



THE MALTESE DESIGN

Explanatory Notes on Malta's Designs Legislation

This article offers basic information on some aspects of Designs as provided for under the Patents and Designs Act, 2000. It is not a reference document and carries no authority. The Industrial Property Registrations Directorate does not undertake to give legal advice or opinion about Designs or models other than in the course of formal proceedings – but sets out to answer some of the more basic questions.

Definition of Designs

Designs mean the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself, and/or its ornamentation.

Property Rights

A registered design is a property right obtained by the registration of the design according to the law entitled 'An Act to make provision for the registration and regulations of Patents and Designs'. A design is protected by a design right if the design in question is new and has individual character.

Novelty

A design is considered to be new if no identical design has been made available to the public before the date of filing of the application for registration or, if priority is claimed, before the date of priority.

Individual Character

A design is considered to have individual character if the overall impression it has on the informed user differs from the overall impression produced by any other design which has been made available to the public before the date of filing of the application for registration or, if priority is claimed, before the priority date.

Disclosure

A design is considered as having been made available to the public if it has been published, exhibited, used in trade or otherwise disclosed, unless it can be shown that the design could have reasonably become known, before the filing date or where priority is claimed, before the priority date, in the normal course of business to the circles specialised in the sector concerned.

Non-Registrable Designs

A design right cannot be obtained for:

- a. features of appearance of a product which are solely dictated by its technical function;
- b. features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to allow the product, in which the design is incorporated or to which the design is applied, to function;
- c. a design serving the purpose of allowing multiple assembly or connection of multiple interchangeable products within a modular system.
- d. a design which is contrary to public policy or accepted principles of morality;
- e. a design which consists of the national flag of Malta, or contains Presidential or Episcopal arms or principal armorial bearings or representation of flags

Scope of Protection

The protection of a design right extends to any design which does not give a different overall impression on the informed user.

Term of Protection

A design right is protected for a period of five years from the date of filing of the application and is renewable for one or more periods of five years each up to a total term of 25 years.

Renewal of Registration

The registration of a design may be renewed at the request of the proprietor, accompanied by the prescribed fee. A late renewal can be effected up to six months after the date of expiry. If the registration is not renewed it shall be removed from the register.

Exclusive Rights conferred by the Design Right

The registration of a design shall confer on its holder the exclusive right to use it and to prevent any third party not having his consent from using it. The rights of the proprietor have effect from the date of registration but no infringement proceedings may be initiated before the date on which the design is in fact registered.

Exhaustion of Rights

The proprietor of a registered design is not entitled to prohibit the use of a product in which the design is incorporated or to which the design is applied when the product has been put on the market by the proprietor or with his consent.

Transmission of a Registered Design

A registered design is transmissible by assignment, testamentary disposition or operation of law in the same way as other personal or moveable property. A transmission may be partial and limited so that the use of the design applies in a particular manner or a particular locality.

Application for Registration

An application for the registration of a design shall be filed with the Comptroller in the Maltese or English language on the appropriate form and accompanied by the prescribed fee.

Date of Filing

The date of filing shall be the date of submission of the completed application form to the Office.

Priority

When an applicant wishes to claim priority for a design or model of manufacture, by reason of an application for a design duly filed in a Convention Country, he must file an application within 6 months from the official date of the first application in the Convention Country.

Examination of Application

The Comptroller shall examine the application in order to ascertain that it complies with the requirements of the law. If any of these requirements are missing the Comptroller will inform the applicant and invite him to make the necessary amendments. If the necessary amendments are not made the Comptroller shall refuse the application.

Withdrawal or Amendment of Application

The applicant may withdraw his application at any time. An application may be amended only in so far as the amendment relates to corrections of the name and address of the applicant, errors of wording and obvious mistakes. Such a correction should not substantially affect the identity of the design.

Registration

On the registration of a design the registration certificate shall be issued and a notice shall be published in the Government Gazette stating the fact that the design has been registered and that it is available to be viewed by the public at the Office.

Grounds for Invalidity of Registration

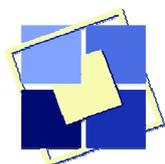
The registration of a design may be declared invalid on the grounds that it does not comply with any of the points 3 – 6 above.

Effect of Acquiescence

An action for invalidity may not be initiated when the person bringing action is aware of the use of the registered design in Malta and has acquiesced for a continuous period of five years to such use.

Action for Infringement

Infringement proceedings shall be brought before the Civil Court, First Hall and shall not be instituted after five years from the date when the injured party has obtained knowledge of the infringement and of the identity of the alleged infringer.



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