

Foundation Certificate

FC4 Design and Copyright Law

Wednesday 14 October 2020

14:00 to 17:00 UK British Summer Time (GMT + 1 hour)

Total time allowed: 3 hours 30 minutes

Starting from the time when you download the question paper, you have 3 hours 30 minutes in which to:

- Print this question paper (if wished)
- Answer the questions
- Take two screen rest breaks of 5 minutes each
- Save your Answer document to your hard drive as a pdf
- Upload your answer document to the PEBX system.

INSTRUCTIONS TO CANDIDATES

1. You should attempt **ALL** questions in Section A and any **three** questions in Section B.
2. The marks for each question in Section A are shown next to the question. Each question in Section B carries **20** marks.
3. If more than the required three questions are answered in Section B only the first three presented will be marked.
4. The total number of marks available for this paper is 100.
5. You must use the Answer document for your answers.
6. Do not attempt to change the font style, font size, font colour, line spacing or any other pre-set formatting in the Answer document.
7. Start each question on a new page. To begin a new page, press the control key and the enter key simultaneously.
8. When you begin a new question, type in the question number at the top of the page.
9. Do not state your name anywhere in your answers.
10. **Candidates who have been granted approval to handwrite their answers:** Instructions on what to do at the end of the examination are on the Candidate Cover Sheet.

This question paper consists of **7 sheets** in total, including this sheet.

AT THE END OF THE EXAMINATION

11. Save your Answer document to your hard drive and follow the instructions for uploading your document onto the PEBX system.

In this question paper the following annotations will be used:

- **UDR:** Unregistered design right (UK)
- **CRD:** Community registered design
- **CUD:** Community unregistered design
- **CDR:** Council Regulation (EC) No 6/2002 of 12 December 2001 on Community Designs
- **CDIR:** Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation EC No. 6/2002 Council Regulation
- **CDPA:** Copyright, Designs and Patents Act 1988
- **RDA:** UK Registered Designs Act 1949
- **EUIPO:** European Union Intellectual Property Office

Knowledge of Section/Article numbers is not required.

SECTION A

Question 1

In relation to CRDs:

- a) Set out the maximum term for deferred publication and from when it is calculated.
2 marks
- b) Explain the two stages required in the process of deferred publication, including what actions must be taken and by when.
5 marks

Total: 7 marks

Question 2

- a) State who is regarded as the author of a literary, dramatic, musical or artistic work which is computer-generated.
1 mark
- b) In accordance with the *CDPA*, when is an author regarded as unknown?
1 mark
- c) Explain what is meant by a work of joint authorship.
2 marks
- d) Describe a situation in which the author of a work is not considered to be the first owner of any copyright in the work.
3 marks
- e) Assuming moral rights exist and are asserted, under what circumstances does the author of an artistic work have the right to be identified?
3 marks

Total: 10 marks

Question 3

With regard to *Article 1C* of the *RDA*, what features of a design will not give rise to a registered design right?

3 marks

Question 4

Explain how the term of an unregistered design right is determined in the UK and EU.

6 marks

Question 5

What acts, in accordance with *Article 7A(2)* of the *RDA*, would not infringe the right in a UK registered design?

6 marks

Question 6

a) Explain the meaning of 'infringing article' as defined in relation to UDR.

4 marks

b) Explain what is meant by exhaustion of rights in relation to a CUD.

4 marks

Total: 8 marks

SECTION A Total: 40 marks

SECTION B

Question 7

In 2017, Woosie developed its first baby seat (seat 1) and registered CRD1 on 1 May 2017 to protect the design. Seat 1 was first sold in June 2017. Woosie continued to develop the baby seat and registered CRD2 to protect the design of its second baby seat (seat 2) on 2 November 2019. Seat 2 was first sold in January 2020.

CRD1 was filed with Computer Aided Design (CAD) drawings which depict seat 1 in grey. However, seat 1 was only sold in white. CRD2 was filed with black and white line drawings and included no shading or colour. Seat 2 was sold in grey and white.

Seat 1 and seat 2 included some common features and some differences. The common features included the shape of the base of the seat, the height of the back of the seat, the angle of the arms of the seat and a rim forming a handle around the edge of the seat. The main differences were the shape of the back of the seat, which was more rounded in seat 2, and the style of the arms of the seat, which were thicker in seat 2.

In March 2020, TotsRUs launched their new baby seat (TotSeat), which has a narrower and taller back than either of seat 1 or seat 2, a different shape of base than seat 1 or seat 2 and a slot forming a handle instead of a rim. The TotSeat was only sold in white.

- a) **Woosie has approached you for advice on enforcing their CRDs against TotsRUs. Write notes outlining points you need to discuss with Woosie. Include considerations of validity and scope of protection as well as infringement.**

14 marks

- b) **Consider whether any parts of seat 1 or seat 2 might give rise to UDR and what criteria would be required for the TotSeat to infringe such UDR. Assume that Woosie meets the qualification requirements for UDR.**

6 marks

Total: 20 marks

Question 8

Your client, Skool-Me, has created a new educational application 'App' for home-schooling, which is accessible via a smartphone, tablet or computer. The App was launched in January 2020 and contains purpose-made content in the form of pictures, photographs, stories and worksheets for a range of different class subjects (e.g. Literary, Numeracy, Art and History). The App is bright and colourful, and full of digital images to engage a child of primary-school age. There is also a consistent screen layout throughout, such that for each class subject there is an area for text, an area for pictures and an area for worksheets. Each area is presented within a distinctive cloud-shape. The worksheets are available as interactive online pages and can also be printed for completion offline. Navigation within the App is by way of a gently curved rainbow-coloured ribbon along the top of the screen, and each colour in the rainbow is labelled for access to a different class subject. When a subject is selected, the cloud-shapes turn the colour corresponding to that subject in the rainbow-coloured ribbon and the content is provided on the coloured cloud-shaped backgrounds. The layout and the class subjects remain constant, but the content is refreshed every week.

- a) **Explain how each of the various different parts of the App might qualify as a copyright work.**

6 marks

- b) **State the duration of copyright protection in each case and how this is affected if the author is unknown or if the work is computer-generated.**

4 marks

Total: 10 marks

A competitor, EdYOUcation, launched a very similar educational website in April 2020. Both Skool-Me and EdYOUcation are aimed at UK school curriculums.

- c) **Advise Skool-Me on the points that would need to be considered for infringement of their copyright and what remedies would be available.**

7 marks

Skool-Me are considering applying for some registered design protection in the UK and EU to supplement their copyright protection. However, they have a limited budget for this.

- d) **Advise Skool-Me on a benefit that registered design protection could offer over copyright protection and outline which parts of the App you would advise Skool-Me to consider registering and why.**

3 marks

Total: 20 marks

Question 9

You hold an initial meeting with a new UK client, KoffiKup, about a new coffee machine design which was first marketed by them in the UK in 2018. The coffee machine was designed by an Israeli company specifically for the UK market and KoffiKup have an exclusive licence to sell the coffee machine in the UK. However, a competitor, HotShot, has just launched a similar coffee machine in the UK and KoffiKup suspect that HotShot have copied their coffee machine design.

The KoffiKup coffee machine has a distinctive bubble-like body and every element of the machine, including all the buttons, has a bubble-shape. In addition, the body of the coffee machine has a bubble design printed on its outer surface.

No registered design rights have been applied for in relation to KoffiKup's coffee machine.

- a) **Explain the qualification requirements for UDR and discuss whether KoffiKup's coffee machine may meet these requirements.**

12 marks

- b) **Define the requirements that design features must meet for UDR and CUD to subsist and discuss whether any UDR and CUD may subsist in any aspects of the design of KoffiKup's coffee machine.**

6 marks

- c) **Identify which acts, if performed by HotShot, would constitute primary infringement of UDR.**

2 marks

Total: 20 marks

Question 10

Your client, Ava, has designed a wooden spoon with a distinctive decorative pattern etched into the handle. She intends to apply the same pattern to a number of spoons in a sterling silver cutlery set, for example, a teaspoon, soup spoon and tablespoon. Each spoon will have a different shape but all will incorporate the distinctive decorative pattern on the handle (these are referred to collectively as the spoon designs). She would like protection for the spoon designs in the UK, France, Germany, USA, China and Japan, minimising the initial cost as she is awaiting funding, which is expected in the next three months.

- a) **Explain the options for seeking protection in the countries of interest and the pros and cons associated with each option. Bear in mind the number of designs that may need to be filed to provide maximum protection.**

12 marks

- b) **Ava has heard that some countries have a grace period for filing a design application after the design is disclosed. Advise Ava on whether she is safe to rely on the grace period in view of her ambitions for her designs.**

2 marks

Ava is employed by Designeroo in the UK as a graphic designer and first created the wooden spoon design when Designeroo asked her to do so. As Designeroo have never been interested in making sterling silver cutlery, Ava decided to create the rest of the spoon designs in her own time and has filed an initial CRD application including all of the spoon designs, in her own name.

- c) **Advise Ava on the ownership of the spoon designs and whether any of the CRDs may be invalidated on this basis.**

3 marks

Ava's funding has fallen through and she decides to sell all of the spoon designs and associated rights to Designeroo to take them forward.

- d) **Explain what is required to transfer the spoon designs to Designeroo and update the Register of Community Designs.**

1 mark

Designeroo would like to use the distinctive decorative pattern, created by Ava, on other products for sale in the UK and several other countries. However, they do not wish to file any more registered design applications.

- e) **What rights might Designeroo have in the distinctive decorative pattern in the UK and overseas?**

2 marks

Total: 20 marks