

## Design Piracy in the Designs Act, 2000: Conceptual Understanding and Judicial Interpretation

Riya<sup>993</sup>

### ABSTRACT

*“Design is not just what it looks like and feels like. Design is how it works.”<sup>994</sup>*

Industrial design protection is the focal point in the modern intellectual property systems due to the fact that it protects the aesthetic aspect of products that contribute to the consumer decision and brand value. In India, industrial design registration and enforcement is provided under the Designs Act, 2000, which provides the proprietor with exclusive rights over the visual look of the items.<sup>995</sup> The success of this regime is however, often put to test by cases of design piracy, as competitors repeat or duplicate registered designs to make money off of them. This type of practice is not only damaging the innovation but also distorting a healthy competition in the market.

This research paper discusses the concept of piracy of registered designs as stipulated by the Indian law based on doctrinal and analytical approaches. It assesses the statutory provisions provided by the Designs Act especially scope of Section 2(d), Section 4, Section 11, and 22<sup>996</sup> that provide definition of designs, conditions to registration, rights due and remedies to infringement. The paper also examines how courts interpret design piracy, and specifically the case of Micolube India Private Limited and Rakesh Trading Company and other cases<sup>997</sup> that shed more light on the criterion employed by the courts to ascertain similarity and infringement.

Using the international scholarship, comparative jurisprudence and the Indian case law, the paper examines the application of the visual impact test, consumer perception and originality

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<sup>993</sup> Student of LLM at Lovely Professional University.

<sup>994</sup> Steve Jobs.

<sup>995</sup> P. Narayanan, Law of Copyright and Industrial Designs (4th edn., Eastern Law House 2017).

<sup>996</sup> Indian Design Act, 2000, ss. 2(d), 4, 11, 19, 22.

<sup>997</sup> Microfibres Inc. v. Girdhar & Co., 2009 (40) PTC 519 (Del).

Castrol India Ltd. v. Tide Water Oil Co., 2010 (43) PTC 146 (Del).

criteria by the courts. It also explores modern issues relating to the speed of digital reproduction, globalised production and the lack of distinction between inspiration and imitation.

The paper throws light upon that even though the Designs Act offers a more organised legal framework; its actual enforcement is inconsistent because of the ambiguous interpretation and the delays in the procedure. This paper finds that registration scrutiny and judicial consistency as well as industry awareness should be enhanced in order to guarantee significant design protection. Finally, the safeguarding of industrial designs needs to keep up with the technological and business realities to support the markets that take innovation.

**Keywords:** Copyright infringement; design infringement; design law; design, the law of design protection; design Act 2000; design and learning; design protection; design protection in India.

## INTRODUCTION

The law of industrial design is in place to safeguard the aesthetic qualities of the products that are attractive to consumers. In the contemporary market places, the pursuit of beauty frequently dictates the business success even more than the functional efficiency. Consumer recognition and brand recall are affected by packaging, product contours as well as decorative features. In order to realise this business value, intellectual property laws in the world accord legal security and safeguard against industrial designs.<sup>998</sup>

In India, this type of protection is regulated by the Designs Act, 2000<sup>999</sup> which has replaced the old colonial law to conform to the international commitments of intellectual property protection. According to the Act, a design is the features of shape, configuration, pattern ornament or colour to an article through any industrial process that is attractive to the eye. Design registration gives the proprietor exclusive rights over the design and other persons cannot use or copy the design without the proprietor approval.

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<sup>998</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994, arts. 25–26.

<sup>999</sup> The Designs Act, 2000, ss. 2(d), 4, 11, 19, 22.

The Designs Rules, 2001.

But, design piracy is a constant problem. The industrial manufacturing processes make it easy to replicate the designs in high speed and at low cost hence competitors can copy successful products within a short time. This imitation may lead to market share erosion, consumer confusion and innovation discouragement. Courts have thus been very instrumental in interpreting statutory provisions and setting boundaries of protection.

The court practice has changed slowly to be more technical in comparison, but it is an analysis of the general impression of the visuals and consumer perception. Such a development is indicative of the fact that the law of design is largely aimed at safeguarding aesthetic expression, and not mechanical invention.

The current paper attempts to discuss the legislative and judicial provisions on piracy of registered design in India. It tries to discover how the Indian design law balances protection of creativity and the need to compete in the market by looking at legal provisions, scholarly interpretations and case law.

## **RESEARCH PROBLEM**

Despite the statutory protection provided under the Design Act 2000, piracy of registered designs continues to occur in India which in result raises concerns regarding the interpretation and implementation of the provisions of the said act. The paper throws light and deep study about the aspects of the Design Act and need to build the clarity and transparency.

## **RESEARCH QUESTIONS**

1. What is the meaning of piracy of a registered design in the Designs Act, 2000?
2. What has been perceived by the Indian courts in regard to visual similarity and deceptive imitation?
3. How much does the consumer perception have an impact on the judicial verdicts in cases of design infringement?
4. Is the existing legislative system sufficient to discourage commercial reproduction of designs?
5. What do we need to fix to increase the enforcement of industrial design rights in India?

These questions will help to discover the clarity of doctrine and efficiency of design protection. They also look at the question as to whether judicial interpretation has broadened or limited statutory protection.

## **HYPOTHESES**

The legal measures of the statutory provisions of the Designs Act, 2000 offer adequate means of safeguarding against piracy, but there is a lack of consistency in the application of law in the courts.

## **OBJECTIVES OF THE STUDY**

- To examine the legal regulations available in protection of industrial designs in India.
- To examine the interpretation and determination of design piracy by the courts.
- To check the efficiency of enforcement mechanisms.
- To test the correlation between design protection and innovation.
- To propose reforms on stronger protection and greater compliance.

## **SCOPE OF THE STUDY**

- Specializes in registered design piracy in the Designs Act, 2000.
- Mainly looks at Indian statutory provisions and judicial decisions.
- Have few comparative referrals to international standards.
- Reflects on the policy factors associated with quality of innovation and research.
- Does not deal with copyright or patent infringement unless it is the design law.

## **SIGNIFICANCE OF THE STUDY**

- Emphasizes the value of guarding visual innovation in the competitive markets.
- Demonstrates the impact of design piracy on innovation, branding and trust.
- Makes a contribution to scholarly discourse about how to make design law enforcement better.
- Favours policy discussion of reinforcing the intellectual property regime in India.
- Stresses the connection between true research and the sustainable industrial development.

## RESEARCH GAP

- A lot of research is limited to statutory interpretation or a summary of cases.
- There is little research looking at enforcement issues in practice.
- There are not many works that relate design piracy to research ethics and policy of innovation.
- The Indian scholarship lacks a comparative analysis with developed jurisdictions.

This paper will seek to address these gaps using the doctrinal and comparative analysis.

## LIMITATIONS OF THE STUDY

- Lacks no empirical surveys and stakeholder interviews.
- Only a few jurisdictions and frameworks are comparatively discussed.
- Conclusions may be influenced by judicial developments that take place post-study period.
- Results are based on published literature and reported verdicts.

## LITERATURE REVIEW

The discussion of the academic interest in industrial design protection proves that the design law is working at the cross-border of the policy of innovations, consumer psychology, and market competition. There are some seminal texts and world literature articles that have influenced the modern notions of design piracy.

One of the most prominent doctrinal expositions is **Intellectual Property Law** by **David Bainbridge (2021)**, in which the author describes that the industrial designs secure commercial identity in a visual form. Bainbridge clarifies that design protection serves the purpose of stimulating aesthetic innovation and halting the unjust market takeover. His writings are commonly referred to in comparative IP studies and offer the conceptual foundation to the comprehension of design as a market-based right, but not as an artistic one.

Likewise, **Introduction to Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights** by **Cornish, Llewelyn and Aplin (2019)** also give a comparative discussion on the design law within jurisdictions. The authors comment on the trend by the courts in Europe and common-law systems of applying the overall impression test instead of analyzing the individual design features. Their discussion is specifically applicable to Indian jurisprudence, in which courts have started to use such line of reasoning.

In the eyes of the Indians, one of the most authoritative commentaries is the work **Law of Copyright and Industrial Designs** by **P. Narayanan (2017)**. Narayanan points out that the Indian design law was traditionally technical in approach though current judgments are becoming more aware of commercial reality and consumer perception. Other flaws in the administrative stage that he points out in the design registration process include problems on novelty and previous publication that are subject to conflict.

These are reinforced by international scholarship. A powerful article by **Jane Ginsburg** called **Industrial Design Protection in a Global Economy** (International Review of Intellectual Property and Competition Law, 2020) claims that design rights are important in brand differentiation and international trade. Ginsburg cites that jurisdictions where design enforcement is high have a greater level of investment into product aesthetics- especially in the fields of consumer electronics and packaging.

A study by **Dinwoodie and Janis (2018)** on **Trade dress protection as a convergence of Industrial Design Rights** in the United States was another widely cited study in Scopus and published in Journal of Intellectual Property Law (article, 2018). The authors claim that in the U.S., the design similarity is frequently assessed in terms of consumer confusion and market substitution, and such an approach to the issue becomes more tangible in Indian law.

The report of the **World Intellectual Property Organization on industrial designs and innovation strategy** provides a policy-oriented view of the issue (**WIPO, 2022**). The report emphasizes that protection of design is a boosting factor to the competitiveness of the product and consumer trust. It also points out the enforcement difficulties in emerging economies such as delays in the process and ignorance of small manufacturers.

Another aspect that comparative scholarship focuses on is the significance of international agreements. The WTO administered Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) commits member states to offer protection to independently created new and original industrial designs. Researchers observe that compliance with TRIPS has affected the legislative reforms of countries like India, where the country is being advocated towards stronger design regimes that are in tandem with the global standards (Reichman 2019). All the literature reveals three dominating themes:

- The protection of industrial designs is a cost-effective phenomenon that ensures a market identity.

- The world is moving towards judicial focus on consumer perception and not on technical comparison.
- The capacity of the administration to enforce and the inconsistency of the judicial system.

It is this literature that gives the theoretical and comparative background to study the problem of design piracy in Indian law.

## RESEARCH METHODOLOGY

The study follows a comparative and doctrinal approach to research. The doctrinal element entails a systematic study of the statutory provisions, judicial rulings, and legal commentary to identify how the concept of the law conceptualises and caters to piracy of registered designs.

The main legal materials are the Designs Act, 2000, applicable regulations and judicial precedents on the interpretation of design infringement. Such resources were analyzed to find out the legislative intent of the design protection, extent of exclusive rights and the remedies that the proprietors can get.

The doctrine approach also included the investigation of judicial reasoning in order to determine the tests that the courts used. Special focus was put on interpretation of originality, visual similarity and pre-existing publication by courts. The analysis of the case law enabled the study to see the trends in the doctrines and gaps in their implementation.

Besides the doctrinal analysis, the study uses the comparative approach between India and the United States. The United States also offers a valuable point of reference in that it defends against industrial designs by protecting the design patent and trade dress law. The U.S. courts are well known in evaluating the infringement by consumer perception and market substitution tests. An Indian jurisprudence versus the U.S. reasoning allows examining whether Indian courts are moving toward the market conceptualization of design rights.

An international compliance perspective is also included in the research as it analyzes the Trucial agreements of TRIPS. TRIPS obliges member states to safeguard designs that are created autonomously and are new or original and have to offer effective enforcement measures. Comparison of the Indian design law with these standards would enable the study to gauge whether the domestic law is at par with international standards.

Secondary sources like journal articles indexed in Scopus, comparative treatises about IP and policy reports were examined to put the Indian developments in the context of design protection trends around the globe. These sources assisted in the determination of the best practices related to registration procedures, mechanisms of enforcement, and judicial interpretation.

The methodology thus works on three levels that are connected:

- Doctrinal Analysis - looking at the statutory and case law.
- Comparative analysis - a comparison between the Indian law and the U.S. design protection models.
- International review - determining how the country is complying with TRIPS requirements and international standards.

The multi-layered strategy will make sure that the study is not just a description of the Indian law, but a critical analysis of its effectiveness in an international intellectual property landscape. The combination of both doctrinal exactness and comparative wisdom is supposed to produce both legal and policy-based conclusions with the help of the suggested methodology.

## FINDINGS

### ➤ **Statutory Framework: theologically sound and operationally lopsided-**

The study concludes that the Designs Act, 2000 has a sound framework on the protection of industrial designs. The Act also spells out design, gives sole rights to owners, and provides remedial action in piracy. The legislation conforms to international standards in the doctrinal aspects and also adheres to the requirements of TRIPS.<sup>1000</sup> Nevertheless, the soundness of the statutory framework does not necessarily reflect in its actual operation. Registration procedures, court procedures, and enforcement procedures are yet to be done to make sure that design rights are turned into actual commercial protection.

### ➤ **Shifting of the Judiciary to Consumer-Based Interpretation-**

Indian courts have over the years shifted to a more non-technical assessment of the design characteristics to the overall visual impact produced on the consumer<sup>1001</sup>. This change is an indication of the understanding that design law safeguards market identity, but not engineering

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<sup>1000</sup> World Intellectual Property Organization, World Intellectual Property Indicators 2023.

<sup>1001</sup> Government of India, DPIIT, Annual Intellectual Property Report 2022–23.

innovation. Recent rulings indicate that the courts have adopted the focus on the perception of an average buyer as crucial in the determination of whether or not there is piracy. This growth has placed the Indian jurisprudence in the same line of thinking as the developed economies especially the United States and European Union.

➤ **Registration and Examination Weaknesses in Administration-**

The other important discovery is on the design registration process. The small-scale examination system can lead to registration of a design that does not have a real novelty or originality. These registrations are then the cause of further litigation with infringement no longer being the focal point of litigation but its validity. Enhanced pre-registration examination would go a long way in minimizing unwarranted lawsuits and also enhance the design protection regime credibility.

➤ **Delay of Enforcement Decreases Commercial Values of Designs-**

The paper also concludes that the failure to get the injunctions or final verdicts quickly undermines the protection of designs. The commercial importance of industrial designs is precisely related to the fact that they affect immediate consumer decision. The competitive advantage of the original proprietor is watered down when infringed products continue to stay in the market whilst litigation is going on. Therefore, the pace of enforcement is significant to the legal entitlement.<sup>1002</sup>

➤ **Low-level Awareness of Industry Parties-**

Many design infringements occur due to the lack of awareness but not deliberate copying. The small manufacturers, institutions and start ups tend to copy the existing designs without knowing the legal consequences. This implies that institutional mentoring and awareness programmes might have a significant contribution in curbing piracy.

➤ **New Concern: Innovation on the Non-Original Research Investment-**

The modern trend in the Indian ecosystem of innovation has brought into focus a more structural issue. When discussing the new AI and innovation projects in India commentators have been able to challenge the quality of the research outputs and how some institutions tend to focus on the numbers in research rather than authentic innovation.

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<sup>1002</sup> Dev Gangjee, "Intellectual Property and Market Identity" (2018) Oxford Journal of Legal Studies 1.

Specifically, the controversy over Galgotias University-related projects, brought up in the framework of the national discussion of AI innovations, reflects a bigger policy problem. The fear of the analysts did not pertain to just a single institution but to a general direction within the system where prototypes, models, technological presentations are in some cases similar to existing designs or products but without an independent R&D investment demonstrated.

Such practices are subject to serious questions on a design law point of view. The level of innovation ecosystems cannot be judged only by the number of patents, models or prototypes made. The quality of the research conducted behind the research, originality of design and ethical development practices are also vital. When institutions reproduce the existing designs, either consciously or unconsciously, the outcome can be the destabilization of the legal protection and the integrity of the national research environment.

This case shows that design piracy does not only apply to commercial production. It can also come in the scenario of academic or institutional innovation where competition pushes people to come up with results fast instead of genuine development. The case is not limited to intellectual property law, however, and is instead a concern of research governance and policy.

➤ **Integration Requirement between Innovation Policy and Design Law-**

The discussion above shows that protection of industrial design should not be considered only as a legal issue but also as a part of the national innovation strategy. The need by countries to develop knowledge economies should make sure that the outputs of research are based on true creativity and not imitation. A combination of a well-established design protection, enforcement, and ethical research conducts an ecosystem where originality is rewarded.

➤ **The trend of India points to the increasing awareness of this necessity-**

The quality, originality and commercial applicability of research is now part of the policy debate. The introduction of intellectual property awareness into the academic and industrial innovation programmes might help to alleviate the issue of design piracy by a considerable margin and enhancing global competitiveness.

➤ **Movement to Global Standards-**

Lastly, the results show that India is slowly moving towards international standards of design protection. There is the judicial interpretation, the structure of the legislative and policy discussions, all of which reflect a growing correspondence with the developed economies. Nevertheless, convergence is not complete. The registration scrutiny, enforcement efficiency, and institutional awareness should continue to be reformed to realise the whole potential of the Indian design protection regime.<sup>1003</sup>

## SUGGESTIONS

There are a number of reforms suggested in order to enhance protection against design piracy.

### ➤ Improving the standards of the examination-

The design registration office ought to take more stringent measures on the novelty searches and digital databases to ensure that previous known designs are not registered. An improved scrutiny would decrease future litigation and improve trust in registered rights. The intellectual property benches are specialised intellectual property benches. The process of resolving disputes will become speedier by setting up specialised design law benches in commercial courts. Visual similarity test could be applied more consistently by the judges who are trained in the principles of intellectual property.<sup>1004</sup>

### ➤ Electronic enforcement systems-

Considering the emergence of online shopping and the new manufacturing approach, legislations must come up with monitoring tools to identify duplicated designs on the electronic commerce websites. The cooperation between IP offices and digital platforms would enhance the enforcement<sup>1005</sup>.

### ➤ Awareness programmes in the industry-

Small manufacturers could be targeted by workshops and outreach activities to decrease unintentional infringement. The risk of design infringement and the knowledge about design registration processes would foster compliance.<sup>1006</sup>

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<sup>1003</sup> Ministry of Commerce, Government of India, IPR Policy Review Report (2022).

<sup>1004</sup> National IPR Policy, Government of India (2016).

<sup>1005</sup> WIPO, Guide to Industrial Design Protection (2021).

<sup>1006</sup> OECD, Intellectual Property and Economic Growth (2020).

➤ **Best interim relief provisions-**

Early hearings on injunctions on case of designing should be given priority in courts. Interim relief is necessary since design piracy is a frequently damaging commercial consequence that cannot be compensated normally.<sup>1007</sup>

➤ **International cooperation-**

India needs to intensify collaboration with the foreign IP offices and international organisations to exchange the best practices in the registration and enforcement of design. Transparency may be enhanced by involvement in international design databases.

The introduction of such reforms would increase Design protection as predictable, efficient, and in line with international standards.

## CONCLUSION

The industrial design protection has taken a more significant role in the contemporary intellectual property regimes. Visual identification in markets dominated by consumer perception may be the key to the commercial success of a product. The Designs Act, 2000 is cognizant of this fact and it ensures exclusive rights on registered designs and remedies against piracy.<sup>1008</sup>

This study establishes that the Indian statutory framework in general is generally consistent with international obligations and comparative jurisprudence. The courts have increasingly developed toward a consumer oriented use of design infringement where the emphasis is similar to the overall visual impression to the technical differences. The shift is a favourable development of safeguarding commercial identity and innovating.

However, the issues of enforcement still persist. Ineffective protection is still being compromised by procedural delays, a lack of scrutiny in the registration, and little awareness among the market participants. The better design enforcement results can be presented in terms of comparative analysis with the United States where the greater level of focus on the market confusion and quicker judicial reaction can be provided.

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<sup>1007</sup> UNCTAD, Technology and Innovation Report (2021).

<sup>1008</sup> TRIPS Agreement, arts. 25–26.

To make design protection effective in achieving both the economic and legal purposes, India needs to improve the administrative procedures, improve the specialisation of the judiciary, and use digital enforcement tools. These reforms would discourage piracy in addition to promoting investments in the aesthetic and branding of products.<sup>1009</sup>

Finally, the safeguarding of industrial designs is not a technical legal matter only. It also echoes a greater desire to be innovative, compete fairly, and be able to create consumer trust.<sup>1010</sup> Design law helps to make the market place more dynamic and innovative by guaranteeing that visual creativity is granted a sense of meaningful protection.



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<sup>1009</sup> WIPO, Industrial Design Protection and Innovation (2022).

<sup>1010</sup> Bainbridge, Intellectual Property (Pearson 2021).