

Jersey Law 11/1957

REGISTERED DESIGNS (JERSEY) LAW, 1957.

A LAW to provide for the registration in the Island of designs registered in the United Kingdom, and for matters incidental thereto, sanctioned by Order of Her Majesty in Council of the

29th day of APRIL, 1957.

(Registered on the 18th day of May, 1957).

STATES OF JERSEY.

The 22nd day of January, 1957.

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law: -

ARTICLE 1

DEFINITIONS

(1) In this Law, unless the context otherwise requires –

“article” means any article of manufacture and includes any part of an article if that part is made separately;

“the Comptroller-General” means the Comptroller General of Patents, Designs and Trade Marks in the United Kingdom;

“copyright” has the meaning assigned to it by paragraph (1) of Article 9 of this Law;

“design” means features of shape, configuration, pattern or ornament applied to an article by any industrial process or means, being features which in the finished article appeal to and are judged solely by the eye, but does not include a method or principle of construction or features of shape or configuration which are dictated solely by the function which the article to be made in that shape or configuration has to perform;

“Government department” means a department of Her Majesty’s Government in the United Kingdom;

“register” means enter in the register of designs;

“the register of designs” means the register of designs kept in pursuance of Article 3 of this Law;

“the Registered Designs Act” means the Registered Designs Act, 1949 (12, 13 and 14 Geo. 6, c. 88);

“registered design” means a design that is actually registered;

“registered proprietor” means, in relation to a design, the person or persons for the time being entered in the register of designs as proprietor of the design;

“set of articles” means a number of articles of the same general character ordinarily on sale or intended to be used together, to each of which the same design, or the same design with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof, is applied;

“the United Kingdom register of designs” means the register of designs kept in pursuance of section seventeen of the Registered Designs Act.

(2) In Articles 3, 4, 6, 10, 11, 12 and 15 of this Law, “the court” means the “Samedi” division of the Royal Court.

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(3) Any reference in this Law to an article in respect of which a design is registered shall, in the case of a design registered in respect of a set of articles, be construed as a reference to any article of that set.

ARTICLE 2

**LIMITATION OF POWERS OF ROYAL COURT IN RELATION
TO REGISTRATION OF DESIGNS**

As from the coming into force of this Law, no title or interest in respect of any design shall be entered in the rolls of the Royal Court otherwise than in accordance with the provisions of this Law.

ARTICLE 3

REGISTER OF DESIGNS

(1) There shall be kept at the Judicial Greffe a register, to be called “the register of designs”, in which there shall be entered the representation or specimen of designs, names and addresses of the proprietors thereof, particulars of assignments and of transmissions of registered designs, and such other matters affecting the validity of proprietorship of designs, as may be prescribed by rules of court, or as the Judicial Greffier may think fit.

(2) Subject to the provisions of this Law and to rules of court, the register of designs shall, at all convenient times, be open to inspection by the public; and certified copies of any entry in the register shall be given to any person requiring them on payment of the appropriate fee:

Provided that no representation of specimen of a design shall be open to inspection except by the registered proprietor or a person authorized in writing by him, or a person authorized by the Court or the Judicial Greffier, before the date on which it became, or is due to become, open to public inspection in the United Kingdom.

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(3) The register of designs shall be *prima facie* evidence of any matters required or authorized by this Law to be entered therein.

(4) No notice of any trust, whether expressed, implied or constructive, shall be entered in the register of designs and the Judicial Greffier shall not be affected by any such notice.

ARTICLE 4

REGISTRATION OF DESIGNS

(1) Any person for the time being entered in the United Kingdom register of designs, as the proprietor of a design, may apply to the Judicial Greffier for the registration of the design.

(2) Where any partial assignment or transmission of the design has been made, every person having any legal interest in the design shall be joined in the application for registration.

(3) Every application under this Article shall be made in such manner as may be prescribed by rules of court and shall be accompanied by a certified representation or specimen of the design and a certificate of the Comptroller-General setting forth the rights or interest to which the application relates, and stating the date at which the representation or specimen of the design became, or is due to become, open to public inspection in the United Kingdom.

(4) Where an application under paragraph (3) of this Article is received, together with the documents mentioned in that paragraph, the Judicial Greffier shall register the design and issue a certificate of registration unless it appears doubtful to him whether the application should be granted or any question arises in relation to the application, in which case he shall present a statement of the matter in question to the Bailiff for the directions of the court, and the court may order such persons to be convened, such evidence to be taken and such enquiries to be made as the Court may deem necessary and, subject to the provisions of this Law and to rules of court, shall determine whether the design should be registered.

ARTICLE 5

**REGISTRATION OF EXTENSIONS OF COPYRIGHT IN
DESIGNS**

Where a design has been registered and the period of copyright in the design in the United Kingdom has been extended, the registered proprietor may apply to the Judicial Greffier in such manner as may be prescribed by rules of court for the registration of the extension, and the Judicial Greffier, on production of sufficient evidence thereof, shall register the same.

ARTICLE 6

REGISTRATION OF ASSIGNMENTS, ETC

(1) Where a person becomes entitled by assignment, transmission or other operation of law, to a registered design, or to a share in a registered design, or becomes entitled as licensee or otherwise to any other interest in a registered design, and has obtained registration in the United Kingdom of such title or interest in accordance with the law for the time being in force in the United Kingdom, he may apply to the Judicial Greffier for the registration of such title or interest.

(2) Every such application shall be made in such manner as may be prescribed by rules of court and shall be accompanied by a certificate of the Comptroller-General relating to the registration in the United Kingdom of such title or interest.

(3) On the receipt of such an application, the Judicial Greffier shall register the title or interest unless it appears doubtful to him whether the application should be granted, or any question arises in relation to the application, in which event he shall present a statement of the matter in question to the Bailiff for the directions of the court, and the court may order such persons to be convened, such evidence to be taken and such enquiries to be made as the court may deem necessary and, subject to the provisions of this Law and to rules of court, shall determine whether the application should be granted.

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ARTICLE 7

CANCELLATION OF REGISTRATION, AND REGISTRATION OF CHANGE OF NAME AND ADDRESS

The Judicial Greffier may, on request in writing made by the registered proprietor –

- (a) cancel the registration of a design; or
- (b) enter in the register any change in the name or address of the registered proprietor.

ARTICLE 8

LEGAL PRESENCE IN ISLAND UNNECESSARY FOR PURPOSE OF MAKING APPLICATIONS

An application under Article 4, 5, 6 or 7 of this Law may be made notwithstanding the fact that the person making the application is not present in the Island and is not represented by an attorney present in the Island so long as he has notified the Judicial Greffier of an address in the Island to which any notice or summons in connexion with any matter relating to the design may be sent, and, in such case, any such notice or summons shall be deemed to be sufficiently served if it is sent to that address.

ARTICLE 9

EFFECT OF REGISTRATION

(1) Subject to the provisions of this Law, the registration of a design or any title or interest in a design shall give to the registered proprietor the copyright in the registered design, that is to say the exclusive right in the Island to make or import for sale or for use for the purposes of any trade or business, or to sell, hire or offer for sale or hire, any article in respect of which the design is registered, being an article to which the registered design or a design not substantially different from the registered design has been applied, and to make anything for enabling

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any such article to be made as aforesaid, whether in the Island or elsewhere, but, save as aforesaid, no person shall be entitled to any privileges or rights in respect of any design.

(2) The copyright so given shall date from the date of registration in the United Kingdom and shall continue in force for so long only as the registration in the United Kingdom remains in force:

Provided that no action for infringement of copyright in the design shall be entertained –

- (a) in respect of any use of the design prior to the date of the registration thereof under the Law; or
- (b) where the period of copyright in the design has been extended, unless such extension has been registered.

ARTICLE 10

POWER OF COURT TO CANCEL REGISTRATION

(1) A petition for the cancellation of the registration of a design may be presented to the court by the Attorney General or by any person who alleges that his interests have been pre-judicially affected by such registration on any of the following grounds, that is to say –

- (a) that the design was registered on the application of a person not entitled under the provisions of this Law to make the application; or
- (b) that the design has been used in the Island before the date of the registration thereof in the United Kingdom; or
- (c) that more than three years had elapsed between the date of the registration of the design in the United Kingdom and the date of the registration thereof under this Law and that, on the latter date, the design was being used in the Island on a commercial scale; or

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- (d) that, three years having elapsed since the date of the registration, the design (being one capable of being used in the Island) is not, at the time of the presentation of the petition, being used in the Island on a commercial scale; or
- (e) that, three years having elapsed since the date of the registration, the demand in the Island for the design is not being met to an adequate extent and on reasonable terms;

and the court, after hearing the parties if desirous of being heard, may make an order cancelling the registration or dismissing the petition.

(2) In proceedings under this Article, the court may determine any question which it may be necessary or expedient to determine in connexion with such cancellation.

ARTICLE 11

RECTIFICATION OF REGISTER

(1) The court may, on the application of the Attorney General or of any person aggrieved, order the register of designs to be rectified by the making of any entry therein or the variation or deletion of any such entry.

(2) In proceedings under this Article, the court may determine any question which it may be necessary or expedient to determine in connexion with the rectification of the register.

ARTICLE 12

POWER TO CORRECT CLERICAL ERRORS

(1) The Judicial Greffier may, in accordance with the provisions of this Article, correct any clerical error in the register of designs.

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(2) A correction may be made in pursuance of this Article either upon a request in writing made by any person interested, or without such a request.

(3) Where the Judicial Greffier proposes to make any such correction as aforesaid otherwise than in pursuance of a request made under this Article, he shall give notice of the proposal to the registered proprietor and to any other person who appears to him to be concerned, and shall give them an opportunity to be heard before making the correction.

(4) Where a request is made under this Article for the making of any such correction as aforesaid and it appears to the Judicial Greffier that the correction would materially affect the privileges and rights conferred by the registration of the design, he shall require the person by whom the request was made to apply to the court for the rectification of the register of designs in accordance with the provisions of Article 11 of this Law.

ARTICLE 13

USE OF REGISTERED DESIGNS FOR THE SERVICES OF THE CROWN

(1) Subject to the provisions of this Law, the registration of a design shall have the same effect against the Crown as it has against a subject:

Provided that any Government department, and any person authorized in writing by any such department, may use any registered design for the services of the Crown in the like manner, to the like extent and subject to the like conditions as it might be used in the United Kingdom by any such department or by any person so authorized.

(2) For the purposes of this Article, any use of a registered design for the supply to the Government of any country outside the United Kingdom, in pursuance of any agreement or arrangement between Her Majesty's Government in the United Kingdom and the government of that country, of articles required for the defence of that country, shall be

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deemed to be a use of the design for the services of the Crown; and the power of a Government department or a person authorized by a Government department under this Article to use a design shall include power –

- (a) to sell such articles to the government of any country in pursuance of any such agreement or arrangement as aforesaid; and
- (b) to sell to any person any articles made in the exercise of the powers conferred by this Article which are no longer required for the purpose for which they were made.

(3) The purchaser of any articles sold in the exercise of powers conferred by this Article, and any person claiming through him, shall have power to deal with them in the same manner as if the rights in the registered design were held on behalf of Her Majesty.

ARTICLE 14

USE OF REGISTERED DESIGNS FOR THE SERVICE OF THE STATES

(1) Notwithstanding anything in this Law, the States, and any person authorized by the States, may use for the public service of the Island any registered design upon such terms as may be agreed, either before or after the use, between the States and the registered proprietor, or as may in default of agreement be determined by the court on a reference under Article 15 of this Law.

(2) The authority of the States in respect of a registered design may be given under this Article either before or after the design is registered and either before or after the acts in respect of which the authority is given are done, and may be given to any person whether or not he is authorized directly or indirectly by the registered proprietor to use the design.

(3) Where any use of a registered design is made by or with the authority of the States under this Article, then, unless it appears

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to the States that it would be contrary to the public interest so to do, the States shall notify the registered proprietor as soon as practicable after the use is begun, and furnish him with such information as to the extent of the use as he may from time to time require.

(4) The power of the States or of a person authorized by the States under this Article to use a registered design shall include power to sell to any person any articles made in the exercise of the powers conferred by this Article which are no longer required for the purpose for which they were made.

(5) The purchaser of any articles sold in the exercise of powers conferred by this Article, and any person claiming through him, shall have power to deal with them in the same manner as if the rights in the registered design were held on behalf of the States.

(6) The States may, by Act, delegate the exercise of all or any of its powers under this Article to any Committee of the States.

ARTICLE 15

REFERENCE OF DISPUTES AS TO USE BY CROWN OR STATES

(1) Any dispute as to the exercise by a Government department or by the States, or by a person authorized by a Government department or by the States, of the powers conferred by Article 13 or 14 of this Law, or as to terms for the use of a registered design for the services of the Crown or of the States thereunder, or as to the right of any person to receive any part of a payment in respect of those services, may be referred to the court by either party to the dispute in such manner as may be prescribed by rules of court.

(2) In any proceedings under this Article to which a Government department or the States are a party, the department or the States, as the case may be, may –

- (a) if the registered proprietor is a party to the proceedings, apply for the cancellation of the registration of the design

upon any ground upon which the registration of a design may be cancelled under Article 10 of this Law;

- (b) in any case, put in issue the validity of the registration of the design without applying for its cancellation.

(3) In determining under this Article any dispute between a Government department or the States and any person as to terms for the use of a design for the services of the Crown or the States respectively, the court shall have regard to any benefit or compensation which that person or any person from whom he derives title may have received, or may be entitled to receive, directly or indirectly, from any Government department or from the States, as the case may be, in respect of the design in question.

(4) In any proceedings under this Article, the court may at any time order the whole proceedings or any question or issue of fact arising therein to be referred to a special or official referee or an arbitrator on such terms as the court may direct; and references to the court in the foregoing provisions of this Article shall be construed accordingly.

ARTICLE 16

EXEMPTION OF INNOCENT INFRINGER FROM LIABILITY FOR DAMAGES

(1) In proceedings for the infringement of the copyright in a registered design, damages shall not be awarded against a defendant who proves that at the date of the infringement he was not aware, and had no reasonable ground for supposing, that the design was registered, and a person shall not be deemed to have been aware or to have had reasonable grounds for supposing as aforesaid by reason only of the marking of an article with the word "Registered" or any abbreviation thereof or any other word or words expressing or implying that the design applied to the article has been registered, unless the number of the design and the words "in Jersey" followed the word "Registered" or the abbreviation thereof or the words "Registered in Jersey" accompanied that other word or those other words.

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(2) Nothing in this Article shall affect the power of the court to grant an injunction in any proceedings for infringement of copyright in a registered design.

ARTICLE 17

REMEDY FOR GROUNDLESS THREATS OF INFRINGEMENT PROCEEDINGS

(1) Where any person (whether or not entitled to or interested in a registered design) by circulars, advertisements or otherwise threatens any other person with proceedings for infringement of the copyright in a registered design, any person aggrieved thereby may bring an action against him for any such relief as is mentioned in paragraph (2) of this Article.

(2) Unless in any action brought by virtue of this Article the defendant proves that the acts in respect of which proceedings were threatened constitute or, if done, would constitute, an infringement of the copyright in a registered design the registration of which is not shown by the plaintiff to be invalid, the plaintiff shall be entitled to the following relief, that is to say –

- (a) a declaration to the effect that the threats are unjustifiable;
- (b) an injunction against the continuance of the threats; and
- (c) such damages, if any, as he has sustained thereby.

(3) For the avoidance of doubt, it is hereby declared that a mere notification that a design is registered does not constitute a threat of proceedings within the meaning of this Article.

ARTICLE 18

FALSIFICATION OF REGISTER, ETC

If any person makes or causes to be made a false entry in the register of designs, or a writing falsely purporting to be a copy of an entry

in that register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be liable to imprisonment for a term not exceeding two years, or to a fine not exceeding one hundred pounds, or to both such imprisonment and fine.

ARTICLE 19

FINE FOR FALSELY REPRESENTING A DESIGN AS REGISTERED

(1) If any person falsely represents that a design applied to any article sold by him is registered in respect of that article, he shall be liable to a fine not exceeding five pounds; and for the purposes of this provision a person who sells an article having stamped, engraved or impressed thereon or otherwise applied thereto the words “Registered in Jersey”, or any other word expressing or implying that the design applied to the article is registered, shall be deemed to represent that the design applied to the article is registered in respect of that article.

(2) If any person, after the copyright in a registered design has expired, marks any article to which the design has been applied with the words “Registered in Jersey” or any word or words implying that there is a subsisting copyright in the design, or causes any such article to be so marked, he shall be liable to a fine not exceeding five pounds.

ARTICLE 20

RULES OF COURT

(1) The power to make rules of court under the Royal Court (Jersey) Law, 1948,¹ shall include a power to make rules for the purposes of this Law and proceedings thereunder, and such rules may make provision –

(a) for the appointment of advisers to assist the court in proceedings for infringement of copyright in registered

¹ Tome VII, page 510.

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designs and proceedings under this Law, and for regulating the functions of such advisers;

- (b) for enabling persons to take proceedings under this Law *in forma pauperis*;
- (c) for the hearing by the court in vacation of all such matters under this Law as may require to be immediately or promptly heard.

(2) The remuneration of any adviser appointed under rules made in pursuance of this Article shall be defrayed out of the General Revenues of the States.

ARTICLE 21

POWERS OF STATES AS REGARDS FEES

For the avoidance of doubt, it is hereby declared that the power to fix fees conferred upon the States by –

- (a) “La Loi (1930) constituant le Département du Vicomte”;²
- (b) “La Loi (1930) constituant le Département des Officiers de la Couronne”;³
- (c) “La Loi (1931) constituant le Département du Greffe Judiciaire”;⁴
- (d) “La Loi (1936) touchant la Rétribution de la charge de Bailli”;⁵

or by any Law, whether passed before or after the commencement of this Law, amending the said Laws, shall include a power to fix fees in respect

² Tome VII (1957 edition), page 67.

³ Tome VII (1957 edition), page 101.

⁴ Tome VII (1957 edition), page 109.

⁵ Tome VII (1957 edition), page 496.

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of the registration of designs and applications therefor, and in respect of all other matters relating to designs under this Law.

ARTICLE 22

SAVING OF VESTED RIGHTS

Nothing in this Law shall be deemed to derogate from such rights as may be possessed by any person by virtue of the registration in the rolls of the Royal Court before the coming into force of this Law of any document relating to a design.

ARTICLE 23

SHORT TITLE AND COMMENCEMENT

(1) This Law may be cited as the Registered Designs (Jersey) Law, 1957.

(2) This Law shall come into force on such day or days as the States may by Act appoint,⁶ and different days may be fixed for different purposes and different provisions of this Law.

⁶ This Law came into force on 1st March, 1958 (R & O 3873).