

THE DESIGNS ACT

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THE DESIGNS ACT

Cap. 97.
Act
9 of 1975.

[15th July, 1937.]

1. This Act may be cited as the Designs Act. Short title.
2. In this Act— Interpreta-
tion.
- “class” means prescribed class;
- “copyright” means the exclusive right to apply a design to any article of manufacture as to any such substance as in this section mentioned in the class or classes in which the design is registered;
- “Court” means the Supreme Court;
- “design” means any design applicable to any article of manufacture, or to any substance artificial or natural or partly artificial and partly natural, whether the design is applicable for the pattern, or for the shape or configuration or for the ornament thereof or for any two or more such purposes, and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical or chemical, separate or combined;
- “Judge” means a Judge of the Court;
- “registered” means registered in the Register of Designs and “registration” has a corresponding meaning;
- “Registrar” means the Registrar of Companies; 9/1975
S. 2(a).
- “Registry” means the office of the Registrar of Companies; 9/1975
S. 2(b).

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“approved society” means a society, institution or organization of a public, philanthropic, or self-help, character approved by the Minister.

PART I. *Designs*

Register of
Designs.

3. There shall be kept at the Registry a book called “The Register of Designs” wherein shall be entered the names and addresses of proprietors of registered designs, and such other matters as may from time to time be prescribed.

Author of
new design
to be deemed
proprietor
thereof.

4. The author of any new and original design shall be deemed to be the proprietor thereof, unless he executed the work on behalf of an approved society, whether for consideration or otherwise, or on behalf of another person for a good or valuable consideration, in which case such society or person shall be considered the proprietor; and every approved society acquiring, and every person acquiring for a good or valuable consideration, a new and original design, or the right to apply the same to any article or substance, either exclusively of any other person or otherwise, and also every person on whom the property in such design or such right to the application thereof shall devolve shall be considered the proprietor of the design in the respect in which the same may have been so acquired, and to that extent, but not otherwise.

Application
for registra-
tion of
design.

5.—(1) The Registrar may, on application by or on behalf of any person claiming to be the proprietor of any new or original design not previously published in this Island, and on payment of the prescribed fee, register the design under this Part.

(2) The application must be made in such form as may be from time to time prescribed, and must be left at the Registry in the prescribed manner.

(3) The application must contain a statement of the nature of the design, and the prescribed class or classes of goods in which the applicant desires that the design be registered.

(4) The same design may be registered in more than one class.

(5) In case of doubt as to the class in which a design ought to be registered, the Registrar may decide the question.

(6) The Registrar may, if he thinks fit, refuse to register any design presented to him for registration, but any person aggrieved by any such refusal may appeal therefrom to a Judge in Chambers.

6. On application for registration of a design, the applicant shall furnish to the Registrar the prescribed number of drawings, photographs, or tracings of the design sufficient to enable him to identify the design, and suitable for the official records; or the applicant may, instead of such copies furnish exact representations or specimens of the design.

Drawings, etc., to be furnished on application for registration.

7.—(1) When a design is registered the Registrar shall grant a certificate of registration and the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during fifteen years from the registration of the design.

Copyright on registration.

(2) Before delivery on sale of any articles to which a registered design has been applied, the proprietor must (if exact representations or specimens were not furnished

on the application for registration) furnish to the Registrar the prescribed number of exact representations or specimens of the design; and if he fails to do so, the Registrar may erase his name from the Register and thereupon his copyright in the design shall cease.

Marking
registered
designs.

8. Before delivery on sale of any articles to which a registered design has been applied, the proprietor of the design shall cause each such article to be marked with the prescribed mark, or with the prescribed word or words or figures, denoting that the design is registered; and if he fails to do so the copyright in the design shall cease, unless the proprietor shows that he took all proper steps to ensure the marking of the article.

Inspection
of, and tak-
ing copies
of, regis-
tered
designs.

9.—(1) During the existence of copyright in a design, the design shall not be open to inspection except by the proprietor, or a person authorized by the Registrar or by the Court, and furnishing such information as may enable the Registrar to identify the design, nor except in the presence of the Registrar, nor except on payment of the prescribed fee; and the person making the inspection shall not be entitled to take any copy of the design or of any part thereof.

(2) When the copyright in a design has ceased, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

Information
as to
existence of
copyright.

10. On the request of any person producing a particular design, together with its mark of registration, or producing only its mark of registration or furnishing such information as may enable the Registrar to identify the design, and on payment of the prescribed fee, it shall be the duty of the Registrar to inform such person whether the registration still exists in respect of such design, and if so, in respect of what class or classes of goods, and stating also the date

of registration, and the name and address of the registered proprietor.

11.—(1) If a registered design is used in manufacture in any foreign country and is not used in this Island within six months of its registration in this Island, the copyright in the design shall cease.

Ceasing of copyright and cancellation of registration.

(2) At any time after the registration of a design any person interested may apply to the Registrar for the cancellation of the registration of the design on the ground that the design has been published in Jamaica prior to the date of the registration, and the Registrar may make such order on the application as he considers just.

(3) An appeal shall lie from any order of the Registrar under this section to the Court, and the Registrar may at any time refer any such application to the Court for trial.

12.—(1) During the existence of copyright in any design no person—

Penalty on piracy of registered design.

- (a) shall, without the licence or written consent of the registered proprietor, apply or cause to be applied such design or any fraudulent or obvious imitation thereof, in the class or classes of goods in which such design is registered, for purposes of sale, to any article of manufacture, or to any substance, artificial or natural, or partly artificial and partly natural;
- (b) shall publish or expose for sale any article of manufacture or any substance to which such design or any fraudulent or obvious imitation thereof shall have been so applied, knowing that the same has been so applied without the consent of the registered proprietor.

(2) Any person who acts in contravention of this section shall be liable for every offence to forfeit a sum not exceeding one hundred dollars to the registered proprietor of the design, and such registered proprietor may, by action brought in the Court recover either such sum as a simple contract debt, or damages arising from any breach of the said section.

PART II. *General*

Trusts. 13. There shall not be entered in any register kept under this Act, or be receivable by the Registrar, any notice of any trust express, implied, or constructive.

Scandalous design. 14. The Registrar may refuse to register a design which is, or of which the use would be, scandalous or contrary to law or morality.

When design deemed to be registered. 15. Any design shall be deemed to be registered when the name of any person is entered, as the proprietor thereof, in the Register of Designs.

Entry of assignments and transmissions. 16. Where a person becomes entitled by assignment, transmission, or other operation of law to the copyright in a registered design, the Registrar shall, on request and on proof of title, cause the name of such person to be entered as proprietor of the copyright in the design in the Register of Designs. The person for the time being entered in the Register of Designs as proprietor for copyright in a design, shall, subject to the provisions of this Act, and to any rights appearing from such Register to be vested in any other person, have power absolutely to assign, grant licences as to, or otherwise deal with the same and to give effectual receipts for any consideration for such assignment, licence or dealing:

Provided that any equities in respect of such design may be enforced in like manner as in respect of any other personal property :

Provided also, that the priority of all assignments and charges shall, as regards purchasers for value without notice, be determined by priority of registration.

17. Every register kept under this Act shall be *prima facie* evidence of all matters duly entered therein; and every such register shall be open to the inspection of the public on payment of the prescribed fee, subject to the provisions of this Act and to such regulations as may be prescribed; and certified copies, sealed with the seal of the Registry, of any entry of such register shall be given to any person requiring the same on payment of the prescribed fee :

Inspection
of extracts
from
Register.

Provided that whenever any extract includes any tracing, drawing, or diagram, an additional fee for any copy thereof shall be paid equal to the cost of preparing such tracing, drawing or diagram.

18. The Registrar may, on request in writing accompanied by the prescribed fee—

Correction
of errors and
amendment.

- (a) correct any clerical error in or in connection with an application for registration of a design; or
- (b) correct any clerical error in the name, style, or address of the registered proprietor of a design; or
- (c) permit an applicant for registration of a design to amend his application by omitting any particular goods or classes of goods in connection with which he has desired the design to be registered.

19. A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing which he is authorized by this Act, or by any general rules made there-

Certificate of
Registrar
evidence.

under, to make or do, shall be *primā facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

Orders by a Judge.

20. An order requiring the Registrar to do or abstain from doing anything under this Act, may be made by a Judge on a summons in Chambers.

Powers of Court or Judge.

21. In any proceedings under this Act, the Court or a Judge, as the case may be, may at any time make such orders for an injunction, inspection, or account, impose such terms, and give such directions as to the order in which the parties shall be heard, and the procedure under this Act generally, as the Court or Judge shall see fit.

Persons under disability.

22. If any person is, by reason of infancy, lunacy, or other disability, incapable of making any declaration or doing anything required or permitted by this Act, or by any rules made under the authority of this Act, then the guardian or committee, if any, of such incapable person, or if there be none, any person appointed by any Court or Judge possessing jurisdiction in respect of the property of persons under disability, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making of such declaration or doing such thing, may make such declaration, or a declaration as nearly as possible corresponding thereto, as circumstances permit, and do such thing in the name and on behalf of such incapable person, and all acts done by such substitute shall for the purposes of this Act be as effectual as if done by the person for whom he is substituted.

Publication of quarterly list.

23. The Registrar shall cause to be published during each quarter, in the *Gazette*, a list of all designs registered, during the preceding quarter, and any further information that he may deem generally useful or important.

24. Any declaration required to be made under this Act may be taken by the Registrar. Declarations.

25.—(1) The Registrar, with the sanction of the Minister, may from time to time make such general rules and do such things as he may think expedient, for prescribing the practice of registration under this Act, for classifying goods for the purposes of designs; for prescribing the fees to be paid under this Act, or for any other purpose which may be or be deemed necessary for the carrying out of the provisions of this Act. Rules and fees.

(2) Any rules made in pursuance of this section shall be laid before the House of Representatives and shall be published in the *Gazette*.

26. All fees received under this Act shall be paid into the Consolidated Fund. Fees to be paid into the Consolidated Fund.

27. All certificates and certified copies given by the Registrar under this Act shall be exempt from stamp duty. Exemption from stamp duty.

28. All designs of an approved society for which application for registration is made under this Act shall be exempt from all fees under this Act, or rules made thereunder. Exemption from fees.