HOW TO PROTECT INDUSTRIAL DESIGNS IN KENYA

INTRODUCTION

In a market where visual appeal influences purchasing decisions, the design of a product is more than just aesthetic, it is a strategic asset. From the shape of packaging to the decorative elements on consumer goods, these features can set a product apart and carry significant commercial value.

Kenyan law recognizes this value and provides a legal mechanism to protect it through industrial design registration. Governed by the Industrial Property Act (Cap 509), and administered by the Kenya Industrial Property Institute (KIPI), industrial design registration grants the creator or rights' holder exclusive legal rights over the appearance of their product. This article provides an overview of industrial design protection in Kenya, including the registration requirements and the procedural steps involved.

THE DEFINITION OF AN INDUSTRIAL DESIGN

Section 84(1) of the Industrial Property Act (Cap. 509) defines an industrial design as the overall appearance of a product resulting from one or more visual features such as its shape, configuration, pattern or ornamentation. To be registered in Kenya, an industrial design must be new (not publicly disclosed) and not contrary to public order or morality.

It is important to note that industrial design protection applies only to the visual or aesthetic aspects of a product. It does not extend to the product's function or technical features, which are instead protected through patents or utility models. In essence, industrial design law protects how a product looks, not how it works.

THE IMPORTANCE OF REGISTERING AN INDUSTRIAL DESIGN

Registering an industrial design grants the holder exclusive legal rights to prevent others from making, selling or importing products that replicate the protected design without authorization. Key benefits of registration include:

- **Market exclusivity:** It prevents unauthorized copying or imitation, therefore maintain a competitive advantage.
- **Commercial leverage:** The registered industrial design can be licensed or sold to third parties, generating commercial value.

- **Legal enforcement:** Registration provides a legal basis to pursue infringement claims and enforce rights through the courts.
- **Enhanced business value:** A registered industrial design can increase product appeal and strengthen consumer confidence.

THE REQUIREMENTS FOR REGISTRATION

To file an industrial design application in Kenya, the application must include the following components:

- **Visual representations:** These must include clear drawings or photographs showing all views of the product which depict its overall appearance.
- **Statement of novelty:** This is a declaration identifying the unique visual features of the industrial design, such as its shape, configuration, pattern, ornamentation or a combination of these elements.
- **Statement of justification (if applicable):** Where the applicant is not the original creator of the design, this statement must establish the legal right to register the design, usually through an assignment or employment agreement.
- **Power of Attorney:** This is required when the applicant is represented by an agent, whether local or foreign.

THE REGISTRATION PROCESS

Step 1: Application submission

The process begins with the submission of a complete application to KIPI, including the necessary forms, visual representations, statement of novelty and proof of fee payment. This sets the foundation for formal review.

Step 2: Examination

Once received, the application undergoes examination to determine whether the industrial design meets the legal thresholds of novelty and originality. Industrial designs that merely replicate existing creations or serve a purely functional purpose may be rejected at this stage.

Step 3: Publication in the industrial property journal

If the industrial design is accepted, it is published in the Industrial Property Journal for a period of sixty (60) days within which any party opposed to the registration of the application may file an opposition.

Step 4: Issuance of the certificate of registration

If no opposition is filed or any raised are resolved in the applicant's favor, the design is formally registered, and a certificate of registration is issued. The initial registration lasts for five (5) years, with the option to renew for additional five (5)-year periods, offering protection for up to fifteen (15) years in total.

HOW CM ADVOCATES LLP'S IP & TMT UNIT CAN SUPPORT YOU

At CM Advocates LLP, our Intellectual Property & TMT Unit provides tailored support to innovators seeking to protect the visual elements of their products through industrial design registration. With a presence across Kenya, Uganda, Tanzania, Rwanda, South Sudan, Zambia and Ethiopia, our team brings regional insight and legal support for product launches, design commercialization and innovation protection. Our support includes:

- **Preparation and filing of applications:** We handle the end-to-end preparation of applications, including well-crafted statements of novelty and supporting legal documentation such as assignments or powers of attorney.
- **Response to examination queries:** Should KIPI raise any queries during examination, we prepare and file timely, effective responses on your behalf.
- **Opposition management:** In case of third-party opposition, we offer representation and legal arguments to defend your d industrial design's uniqueness and secure its registration.
- **Post-registration enforcement:** We support you in enforcing your registered industrial design rights by advising on infringement claims, cease-and-desist strategies and litigation where necessary.
- **Cross-border protection:** Through our regional presence and network, we assist in extending design protection across the EAC region and under the ARIPO System for broader commercial reach.

NEED LEGAL GUIDANCE?

For support with design registration, enforcement or related intellectual property matters, please contact:

Contact Person & Contributor

Mercy Chore
Associate Advocate,
IP & TMT Unit
mchore@cmadvocates.com

www.cmadvocates.com

Or reach our Corporate Commercial Practice Team at:
commercial@cmadvocates.com

Disclaimer; *This publication is for informational purposes only and does not constitute legal advice. For tailored legal support, please consult our team.*