

Designs 2021



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Lexology Getting The Deal Through is delighted to publish the first edition of *Designs*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise.



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LEGAL FRAMEWORK

Relevant legislation

1 | What is the relevant legislation?

Industrial designs in Greece may be protected at the international, EU and national levels. Registered international designs with Greece as a designated state have the same effect as a valid national registration. Registered Community designs are automatically valid in Greece. Unregistered designs are also protected in Greece under EU law.

Registered industrial designs are protected by:

- Law 2417/1996 on the ratification of the Hague Agreement Concerning the International Deposit of Industrial Designs;
- Presidential Decree 259/1997 on the implementing provisions of the Hague Agreement Concerning the International Deposit of Industrial Designs;
- Presidential Decree 161/2002 implementing the EU Designs Directive (98/71/EC); and
- the EU Community Design Regulation (6/2002).

With regard to national industrial designs, Greece has a 'partially cumulative' protection system. According to this doctrine, a registered design is eligible for protection under both copyright and design law, provided that the requirements for each type of right apply. Protection under copyright law also applies independently to unregistered designs, provided that the conditions of Law 2121/1993 on copyright protection are met.

The Greek courts apply the different criteria under the two types of protection on a case-by-case basis (ie, novelty and individual character under design law and originality resulting from the personal contribution of the creator under copyright law). In a case involving an international design registration (recognising the new and individual character of the design in question) that did not designate Greece, the Athens Court of Appeal found that, since the design in question fulfilled the conditions to be considered a creation of exceptional originality, it was eligible for protection in Greece under copyright law (Decision 5863/2008).

Nature of system

2 | Are design rights considered to be distinct or treated as patent rights?

Design rights are distinct from patent rights. They protect the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation.

Agency

3 | Which agency is responsible for registration and grant of design rights?

The Greek Industrial Property Organisation is responsible for the registration and grant of industrial designs.

Overlap with other rights

4 | Is there any overlap between design rights and other rights?

The protection provided under design, copyright and trademark law overlaps. Each type of protection covers different aspects of an IP right, while the conditions of protection and granted rights also differ. Therefore, in the context of related decision making, the comparative advantages and disadvantages of these rights must be assessed. The protection offered by each type of right often complements that of the other rights.

Design protection may also fall under the realm of unfair competition law and benefit from provisions pertaining to unregistered distinctive signs. In light of the above, it is crucial that rights holders undertake a comprehensive evaluation of their IP portfolio with the assistance of an IP expert. In doing so, they can strategically combine the protection options offered, leading to the most effective management of their IP rights.

UNREGISTERED DESIGNS

Protection

5 | What protection and rights are there for unregistered designs?

Although Greek design law does not provide for the protection of unregistered designs, such designs are protectable under Article 11 of the Community Design Regulation. In order to enjoy the three-year protection available in this context, an unregistered design must:

- be new;
- have individual character; and
- have been disclosed to the public within the European Union.

'Disclosure' is understood to mean any public announcement which is made in such a way that specialists in the relevant sector can be informed of it in the normal course of business.

Unregistered designs can also enjoy protection under Greek copyright law, although this requires a considerably higher degree of originality. In this context, a design must exhibit particular individuality which results from the creative intellectual work of the creator and gives the design such originality that it is distinguished from similar creations. The Thessaloniki Appeal Court held that specific seams on clothes, the placement of pockets and the size, shape and placement

of buttons lacked individuality and thus were not original; therefore, they were not protectable under copyright law (Decision 2015/2010).

Use requirements

6 | How much use is generally required to establish unregistered design rights?

There is no guidance by law or case law regarding how much use is required to establish unregistered design rights.

Exclusions

7 | What exclusions apply to unregistered design rights?

The following are excluded from protection:

- designs that are contrary to public policy or the accepted principles of morality;
- designs in which the features of the product's appearance are solely dictated by its technical function;
- designs where the features of the product's appearance must necessarily be reproduced in their exact form and dimensions in order to permit the product to be incorporated or mechanically connected to another product; and
- designs that lack exceptional originality.

REGISTERED DESIGNS

Ownership

8 | Who can apply for and own a design?

An application for registration of an industrial design can be filed with the Greek Patent Office by the creator or his or her successor in title. If the applicant is not the sole creator or co-creator of the design, the origin of the right to the design must be proven by submission of a related declaration.

Scope

9 | What may and may not be protected?

Only designs that are new and have individual character can be protected. They must also be susceptible to industrial application (Thessaloniki Court of Appeal Decision 1044/2011). In order for a design to be considered as having individual character, the overall impression that it produces on the informed user must differ from any design disclosed before the filing or priority date. The designer's degree of freedom in developing the design must be taken into account when assessing individual character.

Protectable as a design is the appearance of the whole or part of a product resulting from the lines, contours, shape, texture or materials of the product itself or its ornamentation. In this context, a 'product' is defined as any industrial or handicraft item, including parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs.

Designs for spare parts – that is, designs applied to or incorporated into products constituting component parts of a complex product – are eligible for registration only to the extent that:

- the component part, after incorporation into the complex product, remains visible during normal use of the complex product, excluding maintenance, servicing or repair;
- the visible features of the component part are new and have individual character; and
- the design is not dictated solely by its technical function.

As a 'complex product' is considered to be a product composed of multiple components that can be replaced and that permit disassembly

and reassembly of the product, 'must-fit' spare parts are not protectable. Also not protectable are features of a product's appearance that are dictated solely by its technical function, or that must be reproduced in an exact form and dimensions in order to permit the product into which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product, so that either product may perform its function. In order for a design to be eligible for registration, it must also not be contrary to public policy or to accepted principles of morality.

Costs

10 | What are the costs involved in registration?

The costs for a single design application from filing to registration amount to €130. In multiple design applications, there is a €10 filing fee and a €10 publication fee for each additional design. Deferment of publication by up to one year is possible on payment of a €30 fee. An additional €10 fee for each additional design must be paid in the case of multiple design applications.

Grace period

11 | Is there a grace period for filings?

An important aspect of the protection of registered designs is the 12-month grace period for designs that have been disclosed by the designer, his or her successor in title or a third party. Due to the particular character of designs within the market, this grace period can prove valuable to creators, who have the opportunity to evaluate the impact of their design on the market before registering it.

PROCEDURES

Application

12 | What is the application process?

In order to register an industrial design in Greece, an electronic application must be filed with the Greek Patent Office which includes:

- a request for registration;
- details of the applicant and the creator;
- a graphic representation or original photograph of the design (with a maximum size of 16 centimetres by 16 centimetres);
- an indication of the product into which the design will be incorporated or used;
- the relevant Locarno class of the product;
- priority documents, if convention priority is claimed;
- any applicable documentation regarding succession, which must be notarised and legalised by apostille;
- a certified copy of an extract from the Register of Commerce reflecting the incorporation of the applicant company, legalised by apostille;
- a power of attorney, signed by the applicant, if the filing is made by an authorised agent; and
- payment of relevant fees.

Examination and appeals

13 | How are the examination and appeals procedures conducted?

The Greek Patent Office does not perform a substantive examination of industrial design applications.

The lack of substantive examination is offset by the possibility of having a design declared invalid upon a nullity action before the competent civil court (Thessaloniki Court of Appeal Decision 1044/2011).

Opposition

14 | What are the opposition rules?

Greek law does not provide for an opposition procedure.

Registration time frame

15 | What are the registration time frames?

Priority must be claimed within six months of the date of first filing.

The Greek Patent Office assesses only the formalities of design applications. Any missing documents or details may be submitted within four months of application. After this term, the design is published in the Official Bulletin of the Greek Patent Office. Grant follows shortly thereafter.

The maximum protection term for designs is 25 years, renewable every five years.

Removal from register

16 | In what instances does removal from the register occur?

A design may be declared invalid upon a nullity action before the competent civil court. A design may be invalidated if:

- the registered rights holder is not the creator, successor in title or owner of the design;
- the protected design does not fulfil the registration requirements provided by law; and
- the features of the product's appearance or its interconnection are not protectable because:
 - they are dictated solely by its technical function;
 - they must be reproduced in an exact form and dimensions in order to permit the product into which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function; or
 - their exploitation or publication contravenes public policy or accepted principles of morality.

ENFORCEMENT

Grounds for a claim

17 | What are the key causes of action?

The most common way to commence an infringement case is by sending a warning letter before initiating court proceedings. This has proven to be an effective method, since Greek infringers often cease infringement on receipt of a strongly worded cease and desist letter.

Rights holders and their exclusive licensees are entitled to bring infringement actions before the competent courts. In cases of co-ownership, infringement actions can be brought independently by each co-owner.

Procedures

18 | What enforcement procedures are available?

Greece has two specialised EU (formerly Community) trademark and patent courts, based in Athens and Thessaloniki. These courts have exclusive jurisdiction over design infringement cases and copyright disputes under the conditions established by the applicable legislation. Judges serving these courts receive special training in IP matters during their studies at the National School of Judges before their appointment to the bench.

Despite the effective protection provided by the courts, it is paramount that rights holders adopt preventive strategies and efficient

monitoring systems. Inspired by the simplified procedure of the EU regulation 608/2013, Law 4155/2013 provides for a straightforward, effective process with respect to the seizure and immediate destruction of infringing goods located within the Greek territory. These actions may be implemented by a number of agencies, including:

- Customs;
- the police;
- the Market Control Unit;
- the Financial and Economic Crime Unit; and
- the Coast Guard.

Remedies

19 | What remedies are available?

If the design infringement is proved to have been intentional, the rights holder may seek one of the following forms of monetary compensation:

- compensation for damages, which includes actual loss, lost profits and moral damages;
- an account of profits; or
- payment of hypothetical lost royalties that the infringer would have paid to the rights holder had a licence agreement been in place. In this case, the plaintiff must submit evidence to justify the requested amount.

The court can also order destruction of the infringing products.

The law does not provide for punitive damages.

By virtue of the Law on Patent Protection (which applies to designs by analogy), any party that affixes to the following a false statement that the products in question are protected by an industrial design certificate will be subject to up to a one-year prison term, a fine or both:

- the products themselves;
- the products' wrapping or packaging;
- any relevant commercial document intended for the public; or
- any other relevant published or advertising material.

The law allows for expedited and even on-the-spot destruction of infringing goods, with the infringer's consent.

Enforcement time frame

20 | What are the time frames for the resolution of enforcement actions for registered and unregistered rights?

Although changes to the Law on Civil Court Proceedings recently entered into force with the aim of simplifying and accelerating proceedings, main proceedings still experience significant delays. This makes it indispensable for the rights holder to consider filing for preliminary proceedings – in particular, temporary restraining orders and injunctions.

The quickest way to halt infringement is to file a temporary restraining order. In order for the court to grant a restraining order, the petitioner must prove the existence of a prima facie serious infringement and the exceptional urgency of the matter; the element of urgency in particular must be evident for the grant of an injunction. The related request must be made at the same time as a petition for injunction. A granted temporary restraining order remains in effect until the hearing on the injunction takes place.

Within the framework of an injunction proceeding, the rights holder can request:

- cessation of the infringement;
- removal of the allegedly infringing products from the market; and
- disclosure of detailed information and accounts concerning the defendant's infringing activities.

The implementation of the EU IP Rights Enforcement Directive (2004/48/EC) established the right of rights holders to request preservation of evidence, inspection and compensation for damages.

As a next step, rights holders can initiate an action on the merits, which becomes statute barred either:

- five years after the date on which the rights holder became aware of the infringement or damage and the identity of the infringing party; or
- 20 years after the date on which the infringement was first committed.

Recent cases

21 | What key cases from the past 18 months should rights holders be aware of?

There have been no key cases on design matters within the past 18 months.

OWNERSHIP CHANGES AND RIGHTS TRANSFERS

Assignment and licensing

22 | What are the rules surrounding assignment and licensing of design rights?

In order for assignments of rights and any other changes (eg, name or address changes and licence agreements) to have legal effect, they must be recorded with the Greek Patent Office. Recordals can be made both while a design application is pending and after registration.

For recordal of an assignment, the following must be submitted:

- an assignment deed signed by both assignor and assignee, which must be notarised and legalised by apostille; and
- a power of attorney, simply signed by the assignee.

For recordal of changes of name, legal style or address, the following must be submitted:

- an extract from the Register of Commerce or any other official certificate issued by a competent authority reflecting the change, which must be legalised by apostille; and
- a power of attorney, simply signed by the rights holder.

For recordal of a licence, the following must be submitted:

- a licence agreement signed by both the licensor and licensee, which must be notarised and legalised by apostille; and
- a power of attorney, simply signed by the licensee.

It is recommended that the new rights holder record the assignment in the register in order to invoke the rights deriving from the design in case of infringement.

Licences of right

23 | Are licences of right available?

By virtue of the Law on Patent Protection, which applies to designs by analogy, the design owner may, at any time, make a statement to the Industrial Property Organisation that he or she consents to the grant of an exclusive or non-exclusive licence, against compensation. Such a statement remains valid for two years, it is recorded in the relevant Register of the Patent Office and is published in the *Bulletin of Industrial Designs*.



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UPDATE AND TRENDS

Key developments and future prospects

24 | What were the key judicial, legislative, regulatory and policy developments of the past year in relation to the protection and enforcement of designs? What are the prospects for future developments?

Recent Law 4512/2018 initiated compulsory use of mediation in legal disputes arising from patent, trademark and industrial design infringements. The new law introduced a compulsory initial mediation session before the hearing of the case. The session, along with proof of the lawyer's compliance to the obligation to inform the client in writing about the option of mediation, are now a prerequisite for the admissibility of the lawsuit.

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