



Legal Update

August 2017

Intellectual Property Department

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**The New Design  
Law 2017**  
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**Dear Clients and Colleagues,**

On July 26, 2017, the Knesset approved a new Design Law (the "Design Law" or the "Law"). The Law will come into force 12 months following its publication.

"Designs" are defined as the visual features of products (such as cars, electrical appliances, screen displays, furniture, jewelry, fashion, etc.), which are not purely utilitarian. The Design Law represents a landmark revolution with respect to the legal protection granted to designs, and replaces the previous legislative protection from 1924 accorded to designs, which was governed by the Patents and Designs Ordinance (the "Designs Ordinance" or the "Ordinance").

The purpose of the Law is to strike a balance between two public interests: on the one hand, encouragement of innovation and development of new designs; and on the other hand, preventing excessive restrictions on the use of such designs by the public. In addition, the Law is intended to assist Israeli law in adapting to contemporary technological developments, international law and conventions, and to the case law that has developed in the various courts.

**The Subject Matter Regulated by the Law:**

The Law defines a "Design" as the appearance of a product consisting of a visual characteristic, including the outline, color, shape, decoration, texture or material of the product. The Law provides protection not only for tangible products but also for graphical symbols and screen displays. The definition of "Designs" under the Law significantly changes the previous definition under the Ordinance in that it does not require that the design be industrially manufactured, but it rather sets forth a very broad definition of the term "Products" to which designs can be attributed.

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**Below we will review the main and most innovative issues regulated by the Law:**

(1) The Law sets forth preliminary conditions for design registration. It provides a cumulative requirement for the novelty and individual character of the design. Registration of a design grants its owner, subject to the provisions of the Law, protection for a period of 25 years (as opposed to 15 years under the Designs Ordinance).

(2) One of the principal innovations in the Law is the protection it accords unregistered designs. To this end, the Law provides protection to seasonal fashion products and to designs of products that have an inherently short shelf-life and thus are not worth registering, and similarly provides a solution to the commercial needs of small businesses and private designers. Thus, subject to satisfying the novelty and individual character requirements, and as long as the product is offered for sale or distributed in Israel by the design owner or someone on its behalf, within six months of the design's publication, the owner of an unregistered design will enjoy protection for a period of 3 years from the publication date of the design. However, it should be noted that the protection granted to unregistered designs is limited in comparison to the protection granted to registered designs, in terms of the protection period, scope, and the required burden of proof. Nevertheless, the Law grants significant protection for unregistered designs, and provides their owners with the right to prevent the commercial manufacturing of a product which copies the unregistered design.

(3) Despite the establishment of new legislative mechanisms for the protection of designs, the Law does not completely invalidate the application of the Designs Ordinance. The Ordinance will still govern the protection of designs registered in accordance with its provisions until the end of the protection period of the last design registered thereunder. Furthermore, the Law extends the period of protection of designs registered in accordance with the Ordinance by an additional three years, thus granting a total protection period of 18 years.

(4) The Law grants Israeli designers the possibility of submitting an international application for registration of designs in accordance with the Hague Agreement. The Law allows Israeli designers to submit one application to the International Bureau, which will in turn route the application to the designated contracting parties. This provision is designed to streamline and simplify the registration process, and save the designers valuable time.

(5) The Law also deals extensively with the question of the ownership of designs. Generally, the designer is the first owner of its design. However, the Law stipulates that in the event that a design was developed by an employee executing his duties or while substantially using the employer's resources, the first owner of the design will be the employer, unless agreed otherwise. Similarly, in the case of commissioned designs, the first owner of the design will be the person who commissioned the design, unless agreed otherwise.

(6) The Law stipulates that the manufacture or importation of a product carrying a design identical to a registered design, without the owner's authorization, will constitute a criminal offense.

(7) According to the Law, infringement of a design (registered or unregistered) is a civil tort. The Law sets out various means of enforcement to provide proper protection for a designers' rights, including,

*inter alia*, the imposition of injunctions, the right to statutory damages of up to NIS 100,000 per infringement, accounting, and, specifically for registered designs, measures pertaining to the confiscation of customs.

**Potential Effects:**

The new legislative mechanism for the protection of designs under the Law may have significant effects on the judicial review of design infringements, and the protection of visual and aesthetic features of products. We foresee two main potential effects:

Interrelation with the Copyright Law – Section 7 of the Israeli Copyright Law, 2017 ("Copyright Law"), determines that a work of authorship which constitutes a design under the Law or the Ordinance is uncopyrightable. Under the previous definition of design, as set forth in the Ordinance, Section 7 of the Copyright Law was seldom discussed, as courts were ready to grant copyright protection to functional works of authorship to the extent that they were not industrially manufactured in large numbers. The new definition of designs under the Law raises the question of the copyrightability of functional works of authorship, specifically in the case of fashion, jewelry and user interfaces (screen displays).

Design Infringement Tests – due to the new definition of designs under the Law, and due to the new definition of what constitutes design infringement, it is yet to be seen how courts will interpret the Law and which judicial tests and sub-tests will be utilized for such purpose. Specifically, due to the fact that the Law protects a design (registered or not) itself and any other design that is "not different" from its general appearance, it is yet to be seen which party will bear the burden of proof with respect to the similarity examination of allegedly infringing designs.

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In conclusion, the new Law provides extensive protection for designs and regulates the legal framework of designs in Israel for the first time in many years. The Law adopts a modern approach and attempts to align the Israeli law with technological developments and international law.

**We would be happy to answer any questions that you might have.**

**Sincerely,**

**Intellectual Property Department  
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