

***The Ministry of Industry Consolidate Act No. 251,
17th April 1989***

The Consolidate Designs Act

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Notice is hereby given of the Danish Designs Act No. 218, 27th May 1970 with amendments pursuant to Act No. 854, 23rd December 1987.

**Chapter I
General Provisions**

1.-(1) In this Act, the term "design" shall mean the prototype for an article's appearance or for an ornament.

(2) The creator of a design, or his assignee, may obtain through registration in accordance with this Act the exclusive right to use the design in the course of trade (see Section 5) (the right to a design).

2.-(1) A design shall be registered only if it substantially differs from what has become known before the date of the application for registration.

(2) In this context, the term "known" shall apply to everything that has been made available to the public, whether as the result of reproduction, exhibition, offering for sale, or otherwise. Even a design that is not available to the public shall be deemed to be known if the design is evident from an application in this country for a patent or for registration of a trademark or a design, where such application has been-or is deemed under the relevant provisions to have been-made before the date

stated in subsection (1) and where the design is subsequently, when the application is dealt with, made available to the public.

3. A design may nevertheless be registered where, during the six months before the application for registration was filed, it was made available to the public:

- (i) as a result of a manifest abuse with respect to the applicant or his predecessor in title, or
- (ii) due to the design's display, by the applicant or his predecessor in title, at an official or officially recognized international exhibition.

4. A design shall not be registered:

- (i) if the design or its utilization conflicts with morality or public order,
- (ii) if, without permission, the design includes:
 - (a) any signs or indications referred to in Section 132 of the Civil Code or any matter likely to be confused therewith;
 - (b) anything which may appear to be the name or the trade name or portrait of another person, unless such person has been long dead, or anything which contains the distinctive name or pictorial representation of another person's real property;
 - (c) anything that may be interpreted as the distinctive title of another person's protected literary or artistic work or anything which infringes another's exclusive right to such work or his right to a photographic illustration;
 - (d) anything that does not substantially differ from a design registered in this country in the name of another person.

5.-(1) Subject to the exceptions stated below, the right to a design implies that no one other than the owner of the right (the registered owner of the design) may, without the owner's permission, use the design in the course of trade, by making, importing, offering, offering for sale, assigning or hiring out an article which does not substantially differ from the design or which includes something which does not substantially differ from it.

(2) The right to a design relates only to the articles for which the design has been registered and to articles similar thereto.

6.-(1) Any person who has, in the course of trade, been using a design in this country, at the time the application for registration is made, may notwithstanding the rights registered, continue such use while retaining its general character, provided that such use did not entail a manifest abuse with respect to the applicant for registration or to his predecessor in title. Under similar conditions, any person who has taken substantial steps to use the design in the course of trade in this country shall have the same right of use.

(2) The right defined in subsection 1) may be transferred only together with the business in which it has arisen or in which the design was to be used.

7. The Minister of Industry may order that spare parts and accessories for aircraft may be imported into this country, notwithstanding the right to a design, where such spare parts and accessories are to be used for the repair of aircraft belonging to a foreign country in which corresponding benefits are accorded to this country's aircraft.

8.-(1) The Minister of Industry may decree that, in relation to Sections 2 and 6, applications for registration of a design previously filed abroad shall be deemed to have been filed at the same time as the previous application.

(2) The Minister of Industry shall specify the conditions under which a right of priority may be claimed.

Chapter II

The Application for Registration and Processing Thereof

9. The Registering authority shall be the Patent and Trademark Office.

10.-(1) Applications for registration of designs shall be made in writing to the registering authority.

(2) The application shall contain information concerning the article for which registration of the design is applied for. The application shall mention the creator of the design. Where the applicant is not the creator, he shall produce evidence of his right to the design.

(3) A representation of the design shall be attached to the application document. Where the applicant, before the application is published in accordance with the provisions of Section 18, also deposits a model, the model shall be deemed to disclose the design. There shall also be attached to the application an attestation, signed by the applicant, confirming that the design to his knowledge has not, before the date when the application is made or is deemed to have been made (see Section 8), become known so as to preclude registration of the design by virtue of Section 2 (see Section 3).

(4) The applicant shall pay the prescribed application fee and additional fees (see Section 48).

11. An application may include more than one design where the articles for which registration of the design is applied for are related with respect to manufacture and use. An application for such multiple registration may comprise not more than 20 designs and must not concern ornaments.

12. An applicant who is not domiciled in this country shall have an agent resident in the country who is empowered to represent him in all matters concerning the application.

13.-(1) An application for registration of a design shall not be deemed to have been made until the applicant has deposited a representation or a model of the design.

(2) An application must not be altered so as to relate to a design or an article other than the design or article stated in the application.

14.-(1) When examining an application for registration of a design, the registering authority shall, within the scope fixed by the Minister of Industry, establish whether the conditions for registration of the design have been satisfied. Where the applicant has not observed the prescribed requirements,

or if the registering authority has other objections to the registration, the applicant shall be notified thereof and be given a time limit to reply or to make the necessary amendments.

(2) Where the applicant fails within the prescribed period to reply or to make the amendments to the application, the application shall be shelved. The notification referred to in subsection (1), second sentence, shall contain information to this effect.

(3) However, the application shall be reinstated upon the applicant's request if, within two months after the expiration of the prescribed period, the applicant makes a reply or amends the application and within the same period pays a prescribed reinstatement fee. Reinstatement may be granted only once.

15. If the registering authority still finds any objection to the acceptance of the application after receipt of the applicant's reply and provided that the applicant has had an opportunity to comment on the objection, the application shall be rejected unless the registering authority finds grounds for renewing the request under Section 14(1).

16.-(1) Where anyone claims before the registering authority that he and not the applicant is entitled to a design for which registration has been applied for, the registering authority may, if in doubt, request him to institute legal proceedings within a certain period. If the request is not complied with, the claim may be disregarded. Information to this effect shall be given in the request.

(2) Where a dispute concerning the title to a design is pending before a court of law, the application for registration may be suspended until the case is finally settled.

17.-(1) Where anyone proves to the registering authority that he and not the applicant is entitled to the design covered by the application, the authority shall transfer the application to him if he so requests. The transferee shall pay a new application fee.

(2) Where transfer is requested, the application must not be altered, shelved, rejected or accepted until the request for transfer has been finally decided.

18.-(1) Where the application is in the prescribed form and no objection has been found to registration, the application shall be published in order to give the public an opportunity to enter opposition. On the applicant's request, publication may however be deferred for a period of up to six months counted from the filing date or from which priority is claimed (see Section 8). Request for deferment shall be made on the application form.

(2) Opposition shall be made in writing to the registering authority within two months from the date of publication.

19.-(1) From the date when the application is laid open for public inspection, the application documents shall be available to everybody.

(2) After six months from the filing date or, if priority under Section 8 has been claimed, from the priority date, the application documents shall be made available to everyone, even where the application has not been laid open for public inspection. However, if it has been decided to shelve or reject the application, the documents shall not be made available unless the applicant requests reinstatement of the application or appeals against the rejection.

(3) If the applicant so requests, the documents shall be made available earlier than the time stated in subsection (1) and (2).

(4) Where the documents are made available under subsection (2) or (3), this fact shall be advertised.

20.-(1) After the expiration of the period prescribed in Section 18(2) a further examination of the application shall be carried out. Sections 14, 15, 16 and 17 shall be applicable to such examination.

(2) In the case of opposition the applicant shall be informed thereof. Where the opposition is not manifestly unjustified, the applicant shall be given an opportunity to answer the opposition.

21.-(1) An applicant for registration of a design may appeal against a decision of the registering authority. A person who has duly entered opposition may appeal against a decision accepting the application. Where the opponent withdraws his appeal, it may nevertheless be considered if there are special reasons for doing so.

(2) An applicant may appeal against the rejection and a request for reinstatement, provided for in Section 14(3), and against the acceptance of a request for transfer, provided for in Section 17. The person making a request for transfer may appeal against the rejection of his request.

22.-(1) Appeals against the decisions made according to Section 21 shall be filed with the Patent Board of Appeal (the Board of Appeal for Industrial Property Rights) no later than two months after the Registration Authority has informed the party concerned of the decision. The fee for appeal shall be paid within the same time limit. If payment is not made, the appeal shall be rejected as inadmissible.

(2) The decision of the Board of Appeal cannot be brought before a higher administrative authority.

(3) Proceedings for the trial of decisions of the Registration Authority which may be appealed against to the Board of Appeal may not be brought before the courts until the decision of the Board of Appeal has been given, cf. however Sections 31 and 32. Proceedings for the trial of decisions by the Board of Appeal shall be brought within two months after the date on which the party concerned was notified of the decision.

23.-(1) Where an application for registration of a design is accepted by a decision having force of law, the design shall be entered in the Register of Designs and the registration shall be published.

(2) A decision to shelve or to reject an application that has been published in the manner provided for in Section 18 shall be published after the decision has force of law.

Chapter III

Period of Validity of Registration of Design

24. Registration of a design shall be valid for five years, dating from the day which the application for registration was made. Registration may, on request, be renewed for two further periods of five years, each such period running from the expiration of the preceding period.

25.-(1) Application for the renewal of the registration shall be filed in writing with the Registration Authority no earlier than three months before and no later than six months after the expiration of the registration period in question. Within the same term, the applicant shall pay renewal fee and additional fees, cf. Section 48. If the fees have not been paid before the expiration of the term, the application shall be dismissed.

(2) The renewal of the registration shall be published.

Chapter IV

Licenses, Assignments, etc.

26.-(1) Where the registered owner of a design has given another person the right to use the design in the course of trade (license), the licensee may not assign his right in the absence of an agreement to that effect.

(2) A license included with a business may however be assigned, when the business is assigned, in the absence of an agreement to the contrary. In such a case the assignor shall remain responsible for ensuring the fulfilment of the license agreement.

27.-(1) In the case of the transfer of the right to a design or the grant or transfer of a license, a note to that effect shall on request and in return for a prescribed fee be entered in the Register of Designs. If it is proved that a license that has been entered in the Register has ceased to be valid, the entry shall be removed on request.

(2) Subsection (1) shall apply correspondingly to a compulsory license and to the right referred to in Section 32(2).

(3) In the case of multiple registration, a transfer of the right to a design may be entered only with respect to all of the designs.

(4) Legal proceedings regarding a design may always be brought against the person entered as registered owner and notifications from the registering authority need only be sent to such person.

28. Any person who, at the time when an application for registration of a design was made available to the public, had been using the design in the course of trade in this country, may where the application leads to registration obtain a compulsory license to use the design, provided that extraordinary reasons exist and that such person had no knowledge of the application and could not reasonably have obtained knowledge of it. In the same circumstances, any person who has taken substantial steps to use the design in the course of trade in this country shall have a right to a compulsory license. Such a compulsory license may also relate to a period before the design was registered.

29.-(1) A compulsory license may not be granted to any person who appears unable to use the design in an acceptable way and in accordance with the terms of the license.

(2) A compulsory license shall not prevent the registered owner of the design from using the design himself or from granting a license. A compulsory license may be transferred only together with the business in which it is used or in which it is intended to be used.

30. The Maritime and Commercial Court in Copenhagen shall decide, as the court of first instance, whether or not a compulsory license is to be granted and the extent to which the design may be used and shall determine the compensation and other terms of the license. When a substantial change in circumstances so demands, the Court may, if so requested by either of the parties, revoke the license or stipulate new terms.

Chapter V

Termination of Registration, etc.

31.-(1) Where a design has been registered contrary to Sections 1 to 4, and there still remains an objection to registration, the registration may be declared invalid by court decision. However, registration may not be declared invalid on the ground that the proprietor is only a part owner of the right to design.

(2) An action based on the grant of registration to a person who is not the rightful owner as defined in Section 1 may be brought only by the person who claims to be entitled to the design. Such action shall be brought within one year after the plaintiff has had knowledge of the registration and of the other circumstances on which the action is based. Where the registered owner of the design acted in good faith when the design was registered or when the right to the design was transferred to him, the action may not be instituted later than three years after the registration.

(3) Moreover, proceedings for cancellation of a registration may be instituted by anyone having a legal interest therein. An action based on a provision of Section 4(1) or (2) (a) may be brought also by the Patent and Trademark Office.

32.-(1) Where a design has been registered in the name of a person who is not the rightful owner as defined in Section 1, the Court shall, when an action is brought by the rightful owner, transfer the registration to him. Where such action is instituted Section 31(2) shall apply.

(2) Where a person who has been refused registration of a design has begun in good faith to use the design in the course of trade in this country or has taken substantial steps for that purpose, he may, on payment of reasonable compensation and on the fulfilment of other reasonable terms, continue such use or start the intended use, keeping its general character. In similar circumstances, the holder of a license entered in the Register shall have the same right.

(3) The right defined in subsection (2) may be transferred only together with the business in which the design is used or in which the design is intended to be used.

33.-(1) Where the registered owner of a design declares in a written statement addressed to the registering authority that he renounces his right to a design, the registering authority shall remove the design from the Register.

(2) Where legal proceedings concerning the transfer of registration have been instituted, the design may not be removed from the Register until there is a final decision in the proceedings.

Chapter VI

Obligation to Provide Information

34.-(1) Where a person who has applied for registration of a design invokes his application against another person, before the application documents have become available to the public, he shall on request allow such other person to be given access to the documents.

(2) Any person who by direct representation to another person, in an advertisement or by the marking of an article or its packaging or otherwise, states that registration of a design has been applied for or granted, without at the same time giving information about the number of the application or of the registration, shall, if so requested, give such information without delay. Where it is not expressly stated that registration has been applied for or granted, but the circumstances are such as to bring about the belief that this is the case, information shall, if requested, be given without delay as to whether registration has been applied or granted.

35.-(1) Anyone who intentionally infringes the exclusive right to a design (infringement of a design) shall be liable to a fine.

(2) If the offense is committed by a limited liability company, a cooperative society or the like, the enterprise as such may be liable to a fine.

(3) The prosecution shall be instituted by the aggrieved person.

36.-(1) Anyone who intentionally or through negligence commits infringement of a design shall be liable to pay reasonable compensation for the use of the design, as well as compensation for the further damage caused by the infringement.

(2) Anyone who commits infringement of a design without intention or negligence and obtains a profit thereby shall be liable to pay compensation in accordance with subsection (1), if and to the extent that this is found reasonable. The amount of compensation shall not however exceed the presumed profit from the design infringement.

37.-(1) In the case of infringement of a design, at the request of the aggrieved person, the Court may order, to the extent that is found reasonable for preventing continued infringement, that goods which have been made or imported into this country illegally, or articles whose use would constitute design infringement, to be altered in a certain way or destroyed or, in the case of goods made or imported illegally, to be surrendered, against remuneration, to the person whose right has been infringed. This shall not apply to a person who has acquired the goods or articles or rights to them in good faith and who has not himself committed infringement.

(2) Notwithstanding the provisions of subsection (1), the Court may, where special reasons exist and if so requested, give the owner of the goods made or imported illegally a right of disposal over such goods during the remainder of the period of protection or during part thereof in return for reasonable compensation and under other reasonable terms.

38.-(1) If anyone without authorization uses in the course of trade a design that is the subject of an application for registration, after the application documents have been made available to the public, the provisions relating to design infringement with the exception of Section 35 shall apply correspondingly if the application leads to registration. Compensation for damage arising from

infringement committed before the application documents were made available to the public shall be payable only to the extent provided for in Section 36(2).

(2) The limitation period for claims to compensation shall not come to an end before one year after registration of the design.

39. In proceedings for design infringement, a plea that the registration is invalid may not be made unless an action for a declaration of invalidity has been brought against the registered owner or he has been summoned under Section 43. If the design registration is declared invalid, Section 35 to 38 shall not apply.

40.-(1) Anyone who, in the cases referred to in Section 34, fails to fulfil his obligation or gives false information shall be liable to a fine if a heavier penalty is not provided for by other legislation and shall be liable to remedy the damage caused thereby to the extent found reasonable.

(2) Section 35(2) and (3) shall apply correspondingly.

Chapter VIII

Rules Concerning Legal Proceedings

41. In proceedings concerning the right to a design, cancellation of registration or the transfer of the design right, applicants and registered owners of designs who are not resident in this country shall be considered within the jurisdiction of Copenhagen.

42.-(1) Anyone bringing an action for cancellation of a design registration, for transfer of the registration or for a compulsory license shall at the same time notify the registering authority accordingly in writing with a view to an entry in the Register of Designs. He shall also notify any registered licensee whose address is recorded in the Register. Any licensee wishing to bring proceedings for design infringement shall similarly notify the registered owner of the design.

(2) If, on the day that the case comes up for trial, the plaintiff does not prove that the notification required by subsection (1) has been made, the Court may give him time for this to be done. If he fails to make use of this time, the action shall be dismissed.

43.-(1) Where, in an action for design infringement brought by the registered owner of a design, the defendant intends to claim that the registration should be cancelled, he shall make the notification provided for in Section 42(1) to the registering authority and to registered licensees. Section 42(2) shall apply correspondingly, so that the claim for cancellation shall be dismissed if the time limit is not observed.

(2) Where, in an action for design infringement brought by a licensee, the defendant wishes to claim as against the registered owner of the design that the registration should be cancelled, he may summon the registered owner or appear, irrespective of the latter's place of jurisdiction. Chapter 34 of the Administration of Justice Act shall apply correspondingly.

44. Copies of judgments in cases referred to in Sections 16, 31 and 32, and 35 to 38 shall be sent to the Patent and Trademark office on the initiative of the Court.

Chapter IX

Miscellaneous Provisions

45.-(1) The registered owner of a design who is not domiciled in this country shall have an agent resident here and entered in the Register of Designs who shall be empowered to receive on his behalf communications and other notifications relation to the design.

(2) Where the registered owner of a design does not have such an agent, communications etc. may be served in the manner prescribed in Section 160(2) of the Administration of Justice Act.

46. The minister of Industry may, provided that reciprocity exists, decide that Sections 12 and 45 shall not apply to registered owners of designs who are domiciled in other countries or who have an agent resident in those countries and entered in the Danish Register of Designs in accordance with Sections 12 and 45.

47.-(1) The Minister of Industry shall lay down specified regulations of the way in which the Act shall be carried into effect, including the filing and examination of design applications, the arrangement and keeping of the Design Register, the publication and contents of Dansk Mønstertidende (the Danish Designs Gazette), and the procedure of the Registration Authority. Regarding the latter, it may be determined that the Registration Authority's records of filed applications shall be publicly available. The Minister of Industry may issue specified rules regarding the days on which the Registration Authority is closed.

48.-(1) An applicant for registration of a design or for renewal of registration of a design shall, in addition to the application an renewal fees, pay the following fees:

(i) a class fee for each class beyond the first;

(ii) a multiple registration fee for each design beyond the first;

(iii) a storage fee for a model;

(iv) a publication fee for each representation beyond the first.

(2) Where the renewal fee is paid after the expiration of the registration period, a supplementary fee shall be payable at the same time.

(3) The Minister of Industry shall determine the fees under this Act and the fees for service, extracts from the Register etc.

48a. If the Minister of Industry delegates his authority according to the present Act to the Danish Patent Office, the Minister can issue rules stipulating that appeals cannot be brought before a higher administrative authority.

Chapter X

Provisions for Entry into Force and Transitional Provisions

49.-(1) This act shall enter into force on October 1, 1970.

(2) The Designs Act, No. 107 of April 1, 1905, as published in Law Notification No. 193 of September 1, 1936, and as amended in pursuance of Section 2 of Act No. 247 of June 9, 1967, is repealed.

(3) (Transitional Provision, omitted)

50. This Act shall not apply to the Faroe Islands; the Act may, however, by Royal Ordinance, be made to apply to these Islands with such amendments as circumstances in the Faroe Islands may require¹).

Act No. 854, 23rd December 1987 on amendment of the Patents Act, the Designs Act, the Trade Marks Act, and the Collective Marks Acts contains the following provisions concerning entry into force and transition:

5.-(1) This Act shall enter into force on 1st January 1988.²

(2) Pending appeals filed with the Design Board of Appeal prior to 1st January 1988 shall be decided upon by the Patent Board of Appeal according to the provisions of the present Act as laid down in Section 2, Subsection 1.

The Ministry of Industry, 17th April 1989

Niels Wilhjelm

/ Per Lund Thoft

¹ By Royal Order of 26th July 1971, the Danish Designs Act No. 218, 27th May 1970 has been put into force on 2th August 1971 on the Faroe Islands.

² The present consolidate Act Section 22, Section 25, Subsection 1, Section 47, Subsection 1, and Section 48a.