



## How do design rights work? – *Video Transcript*

### What does the future hold for design rights?

[Click here for video](#)

*There's been a lot more government investment in terms of looking at the way in which designs work, so getting the data together to prove the validity and importance of designs, and that hopefully will trickle down in terms of encouraging more businesses to invest in both getting registered design protection and also having that awareness that they've got this bank of unregistered designs that could be relied upon when you do have an infringement scenario. I also think that there's slowly but surely more practitioners, like myself, who've worked with the designs and have a much better understanding of the way in which you can segment different designs, so the parts that we've talked about elsewhere, and also the different ways in which the visual appearance can be protected. So, it's not necessarily just the surface decoration, you can have the texture, you can have all sorts of other, clever features that can be protected and it comes back really to the learning that came out of the Trunki decision, which is that, if you want to have a belt and braces approach to design protection, you need to think at all of the different levels: so, think about having a photograph of the product, think about a CAD and also have a line drawing. And then, slowly, I am seeing more and more businesses registering their logos when they, at the same time that they have a rebrand. So, they'll register a logo and also register that as a trademark. And obviously you can register your trademark at any time, but you've only got a one-year period in which to do it as a design. So, if people miss that cut-off, then they have a bit of an issue, but it's not an insurmountable problem because you can always get your trademark protection as well.*

#### *Design rights and their reputation in the media*

*Unfortunately a lot of the recent examples of designs that have hit the media have been of registered designs not being successful – and this I think has presented a slightly negative narrative around what designs cover and the way in which they can be used when you actually come to litigate them. I was fortunate enough to be marshalling with Colin Birss, who was the judge who decided the Apple and*

*Samsung decision in the UK, and I was with him, behind the scenes, in his chambers when he was deciding on the case and even had a draft judgement – and the key thing that comes across in the judgement and from my discussions with him, was that really, what they registered as the design, what Apple registered, was very different to what they ultimately produced in the form of the iPad, and this is an important thing to bear in mind when you're thinking about the timing for registering something. Essentially in the iPad case, the thickness was much much larger in the design than in the final product, so, given that it was a very simple design anyway – as you know, essentially a rectangle with a screen on one side, the fact that the dimensions were so different, created a very different visual appearance compared to the Samsung Galaxy product. So, when you are comparing the two, the design against the Galaxy, they just weren't close enough and it just wasn't possible to reach a finding of infringement.*

*So, the key thing to take away is that designs are incredibly useful, but you need to think very carefully about the timing for registration and if, for example, you've got a product that you're already concerned about, like Apple you want to make sure that it's kept a secret, it is possible to apply to register a design and keep it secret for a period of time prior to the public launch and that is often used by the military when they're looking at getting protection, it's a similar procedure as is available for patents. Obviously until something is actually published, you can't rely on it in court proceedings, but you do have that facility to maintain your marketing anonymity, so that it doesn't ruin a public launch.*

*I think slowly designs are getting a new lease of life and there's new appreciation for them, and I hope that as we have some high-profile positive decisions that there will be a much greater appreciation for the opportunities that they afford. Having the potential to get a pan-European injunction and damages across all territories of the EU is hugely valuable. And even if you're just looking at the UK because you've got a UK registered design, or you've got a UK unregistered design right that you're relying on, that can still be a substantial sum of money and, often, if an infringer is prevented from selling into the UK, you know, which is a relatively major market, the hassle involved in segmenting the market can mean that you get a de facto injunction across all territories.*

#### *Design rights and blockchain technology*

*Blockchain has become a bit of a buzzword. I have actually helped a blockchain client to get patent protection, so I'm more familiar than most lawyers with the way in which it works and the opportunities that it affords. I think that it can be very helpful in some instances around IP protection, but I do not think that designs is really an area where it's got a great deal of utility. Essentially, designs, you're not having a very complicated process on the royalty structure side, which I think is an area where it is useful from a copyright perspective. And you don't have the same volume that you tend to get with trademarks, there isn't a need to keep track of whether the trademark has been used and how it's been used, which again might be a good utility for blockchain technology. I don't really see designs and blockchain as becoming a key marriage in the near future, but, you never know, I suspect that because designs aren't given so much media attention, they're likely to be given a bit less blockchain technology attention as well.*

#### *Where to find help and resources*

*So, if you're looking for resources to find out more information about designs, the best place that I would say is, in fact, my book. So, my book is focused on fashion law, but it really covers off all of the different features of intellectual property rights and it takes the reader on a journey from start-up to global success, which means looking at both things that you need to think about at the registration stage, and right the way through to when you're actually litigating and relying on it in court proceedings.*

*A slightly less promotional answer to that question, the question of where to go to get more information on designs would be the European Union Intellectual Property Office, or the EUIPO. They have some excellent resources that explain in videos, in text, in all sorts of different ways, the way in which designs work. I also have a companion website, [europeanfashionlaw.com](http://europeanfashionlaw.com), that has more information on designs and the way in which they operate and there are lots of very helpful information again on the UK Intellectual Property Office, so the UK IPO, also has some really helpful resources.*

*Moderator: That concludes this course on design rights, so thank you for watching. Thank you to Rosie Burbidge for her contributions on this course. Now that you have an understanding of design rights, why not*

*test your knowledge and try our quiz. To continue learning about other types of intellectual property, we would recommend our course, 'Copyright, Trademarks and Design Rights,' made in collaboration with Dr. Hayleigh Boshier from Brunel University.*