

scribed 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.

(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.

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

§ 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.

If the design has been made public with the design notice prescribed in section 1306, the statement shall also describe the exact form and position of the design notice.

(f) **EFFECT OF ERRORS.**—(1) Error in any statement or assertion as to the utility of the useful article named in the application under this section, the design of which is sought to be registered, shall not affect the protection secured under this chapter.

(2) Errors in omitting a joint designer or in naming an alleged joint designer shall not affect the validity of the registration, or the actual ownership or the protection of the design, unless it is shown that the error occurred with deceptive intent.

(g) **DESIGN MADE IN SCOPE OF EMPLOYMENT.**—In a case in which the design was made within the regular scope of the designer's employment and individual authorship of the design is difficult or impossible to ascribe and the application so states, the name and address of the employer for whom the design was made may be stated instead of that of the individual designer.

(h) **PICTORIAL REPRESENTATION OF DESIGN.**—The application for registration shall be accompanied by two copies of a drawing or other pictorial representation of the useful article embodying the design, having one or more views, adequate to show the design, in a form and style suitable for reproduction, which shall be deemed a part of the application.

(i) **DESIGN IN MORE THAN ONE USEFUL ARTICLE.**—If the distinguishing elements of a design are in substantially the same form in different useful articles, the design shall be protected as to all such useful articles when protected as to

one of them, but not more than one registration shall be required for the design.

(j) **APPLICATION FOR MORE THAN ONE DESIGN.**—More than one design may be included in the same application under such conditions as may be prescribed by the Administrator. For each design included in an application the fee prescribed for a single design shall be paid.

(Added Pub. L. 105-304, title V, §502, Oct. 28, 1998, 112 Stat. 2909.)

§ 1311. Benefit of earlier filing date in foreign country

An application for registration of a design filed in the United States by any person who has, or whose legal representative or predecessor or successor in title has, previously filed an application for registration of the same design in a foreign country which extends to designs of owners who are citizens of the United States, or to applications filed under this chapter, similar protection to that provided under this chapter shall have that same effect as if filed in the United States on the date on which the application was first filed in such foreign country, if the application in the United States is filed within 6 months after the earliest date on which any such foreign application was filed.

(Added Pub. L. 105-304, title V, §502, Oct. 28, 1998, 112 Stat. 2910.)

§ 1312. Oaths and acknowledgments

(a) **IN GENERAL.**—Oaths and acknowledgments required by this chapter—

(1) may be made—

(A) before any person in the United States authorized by law to administer oaths; or

(B) when made in a foreign country, before any diplomatic or consular officer of the United States authorized to administer oaths, or before any official authorized to administer oaths in the foreign country concerned, whose authority shall be proved by a certificate of a diplomatic or consular officer of the United States; and

(2) shall be valid if they comply with the laws of the State or country where made.

(b) **WRITTEN DECLARATION IN LIEU OF OATH.**—

(1) The Administrator may by rule prescribe that any document which is to be filed under this chapter in the Office of the Administrator and which is required by any law, rule, or other regulation to be under oath, may be subscribed to by a written declaration in such form as the Administrator may prescribe, and such declaration shall be in lieu of the oath otherwise required.

(2) Whenever a written declaration under paragraph (1) is used, the document containing the declaration shall state that willful false statements are punishable by fine or imprisonment, or both, pursuant to section 1001 of title 18, and may jeopardize the validity of the application or document or a registration resulting therefrom.

(Added Pub. L. 105-304, title V, §502, Oct. 28, 1998, 112 Stat. 2911.)