
Textile Designs (Registration) Decree, 1973

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In pursuance of the provisions of the National Redemption Council (Establishment) Proclamation, 1972 this Decree is hereby made:

Register of Textile Designs

1. The Registrar shall maintain for the purposes of this Decree a register to be known as the Register of Textile Designs in this Decree referred to as “the Register”.

Textile Designs Registrable Under the Decree

2.—(1) Subject to the other provisions of this Decree, a textile design may, upon application made by the person claiming to be the proprietor, be registered under this Decree in respect of any textile article or textile articles specified in the application.

(2) Subject to the other provisions of this Decree, a textile design shall not be registered—

(a) if it has been copied exactly from a design belonging to a registered proprietor;

(b) if it is similar to any textile design in such a way as to be likely to mislead purchasers in Ghana or to damage the business of any registered proprietor of a textile design;

(c) if it differs from another textile design only in immaterial details or in features which are variants commonly used in the trade; or

(d) if the design is substantially made up of well-known indigenous traditional motifs.

Application for Registration

3.—(1) An application for the registration of a textile design shall be made on the prescribed form and shall be lodged with the Registrar in the prescribed manner.

(2) For the purpose of deciding whether a textile design is registrable the Registrar may make such searches, if any, and request such information as he may think fit.

(3) Subject to the provisions of this Decree, the Registrar may refuse any application for registration of a textile design, or may accept it absolutely or subject to such amendments, modifications, limitations or conditions, if any, as he may think fit.

(4) Where separate applications are made by different persons to be registered as proprietors respectively of textile designs that are identical or are so similar as to be likely to mislead purchasers in Ghana if used by more than one proprietor, the Registrar shall after such investigations as to authorship of the design as he may think fit or where there is no evidence to establish authorship, grant registration to the applicant who first lodged his application with the Registrar.

(5) In the case of refusal or conditional acceptance, the Registrar shall, if required by the applicant, state in writing the grounds of his decision, and the materials used by him in arriving thereat and the decision shall be subject to appeal to the High Court in this Decree referred to as “the Court”.

Disclaimer

4. The Registrar may for the purposes of section 3 request an applicant to disclaim part or parts of a textile design submitted for registration.

Associated Textile Design

5. Where a textile design which is the subject of an application for registration, differs from another textile design of the same proprietor that is registered, or is the subject of a pending application for registration only in immaterial details or in features which are variants used in the trade, or is similar to such other design in such a way as to be likely to mislead purchasers in Ghana if used by a person other than the proprietor, the Registrar shall not refuse the application but shall require that the textile design be entered on the register as associated textile designs:

Provided that the period of copyright in the design shall not extend beyond the expiration of the original registered design.

Notice of Application to be Published in the *Gazette*

6.—(1) When an application for registration of a textile design has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as possible cause notice of the acceptance of the application to be published in the *Gazette*.

(2) Any person may, within the prescribed time from the date of the *Gazette* notice of an application, give notice to the Registrar of his opposition to the registration.

(3) The notice referred to in subsection (2) of this section shall be given in writing in the prescribed manner, and shall include a statement of the grounds of such opposition.

(4) The Registrar shall send a copy of the notice to the applicant, who shall within the prescribed time, send to the Registrar in the prescribed manner, a counter-statement stating the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned the application.

(5) If the applicant sends a counter-statement under subsection (4) of this section, the Registrar shall furnish a copy thereof to the person giving notice of opposition and shall, after hearing the parties, if so requested, and considering the evidence, decide whether, and subject to what conditions or limitations, if any, registration is to be permitted and shall notify the applicant and the opponent accordingly.

(6) The applicant or the opponent may, subject to the provisions of this section, appeal to the Court against the decision of the Registrar.

(7) A person desiring to appeal against a decision of the Registrar under this section must apply to the Registrar within the prescribed time after the date of notification of the decision of the Registrar, for a written statement of the grounds of his decision.

(8) On the appeal the Court may hear the parties and the Registrar and shall make an order determining whether, and subject to what conditions or limitations, if any, registration is to be permitted.

(9) Except by leave of the Court, no appeal against a decision of the Registrar under this section shall be made except within a period of two months from the date of dispatch to the applicant of the statement in writing referred to in subsection (7) of this section or within such further period not exceeding three months as the Registrar may allow upon request received before the expiration of the said period of two months.

(10) On the hearing of an appeal against a decision of the Registrar under this section any party may, by special leave of the Court, bring forward further material for the consideration of the Court.

(11) On appeal against a decision of the Registrar under this section no further grounds of objection to the registration of a textile design shall be allowed to be taken by the opponent

or the Registrar, other than those stated under subsection (3) of this section by the opponent, except by leave of the Court.

(12) Where any further grounds of objection are taken under subsection (11) of this section the applicant is entitled to withdraw his application without payment of the costs of the opponent on giving the prescribed notice.

(13) On an appeal against a decision of the Registrar under this section the Court may, after hearing the Registrar, permit the textile design proposed to be registered to be modified in any manner not affecting substantially the identity thereof, and thereafter the modified textile design shall be registered subject to the provisions of this Decree.

Registration

7.—(1) When an application for registration of a textile design has been accepted, the Registrar shall, unless the application has been accepted in error, upon the payment of the prescribed fee register the textile design.

(2) Where the Registrar registers a design under this Decree—

(a) he shall issue a certificate of registration to the person claiming to be the proprietor who shall thereafter be referred to as the “registered proprietor” and be entered as such in the register; and

(b) he shall specify the date from which the registration is to take effect which, in the absence of circumstances considered by him to be special, shall be the date of the application for registration.

Right Given by the Registration

8. The registration of a textile design under this Decree shall give to the registered proprietor of such design, the copyright therein, that is to say, the exclusive right in Ghana 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 textile article in respect of which the textile design is registered:

Provided that the registration of a textile design which includes any indigenous traditional motifs as described in subsection (2) (d) of section 2 of this Decree shall not give rise to the exclusive use of those motifs.

Period of Copyright and Renewal of Registration

9.—(1) The copyright in a registered design shall, subject to the provisions of this Decree subsist for a period of five years, and shall be renewable for two further periods of five years each.

(2) The Registrar shall on application made by the registered proprietor in the prescribed manner and within the prescribed period, and on payment of the prescribed fee in this Decree referred to as the “renewal fee” renew the registration of a textile design for a

period of five years from the date of the expiration of the original period or of the last renewal date as the case may be.

(3) The Registrar may send a notice in the prescribed manner to the registered proprietor three months before the expiration of the last registration informing him of the date of the expiration.

(4) If at the expiration of the prescribed time the registered proprietor has not paid the renewal fees aforesaid the Registrar shall remove the textile design from the register.

(5) Failure to remove the design from the register by the Registrar at the expiry date shall not give to the registered proprietor any copyright in the design after that date.

(6) Where a textile design has been removed from the register for non-payment of renewal fee it shall nevertheless for the purpose of any application for the registration of a textile design during one year next after the date of the removal be deemed to be a textile design that is already on the register.

Assignment of Title

10.—(1) The Registrar may on application made in that behalf register the assignment in whole or in part of the title to a textile design registered under this Decree in the name of a registered proprietor to a person to whom such title has been assigned in whole or in part by such proprietor.

(2) The Registrar may on application made in that behalf by a person who has been granted a licence (hereafter in this Decree called “the licensee”) by the registered proprietor to use the design subject to such conditions, if any, enter his name, the particulars relating to his interest in the design and the date from which the licence is to take effect.

(3) Registered associated textile designs shall be assignable and transmissible only as a whole, and not separately, but shall for all other purposes be deemed to have been registered as separate textile designs.

Cancellation of Registration

11.—(1) Copyright in a textile design registered under this Decree shall subsist in the registered proprietor until the registration is cancelled under this Decree by the Registrar.

(2) Registration of a textile design shall be cancelled by the Registrar for any of the following reasons:—

(a) upon request by the registered proprietor;

(b) if in the opinion of the Registrar such registration should be cancelled in the public interest;

(c) if the prescribed fees for registration and renewal have not been paid;

- (d) after successful cancellation proceedings instituted by a third party;
- (e) if the application for registration has been accepted in error;
- (f) for contravention on the part of the registered proprietor of any of the provisions of this Decree or regulations under this Decree.

Rectification of Register

12.—(1) When an application is made to the Court or to the Registrar by any person aggrieved, a registered textile design may be cancelled from the register for any of the following reasons:—

- (a) that the design has been copied exactly from a textile design belonging to a different proprietor which is currently registered under this Decree;
- (b) that the design is similar to a textile design belonging to a different proprietor which is currently registered under this Decree in such a way as to be likely to mislead purchasers in Ghana or damage his business;
- (c) that the design differs from a textile design belonging to a different proprietor which is currently registered under this Decree only in immaterial details or in features which are variants commonly used in the trade;
- (d) that the registered proprietor is not the proprietor of the textile design as defined in this Decree;
- (e) that the registration of the textile design was obtained by fraud.

(2) Except in a case where the reason alleged for cancellation of a textile design from the register is the reason set out in paragraph (e) of subsection (1) of this section, no application for cancellation under subsection (1) of this section shall be entertained unless it is made within five years from the date specified in subsection (2) (b) of section 7 in relation to the registration of the textile design concerned.

(3) After the expiration of the said period of five years the original registration of the textile design shall be taken to be valid in all respects unless that registration has been obtained by fraud.

(4) The Court or the Registrar may upon an application made under this section and after such inquiry as may be necessary, make such order for maintaining, expunging or varying the registration of a textile design as may be deemed fit.

(5) Any Court order rectifying the register made under this section shall direct that notice of the rectification be served in the prescribed manner on the Registrar, and the Registrar shall on receipt of the notice rectify the register accordingly.

(6) Any party to proceedings before the Registrar under this section may appeal from the decision of the Registrar under this Decree to the Court.

Rectification of Register in Relation to Assignee or Licensee

13.—(1) The Court or the Registrar may, on the application by any person aggrieved, order the register of textile designs to be rectified by the making or variation or deletion of any entry therein relating to the title of any assignee or licensee.

(2) In any proceedings under this section the Court or the Registrar may determine any question which may be deemed necessary or expedient in connection with the rectification of the register.

(3) Notice of any application to the Court under this section shall be given in the prescribed manner to the Registrar who shall be entitled to appear and be heard on the application, and shall appear if so directed by the Court.

(4) Any order made by the Court under this section shall direct that notice of the order shall be served on the Registrar in the prescribed manner and the Registrar shall, on receipt of the notice, rectify the register accordingly.

Power to Correct Errors

14.—(1) The Registrar may, in accordance with the provisions of this section, correct any error in an application for the registration or any error in the register of textile designs.

(2) A correction may be made in pursuance of this section either upon a request in writing made by any person interested and accompanied by the prescribed fee, or by the Registrar on his own and without such a request:

Provided that the correction shall not be allowed if it will substantially change the design.

Appeals

15. In any appeal under this Decree from a decision of the Registrar the Court shall have all powers conferred upon the Registrar under this Decree and shall make such orders in accordance with the provisions of this Decree, as it thinks just.

Exercise of Discretionary Powers of Registrar

16. Without prejudice to any provision of this Decree requiring the Registrar to hear any party to any proceedings, or to give to any such party an opportunity to be heard, the Registrar shall give to any applicant for the registration of a textile design an opportunity to be heard before exercising, adversely to the applicant any discretion vested in the Registrar by or under this Decree.

Cost and Security for Costs

17.—(1) The Registrar may, in any proceedings before him under this Decree, by order award to any party such costs as he may consider reasonable and direct how and by what parties they are to be paid, and any such order may have the force of an order by a Court.

(2) In any proceedings before the Registrar he may require either or both parties to give security for costs for such amount as the Registrar may deem fit, and in default of such security being given by the applicant the Registrar may treat the application for the proceedings as abandoned.

Offences

18.—(1) If any person—

(a) makes or causes to be made a false entry in the register of designs, or a writing falsely purporting to be a copy of an entry in the register,

(b) produces or tenders or causes to be produced or tendered in evidence as genuine any such writing knowing the entry or writing to be false,

he shall be guilty of an offence punishable by a fine not exceeding ₪5,000.00 or five years imprisonment or both.

(2) If any person falsely represents that a design applied to any textile article sold by him is registered in respect of that textile article he shall be liable on summary conviction to a fine not exceeding ₪200.00.

(3) For the purpose of subsection (2) of this section a person who sells a textile article having stamped, engraved or impressed thereon or otherwise applied thereto the word “registered” or any other word expressing or implying that the design applied to is registered, shall be deemed to represent that the design applied to the article is registered in respect of that article.

(4) If any person, after the copyright in a registered textile design has expired, marks the textile to which the design has been applied, with the word “registered”, or any word or words implying that there is a subsisting copyright in the design or causes any such article to be so marked, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding ₪200.00.

(5) In the case of an offence by a body of persons—

(a) where the body of persons is a body corporate every director and officer of the body corporate shall be deemed to be guilty of the offence; and

(b) where the body corporate is a firm, every partner of the firm shall be deemed to be guilty of the offence:

Provided that a person shall not be deemed to be guilty of an offence by virtue of this subsection if he proves that the act constituting the offence was committed by a person other than himself and without his knowledge or connivance and that he exercised all due diligence to prevent the commission of the offence having regard to all the circumstances.

Civil Suits in Respect of Registered Designs

19.—(1) Nothing in any other provision of this Decree shall affect the right of any registered proprietor to institute civil proceedings for any infringement under this Decree to be granted in any such proceedings any remedy to which he may be entitled:

Provided that in proceedings for an infringement of a copyright in a registered design, damages shall not be awarded against a defendant, who proves that he is duly registered under this Decree in respect of the textile design, which is the subject matter of the suit.

(2) In case of passing off actions between registered proprietors a certificate of registration issued by the Registrar to any defendant shall be a valid defence, and the plaintiff's remedy, if any, shall be the cancellation of the defendant's design.

Searches

20. On the request of any person furnishing such information as may enable the Registrar to identify a design, and on the payment of the prescribed fee, the Registrar may inform him whether the design is registered, and is currently on the register and may state the date of registration and the name and address of the registered proprietor and any other information required by that person.

Resolution of Doubt

21. If there is any doubt as to whether an article is a textile article or whether a design is a textile design, such doubt shall be resolved by the Registrar and his decision shall be final.

Regulations

22. Subject to the provisions of this Decree, the Commissioner may make such regulations as he thinks expedient in relation to textile designs and for regulating all matters under this Decree, especially—

(a) the form of, the time for, and the procedure to be observed for any challenge, rectification or appeal under this Decree, and for matters connected therewith;

(b) matters that are required by this Decree to be prescribed and for the fixing of fees that are not provided for under any other provision of this Decree;

(c) any other matters for the purpose of carrying out they provisions of this Decree.

Interpretation

23. In this Decree unless the context otherwise requires:

“Commissioner” means the Commissioner responsible for Justice;

“copyright” has the meaning assigned to it in section 8 of this Decree;

“Court” means the High Court;

“prescribed” means prescribed by regulations made under section 22 of this Decree;

“proprietor” means a person claiming to be the author of the textile design and includes—

(a) any other person who has acquired title from any person referred to in this section as proprietor;

(b) where the person who is the author is not ascertainable, the person who first applied for the registration of the design; and

(c) where such design is executed by the author for another person that other person shall be treated for the purposes of this Decree as the proprietor;

“registered proprietor”, in relation to a textile design, means the proprietor registered by or under this Decree for such design;

“register” means the Register of Textile Designs referred to in section 1 of this Decree;

“Registrar” means Registrar-General or Assistant Registrar-General;

“textile article” means any article made wholly of substantially from natural, man-made or synthetic textile fibres or from a combination thereof; and

“textile design” means any pattern or ornamental feature applied to a textile article by printing weaving, or other similar process.

Repeals and Transitional Provisions

24.—(1) The Textile Designs (Registration) Act, 1965 (Act 317) and the Textile Designs (Registration) Act (Amendment) Decree, 1966 (N.L.C.D. 54) are hereby repealed.

(2) Notwithstanding the repeal of the Textile Designs (Registration) Act, 1965 (Act 317) the Textile Designs (Registration) Regulations, 1966 (L.I. 512) shall continue in existence as if made under section 22 of this Decree and with such modifications as may be necessary to give full effect to this Decree or with such modifications as the Commissioner may approve.

(3) Any textile design existing at the commencement of this Decree in the register of designs maintained under section 2 of the said Act shall, after the commencement of this Decree, be deemed to have been registered under this Decree with effect from the date

specified by the Registrar in relation to its original registration under subsection (2) (b) of section 2 of the said Act:

(4) Accordingly without prejudice to the application to any such textile design of the other provisions of this Decree, section 9 of this Decree shall apply to such registration; and, for the removal of doubts, the copyright in any textile design so registered shall not have effect for a period longer than fifteen years from the date referred to in subsection (3) of this section as having been specified under subsection (2) of section 2 of the said Act.

(5) Without prejudice to the application to any such textile design of the provisions of this Decree other than this section, the Registrar may cancel the registration of any such textile design if the registration of such design would have been prohibited by subsection (2) of section 2 of this Decree if an application had been made for such registration after the commencement of this Decree.

(6) Notwithstanding any provision in this Decree to the contrary, any textile design registered or protected under or by the copyright laws of another country shall not be protected by or under this Decree for a period exceeding the unexpired term of registration or protection under the copyright laws of that country so however that the protection conferred by this Decree shall not exceed fifteen years.

(7) No textile design shall qualify for registration under this Decree where:—

(a) the design has been previously registered or protected under or by the copyright laws of another country; and

(b) where the period of registration or protection under the copyright laws of that other country has expired.

(8) Where any textile design referred to in subsection (6) or (7) of this section exists on the Register (whether registered before or after the commencement of this Decree) and the period of its protection under this Decree has expired by virtue of the provisions of either of those subsections, the Registrar shall cancel its registration under section 11 of this Decree.

Made this 12th day of September, 1973.

Colonel I. K. Acheampong
Chairman of the National Redemption Council