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Register or lose it! Protecting your furniture designs in Australia

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Legal protection for furniture designers in Australia is one of the most complex areas of intellectual property law. Have you ever wondered how some retailers can sell replica furniture and not get into trouble?

Have you ever wondered if there is **anything** you can do in Australia to prevent your designs from being copied?

Fear not, if you are a furniture maker in Australia then rest assured there are things that you can (and should!) do to protect your designs.

Take away tips

- 3D designs in Australia (such as furniture) can potentially either be protected by copyright (in some limited circumstances) or they need to be registered as a design – it is important to know the difference and know when you need to ask
- Designs must be registered **before** the product is released to the market (including by way of showing at a trade show or online)

Do you need to register your design?

In general terms, if you just make a one-off unique piece of furniture, it will likely be protected by copyright which means that you get automatic protection.

However, if you intend to mass manufacture that product (as is more likely the case), then that furniture design will lose its protection by copyright and you need to be protecting it by design registration.

To add a further element to the mix, even if your product is mass manufactured, if it is deemed to be a “work of artistic craftsmanship”, then it could still be protected by copyright.

Confused yet?

Don't worry, you are not alone. This complex area of law is called the copyright/designs overlap and if you are looking to design and sell unique piece of furniture (and prevent others from copying your designs), it is important to get some advice upfront.

Are your products works of artistic craftsmanship?

To determine whether your products could be protected by copyright, you need to consider whether your products are works of artistic craftsmanship. However, be wary of falling into the trap of thinking, “they are artistic, so of course they are!”.

To determine whether your products are works of artistic craftsmanship, careful consideration needs to be given to a range of quite subjective factors, including whether your products are made by hand or by an automated process and whether they are aesthetic or purely functional.

Because this area is complex, it is important to get advice in relation to any particular product to determine whether it will be protected by copyright. If not, you will need to be looking at design registration to ensure that your products are protected.

How do I register my design?

Designs can be registered with IP Australia and registration protects the overall shape, configuration, pattern and ornamentation of your furniture. The initial process of registration is fairly straight forward. Your application will go through a formalities check and if acceptable, you will obtain a registered design number, which can be a strong deterrent to copying.

Certifying your design

If someone actually copies your design, you may also need to get your design **certified**. One of the requirements to obtain a successful certified design registration is that your product is “new and distinctive”. Upon request, IP Australia will examine the registered design to examine whether it satisfies the requirement of being new and distinct when compared to others in the marketplace.

In other words, your design must be unique and distinctive from other products in the marketplace. Further, you must apply to register your design **before** you release your

product to the marketplace (including by way of showing online or at a trade show).

Therefore, it is essential that you keep your design **confidential** before you have obtained your design registration.

Benefits of having your design registered and certified

Once you have registered your design, you are granted a number of exclusive and enforceable rights, including:

1. The right to use the design and mark products that embody the design;
2. The right to sell, license and import the design; and
3. The right to authorise any person to do the above acts.

Namely, it means that no one else can **copy** your design without your authorisation, giving you a competitive edge in the marketplace.

What can AFA Partners, Sharon Givoni Consulting, do to help you and your business?

Sharon Givoni Consulting can help you assess whether your product will be protected by copyright as a work of artistic craftsmanship, or whether you should secure design registration.

If your products need to be registered as a design, they can assist you in filing the application with IP Australia and securing your certified registered design. Please note that your design applications must be filed before you show your designs in public, so it is important to get advice early. Enquire [HERE](#)

Disclaimer: This article is of a general nature and not to be replaced with tailored legal advice.

About Sharon Givoni

Sharon Givoni is a Melbourne-based intellectual property lawyer with clients in the furnishings industry. Specialising in trade mark and designs work as well as contracts and copyright advice.