

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

16 November 2000
02.00p.m. - 05.00 p.m.

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

1. You should attempt no more than ten questions.
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 any 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 **six** pages, including this page.

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1. Write notes on the advantages and disadvantages of relying on unregistered design right instead of design registration.

(10 marks)

2. Discuss, in note form, what is meant by each of the following terms with reference to case law where possible:
 - (a) 'original' in relation to unregistered design right

(4 marks)
 - (b) 'must fit' in relation to registered designs

(3 marks)
 - (c) 'substantial' in relation to infringement of copyright

(3 marks)

3. Your English client, Mr. C, makes, by hand, lamps to his own designs. No drawings are made. One of Mr. C's lamps has been sold in London by an exclusive retailer since 1991; this lamp design proved so popular the Mr. C could not fulfil his retailer's order. As a consequence, Mr. C reluctantly granted his retailer a license to manufacture that design of lamp in the United Kingdom, insisting on exacting manufacturing standards. Lamps so manufactured were first sold by the retailer in June 1993. To date, several hundred of these lamps have been sold.

Poor imitations of this design of lamp have been put on sale by a major United Kingdom furniture retail chain, having no connection with Mr. C's retailer.

 - (a) Discuss whether copyright and/or design right subsists in the lamp design.

(4 marks)
 - (b) If either right subsists, for how long may Mr. C enforce such a right ?

(2 marks)
 - (c) Does the furniture retail chain infringe any right owned by Mr. C in the lamp design?

(2 marks)
 - (d) Assuming that the furniture retail chain does infringe Mr. C's rights, what remedies are available to Mr. C against the furniture retail chain ?

(2 marks)

4. Discuss whether copyright subsists in any of the items listed as (i) (assume that they have been created in 2000), and whether any copyright which does subsist would be infringed by the items listed as (ii). (Ignore any other rights.)
- (a) (i) A statuette of David and Victoria Beckham
(ii) A plastic copy of the statuette of David & Victoria Beckham to be distributed in packets of breakfast cereal.
 - (b) (i) An off-the-cuff speech given by the Chairman at a conference
(ii) A virtually identical speech given by an attendee of that conference at an in-house seminar.
 - (c) (i) An alphabetical list of trade mark agents practising in the United Kingdom compiled by a trainee of a London law firm for internal use by that firm
(ii) A photocopy of that list taken without permission by a client visiting the firm.
 - (d) (i) A purpose built motor racing circuit
(ii) A computer game reproducing a scaled down version of the circuit.
- (10 marks)

5. Comment on:-

- (a) Ownership of copyright in commissioned works and works made by an employee.
- (b) Moral rights in connection with copyright in commissioned works and works made by an employee.

(10 marks)

6. Part of a computer program is copied onto a floppy disk, removed from a United Kingdom software developer's premises without permission, and stored on the hard drive of another computer in the United Kingdom. The part program is decompiled, written out on paper, converted into a different computer language and is incorporated into a program of similar application to that from which the part program was originally taken. Multiple copies of the similar program are made by another company in the United Kingdom and are packaged for distribution. Copies are distributed to end users for use in the United Kingdom. A user distributes licensed copies of the similar program for use by its employees.

Explain which of these acts constitute infringement under the Copyright, designs and Patents Act, 1988.

(10 marks)

7. Discuss the likely significance and relative importance of the following considerations when assessing the infringement of a registered design. When relevant, also discuss their impact on validity:
- (a) The appearance of the registered design, the alleged infringement and prior designs.
 - (b) The opinion of a well-known art critic as to the aesthetic merit of the registered design and its likely effect on the buying public.
 - (c) The statement of art and statement of novelty of the registered design.
- (10 marks)*

8. Your client, Achilles Ltd., is a UK manufacturer of footwear. Last year it introduced onto the UK market a new style of ladies shoe, reminiscent of sandals found in ancient Egypt. The style was also popular during the 1920's but had since gone out of fashion. The designer of the new shoes had a vague recollection of the 1920's designs, gleaned from company records.

Achilles have registered the design in the UK. The shoes have proved very popular.

Achilles has recently sued a competitor, Bravo Boots & Shoes Ltd., for design right and registered design infringement, following Bravo's introduction onto the UK market of an exact copy of Achilles' new shoe.

In their defence, Bravo have pleaded that the design is commonplace, in view of the 1920's designs. They have also produced in evidence a sandal taken from Nefertiti's tomb and kept in an obscure gallery of the Victoria & Albert Museum for the last 50 years. This sandal differs visually from Achilles' design only in details arising from Achilles' use of modern synthetic materials. Similar differences are also found in many contemporary shoes as between those made in natural materials and those made in synthetic materials.

Comment on the subsistence and validity of Achilles' registered and unregistered design rights.

(10 marks)

9. Your client Gannet Inc, is a US-based producer of sports bags. Its latest range of sports bags is styled to evoke an aerodynamic appearance. The first design drawings and the patterns derived from these, for use in cutting the clothing material to shape, were produced by a draftsman in Japan. The draftsman worked on commission, under close supervision of Gannet's chief designer in the US. The sports bags are manufactured in Japan, and are about to be launched in the UK by a High Street chain, having its headquarters in Austria.

Comment on the possible unregistered rights that there may be in the design in the UK, and their ownership.

(10 marks)

10. Comment on the registrability of designs for the following:

- a) A hairstyle
- b) Children's collectible character cards
- c) An iced lolly incorporating different coloured layers which become visible when the lolly is eaten
- d) Bathroom accessories, comprising a toothbrush holder, a soap dispenser and a toilet brush holder
- e) An artificial flower

(10 marks)

11. (a) In what circumstances may it be appropriate to "associate" a design application with a previously registered design ?
- (b) For an associated design, when do the renewal fees fall due? When does an associated design expire?
- (c) What is a "corresponding design" within the meaning of the Registered Designs Act? What is the significance of a corresponding design as regards novelty?

(10 marks)

12. Draft (i) statements of use, and (ii) statements of novelty, to be included in the application, and (iii) representations to be filed for the following design registrations. If necessary, explain the views that you would consider including in the application.

- (a) Extruded rainwater guttering of a novel profile.
- (b) Wallpaper having a repeating floral pattern along its length, but with no repeat occurring within the width of each strip.
- (c) Absorbent kitchen paper having a random embossed pattern.
- (d) A crisp packet having a distinctive logo and a pattern consisting of graduated shading on the front; and a reverse side that is plain, apart from a list of ingredients, nutritional information, manufacturers' details and other statutorily required information.

(10 marks)