

Registrable Designs and Proceedings for Registration

5. Designs registrable under Act—(1) Subject to the following provisions of this section, a design may, upon application made by the person claiming to be the proprietor, be registered under this Act in respect of any article or set of articles specified in the application.

(2) Subject to the provisions of this Act, a design shall not be registered thereunder unless it is new or original and in particular shall not be so registered in respect of any article if it is the same as a design which before the date of the application for registration has been registered or published in New Zealand in respect of the same or any other article or differs from such a design only in immaterial details or in features which are variants commonly used in the trade.

(3) Regulations made under this Act may provide for excluding from registration under this Act designs for such articles, being articles which are primarily literary or artistic in character, as may be specified in the regulations.

Cf. Registered Designs Act 1949, s. 1 (U.K.); 1921–22, No. 18, ss. 2, 52

6. Proprietorship of designs—(1) Subject to the provisions of this section, the author of a design shall be treated for the purposes of this Act as the proprietor of the design:

Provided that where the design is executed by the author for another person for good consideration, that other person shall be treated for the purposes of this Act as the proprietor.

(2) Where a design, or the right to apply a design to any article, becomes vested, whether by assignment, transmission, or operation of law, in any person other than the original proprietor, either alone or jointly with the original proprietor, that other person, or, as the case may be, the original proprietor and that other person, shall be treated for the purposes of this Act as the proprietor of the design or as the proprietor of the design in relation to that article.

Cf. Registered Designs Act 1949, s. 2 (U.K.); 1921–22, No. 18, s. 52 (1)

7. Proceedings for registration—(1) An application for the registration of a design shall be made in the prescribed form and shall be filed at the Patent Office in the prescribed manner.

(2) For the purpose of deciding whether a design is new or original the Commissioner may make such searches, if any, as he thinks fit.

(3) The Commissioner may refuse any application for the registration of a design or may register the design in pursuance of the application without modification or subject to such modifications as he thinks fit.

(4) An application which, owing to any default or neglect on the part of the applicant, has not been completed so as to enable registration to be effected within such time as may be prescribed shall be deemed to be abandoned.

(5) Except as otherwise expressly provided by this Act, a design when registered shall be registered as of the date on which the application for registration was made, or such other date (whether earlier or later than that date) as the Commissioner may in any particular case direct:

Provided that no proceedings shall be taken in respect of any infringement committed before the date on which the certificate of registration of the design under this Act is issued.

(6) An appeal to the Court shall lie from any decision of the Commissioner under subsection (3) of this section.

Cf. Registered Designs Act 1949, s. 3 (U.K.); 1921–22, No. 18, s. 52

As to appeals, see s. 35.

8. Registration of same design in respect of other articles, etc.—(1) Where the registered proprietor of a design registered in respect of any article makes an application—

(a) For registration, in respect of one or more other articles, of the registered design; or

(b) For registration, in respect of the same or one or more other articles, of a design consisting of the registered design with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof,—

the application shall not be refused and the registration made on that application shall not be invalidated by reason only of the previous registration or publication of the registered design:

Provided that the period of copyright in a design registered by virtue of this section shall not extend beyond the expiration of the original and any extended period of copyright in the original registered design.

(2) Where any person makes an application for the registration of a design in respect of any article and either—

(a) That design has been previously registered by another person in respect of some other article; or

- (b) The design to which the application relates consists of a design previously registered by another person in respect of the same or some other article with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof,—

then, if at any time while the application is pending the applicant becomes the registered proprietor of the design previously registered, the foregoing provisions of this section shall apply as if at the time of making the application the applicant had been the registered proprietor of that design.

Cf. Registered Designs Act 1949, s. 4 (U.K.); 1921–22, No. 18, s. 53; 1939, No. 26, s. 69

9. Provisions for ensuring secrecy in respect of designs relevant for defence purposes—(1) Where, either before or after the commencement of this Act, an application for the registration of a design has been made, and it appears to the Commissioner that the design is one of a class notified to him by the Minister of Defence as relevant for defence purposes, or is in the opinion of the Commissioner likely to be valuable for defence purposes, he may give directions for prohibiting or restricting the publication of information with respect to the design, or the communication of such information to any person or class of persons specified in the directions.

(2) Regulations may be made under this Act for securing that the representation or specimen of a design in the case of which directions are given under this section shall not be open to inspection at the Patent Office during the continuance in force of the directions.

(3) Where the Commissioner gives any such directions as aforesaid, he shall give notice of the application and of the directions to the Minister of Defence, and thereupon the following provisions shall have effect, that is to say:

- (a) The Minister of Defence shall, upon receipt of the notice, consider whether the publication of the design would be prejudicial to the defence of New Zealand, and, unless a notice under paragraph (c) of this subsection has previously been given by the Minister of Defence to the Commissioner, shall reconsider that question before the expiration of 9 months from the date of filing of the application for registration of the design and at least once in every subsequent year:

- (b) For the purpose aforesaid, the Minister of Defence may, at any time after the design has been registered or, with the consent of the applicant, at any time before the design has been registered, inspect the representation or specimen of the design filed in pursuance of the application:
 - (c) If upon consideration of the design at any time it appears to the Minister of Defence that the publication of the design would not, or would no longer, be prejudicial to the defence of New Zealand, the Minister of Defence shall give notice to the Commissioner to that effect:
 - (d) On the receipt of any such notice the Commissioner shall revoke the directions and may, subject to such conditions, if any, as he thinks fit, extend the time for doing anything required or authorised to be done by or under this Act in connection with the application or registration, whether or not that time has previously expired.
- (4) No person resident in New Zealand shall, except under the authority of a written permit granted by or on behalf of the Commissioner, make or cause to be made any application outside New Zealand for the registration of a design of any class prescribed for the purposes of this subsection unless—
- (a) An application for registration of the same or substantially the same design has been made in New Zealand not less than 6 weeks before the application outside New Zealand; and
 - (b) Either no directions have been given under subsection (1) of this section in relation to the application in New Zealand or all such directions have been revoked:

Provided that this subsection shall not apply in relation to a design for which an application for protection has first been filed in a country outside New Zealand by a person resident outside New Zealand.

Cf. Registered Designs Act 1949, s. 5 (U.K.)

As to the punishment of offences against this section, see s. 42.

10. Provisions as to confidential disclosure, etc.—

- (1) An application for the registration of a design shall not be refused, and the registration of a design shall not be invalidated, by reason only of—
 - (a) The disclosure of the design by the proprietor to any other person in such circumstances as would make it

contrary to good faith for that other person to use or publish the design; or

- (b) The disclosure of the design in breach of good faith by any person other than the proprietor of the design; or
- (c) In the case of a new or original textile design intended for registration, the acceptance of a first and confidential order for goods bearing the design.

(2) An application for the registration of a design shall not be refused, and the registration of a design shall not be invalidated, by reason only—

- (a) That a representation of the design, or any article to which the design has been applied, has been displayed, with the consent of the proprietor of the design, at an international or industrial exhibition declared as such by the Governor-General by notice in the *Gazette*, whether the exhibition is held in New Zealand or elsewhere, or at an exhibition authorised by the Governor-General by Order in Council under the Exhibitions Act 1910; or
- (b) That after any such display as aforesaid, and during the period of the exhibition, a representation of the design or any such article as aforesaid has been displayed by any person without the consent of the proprietor; or
- (c) That a representation of the design has been published in consequence of any such display as is mentioned in paragraph (a) of this subsection,—

if the application for registration of the design is made not later than 6 months after the date of the opening of the exhibition.

(3) An application for the registration of a design shall not be refused, and the registration of a design shall not be invalidated, by reason only of the communication of the design by the proprietor thereof to a Government Department or to any person authorised by a Government Department to consider the merits of the design, or of anything done in consequence of such a communication.

Cf. Registered Designs Act 1949, s. 6 (U.K.); 1921–22, No. 18, ss. 58, 63

Effect of Registration, etc.

11. Right given by registration—(1) The registration of a design under this Act shall give to the registered proprietor the copyright in the design, that is to say, the exclusive right