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YOUR VOICE AGAINST DESIGN THEFT

Orbint Chair by Ollie Holman



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Dear ACID members,

A very Happy New Year!

The result of Boris Johnson's success will delight some, disappoint others but about one thing we can be certain; as one tired and boring political sun has set, another arose, bringing an end to paralysis on many levels. It feels like breathing a national sigh of relief and lungs filled with fresh air (to me anyway!) Let's hope the new dawn and New Year brings the promise of peace, certainty, trust and hope and a little more love and respect than some of the divisiveness we have witnessed.

It's good to remind ourselves that we have something unique as the ACID community - the glue that binds us all together. And this is our passion about the design sector, innovation and the fantastic success that is the UK's design success story which unites us all. The need to protect its all too precious intellectual property is even more paramount now as we explore and forge new markets to ensure that businesses can achieve growth in a more certain climate than in 2019.

With a whole new raft of politicians arriving in Westminster our collective focus must be to connect on design issues. It is even more important for us and YOU to contact the new faces and tell them about design. How good we are, how many jobs it sustains and how design in all its forms of innovation contributes significantly to their and our lives.

Who is your MP? Please engage with them and let them know about one of the potentially calamitous situations for the majority of UK designers. Unless something is done soon and swift Government action is taken, UK designers will lose protection in 27 member states, currently available under unregistered EU design rights. We have until 31 December 2020 to achieve this.

What can YOU do now?

1. Write to Boris Johnson – we need guidance and certainty re continuing EU unregistered design protection
2. Write to your MP (contact us for a template letter) – we need guidance and certainty regarding the continuation of EU unregistered protection
3. Write to them both about criminal provisions for unregistered design infringement – designers need a strong deterrent against IP theft, especially now.

For our IP issues, we must highlight how we can help grow the economy, demonstrate the importance of IP, and especially design, to businesses and industry across the country and how strong protection of IP is vital in discussions about trade agreements.

Nick Kounoupas and I had a timely meeting with the relatively new Deputy CEO of the Intellectual Property Office, David Holdsworth, recently and he seemed not only sympathetic to the above requests, but



Nick Kounoupas, Dids Macdonald and David Holdsworth
Deputy CEO IPO

also seemed to understand very quickly that as the UK's major Design and IP stakeholder, we are very different to other sector specific copyright national and international campaigning bodies – take music, film, authors, sports and video as an example. All have millions at their disposal to shout loudly.

We do not and therefore your continued support and advocacy is absolutely critical, so thank you for believing in us.

We are making progress, but we need all the help that you can give us to tell the story. The story about consistent online copying with little online platform

responsibility and the incredible harm it does to design-led businesses, the continuing and unabated copying of new designs by the behemoths and the general disrespect for IP theft. After all, what is the difference between stealing money or credit cards and stealing a designer's livelihood. NONE! Theft is theft, whether it is physical or intellectual property and it should be a crime.

Let's get the message across more strongly because otherwise blatant design theft costs jobs and job security and stunts our incredible growth as a sector. David also seemed very open to the idea of expanding ACID's highly successful mediation offer maybe on a national scale and further talks will be held to explore this idea. The good news is that after several years it looks as if the Small Claims Track (part of the Intellectual Property Enterprise Court) will soon accept registered design infringement cases. What seems common sense and obvious to us has seemed like a mountain to climb for Government decision makers. Hey Ho! It was ever thus!

Finally, on a lighter and celebratory note, as current Master of the Furniture Makers Company, I had the honour of installing Legal Affiliate Kelly Hudson

as a Liveryman of the Worshipful Company of Furniture Makers. Kelly provides guidance on all things IP in the mini IP Master Class to new young industry professionals on their 6-week introduction to successful manufacturing companies throughout the UK.

Kelly is a Director of Niche IP specialist firm McDaniel & Co. For over 10 years she has supported ACID members, and many love her no-nonsense, practical approach to IP issues. She is also a Trade Mark Attorney having undertaken further post graduate study. Kelly's work has included a broad range of IP subjects and she has progressed so well that she is noted by the legal publications as a recommended lawyer in her field. Kelly has been involved in a number of reported ACID member cases but her real value is her ability to identify issues and deal with them speedily and efficiently. Congratulations Kelly.

All it remains for me to do is, as ever, to thank our lovely ACID team, Jane, Yasmina, Julie, Ann, Faith, Tracy and Nick Kounoupas our resolute IP counsel, without whose pro-bono guidance and creative approach to policy we would not achieve what we do. Finally, I am delighted that we have been joined by Michael Rawlinson as a Business Consultant

and he comes to us with much trade association experience. Michael is an already valued member of our team. Lastly, to our ACID Council and our Legal Affiliates, your help and guidance is such an asset to us.

As ever, all good wishes to you and yours, Dids



Kelly Hudson with Dids Macdonald being installed as a Liveryman of the Worshipful Company of Furniture Makers

2019 ANTI COPYING IN DESIGN CAMPAIGNING UPDATE

**Now more than ever we need
a dedicated IP minister!**



A message from Nick Kounoupias, ACID Chief Counsel

Over the last 20+ years ACID has become the leading UK Design and IP voice on intellectual property issues which affect not only its members but the broader design community. We speak to Government, key influencers and policy makers to ensure that the best possible IP enforcement framework is in place to allow IP creators' ideas to be monetised to achieve growth.

The UK design sector punches well above its weight and is worth over

£85.6 billion and employs 1.6 million, of this 1m in non-design industries. The majority of design businesses have less than 10 employees, 60% have less than 4 employees. Taking legal action is still the luxury of the few if their designs and other IP are infringed, with little cost or time friendly means of enforcement.

During the political hiatus of 2019 focus on IP issues has been derailed because of lack of parliamentary will, time and IPO engagement. However, ACID work has continued with the following updates on progress.

• EU Designs Consultation

Following the EU Design Directive and the EU Design Regulation and their entry into force in 2001/2002, the EU Commission started a review of the EU design law regime.

The Commission has commissioned both an economic review and a legal

review of the design system in the EU, which were published in 2015 and 2016. ACID along with others responded, nothing has been heard to date.

• IPO Enforcement Group

This working group will help the IPO achieve its aim of identifying if and what issues right holders and businesses face protecting their IP when using the current IP enforcement framework. The IPO intends to do this through a call for evidence and gathering real life case studies.

This will form part of the commitment the Government made in its enforcement strategy to comprehensively review the IP enforcement framework. The working group will be established to:

- Provide knowledge and experience to inform this research project by providing examples of issues right holders face when using the

enforcement framework

- Help in framing the questions for the call for evidence and securing real life case studies through their networks and experiences
- Aid the collection of real-life case studies to evidence the use of IP enforcement framework
- Support the IPO in successfully completing this project

The IPO group has been set up under the chairmanship of Sir Robin Jacob with Terms of Reference. They met in September. Another meeting has been held and ACID has provided case studies to demonstrate some of their members' issues and, where possible, provide suggestion solutions.

• Unregistered Design Protection in EU27 post Brexit

Evidence has been submitted since 2016 and

ACID, has on a consistent basis approached Government for clarity. Thus far this has been unforthcoming.

Confirmation by Minister no action until post Brexit and we have since sought clarity.

• Alliance for Intellectual Property Strategy – ACID input

ACID is a member of the Alliance for Intellectual Property and Dids Macdonald is Vice-Chair. ACID has submitted a Design and IP Strategy which will form the basis of the Alliance for Intellectual Property Strategy 2020+. This will be acted upon during the forthcoming year and beyond.

• ACID responds to request for feedback from IPO regarding IP ACT 2014

Background

In April 2013, the IPO published a list of responses to a public consultation exercise entitled “The Consultation on the Reform of the UK Designs Legal Framework” to which ACID and others responded. The IPO is conducting a Post Implementation Review of design related measures which were brought in by the IP Act 2014 and requested views on some of them. For example:

1. Revision of scope of design protection
2. Amendments of design ownership provisions
3. Introduction of criminal sanctions for the deliberate infringement of a UK or EU Registered Design

They also wanted to know whether we felt the measures have been of benefit as a stakeholder, or whether our members agreed. They are also

interested to know if any of the measures have not worked well.

ACID Response - summary

We welcomed many of the provisions in the 2014 IP Act and, especially, criminal provisions for the intentional infringement of a registered design and believe this has had a significant deterrent effect on copying. Unfortunately, it did not go nearly far enough by including criminal provisions for the intentional infringement of an unregistered design

- We would like to see harmonisation of UK design law so that the test of proving individual character for the infringement is the same as for UK registered designs and the test for EU registered and unregistered design law
- If the test for UK UDR subsistence moves to individual character rather than being commonplace in the design field in question, then there is no reason why registered designs infringement should only be criminalised and not for unregistered designs.
- Replace the UK unregistered design right set out in Section 213 of the Copyright, Designs and Patents Act 1988 (and which only covers shape and configurations of a product) to create a new unregistered UK design right to mirror EU rights’ protection
- We welcome the technical and process improvements to registration and are encouraged to see that there has been a significant increase in registrations. However, the fact remains that the majority of UK designers rely on unregistered EU

and UK rights. Currently, with Brexit on the horizon, deal or no deal, UK designers will be even more vulnerable with the loss of EU27 protection unless there is clarity on publications. To date there has been no IPO guidance on this matter despite 3.5 years of ACID representations to Government

- ACID and many others are disappointed with the recent expensive and time-consuming IPO research into establishing a robust methodology of design rights infringement. Its findings provide no new insight, nor does it provide solutions especially as it did not include the real and increasing threat that online design infringement challenges effect SME designers. It would appear to be the basis only for further research and ACID has already made a request that this includes a cross section of designers. We have offered connection between and cooperation with our ACID Council but to date this has not been acted upon
- We believe there should be increased focus on mediation as a real alternative to litigation.
- Currently there are no criminal provisions available for statutory enforcement bodies to prosecute counterfeiters who infringe an unregistered UK design to support criminal activity through 3D printing, such as the production of guns, now prolific in the USA



• The Design Act

Shortly to be formally announced is THE DESIGN ACT, a new coalition brought together by Anti Copying in Design (ACID). The founding members are the British Institute of Interior Designers, (BIID) The British Contract Furnishings Association (BCFA), The Association for the Creative Industries (ACFI), The International Lighting Association (LIA) and the Design Business Association (DBA).

As a result of Brexit, the political hiatus and the election, our plan is to launch this officially early in 2020.

To read further documents on our campaigning visit the ACID website and view our Campaigning page where you will find this article and links to further research.

<https://www.acid.uk.com/acid-design-act-and-campaigning/campaigning/campaigning-articles/>

We welcome GUEST EDITOR, GUY TRITTON, BARRISTER AT HOGARTH CHAMBERS and chief author of “Intellectual Property in Europe” which is the text book in many EU Universities and cited by CJEU Advocate-Generals



Community Unregistered Design Right (CUDR) is a short-lived right granted by the Community Design Regulation (6/2002) of great worth to designers. It provides for a 3 year period of protection against the copying of designs without the need for the designer to register the design. It is intended to protect short lived fashion-driven designs whose lifespan is rarely longer than 3 years without the need and cost of registration.

However, for many years, there has been a debate both academically and in the courts as to whether or not it is fatal to the subsistence of CUDR if a design was first disclosed to the public outside the EU. Whilst it may strike many as odd that the fact that a design is first shown to the public in an international exhibition in Hong Kong rather than Berlin should have any effect on whether or not a design enjoys CUDR, the Bundesgerichtshof (German Supreme Court) in *Gebäckpresse II* found that indeed, it was fatal and the matter was *acte clair*.

Industry and in particular, UK industry, has shown considerable concern about this decision. If the UK does leave the European Union, it would mean that first disclosure in London would disentitle a designer to protection in the European Union. There is nothing in the Withdrawal Agreement which gives any comfort to UK designers. Designers would be forced to apply to register their designs as EU designs to obtain protection in the EU.

In *Beverly Hills Teddy Bear v PMS International* [2019] EWHC 2419 (IPEC), the English courts considered this matter for the first time. The case concerned designs for “plush toys” which are cute, furry animals. The Claimant first exhibited them at a well-known international exhibition in Hong Kong. A few months later, it exhibited them in Germany. The Defendants sought to strike out the claim for infringement of CUDR on the grounds that the designs had first been disclosed outside the EU.

Notwithstanding the BGH’s judgment in *Gebäckpresse II*, having heard argument from both sides, HHJ Hacon decided to refer this vitally

important question to the CJEU. This is the first reference from IPEC and was very much driven by the fact that in his view, by the time it arrived at the Court of Appeal, the UK might well have left the EU. The judge did not consider, contrary to the view of the BGH, that the matter was not *acte clair*. He noted that academic commentators were divided on the matter.

Of further interest is that Counsel for the Claimant, the author of this article, argued that the approach of the BGH was contrary to Art.3 TRIPS as it indirectly discriminated against nationals of WTO countries which were not members of the EU. This was because such persons are more likely first to disclose in their home country.

The reference is now before the CJEU at C-728/19. As the reference is pending, Brexit should not affect the hearing of this case. Its outcome will be significant to all designers whether or not they are based in the EU, UK or elsewhere.

Guy Tritton.

BRIDSTOCK GATE TRIUMPHS IN COPYRIGHT CLAIM



Orkney by Bridstock Gate

Textile designer and distributor **Bridstock Gate Limited (t/a Portfolio Home)** has won a bitterly-fought copyright claim advised by intellectual property and commercial law specialists **Taylor's**.

Manchester-based Bridstock Gate, a subsidiary of Evans Textiles, made its claim after "Orkney", its best-selling and innovative design was copied.

Tony Catterall of Taylor's, an affiliate lawyer with Anti Copying In Design (ACID), issued proceedings in the

Intellectual Property Enterprise Court on behalf of Bridstock Gate, who demanded undertakings to discontinue the importation and sale of the infringing product, delivery up of residual stock and payment of compensation and costs.

On the morning of the trial the Defendants agreed to settle. They agreed the terms demanded by Bridstock Gate, including undertakings not to import or sell the infringing products and an inquiry to assess payment of damages and costs.

Tony Catterall of Taylor's said:

"We are delighted to have been of assistance to Bridstock Gate in achieving settlement of this dispute. The ability to bring proceedings in the Intellectual Property Enterprise Court gives clients who create original designs the opportunity to protect their innovative work without fear of plagiarism. The protection of original

designs is essential to justify the cost and effort put in to the creation of new products."

Paul Callan a director of Bridstock Gate said:

"We are delighted by the outcome achieved as a result of this action. We take a great pride in the innovative nature of our products and invest heavily in the design of original textile ranges that distinguish us from others in the market. It is essential that we protect the integrity of our designs and I am delighted that Taylor's have achieved a more than satisfactory settlement on our behalf."

www.taylor's.co.uk



ORPHAN WORKS & PHOTOGRAPHY

- What is the latest news?

Orphan works are works whose copyright owner cannot be identified by someone wishing to use the work. Subject to limited exceptions, use of a copyright protected work is subject to obtaining the owner's permission. This is not always as straightforward as it seems

The Gowers review identified that there is a problem with the way the law works in the UK at present and made orphan works the subject of one of its specific recommendations. The report recognises that it is often very difficult to trace authors, particularly where works are no longer commercially available, and in the absence of any registry of copyright ownership in the UK.

At present the Copyright, Designs and Patents Act 1988 ("the Act") does provide for an exception for the use of certain works where:

- (1) reasonable enquiry has been made to ascertain

the identity of the author and

- (2) it is reasonable to assume that either

- a) copyright has expired or that
- b) the author has been dead for at least 70 years before the beginning of the calendar in which the otherwise infringing act is done.

If those strict requirements are met copying is deemed a permitted act, but the exception only applies to literary, dramatic, musical and artistic works. Plus – what does "reasonable" mean? The Act gives no guidance. Sarah Birkbeck from DMH Stallard one of ACID's Accredited law Firms says, "The Gowers report recommends that the Patent Office should work with groups of rights owners, collecting societies, libraries and archives to establish clear guidelines for "reasonable searches". It also recommends that the Act be amended to provide a solution to the current problem faced by

those wishing to exploit orphan works. First though, a European Directive (the Information Society Directive) will need amending and a recommendation to that effect will need to be made to the European Commission. Watch this space!"

Photographic Images – who owns the rights?

- © In law the photographer usually owns the copyright in any photographs that he or she takes, therefore, it is always advisable to request that the photographer "assign" the copyright to you if you wish to use it.
 - © It is important to realise that copyright may only be assigned by a signed agreement in writing. Having a generic reusable Copyright Assignment Agreement drafted is the best way of achieving this. ACID has standard licenses available.
 - © Paying for photography makes no strict difference to the legal position.
- However payment may well provide an "implied term" of any agreement that you have with the photographer, that you were intended to own the copyright rather than the photographer. Such an implied term will most likely result in your being permitted to decide where photographs are published and for what purpose.
- © The photographer will also have moral rights associated with the photographs he or she has taken. This means that you will have to take into consideration not using the photographs/images in a manner that could be interpreted as derogatory by the photographer.
 - © A photographer is entitled to be credited as having taken the photographs wherever published
 - © To ensure that you retain full rights over how the photographs are published, and to avoid having to name the photographer each time you will need the

photographer to “waive” these moral rights. A waiver of moral rights may be incorporated into a Copyright Assignment Agreement

- © Photographs created on or after January 1 1996 will be protected by copyright for the life of the author plus 70 years. Always check on the date photographic images were produced because many different rules applied before 1996.
- © There are a myriad of image libraries all over the world, so usually for a small licence fee you can access just the right image for the job. Better be safe than sorry!
- © You won't have rights if you take a picture of a television broadcast - the broadcast will attract copyright for the originator and you could be infringing if you reproduce the image.
- © Don't forget, Don't rely on the fact that you won't be found out and that image providers will not sue you. It is a very small world out there. People generally are much more prepared to fight their corner. Photographic image creators and providers are becoming far more IP savvy.
- © Never download or reproduce a photograph without checking the copyright status first – someone, somewhere will have created that original and rights ownership must be checked first.

Photography FAQ's

Can the owner of a product complain if I take a picture of it to promote my own business? I work as an interior designer and I often use images of existing products to create my mood boards. Am I allowed to do this, particularly if I may not be supplying that particular product in a finished scheme?

Interior designers may often take photographs of paintings, sculptures, statues and other artistic items which may be protected by copyright. Only the owner of a copyright has the exclusive right to reproduce the copyright work. Photographing a copyright work potentially amounts to reproducing it. Whether permission from the copyright owner is required would depend however on a number of factors notably; 1) what it is that has been photographed, 2) how much of the copyright work has been reproduced in the image and 3) the use which the photograph has been put to.

Ultimately, a mood board is for your purposes in exploring ideas and will not make up the end product or design which you commercialise and sell on, so it would be very difficult to argue you had committed an infringement of that earlier work because no third party would likely even know the earlier work had been used in a mood board. That said, there may be potential infringement argument but the commercial reality is that it is very unlikely and the measurable amount

of damages which would flow from any such argument would likely be so low as to make a challenge not worthwhile. Different rules apply to images of statues, buildings and other works on public display, which can be more readily photographed without any infringement occurring (Section 62 CDPA), and there is a potential argument any mood board would fall within a permitted use exemption (potentially personal use) so as not to infringe anyway but specific advice would be needed in each case. If you are concerned about use of such images you should contact one of our ACID Affiliate Law Firms who can give more specific advice in relation to the use occurring.

I sell hot tubs and often use other company's garden furniture in promotional images on my website alongside our product. Am I allowed to do this or do I need to ask their permission?

Design right/registered design rights may subsist in the furniture but these rights are not infringed through the taking of a photograph.

The inclusion of another company's products in photography on a website may give rise to advertising issues if consumers think there is a link between the garden furniture company and the hot tub company. It would be recommended to seek permission from the other company before using the images online and/or place a disclaimer online but it is often the case that companies use other products in advertising

images and there will be no issue as there is no likelihood of confusion. A good example is brochure and website advertising for new homes which often show the homes as furnished. Furniture companies usually take no issue with this and in many cases supply the furniture for free or at a low price because it is obviously good marketing for them as building companies will make clear where the items have come from. Members of the public are not confused as to origin or there is no issue.

If I take a picture of a public building or a private home would I be able to use the image on a product?

If a company makes jig saws/tin boxes/artwork etc. are they allowed to use an image they have taken of say, a public building or monument or a private house (like a 'chocolate box' cottage for example) on the product or do they need to ask permission of the building owner?

Architectural/building works are protected by copyright in the UK, but in most countries you may photograph a building if the building is located in a public place or is visible from a public place. Section 62 of the CDPA tell us that the copyright in a building is not infringed by making a photograph or graphic work representing it.

Thanks to ACID Legal Affiliate McDaniel & Co for their input to this article.

BANKSY VS FULL COLOUR BLACK

BANKSY VS FULL COLOUR BLACK

Banksy vs Full Colour Black

IT'S A CASE OF DAVID VERSUS GOLIATH WITH CARD THROWERS FULL COLOUR BLACK INVOLVED IN A LEGAL BATTLE WITH ARTIST BANKSY OVER A TRADEMARK APPLICATION. BUT WHO WINS ARE CLEARING TO BE THE DECIDERS.



Reproduction rights in the UK are automatic for artists who are British citizens, and the artist's estate. This means that anyone can reproduce the work without the artist's permission. However, the artist can register their work as a trademark, which gives them the right to prevent others from using the work in a way that might confuse consumers. This is what Full Colour Black has done with the 'Card Thrower' artwork.



Full Colour Black has applied for a trademark for the 'Card Thrower' artwork. This means that anyone who uses the artwork in a way that might confuse consumers could be liable for trademark infringement. However, Banksy's estate has argued that the artwork is in the public domain and should not be protected by trademark law.

Statement from Andrew Gallagher, owner of Full Colour Black

The 'Card Thrower' artwork is a unique and iconic piece of art. It has become a symbol of Banksy's work and is highly sought after. Full Colour Black has invested significant resources in promoting and selling this artwork. We believe that it is in our best interests to protect this trademark and prevent others from using it in a way that might dilute its value.



can register his trade marks through a company, which is an important consideration. The key question is whether Banksy's art is capable of indicating the origin of products and services of an undertaking, not whether it is in the public domain or not. If it is found that the art work is not capable of being a trade mark, or that it has not been used as a trade mark for more than five years, then his trade mark may be cancelled. This would leave Banksy with no claim under trade mark law.

Copyright subsists in artistic works and is an automatic right. However, if Banksy were to enforce his copyright, he would be required to reveal his identity to prove his authorship of the artwork. Banksy has therefore taken a commercial decision to protect his works as a trade mark. From a legal perspective, his artwork, whilst it might be in the public domain, is nonetheless protected by copyright as copyright subsists in artworks for a duration of 70 years after the death of the author. What is different is that Banksy has chosen not to enforce his copyright, but there is nothing preventing him from taking action against unauthorised use.

On the legal page of Banksy's website for "GrossDomesticProduct the homewares brand from BanksyTM" he makes

it clear that copying for amusement, activism and education purposes is encouraged. However, selling reproductions creating a line of merchandise and fraudulently misrepresenting knock-off Banksy products as 'official' may result in legal action with all funds recovered donated to charity.

Do you believe this is a trademark or a copyright issue?

There is no doubt that copyright exists in Banksy's art. The current dispute centres on whether Banksy's artwork can be protected as a trade mark. Banksy is selling prints featuring the work. An application has been made by Full Colour Black Limited, a company that sells cards depicting graffiti, to cancel the trade mark depicting Banksy's "flower thrower". This would permit them to use the image without threat of enforcement under the trade mark regime.

The arguments made by Full Colour Black Limited are as follows:

- Banksy's art is not capable of being registered as a trade mark for the goods on which it is being used as it is the subject matter of the goods and ornamentation rather than indicating the origin of the goods.



SK | STONE KING

In a recent interview for Greetings Today magazine, ACID was asked to comment on a news story concerning the artist Banksy registering a trademark to protect his work. ACID Legal Affiliate Gavin Llewellyn of Stone King was happy to put his perspective forward.

As an organisation that fights to protect the intellectual property of artists, what is your position on Banksy's attempts to trademark artwork that has been in the public domain for some time?

Banksy has registered a trade mark comprising of his art work. Anyone can register a trade mark, providing it is capable of distinguishing their goods or services from those of others and it is not opposed by another party. As Banksy operates on an anonymous basis, he

- The trade mark has not been used for an interrupted five-year period from the date of completion of the registration procedure or it has not been put to genuine use in the United Kingdom.

As we said above, there would be no issue with protecting this type of art through trade mark registration, provided that it is used in accordance with trade mark law – i.e. to distinguish the origin of goods or services, for example as a clothing label.

Banksy's artwork has appeared on all manner of goods for many years (rightly or wrongly), has he left his claim on them too late?

Banksy has famously said that "copyright is for losers". However, Banksy could enforce his copyright for any unauthorised use for the preceding six years, although he might not recover damages in respect of any infringements which a Court felt he had acquiesced in.

Banksy also has numerous registered trade marks held by the company "Pest Control Office Limited" that could be used to enforce against similar or identical marks, assuming that they are not cancelled for non-use. Trade mark law also permits Banksy to claim for the previous six years. However, by allowing people to use a registered trade mark, it can lead to the mark becoming generic and that also makes it vulnerable to cancellation.

Banksy has said he has opened his store to protect his trademark. Do you believe that this is a reasonable move by an artist?

Generally artists prefer to rely on copyright protection as there is no requirement to register this and pay for renewal fees. As a talented creator, Banksy is doing all he can to protect his intellectual property whilst remaining anonymous through the use of trade marks.

Provided that they fulfil all the requirements of trade mark law and are being used in trade, he is entitled to rely on his trade marks against people seeking to use the same or similar marks in a way which damages the function of his trade marks. In this case, however, it looks like the store has been opened in response to the action filed against the trade mark. This in itself will not be enough to comply with trade mark law. One of the products listed for sale depicts the "flower thrower" registered trade mark across three frames, which is available to purchase. It is doubtful that this amounts to trade mark use because the artwork is being used decoratively.

What do you advise is the best way for graffiti artists to protect their name and art?

Graffiti is an artistic work so is capable of having copyright protection. This is providing that the work has been expressed in some material form and is not just an idea, as copyright does

not protect ideas themselves. The problem is that in order to enforce that copyright, it will invariably be necessary to disclose the identity of the author in order to prove authorship of the work.

A graffiti artist's name indicates the origin of the art works created by them, so would be best protected using a registered trade mark. It is likely to be much more straight forward for the artist to prevent the unauthorised use of their name through trade mark law than it is to protect their artworks for reasons explained above, particularly where their artwork is being used by someone to decorate goods such as T-shirts, which is arguably not the type of use which will infringe a registered trade mark because it is merely decorative use.

Banksy could have used his trade mark as a logo for, say, a clothing label, which would have amounted to use of the mark to indicate the origin of goods and there would have been no issues about whether his use of his trade marks was merely decorative in that case. However, he would still have faced the same issue in trying to prevent decorative use of his artwork by relying on a trade mark registration.

How do you suggest companies such as greeting card companies use art, images or graffiti in their products so everybody's interests are covered?

The simple answer is that companies should obtain licences to use any

intellectual property is owned by someone else. This includes graffiti artworks. Companies can also hire their own artists to create greeting cards providing that in the artist's employment contract the intellectual property is retained by the employer or appropriate assignments are entered into with freelancers. Greeting card companies could be distributors of artist's own cards if the artist manufactures their own cards. A commercial arrangement will ensure that all parties' interests are covered and limit potential claims of infringement.

www.stoneking.co.uk

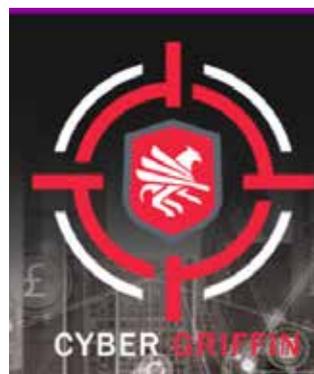


CYBER SECURITY

At a recent Furniture Makers Company event, we heard expert briefings from the Cyber Griffin City of London Police initiative to keep ahead of the game when it comes to cyber security. Their experienced officers shared intel to mitigate cyber risks. They reminded us that our people are both our greatest security asset and our greatest risk so, being aware, prepared and proactive can help reduce cyber risks by taking a few simple steps. Each year fraud and cybercrime costs the UK economy £193 billion.

Cybercrime is when fraudsters target us through our computers, tablets or smart phones or through the internet to steal valuable personal and or commercial information to make money, illegally. Today, our lives increasingly depend on technology providing criminals with easy targets.

City of London Commissioner Ian Dyson said, "About 80% of cybercrime in the City of London is from business, so it's important that we work with businesses to make sure they don't become victims of cybercrime in the future. Cyber Griffin is about making sure that people at all levels of those organisations and businesses have access to get the best advice in order to protect them and their businesses."



"Armed with some simple tools, the challenge is winnable. If it doesn't feel

right, it probably isn't!" said presenter Sgt Ian Brosnam, "A little common sense can go a long way in tackling this insidious crime."

Cybercrime is not faceless, and we were reminded of the vulnerability of mobile devices and that 91% of cybercrime starts with an email. To put cybercrime into perspective and demonstrate its growth, 1 in 7 crimes are now cyber related and 1 in 47 are burglary. Clearly, the ease in which criminals make money through cybercrime is a cause for concern and action.

Phishing is the unlawful act of obtaining sensitive information such as usernames, passwords and credit card details by criminals faking themselves as a credible entity in an electronic communication. What is malware? It is any software which is intentionally designed to cause damage to a

computer, server, client, or computer network. So ensure you obtain malware protection such as Norton or McAfee.

Simple suggestions to keep your online presence safe:

- Check your settings are secure.
- Tweet or use Facebook in secure locations.
- Ensure Location Services are switched off when not in use.
- Keep personal and business email separately.
- Download anti-malware software.
- Beware of cleverly disguised emails from well known brands such as: TV licensing; Netflix; Microsoft 365; they may ask for personal information or payment details. Don't open or respond to anyone who you may not be expecting to have correspondence with.
- Avoid using public Wi-Fi when transferring sensitive information, such as payment details. Ransomware is a type of malicious software that can infect a computer and restricts genuine users' access until a ransom or payment is paid, often into an anonymous Bit Coin account. Be aware of other online activities:
- Ensure antivirus systems are up to date and that appropriate firewalls are in place, together with checking that legitimate software updates are current.
- Did you know that 78% Apps fail basic security checks, so be aware!
- 90% of hot spots are also insecure and easy targets for criminals.
- Look out for antennae



(called pineapples) in cafes and public places, disconnect immediately.

- Gangs often operate in cafés, researching personal information through this means; be aware http:// is insecure; https:// is secure and make sure the padlock is green. If broken or greyish, it is probably not secure, so double check.
- Don't use a free VPN (Virtual Private Network), use a secure paid for VPN.

Do you have a company cyber policy? A disgruntled ex-employee who has had access to sensitive information can wreak havoc, so ensure there is a policy for user privilege. For example:

- Don't share log-in details.
- Discourage bringing personal devices into the office.
- If equipment is stolen, ensure you have the capacity to "wipe" remotely.
- If you use USBs ensure there is security and always use ones which you know. Some criminals can ascertain information at 200 words per minute,

so be very careful about what you plug into your systems.

Passwords:

- Don't use familiar names.
- Date of birth.
- Pet's names.
- Consider using permutations of random common words e.g. balloondesksun* or winehatblue\$.
- You can find out if your password has been hacked by going to Google and entering [haveibeenpwned?](https://www.haveibeenpwned.com/) Fill in your email address and it will tell you instantly.
- Think about having all your passwords managed by password managers.
- Use strong, separate passwords for email accounts.
- Where available, use two-factor authentication on your accounts.

The Internet of things:

- Devices like Alexa, Fridges, doorbell security systems etc., with smart capabilities are potentially insecure.
- Programs used by hackers such as Botnek and Dolphin Whistle can hear frequencies that we can't.
- Don't plug in a device that you don't know and focus

on network security.

- Also, don't buy any technology that will soon reach the end of its life because software updates will stop being available.

Your computer – always back up your most recent data. Never respond to unsolicited approaches for personal and financial information.

Useful numbers to know: 0300 123 2040 if you suffer a cyber attack or report via www.actionfraud.police.uk or sign up for fraud and cyber crime alerts at www.actionfraudalert.co.uk

Dids Macdonald, OBE., CEO of ACID said, *"This was a real wake-up call to the threats posed by cyber and fraud crime and the specialist team from Cyber Griffin gave us all some valuable tips and advice that we can implement today. I thoroughly recommend attendance at any future presentations like these."*

Member Profile

AMMIQUE



Marlene Greenhalgh, joint business partner of Ammique Ltd., recently contributed to our Member Profile section.

Could you tell us about the background behind the creation of what you describe as “the most technologically advanced bed in the world!”

Colin, my husband and business partner, and I were looking for a new bed and were disappointed that we could not make an informed decision when choosing the most important piece of functional furniture any of us buy. At the time, we were running Mainstay Designs, our furniture design and manufacturing company, and we decided to carry out more research into the design of beds and mattresses. We realized that mattresses cannot be assessed objectively, and that they deteriorate badly over their recommended seven years life span both in support and hygiene. This realization led us to look beyond the mattress to see if we could design a more functional and sustainable bed. The bed we created is a mattress free, precision engineered, and durable body support and sleep system developed specifically to address all the problems associated with mattresses.

Who are the driving forces behind the journey bringing this product to market and why did this new concept capture your imagination?

From concept to manufacture of a marketable product, we had dedicated



substantial time and resources developing and creating the technology, bed and brand and protecting all. With no existing supply chain or infrastructure available to us, we set up Ammique as a vertically integrated company. An extended market test and field trial period enabled us to grow the management team to build the Ammique brand, and to ensure that there was a market for a high-performance mattress-free bed that people would be willing to pay a premium for. With limited production budget and capacity, we manufactured a few first gen Ammique beds. These were rigorously tested, exhibited in the UK and the US and sold to select private individuals and a couple of luxury boutique hotels. The response to Ammique at shows and in the hotels attracted international media, public and industry interest,

exceeding our expectations. To move forward, we needed to access the finance required to make the second generation of beds to include the refinements and modifications we had developed, to fund additional patents and IP protection as well as multi-impression production tooling, R&D, assembly, storage and distribution facilities and London retail premises.

What are the key unique selling points of the remarkable Ammique bed?

The Ammique bed's unique selling points are consistent support, health & hygiene, adaptability and sustainability; all of which are quantifiable benefits. Unlike any other bed on the market, the Ammique bed is engineered to yield inch by inch and instantaneously to the natural curves of the

moving body irrespective of its weight and shape with no roll together and no need for any adjustment. It is robustly made and is consistently supportive, because there is no deterioration in the support structure and mechanism for a lifetime - guaranteed. It is healthy, hygienic and adaptable because it is 100% cleanable with excellent airflow, easy to lengthen, shorten and manoeuvre and has an outer decorative frame that can be easily styled and restyled to suit personal taste and trends, and is sustainable because it is energy efficient using only the most sustainable materials and is built to last a lifetime. As a result of your investment in design, skill and craftsmanship, how will you lead the way in creating your market share? Ammique is led by an experienced, specialist team on a mission to revolutionize



the sleep industry. Our primary target market is the sleep savvy and the health conscious, who are looking for credible products to help them stay fit and well for as long as they can. Sleep sells and unlike any of our competitors, we have a uniquely functional bed, protected by patents, ACID protected designs of handcrafted furniture and much more - not least a clear vision for Ammique going forward. Ammique is a leader not a follower. Good design is often copied, and we understand that you have created a proactive IP Strategy. Can you tell us a little more about this? We are a design focused company with our own R&D facility led by an expert team of skilled entrepreneurs and creatives. Securing Intellectual Property Rights wherever feasible has always been embedded in our planning and creative processes.

What is your message about the copying culture that pervades some of your sector and those who ride rough shod over the law?

There are lawbreakers in all industries. We do what we can to invest in IPR to protect our products and to insure ourselves against risks

Do you think that IP ethics, compliance and respect for intellectual property should be the cornerstone of the industry, in terms of declared Corporate Social Responsibility? And if so, how could the bed and interiors sector achieve this?

If securing IPR is legal then the law should protect the companies securing them by penalizing those who breach them. Neither the businesses nor the people running them should be above the law.

Why did you join ACID and what are the main benefits to Ammique?

The ACID brand of deterrence is yellow and black – a warning to others that we are registering ownership over our designs. As part of the ACID family, we feel supported too, by the advocacy of fellow members.

You invest in your people by helping them to develop skills and craftsmanship. How important do you think this is for the future of your specialist bedding sector?

We have created, by default, a new industry, which presents as many challenges as it does opportunities, so we understand the potential and long term



value of forging joint venture partnerships, worldwide, to grow Ammique; from specialist suppliers to specialist retailers throughout the newly created supply chain.

We now have an IP Act which will mean not only criminal provisions for intentional Registered design infringement but also for individual directors. Do you believe that if this is extended to unregistered designs infringement, it will become more of a deterrent?

IP deterrents and a more rigorous system of enforcement are paramount to the creative industries.

As you know ACID is the main Policy and Government campaigning body for Design & IP reform. What are your

3 recommendations to Government to stem the tide of blatant design theft to support the interiors and broader design sector?

Much tougher penalties for design infringement; cracking down on online marketplaces who appear to pay lip service to IP infringement on their platforms; easier access to a much more simplified Court system and making the infringement of an unregistered design a crime. These key changes would proactively support what is one of the UK's most significant assets, its design, manufacturing and interiors industries.

www.ammique.com

ACID Member

Lorna Bateman Embroidery

is our Member Focus contributor



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

I began teaching hand embroidery 30 years ago and successfully ran a teaching studio for 12 years, before setting up my retail business on a very small scale back in 2001, creating simple 'starter' embroidery kits for students and customers wishing to experiment with hand embroidery. I had sold products like silk ribbon at craft shows and found that, in spite of demonstrating and encouraging people to try their hand at the skill, they were reluctant to go ahead and source the raw product and also were not keen to design a pattern themselves. I strongly believe that a kit can introduce a skill to those

interested, who will hopefully carry on stitching as a result and maybe gain enough confidence to draw their own designs.

To this end, I produced small taster packs, which I then sold both online on my website and at retail craft shows. These proved popular and due to requests from the USA, I ended up screen printing my designs onto the fabric. From there, the demand grew, especially once I set up shop on Etsy in 2009.

Today I sell all over the world, both on my own website and on Etsy, with the UK and USA being my biggest customers.

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

Having grown up in South Africa where unfortunately, due to sanctions at the time, copyright infringement was rife, I have always been aware of intellectual property rights and have sought to protect both my work and that of others. I was blatantly copied a number of times and felt powerless to remedy this. The same occurred here in the UK and it was at the suggestion of a friend, who was a member of ACID, that I join the organisation.

Which ACID Membership services have you used and how have you benefited from being a Member?

I have sought help and advice, both via email and telephone, with regard to infringement. I have not however, as yet, taken the matter further. I feel I benefit from ACID membership in as much as I have the logo on all my patterns and instructions, making customers aware of the fact that my work is copyright protected and also in this way hopefully educating them in this regard. I also display the ACID logo when I have a stand at a show, again to make customers aware. The assumption that people can simply photograph your work without asking any permission is something that irks me immensely so again the ACID no photography sign on display is very useful.



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

I recently published my first book in July 2019 called 'Embroidered Country Gardens', put out by Search Press. Together with this, I launched a new website and many new products relating to the book.

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

I have now been a member of ACID for 3 years and the comfort of knowing that they are there for support at any time is immensely reassuring. I have uploaded up some of my designs to the IP Databank and use the logo wherever I can, giving me a sense of ownership of something tangible. Having

access to an organization, which is both nationally and internationally recognised at government level, and who fights for the creative community by trying to effect changes within the law regarding IP, is tremendously reassuring.

What advice would you offer to a new designer?

In the textile field it can be a very lonely journey trying to establish yourself as a designer, teacher and writer. Had I known about ACID previously, I would have joined many years ago in order to have the reassurance of back up and a more in-depth knowledge and education with regard IP. If the textile design route is the one you wish to travel down, I can definitely recommend studying up on IP and joining ACID.

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

I would love to see IP laws firmly enshrined within the constitution, with infringement punishable by law, and clear policies set up for designers to be aware of and be able to use if needs be. Small business practice has been actively encouraged by the government and as a small business on whose income I totally depend, I would like to be confident of backup in this area without having to incur huge costs with IP infringement.



www.lornabatemaneembroidery.com

New Year Resolutions

LEGAL AFFILIATE
A©ID
 ANTI COPYING IN DESIGN



Sarah Merrifield,
Boult Wade Tennant

Most UK designers rely on Community and UK unregistered design right (UDR) to protect their designs. However, with the continuing uncertainty over Brexit, 2020 is the year to think again about investing in registered design protection.

Although the existing form of UK UDR will continue after Brexit, it does not protect surface decoration and 2-dimensional designs. Community UDR does protect both 2- and 3-dimensional designs and provides protection in all EU member states.

After Brexit a new, “supplementary” form of UDR will be created in the UK which will also cover both 2-D and 3-D designs. However, this will only be available for designs which are first disclosed in the UK and will provide protection only in

the UK, not the remaining EU member states. Designs which are first disclosed in the EU will attract Community UDR but this will no longer give protection in the UK. Designers will therefore be forced to choose carefully where to make their first disclosure or risk losing their some of their UDR protection.

A registered design provides a monopoly right – you do not have to prove copying - and strong proof of ownership of a design. Moreover, deliberate copying of a registered design is now a criminal offence. Having a registration provides a powerful deterrent to potential copyists. Although there are costs involved, investing in the best protection for your most important designs makes good business sense.

So, before you launch a new design, give some thought to your protection. Even if you decide not to apply for registration, it will give you the opportunity to check what form of UDR is still available and how best to secure it.

www.boult.com



Tony Catterall,
Taylor's

A very recent case in the Intellectual Property Enterprise Court has raised the possibility of a gap between the protection available to a designer in copyright and that available in Unregistered Design Right.

The case of *Response Designs v Edinburgh Woollen Mill* concerned an allegation of copyright infringement in a woven textile design created on a commercial knitting machine. The Claimant alleged that the design was an artistic work, albeit created on a machine. The Defendant contended that the product was neither a graphic work nor a work of artistic craftsmanship, which if correct will expose a lacuna in the protection available to designers. The Court's judgment is awaited with interest, and is expected in January 2020.

The outcome of the General Election has concentrated minds on the certainty that the UK will leave the EU on 31 January, followed by a “transitional period” expiring on 31 December 2020. Currently therefore both UK and Community Designs will continue to apply in the UK and be enforced by the Courts throughout 2020.

The draft Withdrawal Agreement envisages that holders of Registered Community Designs will automatically get equivalent UK rights but that would not apply in the event of a “no deal”. Accordingly it would be prudent for UK designers to file for UK Registered Designs



and (for exporters) to apply for both UK and EU protection, if the budget permits. Alternatively, Applicants can use the Hague Agreement for International Registered Design Applications, with the option to cover up to 67 jurisdictions including both the EU and the UK.

The position in Unregistered Designs is potentially more difficult because EU Unregistered Design Rights protect surface decoration, unlike UK Unregistered Designs. Thus, if EU design law ceases to apply in the UK on 1 January 2021, the only course for those who rely on Community UDR to protect surface decoration will be to fall back on copyright or (where appropriate) file for UK Design Registration.

www.taylors.co.uk



**Kelly Hudson,
McDaniel & Co**

Prediction: Somebody is going to sue a digital marketplace for a third-parties’ counterfeiting activities

We are predicting that 2020 will be the year that somebody finally has a pop at an online marketplace for IP infringements committed by a third-party reseller on its platform.

Since the opinion of Advocate General Manuel Campos Sanchez-Bordona (“the AG”) was released on the 28th of November this year, there have been murmurings that one of the big manufacturers could shape up to take on an online behemoth like Amazon.

While the AG’s opinion does not create new law, it is certainly indicative of the position the EU might adopt in such a claim and will be highly persuasive to judges of national courts were a claim to be brought. The AG differentiated between “simple warehouse keepers”, who should not be liable for infringements of IP or involvement in counterfeiting, and those that were “actively involved” in bringing the goods to market, by, for example, Amazon’s fulfilment program whereby Amazon packs and ships the goods and provides the customer service and customer contact points.

Our prediction is that it is only a matter of time, whether the UK leaves the EU or not, before somebody in this jurisdiction has a go at the marketplaces to try to keep better control over its offering.

www.mcdanielslaw.com



**Gavin Llewellyn,
Stone King**

Review your design and trade mark portfolio to make sure that it is still up-to-date and that it will continue to protect you after Brexit. Remember that only registered EU designs and trade marks will be automatically converted into UK national designs and trade marks. Any pending applications will not be converted and you will need to file new applications in the UK if you do not already have registrations or applications pending. If you have EU trade marks, check whether you are using them in the EU because you will need to do so after Brexit to maintain the registrations.

Think carefully about where you launch your designs if you want to benefit from unregistered Community design right after Brexit. The law is unclear about where a design must be disclosed to the market to benefit from the unregistered Community design right. There is a risk that by first disclosing your designs in the UK, you will lose the benefit of automatic design protection in the EU after Brexit. Depending upon your market, you might be better off disclosing a design for the first time in the EU so as to be sure of having unregistered Community design right protection for the design and if you are British domiciled or a UK company, you will still benefit from unregistered UK design right protection.

www.stoneking.co.uk



EU unregistered design lasts 3 years
UK unregistered design lasts a max of 15 years

EU	UK
✓	✓
✓	✗
✓	✗
✓	✓
✓	✗
✓	✗
✓	✗



**UK designers
will be
disadvantaged
if they lose the
ability to rely
on registered
& unregistered
EU design right**

The 10 Do's & Don'ts of using the Original IP Rights of Others – remember, Commission it, Don't Copy it!



The ACID Membership office frequently receives queries from the design community regarding the use of other companies' intellectual property. There is a general lack of knowledge on the ownership of intellectual property rights which ACID aims to remedy through our frequent case studies, news stories and articles and for ACID members, help and advice in our Members Area. Remember – you can use existing designs if you ask for permission from the Rights owner or pay a licence fee. You could also commission them to produce a design for you for a fee if you like their work. Can you answer any of the top ten queries without looking at the answers provided by ACID Legal Affiliate Gavin Llewellyn of Stone King?

1. If I buy an artwork can I photograph it and issue prints?

Copyright subsists in an original piece of artwork as it falls under the category of artistic works. This means that the author has the exclusive right to copy the work, issue copies of the work to the public, communicate the work to the public or make an adaptation of the work. Making prints from a photograph of an

artwork amounts to copying the work.

Even if you purchase the original artwork, this does not grant you a licence to copy the work or issue copies to the public. A copyright owner does not automatically licence their intellectual property rights when they sell a copyright protected work. Therefore, if you were to photograph the artwork and issue prints without the appropriate licence to do so, you would infringe the author's copyright.

There was a recent case in Denmark involving the purchase of an expensive, original artwork and the re-purposing of it into other articles for sale (in this case it was the faces of watches). This was an infringement of the copyright of the original artist.

2. Can I take images from the internet and combine them in a collage which I then intend to reproduce on my product?

Copyright subsists in original photographs as artistic works. They do not lose copyright because they are published on the internet. If you reproduce someone else's photographs on your product without the

permission of the copyright owner, then you will infringe the copyright in them. Many photograph galleries have a policy of tracking on-line infringements of copyright in photographs using technology. Remember also that the creator of a work is not always the copyright owner, since they might be an employee or might have sold their copyright.

It is also an infringement to copy a substantial part of an original work. This will include making an altered copy of the work, such as altering the colours of a photograph or reproducing only part of the photograph. It is also an infringement to make a copy in three dimensions of a two-dimensional work and to make a copy in two dimensions of a three-dimensional work.

If you intend to take multiple images and combine them in a collage, you could be putting yourself at risk of multiple claims of infringement by the author of each image you use. If you still intend to use images from the internet, you should either use a free stock photo library or obtain an appropriate licence to use the images.

3. Can I use another

company's product images to create my interior design mood board to show to clients?

Product images are likely to be original copyright works, so you will not be able to reproduce them without infringing copyright. However, you could cut out the photographs from a magazine and stick them onto a mood board, provided that you do not reproduce them. You cannot take the images from the internet because that would involve making a copy of the images, which is an infringement of copyright.

4. Can I copy the concept of a company I saw on the internet who are making a surface design for their product based on newspaper clippings?

There are no rights in a concept, only in the way a work or design has been expressed. A surface design based on newspaper clippings might be a copyright work as a form of collage or it might be a completely original artwork. If it uses real newspaper clippings, there is also likely to be copyright in the newspaper clippings, in both the written works and the

typographical arrangement of the newspapers (owned by the newspaper publishers).

You would therefore need to establish whether you have the right to copy both the collage and the newspaper clippings if you wanted to reproduce the design, so it is better to create an original design of your own based on the same concept.

5. Can I use song titles or quotes from books as part of the design of my Greeting Cards?

Copyright subsists in original literary works, meaning that a song title or a quote from a book can be subject to copyright protection. Simple song titles are probably not sufficiently "literary" to be protected by copyright on their own, but it is not always easy to know whether a work is protected. Quoting a sentence or a passage from a book probably would infringe the author's copyright and there are no exceptions to copyright infringement for quoting other people's works for commercial purposes.

You can always use books or songs which are out of copyright. Copyright lasts for 70 years after the death of the author, so any song titles or quotes which are older than this may be used without the risk of copyright infringement.

Some copyright owners protect parts of their works as trade marks. For example the phrase "let's get ready to rumble" is a registered trade mark in the UK, US and Germany for certain goods and services. If you were to use this phrase in relation to the same or similar goods and services, you would infringe the trade mark.

6. If I send an existing design image I saw on the internet to a manufacturer, how many changes need to be made to the design so that the final product is not infringing?

It is a common myth that a design will not infringe another if a sufficient number of changes is made to the design. The Courts do not count the quantity of changes when assessing design infringement; they focus on the nature of the changes and whether the character of the design has changed. Broadly speaking, a design will infringe an earlier design if it substantially reproduces the features of the design which make it original or give it individual character.

If you were to send such an image you would infringe more than one intellectual property right belonging to the designer of the original image. Firstly, you would be infringing the copyright in the image by copying it and sending it to the manufacturer. Secondly, you would infringe the UK design right in the design by copying and sending the image to the manufacturer because it is an infringement of UK design right in a design to make a document recording the design (which includes a copy of a photograph) for the purposes of enabling it to be manufactured.

7. I want to produce a company's design which is not registered and is over 5 years old. Can I do this without contacting the owner?

A UK unregistered design right lasts for ten years from when an article made to the design was first made available for sale or hire and a maximum of fifteen years from when a design was first recorded. During this period, the design right owner has the right to prevent unauthorised copying of the design or unauthorised dealings with copies of the design.

During the last five years of the design right, anyone can request a licence to copy the design. If the parties cannot agree on the terms of a licence, an application can be made to the UK Intellectual Property Office to determine the terms. Therefore, if you wish to use

a company's designs you should contact them and seek a licence to copy them. If you don't, you could be infringing design right and have to pay up to twice the amount of a reasonable royalty for not having taken a licence in the first place.

You should also be cautious that any design is not registered, because a registered design right can last for 25 years, providing that the registration is renewed every five years.

8. Can I cut and paste copy from websites and re-use in my product literature? For example, a 'how to' guide.

An original literary work is subject to copyright protection. Therefore, you would risk infringing copyright if you were to copy and paste information from websites for your product literature. Since you cannot always tell whether copyright subsists in a text you find on the internet, you should create your own copy. Of course, you can look at what other people have used and take inspiration from it, provided that you don't copy it.

9. I have devised an additional tool for a vacuum cleaner which would attach to the original product. Do I need to ask for permission from the vacuum producer before marketing?

Design rights do not subsist in features of shape or configuration of an article which enable the article to fit with another article so that either article can perform its intended function. A tool which attaches to the tube of a vacuum cleaner would be designed to fit the vacuum cleaner to enable the vacuum cleaner or the tool to perform its cleaning function. This is commonly known as the "must fit" exception. It is designed to prevent monopolies in the spare parts market.

If you are going to design an

additional tool for a vacuum cleaner, you will be able to rely on this exception. This applies even where you are not merely selling a replacement spare part, but a new part for an existing vacuum cleaner. For example, you could create a new nozzle to fit behind radiators to be used with the latest model "Hoover" vacuum cleaner. You would not infringe Hoover's rights in the overall vacuum cleaner design or any part of it by doing this. You could also advertise your tool as designed to work with a "Hoover" vacuum cleaner, although you would not be able to use any of the "Hoover" logo trade marks or make any representation that the product was approved or licensed by Hoover.

Caution should always be taken over whether a product for which you are looking to make spare parts is patent protected. If it is, you will need to seek legal advice on whether what you are intending to make and sell is permitted or whether you will infringe the patent.

10. What does 'generic' mean in relation to design? How do I know when something is generic?

The term "generic" is not a legal term. Just because a design might be available widely on the internet or might follow a familiar concept or trend does not automatically mean that it is not protected by intellectual property rights. There is a concept of "commonplace" in UK unregistered design right and a concept of "individual character" in EU unregistered design right, which broadly mean that a design will not be protected if it is trivial or trite in the design field in question at the time it was designed. In other words, where a design does not include sufficiently original features which differ from what is standard in the industry sector, it will not benefit from unregistered UK design right or unregistered EU design right protection. This is often relied on as a defence to infringement.

“The Works”



“The Infringing Works”



“The Works”



“The Infringing Works”



Fiesta Studios Successfully Enforces Copyright

ACID member Fiesta Studios’ directors, Andy and Liz Kingston, understand the value of their intellectual property rights. In the past they have taken advantage of the benefits of ACID’s presence at trade shows to resolve disputes quickly and efficiently and make good use of their access to legal affiliates. That is why earlier this year, in the face of increasing infringement of their rights, they embarked on a renewed campaign of robustly protecting their intellectual property.

The campaign was prompted by an upsurge in infringement of Fiesta’s range of Greenmen garden ornaments and plaques by a range of companies and individuals.

Fiesta Studios were assisted by Kelly Hudson of ACID affiliate law firm McDaniel & Co in sending out letters of claim to a number of copyists. In recent months Fiesta Studios

has threatened action against seven different entities, securing favourable settlements with all of them.

Assessing the benefits of commencing such a campaign are not always straight forward. While Fiesta Studios has successfully secured payments for damages and costs from several companies (including prominent stoneware specialist Brighthelm Stone), most important is that it has been given undertakings from the infringers not to infringe again. Powertex (UK) Limited, the UK distributor of globally-sold hardening agent Powertex, is amongst those infringers that has now given an undertaking to cease its infringement.

A big benefit of a campaign of this type is the reputational effect within the industry: would-be copyists are now on notice that Fiesta takes its rights

seriously and will actively pursue wrongdoers. That disincentive, along with the undertakings from known copyists, means Fiesta can now be more confident that its rights are not being infringed.

Managing Director Andrew Kingston said this about the campaign,

“It is important in our business to know what rights we have and how we can assert and enforce them. This concerted campaign has been highly effective in stopping infringement of our Greenmen range, and our competitors are now all aware of what will happen if they take shortcuts in getting products to market by just copying ours.”

ACID Comment

“Whilst it can be daunting to approach a lawyer for advice, particularly if you have a contentious issue, this case study shows the positive results that can be achieved. By taking a specialist opinion from an ACID Legal Affiliate team you are assured of the best advice on intellectual property issues from lawyers who understand them. Because they deal with similar matters on a daily basis, they will always be the most informed, with the most up to date knowledge of the options that are open to you.”

www.fiestastudios.co.uk

New Members

ACID welcomes the following new members to the ACID Community



Company Name	Industry
Laura Murphy Ceramics	Ceramics
[gawr-juhs]	Design Agency
Bonnie Binary	Fabrics & Textiles
Giddings Gifts	Fabrics & Textiles
Laura Beer	Fabrics & Textiles
Laurie Herman	Fabrics & Textiles
Scarlet Yarn	Fabrics & Textiles
Socius Global Sourcing Limited	Fabrics & Textiles
Gemima London	Fashion
Marsha L Achene	Fashion
Alan Horgan Studio	Furniture
Alexander Hay Design Ltd	Furniture
and furniture	Furniture
ASR Interiors	Furniture
Hydeline Furniture Ltd	Furniture
Prieto Studio	Furniture
Trade Fair International	Furniture
1066 Creations	Garden Products
DEVO	Garden Products
RainEDays	Garden Products
Woodlands Home & Garden Group Limited	Garden Products
Gail Hatley	Giftware
Jabberwocky Creative Designs	Giftware
Mingle UK Ltd	Giftware
The Stencil Studio	Graphics
Send 'n' Pop	Greetings Cards
Actualthing Limited	Interior Accessories
Cove	Interior Accessories
Hugo & Otto Limited	Interior Accessories

Company Name	Industry
Creplery Ltd	Jewellery
Exhibition Road	Jewellery
Glitter Punk Limited	Jewellery
Jenny Gordon Goldsmith	Jewellery
nowyouseeme Ltd	Jewellery
Northern Lights (Chesterfield) Ltd	Lighting
Aim Field Sports Limited	Product Design
Blinds and Signs Ltd	Product Design
David Jenkins Engineering Design	Product Design
Fredericklake Ltd	Product Design
Ideals Wholesale LLP	Product Design
Ives Product Design Ltd	Product Design
Kokeshe	Product Design
Nina Naversnik	Product Design
Rousseau Design Ltd	Product Design
Superwrappz Ltd	Product Design
Vogue (UK) Ltd	Product Design
Ian Chadwick Glass Art	The Arts
Naomi Jacques Ltd	The Arts
Starburst Glass by Opal Seabrook	The Arts
The Whispering Wild	The Arts
Toni Thornton Art	The Arts

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 ■

One Step at a Time campaign hits 70+ supporters



Over 70 companies have signed up to The Furniture Makers' Company's 'One Step at a Time' welfare campaign, taking the charity most of the way to its target of 100 companies supporting the initiative by May 2020.

The campaign, which launched in May 2019, is challenging companies in the furnishing sector to raise awareness of the organisation's occupational welfare support so every industry colleague knows where to turn in times of financial need.

Some of the companies that have signed up so far are: Acclaim Upholstery, Acres Consultancy, Artistic Upholstery, Axminster Tools & Machinery, Belfield Furnishings, Biesse Group UK, Bisley, Cabinet Maker, Camira Fabrics, CD (UK) Ltd, Celtheath, Crofts and Assinder Ltd, Design Studio, Duflex Foam, Edward Clay and Son, Ercol, Harrison Spinks, Homestore Interiors, Hunter Knight Upholstery, Hunters Contracts, Iain James Furniture, KI, Litmus Furniture, Ocee Design, Panaz, Parker Knoll, Peter Dudgeon Ltd, Shire Beds,

Tempur, Tetrad, The Furniture Ombudsman, Vitafoam, Webs Training, Westbridge, Whitemeadow and William Hands.

Dids Macdonald OBE, Master of The Furniture Makers' Company, said: "The One Step at a Time campaign is over a third of the way to the target, so a great big thank you to the companies who have signed up. With a 40% year on year increase of requests for help from industry colleagues, the word is clearly getting out about how The Furniture Makers' Company can help if times get tough."

Alistair Gough, group CEO at Ocee Design, said: "Ocee Design is delighted to be supporting the One Step at a Time campaign as it directly supports one of our core company values, 'Passion for People'. This very important initiative has enabled us to highlight the financial support available from the Furniture Makers to our employees who find themselves with unexpected expenditure and require some additional assistance. The feedback from the team has been very positive and extremely

appreciative."

Karen Clarridge, group head of HR, said: "During hard times, which let's face it we all go through at some time or another during our lives, we can't have enough support and the support available from The Furniture Makers' Company enhances the support given by Whitemeadow Furniture to our employees."

Kevin Grix, CEO at The Furniture Ombudsman, said: "We here at The Furniture Ombudsman are proud to be supporting The Furniture Makers' One Step at a Time welfare campaign. It's a vital service and can be a lifeline for those who have contributed to our sector. We need to raise the profile of this fantastic cause to ensure those who need support can access help."

To sign up as a One Step Champion today, go to www.furnituremakers.org.uk/one-step-at-a-time/



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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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ACID are supported by these Legal Affiliates. With thanks to; Boulton Wade Tennant, Burness Paull, Howard Kennedy, Kounoupias IP, McDaniel & Co, Stone King, Taylors

Events

For further information on the following events in which ACID will be taking part visit the ACID Events page at www.acid.uk.com

January
FURNITURE SHOW | NEC
19-22 JAN 2020

JANUARY FURNITURE SHOW
NEC, BIRMINGHAM
19-22 JANUARY 2020
ACID STAND HALL 2 H65

SPRINGFAIR
2-6 FEBRUARY 2020
NEC BIRMINGHAM
EVERYDAY SECTOR OPENS 1 FEE

SPRING FAIR
NEC, BIRMINGHAM
2-6 FEBRUARY 2020
ACID STAND HALL 5 A31