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Has your Design Right Been Infringed

What is infringement?

A registered design gives you an exclusive right to make or offer to make a product in relation to which the design is registered. Should a person, without a licence or authority, copy or imitate a registered design that is in force, then that person infringes the exclusive right.

Please note that the *Designs Act 2003* has a potential exclusion from infringement where a registered design is used in a repair context to repair the appearance of a complex product.

What the Designs office cannot do

The Designs Office will not police your rights or launch legal proceedings on your behalf, that is your responsibility. We are not able to become involved in, or give advice relating to the infringement or possible infringement of a design registration. We are not able to act on behalf of the owner of a registered design.

What you can do?

If you intend to enforce your design right, here is some information that you may wish to consider:

- You cannot take any action in respect of possible infringement without a certificate of examination, issued from the Designs Office.
- Your design registration must have been

in force at the time the alleged infringement took place. Should you need information, the Designs Office can tell you the period your registered design was/is in force.

- You will need to establish that infringement of your registered design has occurred or is still occurring. You can do this by buying the product that you believe infringes your registered design. You should have a record of whom you bought the product from, the date and place of purchase.
- You should get professional advice from a patent attorney, or a lawyer who has experience of the Designs Act, as to whether there has been an infringement of your registered design. You will need to show the patent attorney or lawyer the alleged infringing product, your certificate of registration of your design and a certificate of examination, if you have one.

Should their opinion be that there has been or is infringement, you will need a Certificate of Examination issued by the Designs Office before any infringement action or proceedings can commence. You can get them to send the infringing party a 'letter of demand' or 'warning off letter' that tells the other party that they are infringing your design and asking them to stop.



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Note: If the other party ignores the letter of demand, your next step may be to start proceedings in a court of law.

Infringement proceedings are very expensive, and they allow the other party to challenge the validity of your design registration. Alternatives to an infringement action are to have the other person and you proceed to mediation or arbitration or to an independent assessment.

- You might also wish to consider negotiating with the infringing party to license them as a producer of your design (and pay a royalty to you) or selling them the rights in the design.
- If you wish to license or sell your design rights, you should seek professional advice from a Patent Attorney, a lawyer, or a member of the Licensing Executives Society (LES).