



ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER I11

INDUSTRIAL DESIGNS ACT

Showing the Law as at 15 December 2002

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises Act 7/2002, in force 12 August 2002

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INDUSTRIAL DESIGNS ACT

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INDUSTRIAL DESIGNS ACT

Definitions

1. In this Act—

“agent” means a legal practitioner admitted to the Bar of Anguilla and resident and practicing in Anguilla or an agent approved by the Registrar;

“Court” means the Eastern Caribbean Supreme Court;

“International Classification” means the classification according to the Locarno Agreement of October 8, 1968, establishing an International Classification for Industrial Designs;

“Register” means the Register of Industrial Designs;

“Registrar” means the Registrar of Companies.

Definition of industrial design

2. (1) For the purposes of this Act, any composition of lines or colours, any three-dimensional form or any material, whether or not associated with lines or colours, is deemed to be an industrial design where such composition, form or material gives a special appearance to a product of industry or handicraft, can serve as a pattern for a product of industry or handicraft and appeals to and is judged by the eye.

(2) The protection under this Act does not apply to anything in an industrial design which serves solely to obtain a technical result and to the extent that it leaves no freedom as regards arbitrary features of appearance.

Registrable industrial design

3. (1) An industrial design is registrable if it is new.

(2) An industrial design is new if it has not been disclosed to the public anywhere in the world including publication in tangible form or by use or in any other way prior to the filing date or, where applicable, the priority date of the application for registration.

(3) For the purposes of subsection (2), disclosure to the public of an industrial design shall not be taken into consideration if the disclosure—

- (a) occurred within 12 months preceding the filing date or, where applicable, the priority date of the application; or
- (b) was by reason or in consequence of acts committed by the applicant or his predecessor in title or of an abuse committed by a third party with regard to the applicant or his predecessor in title.

(4) An industrial design that is contrary to public order or morality is not registrable.

Right to register an industrial design

4. (1) The right to registration of an industrial design shall belong to the creator.
- (2) Where 2 or more persons have jointly created an industrial design, the right to registration of the industrial design shall belong to them jointly.
- (3) Where 2 or more persons have created the same industrial design independently of each other, the person whose application has the earliest filing date shall have the right to register the industrial design, as long as the application is not withdrawn, abandoned or rejected.
- (4) The right to an industrial design may be assigned or may be transferred by succession.
- (5) Where an industrial design is created in execution of an employment contract, the right to registration of the industrial design shall belong, in the absence of contractual provisions to the contrary, to the employer.
- (6) The creator shall be named as such in the registration of the industrial design unless he indicates to the Registrar in a special written declaration signed by him that he does not wish to be so named.
- (7) Any promise or undertaking by the creator made to any person to the effect that he will make such a declaration shall be without legal effect.

Application

5. (1) An application for the registration of an industrial design shall be filed with the Registrar and shall contain a request, drawings, photographs or other adequate graphic representations of the article embodying the industrial design and an indication of the kind of product for which the industrial design is to be used.
- (2) The application may be accompanied by a specimen of the article embodying the industrial design where the industrial design is two-dimensional.
- (3) Where the applicant is not the creator, the request shall be accompanied by a statement justifying the applicant's right to registration of the industrial design.
- (4) Two or more industrial designs may be the subject of the same application if they relate to the same class of the International Classification or to the same set or composition of articles.
- (5) An application, at the time of filing, may contain a request that the publication of the industrial design, upon registration, be deferred for a period not exceeding 12 months from the date of filing, or if priority is claimed, from the date of priority of the application.
- (6) The applicant may withdraw the application at any time.
- (7) The application shall be subject to the payment of the prescribed application fee.

Examination

6. (1) The Registrar shall accord the date of receipt of the industrial application as the filing date if, at the time of receipt, the application contains indications allowing the identity of the applicant to be established and the required graphic representations of the article embodying the industrial design.

(2) Where the Registrar finds that the application did not at the time of receipt fulfill the requirements referred to in subsection (1), he shall invite the applicant to file the required correction and shall accord as the filing date the date of receipt of the required correction, but if no correction is made the application shall be treated as if it had not been filed.

(3) After according a filing date, the Registrar shall examine the application for compliance with the requirements of section 5 and ascertain that the prescribed fee has been paid.

(4) The Registrar shall examine whether the industrial design complies with the provisions of sections 2 and 3(4).

Registration and publication

7. (1) Where the Registrar is satisfied that the application complies with the requirements of sections 2 and 3(4), he shall register the industrial design, publish a reference to the registration and issue a certificate of registration of the industrial design to the applicant.

(2) Where, upon registration of the industrial design, a request for deferment has been made, no representation of the design nor any file relating to the application shall be open to the public for inspection.

(3) The Registrar shall, however, publish a notice of deferment which shall contain information identifying the registered owner, the filing date of the application, the length of time for which deferment has been requested and any other particulars as may be prescribed.

(4) During the period of deferment of publication, legal proceedings on the basis of a registered industrial design may not be instituted unless the information contained in the Register and in the file relating to the application has been communicated to the person against whom the action is brought.

(5) At expiry of the period of deferment, the Registrar shall publish the registered industrial design.

Rights conferred by registration

8. (1) The exploitation of a registered industrial design in Anguilla by persons other than the registered owner shall require the agreement of the latter.

(2) For the purposes of this Act, "exploitation of a registered industrial design" means the making, selling, importing or exporting for commercial purposes of articles bearing or embodying a design which is a copy, or substantially a copy, of the industrial design.

(3) The rights conferred by registration shall not extend to acts in respect of articles which have been put on the market in Anguilla by the registered owner or with his consent.

(4) The owner of a registered industrial design shall, in addition to any other rights, remedies or actions available to him, have the right to institute court proceedings against any person who infringes the registration of the industrial design by performing, without his agreement, any of the acts referred to in subsection (2) or who performs acts which make it likely that infringement will occur.

Duration and renewal of registration

9. (1) The registration of an industrial design shall be for a period of 5 years from the filing date of the application for registration.

(2) The registration may be renewed for 2 further consecutive periods of 5 years through the payment of the prescribed fee.

(3) A grace period of 6 months shall be allowed for the late payment of the renewal fee on payment of the prescribed surcharge.

Surrender of registration

10. (1) The owner of a registered industrial design may surrender it by written declaration to the Registrar who shall record the surrender in the Register and publish it.

(2) The surrender shall have effect from the date on which it is recorded.

Invalidation of registration

11. (1) Any interested person may apply to the Court for the registration of an industrial design to be invalidated.

(2) The Court shall invalidate the registration of an industrial design if the person requesting the invalidation proves that any of the requirements of sections 2 and 3 are not fulfilled or if the registered owner of the industrial design is not the creator or successor in title.

(3) Any invalidated registration of an industrial design, or part thereof, shall be regarded as null and void from the date of the registration.

(4) The decision of the Court or the decision on any appeal therefrom shall be notified to the Registrar who shall record it and publish a reference to it as soon as possible thereafter.

Changes in ownership

12. (1) Any change in the ownership of the registration of an industrial design, or in the ownership of an application therefor, shall be in writing and shall, upon the request of any interested party made to the Registrar, be recorded and, except in the case of an application, published by the Registrar.

(2) A change under subsection (1) shall be of no effect against third parties until it has been recorded.

Licence contracts

13. (1) Subject to this section, the owner of a registered industrial design or an application therefor may grant a licence in respect of the design.

(2) A copy of each licence contract concerning a registered industrial design, or an application therefor, shall be submitted to the Registrar who shall keep its contents confidential but shall record it and publish a reference thereto and until the contract is so recorded it shall have no effect against third parties.

The Registrar

14. The Registrar shall be responsible for all functions relating to the procedure for the registration of industrial designs and for the administration of registered industrial designs as specified in this Act.

Register; publication

15. (1) The Registrar shall maintain a Register in which he shall record all matters required by this Act to be recorded.

(2) The Register may be consulted by any person and any person may obtain extracts therefrom under the conditions prescribed in the Regulations.

(3) The Registrar shall publish in the prescribed manner all the publications provided for in this Act.

Correction of errors

16. The Registrar may, subject to any provision in the Regulations, correct any error of translation or transcription, clerical error or mistake in any application or document filed with the Registrar or in any matter recorded pursuant to this Act or the Regulations.

Extension of time

17. (1) Where the Registrar is satisfied that the circumstances justify it, he may, upon receiving a written request, extend the time for doing any act or taking any proceedings under this Act and the Regulations, upon notice to the parties concerned and upon such terms as he may direct.

(2) The extension may be granted though the time for doing the act or taking the proceedings has expired.

Exercise of discretionary powers

18. The Registrar shall, before adversely exercising any discretionary power vested in him by this Act or the Regulations against any party to a proceeding before him, give that party an opportunity to be heard.

Representation

19. Where an applicant's ordinary residence or principal place of business is outside Anguilla, he shall be represented by an agent.

Competence of Court

20. (1) The Court shall have jurisdiction in cases of dispute relating to the application of this Act.

(2) Any decision taken by the Registrar under this Act to register an industrial design or to refuse an application for such a registration may be the subject of an appeal by any interested party to the Court and such appeal shall be filed within 2 months of the date of the Registrar's decision.

Infringements, offences

21. (1) Subject to section 8(3), an infringement shall consist of the performance of any act referred to in section 8(2) by a person other than the owner of the registered industrial design and without the agreement of the latter.

(2) On the request of the owner of the registered industrial design or of a licensee, where he has requested the owner to institute court proceedings for a specific relief and the owner has refused or failed to do so, the Court may grant an injunction to prevent infringement or an imminent infringement, award damages and grant any other remedy provided for in the general law.

(3) Any person who intentionally performs an act which constitutes an infringement as defined in subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of 1 year or to both.

Application of international treaties

22. The provisions of any international treaties in respect of industrial property which extend to Anguilla shall apply to matters dealt with by this Act and, in case of conflict with provisions of this Act, shall prevail over this Act.

Regulations

23. The Governor in Council may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

Citation

24. This Act may be cited as the Industrial Designs Act, Revised Statutes of Anguilla, Chapter I11.

Transitional provisions

25. A person who on 12th August 2002 is the owner of an industrial design that has been registered in the United Kingdom for a period not exceeding 3 years or has filed an application for registration of an industrial design in the United Kingdom may, within 12 months after 12th August 2002 file an application for the registration of the same industrial design under this Act and such application shall be accorded the filing date accorded to the application or registration in the United Kingdom.

