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## ECONOMIC IMPORTANCE AND LEGAL PROTECTION OF DESIGN IN SERBIA

*For the success of any product at the market aesthetic appeal is of tremendous importance, or the form of a product. For consumer products in particular there is continual research and improvement of external form of products and its packaging as necessary elements of attractiveness for potential consumers. Appearance should correspond with functionality and aesthetic demands of consumers. Today, with the emerging of more manufacturers of the same kinds of products, with balanced quality level, prices and delivery terms, design had become a crucial factor on which product placement depends. Therefore, design today receives close attention, in order to win consumers with special product design. Today, there are virtually no products with unimportant design. In some of them it is expressed more, in some less, and it can not be neglected.*

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## ЕКОНОМІЧНЕ ЗНАЧЕННЯ І ПРАВОВИЙ ЗАХИСТ ДИЗАЙНУ В СЕРБІЇ

*У статті показано, що для успіху будь-якого продукту на ринку естетична привабливість або форма продукту мають величезне значення. Для споживчих товарів, як правило, проводяться постійні дослідження і вдосконалення зовнішньої форми товару і його упаковки як необхідних елементів привабливості для потенційних споживачів. Необхідно, щоб вигляд товарів відповідав функціональності і естетичним вимогам споживачів, а також вимогам сучасного мистецтва і технологій. Зі збільшенням кількості виробників одного і того ж різновиду продукції з однаковим рівнем якості, ціною і умовами постачання, дизайн став важливим фактором, що дає можливість виділитися. Сьогодні немає практично жодного товару, для якого дизайн не мав би значення. У деяких з них це виражається більше, в деяких менше, але в жодному разі не ігнорується.*

*Ключові слова: дизайн, промисловий дизайн.*

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## ЭКОНОМИЧЕСКОЕ ЗНАЧЕНИЕ И ПРАВОВАЯ ЗАЩИТА ДИЗАЙНА В СЕРБИИ

*В статье показано, что для успеха любого продукта на рынке эстетическая привлекательность или форма продукта имеют огромное значение. Для потребительских товаров, как правило, проводятся постоянные исследования и усовершенствования внешней формы товара и его упаковки как необходимых элементов привлекательности для потенциальных потребителей. Необходимо, чтобы вид товаров соответствовал функциональности и эстетическим требованиям потребителей, а также требованиям современного искусства и технологий. С увеличением количества производителей одного и того же вида продукции с одинаковым уровнем качества, ценой и условиями доставки, дизайн стал важным фактором, дающим возможность выделиться. Сегодня нет*

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*практически ни одного товара, для которого дизайн не имел бы значения. В некоторых из них это выражается больше, в некоторых меньше, однако в любом случае не игнорируется.*

*Ключевые слова: дизайн, промышленный дизайн.*

**Introduction.** When we talk about "design" we should distinguish design of industrial products (cars, motorbikes, phones, house appliances, furniture, clothes and shoes, toys etc.) graphic design (book design, posters, packaging etc.), web-design, fashion design, textile design, jewelry design, ceramics and glass design, interior design, scenic design, eco design etc. In this paper only legal protection of industrial design in Serbia will be considered. For this purpose outstanding regulations, legal protection of design and encompassing regulations, as well as the Hague agreement on international registration of industrial design will be used.

The goal of design protection is to insure for an owner an exclusive right to use design against unauthorized copying or imitation from a third party on the territory of the Republic of Serbia to the extent that does not hurt the rights of others. Today design represents an important element in operations where ingenious and inventive draws attention to themselves and leads over the competition. This is especially important for food products, when in one supermarket can be found over 200.000 items.

Despite the great importance, finances for the design in Serbia are very low. The fact is that we have a lot of young designers, but the key for the economy is to use their potential and start thinking about design as the key element of everyday operations, no matter we talk about small or large companies. Therefore, one of the goals of this paper is increasing awareness about the importance of legal protection of design as the instrument of enterprise competitiveness.

**1. The concept and importance of design.** The word "design" today has many meanings and therefore it is necessary to clarify what it means. Under design is firstly understood applied art, and then science and philosophy, which key goal is to adapt the environment to humans, in order to become more functional and beautiful. Design is art because people who do not have extreme sense of beauty cannot perform it. Design is a science because it, to certain extent, can be learnt, but not to that extent that someone, who does not have sense of beauty, could create aesthetically valuable products. Design is also a philosophy, because it always can be discussed whether and why something is or is not beautiful and to what extent (Vasiljevic, 1999). Under product design is considered also the exterior of a product, which is sensed with eyesight, and partly through sense of touch through shape, color and graphical means for information that are present in a product (Novakovic, 2002). In this paper will be considered only industrial design, which is the design of industrial products. Due to frequent repeat that can be burden for readers, in the paper will be used term "design" instead of "industrial design".

Design of one item separates that item from another that serves the same purpose, and represents one of important factors that governs consumers when deciding to buy it. In such sense design has not only aesthetic function, but at the same time functions of differentiation of goods from one economic entity from the same kind of goods from another economic entity. Besides, exterior design of products is not only an artistic or creative element, but it contributes to commercial value of a product and

enables its marketing and commercialization (Novakovic, 2002). The need to provide to creators of industrial design adequate legal protection lies therefore in the fact that products created according to certain design have larger value, because among consumers they produce the sense of beauty and represent incentive for their procurement (Miladinovic, 2007; Miladinovic, 2009; Markovic, 2007). Besides, manufacturing of a product according to somebody else's design has always been known, therefore early was created the need to provide certain protection for design creators. First legal regulation on design initiated in France with laws dated 1787 and 1806 (Manigodic, 1988). These laws served as the model for all European countries in legal protection of design (Besarovic, 2005).

In Serbia protection of design is organized according to the Law on legal protection of industrial design (Official gazette of RS, no. 104/2009). The right of the design is exclusive, time limited and authorizes its owner to use protected design in the economy prohibiting others to do so. This right is acquired in administrative procedure in front of an authorized body (Bureau for intellectual property), according to the resolution on acknowledgement of the right and subscribing the right to a corresponding register. The subject of the appearance of a product is design, that is overall visual impression that a product leaves on uninformed consumer or beneficiary. Informed consumer, that is beneficiary of the design in the sense of the design right is physical body that is regularly facing the product in question.

The design represents 3-dimensional or 2-dimensional appearance of a total product or its part, defined by its visual characteristics, and especially lines, contours, colors, shape, texture and materials that the product is made of, or decorated, and their combination (Kuzmanovic, 2008; Novakovic, 2002; Vasiljevic, 1999). 3-dimensional shape of a product is for example: shape of a bottle, chairs, car body, toothbrush, refrigerator. The example for 2-dimensional appearances is pattern of a carpet or textile, photo wallpaper. The basic characteristic of appearance of a product (design) as the subject of protection is suitability for industrial and craft products to be manufactured according to the design. It means that the subject of protection is a certain form of a definite product. For example, design is applied to watches, jewelry, fashion and luxurious objects, industrial machines, furniture, houses and electric appliances, vehicles, construction structures, product containers, textiles and wallpapers, entertainment products, toys or items for pets etc.

Creation of appearance of a product (designing) is spiritual entity, and therefore is the subject of protection of non-material product. Material from which is the product itself created (for example, wood, plastic, stainless steel), although sometimes can have important role, is not covered by legal protection (Markovic, 2000). On the other side, the purpose of legal protection of design is to provide to a creator with the exclusive right to solely produce a product of a certain (designed) form, not that he solely can produce type of product related to the protected form of product. From that reason national and supranational on regarding legal protection of design, including Serbian laws, exclude from protection the appearance of products which is exclusively defined by technical functions of products. When this limitation would not exist, an owner of the right on design would have the exclusive right to produce product as such, and not products according to the appearance. The subject of the

protection can be neither the product which is invisible (for example, some internal part of computer).

**2. Conditions for protection.** Law on legal protection of design defines the conditions which the product design must fulfill in order to be protected by the right on design. The most important conditions are novelty and individual character.

To the product on which is submitted the application for acknowledgement the right on design would not be granted protection if the same design is available to public before the day of the submission of the application for acknowledgement of that design, or if there is an earlier submitted application for acknowledgement of identical design. Design, therefore, must in the moment of submitting the application for protection be different as compared to all until then known designs. Besides, it is not enough to present any difference, the design must be different in essential elements.

Definition whether the design is new, or is different in essential elements is organized through comparison with all external form of products in the world, which were publicized until the day of application submission, and also with all external shapes of the product contained in previously submitted applications until the day of submission of the latter application, and which are not yet published. Earlier submitted application which is not published takes over the novelty to the latter submitted application if it is not withdrawn during the procedure. In the sense of design rights it is considered that the design becomes publicly available (the condition of novelty is not fulfilled) if it is publicized, exposed, used in trade of goods or services or in another way made publicly available before the day of the submission of the application for acknowledgement the right on design. The exception is the case when in standard business operations was not present a reasonable possibility that business circles specialized for given area know about the revealed secrets of design.

On the other hand, it is not considered that design becomes publicly available (the condition of carrying) if it is discovered to the third party that keeps the secret of the design. Also, it is considered that design is not available to public if an author discovered the design, its legal successor or third party according to the information received from the author or its legal successor or the operation conducted by some of these persons, if from the moment when the design is discovered until the moment of required right of priority was less than 12 months, and if the design is available to public as the effect of the misuse related to the author or his legal successor.

Another request for legal protection of design is its individual character. Design has individual character if on the day of the submission of application for protection leaves on informed beneficiary overall impression that it is different from any other design available to public until that day (Varga, 2010; Vlaskovic, 2012). Therefore, during definition the compliance of this condition we take into consideration the degree of freedom and objective limitation, of an author during creation of design of a product, caused by technology and functional characteristics of that product. Like in the case of estimation of the condition for novelty in design whose integral part of complex product, also in this case this prerequisite will be fulfilled if an integral part built in a complex product remains visible during regular use and if visible characteristics of integral part fulfill the condition of individual character of design (Miladinovic, 2009; Vlaskovic, 2012).

According to the regulations on legal protection of design it cannot be protected when used against public order or morality. Design is opposite to morality when a product offends national, religious or some other feelings. The offense of national, religious or other feelings can be expressed in words, swearing, pictures, drawings, shaped by characteristics of the product itself as a whole or some its integral part or similar, as well as with inappropriate usage of eminent personalities, saints etc. Besides, cannot be protected the design which offends author's rights or industrial property rights of another person. Establishing of violation of author's rights is in the jurisdiction of courts, but not the Bureau for Intellectual Property. If a third party challenges the application for recognition of the rights on design because the reported design offends its author's deeds, the Bureau directs that person to court achieve the protection of rights. The Bureau will abort the procedure for acknowledgement the right on design and will adopt the conclusion according to the article 134. of the Law on general administrative procedure. According to the final court decision which establishes that the author's right is violated, the Bureau will adopt the solution which rejects the right for approving the design. Against the decision of the Bureau an appeal to government can be expressed within 15 days upon the receipt of a decision.

The examiner in the Bureau can ask for a research report from other organizational unit of the Bureau (Department for patents and trademarks) if it suspects that the submitted application on design hurts patent or trademark belonging to some other person. For example, design pattern hurts a previously registered mark — trademark with identical pattern or three-dimension design of the bottle or the shape of the product that has to be reproduced in its exact shape and dimensions that is which is exclusively defined by the technical function of the product which represents the subject for protection by patent.

In that case after the submission of the application for acknowledgement the right on the design Bureau will enact the resolution in which the right on design will be disapproved. Against the resolution of the Bureau an appeal can be expressed to the Government within 15 days from the submission of the decision.

From the protection of the design are excluded the products that contain:

- state or other public emblem of a country or international organization. Here belong also public emblems of cities (for example, emblem of the city of Belgrade, Kragujevac etc.);

- flag or symbol of another country or international organization (for example, the logo of the Red Cross, the logo of the EU).

- the name or abbreviation of the name of a country or international organization (for example, US for the United States, GB for Great Britain, FR for France).

Excluded from design protection are also the products that support before mentioned official signs and symbols. The support of these symbols will be considered as every product which participants in trade would understand just like that product.

Design that represents, or contains the face of some person, cannot be granted protection without expressed consent of that person. Also, design that represents, or contains the face of a deceased person cannot be granted protection without acceptance of his parents, spouse and children. At the end, design that represents, or contains the image of a historical or another deceased important person cannot be grant-

ed protection without authorization of relevant authority and acceptance of his relatives up to the third degree.

Protection of design will not be granted to the product which has generic shape (Vlaskovic 2011, p. 221). This basis for rejection of protection of is derived from the very definition of design. In the category of generic shapes and generic images belong generally known geometrical shapes and images (cone, cube, prism, cylinder, ball, circle, square, rhombus) which do not contain any other visual characteristics (for example, lines, contours, colors, texture). Such shapes cannot be subjects to protection because they do not represent creation of the author but are generally known and have to be in free use by everyone. For example, package in the shape of cylinder will not be granted design protection if it does not have specific elements which characterize it (dents, bumps, grooves). Also package can have the shape of a cylinder under condition that in their layer contain 2-dimensional design that is drawing, pattern, image etc.

**3. Subject of protections.** The right of design have a physical person that has created it. The person marked as the author has the exclusive authority to submit the application of design. The right on submission of application is the property right, transferable in legal businesses inter vivos and mortis causa. For that reason, as the subject of protection can also be the person which is not the author, but is the author's legal successor (author's legal successor does not have to be legal entity, but an individual).

No matter an applicant is the author or his legal successor; he/she is authorized to demand his name to be quoted as the name of the author in the application and all other documents created in the protection process. If the application is submitted by legal successor of the author, and the author does not want his name to be mentioned as such in the application, then it is necessary to attach the correspondent written statement of the author. Nevertheless, due to the possibility that 2 authors, working independently one from another, create the same or importantly similar design, in legal protection of the design there is the principle of prevalence regarding the right for protection of the author who was the first to submit the application.

**4. The procedure for registration of design protection.** In Serbia design protection is achieved with the submission of application for recognition of the right on design to the Bureau for intellectual property. The application consists of: the request for registration, description the subject of registration and display of the subject of protection and registration. With one request for registration might be demanded protection for one or more (up to hundred) designs applied on the products categorized into the same group of international classification of design.

After the examination of statutory formal and material conditions for registration the Bureau adopts a decision on recognition of the right on design, or the rejection of its recognition, if not all conditions are met as defined by the law. The decision is final and against it can be made an appeal to the government of the Republic of Serbia. Registered industrial design lasts for 5 years, and by paying the tax validation can be extended up to 20 years.

**Conclusion.** Industrial design is very important for commercialization of new products at a market, because the form depends on it that is aesthetic appeal of a product, which has very important role for potential buyers. Companies conduct per-

manent research and improvements of the outer shape of their products in order to fulfill aesthetic and functional demands of consumers. Regulation in this area that are current in Serbia regarding material conditions, are fully coherent with international and European standards. Especially should be stressed that Serbia is the member of the Hague arrangement on international deposit of industrial design, which has the consequence of possibility of acquiring protection of design in several states. The deficiency regarding legal procedure of design protection is related to regulation under which in the second degree, upon administrative acts of the Bureau on intellectual property decides Government of Republic of Serbia. Government does not have narrow expertise regarding intellectual property rights. To dissolve such legal matters are capable only highly trained professionals specialized in this area of legislation. Therefore, such solution is unreasonable and complicated and therefore should be abandoned and establish relevant professional body, Commission or Council for complaints incorporated into the Bureau for intellectual protection, as it is defined in comparative law.

By protecting industrial design, his owner provides to himself exclusive right to use and dispose, and also can prevent third parties from unauthorized copying or imitating his industrial design. Protected industrial design guarantees its owner use it economically: he can transfer it to another persons, give the license for its use or use it as collateral. Protection of industrial design promotes creativity in industrial and crafts sectors, contributes to expansion of economic activities and increases export potential of national products. For such purpose international protection of design is also important. In Serbia bearer the right on design, except for national protection can through Bureau for international property submit application for international registration of design to the World organization for intellectual property (WIPO) and in such manner through the Hague arrangement on international registration of design achieve protection in the countries that signed that arrangement.

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