

**THE JOINT EXAMINATION BOARD**

**PAPER D&C - Design and Copyright**

**Wednesday 7<sup>th</sup> November 2012**

**2.00pm to 5.00pm**

*Please read the following instructions carefully. **Time Allowed – 3 HOURS***

1. You should attempt **TEN** of the twelve questions contained in this paper.
2. **All questions carry ten marks.** If more than ten questions are answered only the first ten presented will be marked.
3. Please note the following:
  - a. Start each question (but not necessarily each part of each question) on a fresh sheet of paper;
  - b. Enter the Paper Number (D&C), the question number and your Examination number in the appropriate boxes at the top of each sheet of paper;
  - c. The scripts are photocopied for marking purposes. Please write with a **dark inked pen** on one side of the paper only and within the printed margins, and do not use highlighters in your answer;
  - d. Do not state your name anywhere in the answers;
  - e. Write clearly, examiners cannot award marks to scripts that cannot be read;
  - f. Reasoning should always be given where appropriate.
  - g. You must number all the pages of your answer script. Once the exam finishes, an additional 5 minutes will be allowed for you to do this.
4. Under the Examination Regulations **you may be disqualified from the examination and have other disciplinary measures taken against you if:**
  - a. you are found with unauthorised printed matter or other unauthorised material in the examination room;
  - b. your mobile phone is found to be switched on;
  - c. you copy the work of another candidate, use an electronic aid, or communicate with another candidate or with anyone outside the examination;
  - d. you continue to write after being told to stop writing by the invigilator(s). **NO WRITING OF ANY KIND IS PERMITTED AFTER THE TIME ALLOTTED TO THIS PAPER HAS EXPIRED.**
5. **At the end of the examination assemble your answer sheets in question number order, number all the pages and put them in the WHITE envelope provided.** Do not staple or join your answer sheets together in any way. Any answer script taken out of the examination room will not be marked.

**Question 1.**

You receive the following email from a potential new client:

**Hi!**

**My brother filed an application to register a Community Registered Design, and he is not sure if he got it right. It was for what he says is a single design, and he sent a specimen of his new product but what information should he have sent them at that time, to get the filing date?**

**Also, he now wonders if he could have claimed priority from an earlier application for the same design he has in the UK? Is there anything he can do about this now?**

Write notes on the answer you will give to these questions

**10 marks**

**Question 2.**

You receive the following email:

**We have a Community Registered Design. We do not want to spend any more money on renewing it than is absolutely necessary. It was filed on 1<sup>st</sup> June 2008. When will its initial term expire? What is the earliest and what is the latest that the renewal fee may be paid without extension? The registration covers multiple designs, and our financial director has asked what will happen if we pay only the fee sufficient to renew only three of the five designs covered by the registration.**

Draft a reply.

**10 marks**

**Question 3.**

Under what circumstances shall a design "be deemed to have been made available to the public" for the purpose of applying Articles 5 (Novelty) and 6 (Individual Character) of the Community Design Regulation, and what exceptions apply?

**10 marks**

**Question 4.**

You receive the following letter

**Although I am temporarily living in France, I am in fact British and my main residence is in Woking, Surrey. For the last 7 months I have been making hand-woven blankets, which are intended as casual "throws" for settees and day beds, but which also make quite effective wall hangings. I can vary the weave so that in addition to colour differences over each article their finished surface has a pattern which is formed by different areas being partly raised**

above the general level of the weave, which I think gives it a new and characteristic appearance.

I have now got a French manufacturer interested. They have found a way of machine-weaving to imitate the partly-raised appearance of my blankets. My lawyers here in France will be dealing with any commercial agreement, as well as the question of know-how, patents and trade marks, but I would like to know from you what protection I might have by way of United Kingdom national unregistered design rights, or which I might achieve by way of United Kingdom National Registered Design Rights.

Draft a letter in reply, respecting your client's wishes not to touch upon the terms of an agreement or with possible know-how, patent or trade mark issues.

10 marks

**Question 5:**

You receive the following letter:

I design and distribute "Retro" home furnishings and accessories. We are based in Poole, but have outlets all over England and Wales. Early last year I came across an illustrated catalogue of home furnishings. This dates from about 150 to 160 years ago. I realised that a range of wooden chests could be made in plastic, without any alteration, except size, and sold as small stools. I selected one of these, and registered it, using a copy of the original drawings, specifying "Stool (furniture)".

I used the same drawings for my catalogue, and also used them to order the manufacture of the stools from my usual Indian manufacturer. At this point I realised that the hinged wooden lid could be replaced by a brightly coloured padded top to make them more attractive, so I asked the Indian manufacturer to add a padded seat but left the choice of fabrics and colours for the padded seats to my manufacturer. They were a great success for the Christmas 2011 season, and I hope they will be equally successful in 2012. My 2013 Catalogue is due out at the end of this month in time for the Christmas season, and I have picked another old chest to supplement my range of stools. I will welcome your advice on this.

Much more important is that I am writing to you because I have just learned that my arch rival, a distributor based in Dorchester who also has outlets throughout the UK, is offering for sale and showing in his catalogue stools which are clearly identical copies of my design, copied either from my catalogue or – more likely from the colours used – copied directly from the stools themselves.

Draft a letter to your client outlining what rights he may have, or may be able to secure, to deal with the situation in the UK, under the heads of

- (a) copyright (3 marks)
- (b) unregistered design right (4 marks) and
- (c) Registered Design right (3 marks).

Do not deal with any other possible causes of action.

10 marks

### **Question 6.**

You receive the following letter:

**Your records will show that you have acted for us on a number of occasions over the years in respect of securing registered design protection in the United Kingdom, most notably for the range of wheel barrows that we licensed to R. Barras Limited. You will recall that this was a very successful licensing deal from which we have derived the bulk of our income (some Fifty thousand pounds annually). I regret to inform you that we have been put into Administrative Receivership and in the turmoil (and spate of redundancies) leading up to and surrounding this unhappy event renewal of a number of our design registrations was overlooked. Eight of the Registrations licensed to R. Barras Limited ought to have been renewed last month and there were four Registrations for equally successful designs that should have been renewed in April this year.**

**I have been asked by the Administrative Receiver to find out what needs to be done in order to preserve our rights in these important registrations, and will welcome your advice.**

Write a letter, setting out in clear terms what needs to be done, (indicating any 'downside'), by when actions must be taken and explain in fair detail why a given action is necessary and what the effect of the proposed action (or failure to take the proposed action) might be. It is not necessary to itemise the level of official fees to be tendered at any point.

**10 marks**

### **Question 7.**

The language or languages in which OHIM deal with matters to do with design registration are, in fact, regulated by The Trade Mark Regulation (No 207/2009).

- (a) There are five "Official languages". Name them (2.5 marks)
- (b) What are the language requirements when filing an application for registration of a Community Registered Design (CRD)? (2 marks)
- (c) In a situation where the applicant is the only party to the proceedings, what will be the "Language of the Proceedings"? (1.5 marks)
- (d) Summarise the language provisions relevant to proceedings at OHIM seeking to invalidate a CRD. (4 marks)

**10 marks**

### **Question 8.**

You receive the following letter from a potential new UK Client:

**Our company produce moulds prepared from drawings prepared by our “In House” design team. We then use the moulds to produce parts for motors and aero-engines. When modified slightly, these parts are then also included in household appliances. Until now our company policy has been for a member of our technical staff to file applications for UK and Community Registered Designs for anything (and everything) that seems relevant.**

**Unfortunately, as a result of a series of recent staff changes Community and UK Design Applications were not filed for the last three developments, and we have decided that the way forward is to seek professionally qualified advice. Two new domestic appliances that incorporate the modified parts of aero engines (first made available some months ago) received considerable acclaim at a product launch a month ago, and these parts are among those that should have been covered by the Community and UK Design Applications, mentioned above, that were not filed.**

**We shall be grateful if you will meet our technical director and commercial director, and advise them:**

- a) What rights do we actually have in our designs for the parts that go into domestic appliances?**
- b) What actions can we take to secure any such rights?**

Write notes on, and give reasoning for the points you will make during your forthcoming meeting.

**10 marks**

### **Question 9.**

You have received the following email:

**Dear Sir or Madam,**

**I wonder if you can help me? I am currently unemployed, but I have designed this fastening device, which has a great new appearance. I originally sketched it out in my daughter’s A4 school pad, but when I had done so, I asked my friend Stan Smith (who is a freelance graphic designer) to do me a favour and prepare a set of “graphics” representing the fastening device as I had drawn it, for me to show to a company that makes various kinds of fasteners, to whom I was trying to sell the design.**

**When the people who said they might buy the design did a search they discovered that Stan had applied to register my design, specifying that this was in respect of fasteners for use in a range of fashion items. When I called him, Stan simply said that since he prepared the graphics, he owns the rights, then refused to talk to me any more.**

**Being unemployed I don’t have much money but the company who wanted to buy the design have said that if I have a good case, they might lend me the**

money to try to sort this out. I will be really grateful if you will advise me whether I do have any rights in, or protection for, the fastener, and the options open to me, giving brief reasons so that I can consider how best to make my case to the company who are considering buying the design.

Advise your client in writing as to any protection currently enjoyed by his designs; and the options open to your client; in each case giving brief reasons.

**10 marks**

**Question 10.**

You receive the following letter from Independently Designed Limited, which is a UK company located in Swindon:

**We have received a letter from a firm of solicitors who say they represent The Electric Fan Company Limited of Stockport. This letter claims that The Electric Fan Company Limited own United Kingdom Registered Design No2345678 for an “Electric Fan Heater” registered 9<sup>th</sup> May 2009, and that, by selling our ACME No 9 fan heater, we are infringing the registered design rights granted to The Electric Fan Company Limited.**

**We started selling our ACME No 9 fan heater about 3 or 4 years ago, it is a follow on to, and its appearance is derived from, our ACME No 8 fan heater which was discontinued at least 4 years ago. In accordance with our standard practice our former patent attorney (now retired) conducted a prior art search against the Acme No 9 fan, immediately prior to its launch, and told us this revealed no prior relevant design.**

**We would like to call in to discuss this matter and to take your advice.**

Prepare a list of points and notes to be included for discussion at the meeting with your client and reasons for each.

**10 marks**

**Question 11.**

- a) Who may apply for re-establishment of rights in a Community Registered Design, under Article 67 of the Community design Regulation? **(2 marks)**
- b) What must the applicant for such a re-establishment show if he is to succeed? **(3 marks)**
- c) Within what time-limit must an application for re-establishment be filed, and what actions must be taken within the time-limit? **(4 marks)**
- d) What must an application for re-establishment contain? **(1 mark)**

**Question 12.**

According to Article 19 (1) of the Community Design Regulation,

a) what rights are conferred upon whom by proprietorship of a Community Design Registration? **(8 marks)**

b) Under what circumstances are those rights exhausted, according to Article 21? **(2 marks)**

**End of Paper**