

## Community Designs

Community Designs cover all European Union states as a single unitary right. There are two types of Community design:

- Registered
- Unregistered

### Common features

Registered and unregistered community designs have common territorial scope, a common requirement to have individual character, and a common scope of protection in terms of enforcement. The differences occur in the maximum term of protection, the need to apply for registration, and the differing novelty requirement.

### Territorial scope

A Community design has a unitary character. It has equal effect throughout the whole of the European Union. It cannot be registered, transferred or surrendered or be the subject of a decision declaring it invalid, nor is its use prohibited, except in respect of the whole European Union. However, it can be licensed on an individual state-by-state basis.

### What can be protected?

Community designs protect the appearance of the whole or part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation.

A “product” means any industrial or handicraft item, including amongst other things, parts intended to be assembled into a complex product, and includes packaging, getup, graphic symbols and typographic typefaces. Computer programs are not considered as products for Community design purposes, but computer screen views are registrable.

Complex product means a product which is composed of multiple components which can be replaced, permitting assembly and reassembly of the product.

Community designs may protect items such as three-dimensional products, spare parts, components of machines, and a wide range of industrial or commercial products. They can also protect two-dimensional designs such as logos, cartoon characters, and computer icons.

## Requirement for protection

A Community design shall be protected to the extent that it is *new* and has *individual character*.

Designs applied to or incorporated in a product which is a component part of a complex product are only to be considered new and have individual character if:

- the component part, once incorporated into the complex product, remains visible during normal use of the product; and
- those visible features of the component part themselves have novelty and individual character. "Normal use" means use by an end user, excluding maintenance servicing or repair.

The novelty requirement is fulfilled if no identical design has been made available to the public

- in the case of *unregistered Community design*, before the Community design has been first made available to the public; or
- in the case of *registered Community design*, before the earliest filing date or priority date of the application to register the design.

In the case of registered Community designs, any publication by the designer in the 12 months period preceding the filing date or priority date is disregarded for the purpose of determining novelty. This makes it possible to validly register a design within 12 months of the date of first publication by the designer or his successor in title.

## Exceptions to design protection

Features of appearance of a product which are solely dictated by its technical function are excluded from Community design protection

Community design does not subsist in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product to which the design is incorporated or to which it is applied, to be mechanically connected to or placed in, around or against another product so that either product may perform its function. This means that things such as aftermarket spare parts or components can still be registered to the extent that they are of different appearance to the original equipment manufacturer's design.

## Scope of protection

The protection given by a Community design includes any design which does not produce on the informed user a different overall impression. In assessing the scope of protection, the degree of freedom of the designer in developing his design is taken into consideration.

## Term of protection

Registered Community design - the maximum term is up to 25 years from the original date of filing of the application. Renewal fees are payable at five year intervals up to the maximum 25 years.

Unregistered Community Design - the maximum term of protection is 3 years from the date on which the design was first made available to the public within the European Community.

## Claiming priority from a foreign design

Registered Community designs can validly claim priority from a national registered design application or a US design patent application. A 6 month priority period from the earliest foreign registered design application applies, as set out in the Paris Convention for the Protection of Industrial Property.

## Information needed to apply for registered community design protection

We will need the following information

- representations of the design. These can either be photographs, or black and white line representations. If you do not have these, we can produce these from the actual prototype or product itself.
- name and address of the applicant
- name of the designer
- brief description of the product (e.g. "container")
- If priority is to be claimed from a foreign design application, the country, priority date, and priority application number

## Summary

The legal scope of protection given by registered and unregistered Community design is very similar. However, registered Community design requires an application to be made to the European Union intellectual property office, and gives a maximum 25 year term of protection, whereas unregistered Community design requires no application procedure, but has a maximum three-year term of protection.

It is almost always better to obtain a registered Community design rather than rely on unregistered Community design alone. Registering a design gives documentary evidence of the design in the form of a certificate of registration, which evidences the rights of the holder in unambiguous documentary form, and which can make enforcement of the Community design much easier.

## Further advice

For further information, or to file a registered Community design, please contact one of our offices.

### Franks & Co

15 Jessops Riverside

Brightside Lane

Sheffield

S9 2RX

T: +44 (0)114 249 9888

F: +44 (0)114 249 9666

E: [franksco@franksco.com](mailto:franksco@franksco.com)

### Franks & Co (South)

Carlton House

26 Billing Road

Northampton

NN1 5AT

T: +44 (0)1604 632436

F: +44 (0)1604 626128

E: [northampton@franksco.com](mailto:northampton@franksco.com)

### Franks & Co (Mancunium)

Cheadle Place, Cheadle Point

Stockport Road, Cheadle

Manchester

SK8 2JX

T: +44 (0)161 820 2891

F: +44 (0)114 2499666

E: [manchester@franksco.com](mailto:manchester@franksco.com)

[www.franksco.com](http://www.franksco.com)

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