

in New Zealand to make or import for sale or for use for the purposes of any trade or business, or to sell, hire, or offer for sale or hire, any article in respect of which the design is registered, being an article to which the registered design or a design not substantially different from the registered design has been applied, and to make anything for enabling any such article to be made as aforesaid, whether in New Zealand or elsewhere.

(2) Subject to the provisions of this Act and of subsection (3) of section 7 of the Crown Proceedings Act 1950, the registration of a design shall have the same effect against the Crown as it has against a subject.

Cf. Registered Designs Act 1949, s. 7 (U.K.); 1921–22, No. 18, ss. 56 (1), 66

12. Period of copyright—(1) Copyright in a registered design shall, subject to the provisions of this Act, subsist for a period of 5 years from the date of registration.

[(2) The Commissioner shall extend the period of copyright for a second period of 5 years from the expiration of the original period, and for a third period of 5 years from the expiration of the second period, if an application for extension of the period of copyright for the second period or third period is made in the prescribed form and the prescribed fee is also paid before the expiration of the original period or the second period, as the case may be, or if such application is made and the fee is paid within such further period (not exceeding 6 months) as may be specified in a request to the Commissioner and accompanied by the prescribed additional fee.]

Cf. Registered Designs Act 1949, s. 8 (U.K.); 1921–22, No. 18, s. 56

Subs. (2) was substituted for the original subs. (2) by s. 2 of the Designs Amendment Act 1972.

13. Exemption of innocent infringer from liability for damages, etc.—(1) In proceedings for the infringement of copyright in a registered design, damages or account of profits shall not be awarded against a defendant who proves that at the date of the infringement he was not aware and had no reasonable ground for supposing that the design was registered in New Zealand; and a person shall not be deemed to have been aware or to have had any reasonable ground for supposing as aforesaid by reason only of the marking of an article with the word “registered” or any abbreviation thereof, or any word or words expressing or implying that the

design applied to the article has been registered, unless the word or words are accompanied by the words "New Zealand" or the letters "N.Z." and by the number of the design.

(2) Nothing in this section shall affect the power of the Court to grant an injunction in any proceedings for infringement of copyright in a registered design.

Cf. Registered Designs Act 1949, s. 9 (U.K.); 1921–22, No. 18, s. 38

14. Compulsory licence in respect of registered design—(1) At any time after a design has been registered any person interested may apply to the Commissioner for the grant of a compulsory licence in respect of the design on the ground that the design is not applied in New Zealand by any industrial process or means to the article in respect of which it is registered to such an extent as is reasonable in the circumstances of the case; and the Commissioner may make such order on the application as he thinks fit.

(2) An order for the grant of a licence shall, without prejudice to any other method of enforcement, have effect as if it were a deed executed by the registered proprietor and all other necessary parties, granting a licence in accordance with the order.

(3) No order shall be made under this section which would be at variance with any treaty, convention, arrangement, or engagement applying to New Zealand and any convention country.

(4) An appeal to the Court shall lie from any order of the Commissioner under this section.

Cf. Registered Designs Act 1949, s. 10 (U.K.); 1921–22, No. 18, s. 62

As to appeals, see s. 35.

15. Cancellation of registration—(1) The Commissioner may, upon a request made in the prescribed manner by the registered proprietor, cancel the registration of a design.

(2) At any time after a design has been registered any person interested may apply to the Commissioner for the cancellation of the registration of the design on the ground that the design was not, at the date of the registration thereof, new or original, or on any other ground on which the Commissioner could have refused to register the design; and the Commissioner may make such order on the application as he thinks fit.

(3) An appeal to the Court shall lie from any order of the Commissioner under subsection (2) of this section.

Cf. Registered Designs Act 1949, s. 11 (U.K.); 1921–22, No. 18, s. 61

As to appeals, see s. 35.

Use of Registered Designs for Services of the Crown

16. Use of registered designs for services of the Crown—(1) Notwithstanding anything in this Act, any Government Department, and any person authorised in writing by a Government Department, may use any registered design for the services of the Crown in accordance with the following provisions of this section.

(2) If and so far as the design has, before the date of registration thereof, been duly recorded by or applied by or on behalf of a Government Department otherwise than in consequence of the communication of the design directly or indirectly by the registered proprietor or any person from whom he derives title, any use of the design by virtue of this section may be made free of any royalty or other payment to the registered proprietor.

(3) If and so far as the design has not been so recorded or applied as aforesaid, any use of the design made by virtue of this section at any time after the date of registration thereof, or in consequence of any such communication as aforesaid, shall be made upon such terms as may be agreed upon, either before or after the use, between the Government Department and the registered proprietor with the approval of the Minister of Finance, or as may in default of agreement be determined by the Court on a reference under section 18 of this Act.

(4) The authority of a Government Department in respect of a design may be given under this section either before or after the design is registered and either before or after the acts in respect of which the authority is given are done, and may be given to any person whether or not he is authorised directly or indirectly by the registered proprietor to use the design.

(5) Where any use of a design is made by or with the authority of a Government Department under this section, then, unless it appears to the Department that it would be contrary to the public interest so to do, the Department shall notify the registered proprietor as soon as practicable after the use is begun, and furnish him with such information as to the extent of the use as he may from time to time require.

(6) For the purposes of this section and of section 17 of this Act, any use of a design for the supply to the Government of any country outside New Zealand, in pursuance of any agreement or arrangement between Her Majesty's Government in New Zealand and the Government of that country, of articles required for the defence of that country shall be deemed to be a use of the design for the services of the Crown; and the power of a Government Department or a person authorised by a Government Department under this section to use a design shall include power—

- (a) To sell such articles to the Government of any country in pursuance of any such agreement or arrangement as aforesaid; and
- (b) To sell to any person any articles made in the exercise of the powers conferred by this section which are no longer required for the purpose for which they were made.

(7) The purchaser of any articles sold in the exercise of powers conferred by this section, and any person claiming through him, shall have power to deal with them in the same manner as if the rights in the registered design were held on behalf of Her Majesty.

Cf. Registered Designs Act 1949, First Schedule, para. 1 (U.K.)

17. Rights of third parties in respect of Crown use—

(1) In relation to any use of a registered design, or a design in respect of which an application for registration is pending, made for the services of the Crown—

- (a) By a Government Department or a person authorised by a Government Department under section 16 of this Act; or
- (b) By the registered proprietor or applicant for registration to the order of a Government Department,—the provisions of any licence, assignment, or agreement made, whether before or after the commencement of this Act, between the registered proprietor or applicant for registration or any person who derives title from him or from whom he derives title and any person other than a Government Department shall be of no effect so far as those provisions restrict or regulate the use of the design, or any model, document, or information relating thereto, or provide for the making of payments in respect of any such use, or calculated by reference thereto; and the reproduction or publication of any model or document in connection with the said use shall

not constitute an infringement of any copyright subsisting in the model or document.

(2) Where an exclusive licence granted otherwise than for royalties or other benefits determined by reference to the use of the design is in force under the registered design, then,—

- (a) In relation to any use of the design which, but for the provisions of this section and section 16 of this Act, would constitute an infringement of the rights of the licensee, subsection (3) of section 16 of this Act shall have effect as if for the reference to the registered proprietor there were substituted a reference to the licensee; and
- (b) In relation to any use of the design by the licensee by virtue of an authority given under section 16 of this Act, that section shall have effect as if subsection (3) of that section were omitted.

(3) Subject to the provisions of subsection (2) of this section, where the registered design or the right to apply for or obtain registration of the design has been assigned to the registered proprietor in consideration of royalties or other benefits determined by reference to the use of the design, then,—

- (a) In relation to any use of the design by virtue of section 16 of this Act, subsection (3) of that section shall have effect as if the reference to the registered proprietor included a reference to the assignor, and any sum payable by virtue of that subsection shall be divided between the registered proprietor and the assignor in such proportion as may be agreed upon between them or as may in default of agreement be determined by the Court on a reference under section 18 of this Act; and
- (b) In relation to any use of the design made for the services of the Crown by the registered proprietor to the order of a Government Department, subsection (3) of section 16 of this Act shall have effect as if that use were made by virtue of an authority given under that subsection.

(4) Where, under subsection (3) of section 16 of this Act, payments are required to be made by a Government Department to a registered proprietor in respect of any use of a design, any person being the holder of an exclusive licence under the registered design (not being such a licence as is mentioned in subsection (2) of this section) authorising him to make that use of the design shall be entitled to recover from