

STATUTES OF THE REPUBLIC OF SOUTH AFRICA—PATENTS, DESIGNS AND COPYRIGHT
 ss. 40–44 *Designs Act, No. 195 of 1993* ss. 40–44

40. Certificates of registrar to be *prima facie* evidence.—(1) A certificate purporting to be signed by the registrar, to the effect that any entry authorized by this Act to be made, has or has not been made or that any other thing so authorized to be done has or has not been done, shall be *prima facie* evidence of the matters specified in that certificate.

(2) A copy or an extract purporting to be a copy of an entry in the register or of a document kept at the designs office or an extract from the register or any such document, and purporting to be certified by the registrar and to be sealed with the seal of the designs office, shall be admitted in evidence in all courts without further proof or production of the originals.

(3) If any document or book bears a date purporting to be the date in which it became available to the public, that date shall, unless the contrary is proved, be deemed to be the date on which it became so available.

41. Certification of validity.—(1) If in any proceedings the validity of any registration of a design is in issue, the court finding that registration to be valid, may certify to that effect.

(2) If in any subsequent proceedings the validity of that registration is unsuccessfully attacked by any party, that party shall, unless the court otherwise directs, pay to the other party his full costs, charges and expenses as between agent or attorney and client so far as that registration is concerned.

42. Appeal to court.—(1) Any party to proceedings before the registrar may appeal to the court against any order or decision of the registrar pursuant to such proceedings.

(2) The order or decision of the registrar referred to in subsection (1) shall be deemed to be an order or judgment of a magistrate in a civil action heard by such magistrate.

43. Proclamations as to convention countries.—(1) The State President may, with a view to the fulfilment of a treaty, convention, arrangement or engagement, by proclamation in the *Gazette* declare that any country or group of countries specified in the proclamation is a convention country or are convention countries for the purposes of any or all of the provisions of this Act.

(2) For the purposes of subsection (1) every territory for whose international relations another country is responsible shall be deemed to be a country in respect of which a declaration may be made under that subsection.

44. Registration of design where application for protection has been made in convention country.—(1) An application for registration of a design or similar right in respect of which protection has been applied for in a convention country may be made in accordance with the provisions of this Act by the person by whom the application for protection was made or his personal representative or cessionary: Provided that no application shall be made by virtue of this section after the expiry of six months from the date of the application for protection in a convention country or, where more than one such application for protection has been made, from the date of the first application: Provided further that if after the filing of the first application in a convention country in respect of any design or similar right, a subsequent application is filed in that country in respect of the same design or similar right, such subsequent application shall be regarded as the first application in that country in respect of that design or similar right, if at the time of the filing thereof—

- (a) the previous applications had been withdrawn, abandoned or refused without having been open to public inspection; and
- (b) no priority rights have been claimed on the strength of such previous applications; and
- (c) no rights are outstanding in the convention country in question in connection with such previous applications.

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(2) An application which has been withdrawn, abandoned or refused shall not after the filing of the subsequent application be capable of supporting a claim for priority rights under this section.

(3) A design registered on an application made under this section shall be registered as of the date of the application or, where more than one such application for protection has been made, the date of the first such application or, as the case may be, the date of the application which is regarded as the first such application: Provided that no proceedings shall be instituted in respect of any infringement committed before the date on which the certificate of registration of the design under this Act is issued.

(4) Where a person has applied for protection for a design by an application which—

- (a) in accordance with the terms of a treaty subsisting between two or more convention countries, is equivalent to an application duly made in any one of those convention countries; or
- (b) in accordance with the laws of any convention country, is equivalent to an application duly made in that convention country,

he shall be deemed for the purposes of this section to have applied in that convention country.

45. Extension of time for applications in certain cases.—(1) If the Minister is satisfied that provision substantially equivalent to the provision to be made by or under this section has been made or will be made under the law of any convention country, he may, by notice in the *Gazette*, make regulations empowering the registrar to extend the time for making application under section 44 (1) for registration of a design in respect of which protection has been applied for in that country in any case where the period specified in the first proviso to that subsection expires during a prescribed period.

(2) Regulations made under this section may—

- (a) where any agreement or arrangement has been made between the government of the Republic and the government of the convention country for the supply or mutual exchange of information or articles, provide, either generally or in any class of case specified in the regulations that an extension of time shall not be granted under this section unless the design has been communicated in accordance with the agreement or arrangement;
- (b) either generally or in any class of case specified in the regulations, fix the maximum extension of time which may be granted under this section;
- (c) prescribe or allow any special procedure in connection with applications made under this section;
- (d) empower the registrar to extend, in relation to an application made under this section, the time limited by or in terms of the foregoing provisions of this Act for performing any act, subject to such conditions, if any, as may be imposed by or in terms of the regulations;
- (e) provide for securing that the rights conferred by registration on an application made under this section shall be subject to such restrictions or conditions as may be specified by or in terms of the regulations and in particular to restrictions and conditions for the protection of persons who, otherwise than as the result of a communication made in accordance with such an agreement or arrangement as is mentioned in paragraph (a), and before the date of the application in question or such later date as may be allowed by the regulations, may have imported or made articles to which the design is applied or may have made an application for registration of the design.

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46. Minister may require designs to be kept secret in certain circumstances.—(1) If the Minister is of opinion that in the national interest an application or any other document relating to any design should be kept secret, he may order the registrar to keep the design secret and to notify the applicant accordingly.

(2) Whenever any order issued by the Minister under this section is withdrawn, any steps which were prior to the date of that order taken under this Act in connection with the application which was the subject of that order, and which were interrupted in consequence of that order, may be proceeded with as if the interruption had not occurred, and any period which may have elapsed between the date on which that order was lodged with the registrar and the date of withdrawal thereof shall not be taken into account in the computation of any period of time prescribed by or under this Act.

(3) If the proprietor of a design has suffered loss or damage by reason of that design having been kept secret in pursuance of an order under subsection (1), the Minister shall pay to him such reasonable compensation as may be agreed upon or as may, in default of agreement, be determined by arbitration or, if the parties so agree, by the court.

47. Penalties for making false entries in register, or making, producing or tendering false entries or copies.—Any person who—

- (a) makes or causes to be made a false entry in the register;
- (b) makes or causes to be made a writing falsely purporting to be a copy of an entry in the register; or
- (c) produces or tenders or causes to be produced or tendered as evidence any such entry or copy thereof knowing it to be false,

shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding one year.

48. Penalties for making false statements for purpose of deceiving or influencing registrar or officer.—Any person who—

- (a) for the purpose of deceiving the registrar or any officer in the execution of the provisions of this Act; or
- (b) for the purpose of procuring or influencing the doing or omission of anything in relation to this Act or any matter thereunder,

makes a false statement or representation knowing it to be false, shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding one year.

49. Penalties for certain false representations.—(1) Any person who—

- (a) falsely represents that there is a registered design in respect of any article; or
- (b) represents that any article is the subject of an application for the registration of a design knowing that no such application has been made or that an application made in respect thereof has been refused or withdrawn or has lapsed,

shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding one year.

(2) If any person disposes of any article on which is stamped, engraved or impressed or to which is otherwise applied the word “design” or “registered design” or any other word expressing or implying that—

- (a) there is a registered design in respect of the article; or
- (b) the article is the subject of an application for registration of a design,

or to which any marking is applied in any manner so expressing or implying, he shall be deemed for the purposes of this section to represent that there is a registered design in respect of the article or that the article is the subject of an application for registration of a design.

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(3) The provisions of subsection (2) shall not apply to a person who disposes of articles in good faith in the ordinary course of trade, provided, when called upon to do so, he discloses the identity of the person from whom he acquired the article in question.

(4) Any person who is of the opinion that he is prejudiced by a representation referred to in subsection (1) (a) or (b), may apply to the court for an interdict against the continuation of that representation.

50. Documents may be sent by post.—Any application, notice or document authorized or required in terms of this Act to be lodged, made or given at the designs office or to the registrar or any other person, may be delivered by hand or sent through the post.

51. Address for service.—(1) With every application, notice or other document authorized or required in terms of this Act to be lodged or given, the applicant or other person concerned shall furnish in the prescribed manner an address within the Republic as an address for service, which shall for the purposes of this Act be deemed to be the address of such applicant or other person, and all documents in relation to such application, notice or other document may be served by leaving them at or sending them to such address for service.

(2) Any address for service may be changed by notice in the prescribed manner.

52. Calculation of periods of time.—(1) Where any period of time is specified by this Act as running from the performing of any act, it shall be reckoned as commencing on the day next following the performing of that act.

(2) Whenever the last day on which, in terms of this Act, any act may or is required to be performed or any document may or is required to be lodged, falls on a day on which the designs office is closed, that act may be performed or that document may be lodged on the next following day on which the designs office is open for the transaction of business.

53. Condonation or correction of irregularities in procedure.—The registrar or the court may authorize the condonation or correction of any irregularity in procedure in any proceedings before him or it, provided such condonation or correction is not detrimental to the interests of any person.

54. Regulations.—The Minister may make regulations—

- (a) with the concurrence of the Minister of State Expenditure, prescribing the matters in respect of which fees shall be payable, and the tariff of such fees;
- (b) prescribing the tariff of fees which shall be allowed on taxation in connection with proceedings before the registrar or the court;
- (c) prescribing the procedure in any proceedings before the registrar or the court;
- (d) prescribing the service of notices and other documents required in terms of this Act to be served in connection with proceedings before the registrar;
- (e) providing for the conduct and administration of the designs office, including the keeping and preservation of any records in the designs office, the removal from such office and preservation in any other place of such records, and as to the circumstances in which any such records may be destroyed;
- (f) prescribing the contents of any application, notice or form provided for in this Act;

(g) as to any other matter required or permitted by this Act to be prescribed by regulation; and
generally, as to any matter which he considers it necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

(2) Any proclamation issued under the repealed Act declaring any country to be a convention country, and any regulations made under that Act, shall continue in operation until repealed or amended by proclamation issued or regulations made under this Act.

56. Short title and commencement.—This Act shall be called the Designs Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.