



675 Third Avenue, 3rd Floor
New York, NY 10017-5704, USA
t: +1-212-642-1700 | f: +1-212-768-7796
inta.org | info@inta.org

**WORLDWIDE REPORT ON PROTECTION OF
UNREGISTERED DESIGNS**

**Prepared By
The Designs Committee – Enforcement Subcommittee
November 2021**

Background

During the 2018-2019 term, the Designs Emerging Issues Subcommittee conducted some research regarding unregistered designs. The Designs Enforcement Subcommittee of the Designs Committee conducted the survey in 2020 and produced the final report below in November 2021.

Overview

The report was compiled on the basis of a survey of Intellectual Property practitioners across the globe in the jurisdictions featured in the report. The survey was not related with protection or overlap protection of unregistered design by copyright laws. The purpose of the report is to identify jurisdictions that provide the protection of unregistered designs and to briefly analyze the requirements to enjoy protection, disclosure requirements and the scope of protection of unregistered designs. This report is up to date as of 1 October 2020.

Summary

The survey has revealed seven jurisdiction that provide protection of unregistered designs, namely Israel, Japan, European Union, Turkey, United Kingdom, Republic of Korea and China (mainland). In China, the protection seems limited to packaging or decoration of a product. In Japan and Republic of Korea protection exists by provisions under the Unfair Competition Prevention Act.

The duration of protection is 3 years with exceptions of China (indefinitely), the UK (15 years or 10 in certain conditions) and South Korea where a special provision exists that can be used to achieve indefinite protection (large investment of time and money in R&D, design consulting and marketing activities). There are differences on the calculation of the duration of protection. Except for UK, China and Japan, protection commences on the date on which the design was first made available to the public.

Only Turkey and the EU requires first disclosure to be a local disclosure. The interpretation of such provision is still not uniform within the EU member states.

In all seven jurisdictions, unregistered design rights enjoy the same scope of protections as registered designs with the limitation that it can only be enforced against exact copies or against undistinguishably similar designs/causing the same overall impression (substantially identical in JP). Protection covers the entire product or parts of a complex product. In Japan there is the requirement that such parts can be separated from the product and traded independently. In respect of colors, mainly all jurisdictions do not take the color into consideration except if the color is considered to be a material feature of the design.

	Q2. Existence of unregistered design protection	Q3. Duration of protection	Q4. a) requirements to enjoy protection of an unregistered design	Q4. b) jurisdiction require first disclosure to be local disclosure	Q4. c) jurisdiction have any particular requirement in order for an online disclosure to be considered local	Q4. d) any court decision dealing with the requirement of local disclosure (physically and/or online)
Argentina (AR)	No	n.a.	n.a.	n.a.	n.a.	n.a.
Australia (AU)	No, except for a limited exception for certain unregistered designs that are protectable under copyright where a copyright work corresponding with an unregistered design:(a) is a building;(b) is a model of a building;(c) is a "work of artistic craftsmanship"; or(b) has not been "applied industrially". A design is taken to be applied industrially if it has been applied to more than 50 articles.If a trader has acquired reputation and goodwill in the distinctive shape and configuration of a product such that it functions as an indicator of trade source, an unregistered design	n.a.	n.a.	n.a.	n.a.	n.a.

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	may be protectable as a registered trademark, under the Australian Consumer Law or under the common law tort of passing off.					
Austria (AT)	No (also see the answer for EU-EUIPO where protection for unregistered designs is provided)	n.a.	n.a.	n.a.	n.a.	n.a.

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Benelux (BX)	No (also see the answer for EU-EUIPO where protection for unregistered designs is provided)	n.a.	n.a.	n.a.	n.a.	n.a.
Brazil (BR)	The straight answer would be NO. Brazilian law does not have specific provisions for the protection of unregistered designs. Following the provisions of Article 109 of the Brazilian Industrial Property Law (Law No. 9,279 of 1996), the property over an industrial design is acquired by a registration validly granted. And in accordance with Article 187 of that same Law, the unauthorized reproduction or substantial imitation is only considered a crime if the industrial design is duly registered. There	n.a.	n.a.	n.a.	n.a.	n.a.

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	<p>are decisions from appellate courts which recognize protection of unregistered designs via unfair competition, based on Article 195, III, of Law No. 9,279 of 1996: “A crime of unfair competition is perpetrated by anyone who: [...] III. employs fraudulent means to divert the customers of another person to his or another party’s advantage;”. Such protection is afforded when a trade dress is demonstrated with respect to the product, subject to the burden of proving: the intrinsic distinctiveness of the product; that the product design is recognizable to the consumer public; that the design is not functional nor included in ornamental patterns</p>					

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	established in the relevant segment; and that the act of copying or association is not a common practice in the relevant segment. There are also court decisions recognizing protection or overlap protection of unregistered design by copyright laws, but I understand that this survey is not related to that matter					
Canada (CA)	No	n.a.	n.a.	n.a.	n.a.	n.a.
Chile (CL)	No	n.a.	n.a.	n.a.	n.a.	n.a.
China (CN)	Yes	The duration of such protection is not limited, but the premise is that the unregistered designs of packaging or decoration of products are distinctive and still have certain influence or reputation.	The unregistered designs of packaging or decoration shall be distinctive and have certain influence or reputation	No.	n.a.	n.a.

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Denmark (DK)	No (also see the answer for EU-EUIPO where protection for unregistered designs is provided)	n.a.	n.a.	n.a.	n.a.	n.a.

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European Union (EU)	Yes. Council Regulation (EC) No 6/2002 on Community designs (CDR) in art. 1 (2) (a) confers protection to unregistered community designs	According to art. 11 (1) CDR, an unregistered community design shall be protected for a period of three years from the date on which the design was first made available to the public within the European Union.	According to art. 11 (2) CDR, for the purposes of the commencement of protection, a design shall be deemed to have been made available to the public within the European Union if it has been published, exhibited, used in trade or otherwise disclosed in such a way that, in the normal course of business, these events could reasonably have become known to the circles specialized in the sector concerned, operating within the European Union. An exception is made for designs that have been disclosed to a third person under explicit or implicit conditions of confidentiality	Art. 110a (5) CDR states that, with regard to the applicability of art. 11 CDR (related to commencement and term of protection of the unregistered community design), a design which has not been made public within the territory of the European Union shall not enjoy protection as an unregistered Community design. However, the interpretation of this provision is still not uniform in all Member	No.In April 2020, the European Union Intellectual Property Network released its 10th Common Practice (CP10) with the aim to identify common criteria for assessing disclosure of designs on the internet and to serve as reference for the European Union Intellectual Property Office, the Intellectual Property Offices of the EU Member States and any other interested persons. In this context, the CP10 focuses on the question of which	The German Federal Supreme Court stated in 09.10.2008 (in case IZR 126/06) that in accordance with art.110a (5) CDR, first disclosure needs to occur within the physical territory of the EU to trigger the commencement of unregistered community design protection

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				<p>States. UK Courts have already ruled that even a disclosure outside the EU could server to trigger protection as an unregistered community design. German courts on the other side, considered that the wording of art. 110a (5) CDR is clear in establishing that first disclosure needs to occur within the territory of the European Union. Recently, the question of whether first disclosure needs to occur</p>	<p>type of online disclosure should be considered to be accessible/known to the relevant public in the EU. The guideline mentions that only under certain circumstances, events of disclosure would not be considered to reasonably become known to the circles specialized in the sector concerned, operating within the European Union. The guideline does, however, neither address the question of where an online disclosure would</p>	

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				<p>within the territory of the European Union in order to establish unregistered community design protection was submitted to the Court of Justice (C-8/19) by the UK High Court. Unfortunately, this request for preliminary ruling was later withdrawn due to a settlement agreement reached by the parties</p>	<p>be considered to have taken place nor does it address the question of whether an online disclosure would/should be considered sufficient to trigger commencement of protection as an unregistered community design. The discussion whether an online disclosure which fulfills the criteria set out in the CP10 could be sufficient for the commencement of protection of an unregistered community design and how this guideline</p>	

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					could influence future court decisions related to unregistered community design (although courts are not bound by the CP10), has only just started.	

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Germany (DE)	No (also see the answer for EU-EUIPO where protection for unregistered designs is provided)	n.a.	n.a.	n.a.	n.a.	n.a.
Hong Kong (HK)	No	n.a.	n.a.	n.a.	n.a.	n.a.
India (IN)	No. Designs are protected under the Design Act, 2000 in conjunction with the Design Rules, 2001. There are no specific or overarching provisions in these legislations that afford statutory protection to Unregistered Designs.	n.a.	n.a.	n.a.	n.a.	n.a.

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Israel (IL)	Yes	3 years from the date on which the proprietor of the design, or anyone on his behalf, first made public the design or the design product, in Israel or abroad.	A design will be eligible for protection as an unregistered design, upon the satisfaction of the following two <i>conditions</i> : 1. it is novel and has an individual character; and 2. the design product was offered for sale or distributed to the public in Israel commercially by the proprietor of the design, or anyone on his behalf, including over the Internet, within six months of the relevant date.	No. A design shall be deemed a novel if, prior to the relevant date, a design identical to it or a design that differs from it only in immaterial details, was not made public in Israel or abroad.	n.a.	n.a.
Italy (IT)	No (also see the answer for EU-EUIPO where protection for unregistered designs is provided)	n.a.	n.a.	n.a.	n.a.	n.a.

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Japan (JP)	Article 2 (1) (iii) of the Unfair Competition Prevention Act (UCPA).	Three years since the date the goods were first sold in Japan.	The "configuration of goods" to be protected by the UCPA is defined as the external and internal shape of goods and the pattern, color, gloss, and texture combined with the shape, which can be perceived by consumers when they use the goods in an ordinary way (Article 2 (4) of the UCPA). The configuration which is indispensable to its functioning is not protected (Article 2 (1) (iii) of the UCPA).	No.	n.a	n.a.
Republic of Korea (KR)	Yes , there are such provisions, i.e., Article 2 (i) & (k), under the Unfair Competition Prevention Act (UCPA)	3-year protection against dead copy of unregistered original design (Article 2 (i) of the UCPA); No limit to such duration in regard to protecting "achievement gained by considerable investment and efforts"	<3 year protection against the dead copy: Article 2 (i) of the UCPA>(i) Substantial sameness The dead copy should be substantially identical with the shape of the original product. In this context, the shape	No	n.a.	n.a.

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		(Article 2 (k) of the UCPA)	refers to the shape, pattern, colors, or combination thereof as stipulated in the UCPA. Furthermore, the case law confirmed that the shape of a “package” of the product can be also subject to this protection.(ii) The product shape must not be a commonly used form for the relevant goods.For instances, a functional shape or other common shape that has no particular characteristics or that is inevitable for competitors to adopt in the relevant field, cannot be entitled to protection. (iii) The protection is only valid during the three (3) years from the date when the original			

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			<p>product (e.g., a prototype) was created. Achievement gained by considerable investment and efforts</p> <p>“Catch-all provision”: Article 2 (k) of the UCPA</p> <p>Even if the above three (3) year period has passed, if an unregistered design can be recognized as achievement gained by considerable investment and efforts, this design could still be entitled to legal protection under Article 2 (k) of the UCPA. This is a supplementary provision aiming to cover unfair competition acts that are not specified by the other provisions of the UCPA, and</p>			

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			<p>therefore is called a "Catch-All provision".(i) Achievement gained by considerable investment and effortsSuch achievement or output can be established by demonstrating a large amount of money and time on R&D, design consulting and other marketing activities in regard to the design element at issue. If the design element at issue turns out to have been used by another company before the claimant or has already been commonly used in relation to a relevant business field, this protection would not be provided.(ii) Resulting in damaging the others' economic</p>			

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			interestsIf the claimant has commercially used the design at issue for profits, such as selling the product of the design, this requirement may be established.(iii) Violating fair commercial practice			
Mexico (MX)	No	n.a.	n.a.	n.a.	n.a.	n.a.
New Zealand (NZ)	No	n.a.	n.a.	n.a.	n.a.	n.a.
Poland (PL)	No	n.a.	n.a.	n.a.	n.a.	n.a.
Portugal (PT)	No, not as a National IP right (only as a Unregistered Community Design - see the answer for EU where protection for unregistered designs is provided globally)	n.a.	n.a.	n.a.	n.a.	n.a.
Singapore (SG)	No	n.a.	n.a.	n.a.	n.a.	n.a.

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South Africa (ZA)	None provided for (other than copyright laws).	n.a.	n.a.	n.a.	n.a.	n.a.
Spain (ES)	No (also see the answer for EU-EUIPO where protection for unregistered designs is provided)	n.a.	n.a.	n.a.	n.a.	n.a.
Switzerland (CH)	No.	n.a.	n.a.	n.a.	n.a.	n.a.

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Taiwan (TW)	No. Although in Taiwan some unregistered designs can be protected under the Copyright Law (suppose the designs pass an aesthetic test) or the Fair Trade Act (suppose the design qualify as trade dress or suppose another party produces a dead copy of the product that bears the design), there does not exist a sui generis law or article in any current Taiwanese IP laws for the specific protection of unregistered designs. As such, it is difficult to say that in Taiwan there exists an unregistered design right. Even for the anti-dead copy claim, it is merely mentioned in an explanatory note (issued by the Fair Trade Commission) as	n.a.	n.a.	n.a.	n.a.	n.a.

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	<p>being a possible type of claim against “obviously unfair conduct” which does not address directly or solely to the protection of unregistered designs. Further, the explanatory note does not clarify the requirement, standing, duration, or scope of protection for an unregistered design against a dead copy</p>					

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Turkey (TR)	Yes, unregistered designs can be protected within the context of Turkish Industrial Property Code which has entered into force in Turkey on January 10, 2017	According to the Article 69/II of Turkish Industrial Property Code, the term of protection of unregistered designs covers a period of three-year as from first presentation/disclosure date to the public of the design for which protection is demanded	According to the Article 55/IV of Turkish Industrial Property Code, a design shall be protected as unregistered design in case it is disclosed to the public for the first time in Turkey . In this respect, it is possible to say that there are two requirements to benefit protection of an unregistered design in Turkey which are; to be disclosed to the public for the (1) first time (2) in Turkey	Yes, Turkish Industrial Property Law requires the first disclosure to be local disclosure. The first disclosures in other jurisdictions are out of consideration in terms of unregistered design registration	n.a.	No, there is not a regulation on this matter in Turkish Industrial Property Law

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United Kingdom (UK)	Yes , unregistered design rights are protected in the UK as set out in Part III of the <i>Copyright, Designs and Patents Act 1988</i> (the “CDPA”).	According to section 216 of the CDPA, unregistered design rights expire:(a) fifteen years from the end of the calendar year in which the design was first recorded in a design document or an article was first made to the design, whichever first occurred, or(b) if articles made to the design are made available for sale or hire within five years from the end of that calendar year, ten years from the end of the calendar year in which that first occurred	The requirements to enjoy unregistered design protection in the UK are set out in sections 213-221 of the CDPA and are listed below:1. Originality, intended as not copied from prior works and not commonplace;2. The design consists of the shape or configuration (whether internal or external) of the whole or part of an article;3. The design has been recorded in a design document or an article has been made to the design;4. The designer is a “qualifying person”. A qualifying person can be an individual or a company resident or incorporated/has a place of business in a “qualifying country”. A	No, it does not.	n.a.	No. Although there was a referral from the UK High Court to the CJEU that was withdrawn (see below).Beverly Hills Teddy Bear Co v PMS International Group Plc [2019] EWHC 2419 (link)• The UK High Court referred questions to the CJEU, but case was settled out of court before CJEU hearing and referral was withdrawn.• High Court’s view was that for UCD protection to come into being under art 11, the event giving rise to the disclosure

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			<p>qualifying country is the UK, EU, Channel Islands, Isle of Man, any UK colony, and countries enjoying reciprocal protection (i.e. Anguilla, Bermuda, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Channel Islands, Falklands Islands, Gibraltar, Hong Kong, Isle of Man, Montserrat, New Zealand, Pitcairn, Henderson, Ducie and Oeno Islands [St Helena, Ascension and Tristan da Cunha], South Georgia and the South Sandwich Islands Turks and Caicos Islands). 5. if the first marketing of articles made to the design is by a qualifying person and</p>			<p>of a design had to take place within the territory of the Community (art 11(1) referred to designs being first made available to the public “within the Community” whereas art 5(1)(a) did not). If before first disclosure in the territory there had been an event outside the EU disclosing the design, and that event could reasonably have become known in the normal course of business to the relevant circles in the Community, the design would lack novelty. • Questions were referred to the</p>

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			take place in a qualifying country.			CJEU, but it was settled out of court and the referral was withdrawn. Quote at para 57: “in order for a design to be afforded UCD protection, the event giving rise to the first disclosure of the design – such as the marketing of a product made according to the design – must first take place within the territory of the EU. If before that date there has been an event outside the EU giving rise to the design being disclosed, in circumstances such that the

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						event could reasonably have become known in the normal course of business to the relevant circles in the Community, the design for which protection is sought will lack novelty.” ^o But agreed the issue of law was not acte clair, so made a reference to CJEU.
Uruguay (UY)	No. Designs can be protected only by “Industrial design patent”, besides the Copyright protection that may apply. Regarding Industrial design patents, the design must comply with the novel requirement. If the design is not novel, it would not qualify for patent design	n.a.	n.a.	n.a.	n.a.	n.a.

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	<p>protection. Below please find the correspondent articles of our Patent Act, regarding designs and the novel requirement: Art. 89: "The following shall not be the object of an industrial design patent: ...those whose contents have been disclosed or made available to the public, in any place, through publication, description, exploitation, commercialization, use or any other means, before the filing date or the priority date". Nevertheless, there is a 6 months grace period: Art. 90. Novelty shall not be affected by the disclosure of the invention made within the term of six months before the filing date of the application or the</p>					

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	invoked priority, providing said disclosure comes directly or indirectly from actions performed by the inventor, his/her heirs or third parties”					
U.S.A. (US)	No, the US has no unregistered design right system. In some cases, a design right which has not been registered could serve as the basis for IP protection under the US copyright or trademark regime provided other conditions are met. But the US has no unregistered design right <i>per se</i>	n.a.	n.a.	n.a.	n.a.	n.a.

	Q5. How is the term calculated	Q6. Scope of protection vis a vis registered designs	Q7. Scope of protection vis a vis the product	Q8. Colors	Q9. Mandatory marking of unregistered designs	Q10. Rules or guidelines for marking unregistered designs
Argentina (AR)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Australia (AU)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Austria (AT)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Benelux (BX)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Brazil (BR)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Canada (CA)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.

	Q5. How is the term calculated	Q6. Scope of protection vis a vis registered designs	Q7. Scope of protection vis a vis the product	Q8. Colors	Q9. Mandatory marking of unregistered designs	Q10. Rules or guidelines for marking unregistered designs
Chile (CL)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
China (CN)	The term of such protection is not limited, but the premise is that the unregistered designs of packaging or decoration are still distinctive and have certain influence or reputation.	It is not necessary to register the designs for protection, but the designs shall be still distinctive and have certain influence or reputation	The protection scope is limited to the distinctive packaging or decoration of the product, and will not extend to the entire product.	The element of colors shall be considered when deciding the scope of protection, however, it usually is not the decisive factor to deny infringement when the shape and pattern are confusingly similar	There is no rules on mandatory marking of unregistered design	There is no rules on mandatory marking of unregistered design.
Denmark (DK)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
European Union (EU)	According to art. 11 (1) CDR, protection of an unregistered community design commences on the date on which the design was first made available to the public within the Community . The Regulation does not foresee a possibility to prolong the time of protection for an unregistered design	Art. 10 CDR which define the scope of protection for a community design does not distinguish between registered or unregistered design. This means a community design will	An unregistered community design can protect the entire product as well as its parts (arts. 3 and 4 CDR)	According to art. 3 (a) a design means “the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself	No	There are no rules for marking unregistered community designs

	Q5. How is the term calculated	Q6. Scope of protection vis a vis registered designs	Q7. Scope of protection vis a vis the product	Q8. Colors	Q9. Mandatory marking of unregistered designs	Q10. Rules or guidelines for marking unregistered designs
		<p>protect the design (in the form made available to the public, in the case of an UCD) in the territory of the European Union against subsequent designs which does not produce on the informed user a different overall impression. However, with regard to the rights conferred by a community design, the scope of protection of unregistered designs is limited to designs <u>which results from copying</u> (art. 19 (2) CDR). In the context of a design which results from an</p>		<p>and/or its ornamentation". The scope of protection of an unregistered design will then be defined by the way it was disclosed to the relevant public. If the disclosure was in black and white, it would normally protect all colors, since no specific color was defined in the scope of the design. If disclosure was made in a specific color, it will normally limit the protection against other colors, as long as the color is considered to be a material feature of the design. Colors per se are not protected as designs. The</p>		

	Q5. How is the term calculated	Q6. Scope of protection vis a vis registered designs	Q7. Scope of protection vis a vis the product	Q8. Colors	Q9. Mandatory marking of unregistered designs	Q10. Rules or guidelines for marking unregistered designs
		independent work of creation by a designer who may be reasonably though not to be familiar with the design made available for the public by the holder will not be considered a copy (art. 19 (3) CDR).		effect that a particular color will have on a design and the question of whether or not it will limit the protection will be decided on a case by case basis, considering the effect of the particular color on the overall impression conveyed by the design		
Germany (DE)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Hong Kong (HK)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
India (IN)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Israel (IL)	3 years from the date on which the proprietor of the design, or anyone on his behalf, first made public the design or the design product, in Israel or abroad. Extensions of the term are not possible	Registered Design: Registration of a design grants the proprietor of the registered design an exclusive right to	Unregistered Design is defined by the law as "a design that is not a registered design". "Design" is defined as "the appearance of a	This issue is not explicitly stated and is open to interpretation. This difficulty is enhanced also by Regulation 14(p) of the local	It is not mandatory to explicitly mark or claim protection as an unregistered design. A proprietor of an	According to Article 62 of the Designs Law, the mark will indicate that this is an unregistered design and the relevant date

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		<p>perform all of the acts enumerated below, with respect to the registered design and any other design which creates for the informed user a general impression that does not differ from the general impression created by the registered design:(1) manufacture, sale or lease, including a bid or position for sale or lease of a registered design product, in a commercial manner, the distribution of such product on a commercial scale or its import into Israel not for personal use, except importing to</p>	<p>product or part of a product, composed of one or more visual characteristic of the product or of part of the product, as the case may be, including outline, color, shape, decoration, texture or the material from which they are made."</p>	<p>regulations, regarding the requirements of the visual representations that are submitted when filing a design application, which states that if the representations of the claimed design are in color, and the claimed design does not include color, a disclaimer should be added to the application. On the other hand, one may argue that the fact that "design" is defined as "the appearance of a product or part of a product, composed of one or more visual characteristic of</p>	<p>unregistered design believing that his design is eligible for protection as an unregistered design may mark the design product.</p>	<p>applying to the design.According to Regulation 93 of the Designs Regulationsa. Unregistered design mark may be one of the following:(1) Unregistered Design (In Hebrew) and the relevant date;(2) URD (in Hebrew) and the relevant date;(3) IL-URD (in English) and the relevant date.b. The product shall be marked at the time it is offered for sale or commercially distributed to the public in Israel, by the proprietor of the design, or anyone on his behalf, including in an online publication.c. The marking shall be visible, and in</p>

	Q5. How is the term calculated	Q6. Scope of protection vis a vis registered designs	Q7. Scope of protection vis a vis the product	Q8. Colors	Q9. Mandatory marking of unregistered designs	Q10. Rules or guidelines for marking unregistered designs
		<p>Israel a product manufactured abroad with the permission of the proprietor of the design, or anyone on his behalf;(2) possession of a registered design product for the purpose of performing any of the acts enumerated in paragraph (1).A person exploiting a registered design, either on his own or through another, after the date of publication of the design application in the ILPO website and without the permission of the proprietor of the registered design, is infringing the registered</p>		<p>the product or of part of the product, as the case may be, including outline, color, shape, decoration, texture or the material from which they are made" means that the assessed design may be composed of some of the parameters mentioned above, while others may be left out. It should be remembered that the unregistered design right refers to an identical design product or another design product that creates with an informed user a general impression not</p>		<p>proper proportion to the size of the product or packaging, as the case may be.d. Each product shall be marked individually, including in one of the following ways:(1) on the product or label affixed thereto, whether removable or not;(2) If the product is presented in a package, the marking should appear on the package;(3) If the product is displayed on a website, the marking shall be done on the website, but this marking will not be a substitute for marking the product if the product is also displayed in a</p>

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		<p>design. Unregistered Design: The proprietor of an unregistered design eligible for protection shall be vested the exclusive right to prevent any other person from manufacturing, for commercial use, a design product which is a replication of the design, whether the replication is carried out by manufacturing an identical design product or another design product that creates with an informed user a general impression not differing from the general impression the design product</p>		<p>differing from the general impression the design product creates with him. It may be argued, in some cases, that color difference does not with an informed user a general impression not differing from the general impression the design product creates with him.</p>		<p>direct display such as in a store;(4) Several products displayed and marked together in direct display, such as a store, shall include a distinction as to which product the marking relates to.</p>

	Q5. How is the term calculated	Q6. Scope of protection vis a vis registered designs	Q7. Scope of protection vis a vis the product	Q8. Colors	Q9. Mandatory marking of unregistered designs	Q10. Rules or guidelines for marking unregistered designs
		<p>creates with him. A person exploiting an unregistered design, either on his own or through another, after the relevant date and without the permission of the proprietor of the unregistered design, is infringing the unregistered design. A person doing any of the acts specified below in an unregistered design product is infringing the unregistered design, if at the time of doing the act he knew or should have known that the design product is an infringing product: (1) sale or lease, including a bid or</p>				

	Q5. How is the term calculated	Q6. Scope of protection vis a vis registered designs	Q7. Scope of protection vis a vis the product	Q8. Colors	Q9. Mandatory marking of unregistered designs	Q10. Rules or guidelines for marking unregistered designs
		position for sale or lease, in a commercial manner;(2) possession for the purpose of doing any of the acts stated in paragraph (1);(3) distribution on a commercial scale;(4) import to Israel not for personal use.				
Italy (IT)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.

	Q5. How is the term calculated	Q6. Scope of protection vis a vis registered designs	Q7. Scope of protection vis a vis the product	Q8. Colors	Q9. Mandatory marking of unregistered designs	Q10. Rules or guidelines for marking unregistered designs
Japan (JP)	Three-year term is calculated from the date when the goods were first sold in Japan. The goods is not necessary "sold", but also the date the goods were first exhibited at a trade show is considered to be the starting date of the three-year term.	A holder of a registered design right has the exclusive right to work the registered design and designs similar thereto as a business. By contrast, protection under the UCPA is limited to the goods that are substantially identical thereto, based on the configuration of the goods. That is, protection under the UCPA requires that configuration of goods of an owner of unregistered design is imitated by an infringer, based on the configuration of the owner's goods	In principal, the configuration of the entire product is protected by the UCPA. The configuration of the part thereof is not protected, unless there are special circumstances such that the part can be separated from the goods and traded independently.	The protection of the unregistered design is considered to be extended to other colors, if the distinctive feature of the configuration of the goods is not the color itself.	Marking or claiming protection is not mandatory.	There is no specific rules or guidelines for marking unregistered designs.

	Q5. How is the term calculated	Q6. Scope of protection vis a vis registered designs	Q7. Scope of protection vis a vis the product	Q8. Colors	Q9. Mandatory marking of unregistered designs	Q10. Rules or guidelines for marking unregistered designs
Republic of Korea (KR)	In regard to protection under Article 2 (i) of the UCPA, the 3 year term is calculated from the date when the original product (such as, the prototype) was created. If the prototype has been published prior to sales, for example via advertisement, the 3 year term would be calculated from the first publication date. No extension of the term is possible.	A. 3 year protection against the deadcopy: Article 2 (i) of the UCPA: the protection scope of an unregistered design is narrower than that of a registered design, as such protection is limited to those that are substantially identical; B. Catch-All provision: Article 2 (k) of the UCPA: The protection scope under this provision may be broader than that of a registered design. There is no strict requirement for establishing design similarity,	A. 3 year protection against the dead copy: Article 2 (i) of the UCPA: in principle, entire product only; B. Catch-All provision: Article 2 (k) of the UCPA: entire product or a part thereof	The scope of protection can be extended to other colors	No	There are no specific rules or guidelines for mandatory/optional marking

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		<p>novelty or creativeness, and a design element that cannot be subject to protection under traditional IP laws (e.g., registered design or copyright), for instance, the image of a golf park including the golf course, could be subject to protection under the above provision.</p>				

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Mexico (MX)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
New Zealand (NZ)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Poland (PL)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Portugal (PT)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Singapore (SG)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
South Africa (ZA)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Spain (ES)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Switzerland (CH)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Taiwan (TW)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.

	Q5. How is the term calculated	Q6. Scope of protection vis a vis registered designs	Q7. Scope of protection vis a vis the product	Q8. Colors	Q9. Mandatory marking of unregistered designs	Q10. Rules or guidelines for marking unregistered designs
Turkey (TR)	No	<p>According to the Article 69/II of Turkish Industrial Property Code, the term of protection of unregistered designs start from first date of disclosure to the public of the design for which protection is demanded.</p> <p>According to the Article 57 of Turkish Industrial Property Code, disclosure to the public means releasing on the market, use, description, publication, promotion or so on by means of exhibition and sale. Disclosure to a third person under conditions of confidentiality shall not be</p>	<p>According to the Article 55 of Turkish Industrial Property Code, a design shall be the appearance of the whole or a part of a product resulting from the features of, the line, contour, colour, shape, material or texture of the product itself or its ornamentation.</p> <p>Product means any industrial or handicraft item, including parts intended to be assembled into a complex product, products like packaging, presentations of more than one object perceived together.</p> <p>Therefore, unregistered design right may protect both the entire product and</p>	There is not a regulation and published case-law on this matter in Turkish Industrial Property Law	No, there are no specific articles on this matter in Turkish Industrial Property Law	There are no specific articles on this matter in Turkish Industrial Property Law.

	Q5. How is the term calculated	Q6. Scope of protection vis a vis registered designs	Q7. Scope of protection vis a vis the product	Q8. Colors	Q9. Mandatory marking of unregistered designs	Q10. Rules or guidelines for marking unregistered designs
		deemed as making available to the public.	its parts as such in registered design right if the parts meet the required criteria. According to the Article 56/II of Turkish Industrial Property Code, the design of a part of a complex product shall be considered to be new and to have a distinctive character if the component part is mounted to the complex product, remains visible during normal use of the complex product and if the visible features of the component part fulfill the requirements as to novelty and individual character. The normal use shall mean use by the end user, excluding			

	Q5. How is the term calculated	Q6. Scope of protection vis a vis registered designs	Q7. Scope of protection vis a vis the product	Q8. Colors	Q9. Mandatory marking of unregistered designs	Q10. Rules or guidelines for marking unregistered designs
			maintenance, servicing or repair work			
United Kingdom (UK)	The term of protection is calculated from the end of the calendar year in which the design was first recorded in a design document or an article was first made to the design, whichever occurred first. If articles made to the design are put on sale within the first five years of that term, then the design right lasts for only 10 years from the date of first sale.	The scope of protection of unregistered designs differs from registered designs for the reasons set out below:- unregistered designs only protect shape or configuration of a design - not 2D designs, decorations or surfaces;- functional	Parts of a product are also protected. The term “any aspect of” has been recently removed from the legislation, due to the uncertainty that it used to cause in relation to the scope of protection of unregistered designs (section 213 CPDA).	Scope of protection of unregistered design does not cover colours.	Marking is not a requirement, protection arises automatically once the design is recorded in a document or an article is made.	See Q. 9

	Q5. How is the term calculated	Q6. Scope of protection vis a vis registered designs	Q7. Scope of protection vis a vis the product	Q8. Colors	Q9. Mandatory marking of unregistered designs	Q10. Rules or guidelines for marking unregistered designs
		designs are protected even if they have an aesthetic appeal;- the requirement of not been copied and not been commonplace differ from the novelty and individual character proper of registered designs;- duration is limited to 10 or 15 years rather than up to 25 years; and-evidence of copying must be provided to claim infringement unlike registered designs				
Uruguay (UY)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
U.S.A. (US)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.

	Q11. Entitlement to act	Q12. Requirements for infringement	Q13. Court decisions	Q14. a) overview as to the remedies	Q14. b) remedy specified in (a) granted	Q15. foreseen changes in law
Argentina (AR)	n.a.	n.a.	n.a.	n.a.	n.a.	By the time being, according to the information that I have, no change is foreseen in the law in order to provide protection to unregistered designs. It should be noted that the Decree-Law No. 6673/63 which regulates industrial models and designs was amended by Act No. 27.444 in 2018 and any provision regarding the protection of unregistered designs was introduced by this amendment.

	Q11. Entitlement to act	Q12. Requirements for infringement	Q13. Court decisions	Q14. a) overview as to the remedies	Q14. b) remedy specified in (a) granted	Q15. foreseen changes in law
Australia (AU)	n.a.	n.a.	n.a.	n.a.	n.a.	IP Australia conducted a public consultation from 31 October to 20 December 2019 on policy issues being considered for inclusion in a Designs Bill in 2020. In May 2020, IP Australia published its response to public consultant and recommended the introduction of an automatic 12-month prior art grace period from the priority date when assessing whether a design is new and distinctive. A bill to implement this recommendation is currently at the drafting stage, which if passed through Parliament, would enact the grace period into law. This would allow the owner of an

	Q11. Entitlement to act	Q12. Requirements for infringement	Q13. Court decisions	Q14. a) overview as to the remedies	Q14. b) remedy specified in (a) granted	Q15. foreseen changes in law
						unregistered design wishing to enforce the design to seek registration if the first disclosure of the design was within 12 months of the filing date. Currently, this is not possible as there is no grace period under Australian design laws.
Austria (AT)	n.a.	n.a.	n.a.	n.a.	n.a.	There are no changes anticipated in Austria.
Benelux (BX)	n.a.	n.a.	n.a.	n.a.	n.a.	There are no upcoming changes to design law which are likely to impact the protection of unregistered designs.
Brazil (BR)	n.a.	n.a.	n.a.	n.a.	n.a.	The new draft of the future IP Law does not foresee any modification or the introduction of the Unregistered Design in the national legislation

	Q11. Entitlement to act	Q12. Requirements for infringement	Q13. Court decisions	Q14. a) overview as to the remedies	Q14. b) remedy specified in (a) granted	Q15. foreseen changes in law
Canada (CA)	n.a.	n.a.	n.a.	n.a.	n.a.	Protection via copyright and/or passing off may apply, however there are no upcoming changes to design law at this time
Chile (CL)	n.a.	n.a.	n.a.	n.a.	n.a.	The new draft of the future IP Law does not foresee any modification or the introduction of the Unregistered Design in the national legislation

	Q11. Entitlement to act	Q12. Requirements for infringement	Q13. Court decisions	Q14. a) overview as to the remedies	Q14. b) remedy specified in (a) granted	Q15. foreseen changes in law
China (CN)	Since the unregistered designs of packaging or decoration with certain influence are protected by anti-unfair competition law, the one entitled to act against an alleged infringer shall be a natural person, a legal person, or a non-legal person organization that engages in producing or distributing products	Using without permission a label identical or similar to the packaging or decoration, among others, of another person's products with certain influence	Jia Duo Bao Company vs Wang Lao Ji Company, (2015) Min San Zhong Zi No.2 decided by the Supreme People's Court, People's Republic of China. In this case, the court held "the condition for commercial identification rights related to packaging and decoration to be protected by the Anti-Unfair Competition Law shall be that the packaging and decoration have distinctive identifying characteristics and are used on products with certain influence."	The remedies include: 1) permanent injunction; 2) damages; 3) preliminary injunction; 4) public apology and clarification. There are four ways for calculating damages, including: 1) the loss of the plaintiff; 2) the profit of the infringer; 3) reasonable times of royalty; 4) statutory damage up to 5 million.	Yes.	With the enactment of new judicial interpretations on enhancement of IP protection, it is estimated unregistered design would get stronger protection.
Denmark (DK)	n.a.	n.a.	n.a.	n.a.	n.a.	There are no plans to introduce unregistered design protection in Denmark

	Q11. Entitlement to act	Q12. Requirements for infringement	Q13. Court decisions	Q14. a) overview as to the remedies	Q14. b) remedy specified in (a) granted	Q15. foreseen changes in law
European Union (EU)	The holder of an unregistered design is entitled to act against an alleged infringer. The holder of an unregistered community design is normally the designer , her/his successors , or her/his employer (if developed by an employee in the execution of her/his duties or following the employer's instructions), according to art. 14 of CDR	The holder of an unregistered design is only entitled to act against the use of its design by unauthorized third parties if the contested use results from copying , unless if it is proven that the design results from an independent work of creation by a designer who may be reasonably thought not to be familiar with the design made available to the public by the holder (art. 19, 2. CDR). The burden of proof related to the act of copying is on the holder of the unregistered design (Court of Justice C 479/12).	The question of whether via the disclosure of the entire product it would also be possible to obtain unregistered community design protection for its parts was recently raised by the German Federal Supreme Court [<i>Bundesgerichtshof</i>] in the case "Ferrari SpA vs. Mansory Design & Holding GmbH, WH" to the Court of Justice. The case (Case C-123/20) is still pending in the Court of Justice; Case C 345/13 (Karen Millen Fashions Ltd vs. Dunnes Stores) – The Court of Justice decided that the assessment of individual character of a community design must make reference to specific earlier designs, taken individually	The following sanctions against the infringement of a community design (registered or unregistered) are foreseen in art. 89 CDR: (a) order prohibiting the defendant from proceeding with the acts which have infringed or would infringe the Community design ; (b) order to seize the infringing products; (c) order to seize materials and implements predominantly used in order to manufacture the infringing goods, if their owner knew the effect for which such use was intended or if such effect	Decisions related to infringement proceedings are rendered by the national courts of the Member States.	The necessity of a change of the CDR has been discussed for some years. In 2016, the European Commission prepared a legal review analyzing the necessity of a change of the CDR. In 2018, they started a public consultation which was closed in April 2019. A specific draft proposal for the change of the legislation has not been published yet but is expected to come soon. The European Commission has also published a roadmap on the Intellectual Property Action Plan aiming to inform citizens and stakeholders about the Commission's work and allow them to provide their feedback with

	Q11. Entitlement to act	Q12. Requirements for infringement	Q13. Court decisions	Q14. a) overview as to the remedies	Q14. b) remedy specified in (a) granted	Q15. foreseen changes in law
			<p>and not to a combination of prior designs. Besides, the Court of Justice affirmed that the holder of an unregistered community design is not required to prove that the design has individual character within the meaning of art. 6 CDR, but only needs to indicate what constitutes the individual character of that design; Case C 479/12 (H. Gautzsch Großhandel GmbH & Co. KG vs. Münchener Boulevard Möbel Joseph Duna GmbH) – The Court of Justice decided that the distribution of a newsletter with images of a design to retailers in the specific sector in Europe was sufficient to obtain</p>	<p>would have been obvious in the circumstances; and (d) any order imposing other sanctions appropriate under the circumstances which are provided by the law of the Member State in which the acts of infringement or threatened infringement are committed, including its private international law; Guidelines for further sanctions and remedies are provided by the Enforcement Directive (Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual</p>		<p>regard to the commission's activities. As far as designs are concerned, the IP Action Plan highlights the need of a legal framework update, especially with regard to the new forms of design protection and the implications of 3D printing. On August 13, 2020, INTA provided its comments on the European Commission's Roadmap on the Intellectual Property Action Plan.</p>

	Q11. Entitlement to act	Q12. Requirements for infringement	Q13. Court decisions	Q14. a) overview as to the remedies	Q14. b) remedy specified in (a) granted	Q15. foreseen changes in law
			<p>protection as an unregistered community design. On the other hand, the Court stated that it is possible that an unregistered design may not reasonably have become known in the normal course of business to the circles specialized in the sector concerned, operating within the European Union, even though it was disclosed to third parties without any explicit or implicit conditions of confidentiality, if it has been made available to only one undertaking in that sector or has been presented only in the showrooms of an undertaking outside the European Union, which it is for the Community design court to</p>	<p>property rights) such as right of information; provisional and precautionary measures (including interlocutory injunctions, seizure or delivery up of suspected infringing goods, seizure of property and blocking of bank accounts); corrective measures (including recall from the channels of commerce and destruction); final injunctions; damages (including unfair profits made by the infringement); legal costs and publicity measures. The application of these sanctions</p>		

	Q11. Entitlement to act	Q12. Requirements for infringement	Q13. Court decisions	Q14. a) overview as to the remedies	Q14. b) remedy specified in (a) granted	Q15. foreseen changes in law
			<p>assess, having regard to the circumstances of the case before it. Furthermore, the Court stated that the holder of the protected design must bear the burden of proving that the contested use results from copying that design, except in cases where the relevant court finds it would be too difficult or impossible for the claimant to produce such evidence and, finally that infringement actions, sanctions and remedies related to unregistered community designs are governed by national law of the respective Member States, including its international law; Case C-32/08 (Fundación Española para la</p>	<p>and remedies are, however, subject to the national law of the Member State in which the infringement action was filed</p>		

	Q11. Entitlement to act	Q12. Requirements for infringement	Q13. Court decisions	Q14. a) overview as to the remedies	Q14. b) remedy specified in (a) granted	Q15. foreseen changes in law
			<p>Innovación de la Artesanía (FEIA) vs. Cul de Sac Espacio Creativo SL) – The Court of Justice confirmed that according to art. 14 (1) CDR the right to a community design vests in the designer, unless it has been assigned by way of contract to his successor in title and clarified that art. 14 (3) CDR does not apply to community designs that have been produced as a result of a commission</p>			

	Q11. Entitlement to act	Q12. Requirements for infringement	Q13. Court decisions	Q14. a) overview as to the remedies	Q14. b) remedy specified in (a) granted	Q15. foreseen changes in law
Germany (DE)	n.a.		n.a.	n.a.	n.a.	There are no upcoming changes to design law which are likely to impact the protection of unregistered designs
Hong Kong (HK)	n.a.	n.a.	n.a.	n.a.	n.a.	Currently there is no plan to protect unregistered design in Hong Kong other than by way of copyright.
India (IN)	n.a.	n.a.	n.a.	n.a.	n.a.	There are no forthcoming developments in the area of unregistered designs as of now
Israel (IL)	Design infringement action may be filed by the design proprietor, and if an exclusive license was granted with respect to the – also the aforesaid licensee. Where the design is under joint ownership, each of the joint proprietors of the design may file a design infringement action. The designer is the first proprietor of a design,	The proprietor of an unregistered design eligible for protection shall be vested the exclusive right to prevent any other person from manufacturing, for commercial use, a design product which is a replication (unlike	Not aware of any key court decisions Israel regarding the enforcement or refusal to enforce an unregistered design right.	<ul style="list-style-type: none"> Design infringement is a civil wrong and the provisions of the Torts Ordinance [New Version]⁴ will apply to it, mutatis mutandis, and subject to the provisions of this Law. (Article 73) In an action on design 	No	No foreseen changes in the Israeli law.

	Q11. Entitlement to act	Q12. Requirements for infringement	Q13. Court decisions	Q14. a) overview as to the remedies	Q14. b) remedy specified in (a) granted	Q15. foreseen changes in law
	<p>unless determined otherwise, as follows:(a) The first proprietor of a design that was designed by an employee in the performance of his duties, or by actual use of the employer's resources (hereinafter referred to in this section as a "service design") is the employer, unless agreed otherwise between the employee and the employer.(b) In case a dispute arises on the question whether the design is a service design, the employee or the employer, or anyone on their behalf, may request that the Commissioner decide on the issue.</p>	<p>registered design, where replication is not required). of the design, whether the replication is carried out by manufacturing an identical design product or whether it is carried out by manufacturing another design product creates with an informed user a general impression not differing from the general impression the design product creates with him If the design product is a set of articles, the aforesaid right will apply with respect to each of the articles in the set.When determining whether a design creates for an informed</p>		<p>infringement, the plaintiff is entitled to a remedy by way of an injunction order, unless the court finds that there are reasons that justify not making such an order. (Article 74)• In an action on design infringement, the court may, at the request of the plaintiff, award the plaintiff for any infringement, compensation without proof of damage in an amount not exceeding NIS 100,000. (Article 75(a))• When determining compensation, the court may take the following, inter alia, into considerations:</p>		

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		<p>user a general impression not differing from the general impression the design product creates for him, It shall take into account, inter alia, the various options available for designing designs with respect to products from the field to which the design product belongs.</p>		<p>the scope of the infringement, severity of the infringement, actual damage caused to the plaintiff, according to the court's estimation, the profit the defendant accrued, according to the court's estimation; and others. (Article 75(b))• In an action for design infringement, the court may require the defendant to give an account to the plaintiff regarding the details of the infringement. (Article 76)• Upon conclusion of an infringement action hearing of a right in a design, the court</p>		

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				<p>may, after having taken into consideration, inter alia, the severity of the infringement and the interest of any other person concerned that is not a party to the action, order the following (Article 77(A))(1) the performing of an act with respect to the design products in which the right was infringed the purpose of which is to prevent any damage to the proprietor of the design, including the transfer of ownership in said products to the plaintiff if he requested so, or their destruction; however, where the court has ordered such transfer of ownership, it</p>		

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				<p>may, if it found that the plaintiff is likely to use the infringing products, charge him with payment as it shall determine;(2) the performing of an act in assets whose main and central use was for the manufacture of the infringing products whose purpose is to prevent the continued infringement heard by the court, or any other infringement of a right in the design.</p>		
Italy (IT)	n.a.	n.a.	n.a.	n.a.	n.a.	No amendment to the Italian statutory laws on designs are foreseen

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Japan (JP)	The one who develops, commercializes and brings the goods on the market is entitled to act against an infringer. Merely a designer, who does not commercialize the goods and put the goods on the market, is not considered to be entitled to act against an alleged infringer.	The act of assigning, leasing, displaying for the purpose of assign or lease, exporting or importing goods that imitate the configuration of another person's goods (excluding that which is indispensable to its functioning) constitutes "unfair competition" under the UCPA. The term "imitate" is defined as the act of creating goods that are substantially identical to another person's goods, based on the configuration of the goods (Article 2 (5) of the UCPA). In summary, to constitute unfair	Dragon Sword Key Holder case (Tokyo High Court February 26, 1998, 1996 (Ne) 6162; Tokyo District Court December 25, 1996, 1995 (Wa) 11102)The plaintiff claimed that the defendant produced and sold key holders which imitated the configuration of the plaintiff's key holder, and demanded an injunction and compensation for damages. The Tokyo District Court granted that the defendant's key holder is an imitation of the plaintiff's key holder, however, Tokyo High Court (appeal court) denied the infringement of the plaintiff's products' configuration, stating that the	Permanent injunctions and monetary relief are available as civil remedies, and a preliminary injunction is also available.As to monetary relief, the followings are presumed to be the amount of damages under the UCPA:- The quantity of the articles sold or transferred by an infringer multiplied by the amount of profit per unit of the articles that an infringed person could have sold in the absence of the infringement (Article 5(1));- The amount of profits in which an infringer received through the act of infringement (Article 5(2));-	There have been a number of court cases that the court granted an injunction and awarded damages against the infringer.	N/A

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		<p>competition, it requires:- The goods imitate another person's goods- The configuration of the imitating goods is substantially identical to that of another person's goods- The infringer had access to another person's goods- Within three years from the first date of selling of another person's goods- The infringer assigns (sells), distributes, leases, displays for the purpose of selling or distributing, exports or imports the imitation goods- The configuration is not indispensable to</p>	<p>configuration of the defendant's key holder is not substantially identical to that of the plaintiff's key holder, so the defendant's key holder is not an imitation of the plaintiff's key holder. The court stated that "imitation" stipulated under the UCPA requires the following conditions to be satisfied: (i) configuration of an infringer's goods is identical or substantially identical to configuration of another person's goods (objective requirement), and (ii) an infringer had access to another person's goods and recognized the configuration of its own goods being substantially identical to that of</p>	<p>The amount of reasonable royalties (Article 5(3) (ii)) As to criminal remedies, imprisonment not exceeding 5 years or fine not exceeding JPY 5 million (in the case of a corporation, JPY 300 million), or both, may be imposed on the infringers ((Articles 21(2)(iii) and 22(2)(iii)).</p>		

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		<p>its functioningA person who infringes on the business interests of another person by unfair competition shall be liable for an injunction, and a person who intentionally or negligently infringes on the business interests of another person by unfair competition shall be liable for damages.</p>	<p>another person's goods (subjective requirement).</p>			

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Republic of Korea (KR)	The entity who actually engages in commercializing the product or invests in such commercialization, is entitled to act. For example, such an entitled entity can refer to the exclusive distributor or the licensee of the product, not to the designer of the product	A. 3 year protection against the dead copy: Article 2 (i) of the UCPA: (i) Substantial sameness; (ii) an imitation with minor alterations to the shape can still be considered as substantially the same as the original product design; (iii) the commonly used or functional shape of a product cannot be protected; (iv) valid three (3) year protection term; B. Catch-all provision: Article 2 (k) of UCPA: (i) achievement gained by considerable investment and efforts; (ii) resulting in damaging the others'	A-Case laws grounded on Article 2 (i) of the UCPA: 1-Supreme Court Decision (Case No. 2006Ma 342): the Claimant's subject unregistered design refers to a package for cookies. The Court has rendered a decision to enforce the unregistered design right under Article 2 (i) of the UCPA. In this case, the court clearly held that the shape of a product package can be subject to protection under this provision, given that such a package can be seen as an entirety of individual cookies inside the package, 2-Supreme Court Decision (Case No. 2015Da240454): The Claimant's subject unregistered design refers to a soft icecream having a	In regard to the 3 year protection, civil remedies including injunctive relief and damages, as well as criminal sanction are available. Administrative remedy (the Commissioner of the KIPO's issuance of corrective recommendation to cease the act) is also available. In regard to the catch-all provision, civil remedies including injunctive relief and damages (e.g., actual damages or those corresponding to reasonable royalty, but no punitive damage) and administrative	Yes	Since the recent positive case laws, including the Supreme Court's ruling in favor of Hermes (Case No. 2017Da 217847), it is anticipated that enforcing unregistered rights for the original designs, which would not be protectable under traditional IP rights, could be encouraged and facilitated

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		economic interests; (iv) violating fair commercial practice	honeycomb topping on top of the ice cream as shown ". The Supreme Court rendered a decision to dismiss enforcement of the unregistered design right. The main ground for this decision is the subject shape is not fixed: the subject shape appears to be irregular and is hard to determine which particular shape (e.g., rectangular) it belongs to and the honeycomb (topping) is not placed in a consistent position at the top of the ice cream B-Case laws grounded on Article 2 (k) of the UCPA: Supreme Court Decision (Case No. 2017Da 217847): the Claimant (Hermes)'s subject unregistered design	remedy is available		

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			<p>refers to their most famous Birkin and Kelly bags. The Court overturned the lower court's decision to dismiss enforcing the catch-all provision, and affirmed that the defendant's act of copying the shape of the claimant's bags and further adding unique eye designs thereto constitutes an unfair act of taking advantage of "achievement gained by the claimant's considerable investment and efforts". The court held that, as a result of continuous and exclusive use of the Birkin bag and Kelly bag in Korea, these bags are deemed as acquiring distinctiveness among consumers; therefore, the shapes of the Birkin</p>			

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			and Kelly bags are entitled to legal protection			
Mexico (MX)	n.a.	n.a.	n.a.	n.a.	n.a.	The new Mexican IP law will enter into force next November 5, 2020; however, it does not contemplate the possibility of protection for unregistered designs.
New Zealand (NZ)	n.a.	n.a.	n.a.	n.a.	n.a.	None

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Poland (PL)	n.a.	n.a.	n.a.	n.a.	n.a.	There is no such plan for the time being. The Council Regulation No. 6/2002 is perceived as a sufficient tool to protect such unregistered designs
Portugal (PT)	n.a.	n.a.	n.a.	n.a.	n.a.	There are no upcoming changes to any IP law. Portugal has a very recent IP Code (fully in force since 01.07.2019).
Singapore (SG)	n.a.	n.a.	n.a.	n.a.	n.a.	There has been no talk of introducing unregistered design rights in Singapore.
South Africa (ZA)	n.a.	n.a.	n.a.	n.a.	n.a.	None provided for (other than copyright laws).
Spain (ES)	n.a.	n.a.	n.a.	n.a.	n.a.	There are no upcoming changes to design law which are likely to impact the protection of unregistered designs

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Switzerland (CH)	n.a.	n.a.	n.a.	n.a.	n.a.	There are currently no plans to revise the Swiss law to include protection for unregistered designs
Taiwan (TW)	n.a.	n.a.	n.a.	n.a.	n.a.	There are indeed calls in Taiwan's IP community for introducing a sui generis Chapter in either the Patent Act (since design can be patent in Taiwan) or the Fair Trade Act in order to render rules for protection of unregistered designs. However, as of this writing, no bill in this regard has been proposed in the Congress or by any government agency

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Turkey (TR)	According to the Article 81/IV of Turkish Industrial Property Code, the right owner of the unregistered designs has the authority to institute the legal proceeding due to the violations of the design right. According to the Article 70 of Turkish Industrial Property Code, design right belongs to the designer or his successors and it may be transferred. If design application or design belongs to more than one person, the partnership claim on the right shall be determined pursuant to the agreement concluded between the parties and if there is no such an agreement between the parties, it is determined in accordance with the provisions related to joint ownership in the Turkish Civil Code dated 22/11/2001 numbered 4721. Each right owner can make the following actions on his behalf	According to the Article 59/II of Turkish Industrial Property Code, unregistered design gives the owner the right to prevent acts of the third parties such as producing, selling, importing, using for commercial purposes, keeping in stock for those purposes or making a recommendation for a contract in case copies of identical designs or in respect of overall impression copies of indistinguishably similar designs are used. A design by an independent designer not being able to	Since the protection of unregistered designs came into force on 2017 and it is a relatively new concept in Turkey, there is not such an example yet. Before the enforcement of Turkish Industrial Property Code, it was possible to file an unfair competition lawsuit within the context of the Turkish Commercial Code for the proprietors of unregistered designs in the case of infringement	According to the Article 149 of Turkish Industrial Property Code, a right owner whose industrial property right is infringed can claim the following from the court: a) To determine the existence of infringement; b) To prevent the possible infringement; c) To stop the infringing actions; d) To remedy infringement and compensate material and moral damages; e) to seize the products causing infringement or requiring penalty, as well as instruments, such as devices and machine	Since the protection of unregistered designs came into force on 2017 and it is a relatively new concept in Turkey, we could not determine any published data on this yet	We do not foresee a change which may affect our answers provided above in our jurisdiction in the near future

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	independently of the others: a) he can freely dispose on the share belonging to himself; b) he can use the design by means of notifying the other right owners; c) in the event that rights arising from design are infringed in any way, he can sue a claim against third persons. In this case, a notification shall be sent by the claimant to the other right holders in order that they can participate in the legal proceeding in question	know through reasonable ways that the protected design is presented to the public prior to his design, shall not be deemed to have copied the design in the scope of the protection. In addition, according to the Article 81 of Turkish Industrial Property Code, the following acts shall be deemed as infringement of a design right: to produce, put on the market, sell, offer for contracting, import, use for commercial purposes or stock for those purposes an identical or similar product in		exclusively used in their production, without preventing the production of products other than infringing products; f) to be granted property right on products, devices and machines seized in accordance with subparagraph (d); g) To take measures to prevent the continuity of infringement, in particular at the expense of the infringer to change the shapes of products and instruments such as device and machine seized according to subparagraph (d), to erase the trademarks on		

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		<p>which the design is incorporated or to which it is applied without the consent of the right holder; to broaden the rights granted by the design owner through licensing or to transfer these rights to third parties without consent; to disseize the right of a design</p>		<p>them or to destroy them if it is inevitable for preventing the infringement of industrial property rights; h) if there is any justified reason or interest, announcement of the final judgment at the expense of the opposite party fully or in summary through the daily newspapers or other means or notification to relevant parties. In case of acceptance of the claim specified in subparagraph (e) of first paragraph, the value of devices and machines shall be deducted from amount of compensation. If</p>		

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				<p>this value exceeds the amount of agreed compensation, exceeding portion shall be paid to opposite party by right owner. In case of acceptance of the claim specified in subparagraph (g) of first paragraph, the form and scope of announcement shall be determined in the ruling. The right for announcement shall be void unless demanded within three months after final ruling. Those who commit acts deemed as infringement on industrial</p>		

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				<p>property right shall be obliged to compensate the damage of right owner. Where the industrial property right is infringed, additional compensation may be claimed if reputation of industrial property right suffers damage because the products or services forming the subject of the right are used or produced in an inferior manner; or such products produced in this way are made available or launched to the market in an improper manner. The right owner, before instituting a legal proceeding for</p>		

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				<p>compensation related to infringement of industrial property right, in order to determine the evidences or if a legal proceeding for compensation has been instituted, in order to determine the amount of damages, may ask the court to order the person responsible for compensation to submit to the court the documentation related to the use of industrial property right. Damage suffered by the right owner includes actual loss and loss of revenue. Loss of revenue, depending on</p>		

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				<p>the choice of the right owner who suffered damages, shall be calculated according to one of the following evaluation methods: a) The potential revenue to be gained by right owner if the competition by the person infringing the industrial property right had not existed. b) The net revenue obtained by the person infringing the industrial property right. c) License fee to be paid by the person who infringed the industrial property right, if this person used this right through a license agreement in</p>		

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				<p>accordance with the law. In calculation of loss of revenue; factors such as economic importance of industrial property right in particular or the number, time and type of licenses related to industrial property right during infringement action and the nature and size of violation shall be taken into consideration. In calculation of loss of revenue; in the event that one of the evaluation methods specified in the subparagraph (a) or (b) of the second paragraph is selected and if court reaches</p>		

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				<p>the conclusion that industrial property right has been the determinant factor in creating the demand to that product, then the court shall decide that an equitable share be added in the calculation of revenue.</p>		

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United Kingdom (UK)	Only the design right holder is entitled to act against design infringement. The design right holder is the employer if the design is created in the course of employment and it can be the exclusive licensee, if such licence is in place (section 215 and 234 CDPA)	The requirements for primary infringement are set out below (section 226 CDPA):- reproducing a design for commercial purposes by making articles to that design or recording the design into a document for the purpose of enabling an article to be made;- reproduction can be exact or substantial and direct or indirect; and- reproduction take place without a licence.The requirements for secondary infringement are set out below (section 227 CDPA):-	- Action Storage Systems Ltd v G-Force Europe.Com Ltd [2016] EWHC 3151 (IPEC) o s1(1) of the Property Act 2014 deleted the words “any aspect of” from s.123(2) CDPA - the Court agreed with the DKH Retail case (see below) and considered the effect to be that a claimant was no longer permitted to claim an unregistered design right unless a design was specifically embodied in an article. This results in almost always preventing design right owners from claiming protection in relation to a method or principle of construction. In assessment of infringement, it was appropriate to disregard features	The remedies available to the design right holder are damages, injunctions, accounts, delivery up or destruction (section 229 and 230 CDPA).• On top of that, flagrancy damages will also be available if the infringements committed are particularly blatant and warrant an increase in the normal level of damages (to the extent the defendant has benefitted) (s229(3) CDPA).• Owner can also apply for an order against other person who have an infringement	Yes, they are granted on a regular basis (in terms of remedies normally available following IP infringement)In the DKH Retail case, the court considered the availability of s229(3) flagrancy damages, but found they were not available (see paras 117 - 122).	Brexit may impact the information set out above. The UK left the European Union on 31 January 2020 and currently the UK is in a transitional period until 31 December 2020 (an extension of the temporary period may be agreed before the end of July 2020) and no changes apply until the end of the transitional period. Designs that are protected in the UK as an unregistered EU design before 1 January 2021 day will be protected as a UK continuing unregistered design and will be automatically established on 1 January 2021 .It will continue to be protected in the UK for the remainder of the 3 year term

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		<p>importing infringing articles into the UK for commercial purposes;- having possession of infringing articles for commercial purposes; and- selling, letting for hire, offering or exposing for sale or hire infringing articles, in the course of a business.</p>	<p>which could receive no design protection as a result of the exclusions under s213(3); however, s213(4) (commonplace exclusion) applies to designs as a whole.o Claimants should set out in their particulars of claim the significant features of the design or designs and the extent to which those features were to be found in the defendant's accused article. Defendants should adopt that list or propose amendments, and admit or deny the presence of those features.o Held in favour of the claimant (in part)- Whitby Specialist Vehicles Ltd v Yorkshire Specialist Vehicles Ltd [2014]</p>	<p>item or knowingly have components for making an infringing item in their possession, custody or control or commercial purposes (s230 CDPA).o The court can order the item to be sent to the rights owner, someone else, or for it to be destroyed or otherwise dealt with as they think fit.o Exceptions:o There is some protection for 'innocent' infringers (s230 CDPA):§ Primary infringers do not have to pay damages if they can prove that, when they infringed, they did not know and had no reason to</p>		<p>attached to it. The fact that a corresponding unregistered EU design was established before 1 January 2021 through first disclosure in the EU but outside of the UK will not affect the validity of the continuing unregistered design. Additionally, designs created in the UK from 1 January 2021 will give rights to a supplementary unregistered design right. The terms of supplementary unregistered design protection will be similar to that already conferred by unregistered Community designUnder the current withdrawal agreement, if the</p>

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			<p>EWHC 4242 (Pat) o Held in favour of the claimant: design possessed individual character, and infringing design was similar (produced the same overall impression).- DKH Retail Ltd v H Young Operations Ltd [2014] EWHC 4034 (IPEC) o See point re s1(1) of the Property Act above. o Held, given the way D had defined the designs claimed in its gilet, s1(1) made no difference. Although the claimant's designs had been created by reference to earlier designs, they fulfilled the test for originality in that sufficient skill, effort and aesthetic judgment were expended in their creation. Designs were also</p>	<p>believe design right existed in the design that they are found to infringe; and § In the case of secondary infringers that innocently obtained the item (i.e. they did not know and had no reason to believe the item infringed), the only claim available against them is damages not exceeding a reasonable royalty. o A defendant can prevent an injunction being granted by undertaking to take a licence of right, if one is available (due to the age of the unregistered design right - i.e. the last five years of the</p>		<p>design has been first marketed in the EU or designed by EU individual/company after the end of the transition period, no unregistered design protection would be granted in the UK. However, protection is expected to continue if the design was first marketed in the EU or designed by EU individual/company before the end of the transition period and infringement occurs after this date as the UK will be ensuring continuity of rights</p>

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			<p>sufficiently original (not commonplace).- Landor & Hawa International Ltd v Azure Designs Ltd [2006] EWCA Civ 1285o Appeal dismissed (upholding decision in favour of claimant)o s213(3)(a) did not preclude a design from protection merely because it had a functional purpose.- Dyson Ltd v Qualtex (UK) Ltd [2006] EWCA Civ 166o Appeal dismissed (upholding decision in favour of claimant)o Dismissed reading of High Court decision that it required parts to touch in order to fall within the exception in s213(3)(b)(i)</p>	<p>design right) (s237 CDPA).o Similarly, a defendant can secure a capping of damages or an account of profits if it undertakes to take a licence of right. It is not possible to recover more than double the amount payable by the licensee if a licence of right had been granted before the earliest act of infringement (s239 CDPA).</p>		

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Uruguay (UY)	n.a.	n.a.	n.a.	n.a.	n.a.	We do not foresee any change on this matter in the near future. There is no law project pending regarding unregistered design protection
U.S.A. (US)	n.a.	n.a.	n.a.	n.a.	n.a.	While copyright-like protection for designs have been proposed in the US legislature, there is no knowledge of any pending active legislation to establish such a right.