



Gamification Code:
SCRATCH



Global IP Playbook

*A fresh perspective on
Trademarks & Designs*





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ABOUT THE FIRM

EXY Intellectual Property is a full-service IP firm with coverage across Malaysia and Singapore. Having assisted hundreds of businesses, the firm provides practical and commercially focused solutions across the entire IP lifecycle, covering trademarks, patents, industrial designs, copyrights and other intellectual property rights. Its services span prosecution, portfolio management, enforcement, litigation, licensing, franchising, commercialisation and strategic advisory, with every strategy tailored to protect clients' most valuable assets while supporting their broader business objectives.

INTERNATIONAL IP SYMPOSIUM

FROM SIGNS TO EXPERIENCES

Rethinking Non-Traditional Trademarks in Asia

What exactly are we protecting?

IF YOU RECOGNISE THE BRAND WITHOUT SEEING ITS NAME OR LOGO 』 IS THAT ENOUGH?

And If It Is Enough To Identify The Brand, What Exactly Have You Recognised?

STAGE ONE: REGISTRABILITY

CAN A NON-TRADITIONAL SIGN BE A TRADEMARK?

Asia has largely answered: YES.

. BUT THAT WAS THE EASY QUESTION

THE FIVE HARD QUESTIONS

01

What exactly is the mark?

02

How do we prove consumer perception?

03

How do we define and represent it?

04

How much do we actually own?

05

How do we enforce it?

When Does A Colour Become A Trademark?

COLOUR AS DECORATION

Aesthetic choice, background ornamentation, or category convention.

VS

COLOUR AS SOURCE IDENTIFIER

Direct commercial association denoting exclusive trade origin.

EXHIBIT 01 . 1 . JAPAN

Hydraulic Excavators

IP High Court, 23 June 2020
Case No. 20 19 (Gyo-Ke) 10 147

How Much Evidence Is Required Before A Single Colour Or
Combination Becomes Distinctive?



EXHIBIT 01 . 2 . JAPAN

Hermès Orange

IP High Court, 11 March 2024
Case No. 2023(Gyo-Ke)10095

Does enormous brand recognition automatically make a colour distinctive per se?



A Colour Can Be **Famous** Without Necessarily Being Distinctive As A Trademark.

Even if consumers recognise it, should one trader be able to exclude competitors from using it across a commercial field?

LABORATORY 02 . JAPAN / SOUND

WHAT EXACTLY IS A SOUND MARK?

MELODY

+

RHYTHM

+

WORDS

+

VOICE

=

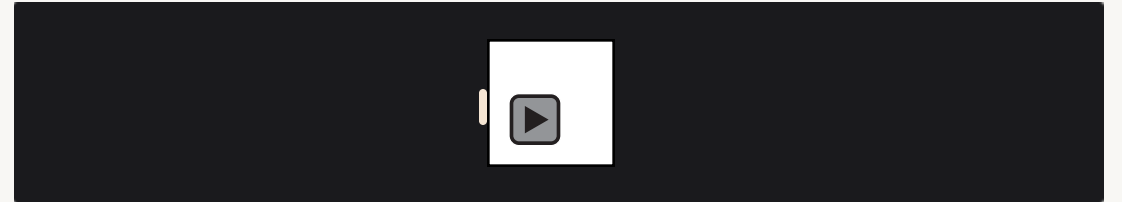
COMPOSITE SIGN

EXHIBIT 02 . 1 . JAPAN

Matsumotokiyoshi Sound Mark

IP High Court, 30 August 2021
Case No. 2020 (Gyo-Ke) 10 126

When a sound combines spoken words and musical elements, what is the legal "sign"?



COMPOSITE ACOUSTIC SIGN SPECTRUM

THE COMPOSITE NTM PROBLEM

SAME MELODY

Different spoken words substituted over the identical cadence.

SIMILAR WORDS

Same commercial phrase rendered with a distinct musical arrangement.

PARTIAL AUDIO

Use of only the opening audio motif without the vocal identifier.

LABORATORY 03 . JAPAN / 3D & SHAPE

WHEN DOES A PRODUCT SHAPE STOP BEING A PRODUCT SHAPE AND BECOME A TRADEMARK?

TRADEMARK

DESIGN

PATENT / FUNCTION

COMPETITION

JAPAN \$ 3D JURISPRUDENCE

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ip

Coca-Cola
Contour Bottle



Yakult
Container



Mini Maglite



Y Chair



Jean Paul
Gaultier



Shin
Godzilla



Japan has developed a genuine jurisprudential laboratory for 3D marks over three decades.

EXHIBIT 03 . 1 . JAPAN

Shin Godzilla 3D Mark

IP High Court, 30 October 2024
Case No. 2024(Gyo-Ke)10047

How much reputation can a particular sign borrow from the wider brand ecosystem?



Can The Reputation Of A Brand Ecosystem Help Establish Distinctiveness Of One Particular Element?

How much reputation can travel from one sign to another across product shapes and merchandise forms?

LABORATORY 04 . CHINA / ENFORCEMENT

CHINA: REGISTRATION IS NOT THE END.

The 2020 Trademark Infringement Determination Standards directly address 3D, colour-combination, and sound marks.

CHINA: COMPARING UNCONVENTIONAL SIGNS

REGISTERED SIGN

Primary 3D / Colour Combination

ALLEGED INFRINGING SIGN

Modified Form / Similar Arrangement

Question: How do we compare an unconventional sign against another sign in commercial use?

SPHERE 0 1

Registration

What is the sign?

SPHERE 0 2

Enforcement

What is substantially the same or similar?

The Second Question Is Much Harder.

WHAT HAPPENS WHEN THE SIGN MOVES?

Static Trademark: A

Motion Trademark: A → B → C → D

Which frame is the trademark? Or is the sequence itself the trademark?

LABORATORY 05 . 1 . PHILIPPINES

2023 REVISED TRADEMARK RULES

Institutionalises protection for colour per se, motion, position and hologram through sequential representations.

FRAME A



FRAME B



FRAME C



FRAME D

Laboratory Question: How do you put something dynamic into a static legal register?

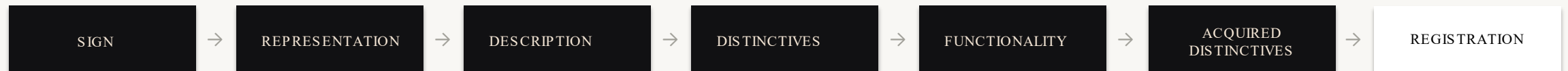
TRADEMARKS ACT 2019

MALAYSIA 』 THE DOOR IS OPEN

Broad Range Of Non-traditional Signs: Shape, Colour, Sound, Scent, Hologram, Positioning, Sequence Of Motion, And Combinations.

MyIPO Guidelines: Chapter 6 Distinctiveness on Non-Traditional Trademarks

MALAYSIA - NTM ARCHITECTURE



Does This Architecture Answer The Hard Questions Raised By International Jurisprudence?

REPRESENTATION

What Must The Register Actually Tell The Public?

TRADITIONAL STANDARD

Graphical representation alone.

MODERN STANDARD

Clear, precise, self-contained, easily accessible, intelligible, durable, and objective representation.

MALAYSIA: SHAPE MARKS

Distinctive Elements Within An Otherwise Indistinctive Shape

COMMON TO TRADE

FUNCTIONALITY

AESTHETICS

INVENTION

PACKAGING

DISTINCTIVE ELEMENTS

within an otherwise indistinctive
shape

MALAYSIA: COLOUR MARKS

SINGLE COLOURS

High evidentiary threshold; exceptional acquired distinctiveness required.

COLOUR COMBINATIONS

Spatial arrangement and specific chromatic proportions.

SOUND MARKS

How Do We Define What The Public Hears?

Musical notation vs audio file upload vs verbal descriptions.

Are We Really Dealing With The Same Legal Concept Of A "Sign"?

SENSORY REPRESENTATION

SCENT MARKS

How Do We Communicate A Scent To The Register?

Chemical formula vs scent description vs deposit.

NTM ASIA DECK

Guidelines of Trademarks 2019 (VA1-2026)

MALAYSIA IS NOT STANDING STILL.

| But Is Administrative Practice Developing Faster Than Judicial Jurisprudence?

WHAT THE LABORATORY TELLS US

DISTINCTIVENESS

Hermès

IDENTITY OF SIGN

Matsumotokiyoshi

SCOPE OF REPUTATION

Shin Godzilla

INFRINGEMENT COMPARISON

China Standards

DYNAMIC REPRESENTATION

Philippines Rules

THE REAL PROBLEM

WHAT EXACTLY IS THE MARK?

The Physical Object? The Colour? The Arrangement? The Sound? The Movement? The
Combination? Consumer Perception?

TRADEMARK PROTECTS A SIGN BECAUSE IT IDENTIFIES THE SOURCE.

CONSUMER RECOGNITION

Factual Market Association By Public.

COMPETITIVE FREEDOM

Public Domain & Competitor Access.

Is consumer recognition sufficient to justify legal exclusivity?

WE KNOW HOW TO REGISTER IT.

BUT DO WE KNOW HOW TO INFRINGE IT?

2D Vs 3D • Whole Vs Part • Composite Vs Individual Element • Static Vs Dynamic • Colour Vs Colour Arrangement

REGISTERED NTM = SHAPE + COLOUR + POSITION

WHAT CONSTITUTES INFRINGEMENT?

- Competitor Uses Same Shape, Different Colour.

- Same Colour, Different Shape.

- Same Position.

- Only Part Of The Shape.

- Similar Overall Appearance.

ASIA'S UNEVEN ANSWERS

Malaysia • Japan • China • Singapore • Philippines • Korea • Thailand • Indonesia

REPRESENTATION

DISTINCTIVENESS

FUNCTIONALITY

INFRINGEMENT

WHY ARE WE SOLVING THE SAME PROBLEM TEN TIMES?

Same Sound. Same Colour. Same Shape. Same Motion.
Different Representation, Evidence, Scope, And Enforcement.

FROM STATIC TO ADAPTIVE



THE TRADEMARK THAT CHANGE

What If The Brand Interface Dynamically Adapts According To:

TIME

DEVICE

USER

ENVIROMENT

INTERACTION

AI GENERATION

If The Sign Itself Changes, What Exactly Is The Trademark?

TRADITIONAL REGISTER

One Fixed Sign

Static snapshot frozen at filing date.

FUTURE REGISTER

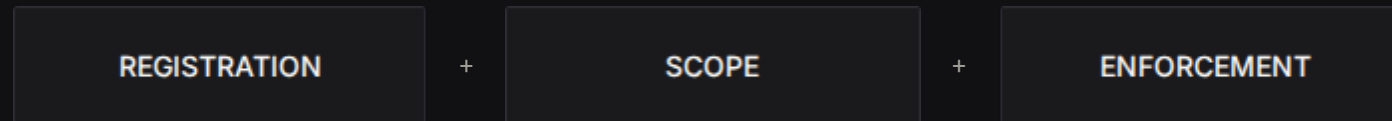
A Range of Experiences

Boundaries, parameters, and algorithms.

FIVE PRACTICAL PROPOSITIONS

1. Move from graphical representation to clear and precise representation.
2. Develop category-specific evidence standards for non-traditional signs.
3. Define the scope of NTM rights more explicitly upon examination.
4. Develop infringement comparison principles for unconventional signs.
5. Explore ASEAN cooperation on common examination principles.

REGISTRATION IS NOT ENOUGH.



A Mature NTM System Needs All Three.

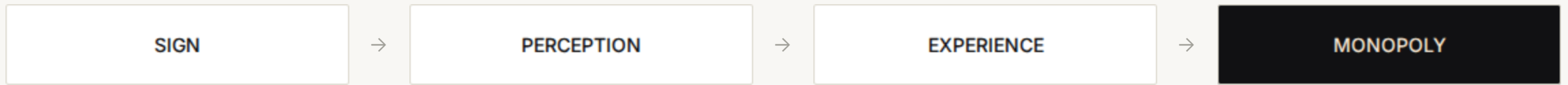
SIX YEARS LATER

2019

Can This Be A Trademark?

2026

What Exactly Are We Protecting?



THE NEXT GENERATION



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WHAT EXACTLY ARE WE PROTECTING?

That Is Where The Next Generation Of Asian Trademark Law Begins.



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Trademark Infringement & Dilution in the Age of AI

A U.S. Perspective

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September 18, 2026

Roadmap

What we will cover in this section

- 1 Why AI × Trademark Law Matters Now
- 2 U.S. Trademark Infringement Framework
- 3 AI & Direct Infringement: Key Cases
- 4 U.S. Trademark Dilution Framework
- 5 Dilution in the AI Context: Tarnishment & Blurring
- 6 Contributory & Vicarious Liability
- 7 Defenses Available to AI Defendants
- 8 Practical Takeaways & Open Questions

Why AI × Trademark Law Matters Now



- AI systems are generating outputs that display, reproduce, or mimic protected trademarks at unprecedented scale
- No AI-specific trademark statute exists in the U.S. — courts applying existing Lanham Act frameworks to novel technology
- Rapid proliferation of generative AI (ChatGPT, Midjourney, Stable Diffusion, Perplexity) creating entirely new categories of trademark risk
- 2024–2026: acceleration of AI-related trademark litigation, concentrated in N.D. Cal. and S.D.N.Y.
- First federal injunction against an AI company for trademark infringement issued in 2026 (Baron App v. OpenAI)

Context: The Lanham Act (1946) is the primary U.S. federal trademark statute, analogous to EU Trademark Regulation or TRIPS obligations.

U.S. Trademark Infringement Framework



For international practitioners

Statutory Basis

§32 (15 U.S.C. §1114)

Registered marks — prohibits unauthorized use in commerce likely to cause confusion

§43(a) (15 U.S.C. §1125(a))

Unregistered marks — false designation of origin, false endorsement

Core Test: Likelihood of Confusion

Are consumers likely to be confused as to source, sponsorship, or affiliation?

Multi-Factor Balancing Tests

Sleekcraft (9th Cir.) — 8 factors

Polaroid (2d Cir.) — 8 factors

Factors include:

- Mark strength & similarity
- Relatedness of goods/services
- Actual confusion evidence
- Marketing channels & purchaser care
- Defendant's intent
- Likelihood of expansion

These are flexible guideposts, not rigid checklists — analogous to confusion-based tests in the EU, UK, and other jurisdictions.

AI & Direct Infringement: Mark Adoption



Category 1: AI companies adopting protected marks as product/feature names

Baron App v. OpenAI (N.D. Cal. 2026)

- First federal injunction against an AI company for TM infringement
- OpenAI named Sora 2 video feature “Cameo” — identical to plaintiff’s CAMEO® mark for celebrity video platform
- PI granted: 5 of 8 Sleekcraft factors favored plaintiff
- Evidence: 10% net confusion rate, misdirected customer service, social media tagging errors
- Descriptive fair use defense rejected — “cameo” used as sub-brand, not descriptively

OpenAI v. Open A.I. (N.D. Cal. 2024/2025)

- Defendant’s “Open AI” mark for competing AI tools infringed OpenAI’s unregistered mark
- Secondary meaning through 7 years of use, 20+ AI products
- Summary judgment for OpenAI

Key Takeaway: AI companies face significant infringement liability when they adopt protected marks as product or feature names — traditional Sleekcraft analysis applies with full force.

AI & Direct Infringement: AI-Generated Outputs



Category 2: AI systems whose outputs display, reproduce, or mimic protected marks

Getty Images v. Stability AI

- AI image generator trained on watermarked images reproduced distorted Getty watermarks in outputs
- TM infringement under §1114(1) and dilution claims survived pleading stage
- Getty's mark met "household" fame standard for dilution

Dow Jones v. Perplexity AI (S.D.N.Y. 2025)

- AI answer engine generated fabricated/hallucinated content falsely attributed to WSJ and NY Post
- False designation of origin and dilution claims survived MTD
- Hallucinated attribution = actionable false designation of origin

The AI output itself becomes the infringing instrumentality — a new paradigm in trademark law.

Trade Dress & False Endorsement in AI



CLAIMS SURVIVED

Andersen v. Stability AI (N.D. Cal. 2024)

- Midjourney's CLIP model functioned as “trade dress database” — users reproduced distinctive artistic styles via artist-name prompts
- Court denied MTD on trade dress claims
- Use in commerce: artists' names in promotional “Name List” and showcase materials
- Vicarious trade dress infringement also survived

CLAIMS DISMISSED

Lehrman v. Lovo (S.D.N.Y. 2025)

- Voice actors' voices cloned by AI platform — Lanham Act claims dismissed
- Voices served dual function: identity + product itself
- No secondary meaning as source identifiers distinct from voice-over services
- **Key: mark must function as brand identifier, not merely recognizable attribute**

The contrast: Trade dress protection for visual artistic style may survive — but voice identity claims hit the source-identification requirement wall.

U.S. Trademark Dilution Framework



Trademark Dilution Revision Act of 2006 (TDRA), 15 U.S.C. §1125(c)

Elements of a Dilution Claim

- (1) The mark is famous — “widely recognized by the general consuming public”
- (2) Use of the mark (or similar mark) in commerce
- (3) Use commenced after the mark became famous
- (4) Likely to cause dilution by blurring OR tarnishment

Fame Standard

“Widely recognized by the general consuming public of the United States as a designation of source.”

= Household name standard

Excludes niche fame

Dilution by Blurring

Association that impairs the distinctiveness of the famous mark

Dilution by Tarnishment

Association that harms the reputation of the famous mark

Note: Dilution is distinct from infringement — no confusion required. Many jurisdictions have analogous concepts (EU well-known marks, Paris Convention Art. 6bis).

Dilution by Tarnishment in the AI Context



Association that “harms the reputation” of the famous mark — no intent to harm required

NY Times v. Microsoft (S.D.N.Y. 2025)

- Publishers alleged LLMs generated fabricated content falsely attributed to their publications
- Tarnishment claims survived MTD
- Fame shown: 100+ years circulation, federal registrations, Pulitzer Prizes, nationwide distribution
- False attribution of inaccurate content = reputational harm to publications

Baron App v. OpenAI (N.D. Cal. 2026)

- Deepfake videos of public figures (incl. MLK Jr.) in offensive conduct generated under “Cameo” name
- Irreparable harm found — threatened mark’s reputation as certificate of authenticity
- Court: mere association with harmful content suffices for tarnishment

Tarnishment is the primary AI threat — AI systems can generate vast volumes of harmful associative content (hallucinations, deepfakes, fabricated attributions) without any intent to harm the brand.

Dilution by Blurring in the AI Context



Association that “impairs the distinctiveness” of the famous mark

Six Statutory Blurring Factors — §1125(c)(2)(B)

1. Degree of similarity
2. Distinctiveness of the famous mark
3. Extent of exclusive use
4. Degree of recognition
5. Intent to create an association
6. Any actual association

Classic Analogies

*“Dupont shoes,
Buick aspirin,
Schlitz varnish,
Kodak pianos.”*

AI-Specific Blurring Risk

AI systems repeatedly associate famous marks with diverse, unrelated content — weakening the mark’s unique source-identifying power at scale

AI parallels: McDonald’s + financial services, Disney + pharmaceuticals, Coca-Cola + automotive repair

Dow Jones v. Perplexity AI: dilution by blurring claims survived at pleading stage

Blurring is a slower burn than tarnishment but potentially more systemic given the volume of AI outputs.

Contributory & Vicarious Liability for AI Platforms



Contributory TM Infringement — Inwood Standard

(1) Intentionally induces infringement, OR (2) continues supplying to one known to be infringing

Tiffany v. eBay (2d Cir. 2010): Generalized knowledge insufficient — must have specific, contemporary knowledge of particular infringing uses

For AI: merely knowing the system CAN generate infringing content ≠ contributory liability

BUT: intentionally designing system to mimic marks OR continuing service after specific notice → liability

Vicarious Liability

Andersen v. Stability AI: Sufficient control over infringing outputs alleged (CLIP model + marketing of artist-name prompts) → vicarious claim survived

Contributory Dilution

Recognized as viable theory (Reliable Carriers; *Coach v. Farmers Mkt.*)

Compare to intermediary liability frameworks in your jurisdictions — the knowledge specificity requirement is critical for AI platforms.

Defenses Available to AI Defendants



Descriptive Fair Use

§1115(b)(4)

Use in ordinary descriptive sense, not as trademark, in good faith

Baron App: Rejected — “cameo” used as sub-brand, not descriptively

Signal: hard to invoke when mark adopted as prominent product feature name

First Amendment / Rogers Test

Rogers v. Grimaldi

For expressive/artistic AI outputs: mark must have (1) no artistic relevance, OR (2) explicitly mislead

Andersen: open question whether commercial AI use qualifies as “expressive”

Unlikely to extend to purely commercial uses of marks as product features

TDRA Exclusions

§1125(c)(3)

Fair use (comparative advertising, parody), news reporting, noncommercial use

May protect AI for journalism/commentary — not commercial platforms

The defense landscape is narrowing for commercial AI platforms.

Case Landscape at a Glance



Case	Year	Key Issue	Outcome
<i>Baron App v. OpenAI</i>	2026	AI co. adopted CAMEO® as feature name	PI granted — infringement + tarnishment
<i>NY Times v. Microsoft</i>	2025	LLMs fabricated content attributed to publications	Dilution claims survived MTD
<i>Dow Jones v. Perplexity AI</i>	2025	Hallucinated content falsely attributed to WSJ/NY Post	False designation + dilution survived
<i>Andersen v. Stability AI</i>	2024	AI reproduced artistic styles via name prompts	Trade dress claims survived MTD
<i>Getty v. Stability AI</i>	2023+	Watermark reproduction in AI image outputs	TM + dilution survived pleading
<i>OpenAI v. Open A.I.</i>	2024/25	Confusingly similar name for AI tools	Summary judgment for OpenAI
<i>Lehrman v. Lovo</i>	2025	Voice cloning — Lanham Act claims	Dismissed — no source identification
<i>Tiffany v. eBay</i>	2010	Contributory liability for platform	No liability — general knowledge insufficient

Pattern: Courts are finding plausible claims in most cases; dismissals involve source-identification or knowledge-specificity limitations.

Practical Takeaways for an International Audience



FOR TRADEMARK OWNERS

- Monitor AI platforms for mark reproduction, mimicry, and false attribution
- Preliminary injunctive relief is a powerful tool — presumption of irreparable harm under §1116(a)
- Collect actual confusion evidence proactively: surveys, misdirected inquiries, social media
- Document specific instances — “specific, contemporary knowledge” strengthens contributory claims

FOR AI DEVELOPERS

- Conduct trademark clearance before naming features and products
- Implement content moderation and respond to specific infringement notices
- Curate training data — avoid watermarked or marked materials
- Implement safeguards against hallucinated attributions to real brands

The U.S. approach applies traditional doctrine without AI-specific modification — it may serve as a template or foil for other jurisdictions developing their own frameworks.

Open Questions & Future Outlook



Unresolved Merits Questions

- Scope of trade dress protection for artistic style in AI
- Application of Rogers test to commercial AI platforms
- Precise contours of contributory liability for AI systems
- Whether AI outputs constitute “use in commerce” by the developer vs. the user

Related Frontier Issues

- Copyright infringement by AI (training data and outputs)
- Right of publicity / deepfakes (No Fakes Act)
- False advertising under §1125(a)(1)(B)
- Antitrust implications of AI platform dominance

*Will Congress enact AI-specific trademark legislation?
Or will traditional doctrine continue to adapt through litigation?*

Thank You

Questions & Discussion

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The Dawn of the EU Design

What's new and what's next?



Background and Timeline

- **1998:** Directive (EU) 98/71/EC on the legal protection of designs
 - **2002:** Regulation (EU) 6/2002 on Community designs
 - **23 October 2024: Regulation** (EU) 2024/2822 amending Regulation (EU) 6/2002 – *directly applicable EU law*
 - **1 May 2025:** main amendments apply (phase I)
 - **1 July 2026:** further amendments apply (phase II)
 - **23 October 2024: Directive** (EU) 2024/2823 to modernise EU design law – *subject to national transposition*
 - **9 December 2027:** transposition deadline for the Member States
 - **9 December 2032:** end of certain spare-parts transition period
-

Key Changes

- **Terminology update:** the term “RCD” (Registered Community Design) is now replaced with the term EU Design (in line with the relevant trademark laws, i.e. EUTM)

- **The definition of “design”**

Earlier version

the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation

New version

the appearance of the whole or a part of a product resulting from the features, in particular the lines, contours, colours, shape, texture and/or materials, of the product itself and/or of its decoration, including the movement, transition or any other sort of animation of those features



- The definition of “product”

Earlier version

any industrial or handicraft item, including inter alia parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs

New version

*any industrial or handicraft item other than a computer program, **regardless of whether it is embodied in a physical object or materialises in a non-physical form**, including:*

- (a) packaging, sets of articles, spatial arrangements of items intended to form an interior or exterior environment, and parts intended to be assembled into a complex product;*
 - (b) graphic works or symbols, logos, surface patterns, typographic typefaces, and graphical user interfaces;*
-

- **Representation:** *“The design shall be represented in any form of visual reproduction, either in black and white or in colour. The reproduction may be static, dynamic or animated and shall be effected by any appropriate means, using generally available technology, including drawings, photographs, videos, computer imaging or computer modelling.”*
 - **Multiple applications:** the former “unity of class” requirement has been removed, allowing designs from different Locarno Classes in one multiple application
 - **Reaction to 3D printing (and AI):** the creation, downloading, copying and making available of any medium or software which records the design for the purpose of reproduction of a product that infringes the protected design, constitutes use of the design which should be subject to the right holder’s authorisation
 - **Registration symbol:** Right holders may use the © symbol to indicate that a product is protected by a registered EU Design
-

Something new(ish): spare-parts

- **Repair clause:** design protection cannot prevent the reproduction of a component part of a complex product where this is necessary to repair it and restore its original appearance
 - **Repair exception:** the repairer must inform consumers clearly and visibly on the product or in another appropriate form about the commercial origin and identity of the manufacturer of the component part, so that consumers can make an informed choice between competing products that can be used for the repair
 - ***Transition period:*** national protection for spare-parts designs that had been applied for before 8 December 2024 may continue until **9 December 2032**
-

Takeaways

- **Rethink what you protect** – digital and dynamic products deserve a place in design portfolios
 - **Rethink how you represent it** – the representation is increasingly central to defining the scope of protection
 - **Rethink how you file** – multi-class applications may change filing strategies
 - **Rethink enforcement** – design infringement is increasingly relevant to digital files and 3D printing
 - **Rethink existing portfolios** – keep an eye on spare-parts
-

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