

Module 1: Design

Design in Business Studies

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APPLICABLE DOCUMENTS

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1. Design in Business Studies

1.1 Learning Outcomes

“Registered design” or “design rights” is a type of intellectual property that protects the shape and configuration (how the parts are arranged) of an object. Design rights also protect the appearance of a product, which can be 2-dimensional and 3-dimensional and includes its: shape, colors, texture, materials and ornamentation.

This type of intellectual property is of fundamental importance in the business and economic sector. Indeed, a registered design gives the holder an exclusive right to create the design. This means they can take action against someone who violates their design even if not copied.

After completing this module, you will be able to:

- Learn what “Registered design” or “design rights” are.
- Learn the importance of this type of Intellectual Property within the business sector.

Estimated seat time: 1 hour

1.2 Main Content

1.2.1 Terms and Definitions

The term intellectual property (IP) refers to a variety of different types of legal rights.

Sometimes it can be quite confusing for business owners to know what IP rights they have, or what rights they should be seeking for their products or services.

There are 4 types of intellectual property (IP): Trademarks, patents, copyright and design rights. A very simple explanation to distinguish them is that:

- Trademarks are elements of branding;
- patents protect inventions;
- copyright protects original expression; and
- design law protects the appearance of products.

This module will explore the topic of design rights.

“Registered design” or “design rights”, whether registered or unregistered, is a type of intellectual property that protects the shape, configuration (how the parts are arranged) and features of an object,

product or article. Design rights also protect the appearance of a product, which can be 2-dimensional and 3-dimensional and includes its: shape, colors, texture, materials, and ornamentation. However, they do not protect functionality, which may be eligible for patent protection.

Design rights' characteristics might change depending on what country you're applying it from. For example, a UK unregistered design right can only apply to designs created by a "qualifying person" or which were first placed on the market in a "qualifying country". More specifically, a "qualifying person" is either a citizen, subject or resident of a qualifying country, or a company or other legal entity which is formed under the law of a qualifying company and has a place of business carrying out "substantial" business in a qualifying country.

A "qualifying country" instead is either the UK; or another EU country; or a country with which the UK has a bilateral agreement to protect unregistered designs, or which has been designated as a qualifying country by the Parliament. Therefore, if the person creating the design is not from one of these countries or more generally from EU, registering a design may be the best option for protecting their design¹.

Slightly different from the design rights are the design patents. The latter represents a form of legal protection of the unique visual qualities of a manufactured item. A design patent may be granted if the product has a distinct configuration, distinct surface ornamentation or both but also has a practical utility.

1.2.2 Theory behind the IP implementation

It's very important to clarify the difference between "unregistered design right" and "registered design rights". Unregistered design right is similar to copyright because it develops from the act of creation of a design. It still protects the shape and configuration of the design of 3D objects against copying by others. The first owner of UK unregistered design right is the creator of the design himself. However, if the design is created in the process of a person's employment, the employer is the owner of the design. UK unregistered designs protects the design for 10 years after it was first sold or 15 years after it was created.

Registered design right instead provides protection for up to 25 years and can be registered in the UK by application to UK Intellectual Property Office and in the EU by application to the European Intellectual Property Office. Registering a design is generally considered the best option for a better protection. However, your design must meet the eligibility criteria of being new and having "individual character"².

¹ Moulton, L. (2021, May 25). A basic guide to design rights. Wright Hassall.
<https://www.wrighthassall.co.uk/knowledge-base/a-basic-guide-to-design-rights>

² Design rights - Intellectual property. (2020, October 30). Clarke Willmott LLP.
<https://www.clarkewillmott.com/legal-services/intellectual-property-lawyers/design-rights/>

Design registration costs are relatively low, and the application process relatively quick (typically only one month), so registered designs are well-suited to manufacturers seeking protection for products with a quick turnaround time³.

It's also very important to remember what are the conditions that a design must have in order to apply for registration:

- **Novelty**: The design must be new; it cannot be the same as any other design which is already publicly available.
- **Individual character**: The design must have individual character, which means that the overall impression of the design has to be different from the appearance of other known designs existent in the market.
- **It must not be solely dictated by the functionality**: The appearance of the product must not be wholly determined by its technical function⁴.

As mentioned before, this type of intellectual property is of fundamental importance in the business and economic sector. Indeed, a registered design gives the holder an exclusive right to create the design. This means they can take action against someone who violates their design even if not copied. The general rule however, is that the person who creates the design will own the copyright and design rights in any work that he or she produces. As for unregistered design rights, in this case as well, if a design is created in the course of employment, any copyright or design rights in that work will automatically belong to the employer⁵.

1.2.3 Practical examples

Businesses are becoming increasingly aware of the advantage that design rights can give them over their competitors. Design rights can offer appealing benefits over other forms of intellectual property right, for example, promptness and ease of registration and fairly low cost.

The examples below show some ways in which design rights have been adopted to meet the needs of particular industries.

³ How your unregistered designs are protected. (2015, September 23). GOV.UK.
<https://www.gov.uk/unregistered-designs>

⁴ Design Rights. (2020). Oury Clark. <https://www.ouryclark.com/resource-library/quick-guides/intellectual-property/design-rights.html>

⁵ I'm an artist – what do I need to know about IP? | Creative IP. (2017, November 12). CreativeIP.
<https://creativeip.org/im-an-artist-what-do-i-need-to-know-about-ip/>

- The relatively low costs of design registration, along with the speed of the registration process, means that design rights are perfect for manufacturers seeking to protect wide and ever-changing product ranges. The toy and fashion industries, for example, rely heavily on design protection.
- Design rights also represent an exclusive way for companies to protect new media and digital products. Copyright indeed will protect the underlying code of a software application, but there are arguments that say it should also protect the 'look and feel' of the results displayed on the screen. However, the nature of design rights means that they are ideally suited to protecting digital images. This means protection of, amongst other things, video game characters. This right has also been widely used to protect graphic icons that appear in computer applications and on mobile phones.
- Registered design rights also offer the ability to achieve speedy infringement remedies, important for fast moving industries. The fashion industry has a notoriously short time for stock turnover, with fashions changing by the season, if not more frequently. The potential risks of damage mean that infringement action has to be quick and easy, injunctions have to come almost before goods reach the shop floor. The current phenomenon of no-frills fashion – clothing chains that specialise in providing the look of designer fashion at bargain basement prices – often strays into the realm of direct copying. Community design rights have given fashion designers a quick and easy means of protecting their designs in key markets, allowing them to strike before the worst of the damage is done⁶.

So, why are design rights important in the business sector? Apart from the examples mentioned above, it's important to remember that sometimes companies build their success on a specific design which becomes a distinctive feature of their products.

A very popular example can be Apple and its products. Apple products, such as smartphones, laptops or iPad, have distinctive features which distinguish these products from those of the competition.

Apple is indeed famous for being a company that strives its competitive edge from the design of its products rather than from their pure technical features. To quote Judge Birss in *Samsung Electronics UK v Apple Inc.* [2012] EWHC 1882 (Pat), Apple's products are "cool"⁷.

That is why Apple being is a prolific filer of registered designs, is not shocking news. In 2019 alone, Apple has filed to protect 458 designs in Europe. Apple's registered Community designs include from

⁶ Traub, F. (2020, April 2). How design rights can add value to a business. Pinent Masons. <https://www.pinentmasons.com/out-law/guides/how-design-rights-can-add-value-to-a-business>

⁷ Traill, J. (2021, April 7). How has the Design of the iPhone 11 been Protected in Europe? - Intellectual Property Law. Reddie & Grose. <https://www.reddie.co.uk/2019/11/29/how-has-the-design-of-the-iphone-11-been-protected-in-europe/>

the likes of watches, tablet computers and user interfaces, to adapters, cases and packaging, through to benches, display units and tables.

1.2.4 Case studies

Remaining on Apple's example, it's necessary to mention the case of the design patents. Indeed, there are cases when design rights are not only about the appearance of a product but an object appearance which is also functional⁸. This is the case of the MacBook Pro with Retina display and the laptop's cooling vents, that were awarded a design patent from The U.S. Patent and Trademark Office.

Indeed, Apple's MacBook Pro with Retina display, launched in June of 2012, was awarded with a design patent for its overall look and design. Unlike MacBook Pros that came before it, the Retina model abjured the optical drive-in favor of having a thin-and-light profile. The design patent was awarded to Apple Senior Vice President of Industrial Design Jonathan Ive and longtime designer Christopher Stringer.

Apple takes the protection of its intellectual property very seriously, due to its popularity and its competitive advantage in the current economic market.



⁸ Kenton, W. (2019, August 21). Design Patents: What You Should Know. Investopedia.
<https://www.investopedia.com/terms/d/design-patent.asp>

1.3 Knowledge Assessment

Quiz-like assessment based on the main content. Please mark the correct answer with bold when required. Include 10 questions for your module. Increase gradually the level of difficulty.

Question 1: Design right is the same thing as copyright

True/ **False**

Question 2: Design rights only protect the appearance of art products

True/ **False**

Question 3: UK unregistered designs protects the design for 10 years after it was first sold or 15 years after it was created.

True / False

Question 4: Where can I apply to register my design in UK?

UK Intellectual Property Office

European Intellectual Property Office

Parliament

Question 5: Does registering a design right give companies economic advantage on their competitors?

[Yes] [No] [**I cannot say**]

Question 6 (More than one answer is correct): What conditions does a design have to have in order to apply for design right registration?

[**Individual character**] [Low cost] [Functionality] [**Novelty**]

Question 7 (More than one answer is correct): Who generally owns the design rights of a specific design?

[The person who renames the design] [The person who has invented the object, where the design was created] [**The person who creates the design**] [**The employer, if a design is the design is created in the course of employment**]

Question 8 (More than one answer is correct): What are the main benefits of design rights registration for companies?

[**The process of design right registration is fast, easy and low-cost**] [Registered design right adds value to the products] [**Registered design rights offer the ability to achieve speedy infringement remedies**] [Registered design rights will protect the underlying code of a software application]

Question 9: How many design rights Apple has registered in 2019 in Europe?

[650] [1076] [243] [**458**]

Question 10 (More than one answer is correct): For what products Apple was awarded design patents from The U.S. Patent and Trademark Office in 2013?

[Laptop's cooling vents] [iPod Touch (5th generation)] **[MacBook Pro with Retina display]** [iPhone 5S]

1.4 Skills Assessment

One of the most important skills to improve when it comes to Intellectual Property concepts is analytical skills, which can help individuals to draw conclusions and solve complex problems from the analysis of all data available.

An IP concept such as designs, related to a complex subject such as Business Studies, will probably require a load of skills to use to acquire a greater knowledge and solve any eventual issues that come with it.

As mentioned before, analytical skills result necessary for this particular subject.

Many exercises and activities exist to practice this skill. Some of them are very simple, like reading books, playing brain games or joining a debate club to keep your brain stimulated

One of the simplest activities to improve your analytical skills is also to keep a journal. This can help you keeping track of the events in your life, reflect on them and, in case something doesn't go as planned, make you analyse the whole situation and find better solution for future actions.⁹

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⁹ Indeed Editorial Team. (2021, February 10). 10 Ways To Improve Your Analytical Skills. Indeed Career Guide. <https://www.indeed.com/career-advice/career-development/improve-analytical-skills>

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