

Copyright in products

Many businesses do not realise that the shape and configuration of a product or its packaging or promotional material can be the subject of rights under the Copyright Act.

Copyright can only be relied upon to protect against copying – it does not confer a monopoly. Thus copyright cannot be used to prevent the production of similar works created by someone else having no connection with the original copyright work. The onus is on the plaintiff to prove actual copying. Furthermore, copyright only relates to the form, expression and appearance of a product. It does not relate to the underlying idea of the product or its principle of operation. Patents alone can protect ideas and principles of operation.

A registered design is essentially a registered form of copyright. The advantages of a design registration are that it confers a monopoly, ownership of the design is readily proved, and it is no defence to claim that the design was not actually copied.

Copyright should therefore be used only as a secondary line of defence for innovators who have been unable to obtain patent or design protection for their product.

Additional Protection

All copyright works and products derived from them should be marked with the international copyright symbol ©, the owner's name and the date of creation – eg: © James & Wells 2009.

This marking acts as a deterrent to would-be copiers. It may also make claiming damages in a copyright infringement action more straightforward, as the defendant would have difficulty arguing that the infringement was innocent and the existence of copyright was unknown to them.

Term

In general, copyright in the design of a product lasts for 16 years from the date the design is industrially applied to products.

Copyright subsisting in drawings contained in patents and registered designs ceases when the patent or design registration ceases.

Licences

The rights of a copyright owner may be readily licensed for others to use.