

less of whether the matrix or form has an intrinsic utilitarian function that is not only to portray the appearance of the product or to convey information.

(7) A “deck” is the horizontal surface of a vessel that covers the hull, including exterior cabin and cockpit surfaces, and exclusive of masts, sails, yards, rigging, hardware, fixtures, and other attachments.

(Added Pub. L. 105–304, title V, § 502, Oct. 28, 1998, 112 Stat. 2905; amended Pub. L. 106–113, div. B, § 1000(a)(9) [title V, § 5005(a)(3)], Nov. 29, 1999, 113 Stat. 1536, 1501A–593; Pub. L. 110–434, § 1(b)–(d), Oct. 16, 2008, 122 Stat. 4972.)

#### AMENDMENTS

2008—Subsec. (a)(2). Pub. L. 110–434, § 1(b), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: “The design of a vessel hull, including a plug or mold, is subject to protection under this chapter, notwithstanding section 1302(4).”

Subsec. (a)(3). Pub. L. 110–434, § 1(c), added par. (3).

Subsec. (b)(2). Pub. L. 110–434, § 1(d)(1), substituted “vessel hull or deck, including a plug or mold,” for “vessel hull, including a plug or mold.”

Subsec. (b)(4). Pub. L. 110–434, § 1(d)(2), added par. (4) and struck out former par. (4) which read as follows: “A ‘hull’ is the frame or body of a vessel, including the deck of a vessel, exclusive of masts, sails, yards, and rigging.”

Subsec. (b)(7). Pub. L. 110–434, § 1(d)(3), added par. (7). 1999—Subsec. (b)(3). Pub. L. 106–113 amended par. (3) generally. Prior to amendment, par. (3) read as follows: “A ‘vessel’ is a craft, especially one larger than a row-boat, designed to navigate on water, but does not include any such craft that exceeds 200 feet in length.”

#### EFFECTIVE DATE

Pub. L. 105–304, title V, § 505, Oct. 28, 1998, 112 Stat. 2918, as amended by Pub. L. 106–113, div. B, § 1000(a)(9) [title V, § 5005(a)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–593, provided that: “The amendments made by sections 502 and 503 [enacting this chapter and amending sections 1338, 1400, and 1498 of Title 28, Judiciary and Judicial Procedure] shall take effect on the date of the enactment of this Act [Oct. 28, 1998].”

#### JOINT STUDY OF EFFECT OF THIS CHAPTER

Pub. L. 105–304, title V, § 504, Oct. 28, 1998, 112 Stat. 2917, as amended by Pub. L. 106–113, div. B, § 1000(a)(9) [title IV, § 4741(b)(1), title V, § 5005(a)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A–586, 1501A–593, provided that:

“(a) IN GENERAL.—Not later than November 1, 2003, the Register of Copyrights and the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a joint report evaluating the effect of the amendments made by this title [enacting this chapter and amending sections 1338, 1400, and 1498 of Title 28, Judiciary and Judicial Procedure].

“(b) ELEMENTS FOR CONSIDERATION.—In carrying out subsection (a), the Register of Copyrights and the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office shall consider—

“(1) the extent to which the amendments made by this title has been effective in suppressing infringement of the design of vessel hulls;

“(2) the extent to which the registration provided for in chapter 13 of title 17, United States Code, as added by this title, has been utilized;

“(3) the extent to which the creation of new designs of vessel hulls have been encouraged by the amendments made by this title;

“(4) the effect, if any, of the amendments made by this title on the price of vessels with hulls protected under such amendments; and

“(5) such other considerations as the Register and the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office may deem relevant to accomplish the purposes of the evaluation conducted under subsection (a).”

### § 1302. Designs not subject to protection

Protection under this chapter shall not be available for a design that is—

(1) not original;

(2) staple or commonplace, such as a standard geometric figure, a familiar symbol, an emblem, or a motif, or another shape, pattern, or configuration which has become standard, common, prevalent, or ordinary;

(3) different from a design excluded by paragraph (2) only in insignificant details or in elements which are variants commonly used in the relevant trades;

(4) dictated solely by a utilitarian function of the article that embodies it; or

(5) embodied in a useful article that was made public by the designer or owner in the United States or a foreign country more than 2 years before the date of the application for registration under this chapter.

(Added Pub. L. 105–304, title V, § 502, Oct. 28, 1998, 112 Stat. 2906; amended Pub. L. 106–44, § 1(f)(1), Aug. 5, 1999, 113 Stat. 222.)

#### AMENDMENTS

1999—Par. (5). Pub. L. 106–44 substituted “2 years” for “1 year”.

### § 1303. Revisions, adaptations, and rearrangements

Protection for a design under this chapter shall be available notwithstanding the employment in the design of subject matter excluded from protection under section 1302 if the design is a substantial revision, adaptation, or rearrangement of such subject matter. Such protection shall be independent of any subsisting protection in subject matter employed in the design, and shall not be construed as securing any right to subject matter excluded from protection under this chapter or as extending any subsisting protection under this chapter.

(Added Pub. L. 105–304, title V, § 502, Oct. 28, 1998, 112 Stat. 2906.)

### § 1304. Commencement of protection

The protection provided for a design under this chapter shall commence upon the earlier of the date of publication of the registration under section 1313(a) or the date the design is first made public as defined by section 1310(b).

(Added Pub. L. 105–304, title V, § 502, Oct. 28, 1998, 112 Stat. 2907.)

### § 1305. Term of protection

(a) IN GENERAL.—Subject to subsection (b), the protection provided under this chapter for a design shall continue for a term of 10 years beginning on the date of the commencement of protection under section 1304.

(b) EXPIRATION.—All terms of protection provided in this section shall run to the end of the

calendar year in which they would otherwise expire.

(c) **TERMINATION OF RIGHTS.**—Upon expiration or termination of protection in a particular design under this chapter, all rights under this chapter in the design shall terminate, regardless of the number of different articles in which the design may have been used during the term of its protection.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2907.)

### § 1306. Design notice

(a) **CONTENTS OF DESIGN NOTICE.**—(1) Whenever any design for which protection is sought under this chapter is made public under section 1310(b), the owner of the design shall, subject to the provisions of section 1307, mark it or have it marked legibly with a design notice consisting of—

(A) the words “Protected Design”, the abbreviation “Prot’d Des.”, or the letter “D” with a circle, or the symbol “\*D\*”;

(B) the year of the date on which protection for the design commenced; and

(C) the name of the owner, an abbreviation by which the name can be recognized, or a generally accepted alternative designation of the owner.

Any distinctive identification of the owner may be used for purposes of subparagraph (C) if it has been recorded by the Administrator before the design marked with such identification is registered.

(2) After registration, the registration number may be used instead of the elements specified in subparagraphs (B) and (C) of paragraph (1).

(b) **LOCATION OF NOTICE.**—The design notice shall be so located and applied as to give reasonable notice of design protection while the useful article embodying the design is passing through its normal channels of commerce.

(c) **SUBSEQUENT REMOVAL OF NOTICE.**—When the owner of a design has complied with the provisions of this section, protection under this chapter shall not be affected by the removal, destruction, or obliteration by others of the design notice on an article.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2907.)

### § 1307. Effect of omission of notice

(a) **ACTIONS WITH NOTICE.**—Except as provided in subsection (b), the omission of the notice prescribed in section 1306 shall not cause loss of the protection under this chapter or prevent recovery for infringement under this chapter against any person who, after receiving written notice of the design protection, begins an undertaking leading to infringement under this chapter.

(b) **ACTIONS WITHOUT NOTICE.**—The omission of the notice prescribed in section 1306 shall prevent any recovery under section 1323 against a person who began an undertaking leading to infringement under this chapter before receiving written notice of the design protection. No injunction shall be issued under this chapter with respect to such undertaking unless the owner of the design reimburses that person for any rea-

sonable expenditure or contractual obligation in connection with such undertaking that was incurred before receiving written notice of the design protection, as the court in its discretion directs. The burden of providing written notice of design protection shall be on the owner of the design.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2907.)

### § 1308. Exclusive rights

The owner of a design protected under this chapter has the exclusive right to—

(1) make, have made, or import, for sale or for use in trade, any useful article embodying that design; and

(2) sell or distribute for sale or for use in trade any useful article embodying that design.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2908.)

### § 1309. Infringement

(a) **ACTS OF INFRINGEMENT.**—Except as provided in subsection (b), it shall be infringement of the exclusive rights in a design protected under this chapter for any person, without the consent of the owner of the design, within the United States and during the term of such protection, to—

(1) make, have made, or import, for sale or for use in trade, any infringing article as defined in subsection (e); or

(2) sell or distribute for sale or for use in trade any such infringing article.

(b) **ACTS OF SELLERS AND DISTRIBUTORS.**—A seller or distributor of an infringing article who did not make or import the article shall be deemed to have infringed on a design protected under this chapter only if that person—

(1) induced or acted in collusion with a manufacturer to make, or an importer to import such article, except that merely purchasing or giving an order to purchase such article in the ordinary course of business shall not of itself constitute such inducement or collusion; or

(2) refused or failed, upon the request of the owner of the design, to make a prompt and full disclosure of that person’s source of such article, and that person orders or reorders such article after receiving notice by registered or certified mail of the protection subsisting in the design.

(c) **ACTS WITHOUT KNOWLEDGE.**—It shall not be infringement under this section to make, have made, import, sell, or distribute, any article embodying a design which was created without knowledge that a design was protected under this chapter and was copied from such protected design.

(d) **ACTS IN ORDINARY COURSE OF BUSINESS.**—A person who incorporates into that person’s product of manufacture an infringing article acquired from others in the ordinary course of business, or who, without knowledge of the protected design embodied in an infringing article, makes or processes the infringing article for the account of another person in the ordinary course of business, shall not be deemed to have in-