A Short Guide
Designs
What is a design?
In the world of intellectual property, a “design” is understood as the appearance of a product, as opposed to the way a product has been technically constructed. Design law focuses on rights that can be owned in the appearance of a product, of part of a product, or of its components. Designs can extend to cover computer icons, typefaces and logos.

What are registered rights?
Registered designs are designs that have been granted by a governmental intellectual property office. The registration clearly defines the scope of protection, ownership and commencement of protection. A design registration with effect in the UK can be obtained via the UK Intellectual Property Office (UKIPO), or via the European Union Intellectual Property Office (EUIPO). Registered Community Designs, obtained from the latter, are effective in all 28 member states of the European Union.

What can I protect with a UK Registered Design or Registered Community Design?
Registered designs are intended to protect “the appearance of the whole or part of a product, resulting from the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation”. In practice, it is possible to protect both two- and three-dimensional features, as well as ornaments (patterns), logos and even the layout of a graphical user interface or animation sequences can be registered. It is not necessary for the product to be a “designer” product. Design protection is available for more “ordinary” products such as street lamps, toothbrushes or tyre treads. Important court cases have been decided for products ranging from air freshener spray bottles to suitcases for children.

A single product may be protected by a number of different design registrations, in relation to the appearance of the product as a whole and in relation to several individual new features. A single protected design feature may also be incorporated in a number of different products. In order to maximise the value of a registration, it is important to ensure designs are represented in the correct way in the registration documents.

What are the criteria for a design registration to be valid?
In order for a registered design to be valid, the design must be new, and must have what is called “individual character”. A design is not new if it has been disclosed to the public anywhere in the world, except where the disclosure could not reasonably have become known within the European Economic Area.

What is “individual character”?
A design possesses individual character if it makes a different overall impression to existing designs. Whether or not a design has individual character depends on a number of issues, including what parts of a product can practically be modified and how many related designs are already known. These can be difficult questions to answer. For instance, a small yet striking feature may convey individual character, as may the simplicity of a design due to the absence of features. As a rule of thumb, the more a design stands out from known existing designs, the more likely it is that the design possesses individual character.

What can I do with a design right?
Depending on whether or not a design is registered with an intellectual property office, the types of design protection can be grouped into “registered rights” and “unregistered rights”.

In the UK, four design rights co-exist: UK Registered Designs, UK Unregistered Designs, (EU-wide) Registered Community Designs and Unregistered Community Designs, each with a different scope of protection.

How do I protect my design?
Unregistered designs are automatic, subsist in “the absence of features”. As a rule of thumb, the more a design stands out from known existing designs, the more likely it is that the design possesses individual character.

What is the difference between UK Registered Designs and Community Registered Designs?
For registered designs, the UK law has been aligned with the corresponding EU law, although there are practical differences in the registration procedure. The greater geographical coverage of the Registered Community Design means that most applicants tend to apply for the Registered Community Design rather than for a UK Registered Design.

What is the point in a Registered Community Design in view of Brexit?
A Registered Community Design will remain available as an option to protect designs in all EU countries by way of a single registration, regardless of the UK’s membership in the EU. It is not yet clear whether or when the UK’s departure from the EU (also known as “Brexit”) will affect the way in which the EUIPO may process design registrations for the UK. It is likely to take years until new procedures are in place, and so the advice is to carry on with “business as usual”. With offices in France and Luxembourg, whatever changes come into effect, we will remain able to register EU IP rights, including Registered Community Designs.
Marks & Clerk advises on all aspects of intellectual property. For more information and to find out how we can help you protect and exploit your designs, contact your usual Marks & Clerk attorney or solicitor, or a member of our designs team at your nearest Marks & Clerk office.

Short guides on other areas of IP are also available.