



LOOKING GOOD

An Introduction to Industrial
Designs for Small
And Medium-sized Enterprises in
Nigeria

Publications in the “Intellectual Property for Business” series:

1. Making a Mark: An Introduction to Trademarks for Small and Medium-sized Enterprises. WIPO publication No. 900.
2. Looking Good: An Introduction to Industrial Designs for Small and Medium-sized Enterprises. WIPO publication No. 498.
3. Inventing the Future: An Introduction to Patents for Small and Medium-sized Enterprises. WIPO publication No. 917.
4. Creative Expression: An Introduction to Copyright and Related Rights for Small and Medium-sized Enterprises. WIPO publication No. 918.

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Introduction

'Intellectual Property' till recently has been considered a luxury by the industry in general and SMEs in particular. In fact, it is a major avenue for SMEs to establish their credentials at par with the large enterprises. Every business has some valuable intangible property worth protecting. Keeping SMEs abreast of the latest information on Intellectual Property Rights (IPRs) systems and to enable them to protect their IP assets is, indeed, the need of the hour. Ignorance in this field may lead to a loss of valuable rights and expensive litigation or both.

This customized version of 'Looking Good' is focused on creating awareness among SMEs in Nigeria on the benefits of protecting the design/feature/appearance of their products illustrated with the help of examples of Nigerian businesses. The registration procedure of industrial designs in Nigeria as well as internationally (especially for exporters) and other relevant information is also provided in the guide. It is mainly directed at creative SMEs who have designed a unique shape, feature, texture or surface of an article. The purpose of this endeavour is to enable SMEs to seize the opportunity of industrial design protection rather than deferring the decision to adopt IP systems on the assumption that IP protection is costly and time consuming or enforcement of the laws are ineffective.

In compilation of this booklet, efforts of the Law and Allied Resourcery team comprising Ayo Ayeni (Project Coordinator), Tinukemi Alabi, Alexandria Adesuwa, Yahaya Maikori and Ese Oraka of Law Allianz, and the meticulous Aisha Y. Salihu from the Registry, without whose effort this guide would not exist, have been most commendable.

I hope Nigerian SMEs will benefit from this joint effort on the part of World Intellectual Property Organisation (WIPO) and The Registry of Trademarks, Patents and Designs, The Federal Ministry of Trade and Investments, for seeking protection and drawing maximum economic gains through the appropriate commercialization of their original creative work.

J.K. Ahmadu-Suka
Registrar, Trademarks, Patents and Designs.

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1. Industrial Designs

What is an industrial design?

In everyday language, an industrial design generally refers to a product's overall form and function. An armchair is said to have a "good industrial design" when it is comfortable to sit in and we like the way it looks. For businesses, designing a product generally implies developing the product's functional and aesthetic features taking into consideration issues such as the product's marketability, the costs of manufacturing or the ease of transport, storage, repair and disposal.

From an intellectual property law perspective, however, an industrial design refers only to the ornamental or aesthetic aspects of a product. In other words, it refers only to the appearance of an armchair. Although the design of a product may have technical or functional features, industrial design, as a category of intellectual property law, refers only to the aesthetic nature of a finished product, and is distinct from any technical or functional aspects.

Industrial design is relevant to a wide variety of products of industry, fashion and handicrafts from technical and medical instruments to watches, jewelry, and other luxury items; from household products, toys, furniture and electrical appliances to cars and architectural structures; from textile designs to sports equipment. Industrial design is also important in relation to packaging, containers and "get-up" of products.

As a general rule, an industrial design consists of:

- three-dimensional features, such as the shape of a product,
- two-dimensional features, such as ornamentation, patterns, lines or color of a product; or
- a combination of one or more such features.

Example of a three-dimensional design



Courtesy: ok Plastics.

Example of a two-dimensional design:



Yoruba, Ashoke. Textile, Nigeria

Courtesy; hamillgallery

Creative Designs in Business

Enterprises often devote a significant amount of time and resources to enhancing the design

appeal of their products. New and original designs are often created to:

1. Customize products to appeal to specific market segments: small modifications to the design of some products (e.g. a watch) may make them suitable for different age groups, cultures or social groups. While the main function of a watch remains the same, children and adults generally have very different tastes in design.

2. Create a new niche market: in a competitive marketplace, many companies seek to create a niche market by introducing creative designs for their new products to differentiate them from those of their competitors. This could be the case for ordinary items such as locks, shoes, cups and saucers to potentially expensive items such as jewelry, computers or cars.

3. Strengthen brands: creative designs are often also combined with distinctive trademarks to enhance the distinctiveness of

a company's brand(s). Many companies have successfully created or redefined their brand image through a strong focus on product design.



Courtesy: UACN plc.

Why protect industrial designs?

An industrial design adds value to a product. It makes a product attractive and appealing to customers, and may even be its unique selling point. So protecting valuable designs should be a crucial part of the business strategy of any designer or manufacturer.

By protecting an industrial design through its registration at the Registry of Trademarks, Patents and Industrial Designs, the owner obtains the exclusive right to prevent its unauthorized copying or imitation by others. This makes business sense as it improves the competitiveness of a business and often brings in additional revenue in one or more of the following ways:

- By registering a design you are able to prevent it from being copied and imitated by competitors, and thereby strengthen your competitive position.
- Registering a valuable design contributes to obtaining a fair return on investment made in creating and marketing the relevant product, and thereby improves your profits.
- Industrial designs are business assets that can increase the commercial value of a company and its products. The more successful a design, the higher is its value to the company.
- A protected design may also be licensed

(or sold) to others for a fee. By licensing it, you may be able to enter markets that you are otherwise unable to serve.

- Registration of industrial designs encourages fair competition and honest trade practices, which, in turn, promote the production of a diverse range of aesthetically attractive products.

Shedding Some Light on Designs

While the functional elements of a plastic baskets do not generally differ significantly from product to product, its appearance is likely to be one of the major determinants of success in the marketplace. This is why industrial design registers in many countries have a long list of designs for household products such as plastic baskets.



Courtesy: Dana Plastics

2. Protecting Industrial Designs

How do you obtain protection for industrial designs?

In Nigeria, an industrial design must be registered in order to be protected under industrial design law.

To register an industrial design you must file an application at the Registry of Trademarks, Patents and Designs.

The unregistered design provides companies with the opportunity to test market their products before going through the effort and expense of registering all designs, many of which may not succeed in the marketplace. In addition, some designs may remain on the market for a very short time, especially in the fashion industry. For such products, the unregistered design provides a good alternative. However, once the product is manufactured, designers have up to 12 months in which to register it. The protection provided to an

unregistered design is limited, in that it is more difficult to enforce than for a registered design. In Nigeria, the right to a registered design lasts for 5 years but may on application made in the prescribed manner, be extended for two further periods each of five years.

While this guide focuses mainly on registered industrial designs, it is important to point out that, in Nigeria, there may be alternative ways of protecting industrial designs:

- Depending on the kind of design, one such alternative for protecting designs is copyright law. Copyright generally provides exclusive rights for literary and artistic works. As some designs may be considered works of art or applied art, copyright protection may apply and may represent an attractive option for SMEs. However, registered industrial designs cover copyrights, but same cant be said vice versa.

For more details on protecting your design under copyright, trademark or unfair competition laws, see Section 5.

What rights are provided by industrial design protection?

When an industrial design is protected by registration, the owner is granted the right to prevent unauthorized copying or imitation by third parties. This includes the right to exclude all others from making, offering, importing, exporting or selling any product in which the design is incorporated or to which it is applied.

What can be registered as an industrial design?

As a general rule, to be able to be registered, a design must meet one or more of the following basic requirements.

- The design must be “new”. A design is considered to be new if no identical design has been made available to the public before the date of filing, or the application for registration.

Exclusive Rights

Let us assume that your company has designed

an umbrella with an innovative design, registered it at the Registry of Trademarks, Patents and Designs, and has therefore obtained exclusive rights over umbrellas bearing that design. What this means is that if you discovered that a competitor is making, selling or importing umbrellas bearing the same or substantially the same design you will be able to prevent him from using your design and, possibly, obtain compensation for damages which your business has suffered from the unauthorized use of that design.

So, while you cannot stop competitors from making competitive products you may prevent them from making products that look just like yours and having a free ride on your creativity. For details on how to enforce your rights you are advised to consult an IP lawyer.

- The design must be “original”. A design is considered original if it has been independently created by the designer and is not a copy or an imitation of existing designs.

- The design must have “individual character”. This requirement is met if the overall impression produced by a design on an informed user differs from the overall impression produced on such a user by any earlier design which has been made available to the public.

Traditionally, protectable designs relate to manufactured products such as the shape of a shoe, the design of an earring or the ornamentation on a teapot. In the digital world, however, protection is gradually extending in some countries to a number of other products and types of design. These include electronic desktop icons generated by computer codes, typefaces, the graphic display on computer monitors and mobile telephones, etc.

What cannot be protected by industrial design rights?

Designs that are generally barred from registration in Nigeria include the following:

- Designs that do not meet the

requirements of novelty, originality and/or individual character (as explained above).

- Designs that are considered to be dictated exclusively by the technical function of a product; such technical or functional design features may be protected, depending on the facts of each case, by other IP rights (e.g. patents, utility models or trade secrets).

- Designs incorporating protected official symbols or emblems (such as the national flag).

- Designs which are considered to be contrary to public order or morality.

In addition, it is important to note that Nigeria excludes handicrafts from design protection, as industrial design law in these countries requires that the product to which an industrial design is applied is “an article of manufacture” or that it can be replicated by “industrial means”.

It is advisable to consult an IP agent or the Registry of Trademarks, Patents and Designs when in doubt.

How do you register a design?

To register a design in The Registry of Trademarks, Patents and Designs you must generally take the following steps:

- Fill in the application form provided by the Registry including your name, contact details and drawings, and/or photographs of the design(s) in question.

- In Nigeria, you are required to file a written description or statement of novelty of the industrial design(s). The description generally needs to be of the design and not of the product to which it has been applied. It should be accurate and adequate in differentiating it from any similar earlier designs. It should cover all the distinctive aesthetic features of the design and should describe which feature(s) is/are the most important. A sample of the

design will be attached.

- You will also be required to pay the appropriate filing fee.
- You may choose to employ an IP agent to assist you in filing the application and completing the registration process. In that event, you will also have to file a power of attorney authorising your agent.

The design is registered only after undertaking a formal examination to ensure that administrative formalities have been complied with and a substantive examination checking the existing designs on the register for novelty and/or originality.

Once a design is registered, it is entered into the design register and a design registration certificate is issued.

Details on how to protect a design abroad are provided in Section 3.

How long does it take to register a design?

The process of registration of an industrial design generally takes 6 months or longer depending on a number of issues such as whether any objections are raised by the design examiner or if there is a provision for opposition prior to the registration of the industrial design under consideration.

How important is it to keep the design confidential before registration?

If you wish to protect your industrial design under a registration system, keeping the design confidential is absolutely crucial. The reason for this is that the central requirement for design protection is generally, that the design must be “new”. If you show your design to others it is advisable to have confidentiality clauses in written agreements, clarifying that the design is confidential.

A design that has already been disclosed to the public by, for example, advertising it in

your company's catalogue or brochure may no longer be considered "new". It becomes part of the public domain and cannot be protected after six months of such exhibition, or unless the priority of an earlier application can be claimed. (see also "How do you protect your industrial designs abroad?" on page 18).

What is the "grace period"?

In Nigeria, the legislation allows for a grace period of six months from the moment a design was made public, disclosed or published.

This is the case when articles bearing the design are sold, displayed at a trade show, officially recognised exhibition or fair, or are published in a catalogue, brochure or advertisement prior to filing an application. During that period, you may market your design without it losing its "novelty" and you may still apply for registration.

However, it is often advisable to keep the design confidential until you apply for design

protection. In addition, you will have no exclusive design rights during the grace period.

How long does industrial design protection last?

The term of protection for a registered industrial design lasts for two consecutive periods of 5 years each on application.

How much does it cost to protect an industrial design?

The actual costs will vary significantly from country to country. However, it is important to bear in mind the different types of costs that may be involved in the process:

1. See details below:

DESIGNS FEES		
S/NO	CATEGORY	FEES (N)
1.	a. Search Form	1,000
	b. Application Forms	1,000
2.	Searches	2,000
3.	Registration of Industrial Designs (Non-Textiles)	16000
4.	Renewal of Non Textile Design	10,000
5.	Registration of Textile Design	18,000
6.	Renewal of Design Certificate	12,000
7.	a. CTC of Certificate of Industrial Certificate (Textile or Non Textile)	6,000
	b. CTC of every other form or document	3,000
8.	Application for alteration in the register	3,000
9.	a. Application for correction of clerical error	2,000
	b. Application for amendment of documents	2,000
10.	Assignment of Industrial Designs	10,000

2. There will also be costs associated with the hiring of the services of an IP agent to assist you in the registration process, if you choose to rely on expert advice to file your application.

3. Nigeria requires the payment of renewal fees, usually on a five-year basis, two times consecutively, to maintain their exclusive rights over an industrial design.

4. There may be costs associated with the translation of the industrial design if it is to be protected abroad.

What should you do if your design combines functional improvements with aesthetic features?

To obtain exclusivity over the functional improvements of a product, it is generally advisable to apply for patent. However, it is often the case that a new product combines functional improvements with innovative aesthetic features. Let us say you have designed

a new mobile phone. While the mobile phone may be the result of a series of improvements to the electronic components and could be protected by patent(s), the original design of your mobile phone could be registered as an industrial design. Can you apply for both? The answer is yes.



Courtesy of Nokia Nigeria

Design Protection and Business Strategy

Decisions on how, when and where to protect a company's industrial designs may have an important impact on other areas of design management. It is crucial therefore to integrate issues of design protection into the broader business strategy of an enterprise. For example, the type of protection, the costs,

the effectiveness of protection and issues of ownership of designs, may be important considerations when deciding:

- whether to undertake design development in-house or to commission an outside agency;
- the timing of the initial use of a new design in advertising, marketing or public display in an exhibition;
- which export markets to target;
- if, when and how to license or assign a design to be commercially exploited by other companies in return for economic remuneration.

Many designers protect different aspects of their products with different intellectual property rights. It is important, however, to keep in mind the basic difference between patents and industrial designs. Patents are

for inventions that bring about functional improvements to a product and industrial design protection is for the appearance of the product.

Who may apply for industrial design protection?

In general, the person who created the design or, if working under contract, his employer, can apply for registration. The applicant can be either an individual (e.g. a designer) or a legal entity (e.g. a company). In either case, the application may be made directly or through an agent. If you are a foreign applicant you may be required to be represented by an agent duly authorized by a Power of Attorney.

Who owns the rights over an industrial design?

The creator of a design, i.e. the designer, is usually the first owner of the design, unless there are special circumstances. For example, in most countries, if an employee has developed

a design under the terms of an employment contract, that is, during his working hours within the enterprise and as part of his regular duties within the enterprise, the design (and the related rights) will belong to the employer or may require to be transferred by a formal written assignment.

If the design was developed by an external designer under contract, the rights will generally belong to the company that commissioned the design. In such cases, it is considered that the design was produced for the use of the person who commissioned the design, who is therefore the owner. Misunderstandings at a later date can be avoided by clarifying the issue of rights ownership in the original contract with the designer. You should also bear in mind that the designer of the product may have automatic copyright protection over the drawings of the original design and the issue should also be covered by the contract.

Can you apply for the registration of many different designs through a single application?

In Nigeria, a separate application is required for each design.

In many countries, however, you may apply for the registration of many designs (10, 20 or even 50 designs) through a single application as long as they all relate to the same product or “class” of products (see explanation of “classes” on page 17).

This means that if you have designed a set of chairs, tables and dressers and would like to protect them, many countries would allow you to file a single application covering all of them, paying only one application fee, as they all belong to the same class of products. If, however, you also intended to protect an accompanying lamp you are likely to be required to file a separate application. Lamps, in fact, do not belong to the same class of products. Generally, although fees are charged for each additional design, they are significantly less

than the cost of filing a separate application for each design.

In some countries, however, you may have to file a separate application for each design. Many of these countries, while limiting an application to a single design, permit several variants of that design; others allow for an exception to the “single design” rule when all the designs relate to a “set of articles”.

- Variants would include, for example, two earrings, which differ in that one is a clip-on and the other is for pierced ears. To be considered variants, the designs must be applied to the same article and must not differ substantially from one another.

- A “set”, on the other hand, is defined as a number of articles of the same general character which are normally sold together, or intended to be used together, and which share some common design features. Examples include, cutlery (forks, spoons, knives) and household appliances (a hairdryer and its

nozzles and brushes).

In Nigeria, however, a separate application is required for each design.

The International Classification System

Industrial designs are generally classified or grouped into classes for ease of retrieval.

You may be asked to refer to the class of products for which you intend to use the design in question in your application form. Many countries use the classification of the Locarno Agreement Establishing an International Classification for Industrial Designs (see List of Classes in Annex II). See also: www.wipo.int/classifications/en/locarno/about/

Nigeria is not a signatory to the above agreement and has no classes of registration for designs.

Can you license your industrial designs?

Industrial designs are licensed when the owner

of the design (licensor) grants permission to another person (the licensee) to use the design for whatever mutually agreed purposes. In such cases, a licensing contract is generally signed between the two parties specifying the terms and scope of the agreement.

Licensing contracts often include limitations as to the countries where the licensee may use the design, the time for which the license is granted and the type of products for which it can be used. In order to license the use of the design in foreign countries you would need to have previously obtained, or at least applied for, industrial design protection in the countries concerned.

Authorizing others to use your industrial designs through a licensing contract will enable your business to receive an additional source of revenue and is a common means of exploiting a company's exclusivity over its registered designs.

Agreements to license industrial designs are

often included in broader licensing agreements, which cover all aspects (i.e. not just the visual elements) of a product.

3. Protecting Designs Abroad

Why protect designs abroad?

If your company intends to export products bearing an original design, or intends to license the manufacture, sale or export of such products to other firms in foreign countries, it should consider protecting its designs in such countries in order to enjoy the same benefits of protection abroad as it enjoys in the domestic market.

How do you protect your industrial designs abroad?

Industrial design protection is territorial. This means that industrial design protection is generally limited to the country or region where you have registered your design. Hence, if you wish to have your industrial design protected

in export markets you would have to make sure that protection is applied for in those specific countries.

It is important to bear in mind that you usually have six months from the date on which you applied for protection in the first country to claim the right of priority when you apply for design protection in other countries. Once this period has lapsed, you will be unable to apply for design protection in foreign countries, as your design will no longer be considered new.

There are three ways of protecting your industrial designs abroad.

1. The National Route: Companies may seek protection by applying separately to the national IP offices of each country in which they intend to obtain protection.

The process can be rather cumbersome and expensive as translation into the national languages is generally required as well as payment of administrative (and sometimes legal) fees.

2. The Regional Route: If you are interested in a group of countries that are members of regional agreements which enable the registration of designs in more than one country, then you can consider filing a single application at the regional IP office concerned. Regional IP offices include:

the African Regional Industrial Property Office (ARIPO) for industrial design protection in English-speaking African countries;

the Benelux Designs Office (BDO) for protection in Belgium, the Netherlands and Luxembourg;

the Office for Harmonization in the Internal Market (OHIM) for Community designs in the 15 countries of the European Union;

the Organisation Africaine de la Propriété Intellectuelle (OAPI) for protection in French-speaking African countries.

See Annex I for website addresses of regional IP offices.

3. The International Route: Companies that wish to register their designs internationally in several countries may also use the procedures offered by the Hague Agreement Concerning the International Deposit of Industrial Designs, a WIPO-administered treaty. An applicant from a Member country to the Hague Agreement can file a single international application with WIPO;

the design will then be protected in as many Member countries of the treaty (currently 36) as the applicant wishes. The agreement provides applicants with a simpler and cheaper mechanism for applying for industrial design registration in various countries. For a list of Member States of the Hague Agreement see Annex III. Full information about the Hague Agreement, including the application form, can be obtained from the WIPO website at: www.wipo.int/hague/

The costs of an industrial design registration

under the Hague Agreement vary depending on the number of designs to be protected and the number of countries where protection is sought. For example, the cost of protection for five designs in 11 countries using the international route offered by The Hague system is approximately 900 Swiss francs.

Note however, that Nigeria is not signatory to any of the above treaties.

4. Enforcing Your Industrial Designs

How can you enforce your rights when your design is being imitated, copied or infringed?

Enforcing any IP right may be a complex issue for which it is usually advisable to seek professional assistance from a competent IP lawyer. It is important to bear in mind that the main responsibility for identifying and taking action against imitations or infringement of an industrial design lies with its owner. In other words, you are responsible for monitoring the use of your design in the marketplace, identifying any imitators or counterfeiters and deciding whether, how and when to take action against them.

An IP lawyer would normally be the competent person to give you information about the possibilities in your country to take legal action against imitators, infringers and counterfeiters and provide you with advice on how to settle any dispute.

Whenever you believe there is infringement, you may choose, as a first step, to send a “cease or desist letter” informing the infringer of a possible conflict between his design and your exclusive rights. The assistance of a lawyer in drafting such a letter is recommended. If the infringement persists, it may be necessary to take legal action against the infringer.

If you know the location of the infringing activity, it may be possible to take surprise action by obtaining a search and seize order (usually from a competent court or the police) to conduct a raid, without prior notice to the allegedly offending company/individual.

In order to prevent the importation of infringing goods, measures at the international border are available to the design owner including Nigeria, through the national customs authorities.

As a general rule, if infringement is identified, it is highly advisable to seek professional legal

advice.

International Design Protection

In 2001, the ten largest users of The Hague System for the international deposit of industrial designs in terms of the number of applications were the Swatch Group, Interior, Sony Overseas, Hermès, Daimler Chrysler, Nokia, Villeroy + Boch A.G., Moulinex, Philips Electronics and Salomon.

In that year, the Swatch Group, the largest user of the system, deposited 103 applications for design registration using The Hague System.

The distinctive “look” of its watches is considered a crucial feature that influences the choice of its customers in favor of its products. In view of this, companies like the Swatch Group invest large sums of money and expertise in the development of winning designs and make sure they have exclusive rights to the exploitation of their designs through registration in many countries.

Photo; Swatch :



Courtesy: Polo Shop, Lagos

In many countries you may obtain cumulative protection, (i.e., copyright protection and industrial design protection) which can exist concurrently for the same design, while in a few countries, the two forms of protection are mutually exclusive. In Nigeria, registering industrial designs does not automatically confer a copyright on the design.

5. Other Legal Instruments for Protecting Industrial Designs

What are the differences between copyright protection and industrial design protection for designs?

In some countries, the applicable law recognizes copyright protection for certain designs, for example, in the design of textile and fabrics.



Courtesy: Kaduna Textiles

The first step before taking any decision on how best to protect your design is to understand the differences between these two forms of protection. Some of the main differences are outlined below:

Registration

Under industrial design law the industrial design generally needs to be registered by the applicant before publication or public use anywhere, or at least in the country where protection is claimed. The registration certificate, provided by protection under industrial design law, may prove useful in cases of infringement, as it

provides a more solid basis from which you may enforce your exclusive rights.

Copyright in works considered to be original subsists without formalities. While registration is not necessary for protection. It is advisable to register original works with the Nigerian Copyrights Commission and obtain a Certificate of Notification.

Duration

Industrial design protection lasts for a period of 5 years in the first instance, and It is renewable on application for 2 consecutive periods of 5 years each. It must also be borne in mind that the process of registration of industrial designs may take some time, and may not always be adequate for products that are linked to passing trends (e.g. fashion products).

Copyright endures in Nigeria for the life of the author and 50 or 70 years after his death.

Scope of protection

The right conferred by registration of an industrial design is an absolute right in the sense that there is infringement whether or not there has been deliberate copying.

Under copyright law, there is infringement only in the negligent reproduction of the work in which copyright subsists. This makes it generally more cumbersome and expensive to enforce in case of infringement.

Types of products

In Nigeria, not all designs can be protected by copyright but primarily those that may be considered as works of art. While the distinction may not always be clear, some designs, such as the shape of manufactured products, are unlikely to be protectable under copyright law, while others, such as textile designs, are often covered by both forms of protection.

Costs

Registering your design in Nigeria means that you will have to pay the applicable fees. In addition, it is necessary to use the services of an IP agent to assist you in drafting the application, which will incur additional costs.

There are generally no direct costs relating to copyright protection if it is not registered. However, there are costs related to demonstrating proof of ownership in case of disputes.

In summary, while the protection granted by registered industrial designs is stronger in that it covers even unintentional infringement and provides a registration certificate which may be an important proof in case of infringement, it involves more effort (financial and administrative) because it requires registration, and is shorter in duration.

In any case, and particularly if the design is not registered, it is generally advisable to keep good records of every step in the

development of the design. Signing and dating each sketch, and properly archiving them, may help in case of infringement.

Example: In a recent survey of fabric designers in the United Kingdom, 80% of respondents said they always kept a record of their original design documents and were aware of their importance for proving copyright ownership.

When can trademark law protect a design?

A trademark is a distinctive sign (generally a word, a logo or a combination of the two) used to differentiate the products of one company from those of others. There are circumstances in which the form, design or packaging of a given product may be considered to be a distinctive feature of the product in question and may be protectable as a three-dimensional trademark. The bottle of Coca-Cola or the triangular shape of the Toblerone chocolate bar or ZIZA milk are some

such examples.



Courtesy: Ziza Milk by Dangote

It is advisable to consult an IP agent to determine whether a particular design may be considered a three-dimensional trademark.

Trademark protection has the advantage of being renewable indefinitely, while industrial design protection is usually protectable for a limited period 5 years in the first instance, and it is renewable on application for 2 consecutive periods of 5 years each. There may also be a difference in the costs of registering trademarks as compared with industrial design protection. In Nigeria the two types of protection may co-exist.

Do laws on unfair competition protect your design?

Nigeria is yet to adopt laws on unfair competition but in many countries, industrial designs are often protected under laws on unfair competition. Thus, a design may be protected against acts of unfair competition including, in particular, slavish copying and acts that may lead to confusion, acts of imitation or use of a third party's reputation. However, protection under unfair competition is generally significantly weaker and infringement is more difficult to prove.

Useful websites for further information:

On other intellectual property issues from a
business perspective:

www.wipo.int/sme/

On industrial designs generally:

www.wipo.int/about-ip/en/

On practical aspects relating to the registra-
tion of industrial designs, see list of websites
of national and regional intellectual property
offices available in Annex I or:

www.wipo.int/news/en/links/ipo_web.htm.

On the Hague Agreement for the International
Deposit of Industrial Designs:

www.wipo.int/hague/en/

On the Locarno Agreement Establishing an

International Classification for Industrial

Designs:

www.wipo.int/classifications
(under Locarno Agreement)

On arbitration and mediation:

<http://arbitrator.wipo.int/>

ANNEX I

Website Addresses of National and Regional Intellectual Property Offices

African Regional Industrial Property Organization (ARIPO)	http://www.aripo.wipo.net/
Algeria	http://www.inapi.org
Andorra	http://www.omp.ad
Argentina	http://www.inpi.gov.ar/
Armenia	http://www.armpatent.org
Austria	http://www.patent.bmwa.gv.at/
Australia	http://www.ipaustralia.gov.au/
Barbados	http://www.caipo.gov.bb/
Belgium	http://www.european-patent-office.org/patlib/country/belgium
Belize	http://www.belipo.bz
Benelux (Benelux Designs Office - BDO)	http://www.bbtm-bbdtm.org/
Bolivia	http://www.senapi.gov.bo
Bosnia and Herzegovina	http://www.bih.net.ba/zsmp
Brazil	http://www.inpi.gov.br
Bulgaria	http://www.bpo.bg/
Canada	http://www.cipo.gc.ca
China	http://www.sipo.gov.cn
China: Hong Kong (SAR)	http://www.info.gov.hk/ipd
China: Macao (SAR)	http://www.economia.gov.mo
Chile	http://www.proind.gov.cl
Colombia	http://www.sic.gov.co
Congo	http://www.anpi.cg.wipo.net
Costa Rica	http://www.registronacional.go.cr

Croatia	http://www.dziv.hr/
Cuba	http://www.ocpi.cu
Czech Republic	http://www.upv.cz
Denmark	http://www.dkpto.dk/
Dominican Republic	http://www.seic.gov.do/onapi/
Egypt	http://www.egypo.gov.eg
Estonia	http://www.epa.ee
European Union (Office for the Harmonization in the Internal Market - OHIM)	http://oami.eu.int/
Finland	http://www.prh.fi
France	http://www.inpi.fr
Georgia	http://www.sakpatenti.org.ge/
Germany	http://www.dpma.de
Greece	http://www.gge.gr
Hungary	http://www.hpo.hu/
Iceland	http://www.els.stjr.is
India	http://www.patentoffice.nic.in
Indonesia	http://www.dgip.go.id
Ireland	http://www.patentsoffice.ie
Israel	http://www.justice.gov.il/rasham+haptentim/
Italy	http://www.european-patent-office.org/it/
Japan	http://www.jpo.go.jp
Jordan	http://www.mit.gov.jo
Kazakhstan	http://www.kazpatent.kz
Kenya	http://www.kipo.ke.wipo.net
Kyrgyzstan	http://www.krygyzpatent.kg
Lao People's Democratic Republic	http://www.stea.la.wipo.net/

Lithuania	http://www.vpb.lt/
Luxembourg	http://www.etat.lu/EC/
Macao	http://www.economia.gov.mo
Malaysia	http://www.kpdnhq.gov.my/
Mexico	http://www.impi.gob.mx/
Monaco	http://www.european-patent-office.org/patlib/country/mo-naco/
Mongolia	http://www.mongol.net/ipom
Morocco	http://www.ompic.org.ma/
Netherlands	http://www.bie.minez.nl
Nepal	http://www.ip.np.wipo.net
New Zealand	http://www.iponz.govt.nz
Norway	http://www.patentstyret.no
Organisation Africaine de la Propriété Intellectuelle (OAPI)	http://www.oapi.wipo.net/
Pakistan	http://www.ipo.gov.pk/
Panama	http://www.mici.gob.pa/comintf.html
Peru	http://www.indecopi.gob.pe/
Philippines	http://www.ipophil.gov.ph/
Poland	http://www.uprp.pl/
Portugal	http://www.inpi.pt/
Republic of Korea	http://www.kipo.go.kr
Republic of Macedonia	http://www.ippo.gov.mk/
Republic of Moldova	http://www.agepi.md/
Romania	http://www.osim.ro
Russian Federation	http://www.rupto.ru
Serbia and Montenegro	http://www.yupat.sv.gov.yu
Singapore	http://www.ipos.gov.sg

Slovak Republic	http://www.indprop.gov.sk
Slovenia	http://www.sipo.mzt.si
Spain	http://www.oepm.es
Sri Lanka	http://www.nipo.lk/
Sweden	http://www.prv.se
Switzerland	http://www.ige.ch
Tajikistan	http://www.tipat.org
Thailand	http://www.ipthailand.org
Turkey	http://www.turkpatent.gov.tr
Ukraine	http://www.ukrpatent.org/
United Kingdom	http://www.patent.gov.uk
United States	http://www.uspto.gov
Uruguay	http://www.dnpi.gub.uy
Uzbekistan	http://www.patent.uz
Venezuela	http://www.sapi.gov.ve

ANNEX II

International Classification for Industrial Designs of the Locarno Agreement

LIST OF CLASSES

1. Foodstuffs
2. Articles of clothing and haberdashery
3. Travel goods, cases, parasols and personal belongings, not elsewhere specified
4. Brushware
5. Textile piece goods, artificial and natural sheet material
6. Furnishing
7. Household goods, not elsewhere specified
8. Tools and Hardware
9. Packages and containers for the transport or handling of goods
10. Clocks and watches and other measuring instruments, checking and signalling instruments
11. Articles of adornment
12. Means of transport or hoisting
13. Equipment for production, distribution or transformation of electricity
14. Recording, communication or information retrieval equipment
15. Machines, not elsewhere specified
16. Photographic, cinematographic and optical apparatus
17. Musical instruments
18. Printing and office machinery
19. Stationery and office equipment, artists' and teaching materials
20. Sales and advertising equipment, signs
21. Games, toys, tents and sports goods

- 22. Arms, pyrotechnic articles, articles for hunting, fishing and pest killing
- 23. Fluid distribution equipment, sanitary, heating, ventilation and air-conditioning equipment, solid fuel
- 24. Medical and laboratory equipment
- 25. Building units and construction elements
- 26. Lighting apparatus
- 27. Tobacco and smokers' supplies
- 28. Pharmaceutical and cosmetic products, toilet articles and apparatus
- 29. Devices and equipment against fire hazards, for accident prevention and for rescue
- 30. Articles for the care and handling of animals
- 31. Machines and appliances for preparing food or drink not elsewhere specified
- 99 Miscellaneous

ANNEX III

Members of the Hague Agreement Concerning the International Deposit of Industrial Designs (as of September 2003)

Belgium

Belize

Benin

Bulgaria

Côte d'Ivoire

Democratic People's Republic of Korea

Estonia

Egypt

France

Gabon

Georgia

Germany

Greece

Holy See

Hungary

Iceland

Indonesia

Italy

Kyrgyzstan

Liechtenstein

Luxembourg

Monaco

Mongolia

Morocco

Netherlands

Republic of Moldova

Romania

Senegal

Serbia and Montenegro

Slovenia

Spain

Suriname

Switzerland

The former Yugoslav Republic of Macedonia

Tunisia

Ukraine

Member States: 36

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