

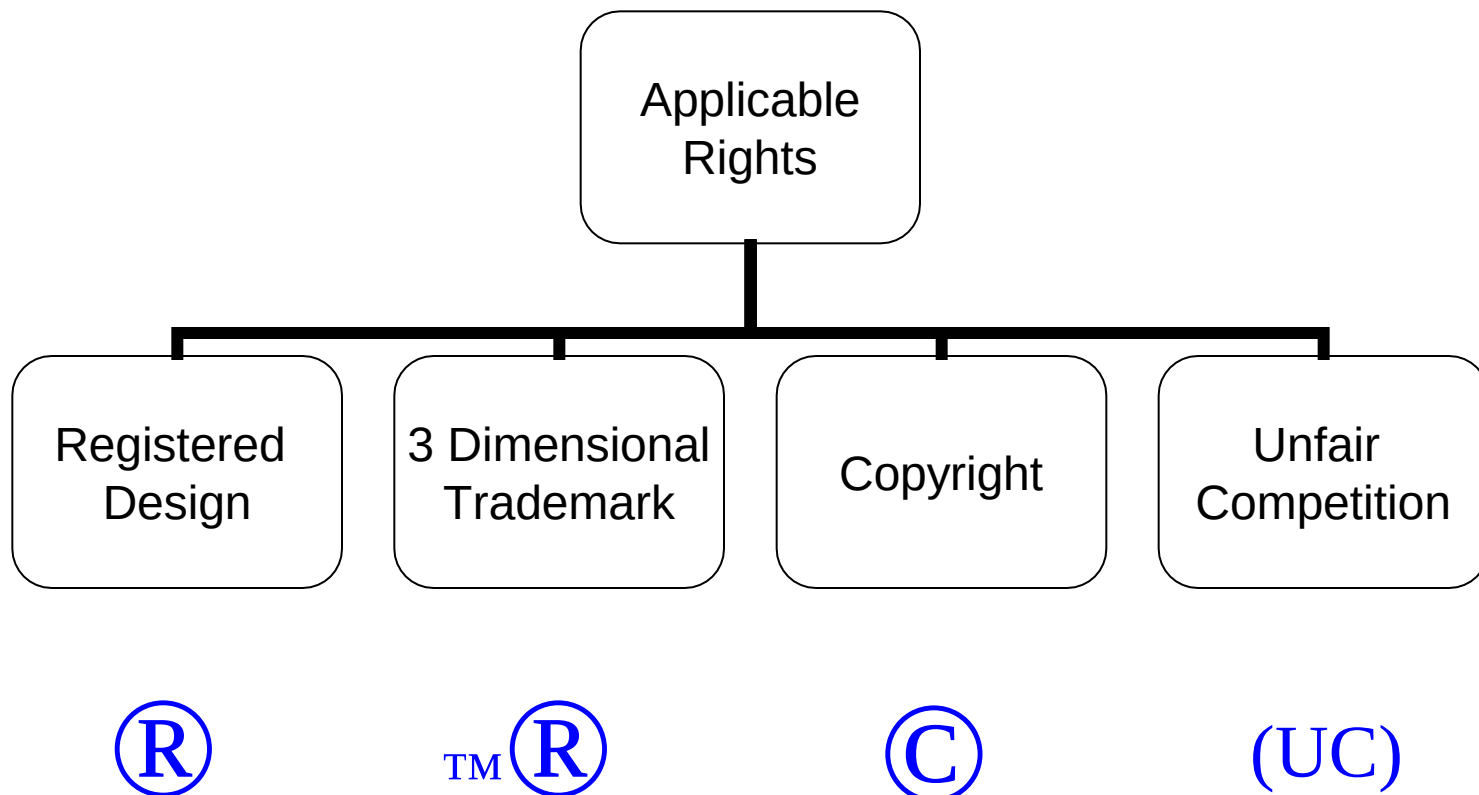


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Product design and trade dress: strategic issues within Design, 3D Trademarks and Copyrights

Giovanni F. Casucci

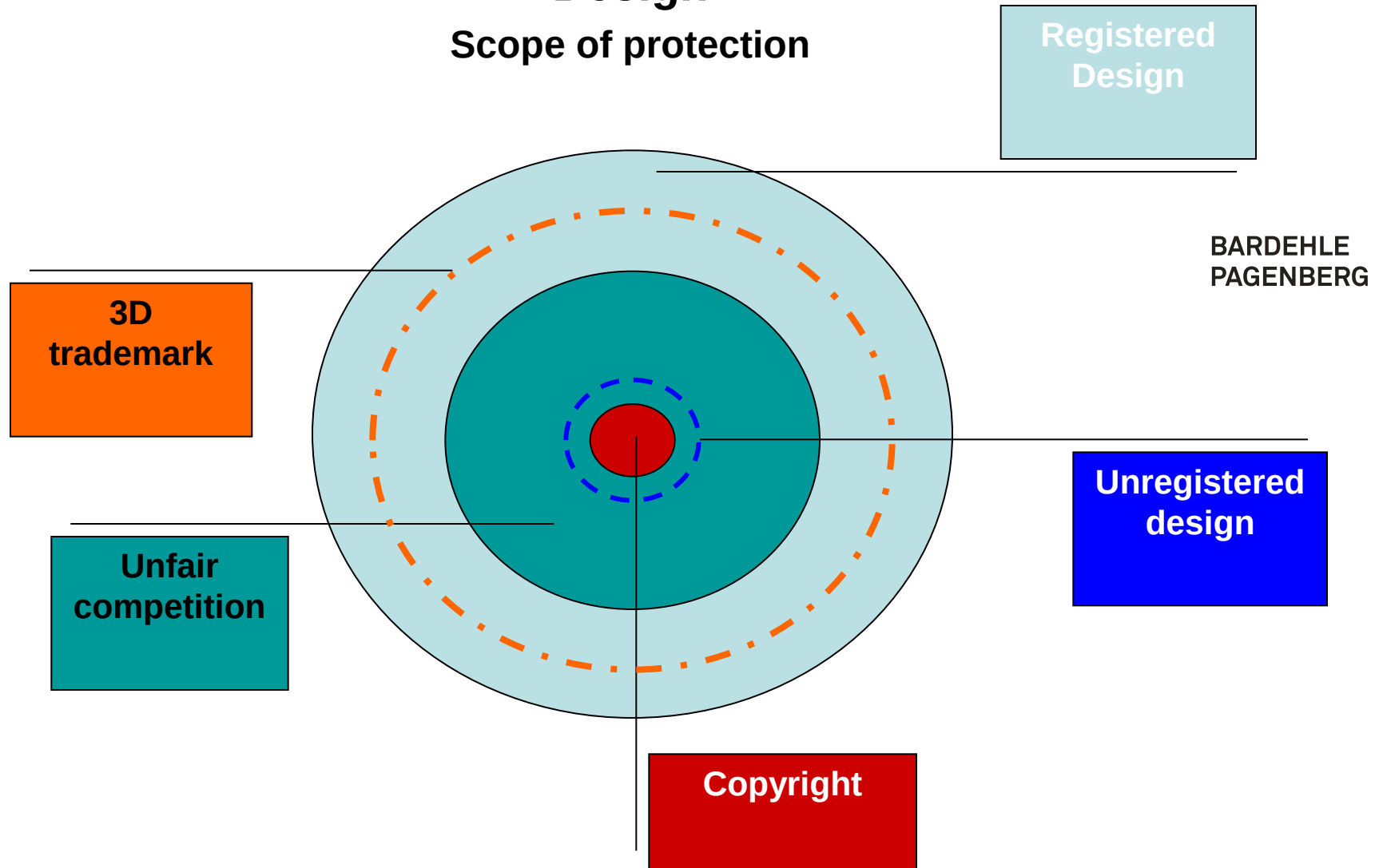
PRODUCT APPEARANCE





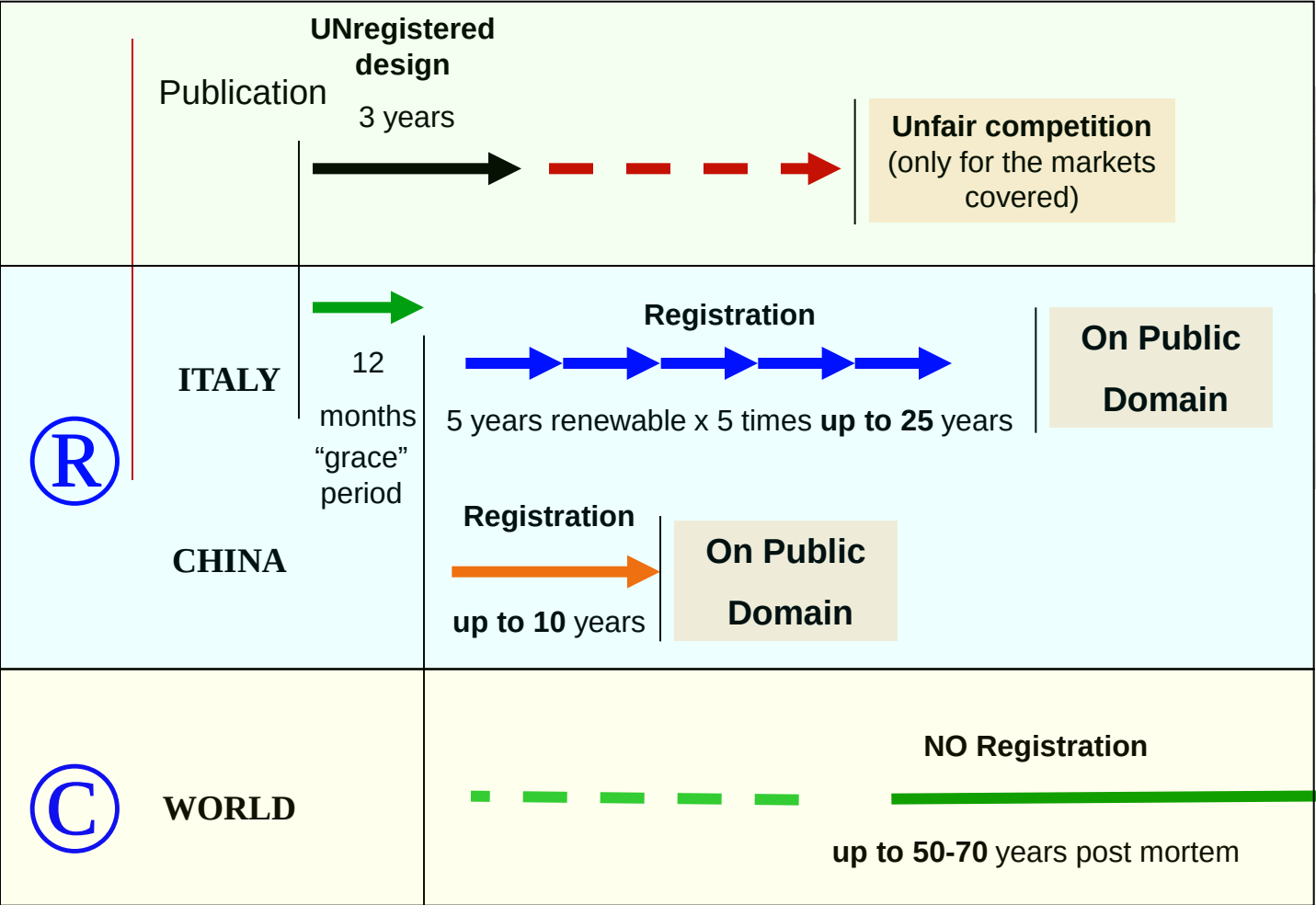
Design

Scope of protection



TERMS OF PROTECTION

b.



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Berne Convention 1886 on Copyrights

(Art. 2) Protected Works [...]

(7) Subject to the provisions of Article 7(4) of this Convention, it shall be a matter for legislation in the countries of the Union to determine the **extent** of the application of their laws to **works of applied art** and **industrial designs** and models, as well as the **conditions** under which such works, designs and models shall be protected. Works protected in the country of origin solely as designs and models **shall** be entitled in another country of the Union only to such special protection as is granted in that country to designs and models; however, if no such special protection is granted in that country, such works shall be protected as artistic works.

EC Directive No 98/71

(Art. 17) Relationship to copyright

A **design** protected by a design right registered in or in respect of a Member State in accordance with this Directive shall also be eligible for protection under the law of copyright of that State as from the date on which the design was created or fixed in any form. The **extent** to which, and the **conditions** under which, such a protection is conferred, **including the level of originality required, shall be determined by each Member State.**

**ORIGINALITY =
ARTISTIC VALUE ?**

Article 10bis
Unfair Competition

(1) The countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition.

(2) **Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.**

(3) The following **in particular** shall be prohibited:

(i) all acts of such a nature as to create **confusion** by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;

(ii) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;

(iii) indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

(UC)

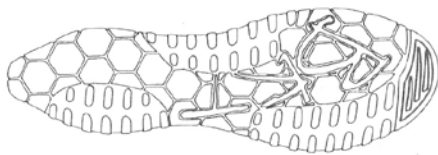
b.

Confusion ?

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Overall impression ?

Need to reconcile the worldwide concept of protection by Copyright and by Unfair Competition without risk of confusion on Industrial Design for the evergreen “Icons**” of design in order to avoid parasitic infringements of the bestseller creations.**



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