

Industrial Designs 101 - Everything You Need To Know In Plain English

By Elias Borges www.borgesrolle.com

What are Industrial Designs?

Most common or every day products have an aesthetic look. In many cases the aesthetic look of a product can be one of its key selling features. A stylish toaster or an artistic lamp tend to sell much better than their drab and utilitarian counterparts. The aesthetic look of these items is referred to as their design. Appealing designs can be protected (i.e. registered) so that only the registered owner of those designs can apply the designs to a useful item. In Canada, we refer to these registered designs as Industrial Designs.

What Kind of Designs can be Registered?

The design must first of all be aesthetic. It must have visual appeal. A purely utilitarian design cannot be registered. Taste is not a consideration, therefore, an aesthetic design, regardless of whether it is a "good" design or a "bad" design, may be registered provided it has some visual appeal (to somebody). The Industrial Design Office will refuse to register a purely functional design, but it does not comment on the quality of the design. A functional design, such as the design of a comb, may be registered provided there is some aesthetic element to it. Hence, a product's shape, as long as its visually appealing to somebody, may be registered.

A pattern which has been applied to a product may also be protected as an Industrial Design. Patterns of ornamentation, such as bangles, bows or ribbons, which are applied to a product may form a registrable design.

Originality of The Design

To be registered a design must also be original. Designs which have been publicly available for more than one year cannot be registered. Therefore, it is important to consider applying for Industrial Design protection before selling your product to the public. If the design has been on sale for more than one year, then it may be too late to apply to register the design.

What Kind of Designs Cannot be Registered?

Here are some examples of common designs which cannot be registered:

- Purely functional designs (with no aesthetic appeal). For example, a new groove design on a screw may be a purely functional design since it only has a functional purpose. Purely functional designs may be protected by a patent (also known as a utility patent).

- Designs for items that are not intended to be seen. If the design is applied to an item which is intended to be hidden or covered, then its design cannot be registered. For example, the design of a circuit board in computer may not be registered since it is intended to be hidden in a computer and will never be seen by the consumer.
- Amorphous designs (designs that have no fixed shape or appearance) cannot be registered. A bean bag chair may be one such design since it can take on many shapes depending on how it is deformed.
- An individual colour cannot be registered as an industrial design. A pattern of colours may be registered as a pattern. Therefore, a red chair cannot be registered, however a pattern of red stripes on a chair may be.
- Inventions, such as new machines, methods of doing things, compositions of matter, functional features, and ideas cannot be registered as Industrial Designs. This sort of things may be protected under patents.

How do you Register an Industrial Design?

An industrial design application is first prepared. The application will have drawings or photographs which illustrate and describe the design. There will usually be several views of the device (rear view, front view, top view, bottom view, side view and a perspective view). The application is filed with the Industrial Design Office along with the appropriate government filing fee. The Industrial Design Office will eventually review the application. Eventually, the design office may issue a letter requesting that changes be made to the application. If changes are required, a response is sent, usually with an amended application. When the Industrial Design office is satisfied, they will issue a notice, and the registration will follow.

What is in an Industrial Design Application?

The application will contain a brief written description of the article to which the design is applied and how the design is applied. The owner of the design, and his or her address is also listed in the application. The application will also have drawings or photographs.

Drawings

Each application must have either drawings or photographs of the design. The drawings must clearly show the aesthetic features of the design. There are several requirements for drawings/photographs.

How is the Application Processed?

The Industrial Design Office will first give your application a preliminary review. A filing certificate will be issued to confirm the filing date, name of the applicant and the application number. If something is missing from the application, a notice will be sent.

After several months, the Industrial Design Office will examine the description portion of the application to ensure that it accurately describes the design features shown in the drawings. The Industrial Design Office then searches its records for similar designs. If they find an identical design (or a design which is very close), they may reject the application.

What Happens if there are Conflicting Industrial Design Applications?

If two applications are filed for the same design, then the Industrial Design Office will grant the registration to the application which has the earliest filing date (or earliest priority date).

How Long does it take to Register an Industrial Design?

Applications generally take at least 12 to 18 months to be processed. However, it is not necessary to wait until the end of the process to get the design on the market. We generally suggest to our clients that an application be filed before the design is disclosed to the public, but after filing it is perfectly acceptable to get the design on the market. You can mark your product with the term "Design Pending" to warn off would be copiers.

How Long do Registered Industrial Designs Last?

A registration lasts for five years, and is renewable for another five years (ten years in total).

Marking Your Product

To maximize your protection, it is important to mark the product as having a registered industrial design. This is usually done with a capital "D" inside a circle followed by the name of the owner. This mark should be found on the product label or packaging.