

THE JOINT EXAMINATION BOARD

**PAPER D&C
DESIGN AND COPYRIGHT**

**Thursday 6th November 2003
2:00 to 5:00 p.m.**

*Please read the following instructions carefully. Time allowed – **THREE HOURS.***

1. You should attempt ten questions.
2. All questions carry ten marks. Questions answered in excess of ten will not be marked.
3. Where a question permits, reasons should be given for the conclusions reached.
4. Please note the following:
 - i) Start each question (but not necessarily each part of each question) on a fresh sheet of paper.
 - ii) Enter the Paper number, the Question number and your Examination number in the appropriate boxes at the top of each sheet of paper.
 - iii) Write on one side of the paper only, within the printed margins using **BLACK** or **BLUE-BLACK** ink.
 - iv) **DO NOT** use coloured pens or highlighters within the answers – they will not photocopy.
 - v) **DO NOT** staple or join pages together in any way.
 - vi) **DO NOT** state your name anywhere in the answers.
5. Unless specifically requested answers are **NOT** required in letter form.
6. **NO** printed matter or other written material may be taken into the examination room.
ALL mobile phones and electronic aids must be switched off and stored away.
7. Answers **MUST** be legible. If the examiners cannot read a candidate's answer no marks will be awarded.
8. **NO WRITING OF ANY KIND WILL BE PERMITTED AFTER THE TIME ALLOTTED TO THIS PAPER HAS EXPIRED.** At the end of the examination assemble your answer sheets in question number order and place in the **WHITE** envelope provided.

This paper consists of seven pages, including this page.

1. With respect to the United Kingdom:-
- (a) What is a "licence of right"?
(1 mark)
 - (b) In what circumstances, in relation to (i) unregistered design right and (ii) United Kingdom registered designs, are licences of right available?
(3 marks)
 - (c) Who settles the terms of a licence of right for design right?
(2 marks)
 - (d) If licences of right are available, what advantage does this give your client if they are threatened with a United Kingdom unregistered design right infringement action?
(2 marks)
 - (e) In what circumstances might a licence not be binding on the successor in title to a United Kingdom unregistered design right?
(2 marks)

2. United Kingdom Design Registration No. 22222222 was filed on 2nd December 1992 in respect of "a chair".

- (a) What was the first renewal date if it has no claim to Convention priority?
(1 mark)
- (b) What would have been the first renewal date if the design had claimed priority from a French registration filed on 3rd June 1992?
(2 marks)
- (c) For the case where the Design Registration was filed on 2nd December 1992; the proprietor, a sole manufacturer/trader was in hospital for a few months during 2002 with a sudden illness. In that period, his secretary received the official renewal reminder but failed to understand its significance and ignored it, as the renewal date was recorded in the proprietor's personal diary which was inaccessible to the secretary during his illness. What can the proprietor do to effect the renewal:-
 - (i) If the failure to pay was discovered in May 2003?

(1 mark)

(ii) If the failure to pay was discovered in October 2003?

(3 marks)

- (d) The proprietor has discovered a rival manufacturer selling settees made to the identical design. Assuming that renewal had been allowed under (c) (ii) above, what limits, if any, are placed on the proprietor to take action for infringement?

(3 marks)

3.

- (a) Your client, Mrs. Anderson, is a Belfast based designer and manufacturer of knitwear. Two years ago she brought out a new design of jumper. When on holiday recently in Scotland, Mrs. Anderson noticed a very similar jumper design on sale in a local shop. On making discreet enquiries, she discovered that the Scottish jumpers are made and sold locally by a manufacturer whose design director attended the same fashion college as her 20 years ago. The Scottish designs were first marketed a year after hers.

Discuss whether there is a likelihood of infringement of Mrs. Anderson's design right by the Scottish design. Assume that design right subsists in Mrs. Anderson's design.

(3 marks)

- (b) Your client, Mr. Bennett, manufactures and sells reproduction fire surrounds based on designs for cast iron originals taken from Victorian foundry pattern books. Many of these surrounds can still be seen in Victorian houses today. The products are made of fibreglass reinforced plastics for cheapness and ease of installation, being aimed at the D-I-Y, as well as new-build, markets. The designs sold "mix-and-match" various features of different designs from the pattern books. Mr. Bennett has come to you for advice after discovering that a disgruntled ex-employee has set up a competing business selling identical product-for-product fireplace designs, as well as others based on different combinations of features from the same pattern books.

Would Mr. Bennett be able to take action for United Kingdom unregistered design right infringement against his ex-employee? Give your reasons.

(7 marks)

4. Explain the main differences between Community Registered Designs and Community Unregistered Designs as to:-

(a) Subsistence

(4 marks)

(b) Term

(3 marks)

(c) Infringement

(3 marks)

5. Your client, a copyright owner, tells you that he has very recently seen objects for sale which are clearly intended to be identical works to his but which are counterfeit. He has seen them for sale in a shop and from a stall in a street market. Explain in detail what legal remedies, if any, are available to him under the Copyright, Designs and Patents Act 1988 against the respective vendors.

(10 marks)

6.

(a) What are the advantages of filing a multiple Community design application?

(2 marks)

(b) What restriction(s) are there on the kinds of designs that can be included in a multiple Community design application?

(1 mark)

(c) What is the maximum number of views of a design that can be contained in a Community design registration?

(1 mark)

- (d) By what means may Community design applications be transmitted to OHIM for filing? Give the advantages or disadvantages for each means.

(6 marks)

7. In relation to United Kingdom registered design applications:

- (a) When may it be unnecessary (or undesirable) to show all features of a design?

(2 marks)

- (b) In what circumstances may a divisional application be called for?

(2 marks)

- (c) What is the time limit for filing a divisional design application?

(2 marks)

- (d) How would you show a design consisting of a repeating surface pattern in the representations filed at the Designs Registry?

(2 marks)

- (e) When are registrations relating to textiles published? When are registrations relating to wallpaper or lace published?

(2 marks)

8. With respect to the following circumstances, who has a cause of action under subsisting copyright and/or design right and, if they have, against whom? Unless otherwise stated all events occur in the United Kingdom. Explain your answer for each circumstance.

- (a) The subject of a family photograph when a photographer from whom the photograph was commissioned passed the copy to a newspaper, which publishes it?

(2 marks)

- (b) The sculptor of an original and unique statue who finds that copies are being mass-produced in Taiwan with some being imported into and sold in the United Kingdom. The copies are crude and do not do justice to the original.

(3 marks)

- (c) The employer of a draughtsman who in the course of employment used the employer's computer-aided design programmes to produce drawings for a set of cutlery. The cutlery is now on sale. The draughtsman has taken copies and has purported to license a competitor to use them for manufacturing.

(5 marks)

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9. Who is the first owner of United Kingdom unregistered design right in the following circumstances?

- (a) a design created by a designer who is an employee of a third party in pursuance of a commission to the third party; all in United Kingdom.

(3 marks)

- (b) the designer and manufacturer are Japanese and articles to the design are imported into the EU by a German firm as exclusive licensee for the whole of the EU.

(5 marks)

- (c) the design is computer-generated (in United Kingdom).

(2 marks)

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10. A United Kingdom client has heard that unregistered design right in the United Kingdom is free. Give notes upon which you would base advice to the client to explain why the cost of registration in the United Kingdom of his new design(s) may be worthwhile.

(10 marks)

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11. A United Kingdom individual client wishes to have registered protection for his design but believes that there is little or no market for the product in the United Kingdom, which should sell well in USA and in Germany.

Give the possible advantages and disadvantages of available strategies for registered protection; in particular can a first application be made outside United Kingdom? Ignore any questions of copyright or trade mark protection.

(10 marks)

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12. During the last six months your client, a United Kingdom bicycle manufacturer, has started applying a distinctive blue and green livery to the frames of his bicycles. He also sells bicycle pumps in the same livery, both with his bicycles and separately. The distinctive colouring has become a big selling point and he is concerned that competitors might try to copy it, since all bicycles and bicycle pumps are very much standard in shape. There is one exception here; your client's pumps and the associated fittings on the frames are shaped so that the pumps are always held in a given orientation such that the liveries match. However, the pumps are also compatible with the standard fittings on ordinary frames.

Make notes on what protection, if any, your client has or could get nationally in United Kingdom. (Do not deal with possible patent, trade mark or passing-off issues.)

(10 marks)