

# INTELLECTUAL PROPERTY RIGHTS IN INDIA

1. TRADE MARK
2. COPYRIGHT
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# DESIGN ACT

- Design Act in India at present is governed by the Design Act, 2000 and Design Rules, 2001.
- The Design Act was amended in the year 2008.
- Earlier this Act was governed by the Design Act, 1911.
- A new Act was required to bring the Design Act at par with International Law, therefore the Design Act, 2000 was enacted.

# PURPOSE OF DESIGN ACT

- The Design Act, 2000 states that it is to consolidate and amend the law relating to protection of designs.
- The Basic Framework of Intellectual Property Rights across the World is provided by the World Trade Organisation's TRIPS Agreement.
- Under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) a Minimum standard of protection of industrial designs have to be provided for by all the signatory countries.

Every member of the World Trade Organisation has to include the TRIPS provision in their IPR legislations and keeping this in mind the Design Act in India was amended to incorporate the minimum standards of protection of industrial design as provided by the TRIPS agreement.

# OBJECTIVE OF THE ACT

- The major goal of this Act is to prevent innovative or original designs from being copied and causing financial harm to the proprietor.
- Design Act consists of 48 sections and 9 schedules.
- The important purpose of the Act is of getting a design registered so as to protect the creator of the design from being copied by others.

# Design

Section 2(d) defines designs as “Design” means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye, but does not include any mode or principle of construction or anything which is in substance a mere mechanical device and does not include any trade mark as defined in clause (v) of sub section (1) of section 2 of the Trade and Merchandise Marks Act, 1958 or 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

# ESSENTIAL REQUIREMENT OF REGISTRATION

## 1. Novelty and Originality

A design will be considered for Registration only if it is unique.

A combination of a previously registered design can only be considered, if the combination produces new visuals.

2. The design should be unique and should not have been already published
3. The design should be capable of being distinguished from other designs
4. The design should not contain any scandalous or obscene matter



# RIGHTS OF THE PROPRIETOR

When a proprietor gets a design registered he gets a copyright in that design for a period of 10 years from the date of registration. This period can be extended for a further period of 5 years if the proprietor desires.

# WHO IS A PROPRIETOR OF A DESIGN

Section 2 (j) defines who is proprietor of a new or original design and includes a person who:

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

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

# INFRINGEMENT OF A DESIGN

In case of an infringement of a design, i.e. that the design is copied then the owner of the design can claim damages and can also apply for an injunction so that the design cannot be used further.

Section 22 of the Design Act provides that in case a civil suit is brought in any case of piracy of a design, then the compensation shall not exceed Rs. 50,000/- for the infringement of the registered design.