

Foundation Certificate

Design and Copyright Law FC4

Wednesday 11 October 2017 14:00 to 17:00

INSTRUCTIONS TO CANDIDATES

1. You should attempt **ten** of questions 1 to 12.
2. Each question carries **10** marks.
3. If more than ten questions are answered only the first ten presented will be marked.
4. The total number of marks available for this paper is 100.
5. Start each question (but not each part of each question) on a new sheet of paper.
6. Enter the question number in the appropriate box at the top of each sheet of paper.
7. Do not state your name anywhere in the answers.
8. Write clearly, as examiners cannot award marks to answer scripts that cannot be read.
9. The scripts may be photocopied for marking purposes.
 - a) Use only **black ink**.
 - b) Write on one side of the paper only.
 - c) Write within the printed margins.
 - d) Do not use highlighter pens on your answer script.
10. Instructions on what to do at the end of the examination are on the Candidate Cover Sheet.
11. Any candidate script removed from the examination room will not be marked.
12. This question paper consists of ten sheets, including this sheet.

The following abbreviations will be used throughout this paper:

CDR: Council Regulation (EC) No. 6/2002 of 12 December 2001 on Community designs

CDPA: Copyright, Designs and Patent Act 1988

EUIPO: European Union Intellectual Property Office

Question 1

You receive the following email from a client, Bob:

‘My cousin Anne came up with a design for a sports bottle and filed a design application in Canada in July, having kept the design confidential prior to filing. She came to me shortly afterwards looking for help commercialising the bottle. We acted quickly and started selling the bottle in Canada, and the business is going well. I have also set up a company in the UK, Fitcessories Ltd, and Anne and I have worked together to expand the range and create other designs for drinking bottles and new products including bags and exercise mats. Our company is now focussing its efforts on Europe.’

Make notes on what Fitcessories Ltd needs to take into account when preparing to file for Community registered design protection, commenting on:

a) when the application should be filed;

4 marks

b) entitlement to file the application; and

4 marks

c) any options or considerations for getting cost-effective protection.

2 marks

Total: 10 marks

Question 2

- a) Discuss whether the following acts constitute infringement of UK unregistered design right (UDR) (assuming it subsists and that no licence to deal with the works referred to has been granted by the UDR holder):

- i) having seen a desk lamp in a catalogue, making and selling a miniature version for a doll's house;

3 marks

- ii) a family importing into the UK a pair of counterfeit candleholders to put in their dining room.

2 marks

- b) Discuss whether the following acts constitute infringement of Community unregistered design (CUD) right (assuming it subsists and that no licence to deal with products incorporating the designs referred to has been granted by the CUD holder):

- i) keeping unauthorised T-shirts in a warehouse in Spain;

2 marks

- ii) designing a pattern for fabric and selling clothing made of that fabric in France, where it is later discovered that the pattern of the fabric is already widely used in upholstering furniture.

3 marks

Total: 10 marks

Question 3

Please refer to the diagrams on page 9 for this question.

Your client, Kurrent Ltd, is a designer and manufacturer of electrical products. It has been told by some of its older customers that they struggle to remove conventional electrical plugs (figure 1) from sockets as it is difficult to grip them. Kurrent Ltd recently created the design shown in figure 2 as a solution to this problem. However, one of its employees found that a German competitor, Voltz GmbH, already has a similar product (figure 3). You check and find Voltz has a UK registered design for its product.

Restricting your answers only to national UK registered designs, discuss:

- a) **whether Kurrent Ltd can secure valid registered design protection in the UK;
and**

5 marks
- b) **whether Kurrent Ltd needs to consider the possibility of infringement in view of
Voltz GmbH's registration.**

5 marks

Total: 10 marks

Question 4

According to Section 3 '*Literary, dramatic and musical works*' CDPA, what is the meaning of the following terms:

- a) 'literary work';

3 marks
- b) 'dramatic work'; and

1 mark
- c) 'musical work'.

1 mark

According to Section 4 '*Artistic works*' CDPA, what is the meaning of the following terms:

- d) 'artistic work'; and

3 marks
- e) 'graphic work'.

2 marks

Total: 10 marks

Question 5

Explain whether the following constitute acts of infringement of UK copyright. Assume that copyright currently subsists in the works in question, and that no licence to deal with the work has been granted by the copyright owner. Give reasons for your answers.

- a) making notes by copying from a book when studying for an examination;
1 mark
- b) reproducing someone else's photos in a factual book and selling the book;
2 marks
- c) publishing a cartoon sketch mocking a famous political figure;
2 marks
- d) making a mould from an article and using the mould to produce copies of the article;
1 mark
- e) producing a greetings card including an identical image of a famous sculpture on the front;
1 mark
- f) replaying a few seconds of video footage of a sporting event on a social media site;
and
2 marks
- g) lending a video to someone to show to a group of people to raise their awareness of an issue of public policy.
1 mark

Total: 10 marks

Question 6

You receive the following email from Sam:

'I have a UK registered design that I filed in 1990 for an office chair. The chair has always been a best seller. One of my competitors is selling chairs to my design. To put them off doing so, I followed the advice my old patent attorney gave me when we filed the design application and I put my design registration number on everything. My competitor just told me I'm committing a criminal offence, but I don't understand why.'

a) Explain what, if anything, Sam is doing wrong.

3 marks

b) Discuss what consequence any offending actions might have.

1 mark

c) Discuss whether the situation would be different if Sam had never filed a design application but was nevertheless marking his products with a design registration number.

1 mark

d) Explain whether someone who copies a design that is protected by a valid registration that is in force is committing a criminal offence.

3 marks

e) Discuss what consequences that might have on that person.

2 marks

Total: 10 marks

Question 7

Your client, Splash Ltd, makes pumps for an ornamental water feature manufacturer Fountain Ltd. Splash's managing director was on very good terms for many years with the managing director of Fountain. They had a friendly agreement where, in return for designing and developing the pump, Splash would make and supply all of the pumps Fountain needed for its fountains. Fountain is now under new management and Splash mistakenly received an email with attachments from Fountain's new managing director asking its competitor, Sprinkle Ltd, to provide a quote for making a pump to Splash's design.

[Restrict your answer to UK national rights, and ignore any trade mark considerations.]

a) Advise Splash Ltd's managing director on:

i) what unregistered rights they may have; and

3 marks

ii) how those rights may be infringed and by whom.

3 marks

b) Advise Splash if your answer would be different if Splash had instead designed the ornamental fountains rather than the pump.

2 marks

Total: 10 marks

Question 8

In relation to Community unregistered designs:

a) discuss what is meant by ownership and joint ownership of a design;

2 marks

b) explain what Article 27 '*Dealing with Community designs as national design rights*' CDR says about how Community unregistered designs are treated as a national design right of a Member State; and

4 marks

c) give four examples of exclusions from infringement as provided for by Article 20 '*Limitation of the rights conferred by a Community Design*' CDR.

4 marks

Total: 10 marks

Question 9

Sarah designs and manufactures a range of fabrics using a technique she developed herself that weaves lengths of unusual materials with more conventional ones. One example is straw and wool; another is metal wires and ribbons. She does it to achieve a fabric with an interesting texture and appearance. The fabrics are used to make blankets and wall hangings. Sarah has been selling her products for about three years.

Marie went to Art College with Sarah. They worked on several projects together developing weaving techniques, but they went their separate ways when they graduated about five years ago. Marie has recently started selling rugs and mats made of fabrics that combine two or three different materials woven together.

Ignoring any matters relating to copyright:

a) discuss what rights Sarah and Marie may have; and

9 marks

b) indicate whether any conflict that might exist between those rights.

1 mark

Total: 10 marks

Question 10

Michaela contacts you and tells you that her competitor Peter has a multiple registered Community design for a number of designs of keyrings. Michaela says she used to work with Peter and she believes some of Peter's registered designs are hers. Others, she says, they designed together. She says Peter is selling other keyrings that have also been made to a design that she believes she owns.

In view of the above discuss what action, if any, Michaela can take before the EUIPO.

10 marks

Question 11

You represent an automotive company, AutoDrive Ltd. The managing director has contacted you and asked you to explain whether vehicle spare parts such as spark plugs and bumpers are protectable with Community registered or unregistered designs.

Write notes that would form the basis of advice to the managing director.

10 marks

Question 12

You receive a query from a client, Mary, for whom you registered a UK design several years ago. She has noticed that one of her competitors, George, is selling very similar products in the UK. She tells you she got in touch with George to ask him to stop because her sales of her own products were suffering. Apparently George got angry about her allegations, said that similar products had been around for at least 30 years, and that he would fight back if Mary insisted on pursuing the matter further.

a) Explain what actions Mary and George can take.

8 marks

b) How might Mary's rights be affected if the products are automotive accessories?

2 marks

Total: 10 marks

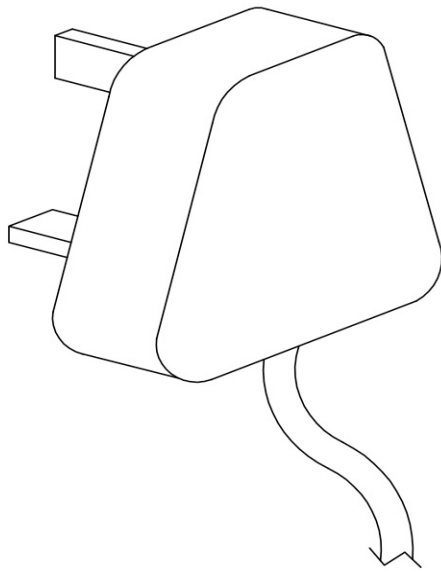


Figure 1

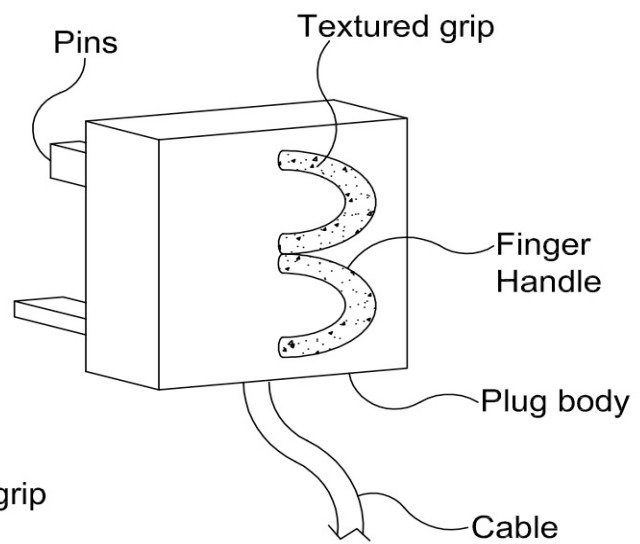


Figure 2

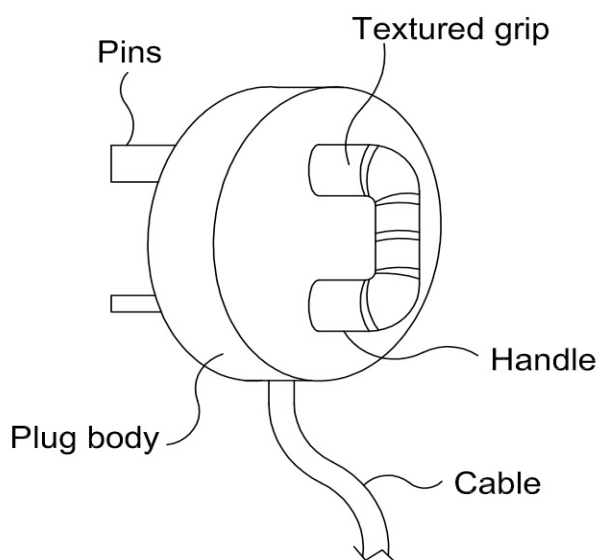


Figure 3