



# Intellectual Property Act 2014

## 2014 CHAPTER 18

### PART 1

#### DESIGN

##### *Registered designs*

### 13 Offence of unauthorised copying etc. of design in course of business

After section 35 of the Registered Designs Act 1949 insert—

#### **“35ZA Offence of unauthorised copying etc. of design in course of business**

- (1) A person commits an offence if—
  - (a) in the course of a business, the person intentionally copies a registered design so as to make a product—
    - (i) exactly to that design, or
    - (ii) with features that differ only in immaterial details from that design, and
  - (b) the person does so—
    - (i) knowing, or having reason to believe, that the design is a registered design, and
    - (ii) without the consent of the registered proprietor of the design.
- (2) Subsection (3) applies in relation to a product where a registered design has been intentionally copied so as to make the product—
  - (a) exactly to the design, or
  - (b) with features that differ only in immaterial details from the design.
- (3) A person commits an offence if—

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- (a) in the course of a business, the person offers, puts on the market, imports, exports or uses the product, or stocks it for one or more of those purposes,
  - (b) the person does so without the consent of the registered proprietor of the design, and
  - (c) the person does so knowing, or having reason to believe, that—
    - (i) a design has been intentionally copied without the consent of the registered proprietor so as to make the product exactly to the design or with features that differ only in immaterial details from the design, and
    - (ii) the design is a registered design.
- (4) It is a defence for a person charged with an offence under this section to show that the person reasonably believed that the registration of the design was invalid.
- (5) It is also a defence for a person charged with an offence under this section to show that the person—
- (a) did not infringe the right in the design, or
  - (b) reasonably believed that the person did not do so.
- (6) The reference in subsection (3) to using a product in the course of a business does not include a reference to using it for a purpose which is merely incidental to the carrying on of the business.
- (7) In this section “registered design” includes a registered Community design; and a reference to the registered proprietor is, in the case of a registered Community design, to be read as a reference to the holder.
- (8) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding ten years or to a fine or to both;
  - (b) on summary conviction in England and Wales or Northern Ireland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both;
  - (c) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both.

### **35ZB Section 35ZA: enforcement**

- (1) The following provisions of the Trade Descriptions Act 1968 (which provide for the enforcement of that Act by local weights and measures authorities or the relevant Northern Ireland Department) apply as if section 35ZA were a provision of that Act—
- (a) section 27 (power to make test purchases);
  - (b) section 28 (power to enter premises and inspect and seize goods and documents);
  - (c) section 29 (obstruction of authorised officers);
  - (d) section 33 (compensation for loss etc. of seized goods).

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- (2) Any enactment which authorises the disclosure of information for the purpose of facilitating the enforcement of the Trade Descriptions Act 1968 applies—
  - (a) as if section 35ZA were a provision of that Act, and
  - (b) as if the functions of any person in relation to the enforcement of that section were functions under that Act.
- (3) Nothing in this section is to be construed as authorising a local weights and measures authority to bring proceedings in Scotland.

### **35ZC Section 35ZA: forfeiture in England and Wales or Northern Ireland**

- (1) In England and Wales or Northern Ireland, a person who, in connection with the investigation or prosecution of an offence under section 35ZA, has come into the possession of relevant products or articles may apply under this section for an order for the forfeiture of the products or articles.
- (2) “Relevant product” means a product which is made exactly to a registered design, or with features that differ only in immaterial details from a registered design, by copying that design intentionally.
- (3) “Relevant article” means an article which is specifically designed or adapted for making copies of a registered design intentionally.
- (4) An application under this section may be made—
  - (a) where proceedings have been brought in any court for an offence under section 35ZA relating to some or all of the products or articles, to that court;
  - (b) where no application for the forfeiture of the products or articles has been made under paragraph (a), by way of complaint to a magistrates' court.
- (5) On an application under this section, the court may make an order for the forfeiture of products or articles only if it is satisfied that an offence under section 35ZA has been committed in relation to the products or articles.
- (6) A court may infer for the purposes of this section that such an offence has been committed in relation to any products or articles if it is satisfied that such an offence has been committed in relation to products or articles which are representations of them (whether by reason of being of the same design or part of the same consignment or batch or otherwise).
- (7) Any person aggrieved by an order made under this section by a magistrates' court, or by a decision of such a court not to make such an order, may appeal against that order or decision—
  - (a) in England and Wales, to the Crown Court;
  - (b) in Northern Ireland, to the county court.
- (8) An order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980 or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981).

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- (9) Subject to subsection (10), any products or articles forfeited under this section are to be destroyed in accordance with such directions as the court may give.
- (10) On making an order under this section, the court may, if it considers it appropriate to do so, direct that the products or articles to which the order relates shall (instead of being destroyed) be released to such person and on such conditions as the court may specify.

### **35ZD Section 35ZA: forfeiture in Scotland**

- (1) In Scotland, the court may make an order for the forfeiture of any relevant products or articles (as defined by section 35ZC).
- (2) An order under this section may be made—
  - (a) on an application by the procurator fiscal made in the manner specified in section 134 of the Criminal Procedure (Scotland) Act 1995, or
  - (b) where a person is convicted of an offence under section 35ZA, in addition to any other penalty which the court may impose.
- (3) On an application under subsection (2)(a), the court may make an order for the forfeiture of relevant products or articles only if it is satisfied that an offence under section 35ZA has been committed in relation to the relevant products or articles.
- (4) The court may infer for the purposes of this section that such an offence has been committed in relation to any relevant products or articles [<sup>F1</sup>if it is satisfied that such an offence has been committed in relation to products or articles] which are representative of them (whether by reason of being of the same design or part of the same consignment or batch or otherwise).
- (5) The procurator fiscal making the application under subsection (2)(a) must serve on any person appearing to the procurator fiscal to be the owner of, or otherwise have an interest in, the products or articles to which [<sup>F2</sup>the application relates a copy of the application, together with a notice giving the person the opportunity] to appear at the hearing of the application to show cause why the products or articles should not be forfeited.
- (6) Service under subsection (5) must be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the Criminal Procedure (Scotland) Act 1995.
- (7) Any person upon whom notice is served under subsection (5) and any other person claiming to be the owner of, or otherwise have an interest in, products or articles to which an application under this section relates is entitled to appear at the hearing of the application to show cause why the products or articles should not be forfeited.
- (8) The court must not make an order following an application under subsection (2)
  - (a)—
    - (a) if any person on whom notice is served under subsection (5) does not appear, unless service of the notice on that person is proved, or
    - (b) if no notice under subsection (5) has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve such notice.

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- (9) Where an order for the forfeiture of any products or articles is made following an application under subsection (2)(a), any person who appeared, or was entitled to appear, to show cause why goods, material or articles should not be forfeited may, within 21 days of making the order, appeal to the High Court of Justiciary by bill of suspension.
- (10) Section 182(5)(a) to (e) of the Criminal Procedure (Scotland) Act 1995 applies to an appeal under subsection (9) as it applies to a stated case under Part 2 of that Act.
- (11) An order following an application under subsection (2)(a) does not take effect—
- (a) until the end of the period of 21 days beginning with the day after the day on which the order is made, or
  - (b) if an appeal is made under subsection (9) within that period, until the appeal is dismissed or abandoned.
- (12) An order under subsection (2)(b) does not take effect—
- (a) until the end of the period within which an appeal against the order could be brought under the Criminal Procedure (Scotland) Act 1995, or
  - (b) if an appeal is made within that period, until the appeal is determined or abandoned.
- (13) Subject to subsection (14), products or articles forfeited under this section must be destroyed in accordance with such directions as the court may give.
- (14) On making an order under this section, the court may, if it considers it appropriate to do so, direct that the products or articles to which the order relates shall (instead of being destroyed) be released, to such person and on such conditions as the court may specify.
- (15) In this section, “the court” means—
- (a) in relation to an order made on an application under subsection (2)(a), the sheriff;
  - (b) in relation to an order made under subsection (2)(b), the court which imposed the penalty.”

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#### **Textual Amendments**

- F1** Words in s. 13 inserted (29.9.2014) by [The Intellectual Property Act 2014 \(Amendment\) Regulations 2014 \(S.I. 2014/2329\)](#), regs. 1, **3(1)**
- F2** Words in s. 13 substituted (29.9.2014) by [The Intellectual Property Act 2014 \(Amendment\) Regulations 2014 \(S.I. 2014/2329\)](#), regs. 1, **3(2)**
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#### **Commencement Information**

- I1** [S. 13](#) in force at 1.10.2014 by [S.I. 2014/2330](#), art. 3, **Sch.**

**Changes to legislation:**

There are currently no known outstanding effects for the Intellectual Property Act 2014, Section 13.