

THE JOINT EXAMINATION BOARD
COMMON FOUNDATION LEVEL
UNITED KINGDOM DESIGNS AND COPYRIGHT LAW

12 November 1998

02.00 p.m. - 05.00 p.m.

Please read the following instructions carefully. This is a **THREE HOUR** paper.

1. You should attempt no more than **four** questions from Part A and no more than **four** questions from Part B.
2. The number of marks allotted to each question is placed in brackets at the end of the question.
3. Where a question permits of reasons being given for the conclusions reached, such reasons should be given.
4. Start each question (**but not necessarily each part of each question**) on a fresh sheet of paper. In the appropriate boxes at the top of each sheet please enter the designations of the paper, the question number, and your Examination number. Write on **one** side of the paper only using **BLACK** ink. You must **NOT** staple pages together. You must **NOT** state your name anywhere in the answers.
5. Unless specifically requested answers are **NOT** required in letter form.
6. **NO** printed matter or other written material may be taken into the examination room.
7. Answers **MUST** be legible. If the examiners cannot read a candidate's answer no marks will be awarded.

This paper consists of **SEVEN** pages, including this page.

PART A

1. 'Slick Man' is a cartoon character starring in a children's TV programme which was launched at the end of 1997. Slick Man Products Limited ('SMPL') owns all the intellectual property rights in the drawings of the character. The first drawings of the character were made in 1997. SMPL has been selling T-shirts bearing an image of the character since last year.

- (a) SMPL have recently received information that unauthorised T-shirts bearing an identical image of 'Slick Man' are being sold at a market stall on Leather Lane in London. They believe that if any court proceedings are started the stall will 'disappear'. Ignoring passing off/ trade mark infringement issues, advise SMPL what steps they can take legally to obtain the T-shirts.
- (b) A model of 'Slick Man' is awarded annually to the winner of 'Slick Man' lookalike contest. The prize is advertised widely in TV listings magazines. The model was sculpted specifically for the competition. SMPL have a policy of not selling or licensing 3D models of 'Slick Man' to avoid potential product liability problems. Ignoring passing off/trade mark infringement issues, advise SMPL what rights they have to prevent third parties reproducing and selling unauthorised copies of the model.

(10 marks)

2. Write notes on what is meant by the following in the context of registered designs

- (a) 'article'
(b) 'new'
(c) 'dictated solely by function'

(10 marks)

3. Your client is a famous photographer who has a large portfolio of photographs from his 30 year career. He has fallen out of fashion in recent years and has decided to supplement his income by exploiting his back catalogue. He has encountered the following problems.

- (a) A Falklands war veteran has complained that the pictures he paid your client to take of him in 1985 are now being used in a book on the Falklands war. The veteran is seeking royalties for use of the photographs.
- (b) He has sold the wedding photographs of two TV personalities who married in 1993 and have recently split up to a daily newspaper. He was the official wedding photographer and the TV personalities have complained.
- (c) The zoologist to whom he has assigned copyright in some of his photographs of Indian elephants has published a paper entitled 'The Sex Life of Indian Elephants' including these photographs. Your client is upset not only because of the subject matter of the paper

which he believes will harm his reputation but also because, in the case of half of the photographs, the zoologist credits himself as author of the photographs.

Write brief notes outlining the client's rights and the rights of third parties in each case.

(10 marks)

4. Your client instructs you to register its design for a standard lamp having a frusto conical base surmounted by two spheres one on top of the other, and then a plain cylindrical stem. The application is filed on 5 April 1998.

In the course of examination, the Designs Registry cite your client's prior registration No 2 111 111, registered on 5 July 1990, for a table lamp. The cited design has a similar frusto conical base surmounted by a single sphere and a shorter stem than the new standard lamp design. The examiner states in the Official letter that the design now sought to be registered is not new, as it is considered to consist of the previously registered design with modifications or variations not sufficient to alter the character or substantially affect the identity thereof. However, the Examiner points out that this objection may be overcome if the two designs are 'associated' as provided for by Section 4 of the Registered Designs Act 1949.

- (a) Explain (giving dates) the consequences of such association on the renewal and expiry of the new standard lamp design registration.
- (b) If, instead, you persuade the Examiner that there are sufficient differences with respect to the old design to permit registration of the new, explain the possible adverse consequences to the client.

(10 marks)

5. According to the Copyright, Designs and Patents Act 1988, how might the following be regarded as artistic works qualifying for copyright protection? Explain any difficulties there may be for such qualification.

- (a) a road bridge
- (b) a child's 'potato print'
- (c) a computer screen display
- (d) a sofa
- (e) a garden gnome

(10 marks)

PART B

6. Ignoring trade mark issues, comment on the registrability of designs for:-

(a) a washing machine having a housing of known shape, but transparent to make its 'high tech' innards visible.

(b) an 'electronic pet' consisting of a casing and screen of known shape on which a character (the 'pet') of novel appearance appears on screen when 'woken up' by pressing a button on the casing

(c) the structure of drive-in restaurant in the 'house style' of a particular burger franchise

(d) a tyre tread pattern

(e) a wing mirror for a car

(15 marks)

7. A German client has devised a novel toaster. He filed a German patent application which was published six months ago, and which includes drawings based on an early prototype. The fully developed product has been on sale for five months in Germany.

Four months ago, on the client's instructions, you filed a United Kingdom design application (which did not include any claim to Convention priority), including representations showing the finished design of the toaster. This application was filed just before the toaster was put on the market in the United Kingdom.

Your client has recently become aware of a UK competitor who has just begun selling a toaster of similar appearance to the finished design. The client is anxious to commence infringement proceedings against this competitor as soon as possible.

Discuss the issues of validity and infringement which arise in connection with the United Kingdom design application. Advise the client as to when the design will be registered. Can the client send a 'letter before action' to the competitor? If so, what considerations should be taken into account in drafting such a letter?

(15 marks)

8. Explain what is meant by, and the relevance of, the following words and phrases:

(a) 'Commonplace in the design field in question', in relation to design right

(b) 'Surface decoration', in relation to copyright and design right

(c) 'Original', in relation to copyright and design right.

(15 marks)

9. In 1988 Soapy Suds plc developed a new concentrated washing liquid which revolutionised the market. Their internal design team of Stephen Bunce and Andrew Quick created a design for a new container in which to sell the liquid in July 1988. No registered design was applied for in respect of the container and the washing liquid was launched on the UK market in a container made to this design in the first part of 1989.

In 1998, Counter Suds Limited, Soapy Suds' main rival, adopted an identical shaped container for their competing product. They had taken advice from their local solicitors, Sue, Grabbit & Run, as to whether Soapy Suds plc could prevent them launching their container on 1 January 1999. Sue, Grabbit & Run advised them to go ahead as 'copyright no longer subsists in pre-1989 designs for articles'. Counter Suds Limited have come to you for a second opinion. They have told you that they are about to go into production.

Ignoring issues of passing off/trade mark infringement, comment on whether the advice given by Sue, Grabbit & Run is correct and whether Counter Suds Limited should launch their product on 1 January 1999. What should Counter Suds Limited do if they are sued, and why? (15 marks)

10. Three years ago, your client designed and began to market garden compost bins having a side wall made from a number of interlocking plastics panels, each of which is slidable in a vertical direction to permit access to the bin contents. The design is registered; a copy of the first sheet of the representations is attached. The statement of article in the design registration reads: 'garden compost bin'. The bins are sold in 'flat pack' form through See & Do, a large DIY chain and are assembled by See & Do's customers at home.

A month ago, See & Do ceased taking orders from your client. Last week, your client became aware that See & Do are selling identical compost bins marked '*Made in Australia by Chookshak Pty Limited and distributed in the United Kingdom by Jolly Roger Enterprises Limited*'.

While in Australia last year, your client noticed a newspaper advertisement for hen houses made by Chookshak Pty Limited. The advertisements showed a construction identical to the client's compost bins, except for an entrance aperture in one of the side panels.

Your client had never heard of Chookshak Pty Limited before, but has now managed to trace some similar advertisements in an Irish farming magazine with a substantial UK circulation. These advertisements state that Chookshak Pty Limited is not only supplying garden compost bins which are available at See & Do (and See & Do's Irish sister company) but is also selling in the Republic of Ireland the henhouses seen previously in Australia. These henhouses are imported into the United Kingdom through an English company Chookshak (Imports) Limited, who have a large warehouse in Slough, in which the henhouses are unloaded directly from airfreight containers. The henhouses are then taken by lorry to the Irish Republic. Your client can find no evidence that Chookshak (Imports) Limited have any direct sales outlets in the United Kingdom.

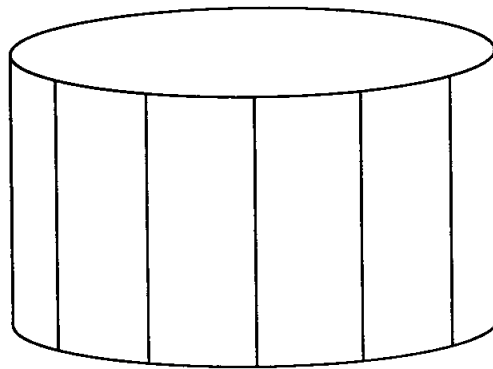
Question 10 (cont'd)

The client is anxious to bring proceedings against any or all of these parties in order to prevent further sales of either the garden compost bins or the henhouses.

Write notes on issues of infringement of the client's registered design by:-

- (1) See & Do's customers
- (2) See & Do
- (3) Chookshak Pty Limited
- (4) Jolly Roger Enterprises
- (5) Chookshak (Imports) Limited

(15 marks)



Perspective view from in front and above

STATEMENT OF NOVELTY

The features of the design for which novelty is claimed are the shape and configuration of the article as shown in the representations

