

New Zealand Copyright in Industrial Designs

Under the New Zealand Copyright Act 1994, automatic protection is available for original industrial designs, as the production drawings, models and moulds, from which the articles are made. Even the articles themselves, can enjoy copyright.

Copyright protection can extend automatically to designs originating in overseas countries. This is because New Zealand is party to international agreements under which reciprocal rights are granted to citizens of most countries in the world. Until we have checked the position for you, the copying of overseas designs, even in the absence of any New Zealand patent or New Zealand design registration protection, should be strictly avoided.

Damages in copyright infringement actions can be severe, and may include additional damages. However, copyright protects only against copying the actual form of an existing design in which copyright exists. It does not provide protection against the totally independent creation of an identical design, or against the copying of the principle of the design if a different form of design results. A New Zealand design registration for your design can be very worthwhile as this provides a monopoly in that design and therefore does not require any evidence of copying to be established in any infringement action.

We recommend that industrial designs (and their packaging) and related printed material such as pamphlets and manuals all include a claim to copyright in the form © /name of copyright owner/date, the relevant date being the date of first publication of the pamphlet or the first sale of the article.

Extreme care should be taken to ensure that all copyright in industrial designs and in printed material belongs to you.

The rules on ownership in the case of a commissioned work are not straightforward, and treat creators of different classes of work differently.

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Difficulties can particularly arise where independent parties are engaged to prepare drawings, moulds and models. You should commission these:

1. in writing,
2. confirming that the work is being done for a fee; and
3. specifying that all rights in the resulting work, including copyright (for all the countries of the world), belong to you or your company.

In the case of industrialised designs, enforcement of copyright protection in three dimensional reproductions of the design will only be possible for a period of 16 or 25 years (depending on the nature of the design) from that date of first industrialisation anywhere in the world under our current law.