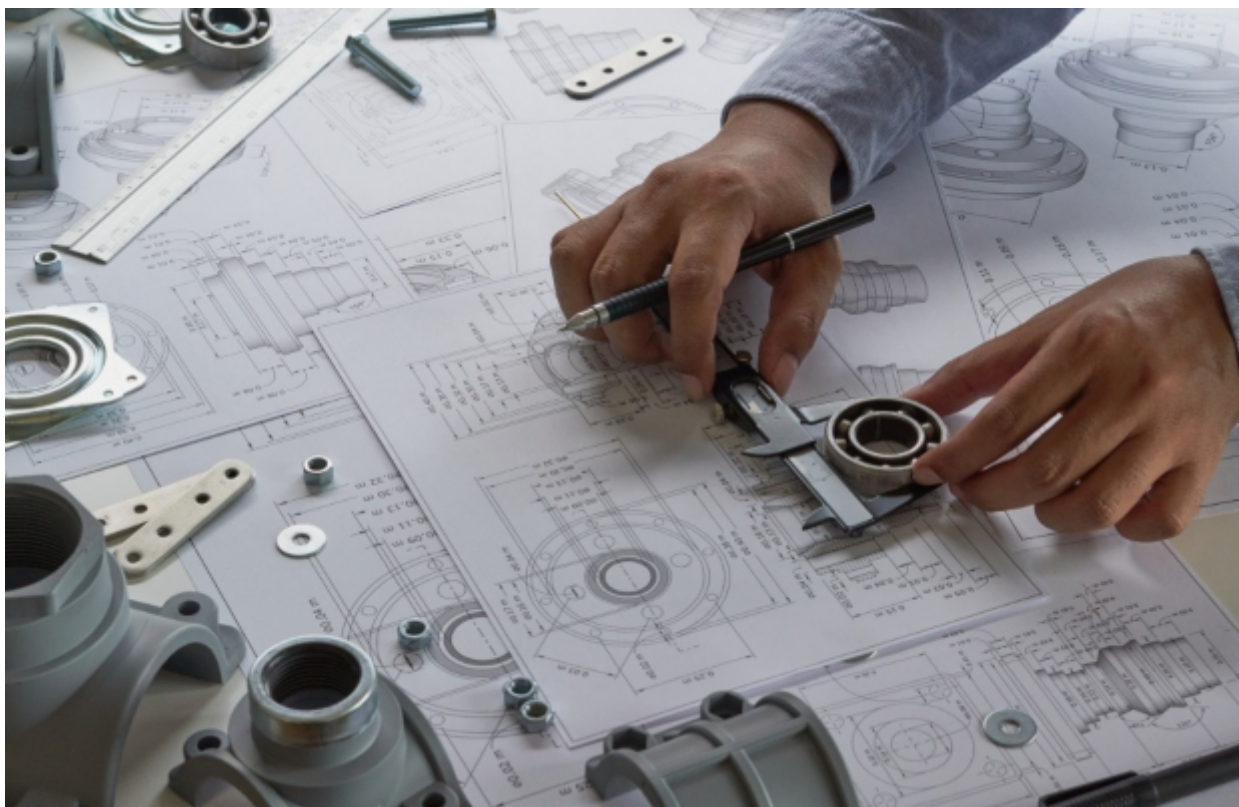


Italy jurisdiction report: Copyright in industrial design

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It is well known that industrial design works need to satisfy two requirements to be eligible for copyright protection in Italy: creative content and artistic value.

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While creative content is almost always a feature of industrial design works, the same cannot be said of artistic value, which represents a clear barrier to entry in Italy for access to protection for industrial design works.



The evaluation of “artistic value” in the field of fashion was addressed in a decision (number 491 of January 25, 2021) by the IP Court of Milan regarding Moon Boots footwear owned by Tecnica Group.

In the sentence in question, the judge stated that for the purposes of evaluating artistic value: “it is necessary to measure in the most objective manner possible the established perception of a specific work of design within society and in particular within cultural environments in the broadest sense”.

The judge stated that one should consider the “widespread recognition that cultural institutions have expressed regarding its connection to an expressive context which is based on and which represents an expression of the trends and influences of artistic movements or, at any rate, the ability of the author to interpret the spirit of the age, beyond even his own intentions and realisation, since a work with an artistic content acquires a value in and of itself and as a result of the representational and communicative capacity it possesses and is deemed to have by a range of individuals that is much wider than the mere consumer of that specific object”.

A more important point of this decision is whether this “artistic value” is only the result of a belated acknowledgement of the value of an industrial design, or whether a comparison must be made with the context in which the work was created.

“This decision comes at a time of highly fragmented and heterogeneous European regulations.” - *Simone Milli*

The sentence clarified that: “The judge does not attribute an ex-post artistic value to a work of design in virtue of this being acquired at a later stage, but rather evaluates the existence of such value through a procedure which in some way requires an appraisal for contextualising the work at the historic and cultural moment in which it was created—and from which it then goes on to acquire an iconic value—which may require (as with all artistic trends) a degree of critical and cultural sedimentation.”

Essentially, an effort is required in the evaluation process for us to contextualise a work in the period in which it was created, without forgetting that it may take some time for its value to be acknowledged.

Precedents

In 2017 scooter manufacturer Piaggio's Vespa was granted copyright protection (sentence 1900/17, Court of Turin). In this case the judge highlighted that "multiple extraordinary awards from numerous leading cultural institutions, which consider the Vespa to be one of the most noteworthy expressions of design, confirm its creative and artistic value".

Some uncertainty was introduced to Italian judicial precedent with the sentence of September 12, 2019 (C683/17) by the Court of Justice of the European Union (CJEU), in which the court expressed the following principle: a national regulation is not compliant with European Directive 2001/29/EC where it makes protection for clothing products under copyright law subject to criteria according to which, aside from their utilitarian purpose, these produce their own significant visual effect from an aesthetic perspective.

The CJEU essentially stated that aesthetic effect is irrelevant for the purposes of clothing products qualifying for protection under copyright law, thereby suggesting that the requirement of artistic value has been superseded and that only the requirement of creative content remains.

This decision comes at a time of highly fragmented and heterogeneous European regulations. Indeed, in certain states, for an industrial design model to be granted copyright protection, creative content alone is required.

The ruling by the IP Court of Milan, in sentence number 491 of January 25, 2021, appears however to confirm the longstanding requirement of artistic value: it will take a few more years to see whether the decision by the CJEU will also lead to Italy repealing the requirement of artistic value.

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