

# Design Protection in Australia

## Features and benefits



### What do Australian Design Registrations Protect?

Australian design registrations protect the visual appearance of products. This visual appearance may be due, for example, to a particularly aesthetically appealing three-dimensional shape adopted for the product and/or to a two-dimensional pattern and/or ornamentation applied to a surface of the product.

### Why Apply for an Australian Design Registration?

In many cases, a large amount of time and expense is invested in developing the desired visual appearance for a product, as this visual appearance often has a significant impact on consumer appeal. There is also often a relatively large cost associated with developing moulds and tooling once a final design has been developed. An Australian design registration is a good way of helping to protect these investments, and provides a mechanism for taking action against third parties who market, in Australia, a product that has a design that is identical or substantially similar in overall impression to the registered design.

The protection provided by an Australian design registration is generally independent of the material from which the product is constructed, unless the material affects the appearance of the product. Accordingly, a competitor will generally not be able to avoid a design registration simply by changing the material from which the product is formed.

### Advantages of Australian Design Registrations over Copyright Protection.

An important advantage of Australian design registrations over Copyright protection is that there is no onus on the design owner to prove that an alleged infringement resulted from the original item being actually copied. In other words, if an alleged

infringement falls within the scope of the design registration, infringement will be found, regardless of whether the infringing article was copied or developed independently.

### Advantages of Australian Design Registrations over Patents.

An advantage of Australian design registrations over patents is that the requirements for registrability of an Australian design application are usually easier to meet than the corresponding requirements for patentability. Accordingly, even in cases where patent protection may be difficult or impossible to obtain, it may still be possible to register an Australian design in order to provide protection for the investment made in a product. Another advantage is that design registrations can usually be obtained at far less expense than patents. Also, the timeframe between lodgement and registration of an Australian design application (often only around six months) is usually significantly shorter than that between lodgement and grant of an Australian patent.

An important consideration to keep in mind, however, is that a design registration generally only protects the appearance of a product. Accordingly, if an innovation relates to the way the product works or is constructed, irrespective of the product's appearance, then patent protection may be more appropriate, and will ultimately provide broader protection.

It is possible to seek both design and patent protection for an innovation and, in many cases, there may be sound commercial reasons for doing so.

### What About Overseas?

Design registrations are also available in most foreign countries. Foreign applications can be backdated

to the date of filing of a corresponding Australian application, provided that the foreign applications are filed within six months of the filing of the Australian application. Most of the comments made above in respect of Australian design registrations also apply to foreign design registrations. However, it should be appreciated that the specific laws and practices relating to design registrations do vary from country-to-country.



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