracy of a design, then the compensation shall not exceed Rs. 50,000 for the infringement of one registered design. The compensation is statutorily fixed so it serves a good ground for an interim injunction even before the trial commencement.

In the case of [Bharat Glass Tube Limited v. Gopal Gas Works Ltd.](#), the respondents (Gopal Glass Works) had registered their design for diamond-shaped glass sheets and had a certificate of the same. The appellants started using this design for marketing. These designs were made in collaboration with a German company.

After knowing that the appellants are using their design, they moved to the Court. The appellants contended that the respondents' designs were not new since the German company had been using it since 1992 and it was already published in the U.K. Patent Office so it lost its originality. When the matter went to the High Court on appeal then it restored the designs to the respondents. When the matter reached the Supreme Court, it upheld the decision of the Calcutta High Court.

Conclusion

Design Act, 2000 brings about many changes which are observed in the features. When a developer develop something for example If an architect develops the structure of a building there is an expectation that my structure will not be infringed. Many designs are capable of providing the author with copyrights also.

In that case infringement of both cannot be claimed separately. The owner must have to choose which is more beneficial. High intellects are involved in making a design look good and have an everlasting impact. Government come up with a great policy of protecting designs. Moreover, these designs can also have a negative impact on the value of the business if infringed. A good design is always remembered.

If you want to know more about Design Registration and Procedure, please [Click Here](#).



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