

# Federal Law on Industrial Designs\*

(of March 30, 1900, as last amended on March 24, 1995)

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## I. General Provisions

*Art. 1.* The Confederation affords to the creators of industrial designs and to their successors in title the rights set out in this Law.

*Art. 2.* Industrial design for the purposes of this Law means any arrangement of lines or any three-dimensional shape, whether or not combined with colors, that serves as a model for the industrial production of an article.

*Art. 3.* The protection afforded by this Law shall not apply to manufacturing processes, to the utilization or to the technical effect of the article manufactured on the model of the protected design.

*Art. 4.–*

(1) The creator's right shall be transferred to his heirs. It shall be assignable, in whole or in part, by all legal means.

(2) The creator may authorize other persons to exploit his design by granting them a license.

(3) Acts transferring the creator's rights and licenses may only be invoked against other persons acting in good faith if they are entered in the Industrial Designs Register.

*Art. 5.–*

(1) Designs shall only enjoy legal protection if they are deposited in accordance with this Law.

(2) No other person may make use of a validly deposited design for an industrial or commercial purpose prior to expiry of legal protection unless he is authorized to do so by the creator or his successor in title.

*Art. 6.* The fact of making a deposit shall lead to the presumption that the deposited article was new at the time of deposit and that the depositor was its creator.

*Art. 7.–*

(1) Designs may be deposited individually or grouped together in packages.

(2) The number of designs included in a package shall be limited only by the dimensions and weight laid down for a package. This type of deposit shall be regulated in detail by an order of the Federal Council, which shall also set out the maximum dimensions and weight of designs deposited individually.

*Art. 8.* The term of legal protection for designs shall be 15 years at most; it shall be granted for consecutive periods of five years, the first of which shall begin on the date of deposit.

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\*\* Added by the International Bureau of WIPO.

*Art. 9.–*

(1) Designs may be deposited, during the first five-year period of protection, either in an open form or in a sealed envelope.

(2) The Federal Council may decide, by means of regulations, that the designs of certain industries or of certain categories of industrial products may also remain deposited in a sealed envelope during the second and third terms of protection; it may likewise decide that the designs of certain industries or of certain categories of industrial products may only be deposited in an open form and that a graphic representation of them shall be published.

*Art. 10.–*

(1) The deposit shall have effect for as long as the fees prescribed in the schedule have been paid.

(2) [Repealed]

*Art. 11.–*

(1) The deposit shall lapse if the fees due for prolongation of protection have not been paid within three months following the due date.

(2) A deposit that has lapsed for lack of payment in good time of the fees due for prolongation of protection may be restored on payment of the fees due within three months following expiry of the time limit not complied with, together with a restoration fee the amount of which shall be laid down in the Implementing Regulations.

*Art. 12.* The deposit of a design shall be declared annulled:

1. if the design was not new at the time of deposit; a design is new, for the purposes of this Law, for as long as it is unknown to the public or to the industrial and commercial circles concerned;

2. if the depositor is neither the creator of the design nor his successor in title;

3. if, in the case of a deposit in a sealed envelope, it is proven that the depositor has made an inexact declaration of the contents with fraudulent intent;

4. if the deposited article does not constitute a design within the meaning of this Law;

5. if the content of the deposit is contrary to the provisions of a Federal Law or of an international convention or if it is contrary to morality.

*Art. 13.* Annulment proceedings may be instituted by any person who can prove an interest therein.

*Art. 14.–*

(1) A person who does not have a domicile in Switzerland may not deposit a design or exercise the rights deriving from such deposit other than through a representative domiciled in Switzerland.

(2) A representative shall be authorized to represent the depositor in all acts pursuant to this Law and in legal disputes concerning the design. The Cantonal provisions on the exercise of the profession of lawyer shall remain unaffected.

(3) [Repealed]

*Art. 14a.–*

(1) The valid deposit of an application for protection for an industrial design made or having effect in one of the countries party to the Paris Convention for the Protection of Industrial Property of March 20, 1883, other than Switzerland, shall generate a priority right in accordance with Article 4 of that Convention. This right may be claimed for an application for protection submitted in Switzerland for the same design, within six months of the initial deposit.

(2) An initial deposit in a country which affords reciprocal treatment to Switzerland shall have the same effect as an initial deposit in a country party to the Paris Convention for the Protection of Industrial Property.

(3) The effect of the priority right shall be to render non-invokable against the deposit anything that has occurred after the initial deposit.

*Art. 14b.–*

(1) The priority right may be claimed by the initial depositor or by the person acquiring the latter's right to submit an application for protection for the same design in Switzerland.

(2) If the initial deposit, a deposit in Switzerland or both have been made by a person not entitled to the grant of protection, the successor in title may claim the priority deriving from the initial deposit.

*Art. 14c.–*

(1) Any person wishing to claim a priority right shall submit a priority declaration to the Federal Intellectual Property Institute (Institute). A priority document shall be supplied at the request of the Institute.

(2) The priority right shall lapse if the time limits and formalities laid down in the order are not complied with.

*Art. 14d.–*

(1) Recognition of the priority right during the deposit procedure shall not exempt the owner of the design from proving the existence of the priority right.

(2) The deposit whose priority is claimed shall be presumed the initial deposit (Art. 14a(1) and (2)).

*Art. 14e.* If the design has been made available to the public during the six months preceding the deposit date or the priority date, disclosure may not be invoked against the depositor where it results directly or indirectly:

(a) from an obvious abuse with regard to the depositor or his predecessor in title or

(b) from the fact that the depositor or his predecessor in title has shown the design at an official or officially recognized industrial exhibition in Switzerland or in any other member country of the World Trade Organization on condition that such disclosure was declared at the time of initial deposit and that, if the Institute so requests, documentary evidence is furnished.

## **II. Deposit**

*Art. 15.–*

(1) The deposit of an industrial design shall be effected by means of an application filed with the deposit office and drawn up in accordance with the form in one of the three national languages.

(2) The application shall be accompanied by:

1. a numbered copy of each design for which deposit is sought, either in the form of the industrial product for which it is intended or in the form of any other adequate representation of the design;

2. proof of payment of the fees prescribed in the schedule.

(3) The Federal Council may lay down further formalities for the deposit of designs of which a graphic representation is to be published.

*Art. 16.–*

(1) Designs shall be deposited with the Institute.

(2) Where necessary, the Federal Council may set up further deposit offices.

*Art. 17.–*

(1) Any deposit made contrary to the requirements of the Law or of the regulations and not regularized by the applicant, despite a warning from the deposit office, shall be rejected by the latter.

(2) The Institute shall refuse all articles or graphic representations, deposited in open form, which do not constitute designs for the purposes of this Law, whose execution would be contrary to the provisions of a Federal law or an international convention or which would be contrary to morality.

(3) The same provisions shall apply as appropriate where a sealed deposit is transformed into an open deposit.

(4) [Repealed]

*Art. 17bis.* The decisions of the Federal Intellectual Property Institute with regard to designs may be appealed from to the Intellectual Property Appeals Commission.

*Art. 18.* All validly deposited designs shall be entered by the Institute in the Designs Register without prior examination of the depositor's rights or of the novelty of the article deposited; a deposit certificate shall be issued to the depositor.

*Art. 19.* The Designs Register shall contain the following particulars: the article and the type of deposit (open or in a sealed envelope), the name and place of residence of the depositor and, where appropriate, of his representative, the date of deposit, the payment of the fees and their amount, together with any changes with respect to the person or the rights of the owner; such changes shall be entered in the Register only if supported by an official document or by a document bearing an officially certified signature.

*Art. 20.–*

(1) The Institute shall publish, in accordance with the entries made in the Register, the title of the designs deposited, the type of deposit, the name and place of residence of the depositor and, where appropriate, of his representative, the date and serial number of each deposit, together with any changes in the person or in the rights of the owner.

(2) The Federal Council shall lay down by means of an order the type of graphic publication that may be adopted for the designs of certain industries or of certain categories of products (Art. 9).

*Art. 21.–*

(1) The entitled person may require at any time that his deposits in sealed envelopes be converted to open deposits.

(2) In all other cases, the sealed envelopes may be opened only at the request of the entitled person or on a court order and shall be closed again thereafter.

*Art. 22.–*

(1) Any person may obtain from the deposit office oral or written information on the content of the Designs Register and may obtain access, in the presence of an official of that office, to the designs under open deposit.

(2) [Repealed]

*Art. 23.–*

(1) A depositor may renounce legal protection at any time by withdrawing his deposited designs.

(2) Designs that have not been claimed beforehand will be kept by the Institute for three years beyond the term of protection.

(3) On expiry of the third year, the Institute shall return them to the entitled person or his representative, or shall destroy them; in special circumstances it may also dispose of them otherwise.

*Art. 23bis.* A person who makes an international deposit of an industrial design shall thereby obtain protection under this Law as if he had deposited the design in Switzerland. The provisions of the Hague Agreement of November 6, 1925, that are more favorable to the owner of an international deposit than those of this Law shall in all cases prevail.

### **III. Civil and Penal Sanctions**

*Art. 24.* Any person shall be liable to civil or penal proceedings, in accordance with the provisions below:

1. who unlawfully copies a deposited design or imitates it in such manner that the true product can only be distinguished from the infringing product on close examination; a simple modification of the colors shall not be deemed to constitute a difference;

2. who has sold, put up for sale or for circulation, or has imported into Switzerland unlawfully copied or imitated articles;

3. who has participated in the above infringements or who has favored or facilitated them;

4. who refuses to inform the competent authorities of the origin of copied or imitated articles in his possession.

*Art. 25.–*

(1) Any person who intentionally commits any of the infringements referred to in Article 24 shall be required to make good the damages occasioned to the injured party and shall be liable to a fine of up to 100,000 francs or imprisonment of up to one year.

(2) [Repealed]

*Art. 26.* If the infringements referred to in Article 24 are committed by negligence, the infringer shall not be liable to a penalty, but shall remain liable under civil law for the damages occasioned.

*Art. 27.–*

(1) Penal prosecution shall be conducted at the request of the injured party and in accordance with the Cantonal penal procedure, either at the place of residence of the offender or at the place where the offense was committed.

(2) In no event may more than one penal prosecution be conducted for the same offense. The authority with which the request was first filed shall be the sole competent authority.

(3) [Repealed]

*Art. 28.–*

(1) At the request of the person entitled to institute proceedings, the court shall order the necessary precautionary measures. It may, in particular, require a precise description of the articles claimed to be infringing and of the instruments and tools having served essentially for the infringement and, where appropriate, have those articles seized.

(2) In the latter case, the court may impose a security on the petitioner which he will be required to deposit beforehand.

(3) Before ordering precautionary measures, the court shall hear the opposing party; in the event of imminent danger, the court may already take emergency measures beforehand. In such case, the opposing party shall be notified immediately after the measures have been executed.

(4) Where appropriate, the court, when admitting the petition, shall give the petitioner a period of 30 days at most to institute proceedings and shall advise him of the fact that the measures ordered shall become inapplicable if he does not act within that period.

*Art. 28a.–*

(1) Should it transpire that the request for precautionary measures is not substantively justified, the petitioner shall be required to make good the damages occasioned to the opposing party. The manner and extent of damages shall be laid down by the court in accordance with Article 33 of the Code of Obligations.

(2) Proceedings for damages shall become statutebarred one year after the time at which the precautionary measures have become inapplicable.

(3) The securities provided by the petitioner shall only be returned to him once it has become certain that no proceedings for damages are to be instituted; the court may set the opposing party a reasonable period of time for instituting proceedings and notify that party that if it does not act within that period the securities will be returned to the petitioner.

*Art. 29.–*

(1) The court may order confiscation and realization or destruction of the articles seized.

(2) Even in the event of acquittal, it may order the destruction of the instruments, tools and other means essentially intended for the infringement. The revenue from realization of confiscated articles shall be set off against payment of the fine, payment of legal costs and the compensation due to the injured party. Any surplus shall be paid to the preceding owner of the confiscated articles.

*Art. 30.* The court may order publication of a penal judgment in the Official Swiss Trade Journal and in one or more other publications, at the cost of the condemned party.

*Art. 31.*–

(1) Any person who without authorization has placed upon his business papers, advertisements or products a designation suggesting that a design has been deposited under this Law shall be liable to a fine.

(2) [Repealed]

*Art. 32.* The proceeds of fines shall belong to the Cantons.

*Art. 33.*–

(1) The Cantons shall designate one court competent to hear civil disputes concerning the protection of designs to act as sole Cantonal instance.

(2) Appeal shall lie to the Federal Court irrespective of the value in dispute (Article 62 of the Federal Law on the Organization of the Federal Judiciary of March 22, 1893).

## **IV. Assistance from the Customs Authorities**

*Art. 33a.* The customs authorities shall be empowered to draw the attention of the owners of industrial designs to specific consignments where there exists a suspicion that copied or imitated goods are to be imported or exported.

*Art. 33b.*–

(1) Where the owner of an industrial design has good reason to believe that copied or imitated goods are to be imported or exported, he may request the customs authorities in writing to refuse the release for circulation of those goods.

(2) The person making the request must provide all particulars available to him that are required for the customs authorities to take a decision; these shall include an exact description of the goods.

(3) The customs authorities shall give a final decision on the request. They may levy a fee to cover the administrative costs.

*Art. 33c.*–

(1) Where the customs authorities have good reason to believe, following a request under Article 33b, that copied or imitated goods are to be imported or exported, they shall inform the person making the request thereof.

(2) The customs authorities shall withhold the goods concerned for 10 working days at most as from the time of the communication under paragraph (1) to enable the person making the request to obtain precautionary measures.

(3) If justified by the circumstances, the customs authorities may withhold the goods concerned for an additional period of 10 working days at most.

(4) If the withholding of the goods is liable to lead to damages, the customs authorities may require the person making the request to provide adequate security.

(5) The person making the request shall make good any damages arising from the withholding of the goods if precautionary measures are not ordered or proved to be unjustified.

## **V. Final Provisions**

*Arts. 34. to 36.* [Repealed]

*Art. 37.* The Federal Council shall promulgate the regulations required to implement this Law.

*Art. 38.*–

(1) The Federal Law on Industrial Designs of December 21, 1888, is repealed.

(2) ...<sup>1</sup>

Art. 39.<sup>2</sup>

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<sup>1</sup> Redundant transitional provision.

<sup>2</sup> Not reproduced here (*Editor's note*).