

Can anyone copy a design?

There are two answers here. Firstly, it is illegal for anyone to imitate for commercial purposes a design which is still under a valid registration in Namibia provided that such registration has not expired due to either non-renewal or having gone the full life.

As mentioned before, the validity of registration is limited to the country of registration. If the design is not registered in, say one country but is registered in another country and such registration is still running, the design is liable to face imitations in the former and the true owner has no legal redress in that country.

Secondly, a design whose registration has expired, or which has never been registered are objects which are very free to imitation by competitors.

If I want to avoid re-designing the wheel, is there a place to get copies of past designs whose registrations have expired and which therefore present no legal complications in using them to help in my product design work?

Yes, certainly. Copies of designs of expired registration are obtained at a very minimal fee and can be of immense commercial benefit to those using the information. Designs obtained in this way, are also far cheaper than those obtained from commercial vendors of industrial property information.

BASIC FACTS ON THE REGISTRATION OF INDUSTRIAL DESIGNS IN NAMIBIA



Companies and Patents Registration Office

A Directorate of the Ministry of Trade and Industry

FOREWORD

This booklet is published by the Directorate of Internal Trade, Ministry of Trade and Industry (MTI) and its main object is to inform Namibian design applicants about the requirements and legal aspects concerning design protection in Namibia.

An industrial design is the ornamental aspect of a useful article. The ornamental aspect may be constituted by element which are three-dimensional (the shape of the article) or two-dimensional (lines, designs, colours).

To be eligible for protection, industrial designs must be original and duly registered with the division. Protection of an industrial design means that it may not be copied or imitated without the registered owner's permission. In Namibia protection is given for a 10-year period.

If anything is not clear or if you require further information, we shall gladly assist if possible.


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MINISTER OF TRADE AND INDUSTRY

Is there a time limit within which an industrial design should be registered after filing an application? If so, what happens if the applicant defaults?

From the date of application, applicants for registration of designs are given one year within which to complete registration. For some reasons, however, if registration is not completed within twelve months, an extension of three months may be granted within which to complete registration. If the application defaults, the application is considered to lapse irretrievably.

Once a design is registered, is protection infinite?

No. A design registration in Namibia is valid initially for five years from the date of filing the application. In order, however, to maintain validity of the registration for the full 15 years term which the law provides, registration must be renewed for a second and third period of five years each. If no renewal is made, registration will lapse and the design will then fall into public domain.

What is the scope of territorial protection for a registered design?

When a design is registered in one country, protection subsists only in the country or countries in which the law under which registration is made operations. For instance, any design registered under the national procedure of Namibia is legally valid only within Namibia.

The consequence of this for use by competitors is that anyone is free to make products based on a similar design outside the geographical area of the protection provided that such products are not exported into the region where registration still validly exists. Otherwise, exportation will amount to infringement of the design rights in that region.

What are the advantages of registering a design?

A design which is not registered by law risks being copied or imitated by others. Inversely, registration therefore gives the owner the sole right to exploit the design commercially in exclusion of all others on the market. Anyone who makes any product bearing a shape similar to the design can be sued for infringing the design registration. This legal action is not available if the design is unregistered.

There is also the possibility of the owner assigning the design right to others in the case in which perhaps the owner is no longer interested in the design or has no facility for commercial production of goods bearing the configuration protected under the design registration.

The Namibia Patent Office stocks information about any design ever registered in Namibia. Is this information publicly accessible?

Yes indeed. At the moment, information on any design which has ever been registered in Namibia, and whose term of protection is either still currently running or expired, may be obtained with open access from the Office. This is very valuable information in your product design efforts.

PART B: REGISTRATION AND MAINTENANCE

Where does one apply for protection of an industrial design?

Applications for registration of a design should be brought to the Designs Office at the following address:

**The Namibian Patent Office
Ministry of Trade and Industry
Block B, Brendan Simbwaye Square
Goethe Street, Windhoek**

Alternatively, it may be posted to:

**The Registrar of Designs,
Namibian Patent Office,
P O Box 21214
Windhoek**

During what hours is the Designs Office open for business?

The Designs Office is open to the public for business from Monday to Friday between 08:00 and 13:00 hours, in the morning, and from 14:00 to 17:00 hours in the afternoon except on public holidays, Saturdays and Sundays.

How does one file an application for registration of an industrial design?

Application forms for registration of a design are available at the Ministry of Trade & Industry for completion by either the applicant or agent, for applicants not resident in Namibia. The application should state the article to which the design is to be applied and should give a brief statement of the features of the design for which novelty is claimed. A further requirement is that four copies of drawings (or pictures) of the design should be submitted along with the application form.

INTRODUCTION

Mission

The Patents and Companies Designs, Trade Marks and Close Corporations Registration Office is a Directorate of the Ministry of Trade and Industry (MTI). It is currently undergoing both commercialisation and computerisation to meet up with trends in the national economy and Government policy on public service reform. In keeping with its role in the economy, its mission is:

“To promote innovation, orderly trade and the competitiveness of Namibian trade industry and through the provision of information and the registration system of commercial and intellectual property rights.”

Functions

The mission reflects the organisation’s three basic functions. The first being to run a legal system for registration and protection of commercial property (i.e. companies, close corporations and firms) and industrial property (i.e. trade marks, designs and patents for inventions).

Since the Ministry is empowered to sell these services, collection of revenue for the Central Treasury is the organisation’s second function. The third function rests in the Office’s position as the legal depository of the information tendered for registration. This is rich commercial and technological information which investors and other entrepreneurs can access.

Statutory authority for executing these three functions come from four laws which it administers. These are the Companies Act, Patents Act, Trade Marks Act and the Registered Designs Act.

STRUCTURE AND INTERNAL ROLES

Structure

In order to accomplish the stated mission and functions, the organisation is comprised of three main divisions, i.e. the Companies and Close Corporation Registration, Patents and Designs Registration.

Internal Roles

The division’s role is to register new companies, close corporations, patents and designs and to provide support services.

PART A: GENERAL INFORMATION

What is a design?

A design is the appearance of an article produced by any industrial process, or manually. The shape and decorative ornaments of a finished article to the eye constitute an industrial design.

Is there a design law in Namibia?

The Patents, Designs, Trade Marks Act (Act No. 9 of 1916) and Proclamation 17 of 1923.

Who is eligible to apply for registration of a design in Namibia?

The originator of the design, or his assignee, who may be a company, individual or group of people, may apply for registration of an industrial design if they claim to have rights vested in the design with respect to the Namibian territory.

What are the conditions for registration of a design?

A design can not be registered unless it is new or original and cannot be registered if there is any similar design on the register of designs or if it is the subject of an earlier application by another person or if it resembles any design which has been published before.

Design Application which can be registered includes reproduction of armorial bearings, insignia, flags of any country or city; or portraits of any known person. Even with a consent, the following designs are completely excluded from registration: i.e. work of sculpture, wall plaques, medals, calendars, certificates, coupons, greeting cards, plans, maps and postcards.

How does the registered proprietor use the registered design?

Registration gives the proprietor copyright in the registered design. She/he acquires an exclusive right in Namibia to make or import for sale or for use in trade, business and to sell any article in respect of which the design is registered. The exclusivity to exploit the design in Namibia is initially five years with extensions of second and third terms of five years each, bringing the total life term of a design registration to 15 years.

Can a registered design be licensed or assigned?

Yes, at any time after registration the registered proprietor may decide to license or even assign the design. A license is granted to the licensee under conditions of use which are mutually concluded between the licensor (registered proprietor) and the licensee. Applications may be made by interested persons to the Registrar of designs for registration of any such change of ownership and licensed use.

What is a compulsory licence and when is it granted?

Upon noticing that a design which was registered has not been put to use in Namibia, any interested person or company may apply to the registrar for grant of a compulsory licence in respect of the design on the ground that the design has not been used in Namibia.

Can the State use a registered design?

Under special circumstances, the State can use a registered design. A Government department or any person authorised in writing by the Minister may use any registered design for the services of the State. The registered design may be used under the following circumstances: -

- (a) for the maintenance of supplies and services essential to the life of the community;
- (b) for promoting the productivity of industry, commerce and agriculture;
- (c) for fostering and directing exports and reducing import or imports of any classes, from all or any countries and for redressing the balance of trade;
- (d) for assisting the relief of suffering and restoration and distribution of essential supplies and services in Namibia or any foreign countries that are in grave distress as the result of war;
- (e) generally for ensuring that the whole resources of the Namibian community are available for use, and are used, in a manner best calculated to serve the interests of the community;
- (f) royalty-free use if the Government department was, even before registration of the design, aware of or using a design identical to it, or use under royalty if Government's knowledge is a result of the disclosure from the design's registered proprietor.