

Protection of Products Design and Packaging in the Form of Branches of Intellectual Property Rights

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Received: 31/03/2016

Accepted: 07/09/2016

Introduction

One of the most important factors that encourages consumers to purchase goods or use services, and make them choose one of them among various goods and services, is the design of products and services or their packaging. Due to this importance, intellectual property rights protect the design of goods and services or their packaging. However, this protection is not limited to one branch of intellectual property rights and it is possible that various aspects of intellectual property rights protect the design and packaging under some conditions. In this regard, the question that arises here is what are the differences between the protection in various forms of intellectual property rights and that which protection is more appropriate? And finally, is multiple protection possible?

Theoretical Framework

The present article attempts to examine the aforementioned issue in two parts. In the first part, protection of design or packaging through various aspects of intellectual property rights will be studied and compared with each other. Then, in the second part, the protection of designs and packaging through multiple legal frameworks is evaluated and scrutinized.

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Methodology

This study attempts to find an answer to questions above by using an analytical-descriptive approach. To this aim, this study seeks to draw a comparison between the various branches of intellectual property rights by using desk research through making use of articles, books, and conducted studies. In some cases, this study benefits from practical examples and judicial decisions in different countries. In addition, in order to investigate more about Iranian legal system, a field research was conducted and then discussed with relevant experts.

Results and Discussion

The results show that various branches of intellectual property rights for protection of design of goods and services or their packaging differ from each other in many ways, including conditions, term, and registration requisiteness. The following table can show the comparison between the different branches in summary.

Type	Term	Benefits	Drawbacks
Trade mark Trade dress)(As long as use is continued (subject to extension)	<ul style="list-style-type: none"> - No need to originality. - No need to novelty. - The longest period of protection. 	<ul style="list-style-type: none"> - Must be distinctive. - Must be nonfunctional. - Must be registered (in most legal systems).
Industrial designs	10 – 25 years	<ul style="list-style-type: none"> - No need to distinction. - Protection through this branch can help to acquire distinction and cause trade dress protection in future. 	<ul style="list-style-type: none"> - Must be novel. - Must be original (in some legal systems). - Must be nonfunctional. - Must be registered. - The shortest period of protection.
Copyright	Life of author + 50 years after his death	<ul style="list-style-type: none"> - No need to distinction. - No need to novelty. - No need to registration (in most legal systems). 	<ul style="list-style-type: none"> - Must be original. - Possibility of creating similar works by others.
Unfair competition	Unlimited	<ul style="list-style-type: none"> - No need to the conditions of intellectual property rights (distinction, novelty, originality) - No need to registration. - Protection of consumers and public along with the right holder. 	<ul style="list-style-type: none"> - Not grant of exclusive rights to the owner. - Proof of civil liability's elements in a lawsuit.

Conclusion

The results of this study show that a decisive response about the most appropriate

branch of intellectual property rights in relation to protection of design of goods and services or their packaging cannot be given, because each aspects of intellectual property rights has several advantages and disadvantages and ultimately, the designer can determine which branch is more suitable to protect his design or packaging. On the other hand, it should be noted that different legal systems accept multiple protection of a design or packaging, as each legal framework is independent of other formats regarding purpose, function, and conditions.

Key words: Product (Service) design and packaging, Trade dress, Industrial design, Artistic and literary rights, Unfair competition law.

JEL Classification: K11

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