

Rights and requirements

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There are a number of ways of obtaining the various intellectual property rights and the requirements for doing so can vary. Some rights are obtained by registration, while others are created by statute or arise at common law. The scope of rights can vary, and each intellectual property asset can be supported by more than one type of intellectual property right.

Designs

A design registration provides the registered proprietor or its New Zealand licensee with the exclusive right in New Zealand to make, sell, import, or use any article covered by the registered design.

New Zealand has local novelty requirements which means that the design must only be new and original in New Zealand at the time of filing the application, or at the priority date of the application if the New Zealand design application is based on an overseas application.

A New Zealand design registration provides exclusive rights in the design so that, unlike copyright, it is not necessary to prove copying to succeed against an infringer.

Design registrations can be used to stop parallel importation, whereas copyright will not.

Even if a design is not registered under the New Zealand Designs Act 1953, it may be protected by copyright under the New Zealand Copyright Act 1994, but this is not as effective

against infringers as a registered design. New Zealand companies commonly rely on copyright to protect three dimensional product shapes. This type of protection is not available in most overseas countries.

It is also possible to protect designs in New Zealand under the:

- **New Zealand Trade Marks Act 2002**, provided that the design is functioning as a trade mark, and
- **Patents Act 1953** if the design, as well as its eye appeal, also includes some patentable feature.

Design Searches

We recommend that a search of the records of the Intellectual Property Office of New Zealand (IPONZ) be conducted in order to identify any existing New Zealand design registrations which may be infringed by the manufacture or marketing of the design in New Zealand. This will identify any existing New Zealand design registration which may prevent registration of a design.