

Compliance by Design | Turn New Packaging Rules into a Brand Advantage with Design Patents

By Erik Maurer and Sydney Huppert

New packaging rules present opportunities to create brand-distinguishing space from competitors. As companies plan for new packages, they should make intellectual property protections—design patents, in particular—part of their process.

The EU's Packaging and Packaging Waste Regulation (PPWR) took effect on August 12, 2026, with key reforms targeted for 2030. The PPWR regulates single-use plastics, recycling targets, reducing excess empty space, and more. It reaches beyond traditional packaging manufacturers, affecting industries from paper products to food and beverages to cosmetics and consumer goods.

The United States is moving in the same direction. States across the U.S. have advanced waste-reduction, recyclability, and labeling requirements. Oregon recently prevailed in litigation enforcing recyclability standards on certain industries. Though California's "Truth in Recycling" law SB 343 is currently on hold, local agencies are collecting recyclability data to support future enforcement. Other states are working on their own regulations. At the federal level, the Truth in Labeling and PACK Acts are both pending in Congress: if either is enacted, they could create new, overlapping packaging regulations with state laws.

As companies redesign packaging to comply with new regulations, they should ask how packages affect their brand equity and how intellectual property can be leveraged to strengthen positive consumer associations while keeping competitors at bay.

A. Design patents can efficiently protect investments in new packaging designs

When most people hear "patent," they think of a utility patent: protection for useful things. A company might seek a utility patent on a new recyclable plastic, for example, or on the process

used to recycle it. But utility patents protect functionality, not appearance. That's where design patents come in.

Design patents protect ornamentation. Unlike utility patents, a design patent has one claim—drawings—that cover “the ornamental design” “shown and described.” The drawings define what is claimed by showing the product from different positions. If related versions of a design—for example, different sizes, shapes, or proportions—are visually different enough to be “patentably distinct,” they can be protected with separate filings.

Design patents are typically less expensive and easier to perfect compared to utility patents. To be patentable, designs must be novel and non-obvious over the prior art (i.e., designs that existed earlier in time). If a design has been publicly disclosed, sold, or otherwise made available more than a year before filing a patent application, it may no longer be patentable.

Design patents can provide powerful protection against infringers. Unlike trademarks, design patents don't require a patentee to show that consumers associate the design with a particular source. Instead, the test is whether an “ordinary observer” would believe an accused design is “substantially similar” to the patented design.

Successful enforcement typically results in a court-ordered injunction stopping the infringement and disgorgement of the infringer's ill-gotten profits from using the design without permission. With these two remedies, design patents offer practical protections for companies investing in distinctive packaging.

B. Companies should be creative when thinking about design patents on packaging

Design patents can claim packaging that is intrinsic to the product or that is a container for products.

For example, in the first category, design patents can protect packaging in the form of a new shampoo bottle, food carry containers, or even a single dishwashing pod (where the “packaging” is a water soluble skin that contains cleaning agents).

In the second category, design patents can protect a complete package, parts of a package, and/or stage-by-stage views of a package, from closed to opening to open. Minor variations in size may be claimed in the same patent. Savvy design patentees also anticipate how competitors are likely to copy and craft different claims (i.e., apply for different design patents) to broadly protect their designs.

Thinking about design protections early in the design process ensures that claims can be crafted to reflect the most important aspects of a final package. Early planning will also help ensure that

applications are timely filed to avoid any potential loss of rights flowing from unprotected disclosure.

C. Banner & Witcoff: Design Patent Leaders

Banner Witcoff is the United States' leading prosecution firm for design patents. For more than 20 years in a row, our lawyers have helped clients by obtaining more design patents than any other firm in the United States. We also have relationships with international firms around the globe to ensure that our clients' designs are protected everywhere they do business. As new packaging regulations drive new packaging designs, we would be happy to help you understand what intellectual property options might be right for you. Please reach out if you are interested in a consultation.

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