



Unregistered Designs in the UK and Europe

EU Unregistered Community Design (UCD)

UCD comes into existence automatically. There are no qualification requirements – any party of any nationality is eligible to an Unregistered Community Design (UCD). The UCD right belongs to the designer, and designs created by an employee during duties of employment belong to the employer.

UCDs protect any aspect of the shape and configuration of an article or a part of an article, provided:

The design is novel

'Novel' means that the design differs from earlier designs by more than immaterial differences.

The design possesses individual character

'Individual character' means that the design produces a different overall impression on an informed user (normally the user of the product). This can depend on how much 'freedom' a designer has – if there are a number of features of an article that must be presented in a certain way, smaller aesthetic changes will have more weight than if a designer has a blank canvas to start from.

The features are not dictated by technical function.

This **includes** protection for the appearance of an article resulting from lines, colours, texture, materials and/or ornamentation and surface decoration of a product (unlike UK UDR – see below).

The term of protection is 3 years from the date the design was first made available to the public in the European Community. In practice, this includes any disclosure that is not particularly obscure in nature. For example, launching a product in the US would likely count even though the launch itself did not take place in Europe.

UK Unregistered Design Right (UDR)

UDR comes into existence automatically when the design is recorded in some way – in a design document or as a prototype – and provided the article/design document is produced by a 'qualified person'. A 'qualified person' is: a national or resident of the UK or an EU country, or non-EU countries which offer reciprocal rights to UK nationals (such as New Zealand and Hong Kong).

UDR protects the shape and configuration of a 3D article or a part of a 3D article, provided the design is not 'commonplace' in the field.

Exceptions:

No design protection is available for:

- designs whose appearance is purely dictated by technical function
- features configured for connection to, or have been arranged to match, another article
- surface decoration
- features solely dictated by technical function

Protection lasts for up to 15 years from the end of the calendar in which the design was recorded in a design document/an article is made. If the articles are put on sale in the first 5 years, UDR instead lasts for 10 years from the date of first sale. In the last 5 years of either term, 'licences of right' from the proprietor to use the design are available on terms decided by agreement or by the UKIPO.

UK Supplementary Unregistered Design Rights (SUDR)

SUDRs are the UK equivalent of the EU unregistered Community Design (UCD), but just cover the UK. Like the UCD, there are no qualification requirements – any party of any nationality is eligible to an Unregistered Community Design and the right belongs to the designer/employer as appropriate.

SUDRs also require that the design is novel and has individual character, and that the feature is not dictated solely by technical function.

Unlike UK UDR this **does include** protection for the appearance of an article resulting from lines, colours, texture, materials and/or ornamentation and surface decoration of a product.

The term of protection is 3 years from the date the design was first made available to the public in the UK. As with UCD, in practice this includes any disclosure that is not obscure – in the age of the Internet this is not a high bar to clear.

The SUDR serves to make sure that IP rights holders can have similar protection across the UK and EU, and can be used in combination with UK UDR if appropriate.

Post 1 January 2021, the place of first disclosure (UK or EU) will determine what new rights come into existence – whether that is UCD or SUDR. The scope of each is different, and the owner of the rights may have requirements for the territories in which protection is needed. A decision will therefore need to be made as to where first disclosure occurs, or to ensure simultaneous disclosure (e.g. online) in both the UK and EU.

UK Continuing Unregistered Design Rights (CUDR)

CUDRs are a UK continuation of the EU unregistered Community Design (UCD). In short, the protection that was previously offered by a UCD is copied over – so the term, scope of protection and requirements are the same as a UCD, just covering the UK.

For example, if a UCD was obtained (automatically) on 20 December 2020, the rights holder will

have a UCD covering the EU and a CUDR covering the UK that both expire on 20 December 2023.

In combination with SUDRs, CUDRs ensure that unregistered design rights holders continue to have the same scope of protection in the UK post-Brexit as they did before 1 January 2021.

To enforce any of the unregistered designs, a proprietor will need to show that the alleged infringer actually copied the features of the design in question.

At Barker Brettell, we have a large group dedicated to designs and copyright, made up of a mix of patent and trade mark attorneys. Please contact designs@barkerbrettell.co.uk if we can be of any assistance, or your usual BB attorney.