

ARGENTINA

Design Law

Decree-Law No. 6,673 of August 9, 1963

ENTRY INTO FORCE: August 27, 1965

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ARTICLE 1

The author of an industrial model or design and his lawful successors are entitled to the property and the exclusive right to make use thereof, to transfer and to register it, for the period and subject to the provisions of this Decree-Law.

Industrial models and designs created by persons who are in the employ of others belong to their authors, who are entitled to the exclusive use thereof, unless the author has been specially engaged for the purpose or has merely carried out orders from the parties for whom he works. If the model or design is the joint work of the employer and the employee, it shall belong to both, unless otherwise agreed.

When two or more persons have jointly created an industrial model or design, all of them shall have the exclusive right to make use of it, as well as the right to register the work that they created, in all of their names; in such cases the relations between the co-authors shall be governed by the provisions relating to co-proprietorship.

The author of an industrial model or design and his lawful successors have the right to legal action to recover the title to a registration fraudulently effected by anyone who was not its author.

ARTICLE 2

The right conferred by the preceding Article shall apply to authors of industrial models or designs created abroad and to their lawful successors, provided that their respective countries grant reciprocity in respect of the rights of Argentine authors or authors residing in Argentina.

ARTICLE 3

For the purposes of this Decree-Law, the shapes or the appearance incorporated in or applied to an industrial product and which give it an ornamental character shall be regarded as industrial models or designs.

ARTICLE 4

In order to enjoy the rights arising under this Decree-Law, the author shall register the model or design created by him in the Register of Industrial Models and Designs which will be kept for this purpose by the Ministry of Industry and Mining (Patent Office).

ARTICLE 5

It is presumed, unless proved otherwise, that whoever has first registered an industrial model or design is the author thereof.

ARTICLE 6

The following shall not enjoy the benefits granted herein:

- a) Those industrial models or designs which have been published or publicly worked, either in this country or abroad, prior to the date of application, excepting those referred to in Article 14. Nevertheless the fact that the authors, themselves or through others authorized to do so, have exhibited the model or design created by them in exhibitions or fairs held in Argentina or abroad, shall not exclude them from such benefits, provided that the respective application is made within a period of six months from the inauguration of the exhibition or fair.
- b) Those industrial models or designs which do not have a different shape or a novel appearance of their own, as compared to prior industrial models or designs.
- c) Industrial designs or models the elements of which are necessary to the function which the product is intended to perform.
- d) The mere change in the color of known models or designs.
- e) When they are contrary to morals and to the rules of proper conduct.

ARTICLE 7

The protection granted herein shall have a duration of five years, as from the date of application, and may be extended for two consecutive periods of the same length, at the registrant's request.

ARTICLE 8

The registration of an industrial model or design, as well as the extensions mentioned in the preceding Article and the issuance of certified copies or certificates, shall be subject to payment of the taxes and fees fixed in the regulations to be issued under this Decree-Law. Such taxes shall be collected by the Patent Office and used to defray its operating expenses. They shall be fixed by the Ministry of Industry and Mining and paid into a special account "Patent Office - services rendered on application".

ARTICLE 9

A single registration may cover up to fifty different examples of a single model or design, provided that they are all homogeneous.

ARTICLE 10

The application for registration shall be submitted to the Patent Office in accordance with the provisions of the respective regulations and contain:

1. An application, along with a receipt for the fee provided for in Article 8;
2. Drawings of the model or design;
3. A description thereof;
4. A special authorization, simply signed by the applicant and not legalized, appointing an agent in the event that the interested party does not apply in person.

ARTICLE 11

The application for renewal of the registration provided for in Article 7 shall be filed not later than six months before the expiration of the current term of protection. Such application shall be accompanied by the same items as were required for the initial application.

ARTICLE 12

The application for registration may not be rejected excepting for failure to meet the formal requirements set forth in Article 10 and related provisions of the present Decree-Law and regulations thereunder.

In the event of applications for registration being refused, an appeal may be taken to the Patent Office Board of Appeal or to the Federal Courts, the choice of one such procedure excluding other.

ARTICLE 13

The Register shall be kept by the Patent Office being an Agency of the Ministry of Industry and Mining and the certificates showing the date of filing and name of registrant and including copies of the drawings and specifications as filed shall be issued by the public official or officials designated by the regulations. Other formalities relating to the certificate and the registration procedure shall also be set forth in the regulations.

ARTICLE 14

Industrial models or designs deposited or patented abroad may be registered in the country and enjoy the same benefits as are accorded herein to those registered locally, provided that they are deposited within a period not exceeding six months from the filing date in the country of origin.

In such cases, the duration of the exclusivity right may not exceed that of the original patent or deposit. No exclusivity rights may be claimed in foreign models or designs which have been used industrially in the Argentine Republic by a third party, before the application for the first registration was made in the country of origin.

ARTICLE 15

The proprietor of a model or design registration may assign it in whole or in part, subject to such conditions as he may see fit. The assignee, successor or heir thereto may not exercise rights thereunder until such time as the assignment has been recorded at the Patent Office. If the assignee fails to notify the assignor when Court action is brought against a registration to enable him to take part in the proceedings as a party thereto, the assignor shall be under no obligation to refund the price of the assignment.

ARTICLE 16

Registrations of models and designs, as well as the renewal, transfer and cancellation thereof, shall be made public in the manner and at the time to be determined by the regulations.

ARTICLE 17

The registration of an industrial model or design shall be cancelled if it was effected by a party other than the author or contrary to the provisions hereof, but such cancellation may only be effected by virtue of a final judgement of the Federal Courts, at the petition of an interested party, regardless of whether or not such party holds a prior design or model registrations.

ARTICLE 18

The right of action for cancellation of a registration, provided for in Article 17 and that for recovery arising under the last paragraph of Article 1 shall become statute barred five years from the date of the deposit in the Register of Industrial Models and Designs.

ARTICLE 19

The owner of a model or design registration has the right of action against anyone who, without authority, industrially or commercially makes use of the registered design or imitations thereof, whether with respect to the same product or different ones. Such action may be instituted in the Federal Courts in civil matters for the purpose of recovering damages and obtaining an order restraining such use, or else in the Criminal Courts if the imposition of the penalties prescribed herein is also sought.

ARTICLE 20

Those who, in good or ill-faith, infringe the rights granted in respect of a registered model or design shall be bound to compensate the owner

of the registration for the damages that he may have sustained, and also in the event of ill-faith, to restore to him any benefits resulting therefrom.

ARTICLE 21

The following shall be punished with a fine of from 3,000 to 100,000 pesos:

1. Those who manufacture or cause to be manufactured industrial products having the characteristics protected by a model or design registration or copies thereof.
2. Those who, in the knowledge that they are committing an unlawful act, sell, put up for sale, exhibit, import, export, or in any other way trade in the products referred to in the preceding paragraph.
3. Those who, with ill intent hold said products or withhold information as to the manufacturers thereof.
4. Those who, with ill intent claim to have registered a model or design, without holding such registration.
5. Those who sell as their own, drawings of designs covered by a registration belonging to a third party.

In the event of second or subsequent offences, the penalties shall be double those prescribed in this Article.

ARTICLE 22

Articles or parts of articles which involve industrial models or designs held to be infringements shall be destroyed, even though the destruction of the model or design involves destroying the products themselves, unless the registered owner of the model or design agrees to accept them, at cost value, on account of the damages and restoration of benefits due to him. The destruction and seizure shall not affect goods already delivered by the infringer to bona-fide purchasers.

ARTICLE 23

Actions seeking the imposition of the penalties provided herein shall be instituted at the request of the aggrieved party. Complaints, whether criminal or civil, shall not be heard, unless accompanied by the Certificate of registration on which the plaintiffs rely.

ARTICLE 24

As the sole preliminary step towards commencement of the civil or criminal actions authorized hereby and in order to prove the unlawful act, the

registered owner of a model or design who is aware that, in a business house, a factory or any other place, his registration is being infringed by the use of the design on objects in trade or industry, may apply to the Judge, giving adequate security and submitting the Certificate of Registration, for an Officer of the Court to be appointed to go to such place and seize a sample of the infringing products, taking a detailed inventory of the stocks thereof. The corresponding order shall be issued within 24 hours after the application therefor.

When the person found in possession of the goods is not the producer thereof, he shall be bound to give the owner of the model or design an explanation as to its origin, in such a way as to enable him to prosecute the manufacturer. In the event that such explanation is refused or is found to be false or incorrect, the person found in possession of the goods may not plead good faith.

ARTICLE 25

Both in civil actions to restrain use and in criminal actions, the plaintiff, by separate motion, may demand a security of the defendant, so as not to interrupt him in the use of the model or design alleged to be an infringement should the latter wish to continue using it and, in the absence of security, he may request suspension of such use, and the attachment of all of the allegedly infringing objects in the defendant's possession, giving adequate security on request. The securities shall be real and be fixed by the Judge on the basis of the interests at stake.

ARTICLE 26

The amount of the fines levied pursuant to this Decree-Law shall be deposited in the special account "Patent Office - Services Rendered on Application" as a contribution towards its maintenance.

ARTICLE 27

Actions seeking the imposition of the penalties prescribed by Articles 21 and 22 above shall become statute barred two years from the date on which the offence was last committed.

ARTICLE 28

If an industrial model or design registered in accordance with the present Decree-Law has also been the subject of a registration under Law No. 11.723, the author may not invoke both simultaneously in legal defence of his rights.

If, by error, letters patent are applied for to cover an industrial model

or design and the application is objected to on this ground by the Patent Office, the interested party may convert the application into one for a model or design registration.

ARTICLE 29

The present Decree-Law shall come into force thirty days after the Regulations have issued, but not less than six months from the signature hereof.

ARTICLE 30

This Article is of a formal nature.

ARTICLE 31

This Article is of a formal nature.