



Webmarking of Products Protected by Registered Designs – Business Guidance

Current Situation

If a registered design owner wishes to be in with the best chance of being awarded financial remedies in the event their design is infringed, they should mark their product with the word 'registered', or an abbreviation of that word, together with the number of the registered design.

This is because damages are not payable by a registered design infringer who is able to prove that at the date of the infringement they were not aware, and had no reasonable grounds for supposing, that the design was registered. The current law provides that an infringer cannot rely on this argument if the protected product is marked in the way described above.

What's Changing

From 1 October 2017, registered design owners who have marked their protected product with a relevant internet link will be able to benefit in the same way – provided that the internet address is accessible free of charge and clearly associates the product with the number of the design. A similar system has been in place for patents since 1 October 2014.

Removing the need to mark the registered design numbers directly on the product will reduce burdens and costs for businesses and individuals who own registered designs, and will make it easier for the public to access up-to-date registered design information in relation to a product.

Options Available

Registered design owners will continue to have the option of marking their product with the relevant registered design numbers if they prefer.

They will also continue to have the option of not marking their products at all, and this will have the same consequences as now i.e. it will reduce the likelihood of successfully claiming damages from an infringer.

Detail

It is in the registered design owner's interest to ensure that clear, accessible and up-to-date information is provided on the webpage, making it easy for the public to ascertain which registered designs apply to the product. The product must be clearly identified, for example by including any relevant model numbers and variants that exist.

Providing clear information will ensure that the registered design owner is in with the best chance of being awarded damages as a result of any infringement proceedings.

Providing the web address of the home page of a company website is unlikely to suffice – unless on that home page there is a clear association between the product and the relevant registered design number.

This change does not apply to Registered Community Designs.

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