

ments 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 reasonable 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.