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<b>FC4</b>	<b>1 of 15</b>	<b>54%</b>

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Q1

- a) Deferred publication is available for up to 30 months from the filing date or earliest priority date if priority was claimed. ✓1 (i)
- b) Deferral of publication must be requested at the time of filing, including paying a deferral fee. Publication of each design must be requested including paying the publication fee. The publication request must be at least three months before the required publication date, and at least 3 months before the end of the 30 month period. ✓1 (ii) ✓1 (iii) ✓1 (iv) ✓1 (v) ✓1 (vii)

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Q2

- a) The author of a work which is computer generated is the person who put in place the arrangements for the work to be produced. ✓1 (i)
- b) An author is regarded as unknown when the work is published without an author having being identified.
- c) A work of joint authorship is a work created by two or more persons where the individual contributions of each person cannot be distinguished from each other. ✓1 (iii) ✓1 (iv)
- d) The author of a work is not the first copyright owner if the work is created in the course of employment, or other agreement where the work was created for hire. ✓1 (v)
- e) The author of an artistic work has the right to be identified as the author any time the work is put on sale, performed or communicated to the public unless they have waived that right. ✓1 (viii)

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Q3

Design right does not subsist in:

Features relating to a technical function. ✓1 (i)

Features in the shape or form that are required to match another object or be placed against another object so that they fit together in use. ✓1 (ii)  
But this does not exclude features that enable objects to be fitted together such as in a modular form.

Features that are required to match the appearance of another object.

Features that are not visible during normal use.

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Q4

A UK unregistered design right lasts from 15 years from the date the design was first recorded, or if placed on the market, 10 years from the date it is placed on the market if that is earlier. ✓0.5 (ii) ✓0.5 (iv) ✓0.5 (v)

An EU unregistered design right lasts for three years from the first date the design was made available to the public in an EU member state. ✓0.5 (vii) ✓0.5 (viii) ✓0.5 (ix)

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Q5

A UKRD is not infringed by acts which would otherwise infringe if:

They are performed for experimental purposes, ✓1 (ii)

✓1 (iii)

For the purpose of education or citation, providing that the use complies with fair use and does not unduly detriment the design owners business.

Use privately and for non commercial purposes. ✓1 (i)

Use on a ship or aircraft registered in another country temporarily in UK waters or land. ✓1 (iv)

The supply of spare parts for a ship or aircraft registered in another country temporarily in UK waters or land. ✓1 (v)

The repair of a ship or aircraft as above. ✓1 (vi)

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Q6

- a) An infringing article is a product made to the design or substantially to the design, or a design document describing the design, where the product or document was produced as a result of copying the design. ✓1 (i) 1
- b) Rights in a CUD are exhausted in an article that is put on the market in any EU member state. ✓1 (vii) This means there is no infringement of the design right if the same article is used or sold elsewhere in the EU. ✓1 (v) 2

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Q8

a)

Assuming the content is all original, as it is purpose made:

Computer programme that runs the app is a literary work. ✓0.5 (i)

✓0.5 (ii)

Pictures are graphic works, which includes paintings, drawings, diagrams, plans, maps and charts.

Photographs are artistic works. ✓0.5 (iii)

Digital images may be artistic works and graphic works.

✓0.5 (iv)

✓0.5 (ix)

Stories and worksheets are literary works

The Stories might also be dramatic works, depending on their format.

The layout of the screen is a typographical arrangement. ✓0.5 (x)

3

b)

Copyright in:

✓0.5 (xiii)

literary and artistic works last for 70 years from the end of the year of

death of the last known author. ✓0.5 (xiv)

Typographical arrangements for 50 years from publication.

If the author of any of the works is unknown, for 50 years from publication.

If the work is computer generated, copyright belongs to the person who put in place the arrangements for the computer to generate the work and so lasts 70 years or 50 years from their death.

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c)

In order for EdYOUcation (EY) to be infringing copyright, it will be

✓0.5 (xxiii)

necessary to show that they have copied the content they are providing.

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Although the work is very similar, we would need to find specific parts of the content that appear to be directly copied. Some similarity would be expected as both Apps are aimed at the same UK school curriculum. The ideas expressed in the subject matter will not be protected, but the expression of those ideas will be as long as the expression is original.

In terms of the original works, if at least a substantial part of the work has been copied then we can take action for infringement. ✓0.5 (xxix)  
✓0.5 (xxviii)

There is an exception for education or citation purposes, but this requires that the copying is only the minimum necessary and meets fair trade and does not unduly detriment the copyright owner. This is not the case here as EY are in direct competition.

It can be assumed that EY have had access to see your work, as it is published.

Once we have identified parts of the work that appear to be copies, we can start action against EY.

We can apply for an interim injunction to prevent them using any infringing works if copying is evident.

If we are successful in showing infringement, then we can ask for:

✓0.5 (xxxiii)  
An injunction to stop using the material.

Offering up and destruction of the infringing material, or equipment or materials used to produce it.

✓0.5 (xxxiv) ✓0.5 (xxxii)  
An account of profits made by EY using the infringing works, or damages based on losses you have incurred.

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As the copying was carried out commercially in the course of a business, the copying would be a criminal offense.

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d)

Registered design protection would provide the exclusive right to use the design, which would include shapes, lines, colours and ornamentation.

You could take action against anybody making or using a product which gave the same impression to an informed user.

You would not need to demonstrate that any product had been produced by copying. ✓0.5 (xxxvi)

However, the design would only be valid insofar as the elements of the design are new and distinctive.

DR would last up to 25 years as long as renewals are paid every 5 years.

The content that is refreshed every week would not benefit from a design right, but the consistent screen layout, including parts such as the distinctive cloud shape and/or the rainbow. ✓0.5 (xxxvii) ✓0.5 (xxxviii) ✓0.5 (xxxix) ✓0.5 (xxxx)

Each registered design would incur an additional cost, but you could register the overall layout with its distinctive shapes as a black and white representation. You could also consider registering the rainbow and the clouds as a design in colour showing the different implementation of the design when the colours change. ✓0.5 (xxxxi)

As the budget is limited, you can file a UK registered design first, within twelve months of its first public disclosure in January 2020, i.e before January 2021. An EU RD application can be filed claiming priority from the

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UK registration withing six months, by providing a certified copy of the UK registration and the date and registration number on filing the EU application. If your website is not relevant outside the UK then you could save money but sticking to UKRD only. However as Brexit may affect your ability to file an EU RD once the UK has left, you might also want to consider whether you want to develop the EU market and obtain an EU registration before that happens.

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Q9

a)

To qualify for UKRD a product must have been designed by a designer ✓0.5 (i)  
that is habitually resident in the EU, or for a company that has facilities in ✓0.5 (v) ✓0.5 (xii) ✓0.5 (vii)  
✓0.5 (ix) ✓0.5 (xiv)  
the EU, or be first put on the market in the EU by a person that has a  
domicile in the EU or is habitually resident there. As the Israel company  
designed the coffee maker for the UK market specifically, and KoffiKup  
(KK) have an exclusive license to sell in the UK, it can be assumed that  
this design was not put in the market earlier or by anybody else, nor  
anywhere else in the EU. ✓0.5 (xxii)

✓0.5 (xxiii)  
Therefore KK are entitled to the UDR and CUD. The UDR lasts for 10  
years from first putting on the market, and the CUD for 3 years from first  
disclosure to the public in the EU, so both rights would still be in force as  
of today, as it is less than three years since 2018..

b)

For UDR in UK, the only features that meet the requirements are the new  
and distinctive shape of the product. ✓0.5 (xxxii)

In this case the bubble like body would qualify as it is distinctive. The  
bubble shape of the buttons and other elements of the machine may be  
considered commonplace, as bubble shape implies a circle or sphere  
which are common design elements for buttons. The arrangement of the  
buttons may qualify if it is new and distinctive. The printed bubble design  
would not qualify as it is surface decoration. ✓0.5 (xxx)

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For CUD rights, the surface decoration may also qualify for protection if it is new and distinctive. ✓0.5 (xxxvi)  
 ✓0.5 (xxxiv)

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c) Primary infringement of the UDR constitutes making a product to the design, or substantially to the design, if the product arises through copying the design. Primary infringement would also include making a design document showing the design, if that arises from copying. ✓0.5 (xxxvii) ✓0.5 (xxxix) ✓0.5 (xxxviii)

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Q10

a)

The distinctive pattern is not protected by UDR in the UK. However, it is protected by CUDR as ornamentation, but with Brexit approaching it is not a good idea to rely on this for protection.

The distinctive pattern can be registered as a design as ornamentation only. This would protect the design in any application. For full protection, each shape of spoon incorporating the design should be registered, as these are all in the same Locarno class there is no obstacle to doing this as a multiple design application.

In order to defer costs until the funding is available, a UKRD application can be filed including both the spoon designs for each shape of spoon, and the ornamentation design itself. This could include both sterling silver and wood as the materials of the designs.

Before the expiry of the 6 month priority period, individual application could be filed in each of the countries, claiming priority from the UK registration, providing the reg. number, certified copy, date of filing.

Alternatively an EU RD application would cover UK, FR and DE, but would require two applications because ornamentation is a different class to spoons. This could either be a first application or a priority application, however it is more costly than the UK filing.

The recommended option is to file a Hague protocol application claiming priority from a UK registration via the UKIPO to WIPO, which would start the registration progress for all the countries required if they are

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designated in the application. This defers the cost of foreign filings until after the funding has arrived, and avoids the need to employ agents in USA, CN and JP to make national filings. ✓0.5 (xvi)

b. ) The grace period allows you to register an application within 12 months from first public disclosure of the design by yourself, or by another if the disclosure is abusive. This prevents your own design being used as prior art to stop the design being considered new. However if another party copies your design during this period, you would have to rely on copyright or unregistered design rights to take action against them, and any disclosure of a similar design by the other parties may be used as prior art against your registration. ✓0.5 (xxv) ✓0.5 (xxvi)

Once your design is registered you have an exclusive right to use the design, and can take action against a party that uses a similar design that creates the same overall impression on an informed user, even if they do not copy. 1

c.) When a design is made by a designer in the course of employment, the design rights belong to the employer in the absence of any other agreement. We don't know whether any other agreement existed, ask Ava whether Designeroo (D) agreed that she could use the distinctive pattern? If Designeroo are entitled to the design right to the distinctive pattern, then the CRD for the ornamentation would be invalid. They may also be entitled to the rights to a spoon incorporating the distinctive pattern, but not the silver spoons or the different shapes of the spoons. ✓0.5 (xxix) ✓0.5 (xxx) ✓0.5 (xxxii) ✓0.5 (xxxiv) ✓0.5 (xxxv)

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d) Ava needs to make an assignment contract to transfer ownership of all of the designs to D, signed by the assignor, and notify the EU design office of the change of ownership, providing the evidence of transfer and requesting that the register be updated. ✓0.5 (xxxv)

e) D own the copyright in the distinctive pattern if it can be considered an artistic work. This copyright protection is available in all member countries of the Berne convention. ✓0.5 (xxxvi)

They also own the unregistered community design right in the ornamentation. If the ornamentation had been filed as a separate class for CRD, then this registered design would now belong to D, but as only "an" application was made, it appears not as CRD with multiple designs must all be in the same class.. ✓0.5 (xxxvii)

Designeroo may be able to apply for a trademark incorporating the distinctive pattern as a sign.

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