

THE JOINT EXAMINING BOARD
PAPER Design & Copyright
Wednesday 5th November 2008
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 Community Design Regulation requires a Community designs court finding infringement of a Community design to order three measures as sanctions, “unless there are special reasons for not doing so”.

What are those three obligatory measures? (9) Under what system of law are those orders to be enforced? (1)

Question 2.

a).The registered proprietor of a UK Registered Design has the exclusive right to use the design. How is “use” defined in the Registered Designs Act 1949 as amended? (3)

b) “Infringement of a UK Registered Design is doing anything, without permission, which is the exclusive right of the proprietor.” Give the exceptions to that statement. (7)

Question 3.

How are:

a) “complex product”, (3) and

b) “product” (7)

defined in Registered Designs Act 1949 as amended?

In your answer to b) list all those things which are either excluded or “in particular” included in the definition in the Act.

Question 4.

In principle all documents filed in connection with the registration of a UK Registered Design can be inspected by the public upon registration. Give the exceptions or limitations to that principle. (10)

Question 5.

- a) During what portion of the life of a UK unregistered design right may any person be entitled to a licence of right? (1)**
- b) Who settles the terms of such a licence? (2)**
- c) What statutory restrictions apply to a licensee under such a licence? (3)**
- d) Under what conditions may the Secretary of State declare that such a licence should not be available? (2) What is the mechanism for such a declaration? (2)**

Question 6.

- a) What are the provisions in the Community Design Regulation (CDR) concerning the right to a Community design? (3)**
- b) What are the provisions of Article 15 CDR (Claims relating to the entitlement of a Community Design)? (4)**
- c) Outline the provisions in the CDR about the position of a licensee of the Registered Community Design who exploited the design before a successful claim in b). (3)**

Question 7.

- a) How is a literary work defined in Copyright, Designs and Patents Act 1988? (8)**
- b) How and when does copyright in a literary work start to subsist? (2)**

Question 8

Your client, an experienced boat builder, plans to leave her present employment to start a business supplying spare parts of a well known sailing dinghy developed and sold by a rival business. She is also planning to commence manufacture of a new racing dinghy to compete with that well known dinghy, and she has commissioned someone to produce a design for her.

Your investigations revealed that the well known dinghy first appeared on the UK market in 1986 after registration of a UK Design in November 1985.

Advise your client what issues need to be considered and what steps she should take before going into production of:

- a) the spare parts, and**
- b) the new dinghy.**

Ignore patent and trade mark issues.

Question 9

Your client is a small Company that is the Proprietor of a Community Registered Design for a particular product. The design is nearly five years old. They also have a number of components that they have not registered, for spare parts for that product. They recently filed three applications in the UK to register a new design for the product and some updated versions of those spare parts, without taking your advice.

In the past the Company has struggled to meet demand, particularly in peak season. It has now been approached by a UK customer who is planning to place an order for the product and various spare parts which will require a trebling in current output. Not wishing to lose this business the Client is considering contracting part of the manufacture to a company in Greece.

Set out, in the form of written notes, points that need to be considered and steps that need to be taken by, or on behalf of, your client to protect its position. Ignore possible patent, trade mark and contractual issues.

Question10

A new client arrives at your office with several small components that fit inside pumps and so would not normally be seen in use.

He tells you that he has recently set up a company to make these and that he wants to protect the components in every way possible.

He shows you a copy of last year's catalogue, from his former employer, which has photographs and drawings of several components, which are similar to his components.

Write notes to tell your client what sort of protection is available to him, what precautionary steps he needs to take and what further checks you need to make.

Do not consider patent and trade mark issues.

Question 11

Some time ago your client wanted to import a product that was being made in Germany but did not do this following the advice you gave; namely that it would have been an infringement of a competitor's UK Registered Design. Last week, which is around a year or so after you gave your advice, you checked the Register in a routine search, which revealed that the third renewal fee (in respect of the penultimate period of protection) was one month overdue.

Write a letter advising your client of options open to him and any relevant time frames.

End of Paper