

Copyright, Trademarks and Design Rights

What are design rights and how are they used?

Duncan Clark:

Welcome to final video in our series on copyright, trademarks and design rights. This series of videos is presented by Dr Hayleigh Boshier of Brunel University, London. This video: 'What are design rights and how are they used?' will cover the following:

- *What terms do we need to be aware of?*
- *What do design rights cover?*
- *What is the process for obtaining design rights?*
- *What is the difference between design right and artistic copyright?*
- *Are there international differences that should be taken into account?*
- *What do companies need to do in terms of protecting design rights?*
- *What can we learn from legal cases involving design rights?*

What terms do we need to be aware of?

Hayleigh Boshier:

So, there are different types of design rights, mainly registered and unregistered designs. I think the reason the terminology is more confusing, than say with other types of IP, is because we commonly use both of them in designs, whereas (as I mentioned before in trademarks, for example, we tend to go for registered trademark) copyright is unregistered. So, it's a bit more clear-cut. With design rights, it's handy for a designer that you can benefit from unregistered design rights for a period of 12 months, is the grace period you have, and then you can apply for registered design right (if you decide that it's a worthwhile venture to invest in). Essentially, the registered design right gives you stronger, longer, broader protection, whereas the unregistered design right is still useful but it's really a first step. That's what it's there for, although some people decide never to register and just rely on the unregistered design protection but that entirely depends on what exact product their using it for.

What do design rights cover?

So a design right protects the aesthetics of what a product looks like, so there's a broad range of different types of registered designs. It could be anything, for example: to do with the shape of a bottle, a beer brand might register the shape of their bottle, the interface of an iPhone texting, that's a registered design right. It's all to do with how that product looks, particularly if there are other products that do a similar thing but there's looks in a different way. It's not to do with the functionality. So, it's really important to know that the design protection only protects the way the product looks and not what the product does.

What is the process for obtaining design rights?

So, a design right, a bit like a trade mark, you just go online and you register it. You might want to seek legal advice before you do that, especially, as I said, because it's important to make the right decision as to whether you want to register or not, and at what point do you need to register by. Once you've registered you have protection for 25 years, although you have to keep renewing every five years. A bit like the other IP rights that we've talked about, it's territorial. So, you register in the country that you're operating in and if you wanted to take action in another country you would also have to register there where the law might be slightly different.

What is the difference between a design right and an artistic copyright?

So, copyright and design in theory are separate types of IP. But as talked about, one product or item can have different IP applied to it, and a strong IP portfolio would use as many types of IP that is possible to protect the work. So, artistic copyright is a way of protecting, for example, a drawing of the work, or the design (if you've drawn how the product will look), that will give you copyright protection in that artistic work, and that will give you all of the things that copyright gives you: protection for 70 years after death of the author, no one can copy it, communicate it to the public, thank kind of thing.

The registered design right is a different type of IP that can protect, ultimately the same product, but in a different way and you get different rights. So, it's the same, once you have a registered design no one can copy it, they can't use it without your permission, but the scope of protection is different.

Are there international differences that should be taken into account?

In relation to registration, with something like a trademark for example, you would have to go to each individual country's IP office and register there. With a design there are some agreements, such as that in Europe, you can register your design and then that will be registered in multiple countries. So, that's one notable difference. The design rights, like any IP right, are different in every country so it's important, if you operate in another country to, find out about how design law works in that country. Copyright, for example, is much more harmonized in concept. The concept of copyright is similar, although the dynamics of it are different around the world.

With design, even the word 'design' means something different in America, for example, then it does here. So, it's even more important to understand the nuances if you are an international company.

What do companies need to do in terms of protecting design rights?

For protecting your design, I think that it's important to know the parameters of what the design protection is, and to be vigilant about registration and keeping an eye to make sure nobody else is registering the same design as you. Again, I think with all the IP rights the same

procedure applies. The first step would be to contact the other side before you move through to maybe mediation or going to court as a final step. And also, the same with trademarks, it's about originality. The more recognizable and original your product or service is, the higher and easier it is to protect.

What can we learn from legal cases involving design rights?

So, one of the things that I mentioned is that a design has to be about the decoration and the way that the product looks, and it cannot be to do with the function of what the product does. A well-known case which illustrates this point is 'Dyson v Vax'. We have these two vacuum cleaners that look very similar. Dyson had tried to register a design right for the clear cylinder bin of their vacuum cleaner, they argued that it was an aesthetic vision by the designer, to do with the way that the product looked. Vax, on the other hand, argued that the cylinder was clear so that the use could see when the bin was full, and when to empty it. When the court were deciding if this was a purely functional aspect or a decoration aspect, what they did was they imagined that the functional aspect of the design is removed, and then whether the main design reaches the criteria or not, and in this particular decision they found in favor of Vax, in that actually the clear cylinder was functional and not aesthetic.

Duncan Clark:

Thank you to Dr Halyeigh Boshier for contributing to Academy by PatSnap. Thanks for watching, and see you next time.