



Looking Good:

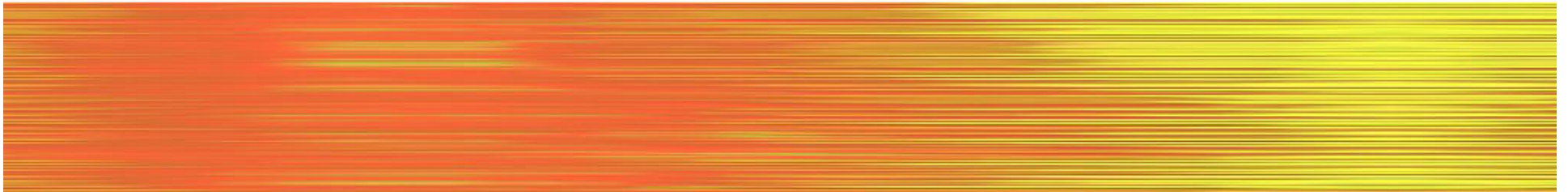
Appeal of Designs in Getting Noticed by the Customer

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**WIPO TOT Program for SMEs
Colombo, Sri Lanka, March 7-10, 2011**

Outline: What will we know after this session?

- What “industrial design” means...
- How industrial design can be a tool to strengthen companies’ branding...
- In which way industrial design is a part of companies’ branding strategy...
- What steps a company can take and what should a company know before registering a design...
- How industrial design fits with other forms of legal protection of a company’s products...

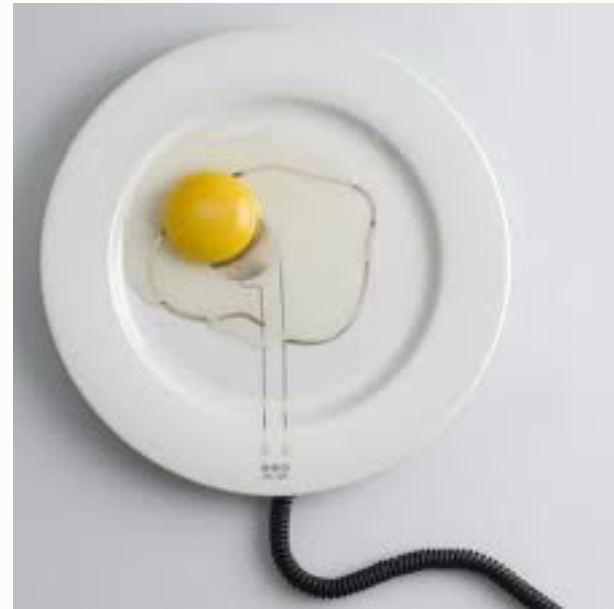


Outline

- What does “industrial design” mean?
- How industrial design can be a tool to strengthen companies’ branding.
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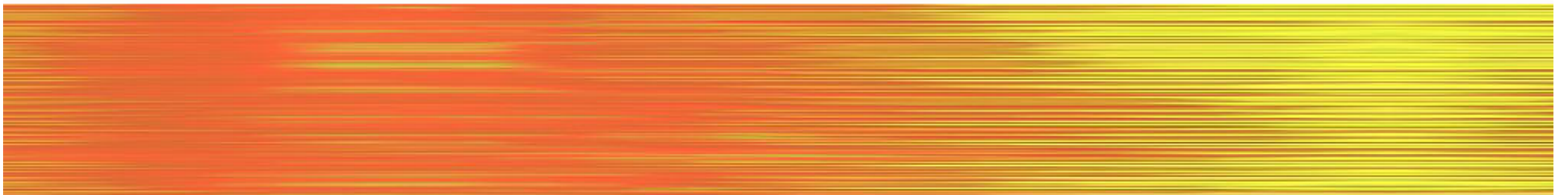
- Creation
- Technology
- Textile
- Fashion and trends
- Interior, constructions, houses
- Process of creating appearance of various objects (cover of a book)
- Drawings, applied art works,

More?..



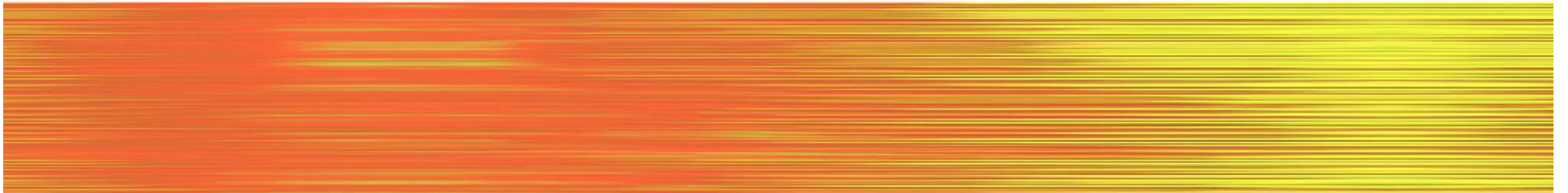
Industrial Design

- Appearance of a product or its part



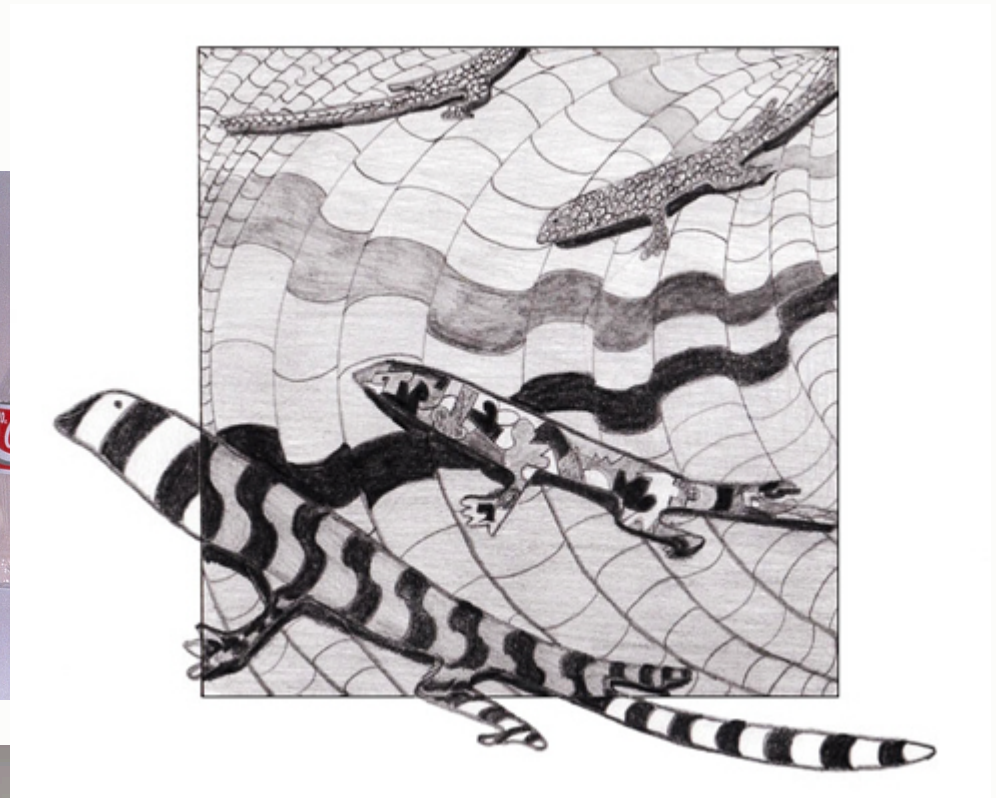
Industrial Design

- Represented by lines, contours, colours, shape, texture and materials of a product or its ornamentation, or their combination



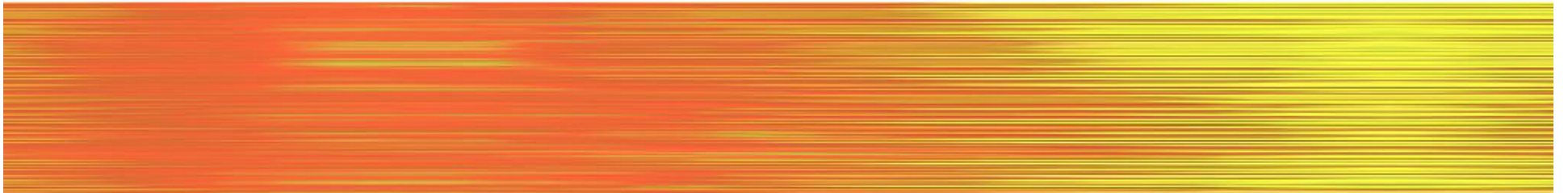
Industrial Design

- 3D or 2D



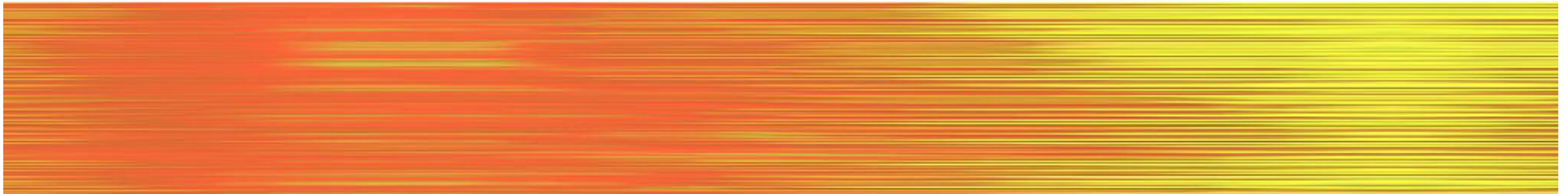
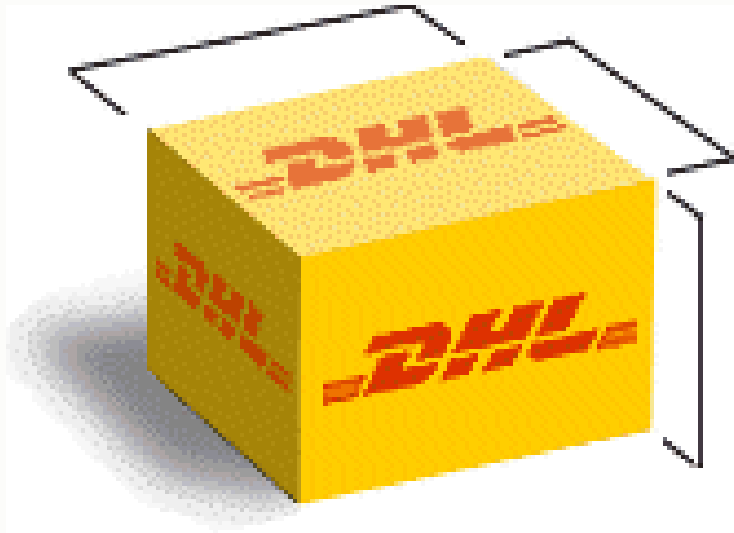
Industrial Design

- “Set of articles”



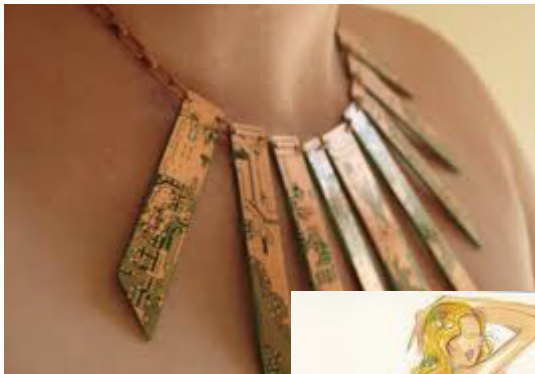
Industrial Design

- Packaging of products/containers



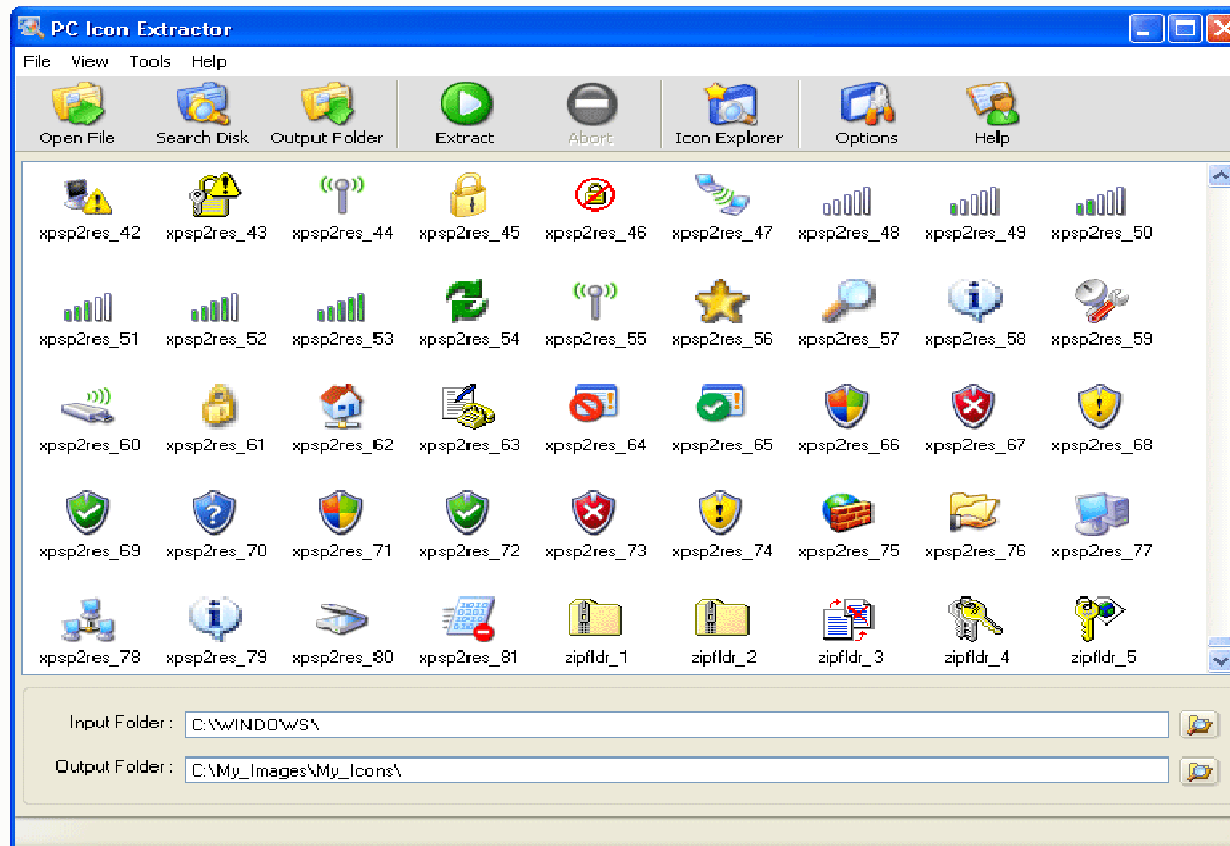
Industrial Design

- Design of clothes, fashion accessories, textiles



Industrial Design

- Electronic “icons” created by the computer code
- Graphic User Interfaces (GUIs) seen on computers’ monitors



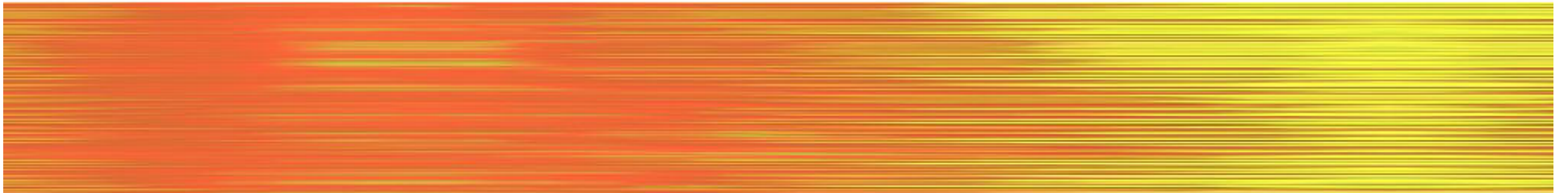
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- It attracts potential customers easier.



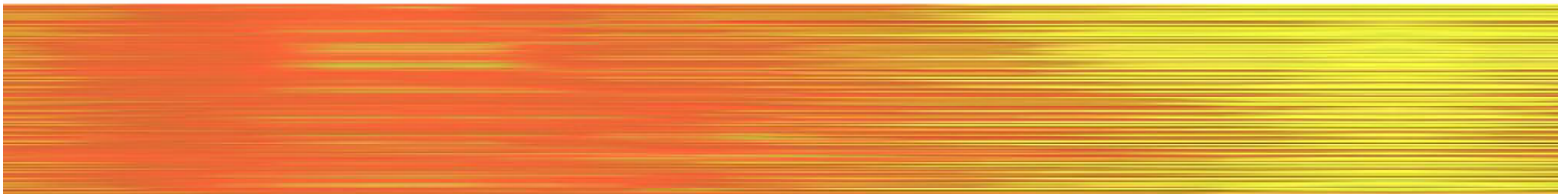
vs.



- It wins customers' loyalty.



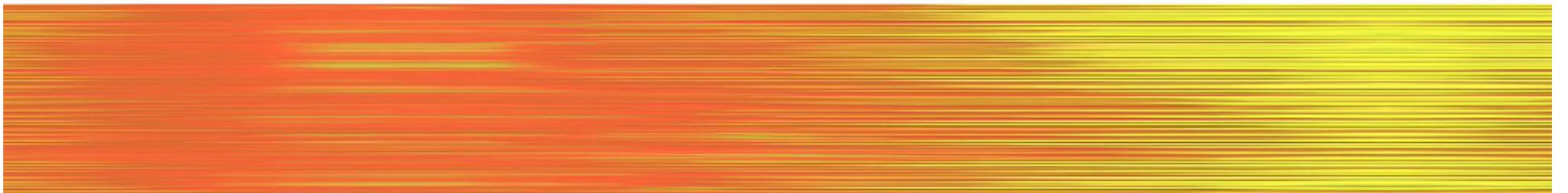
Source: Apple Company



- It creates harmony between functionalities and form of a product.



Source: Allesi Company



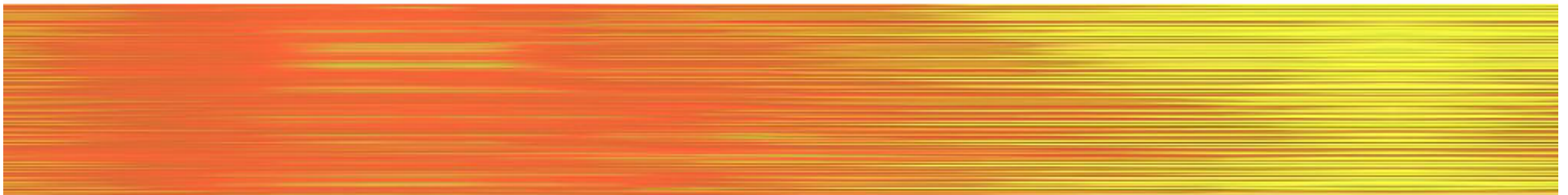
- It can add value to a company's products.



30 USD



500 USD



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Improving company's branding strategy

1 - General branding strategy

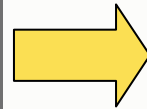
multi-brand strategy

family brand strategy



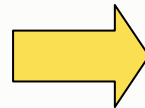
Improving company's branding strategy

2 – Product or line extension



Improving company's branding strategy

3 – Brand extension

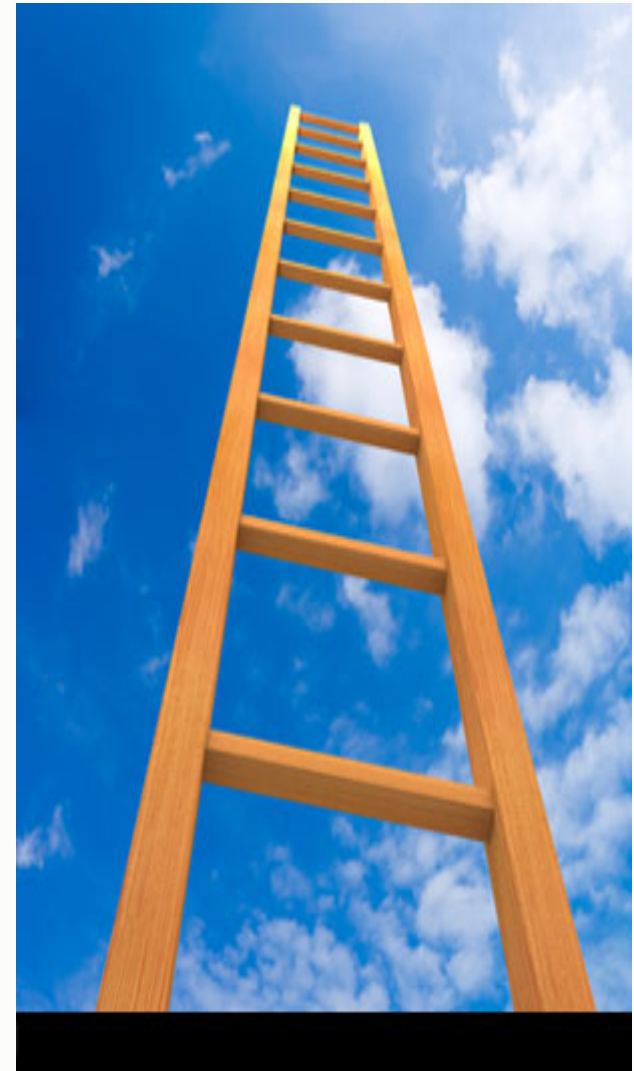


Outline

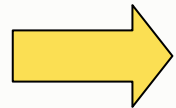
- What does “industrial design” mean?
- How can an industrial design be a tool to strengthen companies’ branding?
- In which way can an industrial design be a part of companies’ branding strategy?
- **What steps a company can take and what should a company know before registering a design?**
- How industrial design fits with other forms of legal protection of a company’s products.

When to register?

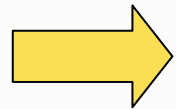
- Attractive appearance of products can improve a company's competitiveness.
- Attractive appearance will bring additional revenues to a company.
- Attractive appearance becomes successful on the market.



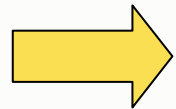
What are the benefits of a registration?



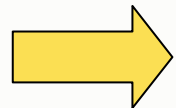
Protection from copying and imitating by competitors



Recoup of investments made in creating nice appearance of products



Transfer of design rights more effective (licensing, selling (for example, by licensing a company can reach other markets))



Ensuring fair competition and principles of fair trade

Any other option of protection?

Unregistered Design (EU-wide)

- Regulated under **EU Community Designs Regulation (2000)**
National laws of EU Member States.
- Used mainly: **In fashion, jewelry, apparel businesses.**
- Condition for protection: **A design should be made available to the public and known by specialists in that specific business sector.**
- Limited scope of protection: **Prohibition of mere copying only.**
- Counter-argument: **Alleged infringer could prove that he or she created a design individually.**

Registration of designs: Which route to choose?

National

Regional

International



Registration of Designs: National Route



Regulated under national design laws

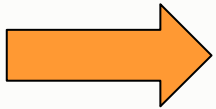


Design application to be submitted to a national IP office

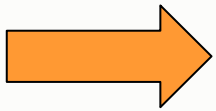


Protection limited to that specific country where design is registered

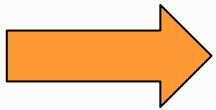
Registration of designs: Regional Route



Regulated under Community Design Regulation (2000)



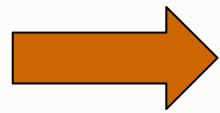
One application at the IP Office (OHIM) in Alicante, Spain (saving time, costs)



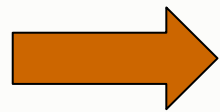
Protection in 27 Member States of the EU



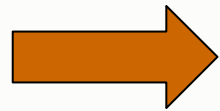
Registration of designs: International Route



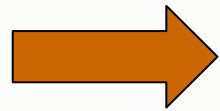
Regulated under the international treaty administered by WIPO (under the Hague Agreement on International Registration of Industrial Designs)



One application at the office registering designs (at WIPO or a national IP office)

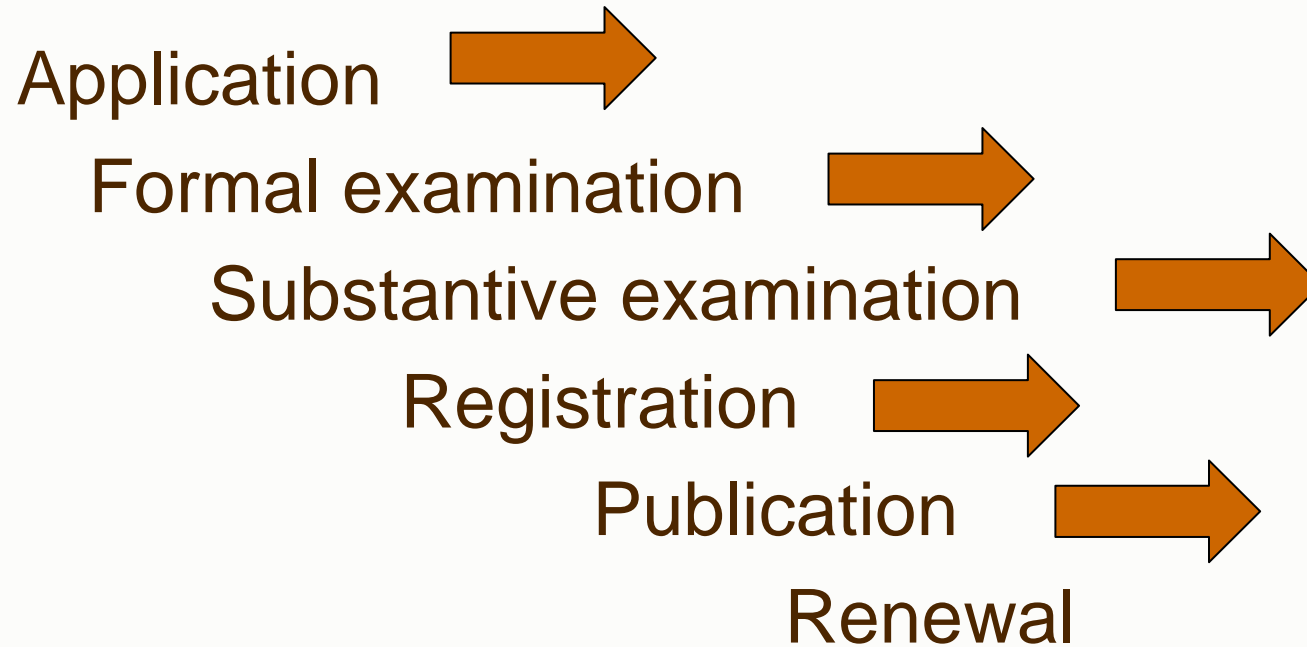


6-month priority right



Protection in designated states which are Members to the Hague System

Registration of designs: Steps





Registrable industrial design

- **New**
- **Distinctive**
- Contains external qualities which allow distinguishing a design from the previously known models
- Is not contrary to public order or public behaviour
- **Is not functional**
- Does not infringe other IP rights



What means “new”?

- No identical industrial design before filing an application or before the date of priority.
- Sri Lanka: a new industrial design means an industrial design which **had not been made available to the public anywhere in the world and at any time whatsoever** through description, use or in any other manner before the date of an application for registration of such industrial design or before the priority date validly claimed in respect thereof.

What means “distinctive”?

- If design is considerably and essentially different from the previously known designs.
- Sri Lanka: design **shall not be considered if it differs from an earlier industrial design in minor respects** or that it concerns a type of product different from a product embodying an earlier industrial design.



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Which types of IP rights are involved in iPhone?

Industrial Design and Other Forms of Legal Protection (Multi-protection)

- Designs & Patents (or Utility Models)
- Designs & Copyright
- Designs & Trademarks
- Designs & Unfair Competition



Aspects of Multi-protection

- **Designs and Patents (or Utility Models)**

1 - Design protects aesthetical features of a product (it is primarily ornamental), whereas its functional features (functional improvements) can be protected by patents or as utility models.

2 - In order to establish its aesthetical function, design should be viewed in its entirety, and not on a feature-by-feature basis.



Aspects of Multi-protection

• Designs and Copyright

1 – **Dual (cumulative) protection** by design law and by copyright law varies on a country-basis:

- in some: only for certain types of designs (and not for others),
- in others: for all types of designs,
- in others: copyright protection is suspended until design rights lapse,
- In others (**Syria**, US): design of some products is protected under copyright as “works of applied art” or “works of plastic and applied arts”.

2 – In a concrete case a company should check **the national legislation** and establish which protection strategy for a certain design is more appropriate.



Aspects of Multi-protection

- **Designs and Trademarks**

1 – If a product's design becomes a **distinctive feature** of that product, it can be protected as a 3D trademark or as a trade dress (in some countries).

2 – **Acquisition of a distinctive design** within time (in order to protect it as a trademark later) can be also a **company's branding and marketing strategy**.

3 – **Dual protection** is also possible (e.g. icons on iPhone's monitor), but its regulation varies from country to country.



Aspects of Multi-protection

- **Designs and Unfair Competition**

1 – Dual protection: under the law against unfair competition and design law

2 – Unfair competition laws usually require to show that a product is distinctive in a certain market, that there is an indication of a product's origin and that **a reputation** of such product is infringed by an unfair competition act.



Case Study: Packaging of Company's Products

Would it be possible to protect as design:

- Closing mechanism of packages?
- Colour/ornamentation and form of packages?
- Combination of colour and smell of packages?



What is your opinion and why?

Industrial Designs: Checklist

Industrial design protects ornamental appearance of goods, not their technical features.	YES
In most countries a registration is not compulsory in order to protect creative designs.	NO
Designers can file an application to the national design offices only.	NO
Some countries protect an unregistered design for a short period.	YES
Design protection can be applied together with patents, copyright, trademarks, unfair competition laws.	YES



Thank you!
Questions?