

THE JOINT EXAMINATION BOARD**PAPER - DESIGN AND COPYRIGHT**

Thursday 4th November 2004
2:00 to 5:00 p.m.

*Please read the following instructions carefully. Time allowed – **THREE HOURS**.*

1. You should **attempt ten questions**.
2. All questions carry **ten** marks. Questions answered in excess of ten will not be marked.
3. Where a question permits, reasons should be given for the conclusions reached.
4. Please note the following:
 - i) Start each question (but not necessarily each part of each question) on a fresh sheet of paper.
 - ii) Enter the Paper number, the Question number and your Examination number in the appropriate boxes at the top of each sheet of paper.
 - iii) Write on one side of the paper only, within the printed margins using **BLACK** or **BLUE-BLACK** ink.
 - iv) **DO NOT** use coloured pens or highlighters within the answers – they will not photocopy.
 - v) **DO NOT** staple or join pages together in any way.
 - vi) **DO 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.
ALL mobile phones and electronic aids **must be** switched off and stored away.
7. Answers **MUST** be legible. If the examiners cannot read a candidate's answer no marks will be awarded.
8. **NO WRITING OF ANY KIND WILL BE PERMITTED AFTER THE TIME ALLOTTED TO THIS PAPER HAS EXPIRED. At the end of the examination assemble your answer sheets in question number order and place in the WHITE envelope provided.**

This paper consists of six pages, including this page.

1.

In relation to Community Unregistered Design Right:-

- a) How does Council Regulation (EC) No. 6/2002 of 12th December 2001 on Community Designs fully define the event which starts the term of protection?
(5 marks)
- b) When does this term of protection end?
(2 marks)
- c) As at what time is the novelty and individual character of the design to be judged?
(1 mark)
- d) On what basis is a judgment on individual character made?
(2 marks)

2.

A declaration of invalidity of a UK Registered Design may be applied for on some grounds, such as lack of novelty, by any interested party. Other grounds can only be raised by a party having a particular status.

List five other such grounds and give the status required in respect of each in order validly to apply for a declaration of invalidity.

(2 marks each)

3.

Is Registered Design and/or Design Right protection available nationally in the UK for the following, assuming all have novelty and individual character? Give reasons for negative, as well as positive answers. No marks will be awarded for unreasoned answers.

- a) A jigsaw puzzle (in respect of the interlock of the pieces, not the picture represented).
(3 marks)
- b) Wallpaper with a multi-coloured repeating decoration.
(4 marks)
- c) The 3-D patterns in a hand-knitted sweater.
(3 marks)

4.

On 14 February 2003 a free-lance designer, a UK national, makes drawings showing a new shape for a product. Confidential arrangements are made for the exploitation of the design, with the result that a publicity campaign starts in the UK on 2 January 2004 with advertisements showing and emphasizing the new shape, and the products are put on sale in numerous shops in the UK on 9 January 2004.

The success is such that on 2 February 2004 a UK Registered Design application is filed relating to the design. The application has been granted. A UK-based manufacturer of the product paid the designer an agreed lump sum to create the design.

- a) On what date do the terms expire of:-
 - (i) copyright in the original drawings? (2 marks)
 - (ii) UK unregistered design right? (2 marks)
 - (iii) rights in the UK registered design? (2 marks)
 - (iv) the period in which the proprietor may claim priority of the UK application when filing a corresponding application in a Paris Convention country? (2 marks)
- b) Who owns the copyright in the drawings and who owns the rights in the registered design? (2 marks)

5.

Are the following people infringers in the UK of a UK Registered Design and/or of UK unregistered design right validly subsisting in the designs concerned?

- a) The innocent importer of identical articles from Taiwan. There is no licence for their importation. (2 marks)
- b) A shopkeeper innocently selling identical articles which come from an unauthorized source. (2 marks)
- c) A wholesaler innocently stocking identical articles which come from an unauthorized source. (2 marks)
- d) A manufacturer innocently making articles from drawings which are direct copies of an original design and which come from an unauthorized source. (4 marks)

6.

Your UK client is owner of validly subsisting copyright in certain drawings and UK unregistered design right in the corresponding design. Articles made by your client in accordance with the drawings and the design were put on sale and very soon copies started to appear in the UK.

Investigation shows that a draftsman unconnected with your client had made his own drawings, by measuring articles made by your client, to produce in the UK manufacturing drawings which he then purported to license to a UK manufacturer competing with your client.

Your client wants to sue these people under both copyright and UK unregistered design right. Make notes on how you would advise your client as to who he can and cannot sue under these rights, in respect of which activities, giving reasons in each case.

(10 marks)

7.

How does the CDPA 1988 define the following in relation to copyright:-?

a) works of joint authorship

(1½ marks)

b) works of unknown authorship

(1½ marks)

c) derogatory treatment

(3 marks)

d) artistic work.

(4 marks)

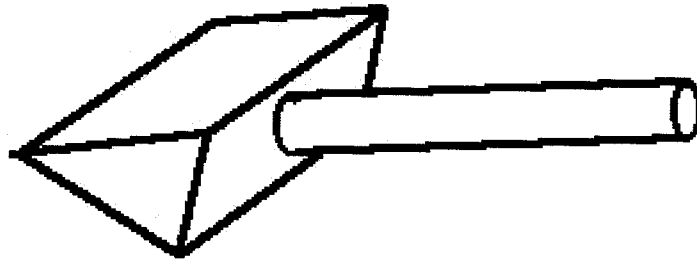
8.

Provide outline information on the substance of two leading cases; one relating to a United Kingdom Registered Design and the other to a United Kingdom Unregistered Design Right.

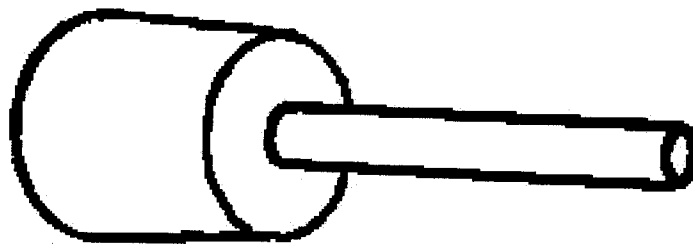
(5 marks each)

9.

Your UK client owns Community Design Registration No. 000111111-0001, for a sun cream applicator, of which the representation is shown below.



The validity of your client's registration has been challenged on the basis of an earlier published Spanish utility model registration for a skin sterilizing solution applicator, a drawing of which is shown below.



In each case, the applicator consists of a foamed plastics applicator sponge, attached to a plastics handle.

a) OHIM have found your client's design to be valid over the prior art sterilizing solution applicator. Give reasons why this may have been so.

(4 marks)

b) Give details of four acts of infringement as defined by the European Designs Directive 98/71/EC.

(4 marks)

Your client is aware of a Dutch manufacturer who owns Community Design Registration No. 000222222-0002 for a similar (and potentially infringing) sun cream applicator registered and marketed after the date of registration of your client's design

c) Where would an infringement action have to be brought against the Dutch manufacturer?

(2 marks)

10.

State, with reasons, whether you consider that the designs of the following products would be registrable under the Registered Designs Act 1949 (as currently amended). Assume in each case that the product is new.

- a) A blue and yellow squash ball.
- b) A tyre tread.
- c) A mobile telephone display logo which only appears when the telephone is switched on.
- d) A building.
- e) An exact scale model of a vintage car.

(2 marks each)

11.

Your client, Abacus Limited (a UK company) is the owner of an original design for a new self-propelled shopping trolley. Relying on the “grace period”, the new design was registered in the UK two months ago, ten months after first marketing.

Abacus has now discovered a rival manufacturer, Bonanza Limited, selling an identical shopping trolley. On checking the Patent Office website, you find that Bonanza have registered their design two months before Abacus’s registration. The representations of the Bonanza registration are identical to the Abacus design.

What actions (if any) can be taken by either party against the other under:

- (i) the Registered Designs Act 1949 (as currently amended)
and
- (ii) the design right provisions of the Copyright, Designs and Patents Act 1988?

(10 marks)

12.

What acts as to infringement of a UK design registration are specifically excluded from the Registered Designs Act 1949 (as currently amended)?

(10 marks)