

Response ID ANON-6TNE-VM65-B

Submitted to Reviewing the designs framework: Call for views
Submitted on 2022-03-25 17:06:29

Introduction

1 What is your name?

Name:

[REDACTED]

2 What is your organisation?

Organisation:

UK Fashion & Textile Association

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?

Not Answered

If you have selected other please specify:

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

An industry body

If you selected other please specify:

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?

10-49

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:

Design protection is incredibly important across the fashion and textile industry from clothes in catwalk shows through to high street shops, but also in the use of textiles in other industries such as automotive, defence and elite sports.

The apparel industry is a complex global industry with multi component goods, and importantly with regards to intellectual property, is probably the only industry that changes its product line more than once a year. While there may be a limited number of core pieces, most clothing collections change at a minimum seasonally twice a year, however often there are “drops” of additional new items in between. Most designer fashion brands launch a minimum of four collections a year, two main collections (typically showcased on the catwalk at a global fashion week) and then two interim collections.

The fashion & textile industry is dominated by micro SMEs - over 80% of companies in the sector employing less than 9 people, and many are freelancers (with 18% of the workforce self-employed), which creates added issues as many do not have the capacity or resources to protect or enforce their intellectual property.

With this volume of designs that need protected, and often by small businesses, low cost, quick, efficient, speedy protection is the absolute priority. Given the nature of the fashion and textile industry we are strongly of the view that the IPO make it as easy and cheap as possible to register designs or obtain unregistered design rights and then let enforcement come separately.

Some of the options above adds complexity and cost, which would be undesirable for both small and large businesses:

We would be opposed to introducing searching and opposition periods for these reasons.

Adding searching, as is done with patents, does not feel right for the industries that use designs for protection. Design rights are very different to patents and have much shorter timescales of protection. In addition we would be concerned about the implementation of the searches. Setting this is going to be very complex, needs understanding and quality of examiners, in order to feel assured it is being serviced in the right way.

We would not want a two tier system as it will cause confusion and potentially disincentive companies from filing.

Our preference is tools that are user friendly and are written in the language of the fashion and textile industries that would use them. Guidance online and AI tools to allow businesses to better understand design framework and explore validity of the design themselves would be much preferable to setting up a new process.

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

Use of AI tools

Please provide more detail below:

We would be interested in the use of AI tools, if they are used to reduce cost and improve speed.

Simplifying the designs system

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

Please add your views here:

Protection of Intellectual Property is a key issue for the fashion and textiles industry, which relies on creativity, particularly in relation to its design. Businesses in the fashion and textile industry tend to rely on unregistered systems due to the nature of the industry as described above. Whilst complicated they give a wide variety of rights for different circumstances. Registered design rights tend only to be used on more long-term products, such as core products or accessories/perfume. It should be noted however that it can often be impossible to predict which products will do well and become "core" pieces, in most circumstances it is impossible to tell within a large collection which pieces to register. Whilst the cost of registered designs isn't high, the costs in terms of time (preparing images for filings) and volume of applications that would be needed can quickly become significant. As registered design protection must be sought within 12 months of a design being presented to the public, many businesses either miss this deadline or do not have enough information to make a decision at that stage. Many businesses do not consider design protection until infringement occurs, so it is very helpful that automatic protections are available..

The nature of the fashion industry is such that products are "displayed" at fashion and trade shows and sales presentations/meetings 6 months before they go into store, which can give ample time for copying, and so it is imperative to have rights in place to protect during this period.

In 2019 the fashion industry accounted for 890,000 jobs across the supply chain and £34bn to the UK economy (Oxford Economics). The UK manufacturing industry (textiles, apparel and leather) is valued at more than £9bn per year. As a significant industry for the UK it is essential that systems and processes in the UK are here to enable the industry to thrive and grow. The fashion & textiles industry is expected to experience significant changes over the next decade, addressing the issues that the sector is having on the planet and people. These challenges bring opportunities, which will be driven by both innovation and the creativity that the sector is renowned for. Changes in the IP system can help the industry meet our sustainability goals - on a very simple level expanding the protection offered by design rights from 3 to 5 years could encourage the industry to design product with an extended lifecycle.

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:

Members rely on a variety of rights to protect their designs. But it could be streamlined e.g. one set of design laws alongside copyright and other unregistered rights such as passing off.

We urge IPO to continue efforts for international harmonisation. IP is different in different territories. The UK designing a very bespoke system is unhelpful and adds to complexity when our businesses are needing rights that work across territories.

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:

Yes.

The fashion & textile industry is dominated by micro SMEs - over 80% of companies in the sector employing less than 9 people, and many are freelancers (with 18% of the workforce self-employed), which creates added issues as many do not have the capacity or resources to protect or enforce their intellectual property. Many IP registrations and enforcement are being carried out themselves, without legal counsel, so detailed, industry specific

examples, using the language of the industry on the IPO website would be appreciated.

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:

The UK's departure from the EU has resulted in challenges for members in terms of added administration when trading internationally but has also introduced barriers and complexity for businesses seeking to trade in the UK. We need to ensure that the UK is seen as having: 1. A very international approach and fit for purpose IP system, reciprocity is key. 2. A territory that is a safe harbour for brand owners (from emerging designers to large corporates, based in the UK or selling into the UK) with the availability of unregistered designs and controls over matters such as exhaustion of rights. Without this many businesses may prefer to focus on expansion in other markets. 3. The EU is undertaking its own consultation of design rights, and given that these issues impact both businesses established in the UK and the EU we are asking that the UK and EU's positions are aligned.

The cost and complexity of IP protection in the UK has increased when the UK left the EU wide systems for the protection of trademarks and designs. Prior to Brexit businesses regularly relied on Unregistered Community Design Rights (UDCRs), which provided unregistered design rights throughout the EU (including the UK). This was a cost effective mechanism to protect designs across the EU, including the UK, given the aforementioned issue of the number of products and seasonal ranges produced).

The EU withdrawal agreement did not allow for designers first showing designs in the UK to rely on UDCRs in the EU in relation to new designs created post Brexit. This means that a designer first showing designs in the UK may not have unregistered design rights in the EU. The Supplementary Unregistered Design right that was created in the UK in anticipation of Brexit that mirrors UDCRs only provides rights in the UK and may exist only if designs are first shown in the UK. This means that a designer first showing designs in the EU may not have unregistered design rights in the UK, and vice versa. This could result in businesses choosing to disclose in EU. We have cases of businesses that have moved their sales/showcasing to the EU, which is a threat to events such as London Fashion Week and other trade shows. It is also an issue that for many UK businesses their collections are first shown ("disclosed") at trade shows in Europe.

Many have now implemented simultaneous disclosure, via live streaming, however are unsure if this will work as a solution, and so are implementing these measures at risk that they may not work. See answer 15. It is unreasonable to ask businesses to wait for a legal decision to determine the issue, this would take a number of years.

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:

Many in the industry have implemented simultaneous disclosure as a possible mechanism to secure unregistered design protection in both territories, by disclosing a design simultaneously in both the UK and the EU (for example live streaming via a website, or social media). However this is currently untested, and won't be resolved until a case is taken through the legal system. It is unreasonable to expect a legal decision to give an outcome that will be so important for our sector. One of our members quoted £850k as the cost of protecting their designs through the courts - it is completely unreasonable for someone to incur that level of cost to give clarity to the issue.

For designers to have certainty of obtaining design protection in the UK and EU they need to register designs in both territories. Whilst design filing is cheaper than filing trade marks, this is still a cost that many emerging and established businesses cannot afford. Equally, many designers only seek to rely on design rights when an infringement occurs, and at that point it may be too late for the designer to seek registered protection which is only available for 12 months after public disclosure

The UK should work to harmonising systems to those internationally. UK IPO have indicated that simultaneous disclosure can't be formalised because the EU won't give reciprocity, however we could take the lead and grant it in the UK. It will benefit EU businesses, but setting this standard will make the UK an attractive place for rights owners and encourage EU brands to come here.

We are asking for as many automatic protections as possible to support the volume and speed needed by the industry. The reality is many designers do not understand the concept of disclosure, for example they may have a sales/press meeting the day before the show without taking the necessary non-disclosure measures. We ask the IPO to provide ongoing support and education to the sector, noting that these are talented businesses, so communication needs to be sophisticated, using the language of the sector and talking in impact terms and implications to business.

Future technologies

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

Please add your views here:

The future of the fashion and textile industry is being defined by advances in technology, many also driven by environmental considerations and the impact the industry is having on the planet. The pandemic took this direction even further, with a huge increase in use of digital tools both to design and showcase fashion. The growth in virtual clothing and "skins" is expected to be huge and a significant market opportunity for the industry. For example Epic Games, the developer of Fortnite, revealed it made \$50 Million from one set of 'Fortnite' Skins, and they have upwards of 1080 available. DM Market, which has a platform for trading skins, estimates that the skin market is worth \$40 billion a year. And so when thinking about metaverse and digital, having the ability to file designs in 3D and 4D will be a necessity for the UK to have a world-leading, technologically advanced IP system.

As mentioned previously the fashion & textiles industry is expected to experience significant changes over the next decade, addressing the issues that the sector is having on the planet and people. These challenges bring opportunities, which will be driven by both innovation and the creativity that the sector is renowned for. Changes in the IP system can help the industry meet our sustainability goals - on a very simple level expanding the protection offered by design rights from 3 to 5 years could encourage the industry to design product with an extended lifecycle.

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

Please add your views here:

This area needs to have further definition. Trade Marks currently have a more holistic filing approach. Design needs to be the same and more dynamic, e.g. the ability to submit moving images. For the fashion and textiles industry an important part of the sales process is also the visual merchandising: the way a product is presented and the experience of that – the packaging, the shop fittings, the e-commerce site, the fashion show production - all are significant to the whole experience of the product and are significant in the sales process. Get up is a wide concept - shop interiors could be protected by design, but it's hard to give the look and feel in 2D submissions. Fundamentally fabrics are not static objects - it is important to capture the movement and look and feel as this is as important to the design as other aspects to the product, for example, the shape.

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:

As mentioned above, yes. Also if the IPO were to cease accepting physical specimens then the technology needs to be there to support this so that all aspects of designs are part of the submission.

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

Please add your views here:

Computer generated designs created by Artificial Intelligence should be protected. However importantly the designer and brand owner should own the rights to these designs, and not the software owner.

Better regulation

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

Please add your views here:

Yes.

It should be 30 months, as this is consistent with the EU.

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

Please add your views here:

The only thing that should be published is the name of the applicant, as if the details of the design are published then you destroy novelty for other territories, which is vital for the fashion and textile industry given the global nature of our trade.

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

Please add your views here:

Please refer to comments in the questions above regarding the nature of the fashion and industry. Of utmost importance is the quick, efficient and cost effective systems to protect designs, rather than adding to cost and complexity of the application stage. The industry relies on unregistered designs for this reason, adding an additional barrier to registering designs will result in less people filing.

This can be dealt with at the enforcement stage. The search will make it more expensive and difficult to get on register.

Enforcement

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

Please add your views here:

Whilst we appreciate the efforts that have been made to improve the IP enforcement regime in recent years via the introduction of IPEC, the UK enforcement regime remains very costly. One of our members quoted £850k to enforce their IP for one collection. In an industry of mainly SMEs this just wouldn't be an option. A streamlined procedure would significantly assist.

Members are telling us that they rely on take-down schemes such as Amazon, something that goes through courts in a similar approach would be appreciated. Other "informal" approaches are relied on - for example following the Instagram account Diet Prada, which was started in 2014 as a

lighthearted way to reference similarities in designs, but is now campaigning formally for integrity and accountability in copied designs.

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

Please add your views here:

Criminal sanctions are quite difficult to implement for a number of reasons.

The reality is that it is extremely difficult for small businesses and individuals to enforce their rights. We have mentioned previously the cost. Trading Standards are under-resourced and just too busy to support brand owners on this matter. There have in fact been very few criminal prosecutions in the UK.

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

Please add your views here:

No views to add

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:

We are concerned about the introduction of criminal sanctions for unregistered designs. Businesses in our sector would find it difficult to know if there was a design they were infringing. It would be very difficult for there to be criminal sanctions on those instances and it could in fact stifle creativity. We recognise that copyright has criminal sanctions and is an unregistered right, but that is (we understand) created for the scenario of organised crime exploiting known copyright works, which is very different to this situation.