

THE DANISH DESIGNS ACT 1970

No. 218 of May 27, 1970

Chapter I GENERAL PROVISIONS

Section 1

In pursuance of the present Act a design is defined as a model for a commodity's appearance or for an ornament.

Subsection 2. The originator of a design or his assignee may by registration in accordance with the present Act obtain an exclusive right to exercise the design commercially, cf. Section 5 (the right in a design).

Section 2

A design shall be registered only if it differs essentially from what was known prior to the filing date of the application.

Subsection 2. Everything made available to the public by depiction, by exhibition, offer for sale, or in any other way, shall be considered known. Furthermore, a design which is not available to the public shall be considered known if it appears in an application for patent, trade mark or design registration which is or – as laid down by law – shall be considered filed in this country prior to the filing date referred to in subsection 1, and if the design in question later becomes available to the public in connection with the examination of the said patent, trade mark or design application.

Section 3

Nevertheless, a design may be registered, notwithstanding the fact that it was made available to the public within the 6 months immediately prior to the filing of the application if such availability was due

- 1) to an evident abuse in relation to the applicant or to his predecessor in title, or
- 2) to the fact that the applicant or his predecessor in title displayed the design at an official or officially recognized international exhibition.

Section 4

A design shall not be registered

- 1) if the design or its exploitation would be against morality or public order,
- 2) if the design in an unauthorized manner contains
 - (a) any signs or indications as referred to in Section 132 of the Civil Code, or any matter which may be confusable therewith,
 - (b) any indications which are likely to appear as the name or the trading style of another party to be construed as the name or portrait of another party, provided however that the foregoing does not apply to persons who have died long ago, or to any indications which contain the distinctive name of or the pictorial representation of the real property of another party,
 - (c) indications which are likely to be interpreted as the distinctive title of the protected literary or artistic work of another party, or indications which infringe the exclusive right of another party in such work or the right in a photographic picture,
 - (d) indications which do not essentially differ from designs registered in this country by another party.

Section 5

The exclusive right in a design implies, with the exceptions mentioned below, that no one except the proprietor of the exclusive right may, without due authority, exploit the design commercially by manufacture, import, offer for sale, transfer or lease of goods which do not differ essentially from the design, or goods which incorporate any matter which does not differ essentially therefrom.

Subsection 2. The exclusive right in a design is restricted to goods covered by the design registration or to goods of a similar kind.

Section 6

A person, who exploited the design commercially in this country at the time when the application for registration of the design was filed, may, regardless of the rights registered, continue the exploitation so long as its general character was retained, provided that the exploitation did not constitute evident abuse in relation to the applicant or his predecessor in title. On similar conditions, such right of exploitation shall be accorded also to a person, who has initiated substantial preparations to exploit the design commercially in this country.

Subsection 2. The right in pursuance of subsection 1 can only be transferred together with the business from which it originated or in which the exploitation was intended to be carried out.

Section 7

The Minister of Commerce may decree that, notwithstanding a registered design, spare parts, and accessories for aircraft may be imported to and used in this country for repair of aircraft belonging to a foreign country which grants similar rights to Danish aircraft.

Section 8

The Minister of Commerce may decree that pursuant to Sections 2 and 6 an application for registration of a design, previously applied for abroad, shall be considered filed simultaneously with the previous application.

Subsection 2. The Minister of Commerce specifies the conditions under which a right of priority may be claimed.

Chapter II

APPLICATIONS FOR DESIGNS AND THEIR EXAMINATION

Section 9

The Registration Authority is the Patent and Trade Marks Office.

Section 10

Application for registration of a design shall be filed in writing with the Registration Authority.

Subsection 2. The application shall contain a statement of the goods to be covered by the registration. The originator of the design shall be stated in the application. If the registration is applied for by somebody other than the originator of the design, the applicant shall prove his right thereto.

Subsection 3. The application shall be accompanied by a representation showing the design. If the applicant also files a model, this shall be regarded as illustrating the design, provided however that the model is filed before the application becomes available to the public in pursuance of the provisions of Section 18. Further, the application shall be accompanied by a declaration signed by the applicant personally, to the effect that to his knowledge the design was not known prior to the filing date or the date which shall be regarded as the filing date, in such a manner as is referred to in Section 2, cf. also Section 3, and which would prevent the registration of the design.

Subsection 4. The applicant shall pay the prescribed application fee and additional fees, cf. Section 48.

Section 11

An application may comprise more than one design on condition that the goods in respect of which the designs are applied for, are related as to manufacture and use. Such an application for a joint registration must not cover more than 20 designs and must not include ornaments.

Section 12

If the applicant is not resident in this country, he shall have an agent domiciled in this country who can represent him in all matters concerning the application.

Section 13

An application for registration of a design shall not be considered filed until the applicant has filed a representation or a model showing the design.

Subsection 2. An application cannot be amended to concern a design or goods different from those stated in the application.

Section 14

In the examination of an application for registration of a design, the Registration Authority shall, within the scope fixed by the Minister of Commerce, examine whether the conditions for registration of the design are fulfilled. If the applicant has not complied with the requirements prescribed, or if the Registration Authority has other objections to the registration, the applicant shall be notified thereof and be given a specified term within which to reply or to make the necessary amendments.

Subsection 2. If the applicant fails to reply or to make the amendments to the application within the specified term, the application shall be shelved. The notification referred to in subsection 1, second paragraph, shall contain information to this effect.

Subsection 3. However, the application shall be reinstated on the applicant's request if, within two months after the expiration of the specified term, he replies to or amends the application and, within the given term, pays a prescribed reinstatement fee. Reinstatement can only be granted once.

Section 15

If, after receipt of the applicant's reply, the Registration Authority still finds any objection to the acceptance of the application, and if the applicant has had an opportunity to comment on the objection, the application shall be rejected unless the Registration Authority finds reasons for a renewed request as under Section 14, subsection 1.

Section 16

If anybody claims before the Registration Authority that he, and not the applicant, is entitled to the design applied for, the Registration Authority may, if in doubt, request him to institute legal proceedings within a specified term. If the request is not followed, the claim may be disregarded. Information to this effect shall be given in the request.

Subsection 2. If legal proceedings have been instituted concerning the title to a design applied for, the examination of the application may be suspended, pending the final decision in the lawsuit.

Section 17

If anybody proved to the Registration Authority that he, and not the applicant, is entitled to the design covered by the application, the Registration Authority shall transfer the application to him if he so demands. The transferee shall pay a new application fee.

Subsection 2. If a demand for the transfer of a design application has been made, the application must not be shelved, rejected, or accepted until the demand has been finally decided upon.

Section 18

If the application conforms to the formal requirements and no objection to the registration has been found, the application shall be published in order to give the public an opportunity to file oppositions. On the applicant's request the publication may, however, be postponed for a period of up to six months counted from the filing date or the date from which priority is claimed, cf. Section 8. Such a request for postponement shall be made in the application form.

Subsection 2. Oppositions against the registration shall be made in writing to the Registration Authority within two months from the date of publication.

Section 19

On and after the date when the application is laid open to public inspection, the files of the application shall be available to everybody.

Subsection 2. Six months from the date of filing of the application or, if priority under Section 8 has been claimed, from the priority date, the files shall be available to everybody, even if the application has not been laid open to public inspection. However, if a decision has been made to shelve or to reject the application, the files shall not be made available unless the applicant requests the reinstatement of the application or appeals against the rejection.

Subsection 3. On the applicant's request the files shall be made available earlier than according to subsections 1 and 2.

Subsection 4. When the files are made available under subsection 2 or 3, this fact shall be advertised.

Section 20

After the expiration of the term specified in Section 18, subsection 2, the examination of the application shall be continued. For this examination Sections 14 to 17 shall apply.

Subsection 2. If an opposition has been lodged, the applicant shall be notified thereof and be given an opportunity to reply to the opposition.

Section 21

An appeal against the decision of the Registration Authority regarding a design application may be lodged by the applicant or, if the application has been accepted in spite of a properly raised opposition, by the opponent. If the latter withdraws his appeal, it may nevertheless be tried when there are special reasons for doing so.

Subsection 2. A decision refusing a request for reinstatement under Section 14, subsection 3, or accepting a claim for transfer under Section 17, may be appealed against by the applicant. A decision refusing a claim for transfer of the application may be appealed against by the claimant.

Section 22

Appeals against decisions made according to Section 21 shall be filed with the Minister of Commerce not later than two months after the Registration Authority has informed the party concerned of the decision. The fee presented for the appeal shall be paid within the same term. Failing this, the appeal shall be dismissed.

Subsection 2. Appeals are decided upon by a Board of Appeal consisting of a chairman, who has a permanent seat on the Board, and two members appointed with consideration to the nature of the case. The permanent chairman shall fulfil the general qualifications of holding an appointment as a High Court judge and be appointed for a period of not more than five years at a time.

Subsection 3. The decision of the Board of Appeal cannot be brought before a higher administrative authority.

Subsection 4. Legal actions for the trial of decisions of the Registration Authority, which can be appealed against to the Board of Appeal, cannot be brought before the Court until the decision of the Board of Appeal is available, cf. however Sections 31 and 32. Legal actions for the trial of decisions, in which the Board of Appeal rejects a design application, shall be brought within two months after the party concerned has been informed of the decision.

Section 23

When final decision on registration is made, the design shall be entered into the Register and the registration shall be published.

Subsection 2. If an application, available to the public according to Section 18, is finally shelved or rejected, notice thereof shall be published.

Chapter III

TERM OF VALIDITY OF DESIGN REGISTRATIONS

Section 24

The design registration is in force until 5 years have passed from the day on which the application for registration was filed and may, on request, be renewed for two further periods of five years each. Each period runs from the expiration of the proceeding period.

Section 25

Application for the renewal of the registration shall be filed in writing with the Registration Authority not earlier than one year before, and not later than 6 months after, the expiration of the current registration period. Within the same interval, the applicant shall pay the prescribed renewal fee and additional fees, cf. Section 48. If the fees have not been paid before the expiration of the term, the application shall be dismissed.

Subsection 2. The renewal of the registration shall be published.

Chapter IV

LICENCES, ASSIGNMENTS, ETC.

Section 26

If the proprietor of the design has granted another party a right to use the design commercially (licence), the licensee may not assign his right to others unless this has been agreed. If the right forms part of an enterprise, such assignment may, however, take place together with the enterprise unless otherwise agreed. In such case the assignee is, however, still responsible for the obligations contained in the licence agreement.

Section 27

If the right in a design has been transferred to another party, or if a licence has been granted or has been transferred to another party, entry thereof shall, on request and against payment of a prescribed fee, be made in the Register of Designs. If it is proved that a registered licence has terminated, the entry shall be deleted from the Register upon request.

Subsection 2. Likewise the provisions of subsection 1 shall apply with regard to compulsory licences and rights as dealt with under Section 32, subsection 2.

Subsection 3. Where a registration comprises several designs, the transfer of the rights to another party can only be entered in the Register if it comprises all the designs.

Subsection 4. Legal actions concerning a design can always be brought against the party registered as proprietor, and notices from the Registration Authority need be sent only to said party.

Section 28

A person, who, at the time when a design application was made available to the public, exploited the design commercially in this country, may, if the application results in a registration, obtain a compulsory licence for the exploitation of the design if very special reasons in favour thereof exist, and if he had no knowledge of the application and had not reasonably been able to acquire such knowledge. Under the same conditions, anyone who has initiated substantial preparations for commercial exploitation of the design in this country, is entitled to a compulsory licence. Such a compulsory licence may cover the period prior to the registration of the design.

Section 29

A compulsory licence may only be granted to a party considered able to exploit the design in a reasonable and acceptable manner and in accordance with the terms of the licence.

Subsection 2. A compulsory licence does not prevent the proprietor himself from exploiting the design or from granting licences to others. A compulsory licence can only be transferred together with the business in which it is exploited or in which the exploitation was intended.

Section 30

The Maritime and Commercial Court in Copenhagen shall decide, as the court of first instance, whether or not a compulsory licence shall be granted and shall also decide the extent to which the design may be exploited and fix the remuneration and the other terms of the compulsory licence. Should the circumstances change considerably, the Court may, on request by either party, revoke the compulsory licence or fix new terms for the same.

Chapter V

TERMINATION OF THE REGISTRATION, ETC.

Section 31

If a design has been registered contrary to the provisions of Sections 1 to 4 inclusive, and if the objection is still valid, the registration may be declared invalid by Court decision. A registration can, however, not be declared invalid for the reason that the proprietor was only in part entitled to the design.

Subsection 2. Actions based on the allegation that the design right has been granted to a party other than the party which is entitled thereto according to Section 1, can only be brought by the party which claims to be entitled to the design. The action shall be brought within one year after the entitled party has acquired knowledge of the registration and of the other facts on which the action is based. If the proprietor of the registration was in good faith at the time when the registration was granted or when the right to the same was assigned to him, action cannot be brought later than 3 years after the date of registration.

Subsection 3. Moreover, proceedings for cancellation of a registration may be instituted by anyone who has a legal interest therein. Actions based on the rules laid down in Section 4, subsections 1 and 2, litra (a), may also be instituted by the Patent and Trade Marks Office.

Section 32

If a design has been granted to a party other than the one entitled thereto according to the provisions of Section 1, the Court shall, when this is claimed by the rightful party, transfer the design to said party. If such action is instituted, the provisions of Section 32, subsection 2, shall apply.

Subsection 2. If the party which is deprived of the design registration has, in good faith, exploited the design commercially or has initiated substantial preparations for this purpose, said party shall, against a reasonable remuneration and on reasonable conditions, be entitled to continue the exploitation already commenced, or to start the intended exploitation while retaining its general character. On the same conditions, a holder of a registered licence shall have the same rights.

Subsection 3. Rights under subsection 2 can only be transferred to others together with the business in which they are exploited or in which exploitation was intended to be carried out.

Section 33

If the proprietor of the design renounces his right in writing to the Registration Authority, cancellation of the registration shall take place.

Subsection 2. If legal proceedings concerning the transfer of the registration have been instituted, cancellation cannot take place until there is a final decision in the proceedings.

Chapter VI COMPULSORY INFORMATION

Section 34

An applicant invoking his design application against a third party before the files of the application have become available to the public, is on request under an obligation to let the party concerned inspect the files of the application.

Subsection 2. Anyone, who indicates by direct communication to third party, by advertisement, by the marking of goods or their packaging, or in any other way that a design has been applied for or registered, without at the same time stating the number of the design application or of the registration, is under obligation to give such information without undue delay to anyone requesting it. If it is not explicitly indicated that a design has been applied for or registered, but the circumstances are such that an impression to that effect is created, information as to whether or not a design has been applied for or granted shall without delay be given on request.

Chapter VII PUNISHMENT AND DAMAGES IN CASES OF INFRINGEMENT, ETC.

Section 35

If anyone infringes the exclusive right in a design (design infringement), and the infringement is committed deliberately, he shall be punished by a fine.

Subsection 2. If the offence has been committed by a limited liability company, a co-operative society or the like, the business as such may be liable to a fine.

Subsection 3. Indictment shall be instituted by the aggrieved party.

Section 36

Anyone, who deliberately or inadvertently commits design infringement, is liable to pay a reasonable remuneration for the exploitation of the design and damages for other injury caused by the infringement.

Subsection 2. If anyone commits design infringement without this being deliberate or inadvertent, and if he has obtained a profit thereby, he is liable to pay remuneration and damages according to the provisions of subsection 1, if and to the extent this is found reasonable, but not exceeding the profit he has presumably made by the design infringement.

Section 37

In case of infringement, the Court may, to the extent it is found reasonable, and if claimed by the injured party, in order to prevent continued design infringement decide that goods, which have been illegally manufactured or imported into this country, or articles, the use of which would cause infringement, shall be altered in a specified manner or be destroyed or, in case of illegally manufactured or imported goods, be surrendered to the injured party against remuneration. However, this does not apply to the party, which, in good faith, has acquired the goods in question or acquired rights to the same and which has not itself committed design infringement.

Subsection 2. In case of very special reasons, the Court may, irrespective of the provisions of subsection 1 and when claimed, grant permission to dispose freely of the goods illegally manufactured or imported during the term of the design or part thereof against reasonable remuneration and on otherwise reasonable conditions.

Section 38

If anyone makes unauthorized commercial use of a design applied for after the files of the application have been made available to the public, and if the application results in a design registration, the provisions about design infringement shall be similarly applicable. However, this does not apply to the provisions of Section 35. Damages for injury arising from infringement which has taken place before the files were made available to the public, are only liable to be paid by the infringer to the extent stipulated in Section 36, subsection 2.

Subsection 2. Limitation of claims for damages under subsection 1 shall commence at the earliest one year after the registration of the design.

Section 39

In lawsuits for design infringement, it can only be claimed that the design is invalid, if a claim that the design be declared invalid is laid against the proprietor, or after he has been summoned pursuant to the provisions contained in Section 43. If the design registration is declared invalid, the provisions of Sections 35 to 38 shall not apply.

Section 40

Anyone who, in the instances mentioned in Section 34, fails to comply with his obligation or gives false information shall be liable to a fine if a more severe punishment is not provided for by other legislation, and shall be liable to make good the damage thereby caused to the extent which is found reasonable.

Subsection 2. The provisions of Section 35, subsections 2 and 3, shall be similarly applicable.

Chapter VIII PROVISIONS OF ADMINISTRATION OF JUSTICE

Section 41

In actions which concern the right in a design, the cancellation of a registration or the transfer of the right to the same to another party, applicants and proprietor of designs who are not residents in this country shall be considered as having their venue in Copenhagen.

Section 42

Anyone who brings an action for cancellation of a design registration, for transfer of the registration, or for a compulsory licence, shall at the same time in writing notify this to the Registration Authority for entry in the Register of Designs and by registered mail give notification of the action to any registered licensee whose address is indicated in the Register of Designs. A licensee who wants to bring an action for infringement of the design, shall in a similar way give notification thereof to the proprietor of the design.

Subsection 2. If, on the day on which the case comes up for trial, the plaintiff does not prove that notification as prescribed in subsection 1 has taken place, the Court may fix a term for fulfilling the conditions. If the said term is disregarded, the action shall be dismissed.

Section 43

In actions for design infringement, brought by the proprietor of the design, the defendant shall give notification according to the provisions of Section 42, subsection 1, to the Registration Authority and to registered licensees if he intends to claim that the design be cancelled. The provisions of Section 42, subsection 2, shall be similarly applicable so that the claim that the design registration be cancelled shall be dismissed if the term fixed is disregarded.

Subsection 2. In actions for design infringement brought by a licensee, the defendant can summon the proprietor of the design, irrespective of the latter's venue, in order to claim against him that the registration be cancelled. The provisions of Chapter 34 of the Administration of Justice Act shall be similarly applicable.

Section 44

Copies of judgments in cases mentioned under Sections 16, 31 and 32, and 35 to 38 shall be sent to the Patent and Trade Marks Office on the initiative of the Court.

Chapter IX MISCELLANEOUS PROVISIONS

Section 45

A proprietor of a design, who is not resident in this country, shall have an agent who is resident here and entered in the Design Register, and who can receive communications and other notifications concerning the design on his behalf.

Subsection 2. If the proprietor of the design does not have such an agent, communications etc. may be served in the way prescribed in Section 160, subsection 2, of the Administration of Justice Act.

Section 46

On the condition of reciprocity the Minister of Commerce may decide that the provisions of Sections 12 and 45 shall not apply to proprietors of designs who are domiciled in other countries, or to proprietors who have an agent, residing in those countries and entered in the Design Register in this country according to the provisions of Sections 12 and 45.

Section 47

The Minister of Commerce shall determine specified rules and regulations of the way in which the Act shall be carried into effect, including the filing and examination of design applications, of the arrangement and keeping of the Design Register, of the contents of the Journal, and the issue thereof, and of the procedure before the Patent and Trade Marks Office and the Board of Appeal. It may be determined that the record of application filed with the Registration Authority shall be available to the public. The Minister of Commerce may issue specified rules regarding the days on which the Patent and Trade Marks Office is closed.

Section 48

An applicant who applies for the registration of designs or the renewal of design registrations, shall, besides the application and renewal fees, pay the following additional fees:

- 1) a class fee for each class beyond the first,
- 2) a joint registration fee for each design beyond the first, cf. Section 11,
- 3) a storing fee for a model,
- 4) a publication fee for each representation beyond the first.

Subsection 2. Renewal fees, to be paid after the expiration of the registration period, shall be payable together with a supplementary fee.

Subsection 3. The Minister of Commerce shall determine the amount of the fees under this Act and the fees for services, extracts of the Register, etc.

Chapter X PROVISIONS FOR OPERATION AND TRANSITION

Section 49

This Act comes into force on October 1, 1970.

Subsection 2. The Designs Act No. 107 of April 1, 1905, as published in Law Notification No. 193 of September 1, 1936, and as amended in pursuance of Section 2 of Act No. 247 of June 9, 1967, is repealed, cf. however subsection 3.

Subsection 3. Applications pending at the time when this Act comes into force, shall be decided upon pursuant to the provisions of the legislation hitherto in force, and this shall also apply to registrations resulting from such applications, however the term given under Section 10, subsection 2, of the former Designs Act shall be extended to 6 months.

Section 50

The Act does not apply to the Faroe Islands, but the Act may by Royal Ordinance be put into force for these islands with such amendments as circumstances in the Faroe Islands may require.
