

ISSUE #69

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YOUR VOICE AGAINST DESIGN THEFT



Robe de Voyage

COS

Robe de Voyage

Original or Copy?

Read about Robe de Voyage & COS
lookalike story P8 & 9

Retail chain Morrisons cave in to
legal challenge P12 & 13

Damian Evans challenges Joseph
Joseph P10 and 11

Dear ACID members,

A very Happy New Year!

In what has been the strangest year ever for us all, few could have anticipated that 2020 would be a year where such seismic changes would emerge from our familiar world which have had such a profound effect within our families and businesses. At a national level and globally, COVID-19 has changed our worlds and the planet forever.

Businesses, whether micro or macro, have had to adapt to this disruption in diverse ways and often it has meant thinking more creatively and overcoming challenge by becoming nimbler in design and manufacturing and more aware of risk-mitigation in the journey of adaptive thinking. But sadly, many have lost a significant part of their business or gone to the wall. No-one knows what 2021 will hold but certainly we have all benefitted from conversations so easily held via Zoom, at the press of a button, and whether we now have a better understanding of remote working, who knows, but we have all had to learn new tricks. And I'm sure we will continue to do so.

The ACID team have adapted well to working remotely though the challenges of becoming operationally efficient to run a member organisation remotely have not been without their peccadilloes. IT support has been a paramount consideration throughout the process. I am glad to say that having gone through an enormous learning curve at rapid speed, we are now well-equipped to deliver efficient membership management.

We, along with many other organisations, have had to deal with mental illness within the team and no-one can underestimate how, often, working from home, without the interaction and spontaneity of others can affect individuals adversely and give rise to mental health issues. It has made us much more aware to ensure that the well being and mental health of everyone is at the forefront of daily life. We place great value in having conversations within our team but also with members (not just on all things IP) but just having a simple chat with those within our community has meant a great deal. We have learned a lot.

On a lighter note, we have held five successful webinars in the jewellery, furniture, 2D and surface pattern and giftware and greetings card sectors – going back to IP basics has been the theme and many have also attended just as a refresher. Fashion, Design Agencies, and Interior Design (inc kitchen and bathroom designers) and lighting will be next year's focus. Other IP subject related webinars will also be the focus in 2021. E.g., "Life After Brexit – IP Issues", "Basics of Licensing and IP" and other topics of business/IP interest.

After four long years of campaigning to persuade the IPO that unregistered Community design reciprocity (and continued protection in EU27) was critical for UK designers, we were delighted that this was accepted by Whitehall and included in the UK/EU Brexit negotiation text on IP. Sadly, as many of you will now realise, the EU rejected this, which is not only a huge loss for ACID members but for UK designers in general. However, this only strengthens our continuing resolve to ensure that design protection is extended to criminal provisions for the intentional infringement of an unregistered design.

On Pages 8 and 9 you will also read the regrettable story of ACID member Jess Linklater who discovered lookalikes of her simply stunning Robe de Voyage designs by the global retail chain COS, owned by H & M. Increasingly micro designers are now resorting to social media to expose those who steal designs but, especially now with retail facing such major challenges. Those who steal are starting to run scared because of reputational damage. Now, more than ever, we need to get the word out that "Fakes are Never in Fashion" and it's not "Cute to Copy!". Take the latest Morrisons settlement as an example on Pages 12 & 13.

So, as we embark on another year I, with many others, will be hoping for life returning to a degree of normality and a period of healing to commence. Mega thanks to the ACID team, to our Legal Affiliates for their valuable pro-bono work as well as contributing to the IP conversations with Government. Of course, no thanks would be complete without acknowledging our Chief Counsel Nick Kounoupas, whose sage advice and comprehensive knowledge of all things IP has been a tower of strength in our ongoing campaigning

for design's voice to be heard more loudly.

Thanks, too, to our ACID Council who represent you in our joint discussions. Take a look at who they are and what they do [here](#) If you would like to support us by becoming an ACID Council Member please let us know.

As 2020 came to a close and with the cautiously optimistic news about the emergence of effective vaccines, I sincerely hope that you and yours are and will remain safe and well and here's to a better 2021.

Just before going to print in this issue I am delighted to announce Nick Kounoupas (ACID's Chief Counsel) has accepted an invitation to be a Director of ACID.

**Warmest wishes
Dids**

Dids Macdonald, OBE.,
CEO ACID



A 2020 review by Nick Kounoupias, Chief Counsel and IP Director of ACID



CAMPAIGNING



In a world when Government and parliamentarians have had to focus all their energies on COVID-19 related attention, it is not surprising that there has been little time for IP issues and, rightly so. But running in tandem with this is not just the emerging threat of “Life after Brexit” for designers and IP owners but, more importantly, the significant intellectual property that is being created by our world leading scientists and technologists that

should be highly valued and protected as a national asset. Dids Macdonald and I have been consistently sending the same message to Government, please let us have an IP Minister who sits at the top table at Number 10. On the one solitary occasion when we were able to meet the current IP Minister, Amanda Solloway, by Zoom we told her directly, “You need to be in the Cabinet!” How can the Government’s ambition to rebuild the UK economy using the country’s

intellectual capital be taken seriously or succeed without Cabinet level representation?

So, in a year when IP has not hit the headlines, we have been in consistent conversations with Government, the Intellectual Property Office and other IP stakeholders to ensure that design and IP UK are firmly kept on high on radar.

ACID, for many years, has been the “go-to” organisation for Design and IP for Government

and we are involved in many ongoing stakeholder discussions through IP stakeholder organisations and specialist groups.

- **ACID is an established member of the UK IP Crime Group** – which has now published their IP Crime & Enforcement Report [here](#). ACID highlighted two cases studies including Cos v Robe de Voyage and FMM
- **EU unregistered Community Design right** - after four years of campaigning we were disappointed that UK negotiators failed to negotiate reciprocity with EU27 protection for EU unregistered designs. The battle will have to go on perhaps in other fora [here](#)
- **Design Act** – a coalition of 6 major UK design organisations was put on hold during the pandemic and Brexit transitional year and we hope to reignite it early in 2021 to ensure that UK Design and IP has a stronger voice. [here](#)
- **The Intellectual Property Enterprise Court (IPEC)**. ACID along with other stakeholders was invited to suggest improvements to the Small Claims Track (SCT) and included these, together with ACID member requests [26 to date](#) to Government for design law reform in the IPO Framework Consultation. See ACID's submission [here](#)
- **IP Databank** – there is still come confusion between registering IP rights and the ACID IP Databank, see further explanations [here](#)
- **Online Marketplaces** – After 2.5 years' discussion between Social Media platforms and Marketplaces, an MOU is in sight but there are still some issues to agree, so on hold for the moment. Dids is now part of the Creative Industries Council's IP group.
- **Latest cases** Cos & Robe de Voyage here Damian Evans against Joseph Joseph here. Morrison and the Old English Company [here](#)
- **Rt. Hon. Emily Thornberry, MP** – at our meeting she seemed genuinely interested but has shown no post-meeting interest as she was unable to accept an invitation to our ACID Council meeting. However, we hope to re-engage given that Ms Thornberry is the MP for Clerkenwell, home of Clerkenwell Design Week.
- **All Party Parliamentary Group meeting** – Briefed the group on ACID current Enforcement Strategy priorities
- **DIT Trade talks and IP** – DM and NK have been in talks during the year and NK has created a summary of design and its status in the various countries as well as potential solutions in DIT Trade Agreements – [designs around the globe](#)
- **AI – IP and Design** - ACID has contributed to the latest consultation on artificial intelligence, IP and Design [here](#)
- **Government clarity on first publication of unregistered designs** – we will be continuing to put pressure on Government to clarify the position on simultaneous publication. The reality is if you register at the EUIPO you can get protection. However, on unregistered designs, the question is establishing simultaneous publication in different territories

and avoiding any 1st publication remains. There is always a bit of a delay when publishing in different places digitally, even a few seconds can create challenge. ACID had campaigned for 4 years and whilst the Government had accepted our arguments and put text forward in the negotiations, it failed. The IPO seemed genuinely disappointed. The advice from Government still remains, “*We don't know the answer, go and talk to your lawyer*”. Business cannot continue without certainty and ACID will take up discussions again on a one to one with Deputy IPO CEO David Holdsworth.

Sadly, the current IP Minister has been conspicuous by her absence and a yearly appearance to cultivate the IP community is not impressive. We urge everyone interested in IP to campaign for the IP Minister, whoever that person is or the party they represent, to be elevated to the Cabinet to enable them to promote the importance of the IP we are creating and how IP will be one of the flag bearers for the recovery. We believe that much more attention should be paid to IP at No 10 from 2021 onwards. The IPO does not have the status it deserves because of the lack of importance given to IP. Other countries such as the USA put IP in the top tier of national priorities. They have

an IP Tsar there with direct access to the President.

ACID could not be part of national conversations about IP without you - our members' contributions and the valuable contribution of our Legal Affiliates with whom we are proud to be associated.

Nick Kounoupas, Chief Counsel.

www.kounoupasip.com



GUEST EDITOR

– Bill Bush, Chairman of the Alliance for Intellectual Property and Executive Director of the Premier League

It is impossible to describe how the COVID-19 year has hit all our organisations and businesses but each of us has our version. As well as being the Chair of the Alliance for Intellectual Property, sitting alongside ACID and Dids as Vice-Chair, I am also Executive Director of the Premier League where we have faced massive challenges. We all have our own stories about how the pandemic has affected us which we will pass down through generations as we look back on a hugely surreal year.

I want though, to offer a sense of hope. The pandemic hasn't made us worse at football or design. It has shown that creativity is at the heart of how we react to new challenges, whatever their scale. The pandemic has shown that we can overcome these challenges and find new ways to live and work.

Design has been at the heart of how we have reacted to the pandemic. The grounds are empty but look good, we have redesigned our offices

and our clubs have redesigned their training facilities, broadcast and online have been adopted for the needs of the times. Design has been central to creating PPE and in times of difficulty we have all looked to humour in the designs of facemasks to raise a smile, even if others can't often see it.

Beyond our reaction to the pandemic though, we all still face significant challenges from IP theft. In addition, I know that designers face uncertainty following

the EU's decision to not provide unregistered design protection after the transition period, despite ACID's hard work in making it a UK Government priority. I hope that once the dust has settled the UK and the EU might be able to revisit that issue, without the huge overhang of fishing and subsidy issues.

With Alliance support, it also offers the opportunity for ACID to press the UK Government to extend protection for

Intellectual property is the lifeblood of modern economies.

It allows us to read books and magazines, to enjoy films, TV programmes and music, to play games, experience design and buy exciting new products. The Alliance has been championing the importance of IP for over 20 years and we are dedicated to campaigning for its promotion and protection.

GUEST EDITOR

unregistered design rights in the UK and to see the protection of those designs in countries with whom we are now negotiating trade agreements. Thanks to Alliance and ACID pressure, we hope that this year will also see designers being able

to take legal cases through the Intellectual Property Enterprise Court's Small Claims Track – an anomaly that has prevented access for justice for designers for too long.

We can't thank ACID and Dids enough for their

support at the Alliance. They provide us with the vital voice of micro and SME businesses around our table and in turn we can hopefully unlock some of the doors to the Government that you, ACID's members deserve. I hope that in 2021 we can focus even more on

tackling the design and broader IP infringement issues that affect us all.

www.allianceforip.co.uk



ALLIANCE
FOR INTELLECTUAL PROPERTY



COS SETTLE IN MEDIATION

WITH ACID MEMBER FASHION DESIGNER JESS LINKLATER, ROBE DE VOYAGE

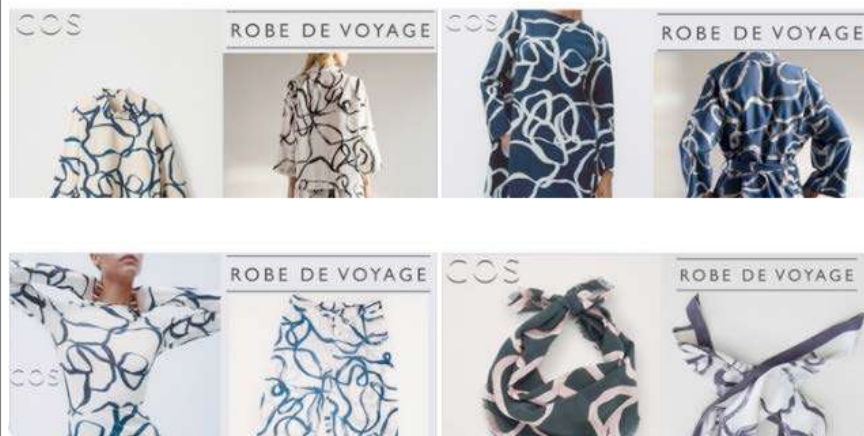
What do you think? Original or Copy?

Global retailer COS (owned by H & M) recently engaged in alternative dispute resolution in the form of a mediation with ACID member and fashion designer Jess Linklater of Robe de Voyage. Despite not admitting liability, Linklater is content with the settlement. A strict condition of the mediation agreement was that the terms of settlement remain confidential.

Linklater, whose glamorous designs have featured in countless celebrity gigs,

was horrified to discover from design colleagues that COS were selling a virtually identical design to her original "Scribble" signature range of luxury wear. Not only were the lookalikes made in inferior material, but they were for sale globally. Over 2000 posts on social media indicated the outrage of fellow designers everywhere, showing how easily recognisable the alleged replication was. Even some of COS's ex-employee designers actually wrote to her sharing their disdain for what appeared to be such blatant copying.

When Jess got in touch with ACID in February 2020 reporting the flood of look alike designs in the market, she challenged COS with a legal letter. A director of COS (Kayleigh Anne Soryal) wrote back to invite Jess into their offices to discuss the matter and assured her that, *"we are equally concerned by the similarity in the design and take your questions very seriously. However, I think it is important for you to know that our Design team have in no way referenced your design, nor were they aware of your company throughout their design process"*. At



CASE STUDY

this point ACID intervened and after many delays by COS, finally succeeded in getting COS to the mediation table in September 2020. COS were represented by Gary Assim of Shoosmiths and the mediator was Jane Player with Nick Kounoupas assisting and Dids Macdonald also taking part.

COS said, “The print in question was designed by one of our in-house Print Designers. One of this season’s inspirations was the art and work process of artists Jahic & Roethlisberger, in particular the idea of exploring accidents and material reaction. With this inspiration in mind, the print designer developed this design by pouring thick black paint on a canvas, then tilting the canvas to create abstract shapes with the paint. Once the canvas was filled, they traced around the shape and

used a black pen to outline the design.”

Dids Macdonald, OBE., Chief Executive of Anti Copying in Design & Vice Chair of the Alliance for Intellectual Property said, “Typically, in high street/ major retail chain settlements and in all mediations, the terms and conditions of settlement are confidential, so my hands are tied in terms of commenting on this particular case, but what I can talk about is copying trends in general, by some major high street retailers. Designers like Linklater provide the zeitgeist that breathes life into new, vibrant and exciting designs. Producing cheap lookalikes is a sanitised word for theft and usually happens on a massive scale. However, the tide is turning as designers are getting angrier. They do not have the deep legal pockets to fight the

behemoths in Court so all they have in their armoury is to go for reputational damage through social media. Only recently Swoon had to pay a substantial sum to designer Simone Brewster together with an apology. ACID’s fight will continue to hold all those responsible to account.”

Jess Linklater of Robe de Voyage said, “This has been an enormously stressful time for me seeing the results of years of work being peddled globally and I am happy to put this sad affair behind me. What I am so excited about is my new collection which is just about to be launched and my message to anyone out there who considers copying is quite simple, don’t!”

ROBE DE VOYAGE - Founded by Jessica Linklater in 2016, Robe de Voyage is a luxury range of hand woven

robes and pyjamas that are check-in essentials for every adventure. Crafted from the softest, sustainable “Khadi” cotton and silk, the collection is lightweight, versatile and ideal to roll up and pack in your carry-on. Scribble, the first print in the collection, is inspired by ripples of sunlight on water and the vibrant colours of Zanzibar, Kyoto and Malabar. Designed in London, tailored in Paris by a retired cutter from Dior and individually screen printed in India, each garment is unique: an original work of art that you will never want to travel without. www.robedevoyage.com

COS is a subsidiary of and owned by Swedish behemoth retailer H & M and was founded in 2007. Globally, it has approximately 290 stores and 32 online markets. www.hmgroup.com H & M have a turnover of approximately £258 billion.



COURT - ONLY OPTION FOR DISPUTE BETWEEN ACID MEMBER DAMIAN EVANS AND JOSEPH JOSEPH



Designer of the iconic and world famous “Index” series of chopping boards for Joseph Joseph in 2007, ACID member Damian Evans went on to design other products for the company, as well as numerous iterations of the Index boards.

But, sadly, now a dispute has arisen, about how some of the terms of the contract between them should be interpreted. The original contract was agreed at a time when neither of them anticipated such huge sales volumes or longevity in the 13 years since its creation, and Damian and Joseph Joseph now disagree on how various

areas of that contract should be interpreted, including: -

1. **Damian’s right to inspect and audit manufacturing data (for calculating royalties).**
2. **Joseph Joseph’s obligation to inform Damian of the number of disposals (for example by giving away promotional products or free samples) as well as the number of sales of his products; and**
3. **Joseph Joseph’s strategy to register and protect IP rights in Damian’s products, and whether and to what extent it must collaborate with him on such a strategy.**

Damian Evans said, “In accordance with our licensing contract, I believe I am entitled to know how many units of my products are made: not just how many are sold, and that I am entitled to appoint an auditor to undertake a comprehensive audit of the manufacture of my designs to verify that my royalty payments are accurate. I also believe that I am entitled to a better understanding of, and to be consulted about, Joseph Joseph’s strategy for IP protection and enforcement.”

Kelly Hudson of McDaniel’s Law who is acting on behalf of Damian said, “On the other hand, Joseph Joseph (represented by Gowling

WG) claims that Damian cannot have an audit of its manufacturing completed and has presently offered to provide sales information for limited example data. Further, in relation to IP protection, Joseph Joseph has stated that if it decides it is not beneficial to Joseph Joseph to register a product, it does not need to consult with Damian in deciding not to register or protect his designs (or explain its reasoning), despite the contractual agreement requiring 'mutual agreement' as to registration decisions. There are also several other points on which the parties do not agree in terms of construction".

Damian and Joseph Joseph have had considerable dialogue to try and settle these issues, both with and without lawyer involvement, but ultimately reached an impasse. Consequently, proceedings were issued under what is known as the 'Part 8' procedure. Part 8 refers to Civil Procedure Rule 8 and contains a set of rules specifically designed for parties where the underlying facts are either agreed or are not relevant to the dispute in question, and only a question of law must be decided. In Damian's case, this means asking the Court to decide the meaning of the terms in the contract between the parties. The case is to be heard in the Business and Property Courts in London in the coming months.

ACID COMMENT: "We will be keeping a close eye on how things unfold, as many of our members will be involved in agreements with retailers and distributors where

there is a power or stature imbalance. The outcome of this case could help designers better understand their rights as it will give clarification on interpretation."

ACID Member Damian, attended the Masters Industrial Design course at the Royal College of Art in London and graduated in 1986 having previously studied Glass and Ceramics. His design philosophy is to produce simple, effective and useful solutions. Design can be considered as an empathic process that attempts to understand a user's needs, wants and aspirations, as well as looking for the opportunities that changing social

environments, manufacturing technologies, material options and many other aspects offer.

From 1986 to 1990 he worked for Terence Conran at the Conran Design Group developing numerous product categories including lighting for Habitat and Concord, handheld computers for Psion and personal care electrical products for Clairol. From 1990 to 1998 he worked as an independent Designer for some of the UK's top design consultancies, before setting up his own studio in London. Since 2012 he has run his studio in the creative melting pot of Brighton. Damian has designed award-winning products for several

international companies.
www.damienevansdesign.com



OLD ENGLISH HALT MORRISONS SALE OF INFRINGING DESIGNS

Old English Company Limited



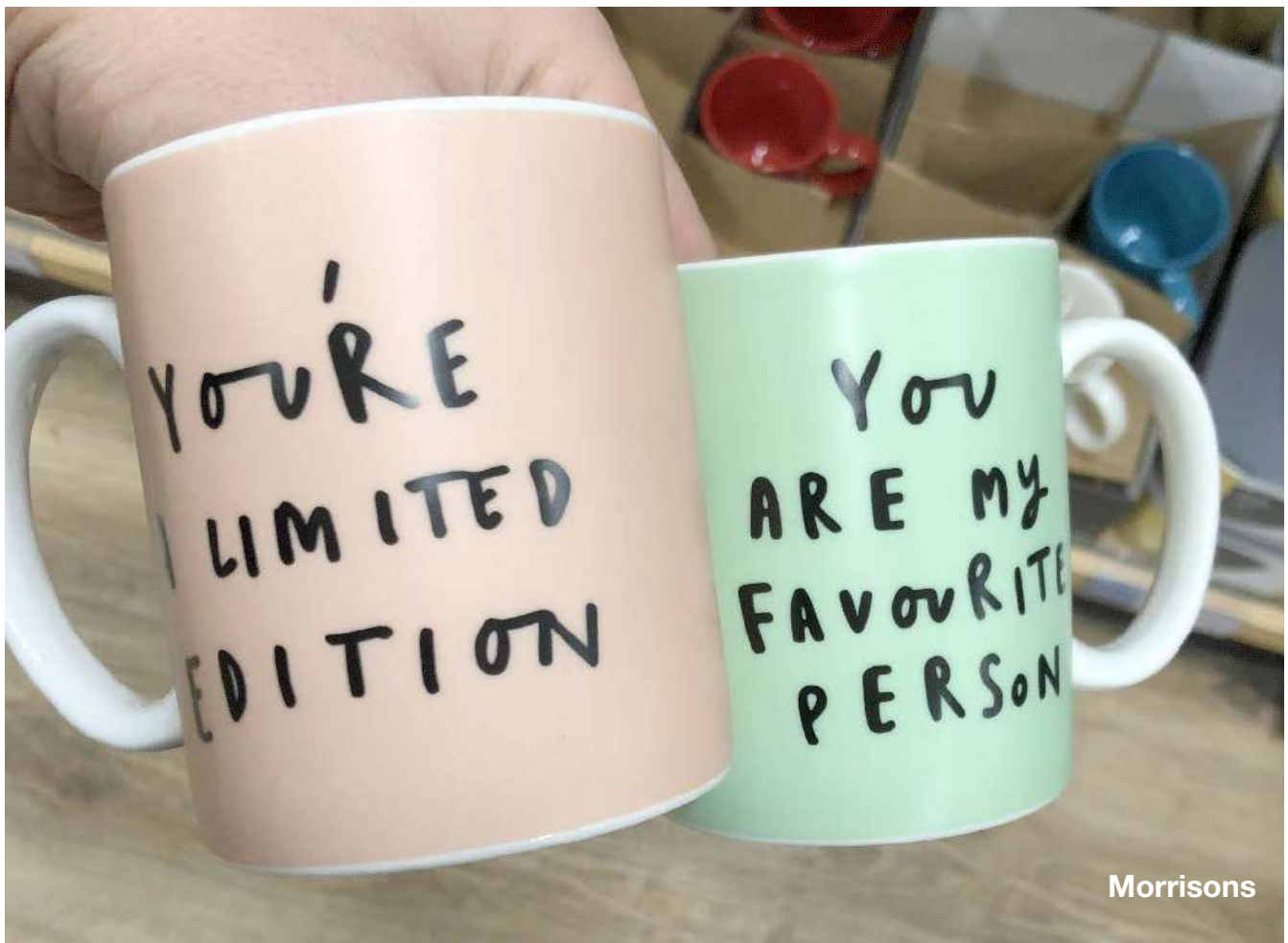
Old English Company Ltd, who design and manufacture a range of high-quality bespoke giftware items, has successfully resolved a copyright infringement dispute against national supermarket chain Morrisons over the sale of infringing designs printed on mugs. Old English Company were assisted by ACID's legal affiliate, McDaniels Law. Despite not admitting liability, Morrisons and Old English reached a settlement, the terms of which are confidential.

Old English became aware that Morrisons were selling products which appeared to have incorporated the whole or a substantial part of the bespoke artistic work created by them which are protected by copyright. Old English thus sought legal advice and commenced pre-action correspondence. The agreement to settle the dispute, without the necessity of proceedings, was a good outcome for both parties.

ACID Legal Affiliate Kelly Hudson, a Director of McDaniels Law, said, "This has been an impressive result for Old English, they have been able to enforce their rights and obtain a very positive result without the need for Court proceedings, which should always be a last resort. If settlement is

possible, we will always try to achieve this for clients, provided it is the right settlement for them." Old English MD, Ben Treanor, said, "I am delighted with the settlement; it can be daunting to go up against a big opponent, as was the case here as the Defendant was a national chain, but if anything that made the issue all the more important as this was a mass reproduction and infringement at prices which sought to significantly undercut our products due to large scale, cheap manufacture."

ACID comment: "Typically when a much smaller company suffers alleged copying by major retail chains and a settlement is reached, the retail chain usually insist on confidentiality so that there is no reputational damage. It is a strategy which ACID does not support. Increasingly micro companies pitted against major retail chains are taking to social media because they want to name and shame this practice. I hope that in 2021 there will be more corporate social responsibility by major players to respect the IP of others and be held to account."



Morrisons

Old English Company Ltd is a UK based stationery and giftware brand established in 2013, with a design studio based in Stamford, Lincolnshire. They design and create beautifully illustrated and hand-lettered products, with the aim to offer stylish, uncomplicated products with messages that resonate with people. Old English Co. is currently stocked in a number of stores across the globe. From the likes of Selfridges and Paperchase, to Oliver Bonas. They offer a range of high-quality greeting cards, stationery and giftware to customers.

www.oldenglishprints.com



Old English Company Limited

GETTING “IP SAVVY!”



During 2020 hundreds of members and non-members joined our new IP webinar series getting to know the basics of intellectual property or as a refresher. The webinars were sector-focused using case studies as examples to explain about IP law and to encourage designer makers/manufacturers to adopt a proactive IP strategy. Very many thanks to Gavin Lewellyn of Stone King and Niall Head Rapson of McDaniel & Co, both ACID legal affiliates, for leading these programs.

For those who were not able to attend, below are links to our sector pages and fact sheets from each webinar are available by emailing info@acid.uk.com

Find out here how ACID supports those in the jewellery, furniture, giftware & greetings cards and 2D surface pattern. During the webinars we received a wealth of questions from the audiences which we did not have time to answer. Niall Head-Rapson has kindly taken time to responded to your queries and we are

pleased to share with you the following TOP TEN IP Q & A's.

TOP TEN WEBINAR IP QUESTIONS & ANSWERS

Q1 - I mainly make bespoke designs for clients. I understand the copyright rests with me. What should I be particularly aware of with one-off-designs?

Answer - when you create a one-off design for someone, they will have the right to use it, but they won't own the copyright unless you assign it them. It really depends what bargain you have struck with the client and what you want to do going forward. If you assign the copyright, then you can't base future designs on that work. If you aren't bothered, then it may well be a way of creating an extra income line; selling exclusivity if you like. If you do want to base future designs on the work as it is, for instance, a signature piece, then you give your client a licence. The thing you should have is clear terms of business so that what clients can do with the work is agreed beforehand.

Q2 - What is the benefit of relying on unregistered designs that last for 10 years, when the copyright law covers you for life +70 years.

Answer - It is not what choice you get to make but the choice the law gives you. Design right covers the shape of a product and applies usually when the product is utilitarian. Copyright covers artworks by contrast and which benefit you get is not really one of choice but is defined by the work that is created. So, if you are creating surface patterns, they will more than likely be covered by copyright and so you should be getting the benefit of copyright subsistence and that is life of the author (you) plus 70 years after your demise.

Q3 - How do we check if a company name is available or already trademarked?

Answer - Company names can be searched at Companies House. <https://www.gov.uk/government/organisations/companies-house> Trade marks can be searched, in the UK, at the IPO <https://www.gov.uk/government/organisations/intellectual-property-office>. The EUIPO has a much more comprehensive search facility; <https://www.tmdn.org/tmview/#/tmview> This gives search results from countries around the world. You should also do some unregistered searches to look for people who use a brand but don't have it formally registered anywhere (so it's

not their company name nor a registered trade mark) as that can reveal names others are using which may lead to difficulty. All of that you can do yourself but if you want a more formal search, speak to an IP lawyer and they can arrange for searches (at a price) to be undertaken.

Q4 - I am starting my own fabric pattern design business. I am completely self-taught which is why I am less confident about protecting my own work as I don't have contacts from university etc. Is the ACID membership the best/least confusing place to start for info and support?

Answer - Yes, it is. There is a great community and lots of information and contacts you can tap into to help you in your venture, and to help you improve your confidence in what you are doing.

Q5 - A fast fashion designer told me if designs are changed in 8 (or maybe 9) ways it's considered different, and so can be used without causing infringement. Is this true?

Answer - It's just simply not true. The test for infringement is, in layman's terms, 'is the design being complained of the same or similar enough to amount to an infringement?' You can make 1 change and it can be fundamental enough to amount to a new design or you can make any number of changes and the fundamentals of the design haven't changed. If you look at the Fiesta example from

It's about time to become IP "savvy!" Intellectual Property protection in the jewellery sector (well, a starting point!)

Dids Macdonald, OBE., CEO of Anti Copying in Design (ACID) & The Design Lawyer, Gavin Llewellyn of Stone King



Hannah Louise Lamb ©



things you should adopt is clear communication as to what is yours and what others can or can't do with your work and understand what the impact will be, if any, on your business. If you let the concern of copying outweigh the benefit then you will not sell and that is a detriment. Be positive, have confidence in your creations and do so alongside a clear and thought out IP strategy.

A larger list of FAQ's are available in the Member Area of the website

www.acid.uk.com

We have also developed new sections in the Member Area where you can view the webinars and presentations in full when you are logged in as a member and find further Q & A's which came up during the webinars.

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the talk, the ornate tiles, there are much more than 8-9 differences and you can see that the complained of tile is substantially the same and as such, a copy.

Q6 - Is a greetings card with an image on it, which is cut to make a 3D item or object a design right item, or does it come under artists' Copyright?

Answer - Copyright; it's a work of art

Q7 - What determines a "surface pattern"? Does it have to be a repeat 'pattern' like might be found on curtains or a bus seat, or does "surface pattern" apply to any image applied to a surface?

Answer - It applies to an image applied to a surface and is usually a copyright work. It does not have to be a repeat pattern.

Q8 - Can a registered design from an Intellectual Property Office be extended beyond 25 years?

Answer - No is the short answer. The public policy argument for this is that you are granted a monopoly and the bargain is once you have had that period to exploit that monopoly, the design is free to all. However, some of the larger and more IP savvy organisations, particularly in the telecoms market, will improve an existing design and the register that improvement. We act for one such client who is in the kitchenware sector and each improvement is registered. The client has more than 10 incremental designs registered which in effect extends the life of the product.

Q9 - If I make DIY kits, am I giving up my trade secrets? Or can my designs still be protected?

Answer - I am not sure what trade secrets you are giving away apart from how to put something together which you are clearly happy to do as you are selling DIY kits. If you put some of your trade secrets into the public domain then they are no longer secrets and, unless they can be protected by other rights, are free to use by others.

Q10 - How do designers balance the 'need' to be on social media with protecting their designs?

Answer - You really have to have an IP strategy and know what you want to do to support your designs. Social media, as well as other mediums, allow one to promote one's designs to a much wider audience. That in itself opens up more sales avenues. If you are copied then you are clearly producing what people like but it is how you react to the copying that is key. If you create a strategy one of the

LIFE AFTER BREXIT AND IP RIGHTS!



CASE STUDY

There are many differences which will affect intellectual property owners, creators, and stakeholders on 1st January 2021 after the transition period is over and we start life in a different world to that of being part of the European Union and, therefore, benefitting from many advantages of that relationship. The UK Intellectual Property Office has provided useful guidance [here](#). It includes key information for customers and users of IP about how the IP system and the IP Office will operate after the end of the transition period.

ACID is delighted to announce that one of its legal affiliate lawyers, Gavin Llewellyn, a partner of Stone King, has also written some very useful guidelines accompanied by advice. Please see the full Stone King Guidance [here](#).

Gavin said, “With the end of the transition period with the EU fast approaching, there are several key steps which individuals, businesses and other organisations with EU and UK IP rights should consider taking now to prepare for the changes which will have come into effect on 31 December 2020 and ensure that their current

and future rights are not prejudiced. Brexit will have an impact on many IP rights, especially on registered trade marks, registered designs and unregistered design rights, which are key IP assets for any creative enterprise.”

ACID Comments, “One of our greatest disappointments is that despite a 4-year campaign, the EU rejected a UK Government request in negotiations for reciprocity on unregistered Community designs. (read more [here](#)) This is potentially calamitous for UK designers because it means the loss of significant IP protection in EU27. However, we have used the consultation on the

Enforcement Framework to raise this matter in support of the UK Government strengthening design laws with the addition of criminal provisions for unregistered design infringement."

Key points in the Stone King article include guidance on:

- Registered EU Trade Marks and International Trade Marks
- Registered Community Designs
- Unregistered Designs and the introduction of a new Supplementary Unregistered Design
- Design Rights and Qualification
- Copyright
- Licence Agreements/Co-existence Agreements
- Exhaustion of Rights
- Patents
- Database Rights
- Representation

In a letter to stakeholders, The Rt. Hon Alok Sharma, MP Secretary of State for Business, Energy & Industrial Strategy said,

On Jan 1st 2021 there will be changes to how the Intellectual Property (IP) system and the Intellectual Property Office (IPO) will operate. These changes will affect:

[Trade Marks and Designs](#)

[Parallel trade from the UK to the EEA](#) [Unregistered Designs](#)

You can find out more information about all of these changes in this [news story from the IPO](#).

Help is available to ensure your business is ready. I urge you to:

- Consider carefully where to [disclose your designs](#) to ensure they have adequate protection in their most important market;
- If you export IP-protected goods on the secondary or parallel market, contact the rights holder in the EEA to see if you have permission to continue to [parallel export](#).
- Consider if you want exports to continue if you are a business that owns the IP rights for goods currently parallel exported from the UK to the EEA.

If you do not act, there is a risk your business operations will be interrupted.

You can find out what other actions you may need to take by using the checker tool at gov.uk/transition and signing up for [business readiness updates](#).



I know this is a tough time for many businesses as we continue to face the challenges posed by coronavirus. I want to take the opportunity to thank you for all you are doing to combat those challenges and in helping to ensure a smooth end to the transition period. The Government is determined to help you take advantage of the new opportunities that being an independent trading nation will bring."

www.stoneking.co.uk

CORPORATE MEMBER PROFILE

– TALKING TABLES



Mark McCormack
MD of Talking Tables



Clare Harris, Founder of
Talking Tables

Talking Tables was launched in 1999, just in time for the millennium. In an interview with Mark McCormack, Managing Director, we asked, “Could you tell us a little about the history of this engaging and fun-focused company and when & why you first started creating your products/designs?”

In 1997 Clare Harris saw a gap in the market for fun, design-led, party accessories, gifts and games. She was unable to buy co-ordinating paper tableware for Christmas, Birthday or Weddings. The typical products on the market were dull, mismatched and did not create the wow-factor required! This was the very early days of mail order, so the business went for a wholesale approach, targeting retailers such as Paperchase, Heals and Conran, as well as UK-wide independent gift retailers. Now we have stockists like John Lewis, Selfridges, and Waitrose plus thousands of independent shops and retailers here in the UK, and internationally. The company name came about because Clare wanted our products to get the table talking.

Did you have any knowledge of intellectual property, or how to develop an effective IP Strategy when you started your business?

Unfortunately, we had no prior knowledge of intellectual property when Talking Tables launched in 1999. Although we trademarked the company logo, we had already been

operating for a few years at the point that we started to take steps to protect our intellectual property.

Talking Tables have been a member of ACID for many years, which ACID Membership services have you used and how have you benefited from being a Member?

Although we have product developers and designers in-house, we also work with freelance designers so we have used the ACID Freelance Designer Template Agreement and adapted this for our own company. The ACID Legal Affiliates have been a useful resources and ACID has helped us with advice and support over the years with a number of cases of IP infringement against our brand or products. We feel the best aspect of membership is the support and advice you are given as part of your membership. Lawyers can be very expensive, and the free advice you are given can be invaluable in understanding when an issue might need taking further, or how to act when faced with a potential infringement. We also value the campaigning work undertaken by ACID, I was pleased to attend the House of Commons with ACID CEO, Dids Macdonald, OBE., and the Alliance for IP, to take part in a number of events to lobby MPs around the IP Act.

Talking Tables work hard to ensure products are fun, unique and on-trend. After launching the company with just eight products there is now

an enormous range of tableware available. Have you brought anything new to the marketplace recently that you would like to share?

We have been working hard over the last few years to make our product offering as sustainable as possible. We have been proud this year to launch the World's first home recyclable paper cup. We worked in collaboration with our European supplier to remove the plastic lining from the inside of the cup, and replace it with a waterproof varnish instead that means the cup is watertight, but can also be easily recycled once used. We have also launched a fully plastic free range of paper party products – both the product and packaging is free from plastic, and all can be recycled.

Talking Tables are committed to demonstrating ethics, sustainable practices and protecting the environment. How do you put these commitments into action?

We develop our own products and work with like-minded suppliers to ensure planet-friendly procedures; from the materials we use, the production process and removing plastic from packaging. It is an ongoing journey for Talking Tables to reduce its plastic. We're not perfect but we are on this journey and working hard to make changes that matter for our products, our gatherings and our planet.

ACID MEMBER



You have already been proactive in making the most of ACID membership and in implementing an effective IP Strategy by using the ACID IP Statement on your website, the ACID IP Databank to prove design origination, and utilising template legal agreements with your designers. What advice would you offer to a new designer in terms of protecting their IP?

We would advise that you take your time to do your research, check the market and ensure everything you

produce is truly original. It is easier than you think to unwittingly copy another design or infringe an existing design registration. Make sure you have agreed your terms upfront before starting a project, never assume your conditions will be your client's conditions. Take the time to read and understand as much as you can about intellectual property law in design – it makes it much easier to follow the steps to ensure your work is protected.

ACID is campaigning for stronger enforcement for design infringement and we value the support of our members to enable ACID to campaign for design law reform. Do you have any messages for Government/Policy Makers on IP issues?

Listen carefully to UK designers and lobby groups such as ACID. There are plenty of large operators out there who are quick to rip-off small companies with little fear of recourse.

To find out more about Talking Tables visit their website. Talking Tables were featured in a recent ACID IP Protection Webinar with a focus on the Giftware sector, you can read more by clicking here, or to view the webinar slideshow click here.



Example of Talking Tables original product Prosecco Pong alongside imitations



Member Focus

Sandra Vick



In our latest Member Focus we want to share a fascinating insight into UK designer, Sandra Vick. Sandra's mission to make art more accessible began in 2016 and her distinctive designs continue to bring artwork inspired by a love of nature into the homes of many. All the inside stories of our amazingly diverse membership all have one common theme – protecting their intellectual property to achieve growth and putting IP at the heart of their business strategy. Sandra Vick is no exception!

When and why did you first start creating your products/designs?

I first started to decorate products using my designs in 2016 when my friends were asking for my distinctive black and white bird paintings on things for their houses. I realised that lots of people like art but can't afford it. I also wanted to bring my love for nature and our local birds to the attention of more people. So, I thought I'd produce things that had my art on them but didn't cost so much. I started with a few mugs, and it grew from there. Now I have lots of designs and products including various styles of mugs, wash bags, tableware, and tea towels.

Did you have any knowledge of intellectual property when you started your business?

No, not really. I signed up to an accelerator programme and found out it was an issue then. But the lawyer there was showing me an expensive copyright system that was way out of my budget at that stage. I thought as an artist I had automatic copyright, but hadn't appreciated that I might need to defend that copyright.

Which ACID membership services have you used and how have you benefited from being a member?

I won the first year of my membership at the British Craft Trade Fair. I had looked at membership many times before but hadn't taken the time in the first couple of years

ACID MEMBER



of business to really look and see what it was about. I have now listed my products on the marketplace and uploaded my designs in the IP Databank. I hope I never have to use it, but it's good to know ACID has my back if I need it.

Have you brought anything to the marketplace recently that you would like to share?

I've not added anything to the marketplace very recently, but I'm in the middle of doing a Kickstarter to bring some notebooks to market and will put them on the marketplace once they are in stock. If you'd like to support my Crowdfunder here's the link. My most recent products on the ACID marketplace are my 'mugs2go' which are china travel mugs with my black and white bird designs on them.

What is the best aspect of ACID membership for your business?

Being able to lodge my designs somewhere as evidence that they are my designs, and when they started being my designs. It's also a great way to keep up to date with issues to do with IP.

What advice would you offer to a new designer?

Join ACID to keep records of your designs – you never know if someone is going to try to copy you and consider registering your designs with the IPO.

ACID values the support of its members to enable it to campaign for design law reform. Do you have any messages for government on IP issues?

Protecting the small makers and designers in the UK is really important. They are the innovators and big companies should collaborate with them not steal from them. It would be great to see the government encourage big companies to work with smaller makers more and to licence designs and ensure that creative people are recognised and valued more.

Sandra Vick

Winner of the ACID Post Newcomer award at BCTF 2019

www.sandravick.co.uk



ARE YOU PLANNING TO TRADE IN OTHER TERRITORIES POST BREXIT?



Ideally, ACID would like to see reciprocal recognition of a discrete regime for protection of unregistered designs in Australia, New Zealand and Canada as currently exists under UK law, through the Unregistered Design Right provided for in the CDPA and the Supplementary Unregistered Design Right (the old EU Community Unregistered Design Right). These rights offer 10-15 years and 3 years protection for designers where their designs are unregistered and are infringed.

If so, it is probably a good idea to examine the design law that will protect your designs in those countries. Globally, design law is complex, so understanding some of the differences is important for most designers planning to trade, for example, with Japan, New Zealand, Australia, Canada, and the United States is important.

Having contributed to many discussions with the Department of Trade in negotiations with the above countries post Brexit, it is important that designers know and understand the differences of what is a very complex set of laws, with little global harmonisation. In the interests of brevity, we have provided a high-level overview of the laws only. More information about the IP framework in terms of designs can be found [here](#) for the above countries.

Nick Kounoupas, ACID's Chief Counsel said,

"A distinction can immediately be drawn between, on the one hand, the design laws of Canada, Australia, and New Zealand, which have a Commonwealth and UK heritage, and on the other, those of Japan and the US, which do not. In the latter two examples designs are protected through a species of patent laws."

IP assistance world-wide

For UK companies, help is at hand from the UK IP attachés who are accessible, knowledgeable and have expertise in country related intellectual property. Also, don't forget that ACID's legal affiliates have "best friend" legal contacts all over the world and so are a great first resource if you need hands on advice. IP attachés are located in the countries listed below and further information

provided by Government includes IP protection abroad: country guides and Extension of UK intellectual property rights abroad. Contact details for regional IP attachés are shown below.

North America -
kayleigh.nauman@fco.gov.uk;

South East Asia -
christabel.koh2@fco.gov.uk;
desmond.tan@fco.gov.uk;

China:
Conor.Murray2@fco.gov.uk;

Brazil:
angelica.garcia@fco.gov.uk;

India -
Pragya.Chaturvedi@fco.gov.uk;

Switzerland – (WIPO liaison)
jan.walter@fco.gov.uk;

Regarding Japan, the fact that Japan has an unfair competition law, whereas the UK does not, could be an issue. Unfair competition laws are much broader and more powerful than passing off laws that apply here. It is expected that Japan will argue for enhanced unfair competition protection and ACID would welcome this! The system of registering designs under patent laws is too well established to be changed.

In the US, the system of registering designs under patent laws is also too well established to be changed. However, there could be examination of trade dress laws to see whether enhanced trade dress protection could be included within the UK design regime in the future.

New Members

ACID welcomes the following new members to the ACID Community



Company Name	Industry	Company Name	Industry
Carys Boyle Ceramics	Ceramics	Dear Henry Ltd	Greetings Cards
Intaglio Creative Limited	Ceramics	Joanne Wishart	Greetings Cards
Martin Wheeler	Ceramics	Samantha Ball Artist	Greetings Cards
Big Beaumont LTD t/a Bullabaloo	Childrenswear	Scott Allan	Interior Accessories
Sand Amari Fashion UK Ltd	Childrenswear	Angle Of Light	Interior Design
Design Gurus Limited	Design Agency	Islewear	Jewellery
No Name Studio	Design Agency	Jawline Jewellery	Jewellery
Art Workers Limited	Fabrics & Textiles	Lakeland Loom	Jewellery
Charlotte Gaisford Ltd	Fabrics & Textiles	Silver Sparrow Jewellery	Jewellery
Davinder Madaheer LTD	Fabrics & Textiles	Sstutter Ltd	Jewellery
Eleanor Fausing	Fabrics & Textiles	The Argentum Design Company	Jewellery
Emma Hardie Designs	Fabrics & Textiles	Velvet Design Co	Jewellery
Joanna Zenghelis	Fabrics & Textiles	Wendy Penrose Jewellery	Jewellery
Knapp Textiles	Fabrics & Textiles	Wolf & Moon Limited	Jewellery
Sarah Baber	Fabrics & Textiles	JMH Assets Ltd	Kitchen & Bathroom
Sarah Dunbar Design	Fabrics & Textiles	&SistersLtd	Product Design
Animal Adventure Pods	Furniture	Bonum Ideas	Product Design
Batch Design Ltd	Furniture	Charlie Nunn Design	Product Design
Ben Dawson Ltd	Furniture	EPH Studios	Product Design
Core Products Ltd	Furniture	Innomate Ltd	Product Design
Dean Watson Interiors	Furniture	O'Hare & D'Jafer Ltd.	Product Design
Done up North	Furniture	Omlet Ltd	Product Design
Elementri Design	Furniture	Fiona Goldman	The Arts
konstr	Furniture	Gwyneth Depport	The Arts
MyTrendyFurniture	Furniture	You Go Productions	The Arts
Raul Castillo	Furniture	Steampotts	Toys
Juke Box Creations	Garden Products		
Open 24 Seven Ltd	Garden Products		
Daisy Ravenfield	Giftware		
Dreams To Reality Design Ltd	Giftware		
Fiona Wilson Prints	Giftware		
Lucy Loves This Ltd	Giftware		
Sharan James Stained Glass	Giftware		
Galit Zadok	Graphics		
The Creative Ox	Graphics		

ACID's Joining Criteria for New Members

In accordance with our policy that all members are provisional members for the first 6 months of their subscription period, we publish a list in each newsletter of companies which have recently joined ACID. In the event that there is any complaint against a new member, please write to the Chief Executive together with any substantiated facts. Hearsay, rumour or unsubstantiated facts will not be considered under any circumstances. Any complaint that should arise will be put before a panel comprising ACID's legal advisor, Chief Executive and two Corporate ACID Members from a different industry sector. If the panel decides that a complaint should be upheld their decision will be final and no correspondence will be entered into ■

ACID Welcomes New Companies to ACID Membership



Events

ACID will continue our series of educational webinars in 2021 and will soon announce a programme of subject specific webinars in conjunction with our ACID Legal Affiliate teams to provide help and advice. Keep up to date on the Events section of our website and our social media platforms.

Save the Date 21st January 2021 11am
IP Protection for Designers in Fashion, Childrenswear and Wedding Attire
Register for the latest in ACID's series of IP webinars to learn more about Intellectual Property and your rights or as a refresher with new post Brexit information, rounded

off with a Q & A session for you to ask your queries. For further details email info@acid.uk.com and follow our social media for more information and a registration link.



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Nothing in this newsletter is intended to be a complete statement of the current law and you should always take specialist advice in respect of your own particular circumstances

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