

ANTI COPYING IN DESIGN

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NEWSLETTER

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Letter from ACID's CEO:



Dear ACID member, wishing you a very Happy New Year

Yes, 2015's first ACID newsletter has a China focus! I visited the awe inspiring Great Wall of China when I attended an IP symposium in Beijing in September. What I didn't know was that its origins date back to 476BC and that it was built to keep warring factions apart! With four million people visiting annually it clearly brings nations together from all points of the globe. However, it is still a land of contrasts. Doing business with China offers exciting opportunities but it also presents IP challenges. So, 2015 will see a focus, through our ACID IP China group, on a proactive strategy to maximise opportunities and drive forward reform.

In his welcoming speech at the IP symposium, Commissioner Shen Changyu of the State Intellectual Property Office (SIPO) spoke about stepping up administrative transparency within the legal environment, with campaigns to crack down on infringement. There was a further commitment to explore the establishment of an IP Court which has since been created so this is good news. Commissioner Shen also announced a new target of "China as an IP Power". These positive steps bode well for change and I welcome them, if they translate into grass roots reality, making it easier for companies to address the flow of copying from China and pursue the many opportunities that China has to offer.



Attending her first international event, our new IP Minister Baroness Neville-Rolfe, said, "I have a passion for encouraging innovation and I consider this a valuable event for both countries". She emphasised the need for bilateral research and respect for IP rights. "The prize is huge" she said, "If there is an efficient (IPR) system which will contribute to further growth". Concluding her remarks, she said, "IP concerns should not stop you pursuing business options in China".



The Beijing symposium provided a timely opportunity to invite Neil Feinson, the UK IPO's International Director of Policy to brief a round table action group of ACID members on some of the recent design reforms in China. At the 2nd China IP action group meeting (report on pages 12-14) also attended by Steve Rowan, IPO Director of Designs and Tom Duke, The UK's Attaché based in Beijing, there was plenty of food for thought and a real desire for action. This event was hosted by Serena Tierney, an expert on China and IP issues and one of ACID's legal affiliates from Bircham Dyson Bell.

ERRA – Iconic v Replica designs

Following a survey of ACID membership on the recent consultation on the provisional term Government will recommend following the Enterprise Regulations and Reform Act becoming law, **there was an over whelming (94%) vote from membership that the UK Government should demonstrate their full support behind the design community to stop exploitation in the UK of iconic designs, sooner rather than later.** Currently EU buyers of unlicensed iconic designs can access them through the UK and many businesses have made their business models exploiting this loophole which the majority of the rest of Europe have adopted except for Romania and Estonia.

Exhibitions

For those who are planning launches of new designs and products early in 2015, design registration is the preferred route to give you piece of mind, either the UK or EU, but if you haven't registered do take advantage of the new, improved and simplified ACID Design Databank. This does not add to your IP rights but provides reassurance knowing that ACID holds them securely and they are date recorded, providing you with third party evidence should you need it. As ever, a pro-active IP strategy is advisable.

Don't wait until someone has copied your designs. There is no better place than on your website to say just that. "I am a member of ACID and any of infringement of our designs will be taken seriously."

Vision for 2020

Most importantly ACID members really care about their IP as a positive vehicle for growth. Designers had their say in the Alliance Manifesto presented to all parties and to policy makers. **The vision for 2020 is crystal clear. For innovation and creativity to continue to thrive and for the UK to remain globally competitive, industry and Government need to work together to ensure that by 2020, creators, consumers and investors choose the UK when deciding where to base their businesses.** To deliver this vision we need to ensure that creativity can be protected and there is a stable legal framework. I urge every individual creator and business that relies on IP to share this vision, support our manifesto and join our call to Government to do the same.

Thank you...

ACID is only as good as the feedback we receive from you, our members. Thank you so much to all of you who have proactively supported our communications with Government, so continue to drop me a line on any particular aspects on which we could improve our service or any issue you would like me to raise with policy makers or Government.

I owe a huge debt to my wonderful ACID team and to our Legal Affiliates who are dedicated to acting on your behalf. And a very special mention to Nick Kounoupas of DMH Stallard who spent tireless (pro-bono) hours and days to make sure our legal i's were dotted and t's were crossed in making the IP Act a reality, with the introduction of criminal provisions for intentional design infringement. History was made on 1st October 2014. Of that we are proud.

All good wishes for 2015
Dids



GUEST EDITOR

Tom Duke IP Attaché to
China, based in Beijing



I have now been in this post for three years and lead the IPO's China team, from Beijing. I work to provide practical support for British businesses in relation to IP in China through 1-2-1 business support, a range of information tools and outreach events across China and the UK. In 2013/14 the Embassy supported 160+ cases worth at least £80 million in total. The second part of my role is to manage the UK's policy cooperation with China, supporting reforms in priority areas for the UK and maintaining a strategic high-level dialogue covering IPR protection and enforcement.

China can be a vital part of business growth for British designers and design-intensive companies. Chinese original equipment manufacturing (OEM) can offer a cost-efficient way to scale up production.

The fast-growing Chinese market provides opportunities for a range of design-intensive products, and massive Chinese trade fairs and e-commerce platforms can help reach consumers in China and across the world.

But China also presents IP risks. These same trade fairs and e-commerce platforms provide sales channels for infringing products. The Chinese legal framework is improving fast, but can still struggle to provide effective remedies against copying. Relationships with manufacturers and other Chinese partners require careful management, especially when designs are disclosed as part of negotiations or manufacturing processes.

Engaging with the Chinese Government on designs is a key part of the UK's relationship with China. We understand that effective protection for designs is an important part of safeguarding the global competitiveness of British design. We hope that the new ACID IP China Group will gather views and suggestions to inform these exchanges and help support further reforms in China.

The registered design system in mainland China operates at a high volume. In 2013 there were over 660,000 applications for design protection to the State Intellectual Property Office (SIPO), with the majority from domestic Chinese applicants. The system to obtain a registered design in China is fast and relatively affordable, there is no detailed examination and applications are usually accepted in around 6 months. Protection currently lasts for 10 years though this will be soon extended to 15 years.

British designers and their companies should protect designs and other IP with the Chinese authorities at an early stage. The risk is that if you don't protect it someone else will take advantage of the system and get there before you, potentially making life difficult further down the line.



Chinese registered designs can be enforced through the civil Courts, customs and local Government units that can confiscate goods and issue fines. Major trade fairs usually have IP enforcement services, though getting effective action taken within the short timeframe available can be challenging.

Despite the frequent frustrations in obtaining effective protection and enforcement of design rights in China we encourage British designers to persevere. We have seen that positive results can be achieved over time and the opportunities presented by China can be large, making the effort worthwhile.

“ I really enjoyed meeting ACID members at the recent China roundtable and I look forward to working with ACID and the new IP China Group in the future. Our objective is to encourage collaboration to ensure that we represent UK business interests and help them to operate effectively in China. ”

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CASE STUDIES

A UNIQUE SHOPPING EXPERIENCE: CAN YOU PROTECT A SHOP DESIGN? Apple Inc. v Deutsches Patent - und Markenamt Case C-421/13

The ever innovative company, Apple Inc., successfully registered a trade mark representing their shop design in the USA. Pursuing this strategy globally, they faced problems when the German Patent and Trade Mark Office, (DPMA), refused Apple's trade mark application. An appeal battle ensued starting at the DPMA and ending at the Court of Justice of the EU (CJEU).

The CJEU's conclusion was that the representation, by design alone, without indicating the size or the proportions of the layout of a retail store, may be registered as a trade mark provided that it is capable of distinguishing the products or services of one undertaking from those of another. This decision is likely to be viewed positively by businesses which operate via a network of business format franchisees or licencees who will find such protection useful to protect their consistent branding in multiple locations.

Charlotte Duly of ACID Legal Affiliate Boulton Wade Tennant said, "It will also give protection from copycats keen to imitate not only the products, but the look and feel of retail environments, such as Apple's stores. The decision also continues the trend away from the traditional standpoint (where registration was limited to words, pictures and similar signs) towards the broader definition of a trade mark to cover all manner of two and three-dimensional marks along with sounds and smells. However, the hurdles to registration that many such marks face remain."

www.boulton.com

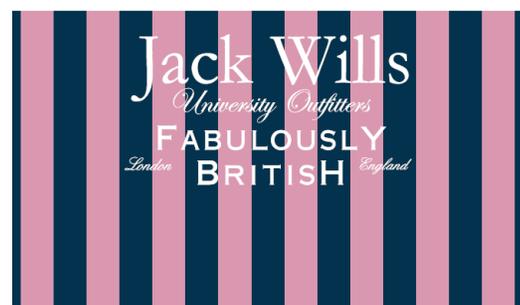


“ Design is not just what it looks like and feels like. Design is how it works. ”

Steve Jobs

IP & Fashion – major fashion names in IP disputes

2014 has been a busy year for IP fashion cases passing through the Courts. The year kicked off with a judgment handed down in the case of Jack Wills Ltd v House of Fraser (Stores) Ltd [2014] EWHC 110 (Ch) in a trade mark claim against House of Fraser who adopted a logo (a pigeon wearing a top hat) that looked a lot like Jack Wills' logo (a pheasant with a walking stick wearing a top hat). The Court had little difficulty concluding that Jack Wills' registered trade mark had been infringed.



Karen Millen v Dunnes Stores

Following this, the European Court of Justice (ECJ) gave us a decision in Karen Millen Fashions Ltd v. Dunnes Stores and Dunnes Stores (Limerick) Ltd (Case C-345/13). This was a case concerning unregistered community designs. Karen Millen designed a shirt that Dunnes admitted it had copied. However, Dunnes insisted that its copying did not amount to an infringement of Karen Millen's unregistered design right because the Karen Millen shirt lacked "individual character".



Dunnes argued that all of the design features that can be seen on the Karen Millen shirt could be found on other shirts. Karen Millen argued that that didn't matter because those features had never been combined in this particular way and it was the combination of these design features that gave its shirt individual character.

The ECJ was effectively asked to confirm if individual character could arise in a combination of pre-existing design features. The ECJ concluded that a combination of pre-existing design features could have individual character. This was good news for Karen Millen because it meant that Dunnes' primary defence had floundered.

FARRER & Co

www.farrer.co.uk

WHAT'S IN A STRIPE? K-SWISS INC V OHIM AND KÜNZLI SWISSSCHUH AG (CASE T-85/13)

This is another ECJ judgment concerning K Swiss' application to register the general idea of "5 stripes" as a trade mark for trainers. The application filed actually covered this figurative mark:

The ECJ agreed with OHIM (the EU IP Registry) that this was not a trade mark capable of distinguishing one brand of trainers from another and was simply a design feature. The trade mark application was therefore rejected. It was the view of OHIM and the ECJ that the trainer buying public is not accustomed to considering designs such as stripes applied to their surface to be an element identifying their commercial origin. This may come as a surprise to those that are accustomed to associating three stripes with Adidas but the difference there is that Adidas have educated the public to understand that three stripes equals Adidas whereas K Swiss have not (yet) done that with their five stripe brand.



THOMAS PINK AND VICTORIA'S SECRET

A long-awaited, judgment in Thomas Pink Limited v Victoria's Secret UK Ltd [2014] EWHC 2631 (Ch) has resolved a pretty complicated IP territorial issue. When Victoria's Secret decided to launch its PINK brand in the UK their PINK brand was aimed at the "college girl" market (18-25 year olds). It had been used successfully in the US since 2004 and was introduced into London in 2012. Thomas Pink has sold shirts and other goods in the UK under the PINK brand since 1984 and sued for registered trade mark infringement. Victoria's Secret attacked Thomas Pink's claim from a number of angles but, ultimately, Thomas Pink won and we are unlikely to see Victoria's Secret PINK brand in the UK unless some agreement can be made with Thomas Pink.



Anthony Misquitta an IP expert at ACID Legal Affiliate, Farrer & Co said,

"Whilst it is good to see the Courts finding in favour of fashion designers and brands in circumstances where their IP is infringed, it is worrying that many of these cases involve significant names in the fashion industry fighting each other. One wonders how often these big fashion brands ride roughshod over small and medium-sized designers and brands that don't have the legal budgets of Thomas Pink, Jack Wills and Karen Millen."

Further details on all of these cases mentioned here (except the K-Swiss decision) can be found at www.farrer.co.uk.



PLANT THEATRE – FUNKY VEG KIT LOOK ALIKES THWARTED ONLINE

Faced with two people selling copies of their “Funky Veg Kit” online, the family run Plant Theatre company wanted to take immediate legal action so contacted Niall Head-Rapson of ACID Legal Affiliate McDaniels & Co. Niall said, “We have got a proactive and consistent approach to this sort of online problem so contacted Amazon and the products have been withdrawn from sale, so a good result”.

ACID comment, “Most of the big online players such as Amazon take a responsible view to online infringements when they receive “take-down” notices so the message is clear: be vigilant, watch the market for look alikes and act decisively.”

Plant Theatre’s business started when the husband and wife team wanted to brighten a corner of the garden for their daughter’s Christening party. They put together some

tiered shelves, nailed them to the fence and filled them with some colourful pot plants – from the many complimentary remarks they received that day, Plant Theatre was born and the rest is history!

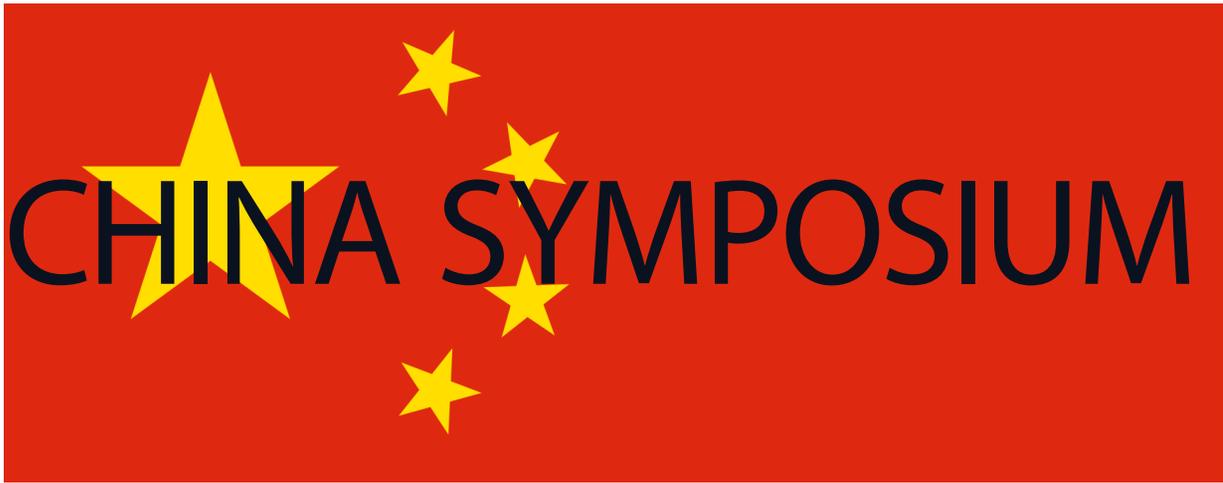
In most instances they innovate, design and manufacture their ideas, so the items found on their website have a little bit of them in them and are not necessarily found elsewhere. They pride themselves in manufacturing products which not only look good but are highly practical. Important for them is a decisive IP strategy to protect their designs.

www.plant-theatre.com
www.mcdanielslaw.com



FARRER & Co





CHINA SYMPOSIUM

At an ACID IP and China Symposium hosted by Serena Tierney of ACID Legal Affiliate Bircham Dyson Bell, design and manufacturing-led members from diverse design sectors came together to discuss one thing - China issues, both opportunities and IP challenges. The event was designed as a catalyst to start an ACID IP China Group and the objectives were to hear from the IPO about developments, opportunities and emerging challenges for those engaged with China, either as start ups or established PLCs and to listen and respond to issues designers and manufacturers face. ACID's plan is to encourage future discussion and dialogue to influence policy to help UK designers and manufacturers to work effectively with China. High on the list of priorities is to identify how we can enter the debate to exert more pressure on China to stop the culture of blatant copying and to start an ACID IP China group, for information sharing and identifying key areas of joint concern so that we speak from a united voice.



Neil Feinson IPO International Policy Director said, "China is an emerging and developing country with different forces at play affecting the economy. The Chinese Government does understand IP, up to state counsel level, and they understand creativity. I hope The IPO can lend some muscle to assisting British Companies working in China, particularly where there are identified patterns of behaviour. Changes to the law highlighted recently, regarding websites such as Alibaba, means the option of taking down infringing websites is also now available."

Steve Rowan IPO, Divisional Director of Trade Marks & Patents described a large trademark application problem where Chinese Companies try to register UK trademarks and that The IPO had discussed the new criminalisation of infringement of Registered designs in the UK. There are changes afoot in China too, with a design patent's term being extended from 10 to 15 years and there are also discussions for International harmonisation with WIPO, a move to try to encourage a treaty for designs.

Tom Duke, IP Attaché to China talked about his role as the first China-based IP Attaché, working with China and Hong Kong, which has given him an insight into how emerging markets differ and his brief as IP Attaché is to provide support to British Companies. The Beijing based IP Attaché department can provide information on how design is protected in China and can make representations if the Chinese system is not functioning. The department can also supply documents and newsletters on new Chinese policies which are developing quickly. The second stand of the IP Attaché role is leading discussions on policy enforcement with the Chinese Government on behalf of the British Government. Support for UK Companies is given on day to day issues that arise and trying to create a better IP system in China for the future. If you do find an infringement in China the good news is that it is quite affordable to take action. The Chinese Civil Court system is quite sophisticated but damages and enforcement are low, although the decisions are to a good standard. In China it is also easy to register designs and trademarks.

IP and China expert **Serena Tierney** said, “The quality of Judgments from Chinese Courts initially included some interesting decisions but now the Chinese system is more helpful and sophisticated with reliable and predictable results. The speed on which improvements are being made is quite dramatic. Recent improvements followed a case when an Anti Virus company had issues abusing monopoly which was followed by a second case testing new anti monopoly laws. This prompted Chinese judges to test the market and look at the anti competitive effect”.



Case study - Laura Breen of Trunki (Magmatic) gave a short presentation on the IP issues which have and are continually hounding Trunki, mainly emanating from China. Trunki are designers of children’s suitcases, seen in many airports. Trunki had taken out both trade mark protection and Chinese patent and design registrations but 100% of fakes found cannot all be covered by trade mark protection. By the time the copies are found online the Chinese Company has registered a design patent and it takes up to 18 months for revocation, which costs a lot of money. When the product is already online it is very hard to stop.



Chinese companies file a patent on our design; there are no checks, so at trade shows and online marketplaces we can’t remove goods as they have a valid certificate. Costs and in the region of \$5000 with 18 months to invalidate, and this makes shutting down factories very complicated. Chinese companies file a patent on a similar design and we cannot invalidate - yet there is no innovative step.

Administrative burden: paperwork, notarising and validating documents creates a sluggish and drawn out process.

Dids Macdonald “The IP landscape in China is changing. There are still administration problems and time challenges. Policy with regard to CSR is another obvious conversation to have with the Chinese. But there was the start of an ongoing dialogue together and also with our colleagues at the IPO and the Embassy in Beijing. The challenges faced on the ground need to be addressed to halt the real commercial threats to business and livelihoods by the increase of counterfeiting and copying through Chinese infringement”.

Next steps:

Create an ACID IP China group for information sharing, dissemination and discussion

Begin an ongoing dialogue with Government on how to tackle some of the increasing IP issues facing designers and design-led manufacturers

Consult ACID IP China group on IP policy issues to raise with Government to engage with International policy makers

Hold a dedicated day in 2015 with expert speakers delving into further issues which affect UK companies and explore all opportunities of working more effectively with China

ACID has formed a partnership with **PIPCU** the newly formed Police Intellectual Property Crime Unit (PIPCU) Since its launch in September 2013, PIPCU has delivered significant results. Amongst many other successes, PIPCU has diverted more than 5 million visits from copyright infringing sites to the PIPCU domain suspension page. ACID has joined forces with PIPCU to work on joint initiatives for the Design Sector.

ON-LINE MARKETPLACE – What are the IP challenges?



SK STONE KING

At an ACID interactive round table forum Gavin Llewellyn of Legal Affiliates Stone King stressed that IP rights are the tradable asset of any designer or brand-owner and the threats to those rights are particularly acute in the on-line arena. Not only can goods be imitated with ease, using modern manufacturing techniques, but also websites are easy to replicate or dress up to look like reputable shop windows for genuine goods. Counterfeits and imitations can be sold in a way which makes the seller untraceable or difficult to pursue.

In a world of fast-moving consumer goods and shoppers accustomed to buying goods with a few mouse clicks on a website, IP rights owners need to be ever more vigilant for fakes and copies because of the destructive effect which the infringement of IP rights can have on a business.

What can I do to protect my unregistered design rights from copying?

A design that is not registered is not completely unprotected. UK design rights automatically protect commercially exploited designs for 10 years after they were first sold (but in the final five years you cannot refuse to grant someone else a compulsory licence called a "licence of right") "Community" unregistered design rights provide a 3-year protection period throughout the EU from the time they are launched. As of 1 October 2014 in the UK, the intentional infringement of a registered design is now a criminal offence punishable by a fine or, in extreme situations, imprisonment.

When should I register my design?

Registration is reserved to "new" designs, so you can register any design which has not yet been disclosed or any design which is within 12 months of first disclosure. 'Disclosure' means, broadly, the design's first entry onto the marketplace within the relevant industry. Discussions under confidentiality terms will not normally constitute disclosure – so you can discuss your design with a potential manufacturer or an



engineer, for example, without fear of triggering the 12-month period.

It is important to have a design protection strategy:

Keep an audit trail of your design from idea to marketplace to demonstrate your ownership. Keep everything from preliminary scribbles on the back of an envelope to CAD drawings. Good records can also improve your chances of a successful infringement claim or of defending a claim made against you. Keep a note of the date of first disclosure – and the date 12 months from then! Finally, submit your registration within 12 months of disclosure. Once registered, your design will be protected from the date of submission.

I have found copies and counterfeits of my designs for sale on the Internet. How can I get these infringing items removed?

On-line retailers and marketplaces generally exclude liability for the IP infringements of their suppliers and/or listed sellers. However, these companies will potentially be liable for infringements if they fail to take action once they are put on notice that they sell or list infringing products and have had

time to assess your claim. Amazon, eBay, Alibaba, etc. all have procedures in place for notifying them of the presence of such items on their sites but often access is complicated and labour-intensive.

If you do not own the rights that you claim to own you could be liable for making a "groundless threat" of design right or trade mark infringement proceedings which would entitle the seller of the allegedly infringing goods to sue you for damages caused by your threats (e.g. lost sales).

To circumvent the on-line merchant's claims process, you can write directly to the company to notify it of your rights. If the letter is appropriately drafted it will not constitute a groundless threat and the company is likely to take the letter seriously as its liability (and reputation) will be engaged if it fails to act.

What if the copies and counterfeits sold on-line are available for purchase in the UK, but the website is not domiciled in the UK or subject to UK law?

If copies and counterfeits of your designs are marketed to a UK audience, your rights are being infringed. If contacting the seller or intermediary website (either directly or via the site's notification procedure) fails in removal of the infringing items, consider whether you wish to obtain a Court Order in the UK necessary to commence enforcement proceedings against the seller or its intermediary who is outside the UK Court's jurisdiction. Foreign Courts can enforce judgments passed by Courts in the UK, but may require that proceedings be initiated in that country.

You can also contact HM Customs & Excise to prevent the importation of the infringing products purchased on the website: Customs can take random samples among items that fit the description provided. This is by no means fool-proof and is usually easier to implement in respect of registered rights, particularly trade marks, but it can provide an additional level of protection.

Sometimes UK-based Internet service providers (ISPs) have been ordered by the UK Courts to prevent access to foreign-domiciled websites, but these cases relied on breach of copyright and concerned sites that were wholly infringing (i.e. streaming sites where all content infringed copyright).

How can I find infringing items in the first place?

The simplest way of monitoring potential infringements of your intellectual property rights is by conducting searches yourself. Searches using your product's name or key descriptive terms are likely to flag up copies or counterfeits sold on the Internet. Unfortunately, it is not easy to search for images or designs.

If you don't get results, or if this is too labour-intensive, a number of brand protection companies offer monitoring services and these companies may also offer to take steps on your behalf to have such items removed, for a fee. ACID members have utilised companies such as Yellow Brand Protection (which has recently expanded its activities to include Russia and Poland) and MarkMonitor, with varying degrees of success.

A competitor is using my brand name to direct traffic to his products instead of mine. What can I do about it?

If your brand name is protected by registration, any unauthorised use of your brand is likely to be an infringement of your trade mark or passing off rights.

MARKS &
SPENCER

CASE STUDY: Marks & Spencer plc was found liable for trade mark infringement by using the Google AdWord "Interflora", the result of which was that M&S' flower and gift offerings featured on search results as sponsored links above licensed Interflora florists and created a serious risk that consumers would have difficulty in ascertaining whether M&S' flowers came from M&S or from Interflora. The Court found that this interfered with the very function of the "Interflora" trade mark.

If your brand name is not registered, you may still have a passing off claim against another person using the brand name, if you can prove that you have goodwill and a reputation in the name and that the other party's use of the name amounted to a misrepresentation of a connection with your business which caused confusion and damage to your brand or business.

What other resources are available to protect my IP rights?

The City of London Police (PIP CU) and the Intellectual Property Office (IPO) have teamed up to establish the Police Intellectual Property Crime Unit (PIP CU) which focuses on intellectual property crime committed on on-line platforms. Victims of IP crime can make referrals to PIP CU (including by filling in an on-line form) www.stoneking.co.uk www.cityoflondon.police.uk

IP CHALLENGES FROM DICKENS TO TODAY

Intellectual Property: Ethics, Best Practice and Compliance



“ Super Dry CEO Julian Dunkerton: ‘We are probably the most copied brand in the UK and these cases are becoming all too frequent. They take up an enormous amount of time and energy to pursue, but they are very necessary and we are determined in protecting our intellectual property. I hope that this sends out a clear signal to other companies who may want to copy our goods that we will protect our IP rights vigorously.’ ”

”

Opening the ACID fashion and textiles round table lunch, Anthony Misquitta, a partner and IP expert at Farrer & Co said that IP history had also been made in the dining room in which delegates were seated, when in the last century, a Farrers’ client, the literary legend Charles Dickens, gave instructions on taking copyright action to protect his works; no more fitting place to discover that the problems that Dickens faced are just as alive today as real challenges to those who create IP within the Creative Industries in the 21st century.



From micro to mega, forum delegates from fashion brands, childrens’ clothing, and from interiors to surface design came to discuss the one thing on their minds; the worrying increase of copying and counterfeiting and the increasing vulnerability of UK designers to these growing and emerging challenges.

Dids Macdonald began by highlighting a significant day in history for UK designers (Oct 1, 2014) when the Intellectual Property Act became law and the intentional copying of a registered design became a crime. Individual Directors will also be held liable. She highlighted the value of UK design to the economy, at an impressive £16b per year, produced by the UK’s 350,000 strong band of designers comprising lone, micro and SME companies, mostly employing less than four people. Making the point that “only good designs get copied” she set out ACID’s raison d’être that creating an atmosphere that discourages copying through proactive and robust defence of IP should be high on everyone’s radar. The message is clear, creating tradable IP is a positive asset and so communication of a proactive IP strategy is paramount through the supply chain.

Anthony Misquitta said, “It is very important to us that we understand not just the legal issues faced by our fashion clients, but the ever-changing commercial and economic issues too. The ACID lunch was a great way for us to do that with an interesting and dynamic group of businesses.”

Dids commented, “The clear message coming out of both events was that Government and decision makers must place more priority focus on robust IP infringement enforcement and access to redress. In the run up to the election thousands of jobs and livelihoods are on the line if the levels of IP infringement increase. Whilst balancing the needs of consumers is an often quoted argument, the question has to be asked, how often is a consumer aware that they are either purchasing a fake or a copy?”

At the ACID Fashion Forum, there was consensus that:

IP infringement issues within the creative industries should be much higher up on Government priorities. (The intellectual capital underpinning the creative industries worth £71.4 billion per year and growing at 10% per year and providing jobs for one million people million people.)

BRIC (Brazil, Russia India and China) countries pose a real threat to UK designers where, despite some progress, the universal inability to effectively police, challenge and enforce IP infringement is a growing battle.

UK retailers could play a much more positive role in supporting and commissioning Britain's wealth of design talent instead of many pursuing a culture of replicating designs, without asking permission, often sending it to BRIC countries to be produced more cheaply. British retailers owe a great deal to UK designers who, over the decades, have provided them with the competitive edge through new and innovative designs. It's pay- back time now!

There is little consumer awareness (and, therefore purchasing responsibility) of some of the real pictures behind counterfeiting such as child labour, unacceptable working conditions and the funding of organised crime.

Government policy should be steered towards effective enforcement supported by a fighting fund to help lone, micro and SME's (who form the back bone of the creative industries) to protect and enforce their IP.

Designer celebrities are invited to put their names behind a new ACID-led campaign to support the UK's talented design workforce against IP infringement. #commission it, don't copy it!

The current culture of journalists appearing to support copying by diluting the value of originality in articles such as "Skinted and Minted" should be discouraged. After all, they rely on copyright for their livelihood too!

Corporate Social Responsibility - more requirement of articulated IP ethics, compliance and best practice in CSR.

our country. Who could imagine life without fashion brands but yet they remain vulnerable to IP theft. Historically, as a tiny nation we punch above our weight so we need to wake up to IP theft and post the success of 2012,

Is it right that a fashion designer has weaker IP rights than a songwriter? Or a bespoke furniture designer has fewer rights than an artist? A songwriter and artist can rely on copyright protection for their lifetime plus 70 years. A furniture designer, if relying on unregistered design rights has 3 years in the EU and a maximum of 10 years protection in the UK. It doesn't seem right.

ACID's main focus is to continue to press Government for criminal provisions for unregistered design rights. Why, because the majority of the UK and EU designers rely on unregistered rights so the campaigning battle goes on and ACID urges members to join the ACID campaign to pursue this with Government.

Communicated ethics, respect and compliance are needed at the very heart of CSR? After all, the majority of UK retailers owe their success on the creativity and inspiration provided by UK designers. So the message is simple, to Commission it Don't Copy it. Social media is now playing its part in helping designers protect their IP. Look at Tatty Devine and Claires Accessories. It takes decades to build up brands, even copyist brands, and moments to destroy using the right SM strategy.

Is imitation flattery if it costs livelihoods and erodes the UK's IP capital? The answer is clearly and unequivocally NO!

Sectors such as fashion are dependent on IP and central to our cultural life. Globally they project an iconic and positive picture of



SHANGHAI DESIGN EVENT

2014 Review from Saul Leese

Group Trade Brand Manager, Media 10

We had no idea what to expect when we launched our first design event in China. We knew there was a growing appetite for original design products because of the unprecedented growth of personal wealth over the past few years, but had no idea just how many people would turn up.

Over 47,000 people, mostly trade, visited the event over the four days and a staggering 15,000 'design conscious' public queued to be the first to see designs they had never witnessed before in their country. Many of our exhibitors were swamped by designers placing orders for products ranging from £50 to £5000.

Furthermore, the auction on the last day selling one-off collectible pieces saw sales in excess of £1.6 million. Interestingly, there appeared to be a huge amount of respect from visitors in terms of IP, with no more photos being taken than you would expect to see at a trade event in Europe. Visitors were engaged with exhibitors and genuinely wanted to understand the thinking behind the design. There's also a significant and growing trend in China for original design reflected in magazine circulations. Elle Decoration China sells 1.2 million copies a month compared to 100,000 in the UK and AD China, aimed at high-end design sells 566,000 copies a month.

A recent festival, celebrating creativity, saw three million visitors, supporting the argument that there are a significant and growing number of people in China today that are interested in design. Many of the most influential global design brands have opened more than one showroom in China and sales are showing no sign of slowing down. There's no denying there is a counterfeit market, supplying product to poorer markets, but the opportunity to sell large volumes of product far outweighs the risk."



2015 will see the return of China's premier design event at the stunning Shanghai Exhibition Centre 27-30 March, featuring even more of the finest international design houses such as Serip, Peter Linnett, Trowbridge, Boss Design, Tom Dixin, Fritz Hansen, & ACID Members Sonya Winner, Scabetti, Magis to name but a few

PLANNING TO EXHIBIT AT DESIGN SHANGHAI? or already engaged or thinking about trading in China, take a look at some tips and guidelines together with useful contacts to help you benefit from China's exciting trading opportunities.

Before you get into the Chinese market register a Chinese trade mark straight away. It is the easiest thing to do and necessary to protect your brand as the first port of call to protect your designs sitting underneath the brand. Growth in take down procedures of infringing websites will also improve the issue of infringing internet based goods being sold in China or Far Asia.

The business licence culture in China means that if no business licence is held by a Chinese manufacturer they are closed down straight away. If they do have a licence, but this does not cover their business activities, they will also be closed down. If you can identify the protagonist there are good Court proceedings available. The biggest problem is with small outfits who, when challenged, simply close down and then set up again elsewhere.

China now understands the benefit of Chinese IP to China itself and its companies.

Do it first! If you think that China has any relevance to your business, protect your IP there just as you would in the UK, Europe or Japan. No IP = no protection. Do it before you expose your work in China.

Prepare well before jumping in – this will take time on the ground and not just a single visit.

Form positive relationships with potential Chinese partners – a good Chinese partner is your best protection. Do not be afraid to protect your IP assets through asking your supplier or manufacturer to sign a Confidentiality Agreement and to agree to social and product auditing.

Protect the Crown Jewels – plan an IP strategy to protect your most important assets first.

Hong Kong, Taiwan, Macau and PRC are four separate IP territories – registration in one gives no protection in another.

China is a civil law country (like Germany). Registration of IP rights is therefore more important for enforcement than in the UK. NB. This includes copyright.

There are administrative enforcement procedures available that are usually quicker and cheaper than Courts – but no damages available.

Enforcement of your IP rights requires (much) more paperwork than in the UK. Advance preparation is critical e.g. allow a minimum of four weeks to prepare papers for trade fair enforcement.

If you have a trade mark, design right or a patent and you are concerned that products entering the UK from China are infringing your IP rights you can inform HM Customs and Excise and ask for a watch at port. In China, there is also an established system for recording trade marks and registered copyrights with the General Administration of Customs.



方針

policy, guidelines



Take a look at : <https://www.gov.uk/government/publications/factsheet-on-intellectual-property-in-china/factsheet-on-intellectual-property-in-china> and <https://www.gov.uk/government/publications/notice-34-intellectual-property-rights/notice-34-intellectual-property-rights>

Consider establishing an IP base in China, if you are a larger company.

This is a very general overview of tips, guidelines and advice. There is a whole wealth of information out there, not least from our own Intellectual Property Office who have produced some very useful China Fact Sheets.

Useful Websites

www.acid.uk.com

www.bdb-law.co.uk

www.gov.uk

www.cityoflondon.police.uk

www.cbbc.org

www.asean-iprhelpdesk.eu

tom.duke2@fco.gov.uk

MEMBER PROFILE

DESIGNERS GUILD – from opening its first showroom in the Kings Road in 1971.....

.....there are now showrooms in 60 countries across the world, a truly amazing success story! The Designers Guild brand is a design icon and synonymous with the best of design in furnishing fabrics, wall coverings, upholstery and bed and bath collections. Their simple philosophy of combining creativity and innovation with the highest levels of quality of design, product, service and people has stood the test of time and their turnover has grown rapidly to over £55 million selling to interior designers, department stores, retailers and the hotel and contract market worldwide. ACID caught up with Chris Halsey - Product Development and Technical Director of Designers Guild to ask him how IP meshes in with their business strategy.

You recently attended the ACID IP China Group seminar. What changes would you request, regarding international IP policy making, to support the opportunities which China could offer to a company like Designers Guild, and also to deal with the worrying IP challenges?

We think a major step forward, especially with regard to China, would be to make the process of IP protection more robust and less onerous. To bring a successful action to a satisfactory conclusion is both incredibly time consuming and extremely costly, and at the end of the day a result is often dependent on the subjective opinion of a judge. Perhaps there is scope for the employment of a small panel of experts who might be able to help in adjudicating. There have after all been significant cases (Trunki is a case in point) where flawed judgments have led to unsatisfactory outcomes.

In 2001 Designers Guild went through a legal battle which created legal history, with a landmark decision which clarified copyright law. Designers Guild CEO Simon Jeffries, said, "Getting a copyright infringement every two weeks is not good for business, when people copy, it limits the possibility of new product development." Do you feel that taking action was proactive in terms of sending a deterrent message to copyists. Did it help you in creating a stronger IP strategy?

It is important for us to be proactive when responding to apparent infringement of our copyright designs. We do not agree with the adage, "You shouldn't worry when people copy you, you should worry when they stop copying you!" We invest an enormous amount of time, money, design skill and expertise in creating our products, and it is extremely galling when people climb onto our bandwagon and profit from our labours. Our experience in the High Court and our subsequent discussions with IP experts in the ACID fold taught us many important lessons: accurate and robust record keeping by our studio designers; close monitoring of competitors products (to ensure we don't unwittingly copy them!); increased confidentiality with our suppliers to close any loopholes.

How does IP infringement impact upon your growth potential? Have you experienced an increase or decrease in copying in recent years?

We don't feel IP infringement limits our potential growth significantly. In our experience, looking back over the incidents of copyright infringement in the last 20 years, most have been companies outside our immediate market sector.



The intellectual capital which underpins Designers Guild's business is to combine creativity & innovation with the highest levels of quality: quality of design, product, service and people. How do you protect these valuable assets?

The only way to protect the assets in a business like ours is to constantly strive to improve and to innovate. Not just in terms of design, but also in working with our suppliers to develop new techniques and technologies to enable us to stay one step ahead.

The Designers Guild Group employs over 280 people in the UK and overseas offices in Munich and Paris. How many employees are involved in the design process and what do you look for in an in-house designer?

We have a relatively small design team. In our studio we have just four full time designers, but one or two part timers at busy times. However, we have a team of around ten product developers, all with design qualifications, who work with printers, weavers and other suppliers to put into practice the vision of our designers.

DESIGNERS GUILD



What would your advice be to anyone planning a career in fabric and textile design?

Any young designer looking to follow a career in textile design I would urge them to be passionate, patient and persistent! To 'read around the subject', to follow your own vision but to temper it with an understanding of what is happening in the marketplace.

How could the UK Government further improve support for the fabric and furnishings sector?

One of the key areas of difficulty facing the UK furnishing fabric sector is the plethora of overseas national standards of flammability testing. We all agree that we must make safe products, but in a global marketplace we are faced with huge costs if we wish to test and certificate our products for sale in other European states and the USA. Each of our main European export markets sets its own test methods and standards and there is no correlation between them. Contrary to the original aspirations of the European 'Common Market', that there should be no cross border barriers to trade, we face a veritable minefield of complex legislation that is not only costly but also time consuming to overcome. A move towards proper harmonization of standards would be invaluable; after all, if it can be achieved in the wallcoverings sector, surely it can be achieved for fabrics too!

ACID values the support of Designers Guild as a founding member and supporter of the organisation. How has Designers Guild benefitted from this association?

In the sometimes complex area of intellectual property protection it is a terrific asset to have the support of an organization like ACID; through their network of specialist IP lawyers we have received valuable advice over the years that have encouraged us to improve our in-house procedures as well as bring successful actions against copiers. Furthermore, the efforts of ACID with government to bring about increased legislative powers to protect design have been a significant factor in the success of smaller design companies and individuals to protect their IP assets.





MEMBER NEWS

Why did you join ACID?

To inform customers that our product design is protected & communicate what we design & build is unique, giving reassurance to them that they are purchasing a truly bespoke product.

How did you start your business?

Working in carpentry & joinery for years, we wanted to get back into the workshop & be creative once again, so the compact Toyhauler was born: a retro/vintage style usable caravan to carry either a motorbike or jet ski. To start the business we built the smaller model, Classic Teardrop.

How do you create & protect your designs?

The two of us live & breathe this lifestyle business, therefore the creation & development is permanently ongoing. Whether we're driving along a motorway or sitting in a cafe, we talk about the current projects, we talk about the development of the next project & forthcoming events. We are passionate about our work!

Which ACID services have you used?

We use the powerful ACID brand to say that we create original designs, to send a clear message about our design originality & that we take any infringements seriously. We plan to use more in the future, such as uploading new designs to the ACID Design Databank & promoting them on Marketplace. A free service for all ACID members

What are you currently promoting?

We thrive on being involved in other caravan & trailer designs. So as our designs are very eye catching with significant kerb appeal, some of our Classic Teardrops have been used as dedicated catering units. Once we built a genuine clay wood burning pizza oven, which won The Best Looking Mobiler at the British Street Food Awards 2013.

What is your most successful product?

Classic Teardrop used in the Crabbies advert for the TV, The Ade in Britain show for two series. It also featured in the Alan Titchmarsh Show; Sunday Brunch on Ch4; Good Morning TV with Laurence Llewelyn Bowen & in a film made by The Caravan Channel.

Caravan and Camping Club featured it in their magazine, and as the front window of Heal's as part of their summer promotion.

We were voted as one of the top ten world's best teardrops.

www.theenglishcaravancompany.com



If you would like to feature in our Member News, please contact info@acid.uk.com or tweet us at @ACID_tweets



EVENTS & CALENDAR

ALLIANCE – THE BIG DEBATE - Political Parties go head to head in IP Question Time

"Intellectual Property Is A Property Right" - Politicians from the three main political parties had a spirited debate at the Alliance for IP's IP: The Big Debate recently on the future of intellectual property policy after the General Election.



Panelists from the political parties were Mike Weatherley MP (Conservative), Iain Wright MP (Labour) and Lord Clement-Jones (Liberal Democrats) and they faced an audience of leading business people and creators from across the design, branded goods, music, software, publishing, film, TV, sports and games sectors. The politicians were joined by Professor Lionel Bently and Andrew Orłowski with Philip Collins, Chief Leader Writer from the Times, maintaining order.

The debate followed the publication of its manifesto earlier this year which shows the need for clear policies to make UK the best place to start and grow an IP rich business by 2020.

All the political representatives were adamant that Intellectual Property Rights were not regulations or a framework but rights that should be protected and promoted. Iain Wright MP stated that the industry needed stability and that he didn't intend to take a reformist agenda towards IP.

Lord Clement-Jones expressed concern that with the advent of 3D printing, three dimensional IP would require greater protection in the future, something he had highlighted during the passage of recent legislation.

Mike Weatherley said that the debate about whether IP was somehow impeding consumers was wrong and that IP delivers them great design and exciting content and without it those wouldn't be here in 20 years' time.

Iain Wright said "We really need to be protecting the smaller designer." and in terms of enforcement, he said "Trading Standards is absolutely vital. The consumer gets a raw deal when local authorities put the red line through trading standards."

Tim Clement-Jones said that "If you are going to have a great creative economy you need to remunerate creators properly". He added that "The technology sector seems to think that IP is an optional extra. Platforms need content and the sooner the tech industry recognises that the better."

Mike Weatherley said that "IP is a property right and should be protected as such. Hargreaves gave away too much on exceptions", adding that "you can regulate the digital market."

Commenting on the event Richard Mollet, Chair of the Alliance for Intellectual Property said: "Last night we heard unequivocal support from all three main parties for IP which is good news for the vast array of creators and innovators as well as the employees who rely on IP and for consumers who benefit from the diversity it creates. Of course the devil will be in the detail and the Alliance will continue to push all the parties ahead of the General Election to ensure we don't get any unwelcome surprises in the next Parliament".

IN PARTNERSHIP WITH PLYMOUTH UNIVERSITY



February 2015 TBA

"I'm a creative, what's next...?" which aims at supporting the employability and enterprise skills of our students. With Niall Head Rapson from ACID Legal Affiliate McDaniel & Co



Spring Fair 2015
1st- 5th February 2015



25th March 2015

A seminar with the IPO & ACID Legal Affiliate McDaniel & Co



23rd April 2015
BPI London
6-8pm
Francis Gurry,
Director General of WIPO,
Keynote Speaker



PROSPECTS FOR THE BRITISH FASHION INDUSTRY

At the Westminster Autumn conference the great and good of fashion talked about many subjects close to the heart of the sector, not least the Intellectual Property Act and the protection of design rights in this sector.

David Ward MP, Chair, All - Party Parliamentary Group for Textile Manufacturing opened the debate and talked about the revival of British manufacturing in Bradford sparked by access to the Intertextile Conference in Shanghai with the specific purpose of selling to the Chinese market.

“The UK is excellent at creating IP but not so good at looking after it.”

British Fashion

"We are so used to losing to the overseas markets, but they are doing it because of the quality of the work that's taking place, and the design that's taking place, the quality of the fabrics that are being made, and a market, a burgeoning middle class market in China from which we all can benefit. So things are on the up!"

ACID CEO Dids Macdonald said "The British Fashion Council's latest figures indicate that fashion contributes £26 billion to the UK economy, employing almost 800,000 people. However, counterfeiting and copying in the fashion industry is as rampant as in any other industry. So, how will this impact on future job certainty? The UK is excellent at creating, but not so good at looking after our IP so vigilance about protecting this intellectual capital is priority."

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Have a look at our Event Calendar for upcoming events on our website at www.acid.uk.com