

THE JOINT EXAMINING BOARD

PAPER Design & Copyright

Wednesday 31st October 2007

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 Number (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, 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 if 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 order and put them in the WHITE envelope provided.** Any answer script taken out of the examination room will not be marked.

This paper contains Five (5) pages including this page.

Question 1

The term of a UK Design Registration should have been extended four months ago, but contrary to the proprietor's wishes was not.

- a) What actions have to be taken and by when in order for the term to be extended? (2)
- b) If the actions in a) are not taken in time, what further remedy is available, what actions have to be taken, and by when? (3)
- c) Assuming any necessary actions were taken in time, what is the proprietor's position in relation to an infringer who first starts infringing the design
 - i) before the end of the period in a) above? (2)
 - ii) before the end of the period in b) above? (3)

Question 2

Summarize the statutory provision regarding an "innocent infringer" of the right in a UK Registered Design. (10)

Question 3

- a) Give the grounds for refusal by the Office of an application for a Community Registered Design. (4)
- b) Give the grounds for invalidation of a Community Registered Design. (6)

Question 4

Assuming that convention priority is being claimed and that a representative is being appointed, what must an application for a Community Registered Design contain? (10)

Question 5

Give the circumstances in which a design which has been disclosed does not anticipate a later filed application for registration of that design in the UK. (10)

Question 6

- a) How is a "complex product" defined in the Community Design Regulation (CDR)? (2)
- b) What are the special conditions in the CDR for a component part of such a complex product to be considered to be novel and to have individual character? (6)
- c) What are the special conditions in the CDR regarding infringement by use of such a component part? (2)

Question 7

Your client has created a new and original cartoon character that she proposes using in comic strips for display at work places to emphasise the importance of following proper Health & Safety procedures. For example, one comic strip shows the character putting on a hard hat at a construction site which then protects him from a falling brick. Your client has produced a dozen cartoon strips showing the character in different working environments. She also plans to manufacture a number of models of the character to be placed strategically around work places in different poses and wearing different safety apparel.

Your client wants to prevent others copying her comic strips and from using the appearance of the character either in their own comic strips or in 3-D format.

Advise your client what copyright protection is available to protect (a) the existing dozen comic strips [3 marks]; and (b) to protect against the use of the 2-D form of the character in comic strips created by a competitor [4 marks]; and (c) the 3-D form of the character [3 marks].

Ignore trade mark issues.

Question 8

Discuss the registrability of the following under the Community Design Regulation (2 marks each):

an engine for a car

a track suit top with a unique pattern of red, white and blue stripes

an electrical adapter suitable for adapting UK plugs for European sockets

a kit for building a permanent conservatory extension on the side of a house

a miniature version of Westminster Abbey in the form of a pencil sharpener

Question 9

Explain with reasoning, what – if any - copyright is likely to subsist in the following:

an engineering drawing showing solely technical features of a machine

a Shakespeare play republished in 2006

a debate in the House of Commons

a chronological list of a season's football fixtures

a skilful but faithful reproduction of the Mona Lisa

(2 marks each)

Question 10

Your client is a celebrity who wants to get a journalist to help write certain parts of his autobiography. Your client wishes to control copying and publication of the autobiography and also does not want the journalist's name to appear on the work when it is published.

- i) What provisions of the CDPA, if any, can your client use in order to achieve his wishes? (7 marks)

The front cover of the book is to show a well-known painting in which the client wishes to substitute his own face for the original face in the painting. The client bought the copyright in the original painting from the artist before he got the idea for using it in the book, but now the artist has complained about the proposed use of his painting on the book in the manner envisaged. The client has offered to remove any mention of the artist's name from the book if he is concerned about the use of his painting.

- ii) Can the artist prevent your client from using the painting in the proposed way under the provisions of the CDPA and if the artist can prevent such use, is the client's offer an adequate response? (3 marks)

Question 11

Your client is a manufacturer of sports shoes. Your client has designed a pair of rugby boots in which the arrangement and shape of studs on the sole of the boot give the wearer greater stability during changes of direction particularly in wet conditions. The client advises that it had previously created a number of designs with similar functionality but has opted for the present design as it would be simpler to manufacture without having to replace its existing manufacturing equipment. The client has some rudimentary knowledge of UK and Community design law and asks to what extent the new design is protected under UK and Community unregistered design rights in view of the exclusions to protection of functional designs. You should assume that the design is not commonplace, and is new and has individual character.

Discuss with respect to the design in question:

the protection available for unregistered designs under UK design law (5); and

the protection available for unregistered designs under Community Design law (5).

Question 12

A United States company "A" created a design for a product in June 2005. "A" first started selling the product in the US in December 2005. Prior to these sales, "A" had not previously disclosed the design of the product anywhere in the world. "B" is a UK company which is a licensee of "A". "B" commenced sales of the product in the UK under licence in March 2006. The design is new and has individual character.

Discuss whether unregistered design right protection exists under the Community Design Regulation, and when such protection would expire, if it does exist. (10)

End of Paper.