

the registered proprietor such part (if any) of those payments as may be agreed upon between that person and the registered proprietor, or as may in default of agreement be determined by the Court under section 18 of this Act to be just having regard to any expenditure incurred by that person—

- (a) In developing the said design; or
- (b) In making payments to the registered proprietor, other than royalties or other payments determined by reference to the use of the design, in consideration of the licence,—

and if, at any time before the amount of any such payment has been agreed upon between the Government Department and the registered proprietor, that person gives notice in writing of his interest to the Department, any agreement as to the amount of that payment shall be of no effect unless it is made with his consent.

(5) In this paragraph “exclusive licence” means a licence from the registered proprietor which confers on the licensee, or on the licensee and persons authorised by him, to the exclusion of all other persons (including the registered proprietor), any right in respect of the registered design.

Cf. Registered Designs Act 1949, First Schedule, para. 2 (U.K.)

18. Reference of disputes as to Crown use—(1) Any dispute as to the exercise by a Government Department or a person authorised by a Government Department of the powers conferred by section 16 of this Act, or as to terms for the use of a design for the services of the Crown thereunder, or as to the right of any person to receive any part of a payment made in pursuance of subsection (3) of that section, may be referred to the Court by either party to the dispute in such manner as may be prescribed by rules of Court.

(2) In any proceedings under this section to which a Government Department is a party, the Department may,—

- (a) If the registered proprietor is a party to the proceedings, apply for cancellation of the registration of the design upon any ground upon which the registration of a design may be cancelled on an application to the Court under section 28 of this Act;
 - (b) In any case, put in issue the validity of the registration of the design without applying for its cancellation.
- (3) If in such proceedings as aforesaid any question arises whether a design has been recorded or applied as mentioned

in section 16 of this Act, and the disclosure of any document recording the design, or of any evidence of the application thereof, would in the opinion of the Department be prejudicial to the public interest, the disclosure may be made confidentially to counsel for the other party or to an independent expert mutually agreed upon.

(4) In determining under this paragraph any dispute between a Government Department and any person as to terms for the use of a design for the services of the Crown, the Court shall have regard to any benefit or compensation which that person or any person from whom he derives title may have received, or may be entitled to receive, directly or indirectly from any Government Department in respect of the design in question.

(5) In any proceedings under this section the Court may at any time order the whole proceedings or any question or issue of fact arising therein to be referred to a special or official referee or an arbitrator on such terms as the Court may direct; and references to the Court in the foregoing provisions of this section shall be construed accordingly.

Cf. Registered Designs Act 1949, First Schedule, para. 3 (U.K.)

19. Special provisions as to Crown use during emergency—(1) During any period of emergency within the meaning of this section the powers exercisable in relation to a design by a Government Department, or a person authorised by a Government Department under section 16 of this Act, shall include power to use the design for any purpose which appears to the Department necessary or expedient—

- (a) For the efficient prosecution of any war in which Her Majesty may be engaged; or
- (b) For the maintenance of supplies and services essential to the life of the community; or
- (c) For securing a sufficiency of supplies and services essential to the well-being of the community; or
- (d) For promoting the productivity of industry, commerce, and agriculture; or
- (e) For fostering and directing exports and reducing imports, or imports of any classes, from all or any countries and for redressing the balance of trade; or
- (f) Generally for ensuring that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community; or

- (g) For assisting the relief of suffering and the restoration and distribution of essential supplies and services in any part of the Commonwealth or of the Republic of Ireland or in any foreign countries that are in grave distress as a result of war; or
- (h) For providing or securing supplies and services required for the defence of any part of the Commonwealth or for the maintenance or restoration of peace and security in any part of the world, or for any measures arising out of a breach or apprehended breach of peace in any part of the world; or
- (i) For preventing supplies or services being disposed of in a manner prejudicial to the defence of any part of the Commonwealth or to peace and security in any part of the world or to any such measures as aforesaid,—

and any reference in sections 16 to 18 of this Act to the services of the Crown shall be construed as including a reference to the purposes aforesaid.

(2) In this section the expression “period of emergency” means any period beginning on such date as may be declared by Order in Council published in the *Gazette* to be the commencement, and ending on such date as may be so declared to be the termination, of a period of emergency for the purpose of this section.

(3) All Orders in Council made under this section shall be laid before Parliament within 28 days after the date of the making thereof if Parliament is then in session, and, if not, shall be laid before Parliament within 28 days after the date of the commencement of the next ensuing session.

Cf. Registered Designs Act 1949, First Schedule, para. 4 (U.K.)

International Arrangements

20. Orders in Council as to convention countries—

(1) The Governor-General may, with a view to the fulfilment of a treaty, convention, arrangement, or engagement, by Order in Council, declare that any country specified in the Order is a convention country for the purposes of this Act:

Provided that a declaration may be made as aforesaid for the purposes either of all or of some only of the provisions of this Act, and a country in the case of which a declaration made for the purposes of some only of the provisions of this

Act is in force shall be deemed to be a convention country for the purposes of those provisions only.

(2) For the purposes of subsection (1) of this section, every territory for whose international relations another country is responsible shall be deemed to be a country in the case of which a declaration may be made under that subsection.

Cf. Registered Designs Act 1949, s. 13 (U.K.); 1939, No. 26, s. 54

For countries declared as convention countries under this section, see S.R. 1968/207.

21. Registration of design where application for protection in convention country has been made—(1) An application for registration of a design in respect of which protection has been applied for in a convention country may be made in accordance with the provisions of this Act by the person by whom the application for protection was made or his personal representative or assignee:

Provided that no application shall be made by virtue of this section after the expiration of 6 months from the date of the application for protection in a convention country or, where more than one such application for protection has been made, from the date of the first application.

(2) A design registered on an application made by virtue of this section shall be registered as of the date of the application for protection in the convention country, or where more than one such application for protection has been made, the date of the first such application:

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.

(3) An application for the registration of a design made by virtue of this section shall not be refused, and the registration of a design on such an application shall not be invalidated, by reason only of the registration or publication of the design in New Zealand during the period specified in the proviso to subsection (1) of this section as that within which the application for registration may be made.

(4) Where a person has applied for protection for a design by an application which,—

(a) In accordance with the terms of a treaty subsisting between 2 or more convention countries, is equivalent to an application duly made in any one of those convention countries; or

(b) In accordance with the law of any convention country, is equivalent to an application duly made in that convention country,—

he shall be deemed for the purposes of this section to have applied in that convention country.

Cf. Registered Designs Act 1949, s. 14 (U.K.); 1939, No. 26, s. 55

22. Extension of time for applications under section 21 in certain cases—(1) If the Governor-General is satisfied that provision substantially equivalent to the provision to be made by or under this section has been or will be made under the law of any convention country, he may, by Order in Council, make regulations empowering the Commissioner to extend the time for making application under subsection (1) of section 21 of this Act for registration of a design in respect of which protection has been applied for in that country in any case where the period specified in the proviso to that subsection expires during a period prescribed by the regulations.

(2) Regulations made under this section—

- (a) May, where any agreement or arrangement has been made between Her Majesty's Government in New Zealand and the Government of the convention country for the supply or mutual exchange of information or articles, provide, either generally or in any class of case specified in the regulations, that an extension of time shall not be granted under this section unless the design has been communicated in accordance with the agreement or arrangement:
- (b) May, either generally or in any class of case specified in the regulations, fix the maximum extension which may be granted under this section:
- (c) May prescribe or allow any special procedure in connection with applications made by virtue of this section:
- (d) May empower the Commissioner to extend, in relation to an application made by virtue of this section, the time limited by or under the foregoing provisions of this Act for doing any act, subject to such conditions, if any, as may be imposed by or under the regulations:
- (e) May provide for securing that the rights conferred by registration on an application made by virtue of this section shall be subject to such restrictions or conditions as may be specified by or under the regulations and in particular to restrictions and conditions for the protection of persons (including