

Response ID ANON-6TNE-VMEX-W

Submitted to Reviewing the designs framework: Call for views
Submitted on 2022-01-26 17:12:22

Introduction

1 What is your name?

Name:

[REDACTED]

2 What is your organisation?

Organisation:

[REDACTED]

3 What is your email address?

Email:

[REDACTED]

4 The Intellectual Property Office may wish to contact you to discuss your response. Would you be happy to be contacted to discuss your response?

Yes

Respondent information

5 If you are an individual, are you?

A designer

If you have selected other please specify:

6 If you are responding on behalf of an organisation, are you?

Any other type of organisation

If you selected other please specify:

Clothing designer and manufacturer

7 In which main industry do you or your business operate?

Clothing and accessories manufacturing

If you selected other please specify:

8 How many people does your business employ?

2-9

Registered designs - search and examination

9 Do you have views on whether the IPO should change examination practice for designs?

Please add your views here:

My view is that if a design is original it should be unique - therefor not currently in the market place.

I support any system that helps to protect designers of original designs - for me whippet apparel - and avoids any under hand methods that might allow bigger companies from stealing these designs and protects smaller businesses from others copying and passing designs off as their own.

10 Do you think it would be useful to introduce any of the options outlined? (please select all that apply)

Prior art searching, Two-tier system, Bad faith and opposition periods

Please provide more detail below:

Simplifying the designs system

11 What form of designs protection works best for you at present?

Please add your views here:

Registered design rights - we are currently involved in a long, expensive case with a competitor who we believe has infringed our design rights on two of our designs. Both of which we have registered design rights for.

Unregistered design rights would have been sufficient for a small claims court to settle but it has become so complex (unnecessarily so) that we are now serving in IPEC and using our registered design rights.

If the system were not so complex, and the theft of a design were to be protected in a way that deterred the smaller copiers, unregistered designs rights would have more use.

12 Do the different and overlapping ways of protecting the appearance of a product present any issues to creators and users of the system? If you think the system could be simplified, we would like your views on how to do this.

Please add your views here:

Yes the system should be simplified - many copiers are 'blissfully' unaware of the crime they commit when they produce a product that is so similar as to cause confusion in the eye of the consumer and more awareness of this might deter them from doing it in the first place.

A unique design that is the first of its type in the market place should have more protection against the copiers who simply ignore the law. One solicitors letter citing the simple fact that they have committed theft of a design that is protected for which there are consequences should be enough to stop the actions of many small makers who don't 'agree' they have done wrong - the law is too complicated.

13 Are there terms in the Registered Designs Act which would benefit from clarification or guidance e.g. "get up"?

Please add your views here:

I am not qualified to answer this, but it is my belief that the Registered Designs act has little use outside of the IPEC court and to get there is a very costly and prohibitive route for many businesses.

14 Please share any issues you or your clients have experienced in relation to the changes to disclosure requirements for unregistered designs since the end of the transition period (31 December 2020).

Please add your views here:

Can't comment

15 Would any of the options outlined, such as simultaneous disclosure, address this issue? Are there any other ways of addressing the lack of reciprocal recognition for unregistered designs in the UK and EU? If so, please provide details on how they may work in practice.

Please add your views here:

Not sure.

Future technologies

16 How can the current system better meet the needs of a digital environment and future technologies?

Please add your views here:

This is not my area of expertise

17 Are areas such as digital designs and 4D printed products adequately protected by the current system?

Please add your views here:

N/A so I can't comment - we design on paper before making an item!

18 Do you think it would be useful to introduce any of the options outlined? These include extending supplementary unregistered design to cover computer generated designs, filing of digital representations and ceasing accepting physical specimens.

Please add your views here:

No view

19 What are your views on the protection of computer-generated designs?

Please add your views here:

I think they are just as valid as any other form of design - if they are original they should have protection.

Better regulation

20 Should UK law have an express deferment provision and how long should it be?

Please add your views here:

Yes I think so, as said companies developing a unique item want to know it will be protected by the time they get it to market.

18 months sounds reasonable to me, especially if there were to be some way of checking the basic details of the item to avoid anyone else registering a similar item.

21 What information, if any, should be published in relation to a deferred design?

Please add your views here:

Basic but unique features.

22 Is there a need for specific provisions for prior use or to deal with co-pending applications?

Please add your views here:

Yes, there is a need for any provisions that give the designer full protection.

Enforcement

23 What are your views on the effectiveness of the UK's enforcement framework?

Please add your views here:

Frankly it is not fit for purpose for the majority of small to medium sized businesses. The public are so used to seeing copies of iconic designs sold in cheaper outlets that they see nothing wrong with it, let alone believe it to be theft.

If the law were to be more accessible to designer of unique products the makers could educate their customer base to the reasons why it is so damaging to brands that have their designs reproduced by cheaper, often one person lacking the knowledge of how to design and develop a product of their own, but with good enough computer skills to set up an online shop selling the copied goods.

24 How could it be improved to help small businesses and individual designers enforce their rights?

Please add your views here:

There should be a tiered system in law - something that a single solicitors letter can send out to the copier that will sufficiently inform them of the breach that is a crime that will have a consequence if ignored.

The copier should not be able to cite 'I have done nothing wrong' to get away with the theft.

Costs need to be far less, if infringements could be settled in one or two letters, out of courts many more designers would have protection, and the markets would not be flooded with cheaper 'oh so similar' items to the original and the designer of the original item would feel more confident to continue to spend time, money and expertise in new designs and not fighting lengthy legal battles.

25 What has been your experience of the introduction of criminal sanctions for registered designs?

Please add your views here:

We are currently nearly two years into a legal battle with a company in our niche. We have registered design rights, but to use them the small claims court - less costly but still very high - is no longer an option for us and we can't rely on our registered designs unlike the much more expensive IPEC where we can.

Registration of designs is prohibitive for many small businesses who should be able to rely on their unregistered rights so much more.

26 What are your thoughts on extending criminal sanctions to unregistered designs and what economic evidence do you have to support your view?

Please add your views here:

I do think unregistered designs should have the full protection of registered ones, as stated above, the longer a case goes on the more costly it is. Many small to medium size businesses cannot afford to get to the stage we are at, but theft is theft and the law should recognize that.