

THE JOINT EXAMINATION BOARD**PAPER Design & Copyright**

**Wednesday 2nd November 2005
2.00 - 5.00 pm**

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

1. You should **attempt ten (10) questions**.
2. All questions **carry ten (10) marks**. Questions answered in excess of ten (10) will not be marked.
3. Please note the following:
 - a. Enter the Paper Number (D&C) and your Examination number in the appropriate boxes at the top of each sheet of paper;
 - b. 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;
 - c. Do not staple or join pages together in any way;
 - d. Do not state your name anywhere in the answers;
 - e. Write clearly, examiners cannot award marks to scripts that cannot be read.
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;
 - 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 order and put them in the WHITE envelope provided.** Any answer script taken out of the examination room will not be marked.
6. This paper consists of seven pages; comprising this page, five pages of questions and one calendar page for the month of July 2005.

1. Outline ten grounds upon which the Registrar may refuse an application for registration of a design in the United Kingdom.

(1 mark for each ground)

2. Who is the first owner of:-

a) copyright in an artistic work commissioned from a free-lance designer resident in the United Kingdom;

(2 marks)

b) United Kingdom Design Right in a design commissioned from a free-lance designer resident in the United Kingdom;

(2 marks)

c) the right to a Community Design Registration for a design commissioned from a free-lance designer resident in the United Kingdom;

(3 marks)

d) the moral rights in an artistic work in a design commissioned from a free-lance designer resident in the United Kingdom?

(2 marks)

In which of the above cases is/are the right(s) assignable by the first owner?

(1 mark)

3. A snooker cue handle was designed by a Canadian national and resident who was employed as a designer by a Canadian company. The design was first published in a specialist and well respected sports journal in August 2002. It has been industrially produced in Canada and much admired there by the trade and public for its striking space-age looks.

Give brief reasons as to whether each of the following now exist:-

a) unregistered Community Design protection;

(3 marks)

b) potential for United Kingdom and Community Registered Design protection;

(3 marks)

c) United Kingdom Unregistered Design Right protection;

(2 marks)

d) United Kingdom copyright protection?

(2 marks)

4. What are the time limits or length of term for the following:-

- a) payment of the fee extending the duration of right in registered design (renewal fee) on a United Kingdom Design Registration, without penalty;
(2 marks)
- b) making an application for restoration of a Registered United Kingdom Design that has inadvertently been allowed to lapse;
(2 marks)
- c) making an application for “restitutio in integrum” of a Registered Community Design that has inadvertently been allowed to lapse;
(2 marks)
- d) claiming priority of an earlier application in the case of a Community Design Application that has already been filed?
(1 mark)

What is the licence of right period in respect of a United Kingdom Unregistered Design Right protection?

(3 marks)

5. In the case of a Registered Community Design Application that is not being filed electronically:-

- a) what size of paper may be used for the representations;
(1 mark)
- b) what is the maximum size allowed for the reproduction of the design;
(2 marks)
- c) what form may the representation take;
(2 marks)
- d) what is the maximum number of views of each design that may be contained in each representation and how must these be labelled;
(3 marks)

When filing a Registered Community Design Application electronically, what data file size and format must be used for the reproduction of the design(s)?

(2 marks)

6. In the case of a United Kingdom Registered Design Application:-

- a) what size and quality of paper may be used to carry the representations;
(2 marks)

6. continued

- b) what form may the representations take; (2 marks)
- c) how many sets of representations must be filed; (1 mark)
- d) how must the figure(s) showing the design be placed on each sheet of representations and how must they and the sheets be labelled; (3 marks)
- e) how is a partial disclaimer filed, and where must it be included in the application? (2 marks)

7. A self-employed draftsman of French nationality normally resident in Germany drew an original design on 2 February 2004 showing features of shape of an article and, starting on 1 July 2004, publicised it widely. On 3 January 2005 he applied for registration of the design in the United Kingdom. [Calendar for July 2005 supplied - see page 7]

- a) What was the last date upon which he could validly apply for a Community Design Registration for the same design **claiming** priority of the United Kingdom application? (3 marks)
- b) What was the last date upon which he could validly apply for a Community Design Registration for the same design **without** claiming priority of the United Kingdom application? (1 mark)
- c) How does the design qualify for United Kingdom Unregistered Design Right? (2 marks)
- d) When does his United Kingdom Unregistered Design Right expire? (2 marks)
- e) When does his Community Unregistered Design Right expire? (2 marks)

8. Your client has designed a set of new, distinctively shaped and ornamented builders' trestles, used for supporting scaffolding boards to form a raised working platform. The trestles are to be launched to the public at a major UK trade show in eight months' time, for sale and hire throughout the European Union. The trestles come in three sizes, which differ slightly from each other in their proportions. Builders' trestles fall within Locarno class 8.

8. continued

You have been instructed to apply for Registered Community Design (RCD) protection for the trestles.

- a) Outline your filing strategy and the points you would consider in securing cost-effective RCD rights enforceable as soon as possible after the product launch.
(5 marks)
- b) When would the rights become enforceable against third parties?
(2 marks)
- c) Your client wishes to keep details of the trestles secret until the trade show, how would this affect your RCD filing strategy?
(3 marks)

- 9.** Your United Kingdom clients are in the business of supplying cake decorations and are in the habit of travelling abroad to look for novelties. This summer they bought in Spain some household candles they had never seen before; they had an unusual and distinctive twisted shape and they determined that these mass-produced candles have only recently been launched by their manufacturer. They think that candles of the same shape would sell very well as cake decorations, but of course the candles would have to be scaled down in size for the purpose and would have a new range of colourings, coloured stripes in the twists, etc. They have extremely good relations with their present United Kingdom manufacturers of cake candles and would like them to make these new ones. They give you a sample of the Spanish product and ask you if there could be any problems for them or their manufacturer. You make a search and cannot find any pending or registered designs in the name of the Spanish manufacturer.

Make notes in preparation for a meeting with your clients concerning what problems they and their manufacturer may encounter. (Do not deal with any possible patent, trade mark or passing-off issues).

(10 marks)

- 10.** Are the following statements true or false? Give reasons. In all cases the works involved were made after 1989.

- a) "Copyright ceases to exist in the United Kingdom once the work has been industrially made and sold".
(4 marks)
- b) "Copyright is infringed in the United Kingdom if I make a copy of a manufactured article rather than of the original drawings of it".
(2 marks)

10. continued

- c) "Copyright and the United Kingdom Design Right cannot coexist in a given article".
(2 marks)
- d) "In order that copyright would exist in the United Kingdom in a manufacturing drawing it would have to have artistic merit".
(2 marks)

11. Outline the statutory provisions regarding the transmission and licensing in the United Kingdom of copyright in an artistic work made after 1989.
(10 marks)

12. Give five features of design which are not protected, even though the design possesses originality, is not commonplace and was made by a qualified person.
(2 points each)

Calendar for Question 7.

JULY 2005						
MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31