

**FC4 (D&C) – Design and Copyright Law
FINAL Mark Scheme 2017**

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

In the answers, half marks may be awarded where candidates have not been precise

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

Answer

- a) A Community application can be filed within 6 months of the Canadian application for the original bottle design (i.e. by January 2018) (1 mark)(i) [Art 41 CDR]; the others are first filings so there is no deadline per se (1 mark)(ii), but the sooner the better for

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prior art purposes (1 mark)(iii). The 12-month disclosure grace period applies to all (1 mark)(iv) [Art 7 CDR].

4 marks

- b) For the original bottle, is Anne still the only owner? (1 mark)(i) Only the owner/successor in title can file an application claiming priority, so is Fitcessories entitled to file an application? (1 mark)(ii) [Art 41 CDR] Is there an assignment or can one be arranged prior to filing? (1 mark)(iii) For the new designs, are Bob and Anne joint owners, is the company entitled? (1 mark)(iv)

4 marks

- c) Discussion of multiple application(s):

Discussion of whether all designs can be covered in a single application if in same Locarno class (1 mark)(i) [Art 2 CDR] (Bottles, bags and mats belong to different Locarno classifications. Designs could be grouped by product type to enable multiple applications to be filed, or a selection of fewer designs could be made (1 mark)(ii). Alternative mark available for noting it's a requirement for the applicant to be the same for multiple designs (1 mark)(iii).

2 marks max

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

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- 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

Answer

- a) i) s226CDPA: copying by making articles to a design owned by someone else is primary infringement of UDR.

1 mark (i)

Presumably “miniature version” means the design is exactly or substantially the same, which is a requirement for there to be primary infringement. The difference in size is irrelevant.

1 mark (ii)

Differences in materials, colour etc. won't make a difference since UDR does not subsist in surface decoration

1 mark (iii)

- ii) s227CDPA: importing an infringing article is secondary infringement of UDR

1 mark (iv)

But s227CDPA requires the importation to be for commercial purposes, so there is no infringement.

1 mark (v)

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- b) i) A19 CDR: keeping products in which someone else's design is incorporated or to which it is applied is primary infringement

1 mark (i)

The products must be copied from the original design for there to be infringement of CUD

0.5 marks (ii)

Spain is an EU country so the provisions of the CDR apply

0.5 marks (iii)

- ii) A19: using the pattern in France would constitute an infringing act

0.5 marks (iv)

but an independent work of creation

0.5 marks (v)

by a designer not familiar with the earlier design

0.5 marks (vi)

is deemed not to result from copying and thus not infringe.

0.5 marks (vii)

Discussion on difference in dress fabric versus furniture fabric

1 mark (viii)

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

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

5 marks

Total: 10 marks

Answer

a) With reference to S1B RDA:

Product is novel – prior art doesn't have a handle and shape of body is different compared with the two pieces of prior art

1 mark (i)

Individual character – yes – handle at least creates a different overall impression on an informed user

1 mark (ii)

the pins and cable are the same but conventional (and dictated by technical function/must fit so no protection is available there)

1 mark (iii)

With reference to S1C RDA, some features may be excluded if they are solely dictated by technical function (1 mark)(iv). The handle is functional and the grip features are functional, but there is some design freedom – using two rounded handles and small grip textures may be protectable (1 mark) (v).

2 marks

b) With reference to S7 RDA: Kurrent Ltd is a manufacturer, and making a product in which a design is incorporated or to which it is applied is an infringing act.

1 mark (i)

You need to assess whether Kurrent's design produces a different overall impression on an informed user. The informed user is the end-user.

1 mark (ii)

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The shape of the plug is different (square vs round) and the location of the handles is similar but the configuration is not (2 versus 1 finger holes, and the pattern of the grip) (1 mark)(iii). Assuming not all of these features are excluded from protection for similar reasons as above (1 mark)(iv), and given the degree of freedom of the designer (0.5 marks)(v), arguably Kurrent's design creates a different overall impression on the informed user (0.5 marks)(vi).

3 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

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Answer

a) “literary work” means any work, other than a dramatic or musical work, which is written, spoken or sung, and accordingly includes

1 mark (i)

a table or compilation other than a database,

0.5 marks (ii)

a computer program,

0.5 marks (iii)

preparatory design material for a computer program, and

0.5 marks (iv)

a database

0.5 marks (v)

b) “dramatic work” includes a work of dance or mime.

1 mark (i)

c) “musical work” means a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music.

1 mark (i)

d) “artistic work” means:

a graphic work, photograph, sculpture or collage, irrespective of artistic quality,

1 mark (i)

a work of architecture being a building or a model for a building, or

1 mark (ii)

a work of artistic craftsmanship.

1 mark (iii)

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e) “graphic work” includes:

any painting, drawing, diagram, map, chart or plan, and

1 mark (i)

any engraving, etching, lithograph, woodcut or similar work

1 mark (ii)

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

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Answer

a) No infringement: s29(1C) (0.5 marks)(i): fair dealing for private study is not an infringement of copyright in a work (0.5 marks)(ii)

1 mark

b) yes there's infringement (0.5 marks)(i): s29(1) - research for commercial purposes (0.5 marks)(ii) is not fair dealing (0.5 marks)(iii) and copying is primary infringement (0.5 marks)(iv) and is not permitted (s16)

2 marks

c) No infringement (0.5 marks)(i): s30A - there's no infringement of copyright for caricature/parody (0.5 marks)(ii), which this sketch is likely to be classed as (0.5 marks) (iii).

1 mark

But that only applies if there is fair dealing of the work in question (0.5 marks)(iv)

1 mark

d) Yes there's infringement (0.5 marks)(i): s16(3) – indirect infringement is still infringement (0.5 marks)(ii)

1 mark

e) yes there's infringement (0.5 marks)(i): s17 – 2D reproduction of a 3D article is infringement (0.5 marks)(ii)

1 mark

f) yes there's infringement [or no with good following discussion] (0.5 marks)(i): s17 – copying of a dramatic work is reproducing in any material form (0.5 marks)(ii)

1 mark

there's infringement if the few seconds' worth can be considered to be a substantial part of the copyrighted work (0.5 marks)(iii). Discussion of whether the social media site is used commercially (0.5 marks)(iv).

1 mark

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g) no infringement (0.5 marks)(i) – s18(2): this is not an infringement if not for an economic or a commercial advantage (0.5 marks)(ii)

1 mark

Total: 10 marks

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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

Answer

a) The design application was filed in 1990, but the maximum term of a UK registered design is 25 years from filing (1 mark)(i). The registration has expired (1 mark)(ii). The person who filed the design is selling a product marked with the registration number, which will be deemed to be falsely representing the design as being registered (1 mark)(iii).

3 marks

b) S35 RDA says a person falsely representing a design as being registered is liable on summary conviction to a fine (1 mark)(i).

1 mark

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c) The amount of the fine payable would be higher (1 mark)(i).

1 mark

d) S35ZA RDA: It is an offence if a person intentionally copies a registered design exactly/substantially and sells a product to that design (1 mark)(i), knowing/believing the design is registered (1 mark)(ii) and without the design owner's consent (1 mark)(iii).

3 marks

e) They would be liable on conviction on indictment, to imprisonment for up to 10 years or to a fine or both (1 mark)(i) or on summary conviction to imprisonment for up to 6 months or to a fine or to both (1 mark)(ii).

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.

5 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

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¹Answer

Up to 2 points from the following:

- a) i) There may be UK UDR in the pumps (0.5 marks)(i), but
 - a. you need to ascertain how old the design is and when UDR came into being - UDR only lasts 10/15 years from first recordal in a design document (0.5 marks)(ii)
 - b. Splash presumably qualifies for UDR protection [No need to spell out requirements] (0.5 marks)(iii)
 - c. It is assumed the design was made by a Splash employee (0.5 marks)(iv)
 - d. UDR will not extend to “must fit” aspects of the design (0.5 marks)(v)
 - e. UDR will not extend to commonplace features of the design (0.5 marks)(vi)
 - f. UDR will not extend to methods of construction (0.5 marks)(vii)
 - g. UDR might vest in Fountain depending on when the agreement was made and whether it constituted a commissioning agreement (0.5 marks)(viii)

Up to 1 point from the following:

- a) There may be copyright in any (technical) drawings showing the design of the pump (0.5 marks)(ix)
- b) There may be copyright in any compilation of technical parameters, or written instructions, set out in the attachment (0.5 marks)(x)
- c) This assumes the drawings were made / document was written by Splash employees (0.5 marks)(xi)
- d) Assuming the designer / author is still alive or died in the last 70 years (0.5 mark)(xii)

¹ Candidates may have labelled Q7b as Q7j in their answer due to an error on the question paper.

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ii)

Up to 5 points from the following:

Assuming Sprinkle owns the UDR in the pump and copyright in the drawings:

If Fountain has produced a design document to provide to Sprinkle for the purpose of making Splash's pumps, it may infringe Splash's UDR (1 mark)(i). [S226 CDPA] If Sprinkle is manufacturing the pumps, it may be infringing Splash's UDR if it still subsists (1 mark)(ii).

Fountain may also infringe Splash's UDR by authorising Sprinkle to infringe - s226(3) (or might alternatively be a joint tortfeasor with Sprinkle). (1 mark for either)(iii)

Fountain may also infringe Splash's UDR by receiving the pumps back from Sprinkle and incorporating them into its fountains for onward sale - (s227(1) (b) and (c). (1 mark for either. Include "stocking" etc. as an alternative, but not additional, correct answer.)(iv)

Sprinkle will also infringe s227(1) (c) by supplying the pumps back to Fountain (1 mark)(v)

Under section 51 CDPA, it's not an infringement of copyright to make pumps to Splash's design or to copy Splash's pumps (1 mark)(vi). Even though technical drawings would constitute a design document under section 51 CDPA, the pump is not a work of artistic craftsmanship (1 mark)(vii).

However, if Fountain copied any of Splash's original drawings to supply to Sprinkle to ask it to quote for the work, that would be an infringement of copyright (1 mark)(viii).

b)

An ornamental fountain could be considered to be a work of artistic craftsmanship.

(Accept "sculpture" or speculation as to the existence of any surface decoration that qualifies for copyright)

1 mark (i)

So under section 51 CDPA there could be infringement of copyright by Sprinkle.

(Accept other differences resulting from copyright being the right at issue rather than UDR: e.g. "must fit" no longer being an issue, different historic rules on commissioned works etc.)

1 mark (ii)

Total: 10 marks

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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 CDR “Dealing with Community designs as national design rights” 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 CDR “Limitation of the rights conferred by a Community Design”.

4 marks

Total: 10 marks

Answer

a) A14 CDR: right vests in designer or successor in title

0.5 marks (i)

If there are 2 or more designers, the right vests in them jointly

0.5 marks (ii)

However, an employer will own a design created by an employee

0.5 marks (iii)

unless otherwise agreed or specified under national law

0.5 marks (iv)

b) A27(1): Unless provided for otherwise in the CDR (0.5 marks), a Community design as an object of property shall be dealt with in its entirety, for the entire Community (0.5 marks), as a national design right of the Member State (0.5 marks) in which the holder has his seat/domicile, or an establishment, on the relevant date (0.5 marks).

2 marks (v)

Where there are joint holders and more than one of them fulfils the above condition, the Member State is determined by a common agreement.

1 mark (vi)

Otherwise, the Member State is that in which the seat of the Office is situated (i.e. Spain).

1 mark (vii)

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c) A20 CDR (which applies to CRDs and CUDs) says rights conferred cannot be exercised in respect of:

- acts done privately and for non-commercial purposes
- acts done for experimental purposes
- acts of reproduction for citations/teaching in accordance with fair trade practices and if the source is mentioned
- equipment on ships/aircraft temporarily entering the Community
- importing into the Community spare parts and accessories for the purpose of repairing such craft
- execution of repairs on such crafts

1 mark for each to max 4 marks (viii)

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

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Answer

Marks are available up to a maximum of 10 from the following:

General points:

CUD lasts for 3 years from first public disclosure (0.5 marks)(i). Selling would make the articles available to the public (0.5 marks)(ii). CUD might exist if the articles are novel and have an individual character (0.5 marks)(iii).

UDR lasts 10/15 years (0.5 marks)(iv). But UK UDR only covers 3D not 2D products because surface decoration is excluded from protection (1 mark)(v).

Sarah:

Articles are about 3 years old. So there will be no CUD, or if it exists it'll be just about to expire (1 mark)(vi). She could in principle have UK UDR since we're well within the 10/15 year duration (0.5 marks)(vii). It's unlikely the fabric is textured enough to count as a 3D product and so there would appear to be no UDR protection in the fabric (0.5 marks)(viii). There could be UDR in the blankets and wall hangings made from the fabric (0.5 marks)(ix), but only in the 3D shape of the item, not due to the fabric used (1 mark)(x).

Marie:

It sounds like Marie is doing a similar thing as Sarah to weave materials together to form a fabric, but need to check (1 mark)(xi). Discussion of whether Marie's rugs/mats could attract UDR – are they 3D articles? (1 mark)(xii) Marie's only recently started selling and so is probably within the 3 year period (1 mark)(xiii). It may be unlikely there is novelty/IC in the overall shape of the rugs/mats, but we don't know (0.5 marks)(xiv). There may be novelty/IC in the woven pattern (0.5 marks)(xv) depending on how similar it is to Sarah's fabrics (1 mark)(xvi).

Discussion of possibility for Sarah/Marie to get registered design protection (1 mark)(xix)

9 marks max

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b) Sarah's designs are earlier but she probably has no rights to enforce against Marie (0.5 marks)(xvii).

Need to check what they designed together at college to see if Marie's designs are the same/similar to those giving her the right to carry on (0.5 marks)(xviii).

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

Answer

Maximum 10 marks available from the following:

- Michaela is potentially the sole owner for some of the registered designs (1 mark)(i).
- She is potentially the joint owner for some of the registered designs (1 mark)(ii).
- Need to determine if Michaela/Peter created the designs in employment, and if an employer would instead be the entitled owner (1 mark)(iii).
- For the registered designs Michaela could look to get the EUIPO register updated (1 mark)(iv):
 - to show entitlement proceedings have been initiated (in a national court) (v)
 - to show any change of ownership that is determined (1 mark)(vi).
- For the "other" designs she may be the owner of CUD (1) if we are within the three year duration but there's no action she can take at the EUIPO (1 mark)(vii).

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- An entitlement action needs to be taken with 3 years of publication of the registered design (1 mark) or 3 years of the first date of disclosure of the CUD (1 mark)(viii).
- However, the 3 year limit does not apply if Peter acted in bad faith when applying to register the designs/disclosing the other designs (1 mark)(ix).
- Michaela could apply for invalidation of the registered designs (1 mark)(x) she thinks Peter is not entitled to (1 mark)(xi)
- Only the person who thinks they're entitled (i.e. Michaela) can apply for invalidation on this ground (1 mark) (xii)
- She'll need to file a statement of grounds and pay a fee (1 mark)(xiii)
- She is free to use the designs she is able to invalidate or have recorded as hers(1 mark)(xiv).
- Before she can take action at the EUIPO she'll need to sort out entitlement at a national court (1 mark)(xv).
- There is a moral rights for a design to be named in design applications at the EUIPO. A remedy *might* be available in respect of this (1 mark) (xv) (Whether there is indeed a remedy is presently untested. No system is set out in the Regulation.

Total: 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

Answer

Maximum 10 marks available from the following:

A8 CDR: no protection available for features of the appearance of a product which are solely dictated by technical function. Spark plugs are probably almost entirely technical/functional, so no protection.

1 mark (i)

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A8 CDR: Bumpers have a function and features solely dictated by technical function are excluded from protection.

1 mark (ii)

There is perhaps some design freedom in the colour, material, size etc.

1 mark (iii)

A8 CDR also excludes features of the appearance of a product which must necessarily be reproduced in their exact form and dimensions (0.5 marks)(iv) in order to permit the product in which the design is incorporated or to which it is applied (0.5 marks)(v) to be mechanically connected to or placed in, around or against another product (0.5 marks)(vi) so that either product may perform its function (0.5 marks)(vii) ["must fit"]. Again, spark plugs and the fixings for bumpers would fall foul of this provision (0.5 marks)(viii).

2 marks max from those indicated above

A4 CDR says that a design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and to have individual character (1 mark)(ix):

(a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter (1 mark)(x); and

(b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and individual character (1 mark)(xi).

3 marks

"Normal use" shall mean use by the end user, excluding maintenance, servicing or repair work.

1 mark (xii)

Spark plugs and bumpers are parts of a car (0.5 marks)(xiii), and spark plugs are not visible in normal use and would fall foul of these exceptions as well (0.5 marks)(xiv).

1 mark

Total: 10 marks max

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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

Answer

Maximum 10 marks available from the following:

a) What can Mary do?

s8 RDA: registration was "several years ago" – check the registration is still in force – have all relevant renewal fees been paid?

1 mark (i)

Check registration has not expired – max duration, if all renewal fees are paid, is 25 years

1 mark (ii)

sue for infringement (0.5 marks)(iii) for acts in UK (0.5 marks)(iv). Offering, putting on the market, exporting and stocking products are acts of infringement under s7 RDA (1 mark)(v). He may be doing other acts e.g. manufacturing but we don't have that information (0.5 marks)(vi).

2 marks max

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What can George do?

Mary's approach would likely constitute a threat (0.5 marks) s26 RDA as George is most likely aggrieved (0.5 marks)(vii). The threat appears not to be in respect of making or importing (0.5 marks), so George could take action for groundless threats (0.5 mark)(viii).

2 marks

start an invalidity action on the grounds of novelty/individual character (s11ZA RDA).

1 mark (ix)

apply for a declaration of invalidity (s11ZB RDA).

1 mark (x)

Alternative mark available for discussion of similarity/overall impression (1 mark)(xii).

Alternative 0.5 mark available for mentioning the possibility to negotiate/licence (0.5 marks)(xiii).

b) if the product in question is a component part for use in a complex product (1 mark)(xiv), s7A(5) may apply: if products/parts are used for repair of a complex product to restore its original appearance, there is no infringement (1 mark)(xv).

2 marks