



# WIPO ToT Programme – Trinidad and Tobago IPO

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CARIFORUM



EU-CARIFORUM Regional project, funded by the European Union and implemented by the European Union Intellectual Property Office (EUIPO)

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## Session 2: Industrial Designs and the Protection of Local art, Crafts, Fashion and Competitiveness

### Topic 1: IP tools suitable for protecting Arts, Crafts and Fashion

# What is being covered

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- Design and business strategy
- What are Industrial designs?
- How to protect designs using IP tools
- How to profit from designs

# Key Question

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How is your product  
presented to the world?

# Business Strategy

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Source: [sundbergferar.com](http://sundbergferar.com)

# Business Strategy

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Good  
**Design**  
Good **IS**  
Business



Source: <https://sundbergferar.com/product-design-business-growth-2/>

# Industrial Design & Business Strategy

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- Design is what makes a product appealing to customers
- Design influences consumer purchase decisions
- Customer discovery helps develop the value proposition
- Your value proposition must be packaged to appeal to customers

# Industrial Design & Business Strategy

- Good customer discovery will help guide the design of the most appealing packaging for your customer segment
- Clients must understand that industrial design is everywhere
- We interact with industrial design daily



# What is Industrial Design?

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- Component of a useful article which is ornamental or aesthetic
- Any composition of lines, patterns or colors or any 3-D forms which gives a special appearance to a product or handicraft

# What is Industrial Design?

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Must be a useful article that is mass produced

- Fashion & Accessories
- Industrial and medical implements
- Furniture

# What is Industrial Design?

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Must be a useful article that is mass produced

- House hold items/ appliances
- Vehicles
- Architectural structures
- Textile designs

# Industrial Design & Business Strategy



<https://www.myguidebarbados.com/barbados/heather-harrington-jones>



<https://designrfix.com/inspiration/industrial-design-80-awesome-product-designs>



Imperfect Art WH © 2020



<http://nicolas.to/hautecaribe>



<https://gwenithwhitford.com/tag/craft-industry-dominica/>

# Protecting Designs: Industrial Design Law

## Industrial design criteria for protection

- Useful article
- New/ original
- Industrial application
- Registered and unregistered Industrial Designs may coexist in the market depending on national law— business implications?



<https://ttfinecocoa.com/shop/70-dark-chocolate-tin/>

## Discussion points

- Discuss the terms of protection provided under national law
- Term of protection 5 years initially – minimum duration of protection is 10 years
- Discuss the rights covered

# Protecting Designs: Industrial Design Law

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- Industrial Designs are interesting because they can sometimes have elements which may be protected by copyright, patents or by industrial design law
- Scope of protection differs in different jurisdictions
- Each of these IPRs are distinct in what they protect
- A product may be protected by more than one type of IP

# Protecting Industrial Design: Copyright Protection

- Copyright protection is afforded to authors of original works of authorship - E.g. literary, dramatic, musical and artistic works
- A copyright gives the rights owner an exclusive economic right to commercially exploit their work as well as authorise certain acts to be undertaken by others: copy the work, adapt the work and distribute copies of the work
- Moral rights - *allows the creator of the work to maintain a personal link between them and their work and to object to certain use of their work*

# Protecting Industrial Design: Copyright Protection

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- Term of protection should and conditions of protection should also be explained
- An ornamental design may be protected by copyright as a work of art
- Fashion sketches, conceptual drawings will be protected under copyright law
- Protects the creative aspects of the functional item

# Protecting Industrial Design: Copyright Protection

- Can copyright be used to protect designs in clothing?
  - E.g. Varsity Brands' cheerleader uniforms with their particular arrangements of colors, shapes, stripes, and chevrons
  - U.S. Supreme Court in 2017 confirmed that artistic designs on clothing can be subject to copyright protection
  - Separability test: how pictorial, graphic, or sculptural features can be identified separately from the utilitarian aspects of a useful article

# Protecting Industrial Design: Copyright Protection

## APPENDIX TO OPINION OF THE COURT



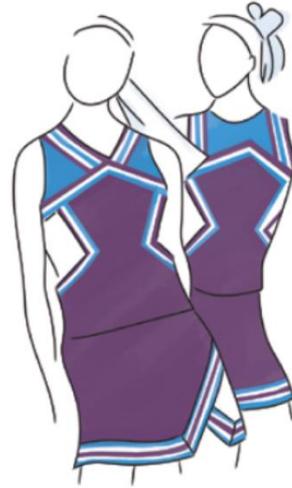
Design 299A



Design 299B



Design 074



Design 078



Design 0815

## Separability test:

A feature incorporated into the design of a useful article is eligible for copyright protection only if the feature

1. can be perceived as a two- or three-dimensional work of art separate from the useful article
2. would qualify as a protectable pictorial, graphic, or sculptural work—either on its own or fixed in some other tangible medium of expression—if it were imagined separately from the useful article into which it is incorporated.

# Protecting Industrial Design: Copyright Protection

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- Fashion Design
- Concerned with the protecting significant aspects e.g.:
  - Color – CR does not protect colour schemes. Possible under trademark
  - Sketches – can be protected by CR. Protection in the drawing itself but not the idea so someone can create fashions resembling yours

# Protecting Industrial Design: Copyright Protection

- Fashion Design
- Designers concerned with protecting:
  - **Cut** – the way that design elements are cut and assembled in fashion is not protected by CR
  - **Graphic design** – CR can protect the designs on the surface of clothing
  - **Textile design** – CR can be used to protect designs which have been imprinted/woven into/on fabric if there is sufficient creative expression

## Handicraft

- For handicraft, their distinctive features can serve several purposes ranging from:
  - Utilitarian, functional
  - Aesthetic, decorative
  - Artistic
  - Creative
  - Having cultural significance
- The purpose and expression can determine the type of IP tool used to protect

# Protecting Industrial Design: Copyright Protection

## Handicraft

- Can have three distinct components related to IP
  - **Reputation** - derived from their style, origin or quality
  - **External appearance** - their shape and design
  - **Know-how** - the skills and knowledge used to create and make them
- Explain how to use various IP tools to protect these components

# Protecting Industrial Design: Copyright Protection

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## Art

- Artistic works such as fine art mainly protected by CR
- 3D configurations – by industrial design law
- Preliminary sketches – CR
- Graphic design – logos tec. TM while others can be protected by CR

# Protecting Industrial Design: Trademarks

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- Explain that one way to build brand equity and increase the value of goods and services is to use trademarks
- Fashion designers can use trademark law to protect their brand names, logos and taglines, colours, sound etc. which connect designs with the company
- The visual characteristics of a product as long as those characteristics identifies the source of the product to consumers and are not functional

# Protecting Industrial Design: Trademarks



Reg. No. 3361597 (Drawing, *left*, Specimen, *right*)

<https://www.gerbenlaw.com/blog/trade-dressed-can-you-protect-clothing-design-elements-through-trademark-law/>



© Rosemary Clarice Hanna, 2017  
EN: Harl Taylor BAG sisal and straw handbags

[https://ich.unesco.org/en/10b-representative-list-01013?include=slideshow\\_inc.php&id=01401&width=620&call=slideshow&mode=scroll#https://ich.unesco.org/img/photo/thumb/12043-LRG.jpg](https://ich.unesco.org/en/10b-representative-list-01013?include=slideshow_inc.php&id=01401&width=620&call=slideshow&mode=scroll#https://ich.unesco.org/img/photo/thumb/12043-LRG.jpg)

# Protecting Industrial Design: Patents

- Not very obvious but.....
- New fabrics can be developed
- e.g. Piñatex, made from pineapple industry waste
- Patents are involved
- <https://www.dezeen.com/2016/06/09/pinatex-ananas-anam-vegan-leather-alternative-ethical-recycled-pineapple-leaves-sustainable-materials-design-camper/>



# Protecting Industrial Design: Patents

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- Recall that trainees may be at different levels of in their business development
- Some may be exporting and offering their products online on their websites or online marketplaces such as Etsy
- May seek protection in other jurisdictions so you will need to discuss different types of protection available
- E.g. Design patents

## Hague Agreement Concerning the International Registration of Industrial Designs

- Governs the international registration of industrial designs.
- the Hague System – allows industrial designs to be protected in multiple countries or regions with minimal formalities.

## Locarno Agreement Establishing an International Classification for Industrial Designs

- Establishes a classification for industrial designs (the Locarno Classification).
- The competent offices of the Contracting States must indicate in official documents reflecting the deposit or registration of industrial designs the numbers of the classes and subclasses of the Classification to which the goods incorporating the designs belong.
- This must also be done in any publication the offices issue in respect of the deposit or registration of industrial designs.

# Protecting Industrial Design: Patents

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**Mention can also be made of the following:**

- WTO-TRIPS
- Paris Convention

## Topic 3: Making Money from Arts, Crafts and Fashion

# Making Money: Branding and Design

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- IP, branding and design strategies can be used to enhance the success and competitiveness of OLPs in the market
- Based on attributes of the products
- **Intrinsic product** attributes include the physical aspects of the product which appeal to the customer and can comprise colour, shape, taste and texture

# Making Money: Branding and Design

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- **Extrinsic product** attributes such as country and region of origin, brand, price, distribution channels, product packaging and advertising, also play a significant role in differentiating products in the market
- Design plays a critical role in enhancing these extrinsic characteristics to deliver an appealing product/service to the customer

# Making Money: Branding and Design

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- Combining different IP tools such as individual trademarks, copyright and design protection; GIs and collective or certification marks can enable variations in price
- **Co-branding** associates a single product or service with more than one brand name, or associates a product with a company other than the principal producer

## **The Trinidad and Tobago Fine Cocoa Company Limited**

- Successfully negotiated a co-branding agreement with Harrods a well-known UK retail outlet known for selling high quality unique specialty food products.
- The strategy to enhance global brand recognition is to pair the emerging TTFCCCL brand with the well-known and established Harrods brand.

# Making Money: Branding and Design

## The Trinidad and Tobago Fine Cocoa Company Limited

- This win-win partnership reinforces Harrod's commitment to responsibly sourcing quality, sustainably produced products while allowing consumers to connect the TTFCCCL brand with quality and excellence.



## Havaianas

Brazilian flip flop brand, Havaianas, has collaborated with Valentino to create a collection of luxury rubber sandals. Priced at \$280, or £175



# Making Money: Branding and Design

## Trinidad and Tobago Fine Cocoa Company



## Art Sensation

Romero Britto – international pop art sensation has interpreted some of the world’s favourite Disney characters in figurines, plush and an impressive range of accessories, in his signature style.



# Bibliography & Resources

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- Industrial design. <https://www.wipo.int/designs/en/>



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EU-CARIFORUM Regional project, funded by the European Union and implemented by the European Union Intellectual Property Office (EUIPO)

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<b>Presentation</b>	Training of Trainers of the National Intellectual Property Training Center of Trinidad and Tobago – Module 2: IP Management – Online Phase Session 3. Industrial Designs and the protection of local art, crafts, fashion and competitiveness	
<b>Status</b>	DRAFT / APPROVED	
<b>Approved by owner</b>	-	
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<b>Contributors</b>	-	
	-	

Revision history			
Version	Date	Author	Description
0.1	DD/MM/YYYY		
0.1	DD/MM/YYYY		
0.1	DD/MM/YYYY		