

Design/Copyright Information Sheet

This information is intended to provide a brief explanation as to obtaining an Australian Design Registration and the relationship between designs and copyright. It is intended as general guidance only and is not meant to be a substitute for obtaining advice. If you have a specific query, you should contact Chrysiliou IP for advice.

- **Requirement of novelty and originality**

In most cases, in order to obtain a valid design registration, the design must be novel and original over the “prior art”. The prior art includes designs disclosed by prior use or publication in Australia. The date at which the design must be novel and original is generally the date on which the design application is filed.

A design application should be filed before you have used or made known the design in Australia.

- **Filing a Design Application**

So that we can prepare and file an application to register a design, we need drawings or photographs showing the features of the article. In most cases, we will need drawings or photographs which show the article viewed from front and back, each side, and top and bottom as well as a perspective view. However, in some cases we may be able to dispense with some of those views. We ask for eight copies of each view.

If you are supplying photographs, please note that these should be clear and should be taken against a blank, contrasting background.

As an alternative, if you have a sample of the article, we can prepare drawings from a sample.

- **Filing Details**

Within about a month after filing of the application, we will receive from the Designs Office the number given to the application. We will report filing details to you.

- **Formalities Report**

Several months after the design application has been filed, the Designs Office will consider whether the application meets the formality requirements such as the quality of the representations. If there is no objection to registration of the design, the application will proceed to registration and a registration certificate will issue.

If a formality objection is raised to registration of the design, these formalities must be overcome before the design will be registered.

- **First Period of Registration**

Initially, a design registration is in force for five years from the date of application. For the first eleven months after registration, other parties may object to registration of the design, on the basis of specified grounds.

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- **Second Period of Extension**

After payment of the required fee, the registration may be extended for a second period of five years ending ten years after the date of application.

- **Examination**

Before your design registration can be enforced against a third party, it must be examined and certified. Third parties can request that the design registration be examined if they consider that the design should not be registered.

- **Copyright**

The Copyright Act 1968 confers protection for certain works, including literary and artistic works. There are no formal registration requirements for obtaining copyright protection. Literary works can include such works as written tables and computer programs. Artistic works can include drawings, artwork and photographs. Copyright may not be enforceable where an artistic work is applied “industrially” to a three dimensional article. In such situations, CHRYSILIOU IP should be consulted on the question of obtaining a design registration for the artistic work in the three dimensional form in which it is “industrially applied” prior to any industrial application, in order to afford some measure of protection. This is a complex area requiring expert advice and the above comments are meant to highlight the necessity for seeking professional assistance to ensure rights are not lost.