

THE JOINT EXAMINATION BOARD

PAPER D&C: Design and Copyright

Wednesday 4<sup>th</sup> November 2009

2.00pm to 5pm

*Please read the following instructions carefully. **Time Allowed – 3 HOURS***

1. You should attempt **ten** of the twelve questions contained in this paper, which contains five pages including this explanatory sheet.
2. **All questions carry ten marks.** If more than the required ten questions are answered only the first ten presented will be marked.
3. Please note the following:
  - a. Start each question (but not necessarily each part of each question) on a fresh sheet of paper;
  - b. Enter the Paper Number (D&C), the question number and your Examination number in the appropriate boxes at the top of each sheet of paper;
  - c. The scripts are photocopied for marking purposes. Please write with a **dark inked pen** on one side of the paper only and within the printed margins, and do not use highlighters in your answer;
  - d. Do not state your name anywhere in the answers;
  - e. Write clearly, examiners cannot award marks to scripts that cannot be read;
  - f. Reasoning should always be given where appropriate.
4. Under the Examination Regulations **you may be disqualified from the examination and have other disciplinary measures taken against you if:**
  - a. you are found with unauthorised printed matter or other unauthorised material in the examination room;
  - b. your mobile phone is found to be switched on;
  - c. you copy the work of another candidate, use an electronic aid, or communicate with another candidate or with anyone outside the examination room;
  - d. you continue to write after being told to stop writing by the invigilator(s). **NO WRITING OF ANY KIND IS PERMITTED AFTER THE TIME ALLOTTED TO THIS PAPER HAS EXPIRED.**
5. **At the end of the examination assemble your answer sheets in question number order and put them in the WHITE envelope provided.** Do not staple or join your answer sheets together in any way. Any answer script taken out of the examination room will not be marked.

Q1. Give i) the starting point and ii) the duration of the subsistence of the following rights. All are of UK origin and authorship.

- |  |           |
|--|-----------|
| a) Artistic copyright, one author.             | (2 marks) |
| b) Literary copyright, known joint authorship. | (1 mark)  |
| c) Copyright in a computer-generated work.     | (1 mark)  |
| d) Community unregistered design right.        | (3 marks) |
| e) UK unregistered design right.               | (3 marks) |

Q2. Discuss whether qualification for the subsistence of UK unregistered design right exists for designs made in the following circumstances. In each case, if a right could subsist, say who would be the first owner of it.

- i) A Chinese designer resident in China is commissioned by a UK company. (3 marks)
- ii) UK and German companies are separately exclusively licensed to import and sell in UK and Germany respectively goods designed and made in Japan by a Japanese designer. In due course such sales take place. (4 marks)
- iii) A design is made by a Norwegian employee of a Norwegian company having substantial business activity in Sweden only. (3 marks)

Q3. Give the situations in which an application for registration of a UK Registered Design may be treated as having been made on a date different from that of its actual filing, and outline the respective procedures and terms for accomplishing this. (10 marks)

Q4. Your client Mr X is a UK toy designer and distributor. In early 2008 he came across an illustrated Victorian catalogue of wooden models of farm animals. He realised that many of them could be made, without any alteration, as soft toys for babies. He selected four of them as being most suitable for that treatment and as forming an attractive collection, and registered these, using copies of the original Victorian drawings as representations, in a multiple UK Design Registration, specifying "Soft Toys". He used the same drawings for his 2008 catalogue, and also used them to order the manufacture of the toys from his usual Indian manufacturer, to whom he left the choice of fabrics and colours.

The toys were a great success for the Christmas 2008 season, which he hopes to repeat in 2009. Now, in late 2009, he has discovered that Mr Y, a rival UK distributor, is offering for sale and showing in his catalogue toys which are clearly identical copies of all four selected designs and are of Indian origin.

Make notes on the action Mr X may be able to take, and not be able to take, to deal with the situation in the UK, under the three heads of

- a) copyright (5 marks)
- b) unregistered design right (3 marks) **and**

c) Registered Design right (2 marks).

Do not deal with any other possible causes of action.

Q5. What are the terms or time-limits for the following?:

- a) Making an application for restitutio for renewal of a Community Design registration which has lapsed. (3 marks)
- b) Claiming priority for an application for registration of a Community Design after having filed that application. (1 mark)
- c) Indicating the filing number of a convention application from which priority is claimed for an application for registration of a Community Design, if not given at the time of filing. (1 mark)
- d) Paying the registration and late-payment fees to OHIM after notification of a deficiency. (2 marks)
- e) At the latest, paying the publication fee for an application for registration of a Community Design when deferment has been requested. (3 marks)

Q6. Council Regulation No 6/2002 ("CDR") confers an exclusive right on the holder of a community design right to use it and to prevent others using it, without consent.

- a) Give the exception in the CDR from that prevention that is specific to unregistered design right. (2 marks)
- b) Give the general exceptions in the CDR to that prevention, other than exhaustion of rights. (8 marks)

Q7. Copying and issuing copies of the work to the public are two of the "acts restricted by the copyright" according to S 16 CDPA 1988. As far as is relevant to literary and artistic copyright, what is defined in the Act (as amended) as being within the terms

- a) "copying" (5 marks) and
- b) "issuing copies of the work to the public" (5 marks)?

Q8. Your client has developed a new connection system for use with flat pack furniture. He claims it is revolutionary because it enables individual furniture pieces to be pulled and locked together, so that in use edges and joins cannot be seen. Another advantage when incorporated in chairs, stools and tables is that the system enables them, once assembled, to fit one on another, thereby facilitating stacking. The connection system comprises four basic, self assembly pieces, which are inserted into specially shaped, preformed recesses in the furniture and which, in use, inter-engage and act to pull together individual furniture pieces.

In addition to the connection system he has designed some surface decorations. He claims that – even if pieces of furniture move slightly in use to reveal an edge or join – the decorations camouflage the gap, making it appear less obtrusive.

A large pan-European flat pack furniture manufacturer has approached him for a licence.

Make brief notes on the nature of the protection that may be available to your client by way of registered design and unregistered design rights, and the actions that should be taken to secure those rights. (10 marks)

Q9. A long established client has recently gone into Administrative Receivership. They have about 60 Registered Designs which your firm is responsible for renewing. Eight of the Registrations were due to be renewed last month and some of these are for a very successful children's toy, which is licensed and which has historically earned your client about £50,000 per year royalty. There were four Registrations for equally successful designs that should have been renewed in April 2009.

You receive a letter from the Company Secretary, who has been asked by the Administrative Receiver, to find out what needs to be done in order to preserve rights.

Write a letter to the Company Secretary, setting out in clear terms what needs to be done, by when actions must be taken and explain in fair detail why a given action is necessary and what the effect of the proposed action (or failure to take the proposed action) might be. (10 marks)

Q10. Your client recently filed a Community Design Application but did not pay the fee on filing. Your client has since come up with four more related Designs which they want to protect, all of which are based on at least one of the Designs in the Community Design Application.

The client contacts you and asks what options are available to him, explaining that if all goes to plan, money should not be a problem in about a week, by when he hopes to have secured a major deal with a large multi-national retailer, on the back of the Designs.

Advise your client what options are open to him, where possible explaining briefly reasons for needing to know answers to any questions you pose. (10 marks).

Q11 Fred Brown and Freda Smith set up a custom made Jewellery Company a few years ago. They registered many successful Designs in their joint names. Diamanto International PLC ('Diamanto') - the world's leading watch and jewellery maker - now want to buy them out. Fred was not keen but Freda wanted to sell out 'lock, stock and barrel'.

In the end they fell out and Freda came to see you, seeking your advice as to ownership of the designs that had been created and registered since she and Fred first established the business. Freda said that since she and Fred started their business she did most of the original sketching, designing and creative work; whereas Fred did all the photography, designed the website, and the brochures and tended to look after the 'business side of things'. Freda says there was an agreement between her and Fred but she cannot now recall what precisely it said nor whether it dealt with any aspect of ownership of the designs.

Write notes on the advice you will give Freda as to (a) what rights she may have in the designs, (b) what she may and may not be able to do by way of exploiting her

existing designs with 'Diamanto' and (c) what needs to be checked and why. (10 marks)

Q12. You have been consulted by Jane Smith who works for a large UK retailer. Jane spends most of her day working with computer aided design ('CAD') systems in order to optimise the amount of clothes that could be cut from a piece of material. Although she was employed as an IT manager, she always had an interest in fashion and after a few months was seconded to the fashion design department where she put in place a procedure which automated almost all of the clothes design process leaving only the size and choice of material to be selected by whoever operated the 'CAD' system. She also, of her own volition designed a dress which her employer has told her it intends to offer for sale in its upcoming Spring Collection. Jane mentions that she did not get paid for that work, and when asked by you, she confirmed that she has not signed any agreement concerning that design of the dress.

Since setting up the new system, and as a result of the ranges of clothes designed by her computerised design process, sales have increased about five-fold and profits have more than doubled. She was asked by the Marketing Director to come up with pencil sketches of several new ranges, which she duly did, again working in her own time.

Her employer has made many redundancies both in the fashion design department (where she has been working from time to time) and in the IT department (which is where she is actually employed as an IT Manager.) Following the launch of the last range of clothes (which again proved popular) she was surprised to receive a letter putting her on notice of possible redundancy. Obviously she thinks this is most unfair given the contribution she has made to the success of the company. She is particularly unhappy that the work she put into designing clothes has gone unrecognised, and has consulted you whether there is any action she can take (or should be considering) to protect what she regards as "her designs".

Advise Jane of any design rights she may have and distinguish these from those which may belong to her employer. Explain what needs to be checked in order to determine this properly and why. Comment on any further evidence you might need from her and, where possible, what she can do in order to secure ownership of any Designs. (10 marks)

**End of paper.**