

ANTI COPYING IN DESIGN

Issue 55

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ANTI COPYING IN DESIGN

NEWSLETTER



IT'S GOOD TO TALK!



MEDIATE DON'T LITIGATE

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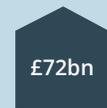
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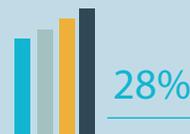
Design is the UK's top export [BIS]



For every £1 invested in design, businesses can expect over £4 increase in net operating profit [Design Council]



The design sector contributes more than £72bn a year to the UK economy



Between 2009-2013 the design economy GVA grew by 28%

Design can help us to solve social challenges of the future



5% (1.6m) of the UK workforce were employed in the design economy in 2014

Design spend in the UK is £33.5 billion

66% of SMEs do not take any action to protect their designs.

91% of SMEs DO NOT have an overall IP policy

97% do not have IP training

87% of SMEs DO NOT check for potential infringements

Dids Macdonald met with the Prime Minister's Deputy Director of Policy Dan Korski recently to discuss three areas of concern to ACID members and designers in general.

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The IP Act in 2014 included criminal provisions for the intentional infringement of a registered design, the result of a 15 year dialogue with policy makers spearheaded by ACID. The IPO is encouraging design registrations in a major push but the IPEC small claims track (for issues under £15K) will not deal with registered designs. This doesn't make sense.

The UK Design Sector punches above its weight with a £33.5 billion pound spend but there are three areas of concern:

- The lack of criminal provisions for Unregistered Design Right (UDR) in line with Registered Design to act as a deterrent
- 3D Printing – As the majority of designers rely on UDR, which is not a criminal offence, this leaves the door open for organised crime.
- Despite improvements to the IPEC and Small Claims Track, it is cost prohibitive for most micro and SME designers to pursue infringement.

Background: The majority of the UK's 350,000 designers are micro and small and rely on unregistered rights (copyright and design right). An average of only 5000 registrations are received by the UK Intellectual Property Office per year which leaves the majority with no real deterrent or support against infringement. To put this in a European context, OHIM, over the past 10 years has only received an average of 2500 from each member state per year.

• The lack of criminal provisions for Unregistered Design Right (UDR) in line with Registered Design to act as a deterrent, most designers are micro and small they cannot afford the cost and time to enforce their rights and even then it is difficult. With the average hourly earnings of a designer between £14 and £26 and legal fees of anywhere between £175 and £500 per hour, taking legal action is the luxury of the few. They cannot seek the help of Trading Standards because unregistered design infringement is not a crime. The new and improved Intellectual Property Enterprise Court is under-resourced with IP Judges, so the time taken to reach a final court hearing is long.

• 3D Printing – As the majority of designers rely on UDR, which is not a criminal offence, this leaves the door open for organised crime. 3D printing is developing at break neck speed in all areas of bespoke manufacture and prototyping from robotic hands, to car and aircraft parts, from fashion to furniture. As the cost of 3D printers falls and the cost of manufacturing is reduced, more organised criminals will see opportunities more quickly and there is currently no mechanism to take any legal action.

Statutory Enforcement - The potential for infringers to mass-produce products with the same outward physical appearance as legitimate goods by way of 3D printing could result in a significant volume of counterfeit goods reaching the marketplace. This is particularly worrying when such products would be combined with potentially flawless imitation packaging, labelling and instructions for use, since the overall product could appear to the relevant consumer as identical to the genuine item. Implications on IP rights and protection for Designers – current design law will not protect designers and manufacturers. 3D printing offers opportunities to new entrants in many businesses, and to those in the public health and medical sectors. However together with these opportunities come challenges. Much like the internet, 3D printing is one person's opportunity, but another person's threat, depending upon who is involved.

Solutions: Introduce criminal provisions for Unregistered Design Rights' infringement, we would like to see analogous provisions to Section 107 and 110 of the CDPA introduced to UDR especially as UDR grew out of copyright laws and has more in common with copyright laws than registered designs laws. This, together with introducing technological prevention measures which prevent the copying of protected designs would provide the support for designers. Machines could be engineered to recognise only authentic drawings containing a digital signature. Documents could be encrypted so as to prevent them from being visible on more than one computer and prevent file-sharing from occurring.

Improve access to stronger, more accessible enforcement for design infringement and exemplary damages.

DIDS MACDONALD



*A very happy 2016
and let's hope it is
the best for
everyone!*

DEAR ACID MEMBER

This New Year sees the launch of ACID's "Mediate to Resolve" initiative in the real hope that the time is right to offer mediation as a real alternative to litigation. We started last year with a mediation between two furniture companies which resulted in a quick solution to an irritating ongoing (and costly) problem, demonstrating clearly that it is better to talk and work things out with the help of an expert and trained IP mediator. So often litigation is cost prohibitive, debilitating and negative so if you have a legal issue, first try to resolve it with mediation! [Nick Kounoupias explains more in his Guest Editor spot on Page 6.](#)

Over three hundred thousand copies of designs are securely held on the ACID Design Databank. This provides valuable reassurance for those who do not officially register their designs, knowing that ACID evidence on the date of receipt offers third party evidential proof. However, did you know that ACID Marketplace offers an additional, safer trading platform to display your new designs? It's so simple for you as a member to display your designs on Marketplace. There are two options; either store designs on the Databank by buying credits for uploads or make your images available for all to view by uploading to Marketplace at no charge. Any potential buyer MUST register and agree to the Design Buyers Code of Conduct before they can view designs. And the good news is that you can track everyone who has viewed your designs on your online profile to see who may be a potential purchaser. It's a no brainer to add your designs to another potential sales platform.

Do call the team if you need help.

“ ACID Marketplace offers an additional, safer trading platform to display your new designs. It's so simple for you as a member to display your designs on Marketplace. Marketplace has no charge. Any potential buyer **MUST** register and agree to the Design Buyers Code of Conduct before they can view designs. ”

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As members of the Alliance for Intellectual Property, ACID's voice is consistently heard by ministers and policy makers on a wide range of issues, from the Digital Single Market to Groundless Threats and the UK's plans to join the Hague Agreement. If we join, which I certainly hope we do, this means that with one single registration 100 designs can be registered under a World Intellectual Property Office treaty to which 67 countries have signed.

In December last year, again through the Alliance for IP, we had very positive discussions with the Prime Minister's Policy Adviser Dan Korski (see page 3) to talk about Unregistered Designs and the need to extend criminal provisions. We also raised awareness about broadening discussions about the amazing opportunity that 3D printing offers but also to raise concerns about potential IP threats which may arise. We will be holding a one day event on 27 January to start the debate.

On October 6th this year I was delighted to attend Buckingham Palace to receive my OBE Honour from The Princess Royal. It was such a memorable occasion and this is just a huge thank you to all those who wrote in support of my name being put forward. The IPO, with whom ACID has a close relationship, were particularly supportive to ACID's work being recognised. So a big thank you to them! I was proud to wear a dress designed and made by ACID member and Scottish Couturier Sandra Murray MBE.

Sadly for ACID and the team the wonderful Sheila Carter has retired. The IPO's Director of Innovation Rosa Wilkinson commenting on her retirement said, "Much is written about the power of chief executives in building organisational success, but the truth is that no organisation can succeed without a corps of focused people committed to delivering daily excellence. Sheila's determination to build ACID services that deliver for its members, to ensure that Is have been dotted and Ts have been crossed is a vital part of what has made ACID one of the premier representative organisations in intellectual property. Her work undoubtedly will have helped member organisations to flourish. The contribution she has made is a template for all to follow – my life would be a lot easier if other organisations had a Sheila."

How very true! We wish Sheila a long and happy retirement!

The year cannot pass without a massive thank you to the ACID team for their hard work and commitment to helping our members and also to our legal affiliates who give up so much of their time to field legal queries and create such great IP events.

For those interested in the design journey and how important it is to protect the IP in an original garment take a peek on Page 12.

Finally, as ever, here's to a happy, healthy, successful and safe 2016 to all our ACID friends.

Warm regards and Happy New Year!

Dick Marshall

GUEST EDITOR



*Nick
Kounoupias*
ACID
Chief Legal Counsel



Mediation and IP

For many years now ACID has been running its “mediate to resolve scheme” for its members, with a primary focus on design disputes. Early next year however we plan to extend this scheme to cover all IP disputes so I would like to take the opportunity to remind all members about the advantages of mediation over litigation.

Mediation is generally pretty under-utilised in IP disputes. Of course not all IP disputes can be settled out of Court; for examples cases of out and out piracy (possibly involving organised criminals), cases where one party needs an emergency remedy via an injunction, or cases where someone needs to clarify a point of law are all inherently unsuitable for mediation. But in the vast majority of cases mediation offers a quicker, cheaper, less stressful, less distracting and far more satisfying solution to a dispute than litigation, and importantly enables parties to craft a settlement that works for them rather than one imposed by a Court.

Mediation has proven itself over the last 15 years to be an effective way of resolving disputes without the need to go to Court. The overall statistics suggest that 82% of all mediations result in a settlement on the day with about 90% of the remaining 18% being settled in some way within the next 14 days.

ACID's own statistics broadly reflects this trend; of the 3500+ mediations that we have handled to date only about 30% were not settled on the day with the vast majority settling very quickly afterwards, and only 3 finishing up going to Court.



of all mediations result in a settlement on the day

90% of the remaining 18% being settled in some way within the next 14 days



Indeed in case after case Courts have penalised parties whom unreasonably declined to mediate their dispute; currently on no less than seven occasions in the Court process a party is invited to consider mediation and if they refuse to do so they can be forced to pay all legal costs even if they win the case ultimately! **This is a massive incentive to mediate before you litigate.**

So how does a mediation work? The parties jointly appoint a mediator, who is an independent third party, to act as a catalyst to assist the parties to craft their own solution to the dispute. The mediator uses a range of skills to test the positions of each party and to offer possible ways forward based on private conversations with each party. This enables the parties to construct their own solutions rather than have one imposed upon them. The mediator cannot force the parties to accept his decision and the mediator will not offer one.

This process and the trust placed on the mediator by all parties provides the framework within which to reach a solution and helps defuse some of the tension and upset that persists in litigation through correspondence. At a mediation between two furniture designers this year the mediation began with one of the parties threatening to kill the other and ended a few hours later with them sharing a taxi and a drink on the way back to their respective train stations.

So it does work. Give it a try.

CASE STUDIES

LANKA KADE FIND MISSING JIGSAW PIECES IN IP PUZZLE! WILCO RETAIL SETTLE IP DISPUTE AFTER CHALLENGE BY LANKA KADE



Lanka Kade Original



ACID member Lanka Kade, renowned for their design-led, ethically made children's toys are pleased to have settled an intellectual property dispute about the copyright of two of their original wooden jigsaw designs with Wilko Retail Ltd , following a letter before action and prior to proceedings being issued. Whilst the settlement terms are confidential, Lanka Kade is delighted there is a resolution.

ACID comments, "So often, a frustrating condition of settlement terms by a much larger company, is that they remain confidential. The true story is never told. However, there is no mistaking that large brands such as Wilko must now realise that original design must be respected and SME designers treated ethically. I hope that lessons will have been learned."

Diane Soysa, Director of Lanka Kade said, "This was a hugely important issue for us. As a small business we pride ourselves on creating new exclusive designs and invest heavily in this process throughout the year. We design all of our toys in house and the infringement involved another company much larger than ours bringing out what appeared to be identical products just before Christmas was devastating. So much innovative design and employment growth is created by the SME sector and in 2013 account for 99% of national employment according to government statistics.

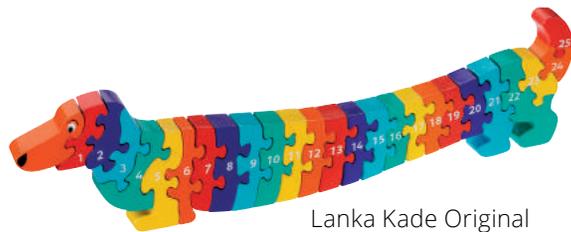
Therefore, an issue such as this, involving a company which does not manufacture toys in the same ethical way we do, was hugely concerning and something we had to take action over. Lanka Kade will no longer stand by and see their designs copied indiscriminately. More action is planned. ACID membership gave us the means to do that, and introduced us to their legal affiliates, McDaniel & Co. We are delighted with the resulting settlement.”



Kelly Hudson, an IP expert at McDaniel & Co, who acted for Lanka Kade in this matter said, “This is a positive outcome for Lanka Kade. Their pro-active strategy in handling this dispute has enabled them to reach a positive outcome and ensured the protection of their IP rights and not least their incredibly worthwhile business ethos. If a designer has created an original design which has a commercial value and their IP rights are infringed, taking decisive action is critical and this is where ACID can help.”



Wilkinsons' Version



Lanka Kade Original



CYCLEHOOP FIND IP SOLUTIONS IN LOOK ALIKE CASE – CYCLEHOOP V BIKE-DOCK SOLUTIONS

In January 2014, ACID member Cyclehoop discovered that a competitor, Bike-Dock Solutions Ltd (“BDS”) had produced a product which looked identical to its “Cycle Hoop” steering-wheel shaped bicycle storage device, which BDS marketed and sold under the name “Cycle Ring”. BDS posted Twitter posts and pictures introducing the ‘new’ design and announced that it had already made sales to a local authority.



Cyclehoop’s “Cycle- Hoop”



BDS “Cycle Ring”

Only ten days before a Summary Judgement hearing in the IP Enterprise Court a settlement has been negotiated between ACID members Cyclehoop and Bike-Dock Solutions (BDS) and Court proceedings ended.

Despite not acknowledging infringement, BDS have agreed to stop manufacturing, importing and selling or offering for sale their Cycle Ring for the duration of the design rights in the Cycle Hoop, to deliver to Cyclehoop any unsold Cycle Rings, to refrain in the future from threatening Cyclehoop and its MD with legal proceedings in respect of another design registered by BDS and to compensate Cyclehoop for the profit BDS had made by selling the Cycle Ring and for a large portion of Cyclehoop's legal costs.



Gavin Llewellyn of Stone King LLP said: "This case shows that even where there appears to be no defence to a claim of infringement of intellectual property rights, it can still be time-consuming and costly to obtain redress. Nevertheless, even if a claim is settled before going to Court, it is possible in a settlement agreement to obtain reimbursement of a significant portion of the expense incurred. Designers should always therefore consider investing in design registrations, which make it simpler and quicker to pursue suspected infringements. Registered designs also now carry the benefit of potential criminal sanctions for intentional infringement where this can be proved, which is a useful deterrent."



Anthony Lau, MD of Cyclehoop said: "It was incredibly frustrating to have to initiate Court proceedings with a view to protecting original Cyclehoop designs. I am very happy that a settlement was finally reached without the need to spend time and money going to a full trial. By knowing your rights and having the correct type of protection, you can take action when you think people are stealing or copying your work which is hugely important."

We work extremely hard to create the most unique designs within the cycle parking realm so it's hardly surprising that this has happened. This incident has only encouraged us to carry on designing the most innovative cycling infrastructure and we'll continue to protect them as a result."

ACID comments, "Protracted legal correspondence like this in what appears to be a clear look alike case are crippling for small businesses. It is hoped that BDS and other competitors will receive a very clear message that Cyclehoop have a proactive IP strategy and are prepared to fight their corner to protect their original designs."

ACID MEMBER PETA UK SUCCESSFUL IN IP FIGHT WITH START-2PLAY

ACID member Peta UK is an innovative company supplying a wide range of products to those people with physical disabilities. The company was built on the success of a "looped" pair of scissors which are ideal for use by people with arthritis or other special needs. Peta UK obtained a registered trade mark, Easi-Grip® in 1977.

A previous customer, based in Doncaster, Start2Play, decided to replace these scissors with an inferior copy, but did not change the wording or images on their website. Furthermore, they listed this cheap copy on Amazon against Peta UK's own listing, even charging just under Peta UK's RRP, despite selling the item for much less on their own website.

Niall Head-Rapson a Partner of McDaniel & Co acting on behalf of Peta UK said, "Of course what purchasers received was not a pair of Easi-Grip® Scissors but an inferior copy. After a series of correspondence, Start2Play agreed to remove the offending material and pay nearly £5000 in costs and damages."

Genny Crockett, Peta UK's Managing Director said, "My father designed these scissors in the mid-1970's so the associated intellectual property is close to my heart. By selling this cheap copy of our scissors under our trade name and using our images, Start2Play created confusion in the marketplace and damaged our reputation for high quality products. Thanks to our ACID membership we were able to take action. We are now working hard to rebuild consumer confidence in our trade name."

ACID comments, "The message is clear, it is simply not acceptable to sell inferior copies as genuine items. The fact that Peta UK have adopted a proactive IP stance in the way they have reacted to this issue, shows just how importantly they value their intellectual property."

Peta (UK) Ltd is a second generation family business which was established in 1975. The company's founder Lionel Crockett was an innovator and entrepreneur who, having designed the first Easi-Grip scissors, contacted Occupational Therapists to understand the variety of special needs of children and adults with physical disabilities. This led to the development of an extensive range of adapted scissors. Since that time Peta UK has designed a range of Easi-Grip garden tools, kitchen knives and utensils. Peta remains committed to universal design principles that benefit everyone, irrespective of age or ability.

<http://peta-uk.com/>



Original

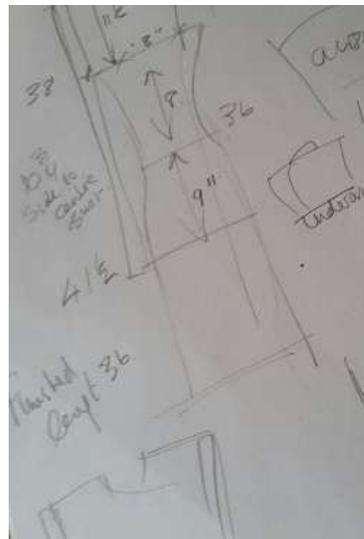
Copy

A BESPOKE DESIGN JOURNEY WITH ACID MEMBER AND HIGHLAND COUTURIER SANDRA MURRAY MBE

It started with a pencil line...

In September, I received the most beautiful hand written letter on stunning, thick card stationery from Sandra Murray, not only congratulating me on my recent honour, but sending some wildly different and wondrous tartan dress designs she had created. *Well I was hooked and decided to ask Sandra if she was free to design and make my outfit to go to the Palace when I received my OBE.* We met in London a couple of weeks later for lunch and chatted about everything and anything. I was wondering when the design part was going to kick in when Sandra delved into her handbag for her sketchpad and deftly drew the most stunning design which was exactly spot on. Clearly the hour's lunch had given her an insight into me, what I could and would wear but more importantly, all the time she was obviously thinking about her design.

With a gorgeous design agreed, out came a paper pattern which she slipped over my head and deftly pinned it to my contours, a tartan was chosen, ordered and Sandra set to work. Work, when I enquired, was translating the pattern to the cutting stage and hand tacking the whole dress together. The dress was lined with Italian silk organza, each seam was hand stitched, all the buttons covered and hand sewn and Sandra spent the next two weeks pulling together the outfit; a bit like the conductor of an orchestra. In between the sewing and fitting stage came countless discussions of what shoes, under garments, stockings, hat and hand-bag I should have. All meticulously chosen by Sandra, a stickler for detail. I flew up to Glasgow for the final fitting and Sandra had an array of accessories from which I could choose.



After curtseying and walking forward to collect my honour from The Princess Royal she said, "It must be very difficult to protect original designs with the advent of the internet" Yes Your Royal Highness said I, "and it is particularly difficult for designers like Sandra Murray my couturier who incidentally designed Her Majesty's dress for an Opening of the Scottish Parliament" - "Yes, I remember it well!" said The Princess Royal!

And protecting her designs is close to Sandra's heart after she told me about a famous TV celebrity for whom she had designed a bespoke original, only to see it worn on TV with the design accolades going to another designer!

Bespoke was the making of Sandra Murray. The creation of handmade, beautifully tailored, one-off clothes brought her to couture, the artisan skills and unerring eye of the former underpinning the artistic aesthetic of the latter. From ball gowns to frock coats to entire weddings, where she will not only design and make the outfits but style the whole occasion.

Bespoke for Sandra is an intimate three-way relationship between herself, the client and the creations that emerge. The dynamic begins with the initial meeting with the wearer. A time to measure, a time to dream, a point from which everything flows. Some describe Sandra's work as more "punk than pomp" and her fantastic collection of designs photographed at Skibo Castle just shows how versatile a designer she is. What I liked about working with Sandra was her attention to detail, her very personal and passionate approach to her craft and the fact that we have now become firm friends. I would definitely commission her again!

Sandra's top tips for designers

- Always sign and date all your work
- Record all key stages of the design process
- If possible register designs but if you can't afford to register them and you are a member of ACID lodge them on the ACID Design Databank
- NEVER leave your design drawings with a client
- Always use simple agreements to clarify design or IP ownership
- Be" IP Savvy", know and understand the rights that protect you
- Use the ACID logo and a simple statement on your website, "All intellectual property in my designs and the photographs on this website are and will remain the property of Sandra Murray. Any infringement will be taken seriously."

www.sandramurray.co.uk





Mediate don't Litigate

At the January Furniture Show 2016, ACID will be announcing the extension of its mediation model and introducing "Mediate To Resolve" an alternative dispute resolution. This is a mediation service without IP lawyers but with a highly skilled intellectual property mediator. The parties jointly appoint a mediator who is an independent third party, to act as a catalyst to assist the parties to craft their own solution to the dispute, rather than have one imposed upon them. Increasingly, Judges are looking more favourably on parties who have tried to mediate much earlier, at the beginning of a dispute rather than when parties are entrenched in what can often be an expensive legal process.

Mediation offers a user-friendly alternative to the cost and time consuming experience of having to go through an often debilitating legal process. So, whether you are a claimant or defendant, the trick is to encourage parties to come to the table and talk. According to CEDR (The Centre for Effective Dispute Resolution), 85% of mediations result in settlement or significant progress.

ACID has spent many years encouraging parties in disputes to seek mediation and has a proven track record in successful and effective alternative dispute resolution. The ACID scheme does not involve lawyers and is not just confined to intellectual property and is now open to all within the creative industries on diverse issues. Most, but not all legal disputes are suitable for mediation - think about the alternatives first! If you do come up against an IP legal issue with a third party (and there are legal grounds for the complaint) think about mediation before litigation.

*It's good to talk, let ACID act as a conduit - **Mediate don't Litigate.***

When is Mediation appropriate?

Mediation is appropriate in many dispute situations!

Every IP dispute can be mediated, but some are less suitable for mediation, for example, cases of blatant piracy or cases where one party needs a Court order or the Court to set a precedent in law. Mediation is almost always far cheaper than litigation and occupies less management time in the long run and is less stressful than litigation.

How does a mediator help?

Very often the mediator can help with negotiations that would otherwise breakdown if the parties were to try to resolve issues between themselves. Mediation should be considered as part of the litigation strategy early on, before the parties have become too entrenched in their positions or incurred legal costs, which could be a barrier to settlement.

What does Mediation Offer?

1. **Flexibility:** *Mediation is a flexible process conducted confidentially in which a neutral person actively assists parties in working towards a negotiated agreement of a dispute or difference with the parties in ultimate control of the decision to settle and the terms of resolution.*
2. **Your own settlement:** *Mediation enables the parties to craft their own settlement and agree terms of settlement that can exceed the possible remedies made available by a Court. In contrast, a Judge is constrained in the remedies he can award.*
3. **Nothing to lose:** *By entering into mediation, neither party loses their right to pursue other dispute resolution methods such as litigation. It can take place at any time, including during litigation.*
4. **Cost and time:** *Mediation is considerably less expensive than litigation and occupies less management time. A mediator can bring value to the process, giving the parties the best opportunity to have a constructive discussion at an early stage, before legal costs escalate and become a stumbling block.*
5. **Selection of neutral:** *The parties can select their mediator, who can be trusted and respected by both parties and is an expert in their field.*
6. **Confidential:** *The mediation is completely confidential, unlike litigation, which is open to public scrutiny. The 'without prejudice' nature which means that the information disclosed during mediation cannot subsequently be used in Court. The settlement reached by the parties sets no precedent so is ideal should a party want to treat the dispute as a one-off.*
7. **Maintains relationships:** *Litigation by its very nature is adversarial and often irreparably damages relationships whereas mediation encourages communication and co-operation between the parties and can often preserve relationships and generate future business.*

8.

Courts expect mediation: Recent cases have shown that the Court may deny winners at trial their costs and expenses if they have unreasonably refused to mediate. Indeed, a Court may award the successful party in litigation to pay the costs of the loser if the winning party has unreasonably refused to mediate. Parties are invited at several moments in the litigation timetable to opt for mediation and if they fail to accept this invitation the Courts may punish the parties.



“As a Judge I have seen, only too often, how parties to a dispute can become locked into litigation when mediation at an early stage might well have resulted in a satisfactory compromise. Having regard to the inevitable cost, time and stress of litigation – to say nothing of the risk of losing the case – mediation must always be worth a try. However much he or she might wish to do so, the Judge hearing a case cannot sit down with the parties, together and separately, to discuss with them informally and confidentially whether a compromise might be possible; yet that is precisely what the mediator is there to do. That is why I am committed to the concept of mediation.”

Former High Court Judge, Sir Jonathan Parker

“Mediation and other Alternative Dispute Resolution mechanisms offer many advantages over litigation and can be particularly valuable in IP cases. ACID’s ‘Mediate to Resolve’ service gives access to a quicker, cheaper and better means of resolving problems. My congratulations to ACID for this vital piece of work and all they do to improve their service.”

Baroness Neville-Rolfe DBE CMG
Minister for Intellectual Property



ACID LEGAL AFFILIATES DISCUSS “WHAT DOES 2016 HOLD FOR IP?”

• **Progress of the EU Unitary Patent and Unified Patent Court System** towards ratification will continue and patent owners may have the opportunity to opt-out their European patents from the jurisdiction of the UPC during 2016, prior to entry into force in late 2016.

• **A UK referendum on membership of the EU** is expected in 2016. A so-called BREXIT would have consequences for registered Community designs and Community trade marks and it would not be possible to cover the UK via an EU Unitary Patent.

• **A new UK Patent Box scheme** will commence on 1st July 2016. The scheme reduces UK corporation tax paid on profits derived from any products that are covered by patents with the aim of encouraging companies to commercialise their patents in the UK.

<http://www.vennershipley.co.uk>

Venner Shipley



Ian Grey, Associate at Venner Shipley



@VennerShipley



Tony Catterall, Partner at Taylors LLP

<http://www.taylors.co.uk>

Copyright law in the UK and in Europe is struggling to keep pace with the digital age. The last full review was the “Infosoc Directive” of 2001. The **EU Commission intends to modernise copyright law** and the European Parliament has adopted a resolution setting out recommendations to update the Infosoc Directive.

Anticipated changes include **prohibiting “geo-blocking”** which prevents consumers buying goods cross-border on the internet, the introduction of a single copyright regime across the EU and reviewing the exceptions to copyright protection which vary throughout Europe. The Commission’s proposals are expected imminently and 2016 is likely to see the biggest shake up to copyright law for almost 30 years.



@taylorslawfirm

Designs

Assuming it is not referred to the CJEU, 2016 will likely see the decision of the Supreme Court in the long-running Trunki case, which is important for several reasons. Firstly, it is the first occasion on which the highest Court in the UK has had to consider the Community design regime which was introduced in 2002 and has been widely adopted by designers around the world to protect their product designs in the EU. Secondly, it involves Trunki, a successful company at the forefront of British design which has created a hugely well known and innovative product that has been imitated by a competitor. Thirdly, it will shed light on how CAD designs, frequently used to depict registered designs, are to be interpreted when deciding how close is too close for a competitor's design. It is likely to have profound implications in the design world, irrespective of the decision reached.

Trade marks

We will see the introduction of a new Trade Marks Directive coming into force in January 2016 and a new CTM Regulation by April 2016 (at which point CTMs will become EUTMs). OHIM will also be renamed the European Union Intellectual Property Office (EUIPO). Key changes include fees being charged on a per class basis, the 3-month opposition period starting 1 month after publication rather than the current 6 months, and the need for a mark to be graphically represented to be removed.

Patents

The UK will continue to work towards the ratification of the Unified Patent Court Agreement, which will introduce a new unitary patent right enforceable throughout most EU member states, which can be obtained instead of needing a bundle of national patents covering each member state.



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**Simon Sellars, Senior Associate of
Sipara**



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<http://www.sipara.com>

Small businesses will become more direct users of the IP system as cost pressures continue and systems become more user-friendly. Businesses will increasingly file their own trade mark and design applications, social media takedowns against copycats, and may even consider filing their own "small claims" for IP infringement.

The rising prevalence of wearable technology will see clashes between traditional watchmakers and technology giants such as Apple and Samsung. Fitness and medical trackers are the underdog of the category, but be prepared to see wrist-based design issues making headlines as everyone jumps on the bandwagon.

MEMBER FOCUS

INTELLECTUAL CAPITAL AND THE CAROLINE GARDNER BRAND AND AN IMPASSIONED PLEA TO THE UK GOVERNMENT

ACID caught up with Caroline Gardner recently, one of the UK's best known leading and most prolific stationery and gift designers, to ask a few questions about why intellectual property is so important to the brand. Caroline's distinctive designs now stretch across various product categories, including paper, accessories and lifestyle, all linked by her design hand print of quirky use of colour and placement. Her signature look is an ever evolving modern classic; products and designs born of traditional production techniques and values.

No strangers to the debilitating effects of copying, ACID wanted to find out Caroline's approach to design protection:

What is the importance of your brand to your company?

We have spent and continue to spend an enormous amount of time, effort and money in building the Caroline Gardner brand. Over the 22 years we have been trading, we have always attached huge importance to delivering quality in everything we do and, of course, as the awareness of the brand has increased, our customers have learnt to appreciate and trust that quality. They now rightly anticipate and expect it in everything we do, and in everything that is associated with the Caroline Gardner brand.



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

Our consumers have learnt to trust the Caroline Gardner brand and many actively seek out the new designs and products we bring to market. IP infringement which sets out to pass off another's work for our own, breaches that trust by actively duping the customer into purchasing something different from that which they think they are purchasing, often meaning that they end up buying something inferior and certainly something they hadn't intended to! In simple terms the IP infringer is defrauding the customer, and clearly that inevitably has an impact on our business on various levels.



Caroline Gardner

The intellectual capital which underpins your business combines creativity and innovation with the quality of design, product, service and people. How do you protect these valuable assets?

Our intellectual property (IP) is the life blood of our business and we will do everything to protect it!

ACID values the support of Caroline Gardner as a longstanding member and supporter of the organisation. How have you benefitted from this association?

The ACID brand has itself grown in stature over the years. ACID now has an industry reputation for championing the good practice of IP protection and seeking to help uphold the laws, such as there are. By associating publicly with ACID, as we have done, and by publicly highlighting past issues we have had with IP infringers, the company has benefited from that reputation, and I hope that the would be copiers will think twice next time...

What 3 recommendations would you give to Government to support industry and those that work in the design sector?

Dear Government,

The design sector is a huge industry for Britain and its exports, please recognise this and:

- 1. Invest more in Design Education.*
- 2. Continue along the path of the criminalisation of IP infringements and extend the new law to unregistered designs, and publicly naming and shaming miscreants.*
- 3. Make it easier and less costly for small businesses to protect what is theirs both domestically and internationally.*

Yours sincerely,

A. Design-Company



Our intellectual property (IP) is the life blood of our business and we will do everything to protect it!

According to the Greetings Card Association Market Report 2014 £1.29 billion was spent on single cards in the last year and more cards are bought per person in the UK than in any other country – 31 per person an astonishing 884 million single greeting cards were bought from retailers of all shapes and sizes in 2013.

It makes sense, therefore, for all designers and those involved in the greeting and gift sectors to become IP aware. Whilst IP is a fairly complex subject, a common sense and positive approach can help to protect original designs and contribute to growth and brand safety.

THE UPS AND DOWNS OF TRUNKI'S IP

By Laura Breen, Trunki's Head of Legal

The recent co-hosted event by ACID and Bird&Bird LLP 'Tackling Design Copycats – Tips and Strategies' Seminar, saw a wonderful range of attendees from ACID members, designers and entrepreneurs, which made me feel privileged to be invited to present a 'live' case study of Trunki's high profile and ongoing dispute with PMS International.



Rebecca O'Kelly-Gillard, Dids MacDonald, Laura Breen, Ewan Grist

Since trading began in 2006, following 10 years of defeating obstacles and hard work by Rob Law to bring his idea to fruition, Trunki has been no stranger to the copycats, openly sharing our achievements and frustrations within the design community.



Understanding infringement is a learning curve for SME's and designers

Outside of trademark and copyright, tackling copycats on the basis of design infringement requires assurance which copycat mimics the overall impression of your product and which lies beyond the scope of your design protection. Crucially for the SME, this ensures investment in legal action is justified by a high expected success rate.

Believing in the strength of the infringement posed by PMS' Kiddeecase following its emergence on the market in February 2013, Trunki's faith in the power of IP was supported by the Judgement of Justice Arnold at the Court ruling in June 2013, with the Kiddeecase design infringing elements of both our Registered and Unregistered Design; fundamentally creating a confusingly similar overall impression.

However, success was short-lived with PMS winning their right to appeal the decision. February 2014 was a big shock and knock back to Trunki, and the design community as a whole. In arguing Trunki's graphical representation implied colour through the use of greyscale CAD render rather than a line drawing, it was ruled that the presence surface decoration distinguished the designs consequently overturning the original judgement and ruling in PMS' favour.

Such a ruling sent shockwaves through the design community; if this really is the case, what is the retrospective implications to Registered Community Designs and the future impact?

Moreover, what form of graphical representation can a designer be most confident in, and does this mean design registration isn't just about protecting the shape of your product anymore?

The wait is over

These questions in fact became key at the Supreme Court hearing on 3rd November 2015. With an overwhelming level of PR support for Trunki, and a dedicated following both in Court and via the live stream, focussing on shape alone increasingly became central to discussions. Designers would have to undertake infinite registrations if colour became vital to Design IP, as well as revisions to existing registrations if line drawings really are the only secure form of graphical representation. Moreover, the impact of confusion to the informed user supported the original ruling of a similar overall impression.



Spanning nearly 3 years...

Time is money and, for SME's and designers, losses can have a devastating impact. To date, Trunki's battle costs have been staggering - reaching beyond £500,000 - and it doesn't end there. Not only are there damages paid, the Court case comes hand in hand with additional action on the part of PMS International; all requiring responses, all of which cost.

There's also the impact on sales; large scale discount chains and online marketplaces are free to sell the Kiddecase both in the UK and across Europe, with pricing identified as low as £14.99. Although retailers' experiences and customer reviews are negative, the damage of the initial circulation is done and retailers are scared off from stocking the original and high quality, Trunki ride on suitcase.

However, it isn't all doom and gloom!

Trunki have received phenomenal support through media coverage, not just for the ongoing case but bringing IP into the political spotlight. Working closely with Dids and ACID, we continue to 'shout about it for UK Designers' and '#ProtectYourDesigns' All these initiatives, and more, blaze the trail for an IP reform.

A new JURNI

It doesn't end there. Rob Law's incredible imagination for design has triumphed yet again with the launch of Jurni - a carry-on suitcase for the next generation of young connected travellers. Launching on Indiegogo on November 16th, Jurni smashed its crowdfunding target within the first 24 hours and success continues to sky-rocket. The PR has been fantastic, and the Huffington Post agree; "This May Be The Most Perfect Carry-On Suitcase We've EVER Seen"! www.myjurni.com



#ProtectYourDesigns

- 1 **REMOVABLE POD**
Durable composite plastic pod with splashproof seal
- 2 **STRONG STRUCTURE**
Supports up to 220lb (100kg) seating load
- 3 **INLINE & PULL ALONG WHEELS**
Custom designed skate wheels with smooth gliding ball bearings
- 4 **ADDITIONAL STORAGE**
Elastic lacing holds documents and magazines
- 5 **FLEXIBLE SHELF**
2 position points, including secret storage or a shelf
- 6 **TELESCOPIC HANDLE**
Wide design maximizes internal storage space
- 7 **POD EJECTOR BUTTON**
- 8 **DOOR RELEASE BUTTON**
- 9 **PADLOCK FIXING POINT**
- 10 **QUICK GRAB HANDLE**
- 11 **SCUFF BOARD**
Hard wearing, designed to take the impact of frequent travelling



Trunki Tutor

Moreover, our commitment to education has seen the launch of Trunki Learn; an online teaching and learning resource for Product Design and Business Students. It is never too early to learn about IP and to protect your designs; a message I strongly convey to the entrepreneurs and designers of tomorrow www.trunki.com/learn

NEW MEMBER LIST



We would like to welcome to the ACID community

Member Name	Design Category	Member Name	Design Category
alijoedesigns	Ceramics	Tracey Louise Designs Ltd	Interior Accessories
Sue Pryke	Ceramics	Wildejawa UK LTD	Interior Accessories
Blade & Rose Ltd	Childrenswear	Alison Levy	Jewellery
Brenoco LTD	Design Agency	Marlano	Jewellery
D. Agency	Design Agency	Mojiana	Jewellery
Fiona Cowell Designs	Fabrics & Textiles	Sally Lane Jewellery	Jewellery
Rustic Country Crafts Limited	Fabrics & Textiles	Skaramanda Ltd	Jewellery
Ala Mairi	Fashion	Chippitycards	Product Design
Fairfax & Favour	Fashion	Dandelion Head Ltd	Product Design
Sorringowl & Sons Leather Goods	Fashion	Holmes Mann & Co Ltd	Product Design
Suki Sabur	Fashion	John Mackenzie	Product Design
Vitek Data Services Ltd	Fashion	rawstudio ltd	Product Design
ZukieStyle	Fashion	Sarah Hurley Ltd	Product Design
DM Midlands	Furniture	Stomaworks	Product Design
SNE Wholesale	Furniture	C Atkinson	The Arts
Soderberg Mills	Furniture	Liz Valenti Paper	The Arts
Wild Manor LTD	Furniture	Lorna Bateman Embroidery	The Arts
Styling Homes and Gardens	Garden Products		
Kate Samuels Design	Giftware		
Made by Berry	Graphics		
Catherine Kleeli Cards	Greetings Cards		
Adam Kester	Interior Accessories		
Animalia Soft Furnishings LTD	Interior Accessories		
Artcuts	Interior Accessories		
Bearsted Trading Ltd	Interior Accessories		
Beverly Todd	Interior Accessories		
Orwell and Goode Ltd	Interior Accessories		
The Occasional Genius	Interior Accessories		
Thomas & Vines Ltd	Interior Accessories		

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.

EVENTS & CALENDAR

Join us at the ACID 3D Printing on one day conference on 27 January in London to explore the vast opportunities 3D printing offers in bespoke manufacture and prototyping. Hear discussions about some of the potential IP challenges should criminals decide this is as easy route to design exploitation.

When? 27 January 2016

Where? Central London

Every now and then a new technology emerges which has the potential to completely change industry and revolutionise the world. Thirty years ago we were focusing on the rise of digital technology and the repercussions for analogue industries. Today all eyes are on 3D printing.

3D Printing Conference 2016: A One Day Symposium invites key players across 3D platforms to share their views on broadening opportunities, exploring the IP challenges and looking at how technology may offer IP protection solutions. It will also discuss whether current policy focus is fully aware of potential IP issues. With the quality of 3D printers getting better and the price getting cheaper, questions arise over what effect this is going to have.

Counterfeiting is an obvious threat and although currently not seen by Government as a big issue, it's illegal, immoral and unfortunately here to stay. Another important aspect is the need for a revolution in how intellectual property protections, such as designs, patents, copyright, and trademarks are applied to the new world of 3D printing.

The ACID 3D Printing Conference 2016: A One Day Symposium will address all these issues and more. The day will bring together experts who have direct experience within the 3D printing industry and provide attendees with insights into the changing face and evolution of this rapidly growing industry. **This event is the first of its kind in the UK - don't miss out. 3D printing is growing rapidly and has a myriad of applications across various industries and sectors.**

- What is 3D printing?
- Practical application of 3D printing
- SWOT analysis of 3D printing
- Do IP rights help? If so how?
- The increased importance of design protection and the bodies that can help
- Case studies-3D printing and particular industries
- Counterfeiting and piracy and 3D printing
- Next Step

For more details, info@acid.uk.com

 WE ARE EXHIBITING AT THE January FURNITURE SHOW
January 24th - 27th 2016 ACID Accredited Exhibition NEC Find us at Hall 2 Stand F15
 ANTI COPYING IN DESIGN
January 27th 2016 ACID 3D Printing Conference Central London
SPRINGFAIR
7-11 FEBRUARY 2016 NEC BIRMINGHAM UK
February 7th - 11th 2016 ACID Accredited Exhibition NEC Find us at Hall 5 Stand E70

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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 ©ACID 2016

