

Question 1

- a) – Can claim priority from an earlier filing for the same design with the same owner, by 6 months ✓1(i) from the date of filing of the earlier filing.

(CRD: Date of reg = date of filing)

- All 6 CRDs appear to have been filed less than 6 months ago, so can claim priority from each. ✓1(ii)
- Need to be the same owner/applicant to claim priority → so need to first assign the CRDs to the client.
- Assignment must be in writing and signed by the assignor to be valid.
- Request change of name on CRD register.

Option 1

- File a multiple UK Reg Design ✓1(iv) application containing all 6 designs. Do not need to be in the same Locarno Class for UK multiple design applications.
- File within 6m of the filing date of the CRDs.
- Claim priority to the 6 CRDs on filing., indicate country ✓1(vi) (EU) and date ✓1(v) of filing for each
- On filing or within 3m of filing, provide a certified copy of each CRD ✓1(viii) and the application number ✓1(vii) of each CRD.
- File translation of priority document into English if the CRD is not in English, also within 3m of filing.

Option 2

- File 6 separate UKRD ✓1(iii) applications corresponding to each of the 6 CRDs.
- File each within 6m of the filing date of the corresponding CRD.
- Claim priority on filing for each, provide country of filing (EU) & date of filing for each CRD

- On filing or within 3m of filing, provide a certified copy of each CRD and provide the application number of each CRD.
- File English translation of priority documents if CRD is not in English, within 3m of filing.
- b) – Request change of the name/owner of the CRDs on the register, ✓1(ix) to the client's name.
- Request in writing., show evidence of an assignment, ✓1(x) ask client for evidence.

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MARKS AWARDED 10/12

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Question 2

- Automatic protection of copyright works, no registration process
- The Berne Convention enables works from the country of origin to be recognised in the same way as a national copyright work ✓1(ii) of another country in the Convention. ✓1(i) (same rights)
- The duration of protection may be limited to that available in the Country of Origin i.e. if the country of origin provides for a longer term of protection, the owner is entitled to that length of term, regardless of the term provided in another country.
- Right of the author – moral rights

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MARKS AWARDED 2/5

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Question 3

a) Reproduction :

- making articles to that design ✓1(ii)
- making a design document recording the design for the purposes of enabling articles to that design right to be made.
- Copying ✓1(i) – exactly ✓0.5(iii) to the design
– or with only immaterial differences. ✓0.5(iv)

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b) The owner has the exclusive right to reproduce the design ✓1(v), and prevent another party from reproducing in the course of business the design, without a licence from the owner

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c) Primary Infringement :

A person infringes a design right, if they reproduce the design ✓0.5(xi) in the course of business, without a licence ✓0.5(vii) from the owner.

Reproduce : –

- Making articles to the design
- Making a design document recording the design for the purposes of enabling articles to that design to be made, When they know, or it is obvious to a reasonable person in the circumstances that such reproduction would constitute an infringement of the design right

Secondary Infringement :

A person also infringes if they do any of the following, without a licence from the owner :

- Import ✓0.5(xii) into the UK for commercial purposes
- Have in their possession ✓0.5(xiii) for commercial purposes,
- Sell ✓0.5(xiv) or let for hire, ✓0.5(xv) or offer ✓0.5(xvi) or expose ✓0.5(xvii) for sale or hire,

an article, which is, and they know is or have reasonable grounds for supposing is an infringing articles.

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MARKS AWARDED 8/11

Question 4

- They reasonably believed that the registered design was invalid. ✓1(i)
- They reasonably believed that they were not infringing. ✓1(iii)
- Show that the copying was not intentional.
- The alleged infringing articles were created by independent design.

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MARKS AWARDED 2/3

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Question 5

a) Graphic Work :

- Map, ✓0.5(iv) drawing, ✓0.5(ii) diagram, ✓0.5(iii) chart, ✓0.5(v) plan, ✓0.5(vi) photograph
- Engraving, ✓0.5(vii) etching, ✓0.5(viii) lithograph, ✓0.5(ix) woodcut ✓0.5(x) or similar work. ✓0.5(xi)

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b) Photograph :

A recording of light or other radiation ✓1(xii) on a medium ✓1(xiii) on which an image is produced, ✓1(xix) or from which an image may by any means be produced, other than a film ✓1(xv)

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MARKS AWARDED 9/9**Question 6**

a) CRD registered 01/04/14.

Check that the registration is still in force. ✓0.5(iv)

CRD term of protection is 5years from date of registration. ✓0.5(vi) → which would be 01/04/2019 → expiry date./renewal date.

- Check if renewed.
- If not renewed, currently within the 6month grace period ✓0.5(vii) for late renewal. (6months from the end of the calendar month in which the renewal date falls due)
→ 31/10/2019. ✓0.5(viii)
- Pay the renewal fee + late renewal fee
- can only enforce a CRD if it is still in force. ✓0.5(iii)
- Waistgrows will infringe if their product does not produce a different overall impression on the informed user to the CRD held by Wholesome.Chocolate (WC) Informed user considers degree of freedom of designer

- WC's representation in their CRD is a colour photo of a white chocolate slab, with the cloud silhouette.
 - Waistgrow's chocolate are white chocolate slabs with a cloudy silhouette.
 - They have a foamy texture.
 - The appearance of Waistgrow's chocolate is similar to the CRD.
 - The foamy texture appears not to be visible, could only be determined upon eating?
 - If the foamy texture is not visible, then Waistgrow's chocolate would infringe WC's CRD as it would not produce a different overall impression on the informed user. ✓0.5(ix)
 - Waistgrow are manufacturing in Ireland which is in the EU. ✓0.5(xviii)
 - Manufacturing in EU is primary infringement, so WC could bring infringement proceedings against Waistgrow. ✓0.5(xvi)
 - Check when Waistgrow started manufacturing.
 - There is no intervening rights for good faith infringement when late renewal was possible in the grace period.
 - WC may not be able to enforce the CRD against Waistgrow if Waistgrow change the colour of their chocolate to milk or dark chocolate. The CRD representation is a photograph, which may limit the scope of protection to white chocolate only.
- b) – Disclosure of the picture of WC's product on the blog from 2012.
- Appears to be similar to the representation shown in their CRD.
 - May destroy the novelty of their CRD if identical ✓0.5(xxxi) or differing only in immaterial ✓0.5(xxxiii) details
 - Or if similar, may not have individual character ✓0.5(xxx) over this disclosure.
 - Blog is a well-known food blog, seen by many people, with over 100 comments..

- Appears not to be an obscure disclosure i.e. reasonably have become known, ✓0.5(xxv) in the course of business, ✓0.5(xxvi) to the circles, within the sector concerned ✓0.5(xxvii) operating within the Community. ✓0.5(xxviii)
- RCD has a 12m grace period before the filing date, for disclosure by the designer or from information obtained from the designer.
- The blog was in 2012 so the disclosure appears to be earlier ✓0.5(xxi) than 12m ✓0.5(xxii) before the filing date of 01/04/2014. ✓0.5(xxiii)
- Therefore this disclosure could be prejudicial to the validity of the RCD, ✓0.5(xxix) on lack of novelty ✓0.5(xxxii)/Individual character. ✓0.5(xxxiv)
- Therefore if they decide to bring infringing proceedings against Waistgrow, they could be vulnerable to a counter claim for invalidity. ✓0.5(xxxviii) on grounds of lack of novelty/Individual character

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MARKS AWARDED 11/20

Question 8

- a) Unregistered rights.

UDR

- Protects an aspect of the shape or configuration of the whole or part of an article
- UDR subsists from date of recordal in a design document or date of articles being made to the design. → Subsists from launch of the watch by WatchIt.
- 15y from date of first recordal.
- Cannot protect surface decoration in UDR
- UDR would therefore not subsist in the dial surface print. ✓0.5(iii)
- UDR may subsist in the composition element i.e. impossible time, if this is not surface decoration.

- UDR could subsist in the overall shape of the watch dial, however, as this appears to be a generic shape, it is unlikely to be original, and appears to be commonplace ✓0.5(ii) in the design field in question, in a qualifying country.

CUD

- Surface decoration is not excluded under CUD. ✓0.5(iv)
 - Length of protection is 3y ✓0.5(x) from date of first disclosure in the EU. ✓0.5(ix)
 - The surface decoration - surface print of the watch could therefore be protected by CUD. ✓0.5(v)
 - The dial shape again appears to be generic and would not have the novelty required for CUD. ✓0.5(vi)
 - The impossible time feature may be protectable by CUD if it is not excluded under the technical function exclusion.
- b) – The watch was launched 10 months ago.
- Both UKRD and CRD have a 12m grace period – preceeding the filing date for the designer's own disclosure.
 - The launch of the watch appears to fall within this time limit. ✓1(xxi)
 - The design could still be registered in UK and EU ✓1(xxii) as long as applications are filed within 12m of date of first disclosure. ✓1(xxiii)
 - Surface decoration is not excluded from protection in UKRD or CRD.
- c) – Check where the watches sold by the outlet are marketed, appears to be from abroad.
- Offering to put on the market ✓0.5(xxxii) is an act of primary infringement of UKRD or CRD. or CUD., which is what the outlet are doing.
 - If watches were put on the market outside the EEA, WatchIt can still prevent the products from entering the EEA, there is no exhaustion of rights.
 - WatchIt's watches have already been put on the market in the UK, which is in the EEA.

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- If the outlet is offering the products for sale in the EEA, then WatchIt's rights would be exhausted, and could not stop the goods from being put on the market again.
- Unless there are legitimate reasons to stop further commercialisation of the watches ie. degradation in quality, which would be the case if the outlet is selling cheap fakes.
- WatchIt could therefore take action against the outlet.
- Could apply register the design, file multiple applications, disclaim the surface print.
- The copies of the watch without the surface decoration would therefore infringe.
- Bring infringement proceedings against the outlet
- Apply for an injunction. to stop them marketing the watches.

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MARKS AWARDED 7/20

Question 9

- a) – In UK registered designs, can protect surface decoration, whilst this is excluded from protection in UDR. ✓1(viii)
- Registered rights provide for a longer term of protection, up to a maximum term of 25years from filing. ✓1(i)
 - Registered rights provide more certainty, stronger form of protection and would be a better deterrent against potential infringers. ✓1(viii)
 - Registered rights have a 12m grace period before the filing date for the applicant's/designer's own disclosure. ✓1(viii)
 - Registered rights have provisions to protect component parts of complex products, not available in UK UDR. ✓1(viii)
 - Registered rights can protect multiple variations of a design, by filing a multiple design application and disclaiming different features, therefore the scope for protection is broader than for unregistered rights, which only protect against copying, with copying differing only in immaterial details. ✓1(viii)

- Need to prove copying for infringement of UDR, not necessary for registered rights. ✓1(vi)
- Registered designs provide certainty for third parties as the filing date/ date of registration is clear. ✓1(iii)
- Registered rights are more appealing to investors as it gives a presumption of validity. ✓1(viii)
- Wider range of remedies and relief available for infringement of registered rights.
- EU registered rights can give the same protection throughout the EU. 6
- b) – Injunction against any continued infringing acts in the EU. ✓1(ix)
- Delivery up or destruction of any infringing products, ✓1(x) including delivery up of any materials or manufacturing implements used to make the infringing products. ✓1(xi)
- Declaration of infringement
- Advertisement of judgement
- Seizure of infringing products
- Other remedies available ✓1(xiv) in the national law of the EU member state ✓1(xv) in which infringement has occurred. 5
- c) – Damages ✓1(xvii) in respect of any loss sustained by the infringement
- Injunction ✓1(xviii) against any continued infringement
- Account ✓1(xix) of profits gained from the infringement
- Delivery up ✓1(xxi)/destruction ✓1(xxii) of infringing goods.
- Declaration of infringement.
- Publication of judgement 5

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MARKS AWARDED 16/20