



WHAT ARE DESIGN RIGHTS? BECOME IP 'SAVVY': PROTECT IT OR FORGET IT!

Under UK and EU law these rights are conferred on the creation of a new 3-dimensional design. They can be unregistered or registered. Unregistered or registered design protects the appearance of a product – this includes shape, contours, lines, colours, texture of the product or ornamentation. The definition of a “product” includes parts, get-up, symbols, and typefaces.

How can designers obtain design rights?

Unregistered rights arise automatically. In the UK they last for 15 years (if not exploited) or 10 years after they are made available to the public.

Post Brexit, the UK also offers a Supplementary Design Right (SDR) which lasts up to 3 years.

In the EU unregistered community rights last only 3 years from the date the design is first made available to the public. So, if you create unregistered design rights in any of the EU member states you can rely on EU unregistered Community design rights.

UK Registered rights can be obtained from the UK Intellectual Property Office (www.ipo.gov.uk), and last for 25 years renewable every five years.

An EU Registered Designs available from EUIPO [Home - EUIPO \(europa.eu\)](http://euipo.europa.eu) and last for 25 years renewable every five years. This only includes member states.

In either case, the more designs you file at the same time, the more cost effective it becomes so long as they are in the same class.

How can design rights be enforced when someone copies your designs?

If a designer has a registered UK or EU design this is a monopoly right (you have a certificate which says you “own” the design) and you do not have to prove copying.

With an Unregistered design you need to provide evidence of design ownership i.e. a design audit trail. (ACID offers its members an IP Databank which provides a unique, dated certificate of ownership).



ACID's advice is to communicate the value designers place in the designs you create DESIGN = VALUE and suggested the following statement is used on all marketing material, websites, product labelling. ***"All intellectual property rights existing in our designs and products (and in the images, text, and design of this website/marketing material) are and will remain the property of (insert designer's name). Any infringement of these rights will be pursued vigorously."*** This statement is available in ten different languages.

Prevention and deterrence should be a key priority in all design processes so that IP rights can be fully exploited and reap the rewards of the design equity which has gone into bringing a product to market.

What constitutes an infringement of Unregistered or Registered UK or EU design right?

An infringement will occur where another design creates the same overall impression to the informed user as the original design

In many cases going to court is the only way to enforce your design rights this can prove expensive - is there another way?

Often a comprehensive letter before action (LBA) or a "cease and desist" letter can be effective in achieving the objectives of a designer who has been copied especially if that is strengthened by being able to offer evidence of a registered design. A good LBA is also strengthened by the underpinning of the ACID brand which communicates that a member knows and understands their rights, asserts their rights, and communicates that they are prepared to take legal action. Only 3 out of the 200 settlements on behalf of ACID members have reached a final court hearing. Over two million pounds has been recovered in costs and damages. All successful settlements are communicated throughout the relevant trade press, thereby communicating a deterrent message to competitors within the same marketplace.

If there is a member-to-member dispute, as signatories of the ACID Code of Conduct, all members are bound to go to mediation a low cost and time effective way of managing copying complaints. At grass roots ACID offers ALL exhibitors FREE advice and help if they discover a copy of their products at an exhibition. There are several ACID accredited exhibitions who endorse the Exhibition Protocol for copying complaint handling. To date there have been over 5000 copying complaint handling interventions through the ACID Exhibition Protocol approximately 70% of these are solved there and then without further legal action. Only a handful have reached a final Court hearing.

Taking legal action doesn't necessarily mean going all the way to a final Court hearing, very few infringements do. Often, an effective "Letter Before Action" (LBA) or sometimes known as a "Cease and Desist" letter from an IP solicitor can achieve results. Keeping evidence or a "design audit trail" of newly created designs is essential.



Are design rights as effective as they should be? If not, why not and how can this be rectified?

ACID's advice is to register designs whenever possible as a deterrent to copying. It gives the designer a monopoly right which means that you don't have to prove copying. However one should have the funds to challenge those that copy, and this can prove to be very costly. ACID instigated a campaign to reduce the costs of registration and the IPO listened.

Since the 2011 Designs Consultation, and in line with then then Prime Minister's recommendations, ACID has campaigned for cost and time effective access to enforcement and a simplification of design law. Subsequently, ACID spearheaded a campaign to criminalise the intentional infringement of both registered and unregistered design resulting in the inclusion of registered designs made a crime in the IP Act of 2014, However, there is much work to be done as the intentional infringement of an unregistered design was not made a crime, as the majority of designers rely on unregistered designs.

The faith in registered designs (in this case a registered Community design – RCD) was eroded to a large extent following what became known as the “Trunk” case where the registered designs did not include the surface detail on the suitcases and the courts could not therefore consider this aspect when deciding whether or not there had been an infringement.

Since the 2022 Calls for Views asking whether the designs framework is fit for purpose, there is long-awaited Designs Consultation in June 2024 and ACID has been collaborating with the Intellectual Property Office (IPO) to ensure that the consultation will not only related to the technical aspects of simplifying design law, but will take into equal consideration the views of designers, designer makers and manufacturers.

No-one can underestimate the stress caused by infringement (a sanitised word for theft) and ACID has emphasised this in all discussions with the IPO reinforced by case study examples.

Is it worth protecting products by applying for design rights?

As the inventor Trevor Baylis says “No-one pays you for a good idea, but they may pay you for a piece of paper which says you own the idea” – We agree!



Points to Remember:

A registered UK design is a monopoly right and you do not have to prove copying

UK and EU - If you want design protection in the UK and EU, you need to register your designs separately with the UK IPO and EU IPO

Term - A registered UK or EU design lasts for 25 years (renewable every 5 years)

Deterrence - You can publicise the fact that you have a numbered certificate on your marketing material and websites to act as a deterrent against would-be copyists.

Proof - A registered UK or EU design can act as strong proof of ownership. The more designs you register, the cheaper it becomes to register.

Don't forget – design rights protect the 2D and 3D appearance or shape of an item. A design must have distinctive character, be new or novel and must not be copied – a design right has nothing to do with its function or the way it performs.

Have you signed the ACID IP Charter?

Join a growing number of people who are about IP ethics, respect, and compliance.
<https://www.acid.uk.com/become-a-charter-signatory/>

