

Design and Copyright Law FC4 (D&C)

Wednesday 19 October 2016 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 8 sheets, including this sheet.

In this question paper the following annotations will be used:

- **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 (formerly OHIM)

Question 1

Explain, with reasons, whether the following are protectable. In each case, assume there is novelty, individual character or originality, as appropriate. There is no need to discuss any issues relating to ownership or qualification requirements.

- a) **An application for a UK design registration for a logo for a pro-monarchy group including a portrait of the Queen in front of the Union Jack flag.**
3 marks
- b) **Copyright in an X-ray.**
2 marks
- c) **UK unregistered design right in a car door.**
4 marks
- d) **Community unregistered design right in a vehicle bumper sticker showing very offensive language.**
1 mark

Total: 10 marks

Question 2

- a) What is meant by 'exhibition priority' according to Article 44 '*Exhibition priority*' CDR?
3 marks
- b) What does an applicant for a Community registered design need to do if he wishes to claim exhibition priority?
2 marks
- c) What effect does exhibition priority have on the priority right provided by the Paris Convention for the protection of industrial property?
1 mark

Cont...

d) Explain:

i) What actions the EUIPO takes if it finds that a design is non-registrable; **1 mark**

ii) What action the applicant needs to take; and **2 marks**

iii) The possible outcomes of those actions. **1 mark**

Total: 10 marks

Question 3

In relation to a UK unregistered design right in a design created after 1 October 2014, explain whether the following would meet the qualification requirements under Section 217 '*Qualifying individuals and qualifying persons*' CDPA:

a) A designer who is an individual who lives in the US. **3 marks**

b) A company that employs a designer, the company being formed in accordance with Italian law. **4 marks**

c) A designer, resident in Japan, of a product embodying a qualifying design, the product having been first marketed in Spain. **3 marks**

Total: 10 marks

Question 4

Define the grounds for invalidity of registration of a UK registered design, according to Section 11ZA '*Grounds for invalidity of registration*' RDA.

10 marks

Question 5

Assuming no authority or licence to use has been granted, explain, with reasons, whether or not the following acts would constitute infringements of UK copyright.

- a) **A student photocopying a chapter of a book to help with her exam revision.**
2 marks
- b) **A social group watching a film from a DVD brought in from home by one of the members.**
2 marks
- c) **Re-issuing advertising materials to households in the UK that have already been distributed with the copyright holder's consent in France.**
2 marks
- d) **Importing poor quality copies of books into the UK for the purpose of reselling them at standard retail prices to make a profit.**
2 marks
- e) **Rewriting software for a mobile phone app that runs on one operating system into software that can run on a different operating system for a different make of mobile phone.**
2 marks

Total: 10 marks

Question 6

- a) According to Article 80 '*Community design courts*' and Article 81 '*Jurisdiction over infringement and validity*' CDR, what is a Community design court, and for what does it have exclusive jurisdiction?
6 marks
- b) If the owner of a Community registered design brought an action concerning infringement of his registered design against a third party, where would the action be heard if the Community registered design owner was based solely in the US and the alleged infringer is based solely in Canada? Give reasons to explain your answer.
4 marks

Total: 10 marks

Question 7

You receive a query from a UK company, Shakers Ltd, regarding their new design for a stackable condiment set (as shown in the drawings on page 7). The pepper shaker P is cylindrical and has a star-shaped bore. The salt shaker S has a disc-shaped base that is the same size as P and a star-shaped main body sized to fit within the bore of the pepper shaker. This allows the shakers to be stored together or used separately. Half-star shapes T adorn the shakers S and P and form whole stars when the shakers are stacked.

Discuss what UK unregistered design protection might subsist for the products S and P and for the features T under Section 213 ‘Design Right’ CDPA. (There is no need to discuss whether the statutory qualification criteria for design right protection are met.)

10 marks

Question 8

- a) According to Article 89 ‘*Sanctions in actions for infringement*’ CDR, what sanctions are available in an action for infringement, and under what conditions?

7 marks

- b) According to Article 19 ‘*Rights conferred by the Community design*’ CDR, a Community registered design confers on its holder the exclusive right to use it and to prevent any third party not having his consent from using it. What particular uses are mentioned?

3 marks

Total: 10 marks

Question 9

You receive the following email from one of your clients:

“I have, as you know, a UK registered design for my product. It’s been doing very well in the marketplace and I’m selling lots of products to that design. However, I have just received a query from a large company who want to be given permission to use my design – they want to include it in the systems they sell. They want to be the only ones allowed to use it. On the face of it, this sounds appealing as I’m considering closing my factory soon so I can concentrate on other things. However, I might want to manufacture it again later so don’t want to give up all rights to the design. I don’t really understand what implications this might have on my business. Can you please explain?”

Make notes that could form the basis of a response to advise your client on:

- a) **whether he can authorise the large company alone to use his design;**

3 marks

- b) **what the client should now do to arrange this; and**

2 marks

- c) **what advantages or disadvantages this would give him or the large company.**

5 marks

Total: 10 marks

Question 10

You have been contacted by Bob Smith, an individual who filed his own application for a Community registered design a few years ago. He tells you he has been enjoying success in selling his product and that he hadn't really thought about his design registration until one of his customers asked him about it. This spurred him into wondering if there was anything else he still needed to do, or whether his responsibility had ended when his design was registered. He told you he'd left the 'administration' to his wife, but she'd been ill over the last few months. He looked at the online register last week and saw his registration had lapsed. He tells you he filed his design application on 7 January 2011.

- a) **Make notes explaining to Bob why his registration has lapsed.**

3 marks

- b) **Advise him what actions he needs to take and by when to get his registration back.**

7 marks

Total: 10 marks

Question 11

You receive a query from a company, Go Away! Ltd, that has produced a pack for sightseers for various UK cities. The pack includes:

- a guidebook showing and detailing important landmarks;
- a CD or MP3 that they can listen to whilst walking around a city; and
- a DVD or MP4 that they can watch either before they go as preparation for their visit, or afterwards by way of a reminder of their trip.

- a) **Discuss what copyrights might subsist in the pack and identify the first owner of each copyright that subsists. (There is no need to consider whether the first owner is employed or whether there are any agreements in place relating to ownership or use.)**

9 marks

- b) **How is joint authorship defined in Section 10 '*Works of joint authorship*' CDPA?**

1 mark

Total: 10 marks

Question 12

Your client creates and produces items of snack foods in her small, family-run factory in Scotland. She has recently created a range of 'inside out' snack bars, which are available in a variety of interesting shapes. She has based her bars on puddings onto which a sauce is normally poured, but has instead placed the liquid in the middle of her bars. Her range includes a fruit crumble bar with custard inside, and a toffee flavoured bar with sticky toffee sauce in the middle. She considers the gooey filling to be an important feature. She has obtained a Community registered design but wants to know your opinion on its validity as she thinks it may be challenged.

- a) **Write notes on whether you think her products fall within the definitions of a 'design', 'product' and 'complex product' as specified in the CDR, and comment on whether the snack bars meet the requirements for protection set out in Article 4 '*Requirements for protection*' CDR.**

9 marks

Your client has other products in which she incorporates a secret, unusual ingredient, and she wants to know if she has copyright protection in her recipe.

- b) **Comment on whether you think any protection is available under the CDPA.**

1 mark

Total: 10 marks

For Question 7

