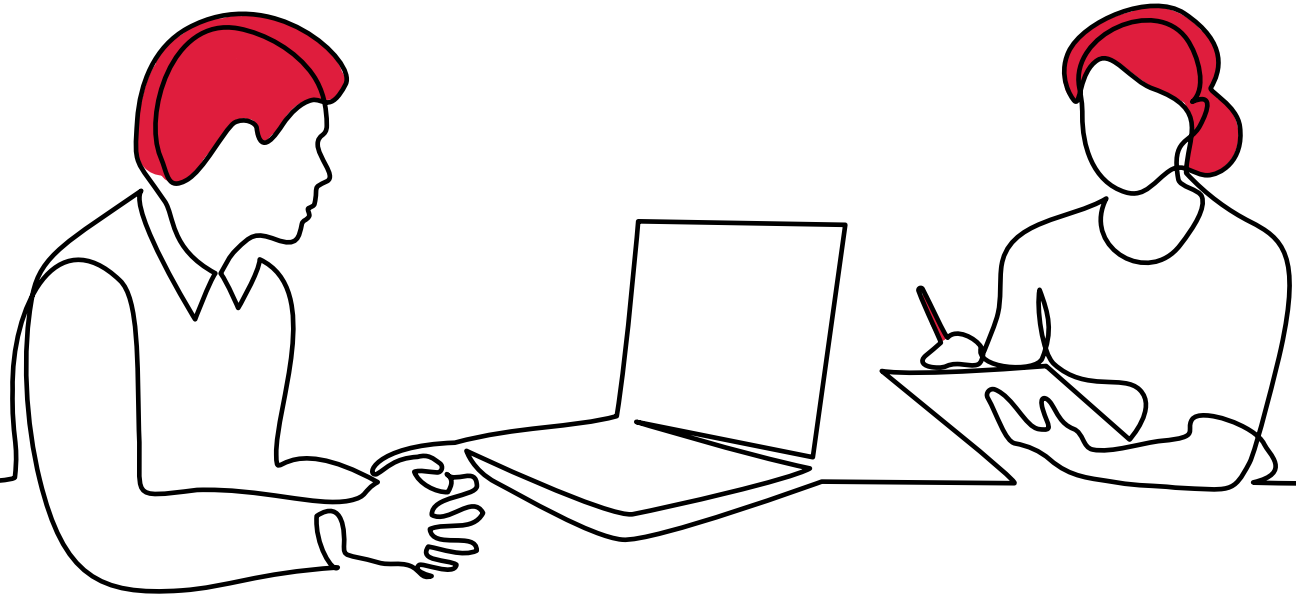


# Design Rights



**Design rights protect the appearance of a product. This can be the whole or part of a product resulting from the lines, contours, colours, shape, texture or materials, or ornamentation of the product itself.**



Examples of designs include graphic designs, patterns, computer icons, three-dimensional product shapes, two-dimensional ornamentation (e.g. stylised logos), packaging, or digital media products, such as computer game characters and computer icons.

### **Types of protection for designs**

In the UK, designs are protected by three legal rights: unregistered design rights; registered designs; and, artistic copyright.

Both unregistered design rights and copyright arise automatically and provide exclusive rights against copying. However, there are limitations on these rights, and so it is always advisable to register designs where possible.

Design registration gives the owner a monopoly on their product design for a limited period to stop others from making, using or selling a product to which the design has been applied, or in which it has been incorporated. The registered design right is additional to any unregistered design right or copyright protection that exist automatically in the design.

### **Length of protection**

For registered designs, initial design registration lasts for 5 years, but can be renewed for up to 25 years.

For unregistered designs, these last for a period of 10 years from the end of the year of the first sale of the product, however, this is subject to an overall maximum of 15 years from the end of the year in which the product was designed if no products were sold within the first 5 years. Only the shape and configuration of your design will be protected by unregistered design rights.

There is also a European protection for unregistered designs which is known as an unregistered community design right. Similarly to the UK, unregistered design right, it arises automatically and offers only limited protection. The community unregistered design right will only protect the design for 3 years after creation.

## Benefits of design registration

A product's design features can be synonymous with the branding and image of a business and can become a core asset with monetary value. By way of example, Apple's range of "i" products display distinctive designs that separate their products from other mp3 players, mobile phones or tablets on the market.

A registered design in the UK gives the holder the exclusive right to make, offer, market, import, export, use or stock any product to which the design has been applied, or is incorporated. It also provides a right to take legal action against others who might be infringing the design, and to claim damages for any infringement that occurs, which has an added deterrent effect. The holder can also licence usage of the design to third parties under commercially agreed terms in the UK and the Isle of Man.

Similarly to trade mark registrations, design rights can be registered solely in the UK; or in the EU (via a single application to the European Intellectual Property Office); or worldwide through the Worldwide Intellectual Property Office (WIPO).

## Considerations before applying for design registration

- **Novelty:** The design must be new, and not the same as any design which is already publicly available.
- **Individual character:** The design must have individual character, which means that the overall impression of the design must be different to the appearance of already known designs in existence 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 function.

## The application procedure

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 time. Applicants can defer publication of their design application for a period of up to 12 months from the date of filing, allowing them to secure a filing date with time to market the product or obtain a patent if necessary.

As with trademarks, it is crucial to carry out searches in order to see if there is anything identical or similar on the market. If the designs are considered new and no similar results are found, then an application can be made to the UK Intellectual Property Office together with representations of the design including all relevant views to be protected (e.g. front, back and sides).

The official filing fees start from £40 for a deferred application and £60 for a standard application, however legal fees involved in carrying out relevant searches and assisting with the application will be significantly higher.

## Design Rights and tax

It will sometimes be commercially sensible to segregate a design right within a separate corporate entity from the rest of a business. Should anything happen to the broader business, control of the design right and can be retained for future use. Moreover, the design right may be transferred to a commercial entity in a lower taxed jurisdiction, where licence fees or royalties for use can be levied.

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