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<b>FC4</b>	<b>1 of 16</b>	<b>65%</b>

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Section A

Question 1

- <sup>✓1 (i)</sup> a) 30 months from effective filing date (priority date if claimed). <sup>✓1 (ii)</sup>  
<sup>✓1 (iii)</sup> b) Deferred publication must be requested at filing. A deferral fee is paid <sup>✓1 (iv)</sup>  
 instead of a publication fee.

<sup>✓1 (vii)</sup> Then, before 3 months from the date of expiry of the 30 month deadline,  
<sup>✓1 (v)</sup> publication must be requested and the publication fee paid. If this is not  
 done, the office will notify the applicant that the publication fee must be  
 paid and set a term for response not exceeding the end of the 30 month  
 deferral period.

If the fee is not paid, the application/registration will not have the effects under EU law.

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Section A

Question 2

- a) The person who created the conditions for the computer generated work to be created. ✓1 (i) 1
- b) When the author of a work cannot be identified. ✓1 (iii) 0
- c) A work which is the product of the contributions of two or more authors their individual contributions are not distinct. ✓1 (iv) 2
- d) Where the work was created by the author in the course of their employment. In this scenario the owner is the employer. ✓1 (v) ✓1 (vi) 2
- e) When the work is copied or issued to the public. ✓1 (viii)
- Where an adaption or translation of the work is made. 1
- When the work is performed, shown or played.

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Section A

Question 3

Features that are not visible during normal use. Where normal use is defined according to the end user and excludes repair or maintenance of the product.

Features that are dictated solely by their technical effect ✓1 (i)

✓1 (ii)

Features that must be produced in their exact proportions and placed in, around, or against another article such that either might perform their function are

✓1 (iii)

excluded from protection.

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Section A

Question 4

UK – UDR

The term of an unregistered right is fifteen years from the design first being  
 ✓0.5 (i) recorded or made by a qualifying person or, if the first sale of article according to  
 ✓0.5 (iii) the design is made within five years of the design first being recorded or made,  
 ✓0.5 (v) ten years from this sale.

10 years from the sale by a qualifying person in a qualifying country.

EU – Community Unregistered Design Right

✓0.5 (vii) The term is three years from the design first being disclosed within the  
 ✓0.5 (viii) community. ✓0.5 (ix)

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Section A

Question 5

Use of the design for:

private, non-commercial use ✓1 (i)

teaching and/or citation purposes, providing the use complies with fair dealing and the source is referenced ✓1 (iii)

Experimental purposes ✓1 (ii)

Use on ships or aircraft temporarily in the waters of the UK ✓1 (iv)

Importing articles according to the design for the repair of such ships or aircraft ✓1 (v)

Repairing such ships or aircraft. ✓1 (vi)

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Section A

Question 6

a) Infringing article in relation to UDR

It is an infringement to, for business purposes and without the permission of the proprietor of the right, to reproduce articles according to the design, or to make design documents that can be used in the replication of the design.

Authorising a third party to do the above is also infringement.

Infringing articles are articles made by the above process and that are the same as, or substantially the same, as the articles protected by the design. The articles will create the same overall impression on the informed consumer as protected design.

1

b) Exhaustion of rights in relation to a CUD

A proprietor exhausts their rights when they put on the market within the EEA, or allow to be put on the market (i.e. give their permission) articles according to the design.

It is not an infringement of the proprietor's rights to subsequently deal with such goods, even for commercial purposes unless the proprietor has good reason to resist further commercialisation, such as severe modifications that might affect safety and therefore the reputation of the proprietor.

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Section B

Question 7

a)

✓0.5 (i)

The renewal period is five years from registration and so there have been no renewals to pay. The maximum term for the CRD is 25 years. Therefore both applications are still in force and were in force when the potential infringement by TotsRUs began.

Validity

Seats 1 and 2 include some common features and some differences. There is a risk therefore that CRD2 may be invalid on the grounds that it does not create a different overall impression over the disclosure of seat 1. A different overall impression from the earlier disclosures is required for a design to be valid.

✓0.5 (xv)

Both CRD1 (registration date 1 May 2017) and the first sale of seat (June 2017, before 12 month grace period) will count as earlier disclosures when assessing the validity of CDR2.

✓0.5 (xii)

✓0.5 (xiii)

✓0.5 (xiv)

Any assessment has to take into account the degrees of freedom that the designer had. For example, the shape of the base of the seat may not be considered if the degrees of freedom are limited by the shape of the car seat onto which it must fit.

✓0.5 (xxv)

In addition, features that are solely dictated by technical effect are not afforded protection and are excluded from any assessment of validity. Therefore, any features dictated solely by the safety of the child will not be taken into account.

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CRD2 was filed with black and white line drawings, therefore the design scope is not limited by colour. ✓0.5 (ix) Colour cannot act as a point of novelty over CRD1, which is limited to grey colour. ✓0.5 (v)

The differences between CRD1 and CRD2 are limited to the back of the seat being more rounded and the arms being thicker in CRD2. The arms being thicker may not alter the overall impression created by the design. ✓0.5 (xviii)

The common features are the shape of the base of the seat, the height of the back of the seat, the angle of the arms and a rim forming a handle around the edge of the seat.

Given that the TotSeat design has a different shape of the base, it seems there are at least some degrees of freedom here. This feature, combined with the angle of the arms and the height of the back will have a strong impact on the overall impression. ✓0.5 (xxvi) The rim feature also sounds distinctive and will probably also contribute significantly to the overall impression. This is especially true as it is on the rim of the seat.

From the information provided it seems that the key features of the designs of CDR1 and 2 are very similar and the two designs might not create a different overall impression. ✓0.5 (xxii) It is likely that CDR2 is not valid. ✓0.5 (xxiii)

If Woosie wish to prosecute TotrRUs on the basis of CRD2 they should be aware that it might not be valid. If an infringement is action is brought on the basis of CDR2, TotsRUs is likely to launch a counter action for invalidity. Therefore, it would be risky to rely on this right alone.

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### Scope of protection

As noted above, CRD1 is limited to grey seats due to the colouration of the CAD drawings they used as representations in their filings. Seat as sold is not therefore covered by CRD1 which was registered to protect it. ✓0.5 (vi)

CRD2 has no colour limitation.

### Infringement

An article infringes an earlier right if the article fails to create a different overall impression on the informed consumer, taking into account the degrees of freedom available to the designer. ✓0.5 (xxiv)

We are told that the Totseat differs from Woosie's designs in that there is a different seat shape, the height and width are different, and there is a slot instead of a rim forming a handle. In addition, the seat is sold only in white whilst CRD1 is limited to grey seats. ✓0.5 (xxviii)

There seem to be quite a few differences between the seats, and many of these differences will change the outline of the chair, meaning it might have quite a different look, even to the informed consumer.

In addition, the only design registration that we know to be valid is limited to a different colour.

It is therefore unlikely that an infringement action based on the designs will be successful against TotsRUs. Certainly there is no certainty of success. ✓0.5 (xxix)

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If CRD2 was relied upon, which it might be if it is decided it is valid as there is a broader scope of colours covered, TotsRUs might have prior user rights if they were making serious preparations to make or sell articles according to the TotSeat design. Given, that the registration of CRD2 and the first sale of the seat by TotsRUs are close, this has to be considered. ✓0.5 (xxvii)

8.5

b)

✓0.5 (xxxvi)

Seat 1 will have UDR. Seat 2 may have UDR depending on whether it has independent character over Seat 1 (both the first marketing and the registered design). ✓0.5 (xxxviii)

To infringe these rights TotsRUs would have to, without the permission of the proprietor (which we assume they don't have) and for business purposes (they are selling the chair so yes) reproduce the design or produce design documents that could be used to reproduce the design, or authorise a third party to do any of the above. This would be primary infringement. ✓0.5 (xxxxxi)

They also infringe the UDR if they import or export infringing articles, sell or rent, or offer to sell or rent infringing articles, or use infringing articles in the course of business.

There is a copying requirement for UDR. It is not clear that TotsRUs have done this.

1.5

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Section B

Question 8

a)

✓0.5 (i)

The computer code behind the app will be protected as a literary work, as will any preparatory documents made in the development of the code.

The stories will be protected as literary works. ✓0.5 (iv)

✓0.5 (iii)

The photographs will be protected as artistic works, specifically, photographic works.

✓0.5 (ii)

✓0.5 (xii)

✓0.5 (xi)

The pictures, gently curved rainbow, and distinctive clouds (of all colours) will be protected as artistic works, specifically graphic works.

✓0.5 (x)

✓0.5 (ix)

The screen layout and the worksheets will be protected as a typographical work.

Presumably, all of the information contained in the app is arranged as a database. This will be protected as a literary work, specifically as a database.

4

b)

In most cases, the length of the protection is 70 years from the end of the calendar year in which the author dies. ✓0.5 (xiii)

✓0.5 (xiv)

The exceptions are the typographical works, which are protected for 25 years from publication.

✓0.5 (xix)

If the work is computer generated, the period of protections is 50 year from the end of the calendar year in which the work was made. ✓0.5 (xx)

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c)

Primary infringement

Infringement may be found if another party, without the permission of the proprietor copies; issues to the public; rents or lends; performs, shows or plays; adapts, or otherwise communicates the work or a substantial part of the work.

Secondary Infringement

It is secondary infringement to

Import or export infringing copies,

provide tools or facilities for the performing of an infringing act where the owner of the tools or facilities knew or reasonably believed the work to be a protected work.

Exceptions

There is an exception on the use or making copies of a work for educational purposes that are non-commercial. Use of material for educational purposes is allowed so long as the practice complies with fair use. However, if EdYOUcation are selling their app to schools, this is not likely to comply with fair dealing.

Remedies

Any remedies available under other intellectual property law, including:

An injunction against further use

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✓0.5 (xxxii)  
Damages/ account of profits ✓0.5 (xxxiv)

Delivery up/ destruction of infringing copies

Publication of the judgement at the defendant's expense

d)

Unlike unregistered UK rights, Registered UK rights can always be asserted, even where the potentially infringing act is also an infringement of existing copyright.

There is also no copying requirement for infringement of registered design rights. ✓0.5 (xxxvi)

Registered design rights protect the overall look of a product, therefore they can only be applied for the more visual works that Skool-Me has created. As the layout remains constant, ✓0.5 (xxxvii) protecting the layout with registered design rights would ✓0.5 (xxxviii) give Skool-Me long term protection for an important part of their product. The ✓0.5 (xxxix) distinctive cloud that forms part of their layout should provide the individual character required for registration.

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Section B

Question 9

a)

✓0.5 (i)

✓0.5 (ii)

To qualify for UDR, the design must be made by a qualifying person.

✓0.5 (vii)

This means that the person is a natural or legal person having their place of residence or establishment in a qualifying country. Qualifying countries are the UK and dependencies (e.g. Isle of Mann), an EU country, a member of the EEA or a county providing reciprocal rights to UK national (e.g. New Zealand or Hong Kong).

✓0.5 (v)

✓0.5 (vi)

✓0.5 (x)

✓0.5 (xi)

✓0.5 (xii)

✓0.5 (xiii)

Where the designer is the owner, qualification is on the basis of the designer.

✓0.5 (iii)

Where the owner is an employer, qualification is on the basis of the employer, not the designer.

Where there is joint ownership of the rights, only one owner needs to qualify for protection.

Where there is no qualification by the above means, qualification is where the product is first marketed in a qualifying country by a qualifying person.

✓0.5 (xiv)

✓0.5 (xvi)

✓0.5 (xv)

The machine was designed by an Israeli company. Israel is not a qualifying country and the design does not qualify for UDR by virtue of the designer.

✓0.5 (xvii)

✓0.5 (xxi)

✓0.5 (xxii)

However, the machine was first marketed in the UK (a qualifying country) by a qualifying person (KoffiKup is a UK company). Therefore the coffee machine meets the requirements to qualify for UDR in the UK.

✓0.5 (xxiv)

✓0.5 (xxiii)

b)

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CUD

✓0.5 (xxxiv)

To qualify for CUD protection design features must be novel and have individual character. Individual character means the design creates a different overall impression on the informed user, where this assessment accounts for the degrees of freedom available to the designer.

Unregistered community design rights only protect features that are visible in normal use as defined by the end user (excluding repair and maintenance).

Features that are solely dictated by technical function are excluded from protection.

Features that must be produced in their exact proportions and placed in, around, or against another article such that either might perform their function are excluded from protection.

UDR

To qualify for UDR protection design features must be novel and have individual character. Individual character means the design creates a different overall impression on the informed user, where this assessment accounts for the degrees of freedom available to the designer.

✓0.5 (xxx)

2D designs are not protected, so surface decoration is excluded.

Must fit features are excluded. This means features that must be produced in their exact proportions and placed in, around, or against another article such that either might perform their function are excluded from protection.

✓0.5 (xxviii)

Must match features are excluded. ✓0.5 (xxix)

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Features dictated solely by technical function are excluded.

However, there is no requirement for UDR protection that features be visible during normal use.

Aspects of the coffee machine that are protected

UDR and CUD may subsist in the bubble-like body of the machine and in the bubble shaped bubbles. ✓0.5 (xxxii)

CUD may subsist in the bubble design printed on the outer surface. UDR will not subsist in this surface pattern. ✓0.5 (xxxvi)

UDR may reside in every element of the machine, including elements that are not visible in normal use as defined above. CUD will not subsist in the components that are not visible during use.

c)

Primary infringement of the UDR is where a third party, who does not have the permission of the proprietor, reproduces articles according to the design or makes design documents suitable for use in the reproduction of the design. It is also primary infringement to authorise another party to do these acts without the permission of the proprietor. The above must be performed for business purposes and copying of the design must occur.

✓0.5 (xxxvii)

✓0.5 (xxxviii)

✓0.5 (xxxix)

✓0.5 (xxxix)

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