

“(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.)

Editorial Notes

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 pre-