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A DESIGNER'S VIEW OF CURRENT INDUSTRIAL DESIGN PROTECTION IN THE UNITED STATES

Cooper C. Woodring†

Imagine it is the year 3000. You are with a group of archaeologists and cultural anthropologists investigating a culture that existed after the industrial revolution, during the atomic age. Layer after layer of industrial and possibly radioactive particulate matter are removed, disclosing the artifacts of a wealthy civilization of people who surrounded themselves with unprecedented numbers of mass-produced objects. Since there are no remaining records to explain this vanished culture, you will learn about them by examining their artifacts.

Their objects are incredibly revealing. They tell you about this culture's social traits and values, their religions, their political and economic systems, and most importantly, about their quality of life. You see that this was a consumer culture that expressed itself through the quality and quantity of objects owned.

When historians examine our society centuries from now, they may very well call this period, "The Century of the Common Man"—the first time the average person's right to happiness and material well-being emerged as an achievable ideal. This ideal was embraced by the international community, bringing with it the improvement of health and quality of life. When historians say this, one of their primary proofs will be the emergence of "everyday art"—art that infuses everyday artifacts with comfort, affordability, and beauty. Those historians will be talking about the art of industrial design—the art form that more than any other, embodies the spirit of the twentieth century. This century will be seen as one in which art is no longer created by the few, for the few.

Art has become integrated into the fiber of our society, infusing our homes and our lives with the qualities once reserved for museums. More visitors to New York City stop at Macy's and Bloomingdales than the Museum of Modern Art, not because they want to own their art, but because "everyday art" satisfies our desire to be a participant in life, rather than a passive observer.

The industrial designer is often compared to the artist. There is no comparison. While the designer is an artist, the artist is not a designer. The artist does what he wants, the designer wants what he does. Today's consumer prefers the active art of the industrial designer.

Let us move from the future to the past. In an 1871 lecture, the American essayist and poet, Ralph Waldo Emerson said: "If a man can write a better book, preach a better sermon, or make a better mousetrap than his neighbor, though he builds his house in the woods, the world will make a beaten path to his door."¹ If Emerson had only said "design a better mouse-

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1. See K. LASSON, *MOUSETRAPS AND MUFFLING CUPS* Intro., at IX (1986).

trap" instead of "make a better mousetrap," we might not need to discuss the merits of legal protection for industrial design.

The basic premise of giving incentives to those who create started in Italy in the 1470s. The governors of Venice wrote in 1474:

There are in this city, and also there come temporarily by reason of its greatness and goodness, men from different places and most clever minds, capable of devising and inventing all manner of ingenious contrivances. And should it be provided, that the works and contrivances invented by them, others having seen them and could not take their honour, men of such kind would exert their minds, invent and make things which will be passed that . . . each person who will make in this city any new and ingenious contrivance, not made heretofore in our dominion, as soon as it is reduced to perfection, so that it can be used and exercised, shall give notice of the same. . . . It being forbidden to any other in any territory and place of ours to make any other contrivance in the form and resemblance thereof, without the consent and license of the author up to ten years.²

There you have it. Just give incentives for creativity, and it will flourish. Venice is to this day one of the world's most vibrant and exciting creative communities.

Years later, in 1778, the United States constitutional convention adopted article 1, section 8: "Congress shall have the Power . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."³ America's leadership position in the family of nations has often been attributed to this constitutional provision.

In 1900, a Japanese commissioner said, "We have looked about us to see what nations are the greatest, so that we can be like them. We said, 'What is it that makes the United States such a great nation?' and we investigated and found that it was patents."⁴

Industrial designers have done a little investigating of their own and found that the Japanese advantage is their Industrial Design Protection Act.⁵ Japanese design protection makes original industrial designs worth the investment by pragmatic business. The value is such that the return is excellent. Copying, however, is prevented only for a reasonable time.

In the 1950s, the phrase "made in Japan" signaled cheap, imitation

2. See *id.* Intro., at XVI.

3. U.S. CONST. art. I, § 8.

4. See K. LASSON, *supra* note 1, Intro., at XVII.

5. See generally Yamaguchi, *Japanese Design Law and Practice*, 19 U. BALT. L. REV. 417 (1989).

merchandise. In 1959, the Japanese made an abrupt change in government policy with regard to long-term economic growth. Top American industrial designers, such as Jay Doblin, F. Eugene Smith, and Victor Papanek, went to Japan to explain a new blend of art and industry called industrial design. The Ministry of International Trade and Industry (MITI), the Japanese equivalent of our Department of Commerce, as a result of their understanding of the value industrial design could bring to MITI's long term goals and objectives, formed the Japanese Industrial Design Promotion Organization (JIDPO).

At first, JIDPO developed its own design educational system by absorbing the know-how of advanced industrial nations. Industrial design schools in the United States trained the first generation of Japanese designers funded by JIDPO. American design schools' curriculum requirements and techniques were then adapted and instituted at colleges and universities in Japan with JIDPO's financial support.

From there, JIDPO expanded its program to include technical support for industrial design, as well as a program for promotion of design and designers. JIDPO also took an action that was to provide Japanese business with an international marketing edge. It compiled research data on cultural preferences, design standards, human physical characteristics, and other user needs and preferences for every target market in the world.

Today, the contribution of industrial design to Japan's economic success is well known and well appreciated by the Japanese people. Major industrial designers in Japan are celebrated with the same enthusiasm reserved in the United States for athletes and actors. For example, one of the best selling books of 1988 in Japan was written by Yasuo Kuroki of Sony about the design decisions that produced the Walkman.⁶

The words "made in Japan" now stand for the best in product design and quality. The United States can no longer blame Honda's success on lower labor rates. Honda simply designs automobiles superior to others. Part of the incentive for the design investment is industrial design protection. Honda's fenders can be replaced only with Honda fenders, and the price of those fenders is fair. Hong Kong, Korea, and Thailand are now adopting JIDPO's policies as a model for industrial growth and economic success.

Last fall, the United States Information Agency (USIA) opened an exhibit of American design in eastern Europe called simply, "Design in America." At the entrance, the USIA confronted the audience with a video of former President Ronald Reagan, whose introductory words were as follows:

Design is an integral part of our lives and as such reveals a great deal about who we are and what we value as Americans. "Design

6. See Davis, *Design Gap—Not a Trade Gap*, N.Y. Times, Aug. 12, 1988, at A27, col. 3.

in America" vividly expresses our love of mobility, our respect for ingenuity, and—above all—the creative freedom we so deeply cherish.

In America, the design process begins with questions—Who will use it? How will it function? How will it enhance life? Can we make it affordable? In America's free enterprise economy, consumer products are designed to meet the varying demands of a broad based marketplace.

Today, designers, manufacturers, and an ever more discerning consumer are joined together in a global network. Design has become an international language, linking the ideas and aspirations of people the world over. I hope you will see yourself as a part of this exciting process, and that our two peoples are brought closer together in mutual trust and understanding.⁷

Americans value other nations' well-designed exports—most designed and invented here in America by Americans. Last year, Americans purchased the designs of about \$170 billion in imports, of which more than eighty percent, or \$136 billion, were manufactured goods, the products of design. In the past twenty-five years, we have witnessed our balance of trade go from an annual surplus of \$5 billion to an annual deficit of \$170 billion. America has the largest trade deficit of any nation at any time in history.

John Naisbitt, in *Megatrends*, states, "We are in a 'megashift' from an industrial to an information-based society." He goes on to say, "Manufacturing, the production of industrial hardware, is irretrievably moving out of the country. You can mourn its passing, but you can't stop it." We can stop it, and we must. If our factories cannot compete, America cannot compete. If America is not an industrial power, America will not be a power. Naisbitt is correct that we are becoming an information-based society, and it is that information that we will use to design and produce world-class products. More incentive in the form of protection for industrial designs of useful articles would go a long way toward maintaining equality with our competitors.

Over a decade ago, an article in the *Harvard Business Review* criticized United States business for no longer being innovative: "The key to long-term success, even survival, in business is the same as it has always been: to invest, lead, and create value where none before existed."⁸ This is precisely what industrial designers do, but the value of their creation is diminished significantly if it is copied with impunity.

America's foreign competitors have earned a reputation in manufactur-

7. United States Information Agency. Introduction to "Design in America" (videotape available through the USIA).

8. Hayes & Abernathy, *Managing Our Way to Economic Decline*. HARV. BUS. REV. 67 (July-Aug. 1980).

ing excellence. While foreign competition is good, those competitors did not pioneer mass-production, quality control, marketing, consumer service, or industrial design. The United States did. The United States has been complacent and resting on its laurels. American companies have been insensitive and unresponsive to consumers' needs and wants. The first and most obvious competitive weapon is design, since the design of the product predicates most of the other attributes.

It takes a long time to gain consensus on anything in a free country, but when it comes, because it comes from the people, the power unleashed is awesome. The United States is unique in its spirit and capability. When Americans elevate something to its proper sense of urgency, they have the talent, ability, and sensitivity to compete successfully.

It is estimated that the average industrial designer annually affects over \$100 million of the United States gross national product. This is the highest impact of any design professional and fifty times the economic impact of the average architect. In 1986, the Gallup organization completed a study of how United States business uses industrial design and what it considers to be industrial design's major contribution. A key point of the Gallup study is that senior business executives rated industrial design as sixty percent responsible for the success of any new product. Twenty-three percent of those surveyed rated industrial design as eighty percent responsible for the success of any new product.⁹

This should not be surprising, given the essence of the industrial designer's contribution. It is the industrial designer who is responsible for the attributes of the products consumers like best: the elegant videocassette recorder you can operate without a manual, the handsome office chair that does not cause a backache, the antifreeze bottle that funnels the contents into the radiator not onto the engine, and the ergonomic and wind-cheating shape of the new family sedan.

Industrial designs are the result of man's best creative efforts to serve the needs and wants of others. As a result, industrial designs are, in most developed nations, considered to be intellectual property.¹⁰ Each is protected by law and is the property of the individuals who were responsible for its creation. This is the incentive that most developed societies have elected to create, an environment conducive to growth in the creative sector. Under such conditions, rather ordinary people can and will make extraordinary contributions.

Charles Kettering wrote forty years ago in *Seed for Thought*: "We should all be concerned about the future because we will have to spend the

9. Industrial Designers Society of America (IDSA), Gallup Study of "How U.S. Business Uses Industrial Design" (1986) (available through IDSA).

10. Mechanical, electrical and chemical inventions, books and manuscripts, music and lyrics, paintings and sculpture, and some plants and animals are also generally considered to be intellectual property.

rest of our lives there." Every good design has an individual of primary design responsibility. Original designs do not happen by machine nor committee. Patents are issued to individuals, not to companies. Companies do not have new ideas, only individuals are capable of innovation. As Thomas Watson said in the Tiffany Wharton Lecture, more than ten years ago, "Good design is good business." Today, one might more accurately advise: Good design is the *only* business.