



Looking Good

An Introduction to **Industrial Designs** for
Small and Medium-sized Enterprises

Intellectual Property for Business Series No. 2

Publications in the “Intellectual Property for Business” series:

1. **Making a Mark:**

An Introduction to Trademarks and Brands
for Small and Medium-sized Enterprises.
WIPO publication No. 900.1

2. **Looking Good:**

An Introduction to Industrial Designs for
Small and Medium-sized Enterprises.
WIPO publication No. 498.1

3. **Inventing the Future:**

An Introduction to Patents for Small and
Medium- sized Enterprises. WIPO
publication No. 917.1

4. **Creative Expression:**

An Introduction to Copyright and Related
Rights for Small and Medium-sized
Enterprises. WIPO publication No. 918

5. **In Good Company:**

Managing Intellectual Property Issues in

Printed in the Kingdom of Bahrain

© 2024 Bahrain's Ministry of Industry and Commerce. All rights reserved.

Bahrain's Ministry of Industry and Commerce, Sea Front, Financial Harbour Gate, P.O. Box 60667, Manama, Kingdom of Bahrain.



Attribution 3.0 IGO (CC BY 3.0 IGO)

Original English © World Intellectual Property Organization (WIPO) © WIPO, 2024

First published 2024

This publication is a translation and adaptation of a guide originally produced and made available under a Creative Commons license by the World Intellectual Property Organization (WIPO). To view a copy of this license, please visit, <https://creativecommons.org/licenses/by/3.0/igo/>.

The Secretariat of WIPO assumes no liability or responsibility with regard to the transformation or translation of the original content.

Disclaimer: The trademarks, industrial designs, and patents mentioned or referenced in this guide are the property of their respective owners. Their inclusion is solely for illustrative purposes and does not constitute endorsement or imply any affiliation with the respective owners.

Table of Contents

Acknowledgements2

Introduction

Industrial Designs

1. What is an industrial design?.....2
2. Why protect industrial designs? 5

Protecting Industrial Designs

3. What rights are provided by industrial design protection?7
4. Who may apply for industrial design protection?7
5. Where can an industrial design be registered?8
6. What can be registered as an industrial design?..... 9
7. What designs cannot be protected through design rights?..13
8. How must an application for registration of an industrial design be filed?14
9. Can you apply for the registration of many different designs through a single application?18
10. How much does it cost to protect an industrial design?20
11. Should the design be kept confidential before registration?21
12. What is a grace period?23
13. Who owns the rights over an

industrial design? 24

14. How long does industrial design protection last?..... 24
15. What should be done if the design combines functional features with aesthetic features?25
16. Licensing industrial designs 26
17. Protection of an “unregistered design”26

Protecting Industrial Designs Abroad

18. Why protect industrial designs abroad? 29
19. How is an industrial design protected abroad? 29
20. Who can file an international application under the Hague System? 31

Enforcing Industrial Designs

21. How can a design be enforced in case of infringement? 33

Other Legal Instruments for Protecting Industrial Designs

22. What are the differences between copyright protection and registered industrial design protection? 38
23. Can laws on unfair competition protect designs? 44



Acknowledgements

This adapted version of Looking Good, a Guide to IP for Startups for the Bahraini legal, administrative, and business context was prepared by Muneera Khalifa Abdulla Al-Khalifa, Research and Teaching Assistant at the College of Law, University of Bahrain; and Legal Advisor to the first technology transfer center in the Kingdom of Bahrain, Bahrain Innovation and Technology Transfer Center (BITTC), and Swiss Patent Attorney, ADIPSE Sarl, Intellectual Property Solutions, Switzerland.

Introduction to Industrial Design

1. What is an industrial design?

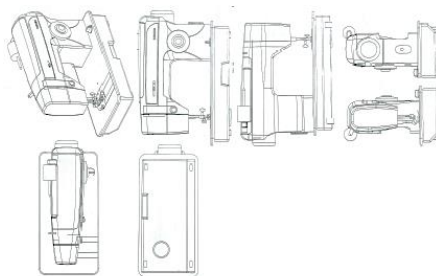
In everyday language, an industrial design generally refers to a product's overall form and function. An armchair is said to have a “good design” when it is comfortable to sit in and we like the way it looks. For businesses, designing a product generally implies developing the product's functional and aesthetic features, taking into consideration issues such as the product's marketability, manufacturing costs and ease of transport, storage, repair, and disposal. From a legal perspective, an **industrial design refers to the ornamental or aesthetic aspects of a product**. If certain conditions are met, these aspects may be protected as industrial designs, a form of intellectual property (IP). Such protection does not

cover the technical or functional aspects of a product.



Smart Solar LED Street Light with Sun Tracking System Applicant: Thomas Marcus Wittig, Bahrain

Filing and Publication Number: BH /D/1/001865



Cast Iron Zig Zag Machine Applicant: The Singer Company, Netherlands

Filing and Publication Number: BH /D/1/00046

So, in the example above, only the appearance of the LED streetlight could be protected as an industrial design; any legal protection for technical or functional aspects would involve other IP rights. Industrial design is relevant to a wide variety of industrial, fashion and handicraft products; from technical and medical instruments to watches, jewelry, and other luxury items; from household products, toys, furniture and electrical appliances to cars and architectural structures; and from textile designs to sports equipment. Industrial design is also important in relation to packaging, containers and the “get-up” of products.

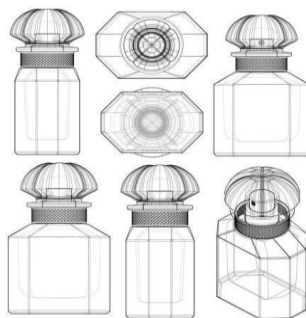
Generally, an industrial design may consist of:

- three-dimensional features such as the **shape** of a product.
- two-dimensional features such

as **ornamentation, patterns, lines, or color** of a product.

- a combination of these things.

Example of a three-dimensional design



FLASK FOR PERFUMERY
PRODUCTS · Applicant:
GUERLAIN SOCIETE
ANONYME, France
Filing and Publication Number:
BH /D/1/001462

Example of a two-dimensional design



Izhiman Zaatar Package .
Applicant: Chain stores of
Izhiman Coffee Company, West
Bank/Palestine
Filing and Publication Number:
BH /D/1/001939

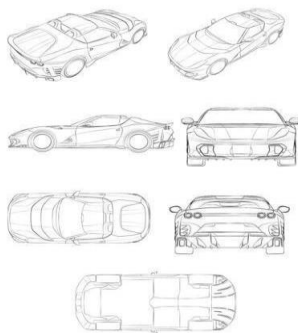
The functions of creative designs in business

Enterprises invest significant time and resources in enhancing the design appeal of their products. New and original designs are often created to:

⇒ **Customize products to appeal to specific market segments:** small modifications to the design of a product, for example, a wristwatch, may make it more attractive for different age groups, cultures, or social groups.

⇒ **Create a new niche market:** in a competitive marketplace, many companies seek to create a niche market by introducing creative designs for their new products to differentiate them from those of their competitors. This could be the case for ordinary items such as locks, shoes, cups, and saucers or for expensive items such as jewelry, computers, or cars.

⇒ **Strengthen brands:** creative designs may be combined with trademarks to enhance the distinctiveness of a company's brand(s). Many companies have successfully created or redefined their brand image through a strong focus on product design.





TOY CAR · Applicant:

FERRARI S.p.A., Italy

Filing and Publication Number:

BH /D/1/001850

2. Why protect industrial designs?

Protecting designs should be part of the business and investment strategy of any designer or manufacturer, for the following reasons:

⇒ A registered industrial design gives the owner an exclusive right to prevent unauthorized copying or imitation by others, thereby strengthening the owner's competitive position and helping them obtain a fair return on investment made in creating and marketing the product.

⇒ Design can add considerable marketing value to a product. It makes a product **attractive** and **appealing** to customers and may even be its unique selling point.

⇒ Registered industrial designs are business assets that can increase the commercial value of a company and its products. The more successful a design is, the higher is its value to the company.

⇒ The exclusivity provided by a registered design right allows an owner to license others to use the design for a fee, or to assign or sell the design right to others.

Shedding some light on designs: While the functional elements of a lamp will generally not differ significantly from product to product, its appearance is likely to be one of the major determinants of success in the marketplace. This is why industrial registers in many countries have a long list of designs for household products such as lamps.



Lightbar enclosure Applicant: Whelen
Engineering Company, Inc., USA

Filing and Publication Number: BH
/D/1/001564

Protecting Industrial Designs



3. What rights are provided by industrial design protection?

In most countries, an industrial design must be registered at the appropriate IP office in order to be protected under industrial design law. In the Kingdom of Bahrain, applicants are required to file their application subject to the conditions stipulated under Law No. (6) for the year 2006 on Industrial Designs and Models. Industrial designs and models' applications are submitted to the national patent office (the Directorate of Foreign Trade and Industrial Property) at the Ministry of Industry and Commerce by the applicant if he/she is a national or resident in the Kingdom of Bahrain. Whereas foreign applicants who are not residents must apply through the IP Registration Office or a law firm in the Kingdom of Bahrain. Once registered, an exclusive right to prevent unauthorized copying

or imitation of the product may be obtained.

This means that the owner of such a right may prevent unauthorized third parties from making, selling, or importing articles bearing or embodying a design, which is a copy, or substantially a copy, of the registered design, when such acts are undertaken for commercial purposes.

Registration of industrial designs encourages **fair competition** and strengthens honest trade practices, which, in turn, stimulates creativity and promotes the production of a diverse range of aesthetically attractive products.

4. Who may apply for industrial design protection?

In general, the persons who created the design or, if they are working under an employment contract, their employer, can apply for registration. The applicant can be either an individual (e.g., a designer) or a



legal entity (e.g., a company). In either case, the application may be made directly or with the assistance of an IP agent. A foreign applicant would be required to be represented by an agent duly authorized by the relevant IP office.

As a result, any natural or legal person is entitled to file an industrial drawing or model application in line with the provisions of Law No. (6) for the year 2006 on Industrial

Designs and Models, provided the following:

- Being one of the Kingdom's citizens; or
- Being a foreigner affiliated with:
 - a member of the World Trade Organization; or
 - a member with any of the

¹ See Article (6) of Bahrain's Law No. (6) for the year 2006 on Industrial Designs and Models.

member states in the Paris Convention for the Protection of Industrial Property; or

- with any country that treats the Kingdom in like manner or if the applicant possesses a real and effective industrial or commercial entity in the territory of that member or country.¹

5. Where can an industrial design be registered?

To register an industrial design a national application must be filed at the IP office of the country where protection is sought, ² or a regional application filed at the IP office of an intergovernmental organization such as the European Union or Patent Office at the Secretariat General for Cooperation Council.³

² A list of IP offices is available at www.wipo.int/directory/en/urls.jsp.

³ See <https://www.gccpo.org/DefaultEn>



In Bahrain, applicants are required to file their application, subject to the conditions stipulated under Law No. (6) for the year 2006 on Industrial Designs and Models, at the Directorate of Foreign Trade and Industrial Property at the Ministry of Industry and Commerce, if the applicant is a national or resident in the Kingdom of Bahrain. Whereas foreign applicants who are not residents must apply through the IP Registration Office or a law firm in the Kingdom of Bahrain. Alternatively, an international application may be filed with the International Bureau of the World Intellectual Property Organization (WIPO). For more information on how to file an international application and the Hague System for the International Registration of Industrials Designs, see later in this guide “Protecting Industrial Designs Abroad.”

6. What can be registered as an industrial design?

The IP office usually examines the **formal** requirements for an application, such as the requirement to include a good quality reproduction of the industrial design or that the required fees are paid. Many IP offices also carry out a substantive examination to determine whether the industrial design is registrable. In Bahrain, industrial designs and models’ applications and their annexes are only subject to formal examinations that cover the form of design, novelty, and industrial applicability of the industrial design or model. The directorate concerned may require the applicant to amend the application as it deems necessary to decide on the application. The approximate registration time from filing to grant is four to six months.

To file an industrial design or model in the Kingdom of Bahrain, it must be:



1. Novel;
2. Filed independently;
3. Is applicable in industry and craft and gives special appearance to an industrial or craft product; and
4. Has not been disclosed to the public in the Kingdom of Bahrain or elsewhere by any means, including using or publication thereof, prior to the date of filing the registration application or the priority date of the application, if any.

However, an industrial design or model does not lose its novelty if it has been disclosed to the public in any way after filing its registration application:

⇒ In a country member of the World Trade Organization; or

⇒ A country member in the Paris Convention for the Protection of Industrial Property; or

⇒ In a country that applies reciprocity to the Kingdom of Bahrain; or

⇒ If the disclosure has occurred as a result of evident abuse or unfair acts by others.

Provided that all this occurs within six (6) months prior to the registration date of the application in the Kingdom of Bahrain or the priority date of the application, if any.⁴ It must comply with the **definition** of a design under the applicable law. For example, in some jurisdictions, a logo may not be registered as an industrial design because it is not considered to be a product. In Bahrain, industrial designs and models are “any arrangement of lines and colors and any colored or non-colored three-

⁴ See Article 2 of Law No. (6) for the

year 2006 on Industrial Designs and Models.



dimensional shape shall be deemed as an industrial drawing or model”⁵ and they must be “applicable in industry and craft and give special appearance to an industrial or craft product.”⁶ As a result, mere logos are not industrial designs.

- The design must be **new**:

A design is new if no identical design has previously been made available to the public. Designs are deemed identical if their features differ only in immaterial details.

- The design must be **original**:

A design is original if it has been independently created by the designer and is not a copy or an imitation of existing designs. Designs are not original if they do not significantly differ from known designs or combinations of known design features.

- The design must have **individual character**:

This requirement is met when the overall impression that a design produces on an informed user differs from the overall impression produced on such a user by any other design which has already been made available to the public.

In assessing the individual character of a design, the degree of freedom of the designer in developing it shall be also taken into consideration.

Traditionally, designs relate to features of manufactured products, such as the shape of a shoe, the design of an earring or the ornamentation on a teapot.

In the **digital world**, however, design protection is gradually extending to new products and types of design. These include, for instance, electronic desktop icons generated by computer codes, typefaces, the graphic

⁵ *Id.* at Article 1.

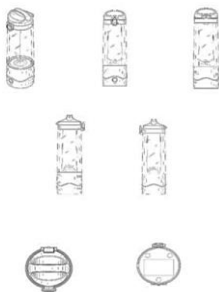
⁶ *Id.* Article 2 (1).



display on computer monitors
and smartphones, and so on.



IZHIMAN DALLAH ARABIAN
COFFEE Applicant: Chain Stores
of Izhiman Coffee Company,
West Bank/Palestine
Filing and Publication Number:
BH /D/1/001985



Cordless Blender Applicant:
Capbran Holdings, USA
Filing and Publication Number: BH
/D/1/002076
Filing and Publication Number: BH
/D/1/001644

Looking Good

Exclusive rights in business

Let us assume that a company has designed a cordless blender with an innovative design that has been registered at the national IP office, and it has obtained exclusive rights over cordless blenders bearing that design. This means that if it is discovered that a competitor is making, selling, or importing cordless blenders bearing the same or substantially the same design, the owner of the registered design will be able to prevent that competitor from using the design and may also possibly obtain compensation for the loss it has suffered from the unauthorized use of that design. Thus, while competitors cannot be stopped from making competitive products, they may be prevented from copying or making products that look just like registered designs and “free riding” on the creativity of others.



7. What designs cannot be protected through design rights?

Designs that cannot be protected include:

- Designs that do not meet the requirements of novelty, originality and/or individual character as discussed above.
- Designs dictated exclusively by the **technical function** of a product. Such technical or functional design features may be still protected but by other IP rights (e.g., patents, utility models or trade secrets), depending on the facts of each case.
- Designs incorporating protected **official symbols or emblems**, such as a national flag.
- Designs considered to be **contrary to public order or morality**.

It is also important to note that some jurisdictions exclude **handicrafts** from design protection, as their industrial design law requires that the product to which an industrial design is applied be “an article of manufacture” or replicated by “industrial means.”

In Bahrain, if the industrial drawings and models are *usable* in industry or handicrafts, and *distinctively appear* as an industrial or craftwork product, such industrial drawings and models may enjoy the protection determined under Law No. (6) for the year 2006 on Industrial Designs and Models.⁷

Additionally, the following may not be registered as industrial drawings or models:

“1. The industrial drawing or model, which usually requires

⁷ Article 2(a)(2) of Law No. (6) for the year 2006 on Industrial Designs and Models.



the technical or professional considerations of the product.

2. The drawing or the model that violates the public law or the rules of conduct.

3. The drawing or model which includes religious symbols, seals, or flags of the Kingdom or other countries.

4. The drawing or the model that is identical or similar to a registered trademark or a well-known mark.”⁸

8. How must an application for registration of an industrial design be filed?

As indicated above, some IP offices complete the registration of the design after having undertaken a purely formal examination to ensure that administrative formalities have been complied with, while many other IP offices may also conduct a

substantive examination by checking the novelty and/or originality of the design application against existing designs on their registers. Whereas in Bahrain, industrial designs and models’ applications and its annexes are only subject to formal examinations. Therefore, the contents of an application for registration of an industrial design may be different from one jurisdiction to another.

Once an industrial design is recorded in the industrial designs register of the IP office, the office issues a **registration certificate** to the holder. Most IP offices publish the recording of industrial designs in their official Designs Gazette. In some jurisdictions, it is possible to request **deferment of publication**, in which case the industrial design will be kept secret for a certain period that may vary according to the

⁸ See Article 3 of Law No. (6) for the

year 2006 on Industrial Designs and Models.



relevant law. Deferring publication of an industrial design for a certain period may be desirable for strategic business reasons.

To register an industrial design, the following steps must be taken to obtain rights to an industrial design:⁹

1. Conditions. Applicants are required to file their application subject to the conditions stipulated under Law No. (6) for the year 2006 on Industrial Designs and Models. Industrial designs and models'

applications are submitted to the national patent office (the Directorate of Foreign Trade and Industrial Property, at the Ministry of Industry and Commerce) by the applicant if he/she is a national or resident in the Kingdom of Bahrain.

Whereas foreign applicants who are not residents must apply through the IP Registration Office or a law firm in the Kingdom of Bahrain.

2. Language. Arabic is the official language of prosecution in Bahrain. However, applicants may file a patent application in English while furnishing the national patent office (the Directorate of Foreign Trade and Industrial Property, at the Ministry of Industry and Commerce) with an authorized Arabic translation within four (4) months from the date of filing the application.

3. Application. In order to obtain a filing date, an industrial design application must contain the applicant's details, two sets of drawings, a notarized and legalized copy of the Power of Attorney a certified copy of the priority document (if claimed), and payment of the filing fee. The

⁹ WIPO (2019). *Looking Good*, pp. 15-16.
www.wipo.int/edocs/pubdocs/en/wipo_pub_498_1.pdf.



legalized power of attorney and certified copy of the Priority Document with its authorized translation into Arabic may be filed within three (3) months from the filing date. If an application is filed in a country member of the World Trade Organization or the Paris Convention for the Protection of Industrial Property, or a country that applies reciprocity to the Kingdom of Bahrain, the person concerned or the successor is entitled to file an application of the same design within six (6) months from the filing date thereof in the foreign country, in accordance with the procedures, terms, and conditions provided for in this Law. In such a case, the priority right will be based on the date of the initial application.¹⁰

The Ministry's Industrial

Design e-Services portal facilitates online filing for Industrial Designs and Models, which allows the applicant to upload all of the required documents. Applicants can also process all their "Requests for Changes," such as change of owner or agent and change of owner or agent details, as well as annual payments for all of their applications.¹¹

4. Formal Examinations. In Bahrain, industrial designs and models' applications and their annexes are subject to formal examinations only, that cover the form of design, novelty, and industrial applicability of the industrial design or model. The directorate concerned may require the applicant to amend the application as it deems necessary to decide on the application. The approximate registration

¹⁰ Article (7) Law No. (6) for the year 2006 on Industrial Designs and Models.

¹¹ See

<https://www.moic.gov.bh/en/eServices/Pages/IP-Bahrain.aspx>



time from filing to grant is four to six months.

5. Grant and Appeals. The directory concerned at the Ministry of Industry and Commerce issues a decision on the application within sixty (60) days from the receipt of the complete application or from conducting the modifications and receipt of the fees necessary. The decision issued awarding the industrial design or model must be published in the Official Gazette.

If the decision issued was to refuse the application, the decision must be justified and shall be notified to the applicant by a registered letter with acknowledgment of receipt within thirty (30) days of issuing the decision. Any concerned person may appeal in writing to the Minister of Industry and Commerce against any decision

issued according to the provisions of Law No. (6) for the year 2006 on Industrial Designs and Models within thirty (30) days of being aware of the decision. The concerned person shall be informed of the decision in writing within sixty (60) days of the date of his appeal. The applicant may challenge the rejection decision before the High Civil Court within sixty (60) days from the notification date of the appeal rejection, or if the period stated above lapses with no notification. Exercising a challenge before the High Civil Court is not permitted unless an appeal is filed and has thereafter been rejected by an issued decision, or if the period prescribed for deciding thereon lapses with no notification.¹²

¹² *Id.* at Article 16.



9. Can you apply for the registration of many different designs through a single application?

Many jurisdictions provide for a maximum number of industrial designs that may be

contained in one application (e.g., up to 100 designs), provided that those designs belong to the same class of product. For example, if there is an intention to protect an industrial design for a lamp and a car, two separate applications would have to be filed since “lamps” and “cars” do not belong to the same class of products. In Bahrain, the application may include several drawings or models. However, the maximum number of industrial designs and models that may be contained in one application is 50 homogeneous designs.¹³ In all cases, the

applicant must provide all data concerning the applications previously filed abroad in terms of the same industrial drawing or model, relevant information about its subject matter, and the decisions made on these applications.

International classification

Industrial designs are generally classified or grouped into “classes” for ease of retrieval. When applying for a registered design right, the class of products for which the design is intended to be used may have to be indicated. Most IP offices use the International Classification for Industrial Designs (Locarno Classification). The Locarno Classification and the *Locarno Agreement Establishing an International Classification for Industrial Designs* are both available on the WIPO website at:

<https://www.wipo.int/classifications/locarno/en/>

¹³ *Id.* at Article 15.



In some jurisdictions, however, a separate application for each design may have to be filed, unless the other designs contained in the application comply with a requirement of “unity of design” under the applicable law. In general, the concept of **unity of design** means that all the designs conform to the same single creative concept. In particular, and although limiting an application to a single design, many jurisdictions allow that “variants” of that design be contained in the same application while others allow for an exception to the “single design” rule when all the designs relate to a “set of articles.”

Similarly, in Bahrain, the application may be submitted

¹⁴ Article 3(a) of Ministerial Decision No. (1) of 2010 on the issuance of the Implementation Regulation of Law No.

for a number of industrial drawings or models not exceeding 50, as stated above. Provided that they are a homogeneous unit in their entirety. It is considered a homogeneous unit if they all fall into one category of the international classification categories and take one shape as a whole.¹⁴

Additionally, each drawing or form is subject to the financial fee stated in the Ministerial Decision No. (1) of 2010 on the issuance of the Implementation Regulation of Law No. (6) of 2006 in respect of Industrial Designs and Models.

Example of a “set”



Packaging Design of Royal
Cutlery Applicant: Deeko
Bahrain W.L.L., Kingdom of
Bahrain

Filing and Publication Number:
BH /D/1/001382



- **Variants** include, for example, two wheeled balancing scooters which differ in color. Generally speaking, “variants” must apply to the same article and must not differ substantially.

- A “**set**,” on the other hand, is defined as a number of articles of the same general character which are normally sold together or intended to be used together, and which share some common design features. Examples include cutlery (a set of forks, spoons, and knives) and household appliances (a hairdryer and its nozzles and brushes). There is thus wide variation in what is possible to include in a single application. The exact details of the requirements and possibilities for seeking protection in a cost-effective manner in a particular jurisdiction should be established either with the assistance of an IP agent or with

the relevant IP office.

Example of a “variant”



INCLUDEPICTURE
LUGGAGE 2 and 4 WHEELS
Applicant: Louis Vuitton
Malletier, France
Filing and Publication
Number: BH /D/1/001636

10. How much does it cost to protect an industrial design?

The actual costs of industrial design protection vary significantly from country to country, so it is important to consider the different costs that may be involved in the process:

1. There will be an **application/registration fee** to be paid to the IP office. The amount of the fee may depend on the number of designs to be



registered, or the number of reproductions submitted for each design. Details of fees can be obtained from the IP agent or from the relevant IP office. In

2. There will also be **costs associated with the services of an IP agent**, if an applicant chooses to use an agent or if their use is required by the relevant IP office.

3. Most IP offices require the payment of a **renewal fee** to maintain the exclusive right over an industrial design. The renewal fee is usually paid on a five-year basis. In Bahrain, **renewal fees** to maintain the exclusive right over an industrial design or model is BHD 40 (roughly USD 106).¹⁶

the Kingdom of Bahrain, the application/registration fee to be paid is BHD 40 (roughly USD 106).¹⁵

4. There may also be costs associated with the **translation** of the relevant documentation if the application is not in Arabic. Thus, upon submission, documents must be translated into Arabic and fees for such services differ from one company to another depending on the contents of the application.¹⁷

11. Should the design be kept confidential before registration?

Keeping the design confidential is absolutely

¹⁵ Ministerial Decision No. (1) of 2010 on the issuance of the Implementation Regulation of Law No. (6) of 2006 in respect of Industrial Designs and Models.

¹⁶ Ministerial Decision No. (1) of 2010 on the issuance of the Implementation Regulation of Law No. (6) of 2006 in

respect of Industrial Designs and Models.

¹⁷ See *registered translation company in Bahrain Chamber of Commerce & Industry (BCCI)* <https://www.bahrainchamber.bh/en/businesses-search>



crucial since the design must be new to qualify for protection. If the design is shown to others, it is advisable to do so within the framework of confidentiality agreement which makes it clear that the design is confidential.

A design that has already been disclosed to the public, for example by having been advertised in a company catalogue or brochure, may no longer be considered new. It may become part of the public domain and no longer be protected, unless the applicable law provides for a “grace period” or unless the priority of an earlier application can be claimed. In the Kingdom of Bahrain, there is no novelty *grace period* stipulated for industrial designs or models. As a result,

an industrial design or model must be novel and should not have been disclosed to the public, whether in Bahrain or abroad, in any way, including its use or publication.¹⁸ However, industrial designs and models do not lose novelty if it was disclosed to the public within six (6) months prior to the registration date of the application in Bahrain or the priority date of the application:

- In a country member of the World Trade Organization; or
- A country member in the Paris Convention for the Protection of Industrial Property; or
- In a country that applies reciprocity to the Kingdom of Bahrain; or
- If the disclosure has occurred as a result of evident abuse or unfair acts by others.¹⁹

¹⁸ See Article 2(a)(3) Law No. (6) for the year 2006 on Industrial Designs and Models.

¹⁹ See Article 2(b) of Law No. (6) for the year 2006 on Industrial Designs and Models.



12. What is a grace period?

Certain national legislation allows for a grace period for processing the registration of an industrial design. This period is usually six months to a year, counted from the date of disclosure of the industrial design to the public. In other words, if a product is marketed with a design that has not yet been the subject of a design application, it will be considered to have lost its novelty and will not be eligible for protection through design right. However, in countries where a grace period is provided, an application for a design right may still be submitted within that period and it will still be considered novel, even though it has already been disclosed to the public. As discussed in the

preceding paragraphs, unlike patents, there is no novelty *grace period* stipulated for industrial designs or models in the Kingdom of Bahrain.

This is the case when the products to which the industrial design is applied are sold or displayed at a trade show, exhibition or fair, or pictures of them are published in a catalogue, brochure or advertisement before an application is filed.

However, as not all jurisdictions provide for a grace period and given that time limits will in any case apply to any such option, it is often advisable to keep the design confidential until an application for design protection is submitted. Bear in mind that even if design rights are lost, other options such as protection under copyright²⁰ or unfair

²⁰ On the protection of industrial design under copyright and unfair competition laws, see later in this guide

“Other Legal Instruments for Protecting Industrial Designs.



competition laws may still be available.

13. Who owns the rights over an industrial design?

The creator of a design, i.e., the designer, is usually the first owner of the design, unless there are special circumstances. For example, in most jurisdictions, if an **employee** has developed a design under the terms of his or her employment contract – that is, during working hours within the enterprise and as part of his or her regular duties – the design and the related rights will belong to the employer, or the designer may be required to transfer them to the employer through a formal written assignment. In Bahrain, the ownership of industrial drawings or models shall be assigned to the employer if the invention was the result of a

contract or a formal commitment.²¹

If the design was developed by an **external designer under contract**, the rights will generally belong to the company that commissioned the design. In such cases, it is considered that the design was produced for the use of the person who commissioned the design, who is therefore the owner. Misunderstandings at a later date can be avoided by clarifying the issue of ownership of rights in the original contract with the designer. Bear in mind that the designer of the product may have automatic copyright protection over the design, so this issue should also be covered in the contract.

14. How long does industrial design protection last?

Industrial design rights are granted for a limited period. In the Kingdom of Bahrain, the protection period of an

²¹ Article 9 of Law No. (6) for the year

2006 on Industrial Designs and Models.



industrial design or model is ten (10) years from the date of filing the registration application in Bahrain. The protection may be extended for a further period of five (5) years, when the right holder applies for renewal within the last year of the protection period. However, the owner may also apply for renewal of the registration within three (3) months after the expiration of the prescribed protection period.²²

15. What should be done if the design combines functional features with aesthetic features?

It is often the case that a new product combines functional improvements with innovative aesthetic features. Different aspects of the product may be protected under different IP rights. It is important to keep in mind the basic difference be-

tween industrial designs and patents/ utility models:

- Patents and utility models are for **inventions** that bring about **functional improvements** to a product whereas industrial design protection applies solely to its appearance or aesthetic appeal.
- To obtain exclusivity over the **functional features** of a product, it is advisable to apply for **patent** or **utility model** protection or, where the function is not obvious from the product, to keep it as a **trade secret**.

Business strategy: combined protection under different IP rights

Take the example of a new mobile device. It may feature new, improved electronic components, which could be protected by patents, while its design may be protected as an industrial design. However, can applications be filed for

²² Article 13 of Law No. (6) for the year

2006 on Industrial Designs and Models.



both industrial design registration and patents for the same product? Yes.

16. Licensing industrial designs

Industrial designs are licensed when the owner of the design (the licensor) grants permission to another person (the licensee) to use the design for mutually agreed purposes. In such cases, a **licensing contract** is signed between the two parties specifying the terms and scope of the agreement.

Authorizing others to use industrial designs through a licensing contract will enable the licensor to receive an **additional source of revenue** and it is a common means of exploiting the exclusivity over registered designs conferred by the design right. It also enables the licensor to enter markets that it might not otherwise have been able to enter.

Licensing contracts often include **limitations** as to the countries where the licensee may use the design, the time for which the license is granted and the type of products for which it can be used. In order to license the use of a design in foreign countries, the licensor should have obtained, or at least applied for, industrial design protection in those countries. If not, the design is not protected in those countries and the issue of granting another the right to use such a design does not arise. Protecting industrial designs abroad is discussed in the next section of this booklet.

Agreements to license industrial designs are often included in broader licensing agreements, which cover all aspects of a product, not just the aesthetic elements.

17. Protection of an “unregistered design”

In some jurisdictions, it is possible to obtain limited industrial design protection for



unregistered designs, but only for a short period. This is the case, for example, in the European Union, where unregistered design protection is available and lasts three years from the date on which the design was first made available to the public within the territory of the European Union. However, in Bahrain, unregistered designs do not enjoy any legal rights or protection.

Design protection and business strategy

Taking decisions on how, when and where to protect a company's industrial designs may have an important impact on other areas of design management. It is therefore crucial to integrate issues of design protection into the broader business strategy of the enterprise.

For example, the type of protection, the costs, the

effectiveness of protection and issues of ownership of designs may all be important considerations when deciding:

- whether to undertake design development in-house or to commission an outside agency;
- the timing of the first-time use of a new design in advertising, marketing or public display in an exhibition;
- which export markets to target;
- if, when and how to license or assign a design to be commercially exploited by other companies in return for economic remuneration.

Protecting Industrial Designs Abroad



18. Why protect industrial designs abroad?

If a company intends to export or sell its products, or to license the right to manufacture such products to other firms in foreign countries, then the design should be protected in those countries.

19. How is an industrial design protected abroad?

Industrial design protection is territorial. This means that industrial design protection is generally limited to the country or region (i.e., group of countries) where the design is registered.

When applying for design protection abroad, there is also what is called the **right of priority**. Once an application has been made for registration of an industrial design right for the first time,

the applicant has six months from that date to make a further

application in another country and such applications will be considered as if filed on the date of the first application. During this priority period, the applicant has priority over anyone else that applied after the date of the first application for the same or similar design. Once this period has lapsed, the design may no longer be considered “new” and so it may not be eligible for protection at all in other territories.

There are three ways of protecting industrial designs abroad.

1. The national route:

Separate applications may be made to the national IP office of each country of interest. The process can be rather cumbersome and expensive as translation into the relevant national languages is generally required as well as payment of administrative fees, which may vary substantially from country to country.



2. The regional route: If the applicant is interested in a group of countries that are members of intergovernmental entities, a “single” application can be filed at the regional IP office of those regional entities, such as:

- The African Regional Industrial Property Office (ARIPO) for industrial design protection in a number of African countries;
- The Benelux Office for Intellectual Property (BOIP) for industrial design protection in the territory of Belgium, the Netherlands and Luxembourg;
 - The European Union Intellectual Property Office (EUIPO) for Registered Community Design in the territory of the Member States of the European Union;
 - The African Intellectual Property Organization

(OAPI) for protection in the territory of its Member States.

A list of national and regional IP offices may be consulted at, <https://www.wipo.int/directory/en/urls.jsp>.

3. The international route:

A wider geographical area may be covered by filing one international application with WIPO. *The Hague System for the International Registration of Industrial Designs* offers a simple and cost-effective mechanism to apply for industrial design protection in various countries or intergovernmental organizations like EU or OAPI. By filing a “single” international application, a bundle of rights contained in one international registration valid in many countries or territories may be obtained. Thus, important savings can be made at the time of filing. You can also save time, effort, and money on maintaining your registration throughout the life



of the design, as the Hague System offers the possibility of “central management,” i.e., operations occurring during the life of the design (renewal, changes, etc.) can also be handled through a single request transmitted directly to and processed by WIPO.

20. Who can file an international application under the Hague System?

The applicant can be either a “natural person” or a “legal entity” which has a connection to a Contracting Party to the Hague Agreement Concerning the International Registration of Industrial Designs.²³

However, startups in Bahrain may not go through this route in the Kingdom of Bahrain, since Bahrain is not a party to the Hague Agreement

Concerning the International Registration of Industrial Designs.

More information on the Hague System can be found at: www.wipo.int/hague

²³ A list of Contracting Parties to the Hague Agreement Concerning the International Registration of

Industrial Designs is available at: www.wipo.int/hague

Enforcing Industrial Design

21. How can a design be enforced in case of infringement?

A registered industrial design is infringed if a third party makes, offers for sale, sells, or imports articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, without authorization from the right owner.

The main responsibility for identifying and taking action against infringements of an industrial design lies with the right owner. In other words, **the owner is responsible for monitoring the use of his or her design in the physical and online marketplaces, identifying any infringing uses and deciding whether, how and when to take action against them.**

Enforcing an industrial design, like any IP right, may be a complex issue.

Whenever **infringement** is suspected, it is advisable to seek professional legal advice.

A first action could be to draft a “cease and desist letter” to inform the alleged infringer of a possible conflict between the two designs.

Where an infringing use has been identified online, for instance in an online marketplace, the design right owner could follow that website’s designated procedure for reporting infringing offers; often, online platforms and other websites will have a “notify and takedown” procedure whereby right owners can notify them of infringing material and have it removed. If there is no established takedown process, the right owner may contact the service provider (i.e., the operator of the online marketplace) directly.

If attempts to warn the alleged infringer through a cease-and-desist letter have been unsuccessful and the infringement persists, it may be necessary to take legal action.

There are a number of measures available. For instance, if the location of the infringing activity is known, it may be possible to take a “surprise action” by obtaining a search and seize order (usually from a competent court or the police) to conduct a raid, without prior notice to the alleged infringer. Therefore, in the case of infringement or to prevent threats of infringement in the Kingdom of Bahrain, the right owner may request an order in a petition from the competent court to take one or more preventive measures, including the following:

1. “Making a detailed description of the goods – including the imported ones upon importation thereof – materials, machinery, and equipment used or that have been used in the infringement act and keeping the pertinent evidence.

2. Effecting precautionary seizure on the items mentioned hereinabove.

3. To desist the infringement.”²⁴

Adequate evidence must be submitted to prove that the applicant is the right holder, that the right is being infringed, or that such infringement is imminent. In the event of conviction, the court may order the seizure or destruction of all infringing articles, as well as the machines and equipment used in committing the offense.

In order to prevent the **importation of allegedly infringing goods**, measures at international borders are available to design right owners in many countries through the national customs authorities. In the case of infringement or to prevent threats of infringement in the Kingdom of Bahrain, the right owner may request an order in a petition from the chief of the competent court to take

²⁴ Article 29(1) of Law No. (6) for the

year 2006 on Industrial Designs and Models.

one or more precautionary measures as appropriate, including the following:

“Prohibiting the infringing products which contain the claimed infringement from entering the commercial channels and prohibit their export, including the imported products that are released by the Customs Affairs.”²⁵

Furthermore, the GCC Unified Customs Law, the Customs Administration “prohibits admission, transit, or exit of prohibited goods, or *infringing goods*, as well as the entry, transit, or exit of any restricted goods, except under approval from the competent authorities in the country.”²⁶

To protect the value of a registered design more generally, it is important to also regularly monitor the registration of designs in order

to ensure that a third party is not attempting to register an identical or similar design. Service providers, including lawyers and other IP professionals, can assist with such monitoring. Search tools for design registrations are also available. Bahrain’s database for Industrial Properties is maintained by the Ministry of Industry and Commerce offers the following:

- Electronic Industrial Properties services for individuals and enterprises, including online search, buy standards, and technical regulations for industrial designs. A request must be filed to utilize the e-Services portal, which is also subject to fees.²⁷

- Whereas the WIPO Publish System, provided by WIPO through its program of

²⁵ Article 40(1)(c) of Law No. (6) for the year 2006 on Industrial Designs and Models.

²⁶ Article 24 of Legislative Decree No. (10) of 2002 of the Unified Customs Law for the Gulf Cooperation Council States (“GCC Unified Customs Law”); Article 2(14) the term goods means

“any natural, material or animal, agricultural, *industrial, or intellectual product*.”

²⁷ See IP e-Services portal of Bahrain’s Ministry of Industry and Commerce: <https://service.moic.gov.bh/ipd/login>

technical assistance to national and regional Industrial Property Offices, is a public automated system that provides a search service for trademarks and industrial designs registered in the Kingdom of Bahrain.²⁸ This public database does not require registration or fees to be paid.

Another tool is WIPO's Global Design Database; another is Design view. If the right owner discovers that a third party has registered an identical design or one that does not produce a different impression overall, or is attempting to do so, they can refer to their earlier right and either oppose the registration of the later design or request that the later design registration be declared invalid, as the case may be. While this publication focuses on industrial design rights, it is important to know that there may be alternative and/or complementary ways of

protecting industrial designs under copyright, trademark or unfair competition laws:

- **Copyright protection** generally provides for exclusive rights in relation to literary and artistic works. In some jurisdictions, certain designs may be recognized as being works of art or applied art which may be protected under copyright law. In the Kingdom of Bahrain illustrations, designs, *images*, concepts, sketches, 3-D works related to geography, topography, architecture, or science, all may be protected under copyright law.²⁹ This may represent an attractive option for SMEs, because copyright generally lasts longer than industrial design protection and does not require registration. However, copyright may also be less advantageous than design protection in certain other respects, as explained below.

²⁸ See WIPO Publish Database on Bahrain's Ministry of Industry and Commerce's Official Portal: <https://service.moic.gov.bh/wipopublish/>

²⁹ Law No. (22) of 2006 with respect to

the Protection of Copyright and Neighboring Rights (the "Copyright Law"), as amended by Bahrain Law No. (12) of 2008, Law No. (3) of 2011, and Law No. (5) of 2014.

Other Legal Instruments for Protecting Industrial Designs

However, copyright may also be less advantageous than design protection in certain other respects, as explained below.

- If an industrial design functions as a trademark in the marketplace, it may also be registered as a **mark**. In particular, when the shape of the product or its packaging is considered “distinctive,” an industrial design may be registered as a three-dimensional mark. The advantage of this is that a mark can be protected indefinitely, provided it is used, and maintenance fees are paid periodically.

- Laws on **unfair competition** may also protect a company’s industrial design from imitation by competitors. Bahrain’s Law No. (31) of 2018 with respect to the Promotion and Protection of Competition, states that carrying out economic activities must be done in a manner that does not

hinder competition, which is guaranteed to all persons. Whether such person is a natural or juridical person or any legal entity practicing economic activities. **Economic activities** include “commercial activities and craft occupations, all activities related to the production and distribution of goods or services, even if it was a non-profit activity, such as activities of cooperative societies and professional bodies, it further includes *Intellectual property rights*, trademark, patents, and publishing.”³⁰

Therefore, Bahrain’s Promotion and Protection of Competition law includes the protection of a company’s industrial design from imitation by competitors.

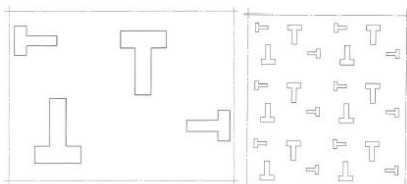
22. What are the differences between copyright protection and registered industrial design protection?

In some countries, the applicable law recognizes the

³⁰ See Article 1(2)(2) of Law No. (31) of

2018 with respect to the Promotion and Protection of Competition.

possibility of copyright protection for some designs, for example those incorporated in textiles and fabrics. In Bahrain, knitting works, textiles, carpets, garments, and printing on fabrics may enjoy copyright protection without the need for any procedural formality, regardless of the value of such works, type, purpose of creating them, or method of expression.³¹



Design of a textile pattern Applicant:
Tod's SPA, Italy

Filing and Publication Number: BH
/D/1/000648

While in many countries it is possible to obtain **cumulative protection** (i.e., copyright protection and industrial design protection) concurrently for the same design, in a few countries, the two forms of protection are mutually exclusive. In Bahrain, the applicant may file for

copyright protection and industrial design protection; however, each application is considered an individual application.

Thus, the application to file for copyright protection must be subject to Law No. (22) of 2006 with respect to the Protection of Copyright and Neighboring Rights, and its amendments. Copyright applications must be submitted to the directorate concerned at the Ministry of Information.

Whereas industrial designs and model applications' must be subject to the conditions stipulated under Law No. (6) for the year 2006 on Industrial Designs and Models. Industrial designs and models' applications are submitted to the national patent office (the Directorate of Foreign Trade and Industrial Property) at the Ministry of Industry and Commerce.

Before taking any decision on

³¹ See Article 1 and Article 2(7) of the

Kingdom of Bahrain's Copyright Law.

how best to protect a design, it is important to understand the differences between these two forms of protection. Some of the main differences are outlined below.

Registration

- Under industrial design law, the industrial design needs to be **registered** by the applicant before publication, disclosure, or public use at least in the country where protection is claimed. The **registration certificate** which is issued to demonstrate that the design is protected under industrial design law may prove useful in cases of infringement, as it represents a solid basis that can be relied on to claim and enforce the exclusive rights.
- Copyright for works considered “original” subsists without the need to observe formalities. While **registration is not necessary for copyright protection**, voluntary copyright registration systems or depositaries exist in some countries. These systems allow

you to register a work, make a deposit, or both, and obtain a certificate.

23. Duration

- Industrial design protection generally lasts between **10 and 25 years**, depending on the country where protection is sought. In the Kingdom of Bahrain, the protection period of an industrial design or model is ten (10) years from the date of filing the registration application in Bahrain.
- The protection may be extended for a further period of five (5) years when the right holder applies for renewal within the last year of the protection period. However, the owner may also apply for renewal of the registration within three (3) months after the expiration of the prescribed protection period.
- It must also be borne in mind that the process of registering an industrial design may take some time and may not always be adequate for

products that are linked to passing trends (e.g., fashion products).

- Copyright endures in most countries for the **life of the creator of the work plus 50 or 70 years after his or her death**. In Bahrain, the Copyright Law extends such protection to the life of the creator *plus 70 years*, commencing from the beginning of the calendar year following the year of his/her death.³²

24. Scope of protection

- The right conferred by registration of an industrial design is an **absolute right** in the sense that there is infringement whether or not there has been deliberate copying.
- Under copyright law, there is infringement when a work **deliberately or negligently** reproduces part or the whole of a previously created work

protected by copyright. This makes it generally more cumbersome and expensive to enforce in case of infringement.

25. Types of products

In most countries that allow some level of protection for designs under copyright law, **not all designs can be protected**, primarily those that may be considered as original works of art. While the distinction may not always be clear, some designs, such as the shape of manufactured products, are unlikely to be protectable under copyright law, while others, such as textile designs, are often covered by both forms of protection. In the Kingdom of Bahrain, the Copyright Law extends to artistic and scientific works upon their creation without procedural formalities, regardless of their value, type, purpose of creation, method of expression thereof, or form of

³² Article 37 of Law No. (22) of 2006 with respect to the Protection of

Copyright and Neighboring Rights (the "Copyright Law") and its amendments.

such expression. Not all designs can be protected; however, the following are protectable under copyright law:³³

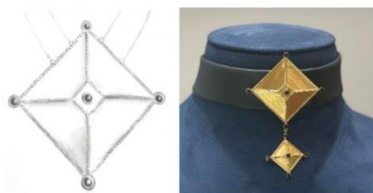
- Illustrations, geographical maps, designs, sketches, and 3-D works related to geography, topography, architecture, or science;
- Painting works using lines or colors, sculptures, inscriptions, lithographs, printing on fabrics, wood, or metals, and any other similar works of this nature; and

Products of folk art such as drawings with lines or color, sculptures, pottery, ceramics, inscriptions on wood and metal, jewellery, knitting works, textiles, carpets, garments, musical instruments, and architectural forms.



³³ *Id.* at Article 2(7), Article 2(10), Article 1(4).

³⁴ See pp. 29,30 of Ministerial Decision No. (1) of 2010 on the issuance of the



Walah Jewellery Piece Applicant:
Walah Abdulaziz Alhamar, Bahrain
Filing and Publication Number:
BH/D/1/002068

26. Costs

- Registering a design entails the payment of fees as detailed in the Ministerial Decision No. (1) of 2010 on the issuance of the Implementation Regulation of Law No. (6) of 2006 in respect of Industrial Designs and Models.³⁴ In addition to the fees of an IP agent that may be required in certain circumstances to assist in filing

Implementation Regulation of Law No. (6) of 2006 in respect of Industrial Designs and Models,
<https://www.wipo.int/wipolex/en/text/201053>

the application, incurring additional costs. In which fees of an IP agent vary *significantly based on each individual application, depending on numerous factors, mainly the complexity of the work*.³⁵

- Since no formal registration of protected copyright work is required under most national copyright laws, there are generally no direct costs relating to copyright protection. However, there may be costs related to:

(a) the registration of a work in the voluntary registration system and/or the deposit of the work at the voluntary copyright depository, in countries where this option exists. In the Kingdom of Bahrain, the creator may deposit the protected works with the *Ministry of Information* in pursuance of the provisions of Bahrain's Copyright Law and register such works in the

register designated for this purpose. The procedures related to depositing and registering such acts or works in the said register, fees that must be paid, and the different categories of such acts is specified by the ministerial order issued in that regard; and

(b) demonstrating proof of ownership in case of disputes.

In summary, while both forms of protection are valid, the protection granted by registered industrial designs is stronger and more effective. It covers unintentional as well as intentional or negligent infringement and provides a registration certificate, which constitutes proof in case of an infringement claim. However, it requires more financial and administrative effort, the registration process takes time, and protection does not last as long as copyright.

In any event, and particularly

³⁵ To estimate application or renewal fees under the Hague System, see the

fee calculator at: www.wipo.int/hague/en/fees/calculator.jsp

if the design is not registered, it is advisable to **keep good records of every step in the development of the design**. Signing and dating each sketch, and properly archiving them, may also be helpful.

27. Can laws on unfair competition protect designs?

In many countries, industrial designs are often protected under unfair competition laws. Thus, a design may be protected against acts of unfair competition including, in particular, slavish copying and acts that may lead to confusion, acts of imitation or use of a third party's reputation. However, protection under unfair competition is generally significantly weaker than under industrial design law, and infringement is more difficult to prove.

For further information on:


- **Small and medium-sized enterprises (SMEs) and WIPO**, visit: www.wipo.int/sme
- **Hague – The**


International Design System,
visit: www.wipo.int/hague



Bahrain's Ministry of Industry and Commerce, Sea Front,
Financial Harbour Gate, P.O. Box 60667, Manama,
Kingdom of Bahrain.


SMES DEVELOPMENT DIRECTORATE


 (+973) 17568032


 (+973) 17581504

 SMEsdevelopment@moic.gov.bh

FOREIGN TRADE AND INDUSTRIAL PROPERTY DIRECTORATE

 (+973) 17574821

 (+973) 17536479

 ip@moic.gov.bh