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Federal Act on the Protection of Designs (Designs Act, DesA)

of 5 October 2001 (Status as of 1 January 2022)

*The Federal Assembly of the Swiss Confederation,
on the basis of Article 122 of the Federal Constitution^{1,2}
and having considered the Federal Council Dispatch dated 16 February 2000³,
decrees:*

Chapter 1 General Provisions

Section 1

Subject-Matter of Protection and Requirements for Protection

Art. 1 Subject-matter of protection

This Act protects the design of products or parts of products that is characterised, in particular, by the arrangement of lines, surfaces, contours or colours or by the materials used.

Art. 2 Requirements for protection

¹ A design is protected to the extent that it is new and has individual character.

² A design is not new if an identical design which could be known to the circles specialised in the relevant sector in Switzerland has been made available to the public prior to the filing date or the priority date.

³ A design does not have individual character if the overall impression it produces differs only in immaterial features from a design that could be known to the circles specialised in the relevant sector in Switzerland.

AS **2002** 1456

¹ SR **101**

² Amended by Annex No 5 of the FA of 21 June 2013, in force since 1 Jan. 2017 (AS **2015** 3631; BBl **2009** 8533).

³ BBl **2000** 2729

Art. 3 Non-prejudicial disclosure

The disclosure of a design may not be invoked against the holder of the right (right holder) during the 12 months preceding the filing date or priority date if:

- a. a third party has disclosed the design in an abusive manner to the detriment of the entitled person;
- b. the person entitled has disclosed the design himself.

Art. 4 Grounds for refusal

A design may not be protected if:

- a. the design filed is not in accordance with Article 1;
- b. the design does not meet the requirements of Article 2 at the time of filing;
- c. the features of the design are dictated solely by the technical function of the product;
- d. the design infringes federal law or international treaties;
- e. the design is contrary to public policy or morality.

Section 2 Validity of the Design Right**Art. 5** Establishment of a design right and term of protection

¹ A design right is established on entry in the Design Register (the Register).

² Protection is for five years from the filing date.

³ It may be extended for four periods of five years each.

Art. 6 Right of priority

A design right belongs to the person who first files the design.

Art. 7 Entitlement to file

¹ The person who has created the design, his or her successor in title or a third person whose right is based on other legal grounds is entitled to file the design.

² Where several people have created the design together, they are entitled to file the design jointly unless otherwise agreed.

Section 3 Scope of Protection and Effects**Art. 8** Scope of protection

The protection of the design right includes designs that have the same essential features and thus produce the same overall impression as a design already registered.

Art. 9 Effects of the design right

¹ The design right confers on the right holder the right to prohibit others from using the design for commercial purposes. Use includes, in particular, manufacturing, storing, offering, placing on the market, importing, exporting and carrying in transit, as well as possession for any of these purposes.

^{1bis} The right holder may prohibit the import, export and transit of commercially manufactured goods even if this is for private purposes.⁴

² The right holder may also prohibit third parties from participating in, encouraging or facilitating such unlawful use.

Art. 10 Obligation of the right holder to provide information

Any person who makes a reference to a registered design on goods or business papers without indicating the number of the design right is obliged to provide the number free of charge on request.

Art. 11 Several right holders

Where there are several right holders, the rights provided for in Article 9 accrue to them jointly unless otherwise agreed.

Art. 12 Right of prior use

¹ The right holder may not prohibit third parties from continuing to use a design to the same extent as previously where those parties have used the design in Switzerland in good faith during the following periods:

- a. before the filing date or priority date;
- b. during the period of deferment of the publication (Art. 26).

² The right of prior use may only be transferred together with the business.

Art. 13 Right of parallel use

¹ The right holder may not invoke the registered design against third parties who have used the design commercially in good faith in Switzerland or who have made special preparations for that purpose between the last day of the time limit stipulated for payment of the fee for a further period of protection and the day on which a request for further processing (Art. 31) was filed.

² The right of parallel use may only be transferred together with the business.

³ Any person claiming a right of parallel use must pay the right holder appropriate compensation from the date on which the design right is revived.

⁴ Inserted by Annex No 4 of the FA of 22 June 2007, in force since 1 July 2008 (AS 2008 2551; BBl 2006 1).

Art. 14 Transfer

¹ The right holder may transfer the design right in whole or in part.

² The transfer is only valid if evidenced in writing, but it does not have to be entered in the Register. It is only effective in relation to third parties who are acting in good faith once it has been entered in the Register.

³ Until the transfer has been entered in the Register:

- a. licensees acting in good faith may discharge their obligations to the former right holder;
- b. actions under this Act may be brought against the former right holder.

Art. 15 Licencing

¹ The right holder may permit third parties to use the design right or individual rights conferred by the design right either exclusively or non-exclusively.

² The licence is entered in the Register at the request of one of the parties involved. It then becomes binding on any rights to the design subsequently acquired.

Art. 16 Usufruct and Pledge

¹ A design right may be subject to usufruct or pledge.

² Usufruct and pledges may only take effect in relation to persons who acquire the design right in good faith if they are entered in the Register. The entry is made at the request of one of the parties concerned.

³ Prior to registration of a usufruct, licensees acting in good faith may discharge their obligations to the former right holder.

Art. 17 Compulsory enforcement

A design right can be subject to compulsory enforcement.

Section 4 Representation**Art. 18⁵**

¹ Any person who is party to an administrative procedure under this Act but is not domiciled or does not have a registered office in Switzerland must designate an address for service in Switzerland unless international law or the competent foreign body permits the authority to serve documents directly in the state concerned.

⁵ Amended by Annex No 3 of the FD of 28 Sept. 2018 on the Approval and Implementation of European Convention No 94 on the Service Abroad of Documents relating to Administrative Matters, in force since 1 April 2019 (AS **2019** 975; BBl **2017** 5947).

² The IPI is entitled to declare to the competent foreign body that direct service is permitted in Switzerland in intellectual property matters provided Switzerland is granted reciprocal rights.

Chapter 2 Filing and Registration

Section 1 Filing

Art. 19 General requirements

¹ A design is considered to have been filed once an application for registration has been submitted to IPI. The application must contain:⁶

- a. a request for registration;
- b. a representation of the design suitable for reproduction; if the representation does not fulfil this requirement, the IPI will set a time limit within which the applicant must remedy the defect.

² The prescribed fee for the first period of protection must also be paid within the time limit set by the IPI⁷.

³ If a two-dimensional design is filed for which a deferment of publication has been requested under Article 26, a specimen of the design may be filed in lieu of the representation. If design protection is to be maintained beyond expiry of the deferment period, a representation of the design suitable for reproduction must first be submitted to the IPI.

⁴ On payment of a fee, a description of the design containing no more than 100 words may be included to explain the representation of the design.

Art. 20 Multiple applications

¹ that belong to the same product class under the Locarno Agreement of 8 October 1968⁸ Establishing an International Classification for Industrial Designs may be filed as a multiple application.

² The Federal Council may limit the size and weight of multiple applications.

Art. 21 Effect of filing

Filing creates a presumption of novelty and individual character as well as of the entitlement to file it.

⁶ Amended by Annex No 3 of the FD of 28 Sept. 2018 on the Approval and Implementation of European Convention No 94 on the Service Abroad of Documents relating to Administrative Matters, in force since 1 April 2019 (AS **2019** 975; BBl **2017** 5947).

⁷ Name in accordance with Annex No 5 of the FA of 21 June 2013, in force since 1 Jan. 2017 (AS **2015** 3631; BBl **2009** 8533). This modification has been made throughout the text.

⁸ SR **0.232.121.3**