

(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 infringed the rights in that design under this chapter except under a condition contained in paragraph (1) or (2) of subsection (b). Accepting an order or reorder from the source of the infringing article shall be deemed ordering or reordering within the meaning of subsection (b)(2).

(e) INFRINGING ARTICLE DEFINED.—As used in this section, an "infringing article" is any article the design of which has been copied from a design protected under this chapter, without the consent of the owner of the protected design. An infringing article is not an illustration or picture of a protected design in an advertisement, book, periodical, newspaper, photograph, broadcast, motion picture, or similar medium. A design shall not be deemed to have been copied from a protected design if it is original and not substantially similar in appearance to a protected design.

(f) ESTABLISHING ORIGINALITY.—The party to any action or proceeding under this chapter who

alleges rights under this chapter in a design shall have the burden of establishing the design's originality whenever the opposing party introduces an earlier work which is identical to such design, or so similar as to make prima facie showing that such design was copied from such work.

(g) REPRODUCTION FOR TEACHING OR ANALYSIS.—It is not an infringement of the exclusive rights of a design owner for a person to reproduce the design in a useful article or in any other form solely for the purpose of teaching, analyzing, or evaluating the appearance, concepts, or techniques embodied in the design, or the function of the useful article embodying the design.

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### § 1310. Application for registration

(a) TIME LIMIT FOR APPLICATION FOR REGISTRATION.—Protection under this chapter shall be lost if application for registration of the design is not made within 2 years after the date on which the design is first made public.

(b) WHEN DESIGN IS MADE PUBLIC.—A design is made public when an existing useful article embodying the design is anywhere publicly exhibited, publicly distributed, or offered for sale or sold to the public by the owner of the design or with the owner's consent.

(c) APPLICATION BY OWNER OF DESIGN.—Application for registration may be made by the owner of the design.

(d) CONTENTS OF APPLICATION.—The application for registration shall be made to the Administrator and shall state—

- (1) the name and address of the designer or designers of the design;
- (2) the name and address of the owner if different from the designer;
- (3) the specific name of the useful article embodying the design;
- (4) the date, if any, that the design was first made public, if such date was earlier than the date of the application;
- (5) affirmation that the design has been fixed in a useful article; and
- (6) such other information as may be required by the Administrator.

The application for registration may include a description setting forth the salient features of the design, but the absence of such a description shall not prevent registration under this chapter.

(e) SWORN STATEMENT.—The application for registration shall be accompanied by a statement under oath by the applicant or the applicant's duly authorized agent or representative, setting forth, to the best of the applicant's knowledge and belief—

- (1) that the design is original and was created by the designer or designers named in the application;
- (2) that the design has not previously been registered on behalf of the applicant or the applicant's predecessor in title; and
- (3) that the applicant is the person entitled to protection and to registration under this chapter.