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If Looks Could Sue: How Can IP Law Protect Product Design? | IP Frontiers

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In today's world, so much consumer decision making is driven by the aesthetic of a product — the shape of a water bottle, phone case, or even mobile app interface can be a key driver of product sales. The public, and product manufacturers, are generally aware that inventions can get patent protection for their useful elements via utility patent, but less aware of design patent protection for the appearance of products. Design patents can protect the visual impression of a wide range of products including shoes, sunglasses, tumblers, car parts, phone cases, display interfaces on computer or phone screens, light fixtures, park benches, appliances, and so on.

WHAT IS A DESIGN PATENT?

Whoever invents a new, original and ornamental design for an article of manufacture can get a design patent. 35 U.S.C. § 171. The patent will protect the claimed design as applied to the product, be it a graphical user interface or a lamp. In other words, it protects the visual characteristics: configuration, shape, overall look — but not the utilitarian or functional elements. Your author's favorite example is that it protects the way your coffee cup looks, rather than what makes the cup a useful receptacle for your preferred beverage (hot or cold). While a utility patent covers the useful features of a product, a design patent can cover the aesthetic features of the same product. When deployed together, enforcement avenues abound; having a few pictures in an infringement story never hurts.

One main purpose of design patent protection is preventing competitors from free riding on the aesthetic of a successful product by selling a similar-looking product. Like a utility patent, design patents grant the holder a monopoly — the design patent term is 15 years — over the claimed design and substantially similar designs. Design patent protection ensures product manufacturers can realize return on their product styling and branding as soon as the product hits the market. Fortunately, awareness of design patent protection is rising and filings have increased significantly over the years, recently crossing 50,000 applications per year, up from about 18,000 in 2000.

WHY CONSIDER A DESIGN PATENT AS A FIRST STEP IN PROTECTING APPEARANCE?

A key component of design patent protection is the immediacy of the protection upon issuance. They are also quicker and cheaper to get than utility patents, typically completing examination in less than two years and costing on average less than a few thousand dollars. And there are no maintenance fees during the patent term, unlike with utility patents.

The quicker timeline is helpful when compared to trade dress protection. Trade dress can also protect the overall look and feel of a product, but trade dress protection for a product requires that product achieve something called "secondary meaning," which is an association in the mind of consumers between the look of the product and the source of the product. The exception to the secondary meaning requirement is that trade dress protection in product packaging, instead of the product itself, can sometimes be protected immediately without secondary meaning. The secondary meaning requirement can delay product protection on trade dress grounds, providing no way to prevent knockoffs without years of branding and investment.

In some cases, a design patent can be a great complement to eventual trade dress protection. For example, Coke smartly filed for design patent protection in its now famous bottle shape when it first hit the market in 1915. See U.S. Pat. No. D48,160. A design patent can provide the initial protection and enforcement grounds. Since it is examined by the USPTO, protection for the design is given a presumption of validity, and the is-

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sued patent quite literally lays out a picture of what is protected, giving the public strong notice.

Trade dress tends to be much more amorphous, and even once trade dress has secondary meaning, it must be carefully articulated in a lawsuit. Without the benefit of drawings in an already issued patent as a guide, that can be difficult, and the court may find less elements are protected than initially pled. Getting design patent protection off the bat in many cases will increase the likelihood that the look of the product will be protectable trade dress after the 15-year design patent term expires.

HOW CAN TRADE DRESS COMPLEMENT DESIGN PATENT PROTECTION?

Trade dress is still very useful and can still exist independent of a design patent. Trade dress is governed by the Lanham Act and can be registered in some cases, although registration is less common because registration is not a requirement to have standing in federal court.

In suit, trade dress must be defined by the party claiming it. The room to define the trade dress at issue makes trade dress inherently more amorphous than a design patent. It may even provide broader protection than a single design patent could. There are various strategies for filing families of design patents to capture different scopes of a product's design, but trade dress still has a more general "look and feel" concept that can be an advantage.

A recent case illustrates this in relation to product packaging. In July of this year, in *Van Leeuwen Ice Cream LLC v. Rebel Creamery LLC*, the Eastern District of New York ruled that Van Leeuwen ice cream packaging was inherently distinctive and protected, defining the trade dress as a combination of: a monochrome pastel color palette, cardboard packaging, black cursive script with an exaggerated first letter, and a minimalistic overall design. *Van Leeuwen Ice Cream LLC v. Rebel Creamery LLC*, 2026 WL 2056314 (E.D.N.Y. July 16, 2026). Obviously, it would be difficult to sufficiently capture that look and feel even with a family of design patents, even if the drawings claimed broad design elements. A design patent might capture a single container with a version of that look, but other flavors or package variations might find clever ways to design around a patent drawing's scope. In this case, trade dress ended up being a good tool to capture a broader packaging concept, instead of a product's design. And since product packaging can be inherently distinctive, and was in this case, it sidestepped the secondary meaning hurdle.

Still, a design patent is very helpful when protecting the look of a product. Consider also, while Van Leeuwen won $23 million in damages, it took more than five years in federal court and untold attorney's fees to realize that outcome. The clarity and notice that comes with design patent protection can help avoid those costs, although they are the subject of heavyweight litigation at times.

WHAT IS THE DIFFERENCE BETWEEN DESIGN PATENT AND COPYRIGHT PROTECTION?

Design patents, while they may overlap with copyright, serve a different purpose. Copyright law provides protection for creative works, incentivizing production and dissemination of expressive works. In contrast, design patents help product manufacturers gain a competitive edge based on visual appearance, promoting distinctiveness in the market and investment in product aesthetic, or "ornamental design," as the law refers to it. Yes, one could obtain a copyright and a design patent in the same content: consider the artistic sculptural elements of a lamp as art (copyright) and the ornamental appearance of the lamp as a product (design patent).

Another difference is that copyrights can be more difficult to enforce. For the same art-promoting reasons copyrights exist, copyright infringement claims are also subject to several defenses such as fair use, independent creation, etc. Design patents are not. A direct design patent infringer is subject to strict liability, removing many of the factual questions underlying defenses in copyright cases.

Design patent infringement defendants are also available up and down the supply chain: anyone making, using, selling, offering to sell, or importing articles with designs that are substantially similar is fair game. See 35 U.S.C. § 271. Another special feature of design patent infringement is the availability of total profits damages. See 35 U.S. Code § 289. Depending on patent scope, total profits may exceed other measures like a reasonable royalty or actual damages. Also, as mentioned above, a design patent issued by the USPTO has a presumption of validity, whereas copyrights go through a registration process, and their validity is taken up in the first instance in court. And, even though copyrights may arise immediately, registration is a prerequisite to bringing suit. See 17 U.S. Code § 411. In sum, design patents are a great tool to protect a brand, and product manufacturers are well served by enforcing a robust design patent portfolio.

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