

INTELLECTUAL
PROPERTY RIGHTS
IN A NUTSHELL

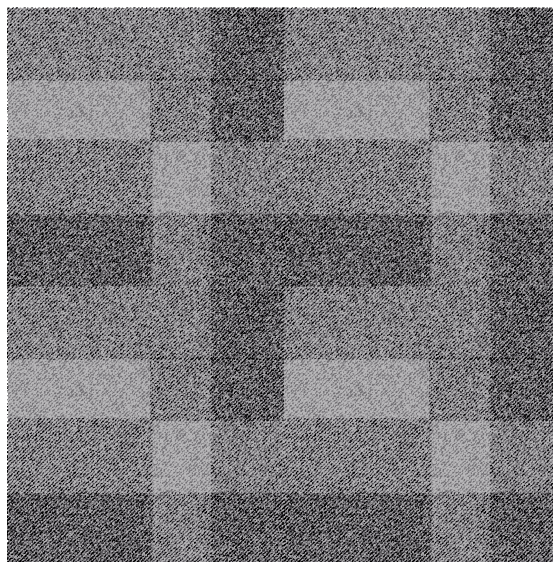
Designs



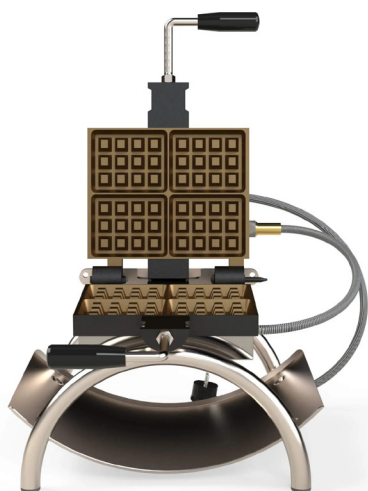
01. What do design rights protect?

A design right protects the **appearance of a product** or a part thereof. Design rights are primarily intended for **utility objects** (e.g. cars, toys, chairs, clothing, machines etc.).

A design right can, on the one hand, protect **two-dimensional shapes**. An example of this is the pattern on wallpaper or a carpet.



On the other hand, it can protect **three-dimensional shapes** such as the shape of a waffle iron or chair.



A **combination** of the two is also possible, think of the shape of a porcelain plate with a certain pattern on it.

The appearance of a product is determined by the **features** of, in particular, the lines, contours, colours, shapes, textures, materials, etc. of the product itself and/or its ornamentation.

Certain features are however **excluded** from protection under design law:

- The features of appearance of a product which are **solely dictated by its technical function**. For example, the lines and patterns on the handle of a shaver may be protected as a design. The shape of the blades and the angle at which they are arranged, on the other hand, are excluded from such protection because they are solely dictated by their technical function, namely to enable a precise shave. That shaving system may, however, be the subject of patent protection if the relevant requirements are fulfilled (see further).
- The features of appearance of a product which must **necessarily** be reproduced in their **exact form and dimensions** in order to permit the product, in which the design is incorporated or to which it is applied, to be **mechanically connected to or placed in, around or against another product** so that either product may perform its function ('must fit' features). This is for example the case with the shape of an electrical plug, where the arrangement of the metal pins cannot be protected, because it guarantees the compatibility of that product with other products or the interconnection of different parts in a larger system.
- Designs which are **contrary to the public order or morality**. Think for example of designs in the sexual sphere or racist designs.

02. What are the requirements for design protection?

For a design to enjoy protection, it must be new and have an individual character. Having an aesthetic character, on the other hand, is not required.

A design will be considered as **new** if **no identical design has been made available to the public** prior to the date of registration or public use of the design. Whether or not this older design is protected by a design right is irrelevant. The earlier disclosure may for example occur through the commercialisation, publication in a magazine or advertising on the internet of a product incorporating the design.

For a design to have **individual character**, its appearance should produce a **different overall impression** on the "informed user" than the overall impression created by existing designs. The informed user is simply put someone who is more specialised than an average user, but who is not an expert either.

When assessing the individual character of a design one must in essence proceed from a **four-step review**:

- **First**, the **sector of the products** in which the design is to be incorporated or to which it is to be applied must be determined.
- **Second**, the **informed user** of these products according to their purpose must be determined.
- **Third**, the **degree of freedom of the designer** in the development of the designs must be determined. The more freedom the designer had when designing, the bigger the differences must be in order to create a different overall impression, and vice versa in designs where the designer's creative freedom is significantly limited, sometimes small differences can suffice to create a different overall impression.

- **Finally**, the result of the comparison of the designs must be determined, taking into account the sector concerned, the degree of freedom of the designer and the overall impressions produced on the informed user by the contested design and **any of the earlier designs**. The assessment should not simply be an analytical comparison of a list of similarities and differences.

03. How can you obtain a design right?

In **principle**, the right to a design is obtained through the **filing and registration of the design** with the competent authority.

Important! A design must be registered within 12 months after its first disclosure (the so-called “grace period”). If not registered within this period, the disclosure of the design will invalidate the design since it will not be “new”.

When filing a design, the applicant needs to provide **picture(s)/drawing(s)** of the product. The application must also contain a **description** and an **indication of the products** in which the design is intended to be incorporated or to which it is intended to be applied.²² The Locarno Classification is an international classification of products that design applicants can use to identify these products.

The filing and registration of a design is possible with **various authorities** depending on the territorial scope of protection you wish to obtain, namely:

- with the **competent national authorities** to obtain a national design which offers protection in that country.
- with the **Benelux Office for Intellectual Property** (BOIP)⁶ to obtain a Benelux design right which offers protection within the Benelux (protection for Belgium, the Netherlands or Luxembourg separately is not possible!).²³
- with the **European Union Intellectual Property Office** (EUIPO) to obtain a Community design right (CDR)⁸ which offers protection within the EU.²⁴
- With the **WIPO International Bureau** to obtain protection in all or some of the member states of the Hague Agreement Concerning the International Registration of Industrial Designs. In contrast to trade mark law, no previous registration or application is required as a basis for this application.²⁵

Tip: Within 6 months after filing a design, it is possible to expand protection to new territories while keeping the original filing date (so-called “**right of priority**”).

The relevant authority will **not examine** whether the filed design meets the **validity requirements**, but will **only verify whether the required formal requirements are met**, such as the addition of a sufficiently clear depiction of the design.

Once the design has been registered, its holder obtains protection for a period of **five years**. This period can be renewed four times, leading to a **maximum of 25 years**.

In addition to registered design rights, there are however also **Unregistered Community Design rights** that are obtained **automatically** without registration if the criteria of novelty and individual character are met. This protection is thus free of cost, but is limited to a maximum period of **3 years** as of the day of first public use.²⁶ There are no unregistered Benelux design rights.

04. What rights do you have as a design holder?

A **registered design right** gives the holder the **exclusive right to use the design**. Use includes the manufacturing, offering, putting on the market, importing, exporting or using of a product in which the design is incorporated or applied.

Consequently, the holder of a registered design also has the right to **prevent any third party from using** the design without his consent. The holder of a registered design can more specifically prevent any third party from using a product with an identical appearance or with an appearance which does not produce an overall impression on the informed user that differs from the overall impression produced by the protected design.



Product | Design | Infringement²⁷

At the same time, the holder of the registered design may also decide **not to use the design**. Contrary as to trade mark law, there is no obligation to use registered designs.

The holder of an **Unregistered Community Design** on the other hand, can only prevent the use of an infringing design if that use results from copying the protected design ('**counterfeit**'). The infringement criterion is however identical to that of a registered Community design: action may be taken against any design which does not produce a different overall impression on the informed user.

05. Design rights and copyright


The **scope of protection** of design rights **partly overlaps** with the scope of protection of copyright. Designs therefore can also be protected by copyright which is obtained automatically.

However, the **registration of a design offers important benefits**, e.g.:

- A **pan-European injunction** can be obtained on the basis of a registered Community design. In cases of copyright infringement only a national injunction can be obtained.
- A registered design enjoys a **presumption of validity**.
- Clear **IP portfolio management**.
- There will be **fewer discussions** concerning the **date of creation** and the **ownership** of a design in case of a registered design right.

06. Examples

a. Community Design




Protect your intellectual property in the European Union

RCD file information

000025325-0003

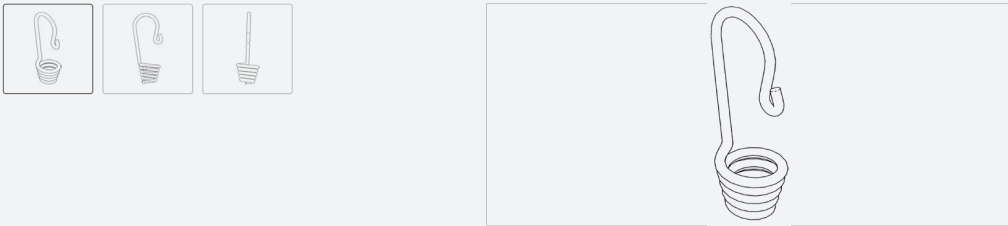
Timeline



Timeline events:

- 16/04/2003: RCD application received
- 16/09/2003: Registered and fully published (A.1.)
- 03/02/2014: Design expired

Graphic representation



Design information

Design number	000025325-0003	Filing language	DUTCH
Name		Second language	ENGLISH
Filing date	16/04/2003	Reference	SIL80 Excellent 01
Registration date	16/04/2003	Vienna Classification	
Expiry date	16/04/2013	Verbal element	
Design status	Design lapsed		

Indication of the product, (DesignClass)

Locarno	09.06	English ▼
Values	Bundle carrier ties (part of -)	

Actions and communications

b. Benelux design



Afschrift uit het modellenregister

Inschrijvingsnummer

29265-00

Nummer en dagtekening (dag en uur) van het depot

73951-00 05-01-1998, 14.00

Vervaldatum

05-01-2023

Naam en adres van de houder

THE COCA-COLA COMPANY Delaware corporation

North Avenue 310

GA 30312 Atlanta

Etats-Unis d'Amérique

Naam en adres van de gemachtigde of vermelding van het correspondentieadres van de houder

Dennemeyer & Associates SA

rue des Bruyères 55

1274 Howald

Luxembourg

Afbeelding van de tekening of het model

ZIE AFBELDING(EN)

Vermelding van het voortbrengsel gevolgd door de aanduiding van de klasse(n) en onderklasse(n)

Verres (cl 07-01).

Recht van voorrang als bedoeld in artikel 4 van het verdrag van Parijs tot bescherming van de

Industriële Eigendom

Etats-Unis d'Amérique

29/081738

23-10-1997

MOUNTAIN JR: Maurice Geary; JUSTICE Steven Wayne.

Vermelding van de naam van de werkelijke ontwerper van de tekening

MOUNTAIN JR. Maurice Geary

JUSTICE Steven Wayne

Publicatiedatum van de inschrijving

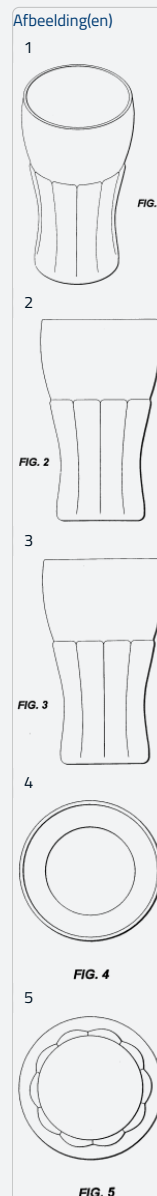
21-06-1998

Publicatiedatum van de vernieuwing

21-12-2017

Status

Ingeschreven



- 22 <https://www.wipo.int/classifications/locarno/en/#:~:text=The%20Locarno%20Classification%2C%20established%20by,the%20Classification%20is%20published%20online>
- 23 Find out more information about the filing and registering of a Benelux Design right at <https://www.boip.int/nl/ondernemers/modellen>.
- 24 Find out more information about the filing and registering of a Registered Community Design right at <https://euipo.europa.eu/ohimportal/nl/registered-community-design-applications>.
- 25 Find out more at e.g. <https://www.boip.int/en/entrepreneurs/registration-maintenance/out-side-benelux/international-design-registration>.
- 26 Find out more at <https://euipo.europa.eu/ohimportal/en/unregistered-community-design>.
- 27 Brussels first instance court, 10 November 2006, I.R. D.I. 2007.

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