

# The Importance Of Design Registration

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The success of a product often depends not only on its brand but also its design. The design of a product will include the technological features in the product, as well as the features of shape, configuration and pattern of or applied to the product.

Features of shape, configuration and pattern of or applied to a product may be registered as designs under the Registered Designs Act. Designs of a wide range of products may be registered. Some examples of designs registered under the Act are:



Lollipop



Handbag



Sofa



Teapot



Camera

Despite the fact that there are numerous fancy products designed at high costs, many manufacturers do not seek to register their designs. In 2009, a total of 1,152 design applications were filed in Singapore compared with more than 10,000 trade mark applications.

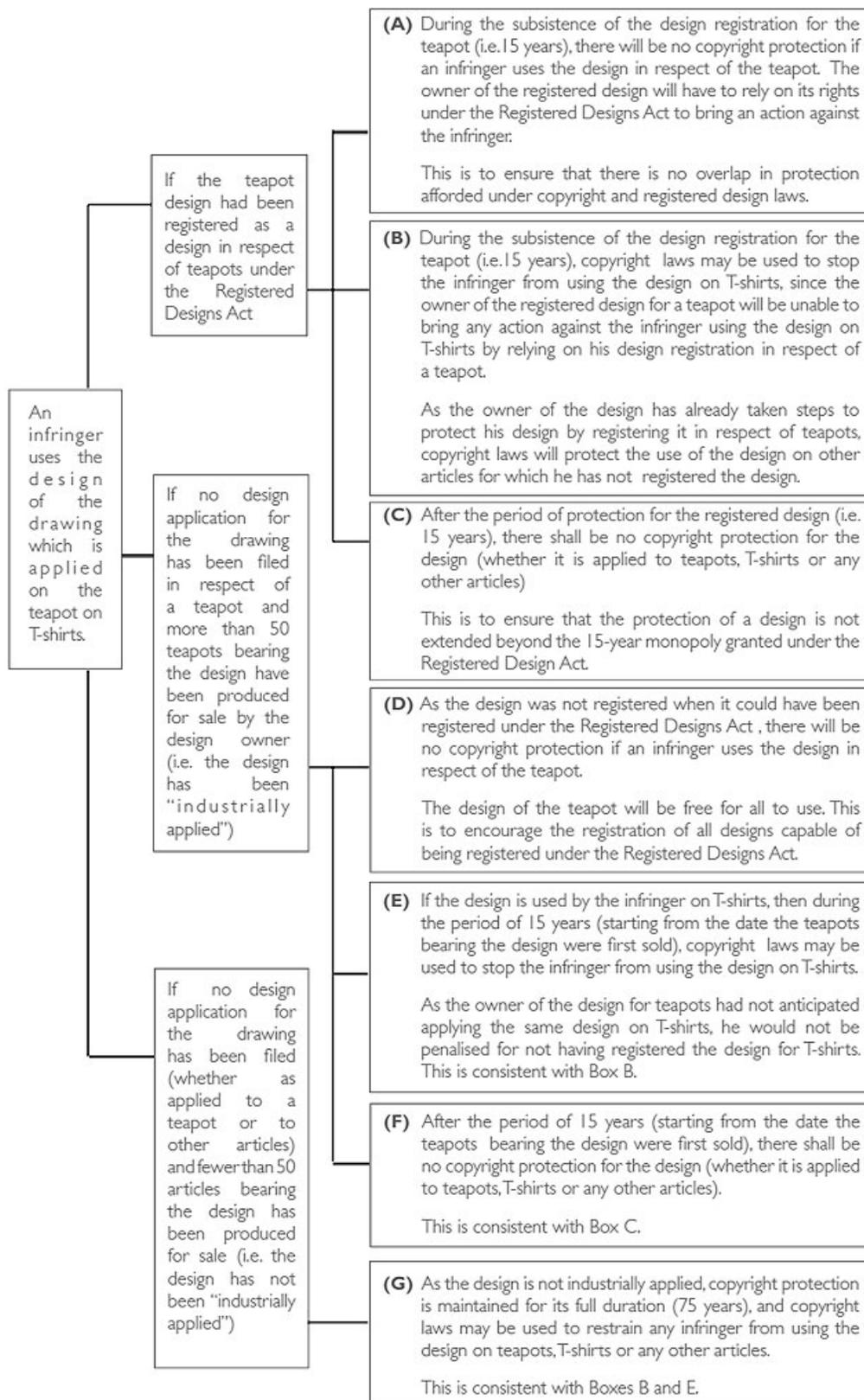
Some reasons for the lack of popularity of design applications may be the following:

- Many manufacturers are unwilling to incur the costs of registering a design until the design has proven to be popular but, by then, it is too late to file the application because one of the criteria for registration is that the design must be new in the market on the date of filing the application.

- As many designs only consist of incremental changes over existing designs, rights granted by registration are therefore very limited. It is possible for infringers to avoid infringement by modifying some features of the registered design while copying the other features.
- As design applications are not examined, the rights granted by registration are not certain. Usually when a proprietor seeks to enforce his registered design rights, the registration will be challenged on the ground that the design ought not to have been registered as it was similar to designs already found in the market.

Despite the issues associated with the rather weak protection afforded to a registered design, one very compelling reason for registering a design is the fact that failure to register the design may lead to the total loss of protection for the design under copyright laws.

The relevant provision in the Copyright Act is section 74<sup>1</sup>. The impact of section 74 is illustrated below, using the example of the teapot design shown above:



## Conclusion

In order to avoid the loss of copyright protection for your design resulting in the loss of protection whatsoever for the design, it is advisable to register a design before it is applied to a product for commercial sale. When a design is registered: (a) the rights granted under the Registered Designs Act may be used to restrain an infringer from using the

design in respect of the articles for which the design is registered (such as the teapot), and (b) copyright laws may be used to restrain an infringer from using the design in respect of other articles in respect of which the design has not been registered or industrially applied.

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