

Unregistered Design Rights

UK Unregistered Design Right (UDR)

UDR comes into existence automatically when the design is recorded in some way – in a design document or as a prototype – and provided the article/design document is produced by a “qualified person”. A “qualified person” is: a national or resident of the UK or an EU country, or non-EU countries which offer reciprocal rights to UK nationals (such as New Zealand and Hong Kong).

UDR protects the shape and configuration of a 3D article or a part of a 3D article, provided:

- the design is not “commonplace” in the field
- No design protection is available for:
 - designs whose appearance is purely dictated by technical function
 - features configured for connection to or arranged to match another article
 - surface decoration
 - features solely dictated by technical function

Protection lasts for up to 15 years from the end of the calendar in which the design was recorded in a design document/an article is made. If the articles are put on sale in the first 5 years, UDR instead lasts for 10 years from the date of first sale. In the last 5 years of either term, “licences of right” from the proprietor to use the design are available on terms decided by agreement or by the UKIPO.

To enforce an UDR, the proprietor will need to show that the alleged infringer actually copied the features of the design in question (unlike enforcement of registered design protection where such proof is not needed).

EU Unregistered Community Design (UCD)

UCD comes into existence automatically. Unlike UK UDR, there are no qualification requirements – any party of any nationality is eligible to a UCD. UCD rights belong to the designer, and designs created by an employee during duties of employment belong to the employer.

UCDs protect the shape and configuration of an article or a part of an article (2D or 3D), provided:

- The design is novel
 - “Novel” means that the design differs from earlier designs by more than immaterial differences.
- The design possesses individual character
 - “Individual character” means that the design produces a different overall impression on an informed user (normally the user of the product). This can depend on how much “freedom” a designer has – if there are a number of features of an article that must be presented in a certain way, smaller aesthetic changes will have more weight than if a designer has a blank canvas to start from.
- The features are not dictated by technical function

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