

Sports Bras and Tires - What Do They Have In Common?



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Sports bras and tires don't seem to have much in common, but both embody visual designs fashioned to appeal to consumers and both have a particular form of intellectual property— design patents—tailored to protect their appearances. In fact, design patents covering the visual appearance of sports bras and tires are front and center in two recent intellectual property lawsuits. The first, brought by athletic apparel retailer Lululemon against its competitor Under Armour alleges infringement of two design patents covering the ornamental design for a sports bra, while the second, brought by tire manufacturer Michelin against after-market tire refurbishing company Tire Recappers, claims unauthorized use of Michelin's patented tread designs.

But apparel retailers and automobile part manufacturers aren't the only companies that can benefit from securing design patent protection. Design patents, which protect the way an article looks (including its shape, ornamentation, or a combination of both), can be obtained for just about any product—from office supplies to cosmetics, toys to product packaging. They are even available for screen-displayed designs, including icons, graphical user interfaces, and animations. Once design patent protection is secured, owners enjoy the right to exclude others in the United States from using a design that is "substantially the same" as the patented design for a period of 15 years.

Design patents can be secured alongside other forms of intellectual property, and pursuing a multi-faceted approach to intellectual property protection can help eliminate gaps in protection and shape a more relevant and valuable intellectual property portfolio overall. For example, where functionality of an article would preclude trademark protection, design patents can be pursued. And where innovations relating to a product, its use, or method of manufacture are protectable by utility patents, design patents can be obtained to additionally protect the ornamental aspects of the product.

In a world of increasing counterfeit and knockoff products, design patents are particularly well suited to protect against copies. And mechanisms for getting infringing products off the market aren't limited to litigation or large-scale efforts. For example, design patent holders can request that listings of infringing products be removed from certain e-commerce websites, and some jurisdictions, including the European Union, provide programs through which infringing imports are seized by customs authorities.

Design patents issue relatively quickly in the United States—usually within 18 months of filing—and expedited processing can be requested in order to obtain a right in as short as a few months. In the United States, design patent applications are examined to ensure they meet certain legal requirements, including that they are new and nonobvious. This means that, like their utility patent cousins, design patent applications should be filed before the design of a product is made public. Outside the United States, design patents (or analogous industrial design rights) are available in all major economies and most other countries.

Rebekah K. Holtz has contributed to this post.

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