

U.S. Copyright Protection for 3-D Product Designs

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Obtaining intellectual property (IP) protection quickly to dissuade potential infringers, or to permit prompt action if infringement occurs, may have enhanced importance if a product has a short life cycle, is seasonal, or if there is a concern that a product may be knocked off before a utility or design patent may issue. Accordingly, for some consumer products, it may be appropriate to obtain a 3-D copyright registration in the U.S.

Although 3-D products may have a complex function, or engineering-based component, the actual shape or appearance of the 3-D object may be arbitrary and creative. That arbitrary and creative aspect may be suitable for protection under a design patent in the United States (or an industrial design in Canada). It may also be suitable for 3-D copyright registration in the U.S.

Although in Canada copyright and design protection are not generally available for the same object, in the U.S. this is not necessarily the case. There are several advantages to seeking U.S. copyright protection in addition to a design patent:

1. Registration is inexpensive, has simple formalities, and is obtained relatively quickly as compared to design patents and utility patents. Copyright registration may therefore serve both as protection in its own right, and as interim protection pending grant of other substantive rights in design patents or utility patents.
2. Registration does not involve a substantive examination of prior art.
3. Copyright has a very long duration as compared to either design patents or utility patents.
4. The test for copyright infringement is not one of detailed analysis of enumerated claim features, but rather a test of general impression to determine whether there has been a substantial copying of the object in question – which may yield entirely satisfactory results when addressing identical knock-off copies of the commercial product.
5. An owner of a registered copyright in an object does not need to prove damages, but is entitled to both statutory damages and legal fees under U.S. copyright law.

All of these advantages suggest that a design owner may wish to consider U.S. copyright registration as an additional option for the protection of commercial products.

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