Development of Industrial Designs in India: An Overview

Dr. M.M. Nataraja, Assistant Professor of Mechanical Engineering, Dr. Ambedkar Institute of Technology, Malathahalli, Bangalore, India

Abstract
Consumers are often influenced in their choice not only by practical utility and efficiency, but by the appearance of an article. Many people blindly choose an article, which catches their eye by appearance. Some look for artistic merit, some are attracted by a design, which is strange or bizarre. Hence, design of goods increase profits by attracting customers. Producers hunt for an attractive design, which will increase sales. Some intellectuals do hard work by putting much thought, time and expenditure to find a design for a particular article which will increase sales. Therefore Industrial design as a form of endeavour, and as part and parcel of the business of manufacture, is something which has existed ever since the production of useful article engaged the attention of man from the days of the ancient civilizations, through the middle ages, the eighteenth century and Victorian era, down to the present day thoughts and efforts have continually been devoted to the outline and the ornamentation of the article produced sometimes more consciously, at times less consciously.

Keywords: industrial designs, copyright, infringement, article, manufacture

Introduction
The designer, who in earlier days was often the craftsmen himself, has sought to blend the efficiency of the article for its purpose with the appeal which is the finished product must make to the eye of its observer. If design of goods is be encouraged, others of the fruits of their labour must protect those responsible for producing designs against the promiscuous taking. To this end, Industrial designs have been safeguarded by legislation for a great many years. The method chosen has been to confer copyright in their work upon the owner of such designs.

Meaning and Definition of Industrial Design
A design is something, which is applied to an article, but is not the article itself. An article to which the design is to be applied must be something, which is to be delivered to the purchaser as a finished good. The Buildings and Structures are not articles within the definition of design. But portable structures or models, which are sold as finished articles, may be the subject matter for registration of design. Section 2 (5) Designs Act, 1911 (Indian) defines Industrial design as follows:

"Means the exclusive right to apply a design to any article in any class in which the design is registered.” It means only the features of shape, configuration, pattern or ornament applied to any article by any industrial process or means whether manual, mechanical or chemical, separate or combined, which is the finished article appeal to and judged solely by the eye, but does include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark defined in clause (v) of sub section (1) of the section (2) of the Trade and Merchandise Mark Act, 1958 or property mark as defined in section 479 of the Indian Penal Code.

From the definition it is clear that the definition is exclusive and only those which have the following characteristics can be brought under the purview of the design namely: there should be a definite shape, configuration, pattern or ornament; such shape, configuration, pattern or ornament should be applied to any article; such application to be made by any industrial process or means whether manual, mechanical or chemical, separate or combined; and more important such application gives a finished article that appeals to and judged solely by the eye. Design does not include: any mode or principle of construction or; mere mechanical designs and not a Trade Mark defined under section 2 (1) (v) of the Trade and Merchandise Marks Act, 1958 or property mark under section 479 of the Indian penal Code.

Requirements of Registered Industrial Design
Design must be applied to articles
A design is something which is applied to an article and is not the article itself. A piece of paper, on which pattern is drawn cannot be a subject matter for registration of design. But a paper on which is drawn a three dimensional object with the pattern shown on it may be registered as design because here the design is a representation of the article, on which the pattern is applied. Similarly if the drawing is that of an article like a bottle, vase, chair, table, a motor body it would be registrable as design of it is novel. Here what may be registered is the shape of an article and the drawing on the paper is only convenient representation of shape of the article. An article to which the design is to be applied must be
something which is to be delivered to the purchaser as a finished article, thus in general buildings and structures like a petrol filling station cannot be considered as article within the definition of design. But portable structures which are sold as finished articles may be subject matter for registration of design. The design of a part of an article is not registrable as a design unless the part is sold separately as an article. There are four features relevant to an Industrial design. They are shape, configuration, pattern and ornament. The term shape and configuration refer to the form of an article and is usually three dimensional in nature. Pattern and ornament are decorative features ordinarily applied to the surface of the articles in the case of wallpaper, textile and playing cards. It is two dimensional in nature pictures or devised printed on packages are also considered Industrial Design.

Appeal to the Eye
The definition of design refers to features of shape etc., which in the finished article appeal to and are judged solely by the eye. This shows that not all shapes or configurations or patterns are registrable designs. The features should appeal to the eye and should be judged by the eye and not by any functional considerations. The eye must be the eye of the customer on a visual test. The test involves two steps; whether aesthetic considerations would normally be taken into account to material extent in relation to that type of article and whether aesthetic considerations would be taken into account in relation to the particular article in question.

There must be a special peculiar, distinctive, significant or striking appearance. Something which catches the eye and in this sense appeals to the eye. The customer must be influenced only by the eye and not by the suitability of the article for any particular purpose. It is not necessary that all the features of the design should be visible when it is actually used for the purpose for which the article was brought, for example, an egg shaped chocolate with the exterior and interior having different colours.

Novelty and Originality
A design in order to be registrable must be both new and original not previously published in India. Natural objects applied as designs may be novel or original for example the representation of a tree or a building on a spoon may be considered new or original. Here the novelty consists in the application of a drawing or design taken from a material source to an article. The words new or original involve the idea of novelty either in the pattern shape, or ornament is to be applied to some special subject matter. A paper weight in the shape of an animal may be new and original. In order to be registrable the design should be substantially different from pre-existing designs applied to the class of article. The novelty or originality to the whole. A combination of known designs may be considered novel if the appearance of the combination as a whole is new. Colour may form an element in a design, but colour or colouring as such does not constitute a design, unless change of colour create a new pattern or ornament.

No Prior Publication
The design must not be previously published in India though the word publication has not been defined by the Design Act, 1911, to constitute publication, a design must be available to the public or it has been shown or disclosed to some person who is not bound to keep it secret. For example the display of a design on a skirt of a model in a fashion show constitutes publications of the design. In India, registration of the design in the first instance will be for a periods of five years which can be extended twice by five years at time.

Evolution of Industrial Design
In India till 1911 there was no regulation regarding Industrial Design. In the year 1911 an Act called Industrial Design Act, 1911 was passed in India by barrowing all the principles in English Law for the same purpose. So, the law of designs in India had been controlled by Designs Act, 1911 and Rules made there under in 1933 as the Design rules and now it is controlled by Design Act, 2000. In order to trace the origin of the design we need to focus on the English Law. The Development of statutes with reference to the design is as follows.

Designing and Printing of License, etc., Act, 1787
This is the first act dealing with copyright in Industrial Designs. It was concerned with designs for certain specified textile materials namely linens, cottons, calicos and muslins. It gave to designers, printers and proprietors of new and original patterns for the materials in question the sole right and liberty of printing and reprinting them for two months from the date of first publication, provided the name of the proprietor was marked on each piece. An infringer was liable to a special action on the case, damages and costs. This Act as a nature of experiment stands in force for one year only.

Designing and Printing of License Act, 1789
It was passed in the year 1789 and was in force till July 1794. The provision of this Act were almost similar to those of the 1787 Act except the period of protection which was extended to three months from the date of publication.

Copyright of Designs Act, 1839
The legislature again turned its attention to industrial designs, and the next 50 years a series of statutes was
passed, gradually extending the boundaries of copyright in these works. This Act extended the protection, beyond the confines of the textiles trade and laid foundations for the law of registered designs as it exists today. It gave protection to every new or original design, as follows:

a. For the pattern or print, to be either worked into or worked on or printed on or painted on any Article of manufacture being a Tissue or Textile Fabric, except Lace, and also except Lines, cottons, calicoes, and Muslins;

b. For the modelling, or the casting, or the embossment, or the chasing, or the engraving, or for any other kind of impression or ornament on any article of manufacture, not being a tissue or textile fabric;

c. For the shape or configuration of any article of manufacture...
   i. This Act includes textiles as well as “any article of manufacture”.
   ii. It protects ornamentation placed upon an article and also shape in which it was made. It was introduced for the first time as a system of registration.

A new principle was introduced, according to which the proprietor when published his work, copyright in it automatically accrued to him. This principle is still central to one aspect of the protection afforded to industrial designs.

**Designs Act, 1842**

It repealed the earlier Acts and consolidated and amended the law relating to the copyright of Designs for ornamenting articles of manufacture. This Act replaced the legislation which it repealed by a new set of provisions, which, whilst embodying most of what was contained in the earlier Acts, considerably extended their scope. This Act is particular extended the protection to substance also. Any new and original design, “applicable to the ornamenting, of any article of manufacture, or any substance, artificial or natural. Whether applicable for the pattern, or for the shape or configuration, or for the ornament thereof, was now made the subject of copyright.

Designs for sculpture and other things within the provisions of sculpture copyright Acts, which would otherwise have fallen within the provisions of new Act, however, were specifically excluded from its provisions. This Act divided the possible articles of manufacture and substances into classes, and further increased the remedies for infringement, but these were as yet obtainable only if the actual application of the design had taken place within UK.

**Copyright of Designs (Amendment) Act, 1843**

This Act recited that, whereas by the Act of 1842 the sole right had been given to the proprietor of certain new and original designs to apply them to the ornamenting “of any article of manufacture or any substances, it was expedient to extend the protection of the Act to designs not of an ornamental character. Therefore, copyright should subsist in “any new original design for any article of manufacture having reference to some purpose of utility,” as far as such design should be for the shape or configuration of the article.

**Copyright of Designs Act, 1850**

This Act gave overlapping protection for sculptures that the Act empowered the proprietor of any sculpture, model, copy or cast within the protection of the sculpture copyright Acts” to apply to the Registrar of Designs for registration of his work, for the whole or any part of the term during which copyright might exist under the sculpture Copyright Acts. Sculpture Copyrights Acts, 1797 and 1814 provided that any person who should “make or cause to make any new and original sculpture, or model, or copy, or cast of the human figure or human figures, or bust or busts, or of any part or parts of the human figure, clothed in drapery or otherwise, or of any animal combined with the human figure or otherwise, or of any subject being matter of invention in sculpture, or any alto or basso relievo representing any have the sole right and property therein for 14 years from the date of first publication.

The Act remained in force till the passing of first copyright Act, 1911 when it was repealed. Two further Acts dealing with industrial designs were passed, in 1858 and 1861, but there were not of major importance.

**Fine Arts Copyright Act 1862**

This Act had been made to protect ordinary drawings and paintings. This Act provided that the author, being a British subject, or resident within the Dominions of the Crown, of every original painting, drawing and photograph and his assigns should have the sole and exclusive right of, “copying, engraving, reproducing and multiplying such painting or drawing and the design thereof, or such photograph and the negative thereof by any means and of any size for term of the natural life of such author and seven years after his death.”

**Copyright of Designs Act 1875**

This Act gave the powers and duties to the Board of Trade. Under this Act Various Designs were transferred to patent office, through the Design Branch for which registration is now carried out. In 1883, a single consolidating and amending Act was passed embracing both of these subjects, as well as Trade Marks. Hence, copyright in Industrial Designs having become associated with
The Copyright Act 1911 was a measure of far-reaching importance. It repealed nearly 18 existing copyrights legislation, most of them substantially in toto, which had been accumulating over a period of two centuries. Now, every branch of subject was brought within the four corners of two statutes i.e., the Copyright Act, 1911 and patents and Designs Acts 1907-1946, regulated the position from 1911 until 1949. In the year 1949 one more registered designs were separated from the patents by Registered Designs Act 1949. This Act amended the definition of a design and the abolition of classification, both of which materially affected the validity as well as the scope of many registered designs. A discussion is made over it in the later part of the article.

Effect of Copyright Act, 1911 on overlapping protection
A substantial increase in overlap between industrial designs and other forms of artistic copyright was created in this Act. It was intentional in pat and in part it was by oversight. It Work of sculpture acquired copyright as artistic works under this Act, in place of the copyright enjoyed under this Act, in place of the copyright enjoyed under the Sculpture Copyright Act, 1814, which was repealed. So the sculptures ceased to be excluded from registration under the Patents and Designs Act, 1907 and sculptures to fall within the scope of both Copyright Act and the Patents and Designs Act 1907. The Copyright Act, 1911 includes “works of artistic craftsmanship and architectural works of art”. All works of artistic craftsmanship and some architectural works of art, would appear to have been “designed” within the meaning of the Patents and Designs Act, 1907. Under this Act the scope of artistic copyright was extended to cover reproduction of the copyright work “in any material from whatsoever”. After the Act, 1911, reproduction of the drawing in the form an industrial article would be an infringing not only of industrial design right under the Patents and Designs Acts, but also of artistic copyright under the Copyright Act.

Section 22 of Copyright Act, 1911 limits the extent of the overlap of artistic copyright with Industrial Designs, which it had potentially created by formulating the provisions of the Copyright Act 1911 in wide terms. However, this section gave rise to certain problems of interpretation and resulting litigation. This section interpreted by the rule 89 of the Designs Rules 1920, was that a work was capable of registration as a design, and was reproduced or intended to be reproduced in more than 50 single articles or was to be applied to any no protection under the Act 1911. If, however, the intention was to reproduce the design in less than 50 articles, the Act still applied. The obvious interpretation of the effect of section is that copyright is denied to an artistic works in two circumstances: if it is created with the original intention of embodying design to be industrially reproduced; if it is not with that original intention, and if the copyright owner subsequently permits it to be reproduced.

Copyright Act, 1956
This Act was brought to reform the provisions against overlap under Copyright Act, 1911. Under this Act, the basic policy remained as the same but instead of “all or nothing” approach to subsistence of copyright in section 22, a new and subtler approach was adopted by section 10 of the Copyright Act, 1956. Hence, the effect of section 10 of the Act, 1956 was to make the rights of the owner of the copyright in an artistic work no longer dependent upon the author’s intentions at the time he made the work. His rights of exploitation in the industrial field were now made dependent upon his obtaining registration of his work as an industrial design under Designs the Registered Act, 1949. So that prior application of a design created as a purely artistic work and thus prevent to its registration, the Registered Designs Act, 1949 was amended to protect a copyright owner against the invalidating effect of previous non-industrial exploitation of his own artistic work.

Designs Copyright Act, 1968
This Act amended section 10 of the Act, 1956, to permit artistic copyright to be enforced without restriction for a period of 15 years from the date when the article concerned was first marketed, whether or not a corresponding design had been registered or whether or not such a design had been industrialized but not registered. For those designs which lack any aesthetic merit, the effective protection will be during the age of author plus 50 years in England and the age of author and 60 years in India.

There are two forms of design rights recognised by the law, one is the registered designs protected under the provisions of the Registered Designs Act, 1949 and other is the functional designs governed by the provisions of the Copyright, Designs and Patents Act, 1988.

Registered Design
The law relating to registered designs was substantially modified in line with a harmonizing Directive as from 9
December 2001 and numerous changes were made to the Registered Designs Act, 1949 by the Registered Designs Regulations 2001. However, in real the designs have always been a substantial complexity, amongst other elements due to the influence of copyright. The Design Law is far from straightforward as there is an overlap between the rights and the extent of it, is not clear.

Under section 1 (1) of the Registered Designs Act, 1949 defines ‘design’ as features of shape, configuration, pattern or ornament applied to any article by an industrial process being features which in the finished article appeal to and are judged by the eye and there should be no prior publication means it should be “new”. Registration of novel design with an appeal to eye provides its 25 years monopoly to the proprietor.

Under Section 1 (2) of the Registered Designs Act changed the definition of design and it says “the appearance of the whole or a part of a product resulting from the features of, in particular, the lines contours, colours, shape texture or materials of the product or its ornamentation”. Appearance and visual significance (over all impression0 is important for novelty and individual character test and it should be new means no identical design has been made available to the public. The design must be applied to a product or an article and registration was limited to the article specified. An unregistered design may be applied to a part of article, and related only to aspects of an article. There is no requirement of eye appeal. The right lasts for 10 years from the first marketing of articles made to the design (provided this is within five years of the design). In other cases, it lasts for a maximum of 15 years from recording.

Design Right

Design Right has been applied to functional designs. But the overlap/ambiguity has continuously crept between the Registered Designs and Designs Right. The Registered designs have a requirement of appearance and individual character, but excluded the components/parts hidden from the normal use such as “under the bonnet” part of the vehicles and these may be subject to the Designs Right. There is no valid reason why a new aesthetic or a new design having individual character, when it relates to the shape and configuration of some article, as it can be expected to registered as a design. Such as a design for a drinking tankard which is a new shape or which has a new shape of handle, made industrially or handmade and which, it makes hopes, people will buy for the visual attractiveness of its shape. This should qualify for both rights. There are no provisions for separate one of these rights in favour of the other. It proved in the proprietor of the Registered Design and the owner of the Design Right are one and the same person.

Overlapping of Copyrights and Designs Law

Design law overlap with copyright protection. In case of the drawing if a person copied an article, even he had never seen and no matter how mundane the article was, he would infringe the copyright in the drawing. The design may overlap with sculptures and works of artistic craftsmanship. The design may be recorded in a document in which copyright subsists as a literary work, including computer data, or the design document may be a photograph. CDPA through section 236 and 51 (1) tried to reduce this overlap. Where a work consisting of or including a design in itself protected by copyright, the design right is suppressed in favour of copyright. For example, works of artistic craftsmanship like a handmade wooden to or an item of jewellery. And if an article is made to infringe the copyright in a design document any record of the design including drawings, written descriptions, photographs and computer data or model recording or embody but infringe the design right respectively.

References