

LEGAL PROTECTION OF INDUSTRIAL DESIGN IN AZERBAIJAN AND EUROPEAN UNION

*Industrial design keeps the customer happy,
manufacturer in the black and the designer busy.*
Raymond Loewy

Summary

Industrial design plays an important role in the field of intellectual property. There is no doubt that design is crucial to the success of a product. For this reason, companies use intellectual property laws to protect industrial design. This article covers one of the most important areas of intellectual property, legal protection of industrial designs, legal regulation of industrial design in Azerbaijan and the European Union. There should be accessible, modern and effective legal protections for design rights to encourage manufacturers to invest in designs. There is currently a wide range of legal tools available to protect designs at the national and European Union levels.

Key words: *industrial design, intellectual property law, design protection, product, industry*

Introduction

Industrial design currently plays a significant role in every national industry and is defined as a combination of entrepreneurship and craftsmanship, knowledge and passion, tradition and innovation, which gives the product and the company a competitive advantage in the global market.

According to intellectual property law, industrial design is concerned with the aesthetic or external appearance of a product. This is a feature that makes the product attractive or appealing to the customer, visual appeal is one of the key reasons affecting customers' decisions to choose one product over another. Industrial designs help companies differentiate their products from those of their competitors and strengthen the brand image of their products. That is why it is important to protect industrial designs legally.

Before going into a deeper analysis of the various forms assumed by the legal protection of industrial design, it is essential to establish what is meant by industrial design.

Empirical research tells us that "design led companies have produced dramatically better share price performance for their investors" (1, p.2). In daily life, industrial design is used to describe the general shape and form of a product. If a chair is comfortable when we sit and we like its appearance, it can be said that it is a good industrial design. When viewed through intellectual property law, an industrial design only refers to the aesthetic or decorative aspects of the product. That is why companies are using intellectual property laws in an effort to protect their industrial design.

Before the First World War, manufacturers paid less attention to manipulating the look of a product to attract consumers and more to developing its functional aspects and enhancing its performance (2, p.5). French-born, Raymond Loewy, a fashion illustrator by training, was one of the first people to convince American manufacturers that the appearance of their products mattered, and, by the transformation of various products, he was able to show that changes to the outward appearance could result in products which were easier to manufacture, cheaper to produce and more pleasurable to use (3, p.56).

Industrial design is easy to describe but hard to specifically define. Various attempts have been made to give a correct and unambiguous definition of this concept. The ICSID (International Council of Societies of Industrial Design), a non-profit organization committed to the defence of the interests of industrial design professionals, adopts the formulation of Tomás Maldonado (he is an Argentine painter, designer and philosopher born in Buenos Aires in 1922; there, he became a teacher and later director of the Hochschule für Gestaltung in Ulm and also famous for an experience in Italy in the 1960s, when he cooperated with a project by Olivetti and contributed to the care of the image and design of the Rinascente di Milano) and defines it in this way: "Design is a creative activity whose aim is to establish the multi-faceted qualities of objects, processes, services and their systems in whole life cycles. Therefore, design is the central factor of innovative humanization of technologies and the crucial factor of cultural and economic exchange" (4, p.25).

In the Directive 98/71 / EC of the European Parliament and of the Council of the European Union of October 13, 1998 on the legal protection of designs and models and in the EC regulation no. 6/2002 of the Council, dated December 12, 2001, on community designs, we find the definition of designs and models respectively in art. 1 letter a) and in art. 3 letter a): both refer to the "aspetto dell' intero prodotto o di una sua parte quale risulta, in particolare, dalle caratteristiche delle linee, dei contorni, dei colori, della forma, della struttura superficiale e/o dei materiali del prodotto stesso e/o del suo ornamento. "It can be translated as "the appearance of the whole product or part of it as it results, in particular, from the characteristics of the lines, the contours, the colours, the shape, the surface structure and / or the materials of the product itself and / or its ornament". Once again, that reference to the external appearance of a product is found, and a protection is also specified for the individual parts that make up the object itself.

There are some reasons that industrial design should be protected by law:

- 1) Exclusive right to prevent unauthorized copying or imitation of the product;
- 2) Strengthening competitive positions of the company;
- 3) Fair return on investment made in creating and marketing the product;
- 4) Encouraging fair competition and honest trade practices.

There are 3 types of protection of industrial design levels:

a) National level:

-in most countries, an industrial design needs to be registered in order to be protected under industrial design law as a "registered design";

-in some countries, industrial designs are protected under patent law as "design patents".

b) Regional level:

-African Intellectual Property Organization (OAPI), African Regional Intellectual Property Organization (ARIPO), European Union Intellectual Property Office (EUIPO).

c) International level:

-The Hague system for the International Registration of Industrial Designs;

-OAPI and the European Union are contracting parties to the Geneva Act (1999) Act of the Hague Agreement (5).

In many countries, industrial designs need to be registered under the industrial design law for protection. In this thesis we look through the legal protection of industrial design in Azerbaijan and European Union.

Since 1996, the Republic of Azerbaijan has implemented a national system for the registration and protection of intellectual property rights. The Constitution of the Republic of Azerbaijan recognizes the right to intellectual property ("IP") and ensures the protection of IP rights of all persons. In order to clarify the Constitutional norm and establish the legal basis of the protection of intellectual property rights, the Parliament of Azerbaijan approved some laws and ratified international agreements. Intellectual property rights in Azerbaijan include all rights to industrial property including inventions, industrial designs, utility models, trademarks, geographic names and domain names and copyright and related rights. Current legislation pertaining to intellectual property includes the Law on Copyrights and Related Rights (the "Copyright Law"), the Law on Trademarks and Geographic Designations (the "Trademark Law"); the Law on Patents (the "Patent Law"), the Law on the Topology of Integrated Microcircuits, the Law on Unfair Competition (the "Unfair Competition Law") and the Law on Securing Intellectual Property Rights and Combating Piracy (the "Anti-Piracy Law").

According to the Law of the Republic of Azerbaijan on Patents, industrial design is the novel outward appearance of an article, art-constructive solution outward appearance of an article. The term of a patent's validity in the Republic of Azerbaijan shall be determined from the date on which the application was filed to the respective body of executive power: for industrial design - 10 years. The disclosure of information concerning the subject matter of an industrial design during 6 months before the filing date of the industrial design application to the respective body of executive power shall not affect the novelty of the industrial design, if it was made by the author, the applicant or other person having obtained such information directly or indirectly from the author or applicant. Author or applicant undertakes the proof of the fact of disclosure of information. The following subject matter shall not be deemed industrial designs:

-solution that are determined exclusively by the technical function of the manufactured article; architectural concepts (with the exception of small scale architectural forms);

-industrial, hydraulic and other stationary structures; o printed matter as such;

-subject matter of unstable shapes such as liquids, gaseous, dry substances and the like (6).

As can be seen from the legislation, industrial designs provide rights to any party without the permission of their registered owners, which does not allow any party to manufacture, sell or import a product consisting of or

part of that design. Industrial designs registered as means of protection (means) are given according to the ornamental aspect of the useful product, ie according to the artistic-constructive solution that determines the new appearance.

It should be noted that according to Article 110 of the Code of Civil Procedure, in court cases: on copyright disputes - on claims arising from rights to authors, copyright, inventions, utility models, industrial designs, as well as other types of intellectual property - plaintiffs are exempt from state duty (7).

According to the Criminal Code, violation of an invention and patent rights occurs in case of the illegal use of an invention or efficiency proposal, disclosure without the will of the author of essence of invention and efficiency proposal before official publication of data on them, assignment of authorship, compulsion to co-authorship and as a result of these acts the damage caused was in significant size. Punishment can range from a fine to imprisonment for a period for up to 3 years (8).

Apart from that there are some requirements for registration of industrial design in Azerbaijan. First of all, the term for filing industrial design applications claiming priority in Azerbaijan is six months from the priority date (9). The term can be extended for 2 months if the applicant fails to file the application in spite of due care. After completion of filing procedure the Azerbaijani industrial design application undergoes the formal examination. If the application meets the formal requirements, a decision to grant a patent on the industrial design is issued. The substantive examination in Azerbaijan is conducted at the optional request of the applicant, which may be filed within 18 months from the date of filing the design application. Alternatively, the patent will be issued at the applicant's responsibility. In case no opposition is filed from the third parties within 6 months from the publication of the application, the grant fee should be paid. The patent on industrial design is issued within 7 months after payment of the grant, publication fees and the first post grant annuities.

Azerbaijan is also party to several international agreements concerning the protection of intellectual property, including the Berne Convention for the Protection of Literary and Artistic Works, the Convention Establishing the World Intellectual Property Organization, the Performances and Phonograms Treaty of the World Intellectual Property Organization, the Copyright Treaty of the World Intellectual Property Organization, the Paris Convention for the Protection of Industrial Property, the Madrid Agreement Concerning the International Registration of Marks, the Protocol regarding the Madrid Agreement Concerning the International Registration of Marks, the Patent Cooperation Treaty and the Eurasian Patent Convention.

Design protection has always played an important role at the European level. Already in the 1950s, the Europeans aimed to harmonize patents, trademarks and design. After a failed attempt to harmonize the national laws, the European Commission finally succeeded in introducing European legislation intended to lead to a European design patent regime (10, p.23).

To encourage producers to invest in designs, there needs to be accessible, modern and effective legal protection for their design rights. Currently, there is a broad range of legal tools to protect designs at national and EU level. This gives right holders flexibility and a choice of protection that can be used according to their needs.

The European Union passed a Design Directive in 1998 and a Design Regulation in 2001. Similar to the Community Trademark, the goal was to first harmonize the national laws of the member states and subsequently create a parallel form of protection at Community level, known as the Community design system.

The Directive was adopted in 1998 and Member States had to revise their national design laws by 28 October 2001. The Directive sets minimal standards as to the eligibility and scope of protection for industrial designs. In order to be eligible for protection, a design must be novel and have individual character. The owner then has the exclusive right to use it and to prevent others from using it. The term of protection can be renewed every five years but may not exceed 25 years (11).

It should be mentioned that the concept of unregistered Community designs does not necessarily exist at national level in all 27 Member States. Unlike the registered design, the unregistered design is a concept at European Community level. The European legislator has not obliged Member States to introduce a comparable form of protection at national level.

There are several reasons why design protection is so strongly regulated by the European legislator. The most prominent one goes back to one of the original core objectives of the European Union, namely the establishment of an internal market as set forth in Article 26 of the Treaty on the Functioning of the European Union (TFEU). In the mid-1980s, legislators recognized the high impact of design for a product's commercial success and found it to be crucial for the trade between the Member States. The fact that Member States offered design protection at very different levels was, therefore, seen as a threat to undistorted competition within the internal market (12, p.35). There was also increasing concern at European as well as at national level that

companies might use national copyright and design protection to protect designs that are highly functional and thereby harm free and undistorted competition.

In 2007, the EU acceded to the Geneva Act of the Hague Agreement on the international registration of industrial designs. This agreement allows applicants to register a design in countries that are party to the Hague Agreement with a single application to the World Intellectual Property Organization. Accession to the Agreement allows EU companies to obtain design protection not only throughout the EU with the Community Design, but also in the countries which are party to the Geneva Act. It simplifies procedures, reduces the costs for international protection and makes administration easier.

Today industrial design is integrated into the design process of most new products, and in a world of global competition, it makes good business sense to do so. In some products – sunglasses, skis, coffee makers – the influence of the industrial designer is more obviously central than in others – light bulbs, machine tools, jet engines – but even here it can be found. Next time you step off a plane, glance for a moment at the discretely noticeable Pratt and Whitney or Rolls Royce logo on the engine cowling – its styling is no accident. In short: technical and industrial design are the essential, complementary, parts of the design of anything (13, p.25).

Conclusion

Design is increasingly important to global competitiveness and counterfeiting is a growing problem which harms designers and consumers all over the world. International design laws provide some evidence of a developing consensus that all original design should be protected against copying on modified copyright principles. Azerbaijan and the EU offer different design protection regimes. While Azerbaijan seems to rely more on a mix of different laws, the trend in the EU seems to be moving towards uniform European design protection. However, in both jurisdictions it is common for companies to protect designs with various different intellectual property rights. Patent law, in particular seems to be playing an increasingly important role in protecting unusual designs both in Azerbaijan and in the EU.

Design is increasingly recognized as key to bringing ideas to the market and transforming them into user-friendly and appealing products or services. A EUIPO and European Patent Office study on IPR-intensive industries found that they generated around 29% of all jobs in the EU between 2014-2016 (direct contribution), with 14% in design-intensive industries. This means that over 30 million Europeans were employed by design-intensive industries in that period.

Design is important for consumers who often choose a product based on how it looks. Well-designed products create an important competitive advantage for producers and companies that invest in design tend to be more profitable and grow faster.

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