



[Design Management in a Furniture Company](#) ^[1]

Enterprises often devote a significant amount of time and resources to enhance the design appeal of their products. Protecting an industrial design may improve the competitiveness of a company and often brings in additional revenue. The case of a Belgium furniture designer examines possible solutions to copyright infringements at European level.

Background

Mr van Hepar is a creative and passionate furniture designer running his own successful business of manufacturing and distribution of comfortable sofas and armchairs in the centre of Brussels. One day, in the course of his activity, he developed the idea of an innovative sofa design whose lines, contours, colour and shape contribute to conferring an appealing appearance to the piece of furniture.

He began to commercialise the product, which became very popular in Belgium, to the extent that an interior design magazine dedicated an entire page to the sofa including images of the product along with an interview with the designer.

Issues faced

After one year and a half, Mr van Hepar discovered that a competitor in Spain had begun to sell sofas reproducing the lines, contours, colour and shape of his popular sofa. And as if this was not enough, the competitor offered the product at a lower price. Knowing that such circumstances could cause a consistent economic loss, he decided to ask a legal advisor for support in order to assess the chances of protecting his design rights.

The advisor showed that, in order to prevent third party copies in the entire territory of the European Union, it was possible to protect the design rights through the Registered Community Design (RCD) or the Unregistered Community Design (UCD). The first one confers a long protection of 5 years renewable for five-year periods, up to a maximum of 25 years. Unfortunately, in this specific case, the divulgation of the sofa design (i.e. in the relevant case of commercialisation and publication of images in a specialised magazine), for a period exceeding one year, did not comply with the novelty requirement to obtain a RCD. Nevertheless, while lacking any design registration, Mr van Hepar's design rights could be protected through the Unregistered Community Design, granting an exclusive right for a period of three years from the date on which the design was made available to the public. Therefore the advice provided by the legal advisor was the following:

1. to send a cease and desist letter to refrain and stop the infringing conduct on the basis of the UCD;

2. to enforce the unregistered design rights before a court if the infringing conduct persists;
3. to develop an effective strategy for the protection of the design rights in future products, being aware that registering a Community Design (granting an exclusive right for up to 25 years) may not be possible if the design is divulged (through its commercialisation, publication, etc.) after the 1-year grace period (1 year from the first divulgation).

Actions undertaken and results

Mr van Hepart finally managed to solve the issue by reaching an amicable settlement with the infringing third party who ceased commercialisation of the sofa. Unfortunately, due to the earlier divulgation of his design, he was not able to register his community design (potentially granting a protection up to a maximum of 25 years) but he could rely on his unregistered design (granting protection for three years from the date of the first divulgation). Nevertheless, once the UCD expires, his sofa design will enter the public domain.

Lessons learned

As shown above, securing IP rights do not necessarily require registration but the choice of relying on an unregistered IP right should also consider the protection granted. The unregistered design grants an exclusive right for a relatively short period (three years). Such an instrument is very useful to secure the design rights in products with a short market life (e.g. seasonal products in fashion industries). On the contrary, it could appear as a weak instrument for products with a potentially long market life, given that the unregistered design will enter the public domain after three years.

Economic operators should be aware of the different instruments offered in order to set the best IP practices in accordance with their marketing and sales objectives.

In this regard, an adapted training on the available instruments to secure one's own intellectual property rights appears to be relevant in order to effectively manage potential conflicting situations and to valorise one's own intangible assets in the light of the planned business strategy.

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