

Response ID ANON-6TNE-VMWH-Y

Submitted to Reviewing the designs framework: Call for views
Submitted on 2022-02-25 13:05:31

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?

Design consultant

If you have selected other please specify:

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

A design organisation

If you selected other please specify:

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

Specialist design, e.g. fashion design, industrial design, graphic design

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:

It is unlikely that a design would exactly match an existing design and if it did it would be easy to get a legal injunction to stop it. For designers, it would be very useful to run a check to see if the new design did infringe any existing registered designs and could amend the new design accordingly.

There are many cases of designs deliberately mimicking an existing design and claiming that the overall style was now seen as a category-wide style. Think of supermarket own-label offering copying brands. Or white earbuds looking just like Apple products.

Any searches might throw up lots of similar-looking designs but where designers need help is to understand how much they need to make their designs different from an existing design.

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

Prior art searching, Use of AI tools

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:

Registering a Trademark is really the only form of protection we use as the Trademark is the most enduring element of the type of design we specialise in. Surface decoration is likely to change every 3-5 years whereas the Logo or Trademark will last for decades.

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:

All forms of applying for protection rely on the owner being willing to bring legal action against the other party.

If a simple system of bringing all the protections under one simple cluster of rules that a brand owner could apply easily it would be very useful. Such as:

- Have they deliberately copied our brand?
- Are they damaging our reputation?
- Are consumers likely to mistake their brand for ours?
- Are they piggy-backing on our hard-earned positioning in the marketplace?

A simple checklist without legal jargon would really help.

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:

The more clarification the better. Simple plain English.

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:

None I know about.

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:

Future technologies

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

Please add your views here:

Many designers understand that there is very little that is truly "new" and everyone borrows or take influence from what they see around them.

The law has to take into account this fact and allow that some elements of the creative process are by definition, about combining the familiar into something that feels unfamiliar.

If the law becomes too draconian it will stifle creativity. The spirit should always be simply " Did they intend to copy our design and profit from it at our expense?"

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

Please add your views here:

Don't know.

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:

Digital design tends to be much more fast-changing than printed design. I doubt that many people will have the time to think of this kind of legal protection.

Obviously, if you work in something like the gaming industry your IP is already protected from theft but most designers have a professional pride and wouldn't deliberately rip off another's work.

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

Please add your views here:

I really don't think it makes any difference if it is a human or AI that creates the work. The design belongs to the person or company who paid for it. If the owner feels that their property has been stolen or used without their consent, then they should be able to stop it.

Better regulation

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

Please add your views here:

Yes. Sometimes project timescales can be very long. There should be a provision to potentially defer for set periods of time but there should be proof that the design is still intended to be used and the project is ongoing.

With industrial design, I imagine this can take some years. (3 years between model changes for the car industry)

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

Please add your views here:

All copyright or trademarked elements along with any elements that are considered IP. Music, character design, defining physical elements.

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

Please add your views here:

Don't know.

Enforcement

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

Please add your views here:

Never had to use it but many small businesses just don't have the resources to take on a large business if they feel their work has been used inappropriately.

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

Please add your views here:

Perhaps a degree of anonymity would be an advantage so that designers could feel they can challenge a large organisation without damaging their potential of getting repeat business from that organisation.

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

Please add your views here:

Not had any experience of it.

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 think if you don't register the design it implies that you don't value it enough. Cease and desist of repeat usage should be enough.

If your designs are being routinely ripped off in other territories like China then there is not much you can do about it.