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The interplay between design and copyright protection for industrial products (Q 231)

REPORT OF SWISS GROUP

Questions

I. Analysis of current law and case law

Cumulative Protection

1. Can the same industrial product be protected by both a design right and a copyright? In other words, is the cumulative protection of the same industrial product by copyright and design law allowed in your country?

Yes, in Switzerland one and the same industrial product can be protected by both a design right and a copyright, provided it fulfils the requirements for both copyright and industrial design protection. While the differences in the respective protection requirements and scopes of protection between copyright and design right have been intensively debated in Swiss doctrine, the principle of cumulative protection as such is generally acknowledged.

Article 2(7) RBC

2. In your country, has copyright protection for applied art ever been refused for a work with a foreign country of origin pursuant Article 2 (7) RBC?

No, Swiss law generally grants a work of applied art with a foreign country of origin both design right and copyright protection under the same conditions as apply to works with Switzerland as country of origin. Switzerland does not make use of the exception of national treatment provided in Article 2 (7) RBC. It will also grant copyright protection to works of applied art which are designed by foreigners even if they were eligible under the home country law for protection only as industrial design, or for no protection at all. Switzerland also grants protection where the term of protection has expired under the home country law, i.e., does not make use of the comparison of terms of protection provided in Article 7 (8) RBC.

Registration | Examination

3. In order to enjoy design right protection for industrial products, is registration of a design necessary? In order for the design to be registered, is a substantial examination necessary?

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1 In the context of this report, the term “industrial product” is understood in a broad sense as a work produced by industrial means. It includes all types of products for which protection is available based on appearance, shape, ornamentation including for example handicraft products and works of applied art, i.e., works of art designed and produced for practical use. Whereas works of free or abstract art (paintings, sculptures) are only exceptionally produced in large numbers by using industrial production techniques, this is customary for works of applied art.

2 In earlier judgments, the Federal Supreme Court applied a very narrow definition of the term "art", such that objects of industrial design were not granted protection under copyright law. The Court imposed such high standards for meeting the prerequisites for protection relating to the object’s individuality and originality (under the old law) that protection under the Copyright Act was seldom granted. See BGE 75 II 357; R. M. STUTZ/S. BEUTLER/S. KÜNZI, Handkommentar DesG, 2006, 26; R. M. STUTZ, Individualität, Originalität, Eigenart?, Berne 2002, 337.
Registation of the design in the design register (national or international) is necessary in order to enjoy design right protection (Art. 5 para. 1 Design Act). The Swiss Design Act does not provide for protection of unregistered designs.

On the other hand, a design may enjoy protection without registration by other Swiss laws such as the Copyright Act (see question 1). Indirectly, a design may further benefit from protection through the Unfair Competition Act, provided the special conditions of the Unfair Competition Act are met.

As regards substantial examination, the national registration authority (Swiss Institute of Intellectual Property) examines design applications for compliance with certain requirements of the Design Act, i.e., whether the object of the application is at all a design, whether it infringes federal law or international treaties and whether it is contrary to public order or accepted principles of morality (Art. 4 lit. a, d and e Design Act). If any of these requirements are obviously not met, this leads to rejection of the application (Art. 24 para. 3 Design Act). Examination, however, does not extend to the questions of novelty or individual character or to the question whether the features of the design are exclusively the result of the technical function of the product.

In the case of international design registrations, WIPO, as the registration authority, does not carry out a substantial examination but the Swiss Institute of Intellectual Property may refuse protection of the international registration with regard to Switzerland. The grounds of refusal are the same as for national design applications.

Requirements

4. What are the requirements to obtain industrial design protection or copyright protection, respectively, for industrial products in each country? What are the differences between these requirements?

Swiss Design law is largely harmonized with the Community Design Law. As in the Community Design Regulation, the requirements to obtain design protection for industrial products are novelty and individual character. Article 2 para. 2 Design Act provides that a design shall be considered new if no identical design has been made available that could have been known to the involved circles of the Swiss public prior to the date of the deposit. According to Art. 2 para. 3 Design Act, a design shall be considered to have individual character if the overall impression it produces differs in more than only non-essential features from the overall impression produced on such user by any other design which could have been known to the involved Swiss circles. Further, design rights shall not subsist in features of appearance of a product which are solely dictated by its technical function (Art. 4 lit. c Design Act).

There is no requirement of an intellectual creation of the author or any special aesthetic or artistic value for a design to qualify for protection. It is enough if it sufficiently differs from formerly known designs. Hence, the threshold for design protection in Switzerland is relatively low.

Under the Swiss Copyright Act, industrial designs may obtain copyright protection as works of applied art within the meaning of Art. 2 para. 2 lit. f Copyright Act if the requirement of originality is met. The requirement of originality will be considered fulfilled if the industrial design is an intellectual creation with an individual character or if it may be considered as an expression of a new original idea at the time of its creation. To achieve this, a work of applied art must be a result of a considerable creative effort by the creator, which must exceed the level of mere craftsmanship or industrial production. The Federal Supreme Court granted copyright protection to certain categories of industrial products such as furniture designed by Ray and Charles Eames or Le Corbusier, finding that they were not the result of a strictly mechanical or industrial application of work, but rather could be viewed as an independent and creative work that was original and artistic.

In a case regarding the question of whether a perfume bottle met the standard of a copyrighted work, the High Court of Zurich held that industrial design ought to clearly set itself apart from known shapes of the same genre in order to obtain copyright protection. In case of doubt, it seems preferable to assume the existence of a merely technical product rather than one protected by copyright.

4 Judgement of the High Court of Zurich of September 25, 1995, consid. 2a.
5. Are the requirements for copyright protection for industrial products different from the requirements for copyright protection for other ordinary artistic products (fine arts)?

There is no legal provision setting higher requirements for the protection of industrial products, in particular works of applied art, than for the protection of other artistic works (works of free or abstract art) in Swiss copyright law. Hence, the Copyright Act provides for the same requirements for copyright protection for industrial products, as works of applied art, as for works of free or abstract art.

However, Swiss Courts require that a work of applied art shows individual or original characteristics beyond a certain style or spirit of a time (Zeitgeist), exceeding the level of mere craftsmanship or industrial production and going beyond what is required by the technical functions of the object, whereas a relatively low level of original characteristics may suffice to assure the level of individuality required for copyright protection for certain types of fine arts. It therefore can be said that under Swiss copyright law, it is in fact harder to get copyright protection for works of applied art than for some types of works of fine art.

Only if a design shows this higher degree of creativity, it may enjoy both copyright and design protection in Switzerland. Swiss case law is thus closer to the so-called “Stufentheorie” applied by the German Courts than to the liberal “cumul total” approach of French case law.

Scope of Protection and Assessment of Infringement

6. Is the scope of the copyright protection for industrial products different from that for other ordinary artistic products (fine arts)? If so, in what ways?

The Swiss Copyright Act does in principle (but see the following paragraph) not distinguish between the scope of protection for industrial products on the one side and the scope of protection for other ordinary artistic products on the other side. The same principles and criteria apply (see question 7 below).

The only difference is the following: Whereas renting out works of art in general gives the rightsholder a claim for remuneration (but no claim for prohibition or other claims based on copyright), such claim does not apply to works of applied art (Art. 13 para. 2 lit. b Copyright Act).

In practice, there are more differences, though, particularly with regard to moral rights. Moral rights are linked to the person of the author and are considered flowing from his or her right of personality. For example, the author is entitled to claim authorship in a work of art, and even if another person is authorized by contract or by statute to alter a work or to use it to create a derived work, the author still may oppose any distortion of the work that is damaging his or her personality (art. 11 para. 2 Copyright Act). Since the nature of the work and the circumstances under which it is being produced and marketed has an impact on whether and to what extent the author can assert moral rights, e.g., naming the author is not customary for most types of industrial products, and even major changes to an industrial product may not be considered damaging the author’s personality. So omitting the name of the author or changing features of a work of applied art are less likely to be qualified as damaging the author’s moral rights than omitting the name of the author or changing features of a work of fine or abstract art. Also the author is not likely to be able to exercise any control over the use and marketing of an industrially produced work based on his moral rights.

7. Are the criteria for assessing infringement of copyright protected industrial products different from the criteria for assessing infringement of a design right?

The issue of assessing infringement needs to be looked at for three different aspects relevant for the infringement, i.e., (i) the scope of protection, (ii) the infringing acts and (iii) the limits of protection.

a) Scope of protection

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5 This is referred to as the copyright concept of “kleine Münze”, “petite monnaie” or small change. See also M. WANG, Die schutzfähige Formgebung, St. Gallen 1998, 291 et seq.
The scope of both copyright and design right protection includes protection against copies (Nachma-
chungen; contrefaçons) and imitations (Nachahmungen; imitations). Thus, it is illegal, under both co-
pyright and design law, to produce copies or imitations of the protected design or work of art.

With respect to imitations, only the Design Act contains in art. 8 a definition of the scope of protection,
whereas the Copyright Act is silent on this issue. However, one can deduct the scope of protection of
a copyrighted work from Art. 3 of the Copyright Act, which defines in para. 1 derivative works as works
created by using a pre-existing work, which remains recognizable with its individual character, and
clarifies in para. 4 that the protection of the works used shall remain unaffected by the copyright pro-
tection granted to derivative works.

Both copyright and design right assess the scope of protection on the basis of the material charac-
teristic features and the overall impression created by them of the relevant design or work of art. The
way how these overall impressions are compared with each other is different in copyright and in de-
sign law, though:

In design law, the overall impression is based on the material characteristics of the relevant design
objects (art. 8 Design Act). According to the Federal Supreme Court, the comparison has to be made
from the perspective of a consumer who is interested in purchasing the objects. According to current
Federal Supreme Court practice, it has to be assessed which features such consumer will consider as
subjectively important and which he or she will memorize in his or her short term memory. The objects
to be compared are the design registration (picture, or copy of two-dimensional design object, see Art.
19 para. 1 Design Act) on the one side (and not the object as it is used in practice by the design right
holder) and the object as it is used by the potential infringer on the other side. Features that are not
visible in the picture used in the design registration are irrelevant. The comparison has to focus on
what the designs have in common rather than on their deviations or differences. All features have to
be considered regardless of whether they are original or not, as long as they contribute to the overall
impression. The scope of protection may extend beyond the limits of the relevant type of products
and even include products that are not substitutes or made of different material.

The comparison of the objects in copyright cases also starts with the determination of the characteris-
tic features of the works. Based on these features, one has to assess whether the original works
remain recognizable with their individual character in the derived works (cf. Art. 3 para. 1 Copyright
Act). If a creation is just inspired by a copyright protected work, without taking up the individuality
of the older work, the new creation is not a derivative work, but rather constitutes a free use of the pre-
existing work and does not fall within the scope of copyright protection. The comparison has to be
made from the perspective of an expert in industrial design rather than a consumer. Copyright does
not distinguish at all whether the products are of a similar type, substitutable or the like. The compari-
son has to be based on the objective characteristic features that determine the creative individuality
of the two compared works and the overall impression they make.

In a nutshell, the main differences lie in the fact that in design law, the approach used is similar to the
one used in trademark law, whereas trademark approach and the perspective of the consumer are
completely irrelevant in copyright law. Further the perspective from which the comparison is made is
different (consumer in design right cases; skilled person in copyright cases). These different approa-
ches may lead in some cases to different results.

b) Infringing activities

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6 M. A. MEER, Die Kollision von Immaterialgüterrechten, Berne 2006, 123.
7 Art. 8 Design Act; R. M. HILTY, Urheberrecht, Berne 2011, N 182.
8 BGE 129 II 545; 130 III 636; 130 III 645.
9 M. WANG, SIWR VI, Basel 2007, 223.
10 BGE 83 II 482: 130 III 636; 641.
11 WANG (n. 9), SIWR VI, 227; STUTZ/BREITLER/KÜNZI (n. 2), DesG 8 N 21; L. STAHL/A. L. CIELLI, Designrecht, Zurich 2003, DesG 8
N 33.
13 BGE 130 III 645, 649.
14 HILTY (n. 7), N 182.
15 BARRELET/EGLOFF (n. 3), URG 3 N 5.
16 MEER (n. 6), 123.
17 Judgement of the High Court of Zurich of 7 July, 2009, sic! 2010, 889, consid. IV/2.1.
To be infringing, the use of a design must be for commercial purposes (art. 9 para. 1 Design Act). If such purpose is given, any use of the design is infringing, provided it does not fall under a legal limitation (see below).

Copyright infringement does not require a commercial or industrial purpose of the use. Hence, even if a copyright protected industrial product is used for non-commercial purposes, such use can be infringing.

In design law, there are no moral rights of the designer, arguably except for the right to be named as designer (Art. 25 Design Act i.c.w. Art. 9 para. 1 lit. g Design Ordinance), whereas moral rights exist in copyright. Hence, copyright law also includes the right of first publication (Art. 9 para. 2 Copyright Act), the right of recognition of authorship (Art. 9 para. 1 Copyright Act), the right to decide under what author’s name the work shall be published (Art. 9 para. 2 Copyright Act) and the right of integrity of the work (Art. 11 Copyright Act). As a consequence, the range of infringing activities is broader in copyright law than in design law.

c) Limits of the exclusive rights

Design law knows two limitations of the design right, which are a consequence of the registration system. Art. 12 Design Act grants a right of continued use if, and to the extent that, a third party has used the design in good faith in Switzerland before the date of filing or the priority date or during the period of a deferral of publication. Art. 13 Design Act contains a right of parallel use from which benefit third parties who have used the design commercially in good faith, or have taken steps in preparation for that purpose, in Switzerland between the last day of the period for payment of renewal fees and the day on which an application for further treatment was received. If a registered design qualifies for copyright protection, these exemptions will not apply to the extent that the right owner claims an infringement of its copyrights.

The Copyright Act contains a range of limitations of copyright, which are unknown under design law. The following limitations may be relevant for industrial products: the reproduction of copies of a work in enterprises for internal information or documentation (Art. 19 para. 1 lit. c Copyright Act), the right to make quotations (Art. 25 Copyright Act), the right to reproduce a work forming part of a collection accessible to the public in a catalogue (Art. 26 Copyright Act), the freedom of panorama for works located at a place accessible to the general public (Art. 27 Copyright Act) and the right to distribute or otherwise make perceivable works where this is necessary for the reporting on current events (Art. 28 Copyright Act).

8. Is it a relevant defence under copyright or design law that the industrial product was created independently of the older work or design?

In design law, independent creation is not a relevant defence. The right owner can prohibit the use of infringing designs, even if they were created independently. Only when it comes to assess the issue of willful intent or negligence for determining financial claims, knowledge about the existence of the pre-existing work may be relevant.

Under Swiss copyright law, the situation is not entirely clear. It appears to be the prevailing opinion in Switzerland that copyright infringement requires knowledge of the copied work. This seems to allow for independent creations of works with the same individual features, either simultaneously (Doppelschöpfung), or with the second being created after but unbeknownst of the first work (Parallelischöpfung). Several authors deny copyright in the second of two independently created works with identical characteristic features, since the second work would lack originality. There is also case law where the court came to the conclusion that an independent creation of works with identical characteristic features can be excluded where there is a multiplicity of means available to design the work. This does not also mean that the rightsholder must prove that the infringer copied or imitated on purpose.

18 Wang (n. 9), SIWR VI, 199; Stauber/Celli (n. 11), DesG 9 N 27.
19 Stutz/Beutler/Künzi (n. 2), Einführung N 22; F. Trouvenin, Funktionale Systematisierung von Wettbewerbsrecht (UWG) und immateriälgüterrecht, Cologne 2007, 310.
Even an unconscious use can be regarded as a use of the pre-existing work. There is also case law where the court came to the conclusion that it is irrelevant whether the characteristic features of a protected work were taken over consciously or unconsciously.

**Duration of Protection**

9. How long is the duration of industrial design protection or copyright protection for industrial products, respectively?

An industrial product registered as design enjoys protection for five years from the date of deposit for registration (Art. 5 para. 2 Design Act). The protection period can be extended by four successive periods of five years each, up to a maximum duration of 25 years from the date of filing (Art. 5 para. 3 Design Act).

Copyright protection for industrial products begins as soon as they are created, without requiring any deposit or application for registration or any entry in a register. Protection ends by the end of the 70th year after the death of the author (Art. 29 para. 2 lit. a Copyright Act). If there is any uncertainty regarding the time of death, but it can be rightly assumed that the author has been dead for more than 70 years, protection is considered to have ended (Art. 29 para. 3 Copyright Act). In case of a joint copyright ownership, protection expires 70 years after the death of the copyright owner last deceased (Art. 30 Copyright Act). Upon expiration of the protection period, the copyright completely, i.e., including moral rights, ceases to exist.

10. What happens upon expiration of the IP right having the shorter term? In other words, after the term for industrial design protection expires, does the copyright protection continue?

Protection for a work registered as design ends with expiry of the period of protection under the Design Act. If the same work is also protected by Copyright, what is considered possible according to case law and prevailing doctrine, copyright protection ends independently of the end of design right protection, normally by the end of the 70th year after the death of the author (see question 9). Theoretically, design protection could be longer in case of a work that has remained unpublished for a long time.

Thus, the protection periods under design and copyright law apply independently of each other.

**Measures for adjustment**

11. In your country, is there any measure for adjustment so that the same industrial product may not be protected, by both a design right and a copyright or, by a copyright after the design right expires?

In principle, there is no measure for adjustment in Switzerland to avoid an industrial product’s double protection by copyright law and as registered design.

The absence of protection for unregistered designs and the high standards applied by Swiss courts for granting copyright protection to works of applied art, however, in practice limit the number of instances where an industrial product enjoys protection both under design and copyright law.

**II. Proposals for Harmonisation**

12. What should be the requirements for obtaining copyright protection for industrial products?

The requirements regarding

a. level of originality and

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22 M. REHBINDER, Schweizerisches Urheberrecht, Berne 2000, N 34; F. THOUVENIN, Note to the decision of Obergericht Zürich of 7 July 2009, sic! 2010, 899.
24 STUTZ/BEUTLER/KÜNZI (n. 2), 197; REUTTER, in: Müller/Oertli (n. 3), URG 29 N 3 et seqq.
25 ID; STUTZ/BEUTLER/KÜNZI (n. 2), 25, 212; BGE 134 II 547, 549; M. RITSCHER, DER SCHUTZ DES DESIGN, Zürich 1985, 72; K. TROLLER, GRUNDZÜGE DES SCHWEIZERISCHEN IMMATERIALGÜTERRECHTS, BASEL 2005, 399; WANG (n. 5), 397.
b. scope of protection

with regard to industrial products as works of applied art (and with regard to all other types of works) should be harmonized within the EU and between the EU and Switzerland in order to facilitate the free flow of goods that do not violate copyright or design law, and to allow for a uniform ban on goods that violate either copyright or design law or both.

Standards should remain differentiated between different types of goods, however.

13. For industrial products, should there be any cumulative protection by industrial design rights and copyright?

Yes, industrial products should be able to enjoy protection under both copyright and design law, provided they fulfill the criteria of protection for both.

14. If so, should there be any measures to resolve this overlap? What measures should be taken? For example, once a certain artistic work has enjoyed industrial design protection, should copyright protection be denied for the same work?

We do not see any problem with an overlap and thus no need for resolving it.

15. National Groups are invited to comment on any additional issue concerning the relationship between design and copyright protection for industrial products that they deem relevant.

Swiss design law should aim at protecting design innovations rather than creativity or any of the functions that are associated with trademarks, and should be kept, or brought, into accordance with the EU Regulation No. 6/2002 on Community Designs as far as possible.

1. The test of originality (Eigenart, individual character) has to be interpreted as a level of differentiation from the designs that had been disclosed on the date of filing, or, as the case may be, on the date of priority claimed. Thus, design law should protect any new design whose dominant characteristics and whose overall impression created by them differs substantially from the pre-existing designs, independent of the level of creative effort put into it.

2. The decisive test should be the overall impression of a design on a user that is informed about the products available in the industry and their designs, not on any actual or potential consumer of products of that type.

3. According to Swiss design law, protection extends beyond one-to-one copies and slavish imitations and relies on whether the ensemble of the main features that determine the overall impression substantially differentiate the new design from the pre-existing designs, or whether they substantially differentiate the allegedly infringing design from the registered design. In both cases, minor differences are to be neglected. The reference to the short term memory of a consumer applied by the Swiss Courts does not add anything to this test. Rather, a direct, synoptical comparison appears to be better suited to identify and protect design innovations, what is the true purpose of design right.

4. Swiss design law should adopt the concept of a protected unregistered design.

Summary

Under Swiss law, an industrial product can be protected by both design right and copyright provided it fulfills the requirements of protection for both. In order to enjoy design right protection, an industrial product has to be registered, whereby it undergoes a limited examination. The requirements for protection of a work of applied art under copyright are substantially higher than those as design rights, and may also be higher than for other types of works.

Infringements are assessed in design law from the perspective of a consumer and, according to current Federal Court practice, based on all features that he/she will memorize in his/her short term memory, but in copyright from the perspective of an expert and based on whether the characteristic features of the original work remain recognizable. Copyright protection continues after expiry of the term of protection as design right.
The Swiss group is of the opinion that the required level of originality and the scope of protection with
regard to industrial products, as works of applied art, should be harmonized within the EU and
between the EU and Switzerland.

The Swiss group proposes that under Swiss design law, the similarity and essential differences should
be determined through a direct comparison from the standpoint of an informed user (i.e., not via the
short term memory of an actual or potential buyer) of the relevant design with the design that allegedly
violates it, or with the pre-existing designs.

Finally, it is the opinion of the Swiss group that Swiss design law should provide for protection of unre-
geristered designs.

Zusammenfassung

Nach Schweizer Recht kann ein industrielles Produkt sowohl durch Designrecht als auch durch Urhe-
berrecht geschützt sein, vorausgesetzt, es erfüllt die jeweiligen Schutzvoraussetzungen. Um ein in-
dustrielles Produkt designrechtlich schützen zu lassen, muss dieses registriert werden, wobei es einer
begrenzten Prüfung unterzogen wird. Die Anforderungen zum Schutze eines Werkes der angewand-
ten Kunst unter Urheberrecht sind wesentlich höher als jene unter Designrecht und können auch hö-
her sein als für andere Arten von Werken.

Verstösse werden im Designrecht aus der Perspektive eines Kaufinteressenten beurteilt und, gemäß
aktueller Bundesgerichtspraxis, basierend auf allen Merkmalen, welche er/sie sich in seinem/ihrem
Kurzzeitgedächtnis merken kann. Im Urheberrecht hingegen werden sie aus der Sicht eines Experten
und basierend darauf, ob die charakteristischen Merkmale des Originals erkennbar bleiben, beurteilt.
Nach Ablauf der Schutzfrist des Designrechts besteht der Urheberschutz weiter.

Die Schweizer Gruppe ist der Meinung, dass das erforderliche Mass an Originalität und der Anwe-
dnungsbereich des Schutzes in Bezug auf industrielle Produkte als Werke der angewandten Kunst
innerhalb der EU sowie zwischen der EU und der Schweiz harmonisiert werden sollten.

Die Schweizer Gruppe schlägt vor, dass nach schweizerischem Designrecht die Ähnlichkeit und die
wesentlichen Unterschiede durch einen direkten Vergleich aus der Sicht eines informierten Benutzers
(also nicht über das Kurzzeitgedächtnis eines Kaufinteressenten) des registrierten Designs mit dem
angeblich verletzenden Design, oder mit den bereits vorhandenen Designs ermittelt werden sollen.

Schliesslich solle das schweizerische Designrecht gemäss der Schweizer Gruppe den Schutz von
nicht eingetragenen Designs vorsehen.

Résumé

En droit suisse, tant la loi sur les designs que la loi sur le droit d'auteur sont susceptibles de protéger
un produit industriel, pourvu que celui-ci satisfasse aux conditions de la protection prévues par les
deux lois. Pour bénéficier de la protection en tant que design, le produit industriel doit être enregistré,
ce qui implique qu'il subisse un examen limité. Les exigences pour la protection d'une œuvre des arts
appliqués en droit d'auteur sont substantiellement plus élevées que celles requises par la loi sur les
designs et peuvent également être plus élevées que pour d'autres types d'œuvres.

Les violations de la loi sur les designs s'apprécient du point du vue d'une personne intéressée à une
acquisition et, conformément à la pratique du Tribunal fédéral, sur la base de tous les éléments rete-
nus par sa mémoire à court terme. Dans le domaine du droit d'auteur cependant, l'appréciation se fait
sur la base d’un avis d’expert et à la lumière de la question de savoir si les éléments caractéristiques
de l’œuvre originale demeurent reconnaissables. La protection du droit d’auteur continue après
l’expiration de la protection en tant que design.
Le Groupe Suisse est d’avis que le niveau requis d’originalité et l’étendue de la protection concernant les produits industriels, en tant qu’œuvres des arts appliqués, devraient être harmonisés au sein de l’UE et entre l’UE et la Suisse.

Le Groupe Suisse propose qu’en droit des designs, la similitude et les différences essentielles devraient être déterminées à travers une comparaison directe du point de vue de l’utilisateur averti (et non via la mémoire à court terme d’une personne intéressée à une acquisition) du design en question avec celui qui le viole prétendument ou avec les designs antérieurs.

Enfin, le Groupe Suisse est d’avis que la loi suisse sur les designs devrait prévoir la protection de designs non enregistrés.