

THE JOINT EXAMINATION BOARD

Design & Copyright

Wednesday 1st November 2006

2.00pm – 5.00pm

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

1. You should **attempt ten (10) questions**.
2. All questions **carry ten(10) marks**. Questions answered in excess of ten (10) will not be marked.
3. Please note the following:
 - (a) Enter the Paper Title (D&C) and your Examination Number in the appropriate boxes at the top of each sheet of paper;
 - (b) 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;
 - (c) Do not staple or join pages together in any way;
 - (d) Do not state your name anywhere in the answers;
 - (e) Write clearly as examiners cannot award marks to scripts that cannot be read.
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 room;
 - (d) you continue to write after 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 order and put them in the WHITE envelope provided.** Any answer script taken out of the examination room will not be marked.

Question 1

In relation to an application for Registration of a Community Design for a single design:

- a) When is the registration fee payable? (1)
- b) When is the publication fee payable, if deferment of publication is not requested? (1)
- c) When is the fee for deferment of publication payable? (1)
- d) What is the period of deferment? (1)
- e) If deferment of publication has been duly requested, when is the publication fee payable? (3)
- f) In the case when deferment of publication has been requested, what is the procedure and possible consequence if the publication fee is not paid.? (3)

Question 2

According to the Community Design Implementing Regulation, in relation to an application for Registration of a Community Design:

- a) What are the three essential requirements for a filing date to be accorded? (3)
- b) What is the procedure and possible consequence if OHIM notes that these requirements are not fully met? (3)
- c) What is the procedure and possible consequence if a filing date has been accorded but a multiple application is found to relate to designs falling in more than one class of the Locarno classification? (4)

Question 3

- a) Give three legal remedies that are available to a person consequent upon a threat of proceedings for infringement of UK unregistered design right having been made. (3)
- b) What does that person have to prove in such proceedings? (2)
- c) What does the defendant have to show to avoid such relief being afforded? (2)
- d) Threats against which activities (which would be an infringement) are immune from threats actions? (2)
- e) What is declared by the statute not to be a threat? (1)

Question 4

State with reasons whether a UK unregistered design right does or does not exist in the following circumstances, all of the designs being original and not commonplace at the time of their creation.

The design was created by:

- a) A Canadian designer in pursuance of a commission from a UK company. (2)
- b) A Japanese designer in pursuance of a commission jointly from Japanese and German companies. (2)
- c) An Australian designer employed by an Australian company which has an office in UK to represent it in the EU. (2)
- d) An Indian designer in pursuance of a commission from a Japanese company which then authorises a UK company and a German company, among others, to put articles made to that design on the market, and which are then first put on the market in the UK by the German company. (4)

The design was created by:

- a) A Canadian designer in pursuance of a commission from a UK company. (2)

Question 5

Mrs A, a UK national, did some black and white drawings about three months ago of a dozen or so different, highly original, artificial flower arrangements. Mrs B, an English friend of hers, was impressed and suggested that they would be valuable to people who do such flower arrangements commercially, for weddings and the like. Mrs B offered to use a commercially-available program to put the drawings into computerized form with access being allowable to potential users on payment of an appropriate fee. Mrs A willingly accepted on the basis they would share the proceeds equally but nothing was put in writing.

Mrs A showed her drawings to Mr C, an interior decorator in the UK, without imposing any duty of confidentiality on him. He remembered the gist of what he had been shown and used it in creating flower arrangements he publicly displayed, all before Mrs A and Mrs B launched their computerized enterprise. At the same time, he recorded the arrangements he made in his computer.

Ignoring the question of any possible misuse of confidential information, what rights have (a) Mrs A, and (b) Mrs B which they might jointly or severally be able to exert to stop Mr C? (6)

What, if anything might a) Mrs A and b) Mrs B be able to do to improve their respective positions? (4)

Question 6

Your client (a UK company) designs machinery and two years ago designed a machine for processing and packaging foods. It sells the machines with a manual, including engineering drawings of the machine and technical information, to enable the customer to operate and maintain the machine and to carry out minor modification work so that a machine can process and package particular types of foods. The client sold 50 machines with manuals to UK "Company A" last year. Company A has recently decided that it no longer requires all 50 machines, and has sold 20 machines, with their relevant manuals, to UK "Company B" which is a competitor of your client. Company B has modified the machines using the manual so that the machines can process and package cosmetics and pharmaceuticals and intends to sell the machines to a third party. Company B has produced its own operating manual for the modified machines, which takes engineering information and some drawings from your client's manual.

Advise your client on copyright and UK unregistered design right which might be infringed by the activities of Company A and Company B in relation to your client's machine and manual.

Ignore any potential breach of contract or confidentiality. (10)

Question 7

Your client is a UK-based landscape design company. It has recently designed an attractive lamp for illuminating the gardens and outdoor spaces of commercial premises, hotels, sport grounds etc. The lamp comprises a vertical support around five metres in length for fixing in the ground and a horizontal top member of around one metre in length for supporting the light fitting. Your client wishes to file a Community Design Application but is unsure if the application is worth the expense given an existing well-known design for an outdoor lamp designed by another UK based company. The client indicates that the support structure of its design is the same as the existing design, but the light fitting itself although also similar, has different features, particularly when inspected in detail.

Ignore any issue of potential infringement, and explain to your client in general terms how the validity of a Community Design Registration resulting from the proposed Community

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Design Application would be judged in light of the existing design, and what features or aspects of the new design might be selected for an application in order to maximise the chances of a finding of validity. (10)

Question 8

Your client has a company that makes watches. He recently attended a jewellery trade show in Singapore where he was shown a bracelet that he considered was particularly eye-catching, and that he would like to buy and adopt as the design for a watch-strap. Your client has asked if the design can be registered as a community design.

Make notes on the issues to be discussed with your client. (10)

Question 9

Your client has designed a kit for a boat, with a specially designed contoured hull. Your client advises that when the boat is piloted at high speeds, the hull creates increased lift which raises it in the water and thereby reduces drag on the boat. At low speeds, when the hull is almost fully submerged, the contouring is designed to minimise the production of wake as the boat passes through the water. What considerations would be made when judging if the design is new or has individual character in the context of a Community Design Registration? (10)

Question 10

According to the Registered Designs Act 1949 as amended:

- a) In what circumstances can the proprietor of a UK Design Registration make an "application for modification"? (5)
- b) What are the grounds for such an application to be refused? (3)
- c) If such an application is accepted, from when is the modification effective? (2)

Question 11

Outline the differences between UK Unregistered Design Right and Unregistered Community Design, as to aspects of novelty, entitlement to the right, the scope or nature of the protection and its duration. (10)

Question 12

- (a) Who is the first owner of copyright in a film? (2)
- (b) Who is the first owner of UK unregistered design right if a design is created by a UK designer in pursuance of a commission from a Japanese company, and articles to the design are sold in the UK by a French firm as exclusive licensee to the Japanese company? Give your reasons (5)
- (c) Who is the first owner of UK unregistered design right if a computer-generated design is created by a UK research student at a UK university, where the research student is an employee of a UK company? Give your reasons (3)