

## Designs Act, 2000

### Chapter 8 - Evidence, Etc.

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Subject to any rules made under section 44, in any proceeding under this Act before the Controller, the evidence shall be given by affidavit in the absence of directions by the Controller to the contrary; but in any case in which the Controller thinks it right so to do he may take evidence viva voce in lieu of or in addition to evidence by affidavit or may allow any party to be cross-examined on the contents of his affidavit.

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#### Section 38 - Certificate of Controller to be evidence

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A certificate purporting to be under the hand of the Controller as to any entry, matter or thing which he is authorized by this Act, or any rules made thereunder to make or do, shall be prima facie evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

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#### Section 39 - Evidence of documents in patent office

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Printed or written copies or extracts, purporting to be certified by the Controller and sealed with the seal of the patent office, of documents in the patent office, and of or from registers and other books kept there, shall be admitted in evidence in all courts in India, and in all proceedings, without further proof or production of the originals:

Provided that a court may, if it has reason to doubt the accuracy or authenticity of the copies tendered in evidence, require the production of the originals or such further proof as it considers necessary.

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#### Section 40 - Applications and notices by post

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Any application, notice or other document authorized or required to be left, made or given at the patent office or to the Controller, or to any other person under this Act, may be sent by post.

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#### Section 41 - Declaration by infant, lunatic etc.

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(1) If any person, is by reason of infancy, lunacy or other disability, incapable of making any statement or doing anything required or permitted by or under this Act, the lawful guardian, committee or manager (if any) of the person subject to the disability, or, if there be none, any person appointed by any court possessing jurisdiction in respect of his property, may make such statement or a statement as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of the person subject to the disability.

(2) An appointment may be made by the court for the purposes of this section upon the petition of any person acting on behalf of the person subject to the disability or of any other person interested in the making of the statement or the doing of the thing.

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## Section 42 - Avoidance of certain restrictive conditions

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(1) It shall not be lawful to insert-

(i) in any contract for or in relation to the sale or lease of an article in respect of which a design is registered; or

(ii) in a licence to manufacture or use an article in respect of which a design is registered; or

(iii) in a licence to package the article in respect of which a design is registered, condition the effect of which may be-

(a) to require the purchase, lessee, or licensee to acquire from the vendor, lessor, or licensor or his nominees, or to prohibit him from acquiring or to restrict in any manner or to any extent his right to acquire from any person or to prohibit him from acquiring except from the vendor, lessor, or licensor or his nominees any article other than the article in respect of which a design is registered; or

(b) to prohibit the purchaser, lessee or licensee from using or to restrict in any manner or to any extent the right of the purchaser, lessee or licensee, to use an article other than the article in respect of which a design is registered which is not supplied by the vendor, lessor or licensor or his nominee, and any such condition shall be void.

(2) A condition of the nature referred to in clause (a) or clause (b) of sub-section (1) shall not cease to be a condition falling within that sub-section merely by reason of the fact that the agreement containing it has been entered into separately, whether before or after the contract relating to the sale, lease or licence of the article in respect of which a design is registered.

(3) In proceeding against any person for any act in contravention of section 22, it shall be a defence to prove that at the time of such contravention there was in force a contract relating to the registered design and containing a condition declared unlawful by this section:

Provided that this sub-section shall not apply if the plaintiff is not a party to the contract and proves to the satisfaction of the court that the restrictive condition was inserted in the contract without his knowledge and consent, express or implied.

(4) Nothing in this section shall-

(a) affect a condition in a contract by which a person is prohibited from selling goods other than those of a particular person;