

ARGENTINA

Design Law

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

Decree No. 27/2018 B.O. 01/11/2018

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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, an industrial model or design is considered to be the form incorporated and/or the appearance applied to an industrial or artisanal product, which give it an ornamental character.

ARTICLE 4

In order to enjoy the rights recognized by this Decree-Law, the author must register the model or design of his creation with the DIRECTORATE OF INDUSTRIAL MODELS AND DESIGNS of the NATIONAL INDUSTRIAL PROPERTY INSTITUTE, a decentralized agency acting within the MINISTRY OF PRODUCTION.

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 are not eligible for the benefits granted by this Decree-Law:

a) Any industrial models or designs that have been published or exploited publicly in the country or abroad prior to the date of registration. However, this does not include models or designs made public within SIX (6) months prior to the date of filing of the application or the priority date, provided that they meet any of the following conditions:

1. The publication resulted directly or indirectly from acts carried out by the author or his legitimate successors;
2. The publication was made as a result of bad faith or breach of trust by a third party, or a breach of contract or another unlawful act committed against the author or his legitimate successors; or
3. The publication of the application was made erroneously or unduly by the DIRECTORATE OF INDUSTRIAL MODELS AND DESIGNS.

b) Any industrial models or designs that do not have a distinctive configuration or a unique, novel appearance with respect to previous industrial models or designs.

c) Any industrial models or designs whose elements are dictated by the technical functions the product must perform.

d) Results of a mere change of color to models or designs that are already known.

e) Those that are contrary to morals, good customs, and public order.

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

Applications for registration of an industrial model or design, the inclusion in an application of up to TWENTY (20) industrial models or designs, applications for divisional registration, postponement of publication, such as the renewals mentioned in the previous article, will be subject to the tariffs set by their respective regulations. The value of the tariffs will be established in proportion to the

value set for the tariff that is received for the originating application for registration of an industrial model or design. The NATIONAL INDUSTRIAL PROPERTY INSTITUTE has the authority to establish, amend, and eliminate tariffs, including those for the purpose of maintaining the owner's rights.

ARTICLE 9

A single application for registration may include up to TWENTY (20) industrial models or designs, provided that all of them are applied or incorporated into products that belong to the same class in the International Classification for Industrial Designs and Models of the Locarno Agreement.

If an application includes more than ONE (1) industrial model or design that does not comply with the conditions provided by current regulations, the DIRECTORATE OF INDUSTRIAL MODELS AND DESIGNS of the NATIONAL INDUSTRIAL PROPERTY INSTITUTE may require the applicant to choose either to change the initial registration application to meet the conditions or to divide the initial registration application into TWO (2) or more divisional registration applications, dividing the industrial models or designs for which protection was requested in the application for initial registration.

Divisional applications will keep the filing date of the initial application and the benefit of the priority right if appropriate. The rights arising from the models or designs included in an application or in a multiple registration shall be independent from each other and may be exercised, transferred, encumbered, renewed, or cancelled separately, subject to the provisions of Art. 15 of this Decree-Law.

ARTICLE 10

The registration application must be submitted to the INDUSTRIAL MODELS AND DESIGNS DEPARTMENT and must contain:

- a) The application for registration;
- b) Drawings, photographs, and/or digital reproductions of the model or design that sufficiently identify the object of the protection; and
- c) A description of the industrial model or design if the applicant considers it necessary.

ARTICLE 11

An application to renew registration must be submitted within the last SIX (6) months of its validity. Renewal may also be submitted within SIX (6) months following the aforementioned time period, with payment

of a set fee.

ARTICLE 12

An application for registration may only be rejected for failure to comply with the formal requirements set out in Art. 10 and concordant articles of this Decree-Law. A decision rejecting an application for registration can be appealed against before the NATIONAL INDUSTRIAL PROPERTY INSTITUTE.

After the administrative procedure has been concluded, the decision issued by the NATIONAL INDUSTRIAL PROPERTY INSTITUTE may be appealed against before the Federal Civil and Commercial Court.

ARTICLE 13

The DIRECTORATE OF INDUSTRIAL MODELS AND DESIGNS will extend the title of the corresponding property.

ARTICLE 14

(Article repealed by Art. 106 of Decree No. 27/2018 B.O. 01/11/2018. Validity: from the day following its publication in the OFFICIAL BULLETIN OF THE ARGENTINE REPUBLIC)

ARTICLE 15

The owner of a registered model or design may transfer its ownership totally or partially. The transferee or successor under an individual or universal title may not invoke emerging registration rights until such transfer is registered with the NATIONAL INDUSTRIAL PROPERTY INSTITUTE.

ARTICLE 16

Registrations of industrial models and designs, as well as their renewals, transfers, and cancellations, will be published in the manner and time established by the regulations.

At the request of the applicant, upon submitting the application for registration, publication of the grant may be postponed for a maximum period of SIX (6) months from the date of registration.

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

A sanction with a minimum fine equivalent to the value of the fee or tariff that is levied for FIFTY (50) originating applications for registration of industrial models and designs, and a maximum fine equivalent to the fee or tariff that is levied for THREE HUNDRED THIRTY (330) originating applications for registration of industrial models and designs will be applied to:

- a) Anyone who manufactures or has manufactured industrial products that show the characteristics protected by the registration of a model or design, or their copies;
- b) Anyone who, knowing the products to be illegal, sells, offers for sale, exhibits, imports, exports, or otherwise trades the products referred to in subparagraph a);
- c) Anyone who maliciously holds these products unlawfully or conceals their manufacturers;

d) Anyone who, without having registered a model or design, maliciously invokes their right to it; or

e) Anyone who sells design plans protected by a third-party registration as his own.

In the case of recidivism, the penalties established in this article will be doubled.

(Supplementary Note: Art. 69 of Law No. 26784 B.O. 11/05/2012 sets the amount of the fine established in this article at thirty thousand pesos (\$ 30,000) as the minimum and one hundred thousand pesos (\$ 100,000) as the maximum)

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

When an industrial model or design registered in accordance with this Decree-Law has also been subject to a deposit under Law No. 11723 and its amendments, the author may not invoke these simultaneously when legally defending his rights.

If an erroneous application is made for an invention patent or a utility model to protect an industrial model or design, and the application is rejected by the NATIONAL INDUSTRIAL PROPERTY INSTITUTE, the interested party may request that it be amended to an application for registration of the model or design.

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.