

Unofficial translation

Draft

Law No () for the year

On Industrial Designs

Article (1):

This Law shall be called (The Industrial Designs Law)

Article (2):

For the purpose of implementing the provisions of this Law, the following terms and phrases shall have their corresponding meanings unless context suggest otherwise:

Except as otherwise

Ministry: Ministry of Industry and Trade

Minister: Minister of Industry and Trade

Regulation: The Executive Regulation of this Law

Court: The Commercial Court of competent jurisdiction

Department: General Department for Protection of Industrial Designs
at the Ministry

Registrar: General Director of the Competent Department

Article (3):

Industrial Design is the ornamental and aesthetic outer appearance of a particular good that may include lines, colors, solid shapes with or without colors that can be used in industrial production either manually or through machinery, including textile design provided that the such combination or shape gives a special appearance to the industrial or handicraft product.

Article (4):

The industrial design can be eligible for registration if it fulfills the following conditions are met:

A-It should be new and not revealed to the public, anywhere in the world, by any means including its usage or extensive publication before the date of filing a registration application or the date of filing an application for priority registration if applicable. Any revealing of the industrial Design shall not be considered during the six months that precede the date of the application or the date of filing an application for a priority claim shall not be considered or due to an action committed by the registration application or due to unjustifiable act by other parties against him.

B- it shall not be contradictory to public order or public taste or contains slogans, religious symbols, or stamps or flags of Yemen or countries, regional and international organizations.

c- That it is not imposed essentially due on technical or functional considerations.

Article (5):

The rights to register the Industrial design shall be accorded as follows:

A- The inventor or to his/ her successor in title.

B- If the industrial design was the outcome of collective work, the rights to its registration shall be equal among the participants, unless otherwise specified.

C- To the one who has priority, if more than one application for industrial registration is available.

Article (6):

A registry in the Department shall be set up called (Industrial Designs Registry) in which all details related to industrial designs are recorded, including changes, assignment, transfer, mortgages, licensing, renewal or cancellation.

Article (7):

The application to register an industrial design shall be submitted to the Department in accordance with the requirements, procedures and subject to payment of the prescribed fees. The application shall contain the following details.

1. Name of applicant, nationality and address.
2. Drawings and topographies and photographs and illustrative data related to the industrial design.
3. Products for which the industrial design is to be registered.

Article (8):

The registration application may include a claim for priority registration based on prior filing in any country that is a member of the Paris Convention on Industrial Property Protection provided that the application in Yemen be made within a period not exceeding six-months from the day the application was first filed. The applicant shall provide an official copy as evidence to submitting the application to the authorities of the other country. The date of filing the first application for registration shall be the same as the date of filed in the Republic of Yemen.

Article (9):

The regulation shall define the procedures and time periods for reviewing and examining the application.

Article (10):

The Registrar may request certain amendments to be made to the industrial design in order to avoid its confusion with other industrial designs protected under this law.

Article (11):

The Registrar shall issue a decision on the design registration application and shall notify the applicant of the registration in writing in case the application is rejected or needs to be amended.

Article (12):

The registration applicant may appeal the decision to the registrar referred to in the preceding article (11) of this law before the court within 30 days of being notified of the decision, otherwise he would be considered to have assigned this application.

Article (13):

Once the registration of the industrial design has been accepted, the Department shall publish it by the means specified by the Regulation.

Article (14):

- 1- Any interested party may submit a written opposition against the application to register the industrial design, showing reasons for the opposition within 90 days from the date of publication of the announcement.
- 2- The Registrar shall provide the applicant of the registration with a copy of the opposition, to which the applicant must respond in writing within 30 days from the notification date, otherwise he shall be deemed to have assigned his/ her application.
- 3- The Registrar shall issue a decision to accept, turn down, or amend the opposition. Each party has the right to appeal against the decision before the court within 30 days from the date of notification of the decision. The court may hold, amend or revoke the decision.

Article (15):

- 1- After the elapse of the grace period specified in Article (14/1) and no opposition against the application for registration of the industrial design is made, the industrial design shall be registered, and a Registration Certificate shall be issued in accordance with the procedures specified by the regulation.
- 2- The applicant of the registration shall be given a six months grace period from the date of the opposition period referred to in Article (14/1) ends, or from the date that a decision on the opposition is made, or from the date a judgment issued by the court to finalize the procedures related the registration of the industrial design, otherwise he shall be considered to have assigned the application.

Article (16):

Registration of the industrial design grants its holder the following rights:

- A- A ten-year non-renewable protection period from the date of filing a request.
- B- Preventing others from using the industrial design to manufacture, sell or import products having the shape of the protected industrial design in accordance with the provisions of this law.
- C- Disposition of the industrial design through assigning it to others, or licensing it, putting it on a mortgage in accordance with the procedures specified by the regulation, disposal of the design should be in writing and duly authenticated. It shall not be

considered before it is recorded in the registry and published by the means specified by the regulation.

Article (17):

Protection of the industrial design is exempted in the following cases:

- a- Using the protected industrial design in scientific research.
- b- Using it for educational and training purposes.
- c- Using it for non-commercial purposes.
- d- Other non-commercial usages, which do not contravene with the normal use of the protected industrial designs, nor affect the legitimate interests of the design owner.

Article (18):

The competent minister may, in pursuance of public interests, issue a reasoned decision to grant another person a non-exclusive compulsory license to use a protected industrial design in exchange for an equitable compensation.

Article (19):

The owner of the industrial design shall benefit from right to prevent others from importing, selling, distributing products distinguished by the design shall be exhausted if the owner markets the same products in any other country, or license others to do so.

Article (20):

The owner of the industrial design may submit a request to the Department to record any changes to the owners name, nationality, address in accordance with the conditions specified by the regulation.

Article (21):

Temporary protection shall be given to industrial designs displayed at national or international exhibitions organized in the Republic of Yemen. The regulation shall specify the terms regulating the same.

Article (22):

Any interested party may request the court to cancel the registration of the industrial design if it was unlawfully registered. The Department shall cancel the registration on the strength of an enforceable final judgment.

Article (23):

The right owner may request the court, upon filing a civil/ criminal action or at the time of looking into the case, to take provisional measures to prevent any infringement to his rights including preventing others from producing, selling or importing goods which use the protected design in their production either partially or wholly for commercial purposes. He may also request the court to seize products, goods, covers, documents or others like machinery and tools used during the infringement.

Article (24)

A-The court may take any of the measures stated in Article (23) of this law on a precautionary basis without notifying the other party and its absence in cases where delay might cause injury to the right owner or lead to the loss of evidence which substantiate the incidence of the violation. The other party shall be notified immediately upon implementation. The person against whom precautionary measures were taken may request a hearing a court hearing. The court may order upholding, modifying or revoking the precautionary measures.

B-the court may, when necessary, order the infringer to notify the right owner with the identity of the other parties that participated in the production, distribution the goods that bear the counterfeit mark, and the channels of distribution unless the seriousness of the infringement is not commensurate with such step. The component authority, when necessary, and upon the issuance of a verdict on the case, may notify the right owner with the names, addresses of the consigner, the importer and consignee and the size of the infringing shipment.

Article (25):

The applicant of the seizure should deposit a security that is estimated by the court prior to the issuance of a seizure order and the seizure applicant should file case within ten days from the date of the court's order, otherwise he would

be deemed to have assigned the application. The distrainee shall, consequently, have the right to file a claim for compensation.

Article (26):

The regulation should determine the fees the beneficiaries should be charged for the services rendered and procedures that resulted from implementing this law.

Article (27):

The court shall look into cases and disputes arising from the implementation of the provisions of this law.

Article (28):

- A. The employees of the Department shall be given the capacity of Judicial Investigators
- B. Competent authorities shall exempt official employees designated to implementing this law from being subject to criminal procedures as a result of actions they committed within the context of enforcing this law if the court is satisfied that such actions were committed in good faith.

Article (29):

Any natural person or legal entity whether Yemeni or foreigner who have a genuine and effective establishment in the Republic of Yemen or in any country or entity related to Yemen through an international agreement on copyright or treats Yemen on the principle of reciprocity, shall have the right to request registration of industrial designs in accordance with this law.

Article (30):

The implementation regulation of this law is issued under a Prime Minister's decree upon a submission by the Minister.

Article (31):

The Minister shall issue decisions, orders and instructions necessary to implement the provisions of this law.

Article (32):

This law shall be published in the official gazette and shall go into effect starting from the day following the date of the transition period provided to the Republic of Yemen in accordance with international agreements on intellectual property right ends, except for provisions of Article (29), which shall go into affect starting from the day following the publication of this law. Section two of law No. (19) of 1994 on Intellectual Property Right shall become null as well as any other provision that conflicts with this provisions of this law.