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INDUSTRIAL DESIGNS ACT

CHAPTER 312

**Act No.
20 of 2005**

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CHAPTER 312**INDUSTRIAL DESIGNS ACT****ARRANGEMENT OF SECTIONS****SECTION**

1. Short title and commencement.
 2. Interpretation.
 3. Definition of industrial design.
 4. Registrable industrial designs.
 5. Right to registration and naming of creator.
 6. Application and right of priority.
 7. Examination.
 8. Registration and publication.
 9. Rights conferred by registration.
 10. Duration and renewal of registration.
 11. Surrender of registration.
 12. Invalidation of registration.
 13. Changes in ownership.
 14. Licence contracts.
 15. Register and publication.
 16. Correction of errors.
 17. Extension of time.
 18. Exercise of discretionary powers.
 19. Representation.
 20. Competence of Court.
 21. Infringement and offences.
 22. Regulations.
 23. Repeals.
 24. Transitional provisions.
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CHAPTER 312

INDUSTRIAL DESIGNS ACT

An Act to provide for the registration and protection of industrial designs, and for related matters.

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same, as follows.

[Act No. 20 of 2005.]

[Date of commencement: 4th August, 2008.]

1. Short title and commencement

(1) This Act may be cited as the Industrial Designs Act, 2005.

(2) This Act shall come into force on a date to be fixed by the Governor-General by Proclamation published in the *Gazette*.

2. Interpretation

In this Act—

“**attorney-at-law**” means a person duly admitted and entitled to practise law in Saint Vincent and the Grenadines;

“**Court**” means the High Court;

“**International Classification**” means the classification according to the Locarno Agreement of October 8, 1968, establishing an International Classification for Industrial Designs;

“**Minister**” means the Minister responsible for intellectual property;

“**Paris Convention**” means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as last revised;

“**priority date**” means the date of the earlier application that serves as the basis for the right of priority provided for in the Paris Convention;

“**Register**” means the Register of Industrial Designs;

“**Registrar**” means the Registrar of the Commerce and Intellectual Property Office and any reference to the Registrar shall be construed as including a reference to any officer discharging the functions of the Registrar.

3. Definition of industrial design

(1) For the purposes of this Act, a composition of lines or colours, a three-dimensional form or a material, whether or not associated with lines or colours, is deemed to be an industrial design where such composition, form or material gives a special appearance to a product of industry or handicraft, can serve as a pattern for a product of industry or handicraft and appeals to and is judged by the eye.

(2) The protection under this Act does not apply to anything in an industrial design which serves solely to obtain a technical result and to the extent that it leaves no freedom as regards arbitrary features of appearance.

4. Registrable industrial designs

(1) An industrial design is registrable if it is new.

(2) An industrial design is new if it has not been disclosed to the public anywhere in the world by publication in tangible form or by use or in any other way, prior to the filing date or, where applicable, the priority date of the application for registration.

(3) For the purposes of subsection (2), disclosure to the public of an industrial design shall not be taken into consideration if the disclosure—

- (a) occurred within twelve months preceding the filing date or, where applicable, the priority date of the application; and
- (b) was by reason or in consequence of acts committed by the applicant or his predecessor in title or of an abuse committed by a third party with regard to the applicant or his predecessor in title.

(4) An industrial design that is contrary to public order or morality is not registrable.

5. Right to registration and naming of creator

(1) The right to registration of an industrial design shall belong to the creator.

(2) Where two or more persons have jointly created an industrial design, the right to registration of the industrial design shall belong to them jointly.

(3) If and to the extent to which two or more persons have created the same industrial design independently of each other, the person whose application has the earliest filing date or, if priority is claimed, the earliest validly claimed priority date, shall have the right to register the industrial design, as long as the said application is not withdrawn, abandoned or rejected.

(4) The right to an industrial design may be assigned or may be transferred by succession.

(5) Where an industrial design is created in execution of an employment contract, the right to registration of the industrial design shall belong, in the absence of contractual provisions to the contrary, to the employer.

(6) The creator shall be named as the creator in the registration of the industrial design unless he indicates to the Registrar in a written declaration signed by him and addressed to the Registrar that he wishes not to be so named.

(7) A promise or undertaking by the creator made to a person to the effect that he will make a declaration referred to in subsection (6) shall be without legal effect.

6. Application and right of priority

(1) An application for the registration of an industrial design shall be filed with the Registrar and shall contain a request, drawings, photographs or other adequate graphic representations of the article embodying the industrial design and an indication of the kind of product for which the industrial design is to be used.

(2) The application may be accompanied by a specimen of the article embodying the industrial design where the industrial design is two-dimensional.

(3) Where the applicant is not the creator, the request shall be accompanied by a statement justifying the applicant's right to registration of the industrial design.

(4) The application may contain a declaration claiming priority, as provided for in the Paris Convention, of one or more earlier national or regional applications or international deposits filed by the applicant or his predecessor in title in or for any State party to that Convention.

(5) Where the application contains a declaration referred to in subsection (4), the Registrar may require that the applicant furnish, within the prescribed time limit, a copy of the earlier application or international deposit, certified as correct by the office with which it was filed, and the effect of that declaration shall be as provided for in the Paris Convention.

(6) Where the Registrar finds that the requirements under this section and the Regulations pertaining to a declaration are not fulfilled, the declaration shall be considered not to have been made.

(7) Two or more industrial designs may be the subject of the same application if they relate to the same class of the International Classification or to the same set or composition of articles.

(8) An application, at the time of filing, may contain a request that the publication of the industrial design, upon registration, be deferred for a period not exceeding twelve months from the date of filing, or if priority is claimed, from the date of priority, of the application.

(9) The applicant may withdraw the application at any time before it is registered.

(10) The application shall be subject to the payment of the prescribed application fee.

7. Examination

(1) The Registrar shall accord as the filing date the date of receipt of the application provided that at the time of receipt, the application contains indications allowing the identity of the applicant to be established and the required graphic representations of the article embodying the industrial design.

(2) Where the Registrar finds that the application did not at the time of receipt fulfil the requirements referred to in subsection (1), he shall invite the applicant to file the required correction and shall accord as the filing date the date of receipt of the required correction, but if no correction is made the application shall be treated as if it had not been filed.

(3) After according a filing date, the Registrar shall examine the application for compliance with the requirements of section 6 and ascertain that the prescribed fee has been paid.

(4) The Registrar shall examine whether the industrial design complies with the provisions of sections 3 and 4(4).

8. Registration and publication

(1) Where the Registrar is satisfied that the application complies with the requirements of sections 3 and 4(4), he shall register the industrial design, publish a reference to the registration and issue to the applicant a certificate of registration of the industrial design.

(2) Where a request for deferment of publication has been made under section 6(8), no representation of the design or any file relating to the application shall be open to the public for inspection and the Registrar shall publish a notice of deferment which shall contain information identifying the registered owner, the filing date of the application, the length of time for which deferment has been requested and any other particulars as may be prescribed.

(3) During the period of deferment of publication, legal proceedings on the basis of a registered industrial design may not be instituted unless the information contained in the Register and in the file relating to the application has been communicated to the person against whom the action is brought.

(4) At the expiry of the period of deferment, the Registrar shall publish the registered industrial design.

9. Rights conferred by registration

(1) The exploitation of a registered industrial design in Saint Vincent and the Grenadines by persons other than the registered owner shall require the agreement of the registered owner.

(2) For the purposes of this Act, “**exploitation**” of a registered industrial design means the making, selling, importing or otherwise distributing, for commercial purposes, articles bearing or embodying a design which is a copy, or substantially a copy, of the industrial design.

(3) The rights conferred by registration shall not extend to acts in respect of articles which have been put on the market in Saint Vincent and the Grenadines by the registered owner or with his consent.

(4) The owner of a registered industrial design shall, in addition to any other rights, remedies or actions available to him, have the right to institute court proceedings against any person who infringes the registration of the industrial design by performing, without his agreement, any of the acts referred to in subsection (2) or who performs acts which make it likely that infringement will occur.

10. Duration and renewal of registration

(1) The registration of an industrial design shall be for a period of five years from the filing date of the application for registration.

(2) The registration may be renewed for one further consecutive period of five years through the payment of the prescribed fee.

(3) A grace period of six months shall be allowed for the late payment of the renewal fee on payment of the prescribed surcharge.

11. Surrender of registration

(1) The owner of a registered industrial design may surrender it by written declaration to the Registrar who shall record the surrender in the Register and publish it.

(2) The surrender shall have effect from the date on which it is recorded.

12. Invalidation of registration

(1) An interested person may apply to the Court for the invalidation of the registration of an industrial design.

(2) The Court shall invalidate the registration of an industrial design if the person requesting the invalidation proves that any of the requirements of sections 3 and 4 are not fulfilled or if the registered owner of the industrial design is not the creator or successor in title.

(3) An invalidated registration of an industrial design, or part thereof, shall be regarded as void from the date of the registration.

(4) The decision of the Court or the decision on an appeal therefrom shall be notified to the Registrar who shall record it and publish a reference to it as soon as possible thereafter.

13. Changes in ownership

(1) A change in the ownership of the registration of an industrial design, or in the ownership of an application for registration of an industrial design, shall be in writing and shall, upon the request of an interested party made to the Registrar, be recorded and, except in the case of an application for registration of an industrial design, published by the Registrar.

(2) A change under subsection (1) shall be of no effect against third parties until it has been recorded.

14. Licence contracts

(1) Subject to this section, the owner of a registered industrial design or an application for registration of an industrial design may grant licences in respect of the design.

(2) A copy of each licence contract concerning a registered industrial design, or an application for registration of an industrial design, shall be submitted to the Registrar who shall keep its contents confidential but shall record it and publish a reference thereto.

(3) A licence contract shall have no effect against third parties until it is recorded in accordance with subsection (2).

15. Register and publication

(1) The Registrar shall maintain a Register in which he shall record all matters required by this Act to be recorded.

(2) The Register may be consulted by any person and any person may obtain extracts therefrom under the prescribed conditions.

(3) The Registrar shall publish in the prescribed manner all the publications provided for in this Act.

16. Correction of errors

The Registrar may, subject to any provision in the Regulations, correct any error of translation or transcription, clerical error or mistake in any application or document filed with the Registrar or in any matter recorded pursuant to this Act.

17. Extension of time

(1) Where the Registrar is satisfied that the circumstances justify it, he may, upon receiving a written request, extend the time for doing any act or taking any proceeding under this Act, upon notice to the parties concerned and upon such terms as he may direct.

(2) The extension may be granted though the time for doing the act or taking the proceeding has expired.

18. Exercise of discretionary powers

The Registrar shall, before exercising any discretionary power vested in him by this Act adversely to any party to a proceeding before him, give that party an opportunity to be heard.

19. Representation

Where an applicant's ordinary residence or principal place of business is outside Saint Vincent and the Grenadines, he shall be represented by an attorney-at-law.

20. Competence of Court

(1) The Court shall have jurisdiction in cases of dispute relating to the application of this Act and in matters which under this Act are to be referred to the Court.

(2) Any decision taken by the Registrar under this Act, in particular the decision to register an industrial design or to refuse an application for such a registration, may be the subject of an appeal by any interested party to the Court and such appeal shall be filed within two months of the date of the Registrar's decision.

21. Infringement and offences

(1) Subject to section 9(3), an infringement of the rights of an owner of a registered industrial design shall consist of the performance in Saint Vincent and the Grenadines of any act referred to in section 9(2) by a person other than the owner of the registered industrial design and without the agreement of the owner of the registered industrial design.

(2) On the request of the owner of the registered industrial design, or of a licensee if the licensee has requested the owner to institute court proceedings for a specific relief and the owner has refused or failed to do so, the Court may grant an injunction to prevent infringement or an imminent infringement, award damages or grant any other remedy provided for in the general law.

(3) A person who intentionally performs an act which constitutes an infringement as defined in subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding four years.

22. Regulations

The Minister may make Regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the provisions of this Act.

23. Repeals

The United Kingdom Designs (Protection) Act (hereinafter referred to as “the former Act”) is hereby repealed.

[Chapter 116 of the Revised Laws 1990 Edition.]

24. Transitional provisions

(1) Notwithstanding the repeal of the former Act, industrial designs protected thereunder shall remain in force but shall, subject to subsection (2), be deemed to be protected under this Act.

(2) Industrial designs protected under the former Act shall remain in force for the unexpired portion of the period of protection provided for under the former Act.
