



Food for Thought: Design Patents



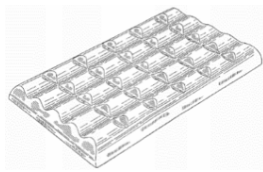
DESIGN PATENTS PROTECT novel and ornamental designs for products or packaging. In the food and beverage industry, design patents can be a vital element of intellectual property protection.

Design patents have long been an underutilized form of IP protection, assumed to be less useful than utility patents. But companies are wising up: the available data shows filings of design patent applications reaching a new record high every year since 2015. In the food and beverage space, design patents have been filed for things like novel kitchen utensils, cooking appliances, pizza trays, bottle designs, and packaging for produce. Design patents covering the shape of a whiskey bottle, spiral-cut french fries, and Copper Chef pans, among many others, have been litigated.

Unlike utility patents that protect the functionality of a product, design patents protect ornamental designs, although it is possible to obtain both types of patents for a product that is both functional and ornamental. A design patent can be useful in the food and beverage industry in several ways:

THE PRODUCT

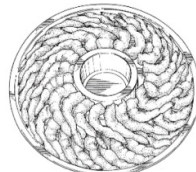
Unique appearance that has no functional purpose



MARS, Inc. – “Candy Bar”
D593,276 (2009)

THE PRESENTATION

Unique presentation of a product that may or may not have a functional purpose



Blazevich
“Serving Tray with Shrimp” –D404,612 (1999)

THE PACKAGING

Unique presentation/appearance that may or may not have a functional purpose



Société des Produits Nestlé S.A.
“Bottle” – D572,143 (2008)

WHAT ARE SOME DESIGN PATENT BENEFITS?

Design patents are helpful in fending off copycat competitors—those that copy the entire design of a product, presentation, or packaging. But they can be used more strategically as well by focusing on specific and novel design features. Design patents can be filed for a variety of product variations and in conjunction with other intellectual property protection.

- **Inexpensive:** Substantially cheaper to obtain than utility patents; no maintenance fees for the life of the design patent
- **Quick:** Averages 14-20 months from application to issuance
- **Opportune:** If infringed, design patents could offer a unique type of damage remedy for profits from the sale of the product covered by the design patent

Applying for a design patent on a final product design prior to launch allows the applicant to label the product “Patent Pending”—a warning for would-be competitors. As with all patents, a thorough review of prior art is important to avoid a challenge for invalidity.

HOW IS A DESIGN PATENT DIFFERENT FROM TRADE DRESS?

Obtaining a design patent does not require the applicant to show that consumers associate the design with a brand or company, while trade dress protection depends upon that. Because consumer recognition of a unique design can take years to establish, trade dress protection may take longer to obtain than design patent protection. For this reason, obtaining a design patent can be a wise first step for a new design while it gains consumer recognition.

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