



Copyright, Designs and Patents Act 1988

1988 CHAPTER 48

PART III

DESIGN RIGHT

CHAPTER II

RIGHTS OF DESIGN RIGHT OWNER AND REMEDIES

Infringement of design right

228 Meaning of “infringing article”.

- (1) In this Part “infringing article”, in relation to a design, shall be construed in accordance with this section.
- (2) An article is an infringing article if its making to that design was an infringement of design right in the design.
- (3) An article is also an infringing article if—
 - (a) it has been or is proposed to be imported into the United Kingdom, and
 - (b) its making to that design in the United Kingdom would have been an infringement of design right in the design or a breach of an exclusive licence agreement relating to the design.
- (4) Where it is shown that an article is made to a design in which design right subsists or has subsisted at any time, it shall be presumed until the contrary is proved that the article was made at a time when design right subsisted.
- [^{F1}(5) Nothing in subsection (3) shall be construed as applying to an article which—
 - (a) may lawfully be imported into the United Kingdom by virtue of anything which forms part of assimilated law as a result of section 3 of the European Union (Withdrawal) Act 2018, or

Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Section 228. (See end of Document for details)

- (b) has been or is proposed to be imported into the United Kingdom after being put on the market in the European Economic Area by or with the licence of the design right owner.
- (5A) In subsection (5)(a), the reference to assimilated law is to be read, until the coming into force of paragraph 2(6) of Schedule 2 to the Retained EU Law (Revocation and Reform) Act 2023, as a reference to retained EU law.]
- (6) The expression “infringing article” does not include a design document, notwithstanding that its making was or would have been an infringement of design right.

Textual Amendments

- F1** S. 228(5)(5A) substituted for s. 228(5) (31.12.2023) by [The Intellectual Property \(Exhaustion of Rights\) \(Amendment\) Regulations 2023](#) (S.I. 2023/1287), regs. 1(b), **4(4)**

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