

ISSUES RELATING TO PROTECTION OF INDUSTRIAL DESIGNS

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Abstract

Industrial design renders an object attractive or appealing. Commercial success of a product depends on industrial design. Novelty, originality and visual appeal are essential if an industrial design is to be registered. Its aesthetic features should not be imposed by the technical functions of the product. Industrial designs may potentially be protected through design patents, trade dress, and copyright. Industrial design rights are granted to the creator of designs to reward them for their effort and investment in manufacturing the product. The holder of this legal title has the exclusive right to make, import or sell any objects to which the design is applied. They can authorize others to exploit the design and bring a legal action against anyone using the design without authorization. This research paper will discuss the issues relating to the recognition and protection of industrial designs as objects of intellectual property, the relation between industrial designs and other objects of intellectual property.

Keywords: Industrial Design, Novelty, Visual appeal, Design patents, Trade Dress, and Copyright.

Introduction

Intellectual property deals with a broad range of creations of the human mind which often have a high economic relevance when applied in industry and commerce. Intellectual property covers objects that range from works of art and other artistic intellectual creations, to technical solutions, to signs and business identifiers used in trade to distinguish persons, goods and services. Industrial designs are a particular object of protection in the intellectual property gamut, and enjoy special recognition and treatment. Although the intellectual creations that constitute the objects of protection under intellectual property are quite varied and generally well-defined, they are confined to those that have achieved legal recognition.

The purpose of legal protection of industrial design is that strong design protection will lead to increased innovation and creativity by providing

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designers with an economic incentive to develop better products. Although industrial design law is a distinct aspect of intellectual property law, it shares some characteristics with patent law and some characteristics with copyright. Subject matter that is protected under industrial design law in one country may be protected under patent law, copyright law, or even unfair competition law on another.

This paper is intended to study the identification and clarification of some of the issues connected with the protection of industrial designs and their relation to other objects of intellectual property. It may also facilitate the industrial design protection in Myanmar and particular aspects for further analysis after enacting the Industrial Design Law.

Material and Methods

A descriptive, comparative and an analytic method are applied in this paper. The materials used for the purpose of the research are books, articles (including articles on the Internet), conventions, treaties, agreements and case-law.

The Concept of Industrial Designs

An industrial design refers to the ornamental or aesthetic aspects of a useful article. A design may consist of three-dimensional features, such as the shape or surface of an article, or two-dimensional features, such as patterns, lines or color. Industrial designs are applied to a wide variety of industrial products and handicrafts: from technical and medical instruments to watches, jewelry and other luxury items; from house wares and electrical appliances to vehicles and architectural structures; from textile designs to leisure goods.¹

The work of industrial designers can be seen in almost all manufactured goods including cars, televisions, coffee makers, cellular phones, furniture, and computers. Design is increasingly recognized as key to

¹ Looking Good: An Introduction to Industrial Designs for Small and Medium-sized Enterprises, 2005, WIPO, p.3.

bringing ideas to the market and transforming them into user-friendly and appealing products or services.²

To be protected under most national laws, an industrial design must be new or original and non-functional. This means that an industrial design is primarily of an aesthetic nature, and any technical features of the article to which it is applied are not protected by the design registration. However, those features could be protected by a patent.

Industrial designs developed into a distinct object of intellectual property because of their peculiar nature aimed at satisfying both aesthetic and functional purposes when incorporated in a tangible product. Industrial designs are at the crossroads of art and technology, since the designers of industrial products strive to create products whose shape or appearance will satisfy the aesthetic preferences of consumers as well as their expectations with regard to the functional performance of those products. Although the design that gives a product its particular shape and aspect will be conceived to meet both functional and non-functional criteria simultaneously, many laws provide that only the non-functional features will be covered by industrial design protection. This reflects different policy options regarding the desirability to give legal protection to, on the one hand, technical achievements and, on the other, aesthetic creations.³

Industrial designs normally express the personal taste and style of their designers. Moreover, works of art applied to useful products can in certain cases be assimilated to industrial designs. Because such artistic expressions are applied to industrial products that perform specific utilitarian functions, industrial designs are also closely linked to technical creations.

International Provisions Concerning the Protection of Industrial Designs

International convention relating to protection of intellectual property provides many ways of protection of industrial design. But, there is no universally accepted definition of industrial design and uniform system of

² https://ec.europa.eu/growth/industry/intellectual-property/industrial-design/protection_en.

³ www.wipo.int/edocs/mdocs/sct/en/sct_9/sct_9_6.doc.

protection. This results in many difficulties in advancing toward the uniform international protecting of designs, though the following treaties and agreements concerning design protection are currently in force.

Paris Convention for the Protection of Industrial Property, 1883

The Paris Convention deals with industrial designs in Article *5quinquies*. This provision merely states the obligation of all member countries to protect industrial designs. Nothing is said about the way in which this protection must be provided. Member countries can therefore comply with this obligation through the enactment of special legislation for the protection of industrial designs. They can, however, also comply with this obligation through the grant of such protection under the law on copyright or the law against unfair competition.

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement 1994)

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) became effective in 1994 and is administered by the World Trade Organization (WTO). It imposes minimum standards for the protection of intellectual property in general. However, only two provisions of TRIPS directly refer to industrial design protection. Art 25 TRIPs sets forth the “Requirements for Protection”, whereas Art 26 TRIPs defines the “Scope of protection”.

Article 25 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement 1994) states “Requirements for Protection”. Members shall provide for the protection of independently created industrial designs that are new or original. Members may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. Members may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.

Each Member shall ensure that requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair the opportunity to seek and obtain

such protection. Members shall be free to meet this obligation through industrial design law or through copyright law. Article 26 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement 1994) states the way of protection and the duration of protection.

The Hague Agreement Concerning the International Deposit of Industrial Designs

The Hague Agreement was first concluded in 1925 and consists of several individual treaties. It was last revised in 1999 with the adoption of the Geneva Act. The Hague Agreement's purpose is to simplify registration of industrial designs for several countries. Therefore, it provides an international deposit system that allows national design proprietors to obtain protection in all member states by filing one application and depositing one sample. The eligibility for and scope of protection, however, are subject to the national laws of the member states in which protection is sought.⁴

The applicant is thus relieved of the need to make a separate national deposit in each of the States in which he requires protection, thus avoiding the inherent complication of procedures that vary from one State to another. The Hague Agreement offers designers and other design owners a simplified and economic system for the protection of designs in a large number of countries. The 1999 revision of the Hague Agreement gives Member States additional flexibility to maintain certain conditions applicable under their national design laws.

Locarno Agreement Establishing an International Classification for Industrial Designs

The Locarno Classification, established by the Locarno Agreement (1968), is an international classification used for the purposes of the registration of industrial designs. The eleventh edition of the Classification entered force on January 1, 2017. The Locarno Classification is "solely of an administrative character" and does not bind the contracting countries "as regards the nature and scope of the protection afforded to the design in those

⁴ <http://www.wipo.int/treaties/en/registration/hague/>

countries”.⁵ The Locarno Agreement requires the industrial property office of each contracting country to “include in the official documents for the deposit or registration of designs, and, if they are officially published, in the publications in question, the numbers of the classes and subclasses of the international classification into which the goods incorporating the designs belong”.⁶ Recommendations of the Committee of Experts deal with the manner in which the classes and subclasses should be indicated in the said documents and publications.

Berne Convention for the Protection of Literary and Artistic Works (1886)

The Berne Convention became effective in 1886 and was the first major international copyright treaty. Art 2 (1) of the Berne Convention provides a non-exclusive list of works protectable under copyright law. Industrial design is not specifically regulated in the Berne Convention but might fall under the concept of “applied art” that is not further defined in the convention. According to Art 2 (7) of the Berne Convention it is in the discretion of the signatory states whether they want to protect industrial design as applied art, and if so, to set the conditions of protection. Interestingly, however, the Berne Convention concludes that industrial design should be protected as artistic work, and therefore under copyright law, in the event that the signatory state’s laws are silent as to the form of protection offered for industrial design. As a result, in case of doubt, industrial design should be protected under copyright law. The Berne Union countries first agreed to protect applied art as a separate category of work like to copyright at the Brussels Conference to revise the convention in 1948.

They agreed to add works of applied art to the protectable subject matter of the Convention, but each country retained the right to define applied art, to limit the duration of copyright in applied art, and also to distinguish between protectable applied art and a category called “designs and models”-- which could be subject to a more restrictive industrial property regime.

⁵ Article 2(1) of Locarno Agreement 1968.

⁶ Article 2(3) of Locarno Agreement 1968.

Thus, although it was agreed that applied art should be subject to copyright protection, the 1948 Brussels Conference did not require countries to protect all industrial design under copyright law. Countries could choose to write *sui generis* design laws to protect industrial design, and even if they used the copyright scheme as a basis for design protection, these countries could still limit the duration of protection of applied art as opposed to fine art. The change to Berne in 1948 was probably the high point of the “unity of art” approach to design protection. This movement lost momentum after 1948--both inside and outside the Union--as countries sought to pass *sui generis* laws and protect design as a type of industrial property. This trend was a rejection of the full copyright approach and perhaps a recognition of the growing importance of industrial designs with the need for more short-term protection.⁷

Protection of Industrial Designs

In most countries, an industrial design must be registered in order to be protected under industrial design law. As a general rule, to be registrable, the design must be “new” or “original”. Generally, “new” means that no identical or very similar design is known to have existed before. To be protected under most national laws, an industrial design must be new or original and nonfunctional. This means that an industrial design is primarily of an aesthetic nature, and any technical features of the article to which it is applied are not protected by the design registration. The objective novelty countries themselves even differ from one another as to the qualifications to which this notion is subject.

In Ireland, Benelux, and the United Kingdom, there are limitations in space; the design has to be new in the State concerned. In Denmark and Portugal, is a time criterion; the design is deemed to be new if no identical form has been used or protected since a certain point in the past. In Benelux and Germany, a design is not new if it is known to the national circles specialized in the relevant sector, which is an interesting concept. Now, an additional criterion to novelty is also required in some of the Community Countries. It must be "original" in the United Kingdom and Ireland in the

⁷ https://www.wipo.int/edocs/mdocs/sct/en/sct_9/sct_9_6.doc

sense that it differs in more than immaterial details or common variants. It must have "physionomiepropre" (own appearance) in France; it must give the product a "special ornament" in Italy; and in Germany, it must have what is called "eigentumlichkeit" (individual character), implying some creative effort on the part of the designer.⁸

Industrial Designs and Patent

Design patents only protect the ornamental aspects of the patented design. Therefore, a design patent will not protect functional aspects. This requirement does not present a problem for designs that are clearly ornamental, but for designs that incorporate ornamental and functional aspects in the same product, courts have had trouble distinguishing between the protectable ornamental aspects and the unprotectable functional aspects. This problem is particularly applicable to the work of industrial designers because the products they design will inevitably have both functional aspects and ornamental aspects. Therefore, the ability and willingness of the courts to develop rules to extract the protectable ornamental aspects of a design is crucial to the successful protection of industrial design through design patents, but courts have not yet developed an easily applied rule in this area.⁹

In sum, design patents do offer advantages, but these advantages only benefit the designers and manufacturers of products that meet the requirements of a design patent and have characteristics that make obtaining a design patent feasible. Ultimately, for many products, design patents simply are not the solution to the need for the protection of industrial design.

Industrial Designs and Copyright

Industrial designs are closely related to works of art, and it might be assimilated to works of applied art. Industrial designs can be regarded as a

⁸ Hugh Griffiths, Overview of Developments in Europe on Industrial Design Protection Fordham Intellectual Property, 1993, Media and Entertainment Law Journal, Volume 4, Issue 1, Article 25, p.362.

⁹ Regan E. Keebaugh, Intellectual Property and the Protection of Industrial Design: Are Sui Generis Protection Measures the Answer to Vocal Opponents and a Reluctant Congress, 2005, Journal of Intellectual Property Law, Volume 13, Issue 1, Article 8.

form of artistic expression. Industrial designs may also be protected as works of art under copyright law. While industrial designs are usually embodied in industrial and consumer products, they may also be embodied in works of handicraft. Handicrafts and other forms of traditional arts expressed in tangible products are automatically protected by copyright as works of art or applied art, and may also be protected as industrial designs.¹⁰

Three approaches may be considered in relating copyright and *sui generis* design rights: cumulative protection, separation of regimes, and partial overlap. (i) Cumulative protection (based on the theory of “unity of art”) proposes a total and automatic application of both the copyright and the special industrial design regimes to industrial designs. (ii) Separation of regimes (based on the theory of “separability” or “dissociation”) proposes a clear separation of protection regimes, such that industrial designs may only be protected by special design legislation because the artistic expression, if any, cannot be separated from the article in which it is embodied. (iii) Partial overlap would allow copyright protection for industrial designs that meet the standards of works of art, although the required level of artistic merit might not be easily met in practice.¹¹

Work of arts includes an object and/or the features of an object. Handicrafts may have utility or “functional features” in addition to aesthetic features. Exclusive rights in an industrial design may, under certain laws, also be acquired on the basis of original creation of the design, or first fixation or embodiment of the design in a product or in a document. Such systems plainly adopt the basic principle of copyright law, whereby exclusive rights are generated upon creation of a literary or artistic work, without any formality or procedure. These systems have the clear advantages of simplicity and economy, since there is no initial cost to obtain exclusive rights. Arguably, one disadvantage of those systems would come from the need to prove authorship and entitlement at the time of litigation proceedings. Registration of a design, or even a simple deposit thereof, would help by

¹⁰ Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), 2002, Industrial Designs and Their Relation with Works of Applied Art and Three-Dimensional Marks, WIPO SCT 9/6, p.3.

¹¹ W.Cornish, D. Llewlyn, T. Aplin, Intellectual Property: Patents, Copyrights, Trade Marks and Allied Rights, London, 2010.

establishing a rebuttable presumption of ownership in favor of the right holder.¹²

For designers, the great benefit of copyright protection over design patent protection is that no registration or other formalities are required to obtain copyright, the protection period is long, and the required level of originality of the design is much lower than the patent law standard. However, the line between copyrightable applied art and non-copyrightable industrial design is the most important and difficult boundary in any system for the protection of industrial design. In the U.S., because of fears of the anticompetitive nature of providing long term copyright protection, the role of copyright in protecting industrial design has been almost eliminated.

Cumulative protection by copyright and industrial design rights is therefore possible for the non-functional features of product configuration. Likewise, the shape of a product may theoretically enjoy overlapping protection as an industrial design and as a (three-dimensional) mark. However, for this to happen, the shape in question must be capable of functioning as a mark, i.e., it must allow consumers to distinguish goods on the market.¹³

Industrial design can also be protected under copyright law, thus there is a possibility to obtain simultaneous and concurrent protection. This means that even though any designs fail to obtain industrial design protection, but in some jurisdictions they can be covered by copyright law. Copyright protection is automatically available, without formalities, upon the creation of a design in the form of drawing, a photograph, data, a sculpture or a 3-dimensional shape. However, even while copyright gives a longer term of protection, unlike industrial design rights generally, in principle copyright laws protect the creations only against direct reproduction and not against independent development of a similar design. In another jurisdiction, trademark laws also may be applied to protect 3-D marks, including trade dress, if they are

¹² Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), 2002, *Industrial Designs and Their Relation with Works of Applied Art and Three-Dimensional Marks*, WIPO SCT 9/6, p.4.

¹³ Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), 2002, *Industrial Designs and Their Relation with Works of Applied Art and Three-Dimensional Marks*, WIPO SCT 9/6, p.3.

distinctive signs capable of distinguishing goods with respect to the origin of the goods to avoid from deceiving consumers. In some jurisdictions, laws of unfair competition, including the common law of passing off, would also apply to industrial designs.¹⁴

Industrial Designs and Trademark

Protection for industrial design can also be found under trademark law. This protection comes in the form of trade dress protection. Trade dress defines as "the overall appearance and image in the marketplace of a product or a commercial enterprise." Trade dress encompasses many characteristics of a product including color, size, weight, texture, shape, and graphics, or a combination of these characteristics. When the trade dress of a product becomes so popular that consumers begin to associate the particular dress with the source of the product, the trade dress can then be protected under trademark law. Like copyright and design patent protection, protection of industrial design through trade dress law has advantages and disadvantages. One of the major advantages of trade dress protection of industrial design is that registration is not required to enjoy the protection trademark law offers.¹⁵

The function of industrial designs is to make utilitarian, industrial and consumer products more pleasing to the eye, i.e., more aesthetically attractive to prospective buyers. Beauty of appearance adds not only aesthetic value but also commercial value to any product. That value becomes real when an article embodying a particular design can command a higher market price than a functionally identical product having a different shape or aspect.

Some designers have turned to trademark protection for industrial design. Commentators have argued that trademark law is not the best place for protection of design: "the problem is this: protection of industrial design, unless kept firmly tied to source recognition as a trademark, easily slides into an unpredictable system of monopoly awards for successful designs, uninhibited by the statutory standards of copyright law or design patent law."

¹⁴ Budi Suratno, *Industrial Design Protection in Indonesia: A Comparative Study of the Law on Industrial Design Protection between Japan and Indonesia*, 2004.

¹⁵ http://www.wipo.int/wipo_magazine/en/2008/01/article_0006.html.

A trademark enjoys potentially perpetual protection without the need for patent novelty, or even originality under copyright law.¹⁶

The problem is that in their attempts to ensure that trademarks do not provide designers with monopolies over non-distinctive features, the courts have rendered trademarks useless for protecting market-entry designs while in some ways strengthening their use for well-established designers who can use them to monopolize particular design features.¹⁷

Unlike industrial design rights, rights in a mark may be extended indefinitely in time, through continuous use to distinguish goods or services on the market, and periodic renewal of the mark's registration. Such perpetual exclusive rights in marks are not, however, detrimental to competition, since it is not necessary to copy or use someone else's mark to be able to produce and sell the same goods competitively.

Industrial Design and Unfair Competition

A degree of formality-free exclusivity in the exploitation of a product design may also be attained through the law on the repression of unfair competition. Notwithstanding the principle that any creation that is not covered by copyright, a design right or a patent is in the public domain and hence free for anyone to copy, in certain cases unfair competition principles may be invoked to prevent copying. In particular, slavish or systematic imitation of a competitor's products in a manner that may be regarded by a competent authority as contrary to honest commercial practices, could be enjoined. Distinguishing fair competitive copying from unfair slavish or parasitic imitation is not easy. However, certain unfair competition laws and court decisions may effectively allow an unregistered product configuration to be protected against unauthorized copying.

Passing off is another form of Unfair Competition, is arguably the most important, its occurs most often in practice, the Paris Convention singles

¹⁶http://www.esa.int/About_Us/Law_at_ESA/Intellectual_Property_Rights/Protection_against_unfair_competition.

¹⁷ Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), 2002, Industrial Designs and Their Relation with Works of Applied Art and Three-Dimensional Marks, WIPO SCT 9/6, p.3.

out as one of the main forms of unfair competition against which protection should be granted. In Article 10 *bis*(3) of the Convention requires countries to grant protection against all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor. Passing off takes place where a trader represents to the public that her enterprise, goods or services are that of her competitor or are connected with competitors. To determine whether a trader conduct amount to passing off, one has to enquire whether the public is likely to be confused into believing that her enterprise, goods or services are, or are connected with that or her competitor. Passing off should not be looked at in notation. In practice statutory remedies often overlap with the common law remedy against passing off.

National Law Relating to Protection of Industrial Designs

Some industrial designs are business assets that can increase the commercial value of a company and its products. The more the successful the design is, the higher its value to the company. In some ASEAN countries, industrial designs are protected by Design Law. In other countries, they are protected by some kinds Intellectual Property Law. In Singapore, Malaysia, Philippines and Indonesia, industrial designs are protected by Design Law. But in Brunei and Thailand, they are protected under Intellectual Property Law. In some countries, the designs are protected in different category such as textile designs are protected by Textile Design Protection Rules.

In Japan, industrial designs are protected primarily under the Design Law but depending on their types, partly under the Copyright Law, the Unfair Competition Prevention Law and the Trademark Law. Because the principle of examination is employed for designs, the Design Law, in fact, serves a great role in the protection of designs. Both the EU and Australia have *sui generis* forms of design protection. In both these countries, design systems are independent of the preexisting copyright or patent protection regimes. In the

US, design patents are protected using United States Patent Law (35 USC). There is no independent design law.¹⁸

As in the United States, the concept of design protection is incorporated into the law based on patent-oriented approach. It is however questionable whether this legislative concept prevails in the wider world. In European countries, design laws are copyright-oriented and EU rules on designs have been drafted based on a design-oriented approach. This means that the protection of designs varies widely both in form and type, in a way incomparable with patent and trademark protection. This results in many difficulties in advancing toward the uniform international protecting of designs, though the treaties and agreements concerning design protection are currently in force.

In most countries all over the world, industrial design needs to be registered in order to be eligible for the protection. However, due to different point of views in terms of national directions and legal infrastructures in any respective countries, it is common that there are some differences regarding to administrative and substantive procedures applied to administer of Industrial Design Protection in each country. In order to minimize such differences and to provide public with a highly assurance on the protection of Industrial Design and further nurturing the industry of any country, a comparative study on the administration of such an IPR field is a necessity to improve the quality of protection itself.¹⁹

Term of Protection

By protecting an industrial design, the owner is ensured an exclusive right against its unauthorized copying or imitation by third parties for a period of time, which is typically for 5 years with the possibility of renewal, up to a maximum of 15-25 years depending on the particular national law. The TRIPs provides for protection of a minimum of 10 years. Once a design is registered,

¹⁸[https://www.jpo.go.jp/torikumi_e/kokusai_e/training/textbook/pdf/Legal_Protection_of_Industrial_Designs\(2001\)](https://www.jpo.go.jp/torikumi_e/kokusai_e/training/textbook/pdf/Legal_Protection_of_Industrial_Designs(2001)).

¹⁹ Budi Suratno, *Industrial Design Protection in Indonesia: A Comparative Study of the Law on Industrial Design Protection between Japan and Indonesia*, 2004. Mr. Riichi Ushiki, *Legal Protection of Industrial Design*

the term of protection is generally five years, with the possibility of further periods of renewal up to, in most cases, 15 years. This varies from ten years in Spain; fifteen years in Benelux, Denmark, Ireland, and Italy; twenty years in Germany; twenty-five years in the United Kingdom; fifty years in France; and nobody quite knows in Portugal, but it seems to be more or less indefinite.

Protection of Unregistered Designs

In the US, Australia and Japan unregistered designs may only be protected through trademark and copyright law. In EU, unregistered designs are protected through the unregistered community design route. Unregistered community designs are suitable mainly for small companies or freelancers to protect their products for a short period, for example, fashion since the registration process is costly and time consuming.

The protection of unregistered designs is basically aimed at protection against imitation and fraud. Imitation and fraud occurs as marketing begins where the response of consumers may be easily influenced, especially in the case of fashion-related business. If it is recognized that such designs must be protected for a period longer than 3 years, such design protection can be transferred to long-term protection as a registered design within 12 months from the start of marketing. It should be understood that such selective transfers of protection systems may not be realized under legislation according to the copyright approach.²⁰

Findings

Although industrial design can be protected through design patents, copyright, and trade dress, all of these methods of protection have limits and difficulties that render them inadequate for the protection needs of industrial designers. The criteria for protection differ from one country to another. The examiner or court faced difficulty to determine whether the design is perceived as an aesthetic feature rather than as a functional part of the product itself.

²⁰Mr. Riichi Ushiki, Legal Protection of Industrial Designs, Patent Attorney USHIKI International Patent Office, 2001, Japan Patent Office.

Design is important for consumers who often choose a product based on how it looks. Well-designed products create an important competitive advantage for producers and companies that invest in design tend to be more profitable and grow faster. In order to encourage producers to invest in designs, there needs to be accessible, modern and effective legal protection for their design rights.

There is no practical position of protecting patents and designs in Myanmar although there has been the Science and Technology Development Law 1994. Burma Patents and Designs Act 1945 was repealed in 1993. At the present, the Office of the Attorney-General is drafting the bills on the IP laws in compliance with the TRIPs Agreement. Because, Myanmar is a member of WTO, WIPO, and ASEAN.

Under section 18(f) of the Registration Act, industrial design may be registered with the Registry of Deeds and Assurances by means of Declaration of Ownership and followed by Cautionary Notice. Publication of Cautionary Notice in a local designated newspaper based on registration is the sole process to remind the public. From September 1, 2017, the registration of industrial design was not allowed. Because of the lack of promulgated law, rules and regulations, this process is used for any possible passing-off and infringement of industrial design rights.

Conclusion

Nowadays, commercial success of a product largely depends upon its attractiveness and visual appeal. Design nourishes creativity in the industrial and manufacturing sector and helps to expand commercial activities ultimately leading to economic development. So, companies use intellectual property laws to protect industrial designs which are important tools for branding. Brand names affirmed by industrial designs have become the most important strategic factor for an increasing number of companies.

An effective system of protection also benefits consumers and the public at large, by promoting fair competition and honest trade practices, encouraging creativity and promoting more aesthetically pleasing products. Protecting industrial designs helps to promote economic development by

encouraging creativity in the industrial and manufacturing sectors, as well as in traditional arts and crafts. Designs contribute to the expansion of commercial activity and the export of national products.

Protecting industrial designs helps to promote economic development by encouraging creativity in the industrial and manufacturing sectors, as well as in traditional arts and crafts. Designs contribute to the expansion of commercial activity and the export of national products. Protection of Industrial designs can be relatively simple and inexpensive to develop and protect. They are reasonably accessible to small and medium-sized enterprises as well as to individual artists and crafts makers, in both developed and developing countries.

A worldwide effort also started to develop a model design law or agreed set of principles when the World Intellectual Property Organization (WIPO) was created. Many countries were interested in creating specific design protection laws. However, the reform movement failed out without setting a clear international standard. As a result, the international legal framework does not give sufficient guidance as to the definition of design and the nature of protection.

Because of the improvement of industrial designs work, lives more comfortable, pleasurable and efficient. Currently, protection for industrial design can be found under copyright law, patent law, and trademark law. Each of these areas of intellectual property law provides a different level of protection, and each has distinct advantages and disadvantages when compared to other forms of protection for industrial design. Despite the protection that each of these areas of law provides for industrial design, the consensus among intellectual property scholars and industrial designers is that none provides a level of protection that adequately serves the needs of the design community.

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