

# Registered Designs (UK) Frequently Asked Questions

June 2023

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# Registered Designs (UK) FAQ

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## What are design rights?

In brief, design rights protect the shape and appearance of products and articles. They are designed to protect the investment in design innovation in product development by discouraging replicas and “lookalike” products. They are not intended to protect how something works (i.e. inventions) or general design concepts or ‘ideas’. Design rights are all about how something looks to the eye.



## Can designs be registered?

Yes! Although some design rights can arise automatically without registration, they tend to last for a shorter term, have some limitations in what they protect, and can be more difficult to enforce. Design registration provides additional protection for important and longer-term product designs.

Registration is, however, not necessary or appropriate in all cases. There are some pros and cons to each option, which are discussed in more detail below.



## What’s the aim of a design registration?

A design registration allows its owner to take action against infringing designs, without having to show evidence of creation and without the need to prove copying. A registration certificate also makes it easier to enforce your rights in infringement actions and registry actions, particularly online where marketplaces tend to respond better to take-down requests based on registered rights. The record of the protected design on the public design register also acts as a great deterrent to potential infringers.

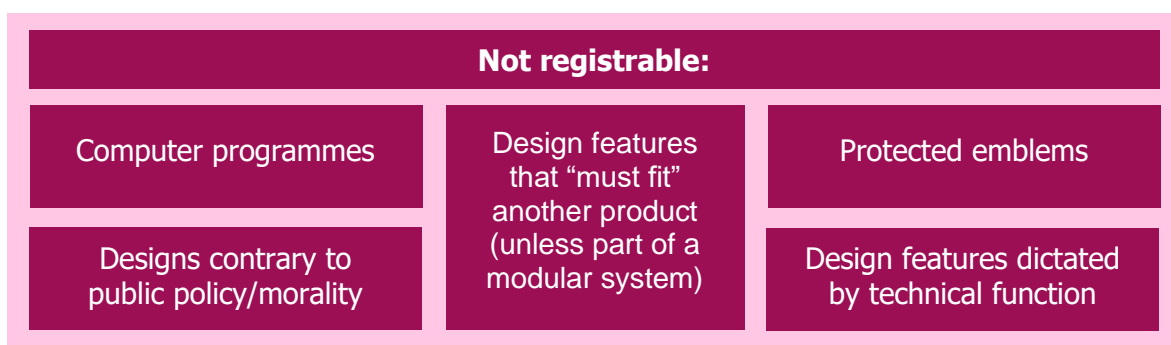


## Can I register anything as a design?

No – there are some things that cannot be protected by registration. A registered design can be used to protect features of appearance of a product, such as shape, lines, contours, texture, material, ornamentation, colours (or any combination of these). This can include 2-dimensional design features, such as surface decoration and graphics. The design registration can protect the whole product, or key features only. However, it cannot protect parts of features of a design that are solely dictated by technical function. Other specific exclusions also apply.

Below are examples of designs and design features which can be considered registrable and not registrable:

Registrable:		
Any industrial or handicraft item	A kit of parts, provided those parts remain visible in normal use once assembled	Product packaging design and “get up”
Graphic symbols		Typographic typefaces



Importantly, a registered design needs to be “new” and have “individual character” to be valid. This means it must not have been previously disclosed to the public and cannot be too similar to other existing designs already on the market.

If your design fits into the ‘not registrable’ bucket, all hope may not be lost. There are other forms of IP protection that we may be able to explore, such as unregistered design rights, trade marks, copyright or patents.

**We can review your proposed design and advise you on what IP option will suit it best.**



### What are the benefits of design registration?

As noted above, original designs can potentially attract some protection under UK law whether they are registered or unregistered. There are, however, some differences in the scope of protection between registered and unregistered designs. Not all designs should necessarily be registered – there are pros and cons to registering your designs:

Advantages:	Disadvantages:
✓ Up to 25 years of protection.	✗ Cost of registration and renewal can add up if protecting multiple designs.
✓ No substantive examination – quick registration process.	✗ Administrative burden of filing and maintaining registrations.
✓ No need to show evidence of creation.	✗ No examination, so validity of the design is unknown until it is challenged (and many registrations are later declared invalid).
✓ Deterrent factor – a design registration serves as a public notice of your rights.	✗ Only new designs can be registered (subject to a 12-month “grace” period in the UK, from first launch).
✓ Easier to exploit and license than an unregistered right.	✗ Designer is “stuck” with what is on the register for enforcement purposes – there is no flexibility to redefine what is protected.
✓ More persuasive when seeking quick “take down” of infringing products online.	
✓ A monopoly right – no need to show copying to prove infringement.	

**Once your design is ready to publish, we can assess whether registration is your best option.**



## What if someone else has already registered a similar design?

The UKIPO does not check whether your design is “new” or has “individual character” when you apply for registration. Therefore, there is a risk that your registration will later be found to be invalid, if it was too close to another (earlier) registered design at the time of filing. If someone else has pre-existing design rights in a similar design, there is also a risk of infringing those rights if your product is too similar to theirs. In the worst-case scenario, your design registration could be declared invalid, you could be sued and enjoined from exploiting your design, and you may have to pay damages.

It is therefore crucial to adopt innovative and original design processes which avoid copying or “over-borrowing” from existing designs, to reduce the risk of conflicts with prior rights holders.

In some cases, it may also be advisable to conduct a registered design search before launch / registration to see whether there are any third party designs already registered that could either (i) invalidate your design registration, and/or (ii) pose an infringement risk. However, design searches are often imprecise since visual “similarity” is a matter of impression. Design registers are also not easy to search, as visual AI search tools are still developing and certain information on the databases can be misleading and incomplete. We would therefore recommend that any such searches are carried out by a qualified IP professional with the necessary expertise in design searching.

However, searches are not mandatory and can be very expensive. Many of our clients (particularly where they are confident in the originality of their designs) take the approach of simply applying for their preferred design, with a view to resolving any issues if and when they are raised.

**We would be happy to assess your design(s) to advise whether searches may be advisable and to provide the necessary assistance.**



## The process of design registration in the UK

The process for registering a design is relatively streamlined and straightforward. The key steps are set out below:



A typical UK design application that encounters no obstacles takes approximately 3 weeks from filing to registration. If an objection is raised during examination, you will be granted a minimum of 2 months to try and resolve the issues.

We have a standard charges tariff\* for design filings in the UK. The costs are as follows:

- A single design = £700
- A second design filed in the same application = £240
- Each additional design filed in the same application = £220

*\*All of these charges are inclusive of professional fees and official fees. They do not include CMS’s fees for pre-filing advice or preparation of visual representations.*

In the UK, multiple designs can be filed as a single application, even where the designs are for different products, which can result in a big cost saving if you are interested in filing multiple different designs.

We would be happy to provide a no-commitment fee quote for registering your design(s) in the UK. Please get in touch to discuss your requirements.



## What we need from you to file a design

To proceed with a design registration in the UK, we would simply need from you:

- Confirmation that the design is new (not previously published, or first published by you **less than** 12 months ago) and, to your knowledge, not visually identical or highly similar to any existing third party design;
- Visual representations of the design(s) you wish to protect (unlimited for UK);
- Details of the designer(s) and the name of the person/entity to be named as the applicant;
- Your confirmation that all rights in the design(s) belong to the applicant; and
- A description of the design.

As the visual representations will define the scope of your design protection, it is very important to get this right, as poor drawings could compromise enforcement action later on. We can advise you on the optimal visual representations to file for each design.



## What protection will my design registration provide me with?

A design registration provides a 5-year term of protection that is renewable up to a total of 25 years. This is significantly longer than the protection offered to unregistered designs, which in the UK is either 3 years or 10 years from first marketing, depending on the type of design.

A design registration entitles you to prevent others from using the same design, or any design which does not form a different overall impression on the informed user, with or without proof of copying. Infringing acts include making, offering for sale, putting on the market, importing, exporting, using or stocking products in the UK which incorporate an infringing design.

In the UK, it is also a criminal offence to intentionally copy a registered design or to knowingly profit from a copied registered design in the course of business. This gives you an additional layer of protection as a design registration owner, as the consequences of an infringer deliberately copying your design are significant.



## Once my design registration is granted, is there anything else I need to think about?

Keep in mind that a design registration initially lasts for only 5 years, after which you will need to renew it with the UK IPO by paying a renewal fee by the applicable deadline. The term of protection can be extended up to 4 times, for a total period of protection of up to 25 years.

If you miss the renewal deadline, your registration will be lost. The easiest way to ensure that your design registrations remain in force is to get a specialist intellectual property firm to manage your portfolio. They can track the deadlines and ensure that any registrations that you are still using are renewed.



CMS has a top-ranked team of trade mark and designs specialists who manage the IP portfolios of some of the world's leading brands and designers.

**Please get in touch to discuss how we can support you.**

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# CMS Design Law Team

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**Our top-ranked IP team has a dedicated Design Law group focusing on the protection and commercialisation of designs in the EU, UK and beyond.**

We offer support across the full lifecycle of designs, from initial product clearance to filing strategy, design portfolio management, tackling counterfeit and copycat products, advising on exploitation and licensing opportunities, and working with customs authorities to stop infringing imports from entering the market. We can help maintain and grow the value of your design portfolio while protecting your business from those who seek to trade off your design innovation and success.

Get in touch if you would like to find out more about how you can benefit from our in-depth industry knowledge and legal expertise to make the most of your designs.



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