



History and Evolution of Industrial Designs in India

Suvrashis Sarkar

Researcher for PhD with the University of Mumbai at Jamnalal Bajaj Institute of Management Studies

ABSTRACT

The study of history and evolution of a subject matter is important to gain deep knowledge of the specific area of study and the same has been explored as a part of the study on IPR management system in India. This paper presents in a short and concise manner the history and evolution of Industrial Designs in India.

KEYWORDS : History, Evolution, Industrial Designs, India

INTRODUCTION:

Design is that creation of human intellect which is appealing to the eye and attracts attention. This design when applied to a commercial product becomes important and distinct due to its aesthetic value. However design can be of two types: aesthetic and functional. Aesthetic factor satisfies the appealing/attraction concern of a consumer whereas the functional factor would satisfy the ease of product usage concern of a consumer. Some consumers may simply get attracted to a design which is odd/unusual. A product can sell better than the other due to any of the above design factors that it might be having which attract more consumers.

Considering Intellectual Property Rights in Design the importance is only credited to the aesthetic factor of that design and not the functional aspect.

The registration of a design confers upon the registered proprietor the exclusive right to apply a design to the article in the class in which the design has been registered. A registered proprietor of the design is entitled to a better protection of his intellectual property. One can sue for infringement, if his right is infringed by any person and can licence or sell his design as legal property for a consideration or royalty. Registration initially confers this right for ten years from the date of registration. It is renewable for a further period of five years. If the fee for extension is not paid for the further period of registration within the period of initial registration, this right will cease. There is provision for the restoration of a lapsed design if the application for restoration is filed within one year from the date of cessation in the prescribed manner.

The Designs Act, 2000 and the Designs Rules, 2001 presently govern the design law in India. The essential purpose of this Act is to promote and protect the design element of industrial production and also intended to promote innovative activity in the field of industries.

Definition:

According to section 2 (d) of the Design Act, 2000:

Design means only the features of shape, configuration, pattern, ornamentation or composition of lines or colours applied to any article, whether in two or three dimensional or in both forms. This may be applied by any industrial process or means whether manual, mechanical or chemical, separate or combined process, which in the finished article appeals to and judged solely by the eye, but does not include any mode or principle of construction or anything which is mere mechanical device and does not include any trade mark as defined in the Trade Marks Act or any artistic work as defined in section 2(c) of the Copyright Act, 1957

There are six main features of a design:

- Shape
- Configuration
- Pattern
- Ornament
- Composition of lines
- Colours

The term shape and configuration refers to form of an article and is three dimensional in nature. Pattern and ornament are two dimensional decorative features ordinarily applied to the surface of articles as in the case of textile. Pictures or devices printed on product packages are also considered as industrial designs. Composition of lines and colours are applied to the surface of a product.

The author of an industrial design is the one who conceived and created the design for the first time and produced it in a visible form whether by drawing or making a model.

The design is distinguishable from a Patent, Copyright and Trademark, even if all of them may appear to be resembling at a certain time. The design is primarily for its appearance of the shape and is registered as an industrial design. A trademark will be the label attached to the design to give it an identifiable name. Patent will be on the novel product on which this design might have got applied. The right conferred by registration of a design is called as the 'copyright', but it has no resemblance to the copyright covered under the Copyright Act. Design registration gives a monopoly of use like that in Patent. Copyright in an industrial design or product design is governed by the Designs Act, 2000. If a design is registered under this act, then it is not eligible for protection under the Copyright Act even though it may be an original artistic work. If the design is not registered under Designs Act, 2000 then Copyright will subsist on it under the Copyright Act, 1957, but that will cease to exist if the design is reproduced by the owner for more than 50 times by any industrial process.

Designs which are functional in nature are not registrable under Designs Act. Thus if a designer makes an article in certain shape not in order to make it appealing to the consumers' eye, but for making the product perform in for a particular functional requirement, it won't be registered under the Designs Act.

HISTORY OF INDUSTRIAL DESIGN IN INDIA

The need to protect new designs was felt in India as early as 18th century where in the legislation enacted the Patterns and Designs Protection Act, 1872 for the first time. The Act provided the inventors of new patterns and design in India, the exclusive privilege of making, selling and using the invention in Indian or authorizing others to do so for shorter duration of time.

This Act was followed by the Inventions and Designs Act, 1888 which consolidated and amended the law relating to the protection of inventions and designs and contained a provision relating to design in a separate part. The Act of 1888 was replaced by the British Patent and Designs Act, 1907 which became the basis of the Indian Patent and Designs Act, 1911. The Patents Act, 1970 repealed the patent provisions of the 1911 Act. The Designs Act, 2000 repealed the Designs Act, 1911. The Act came into force on 11 May, 2001.

EVOLUTION OF INDUSTRIAL DESIGN ACT IN INDIA

The first act in India to grant exclusive privileges to inventors of new patterns and designs was passed in 1872. This act was titled as "The Patterns and Designs Act, 1872". It gave a definition of new manufacture to include any new or original pattern or design or the applica-

tion of such pattern or design of the application of such pattern or design to any substance or articles of manufacture.

Later-on the Act was replaced by a new consolidated act called The Inventions and Designs Act, 1888. The 1888 Act was a clear reflection of British model of the same Act in the United Kingdom. Then came the Patents and Designs Act, 1911, which repealed the previous acts relating to Patents and for the first time in India this Act introduced a new separate office for the execution of law relating to designs.

The creation of controller general for all the Intellectual Properties unified the registration, administration and information in one office and made the procedure for obtaining protection more steady and uniform. To regulate the practice of registration and for the purpose of carrying into effect the provisions of the Act, Patent and Designs Rules were framed in the year 1933.

Section 2(4) of the Act gives copyright protection to a registered design as "Copyright means the exclusive right to apply a design to any article in any class in which the design is registered".

The 1911 Act excludes any Trademark or property mark from the definition of the term 'design' which was stated as only the features of shape, configurations, pattern or ornament applied to any article by any industrial process, which in the finished article appeal to and are judged solely by the eye. The Act further provides certain essential requirements to be satisfied in order to get a design registered in India.

The first important requisite is that the design should be new or original and not previously published in India. For the purpose of registration of designs, goods have been classified into fourteen different classes and an applicant, to safeguard his own interest, may register the identical design in different classes.

When a design is registered under this act, the proprietor of the design shall have copyright on his design for a period of five years, which may extend to fifteen years on an application filed before the registrar with the prescribed fee for the extension of the period of Copyright before the expiry of the five years term. During the period of the protection, the registered owner has the exclusive right to apply the design so registered on any particular thing or object in which it was registered. Under this act, the registered owner of the design should mark the article with word 'Regd' or 'Registered' with the number of registration, except in case of the textile design. If it was not marked by the proprietor, the he cannot claim protection and not entitled to recover damages from an infringer.

The 1911 act was amended so many times in the British colonial period and after the Indian independence. Finally Indian Designs Act, 2000 was enacted to consolidate and amend the law relating to the protection of designs and to implement the TRIPS Agreement. The rules came into effect on 11 May 2001, replacing the old law of 1911 to provide more effective protection to the registered designs and to encourage design activities. The new Act of 2000 grants the owner or proprietor of the registered designs an exclusionary right of selling, licensing, assigning and using the same in any product. The objective of the Act is to protect the IPR of original design and reward the innovator for the efforts applied to create a new and original design.

In India, registration of an industrial design is possible to protect if it is new or original provided it is a non-functional feature of shape, configuration, pattern, ornamentation or composition of lines or colours, applied to any article in two or three dimensional or in both forms, by any industrial process or means whether guide, mechanical or chemical, separate or combined. Under this Act, India has adopted the 'first to file, first to get' system, which means that the inventor or creator of a design should file the application for registration on the earliest possible time in order to prevent other persons claiming rights on that particular designs. A design is considered to be new if no identical design has been made available to the public before the date of filing, or the application for registration. In India, novelty is determined on a worldwide basis.

The main change that the Act has brought in is the exclusion of 'artistic works' as defined in the Indian Copyright Act, 1957 from the defini-

tion of the term 'design'. Likewise the Copyright act also excludes any design which is registered under the Designs Act from the scope of protection under the Copyright act. As per the new definition to the term 'design' the drawings and illustrations on which the product is made will be considered within the definition of artistic work as described in the Copyright Act and will enjoy copyright protection for the author's lifetime plus sixty years more. An industrial design is primarily for aesthetic features and will not get registered if it is same or similar to a previously existing design or is scandalous or obscene in nature.

REFERENCES:

1. Copyright Act, 1957
2. Designs Act, 2000
3. www.wipo.int