



ANTI COPYING IN DESIGN

●●● events and exhibitions

ACID WILL HAVE A PRESENCE AT THE FOLLOWING ACID ACCREDITED EXHIBITIONS DURING AUTUMN 2009.



**Autumn Fair,**  
**NEC Birmingham**  
**6-9 September 2009**  
**Entrance to Hall 3 Stand L02**  
[www.autumnfair.com](http://www.autumnfair.com)



**Top Drawer Autumn,**  
**Olympia, London**  
**13-15 September**  
Telephone support available through the ACID Legal Hotline +44(0)845 230 5742  
[www.topdrawerautumn.com](http://www.topdrawerautumn.com)



**GLEE, NEC Birmingham**  
**20-22 September 2009**  
**Hall 5 Stand L16**  
[www.gleebirmingham.com](http://www.gleebirmingham.com)



**100 Percent Design,**  
**Earls Court 1, London**  
**24-27 September 2009**  
**Stand K22**  
[www.100percentdesign.co.uk](http://www.100percentdesign.co.uk)



**Decorex**  
**Royal Hospital Chelsea, London**  
**27-30 September 2009**  
ACID presence on 27th followed by telephone support available through the ACID Legal Hotline +44(0)845 230 5742  
[www.decorex.com](http://www.decorex.com)

# Lighting Association Awards 2009

## Showcase Shining Talent

The annual Lighting Associations Awards for Student Designers was recently held at Stratford Manor Hotel, Warwick. Once again, it was supported by ACID and a host of famous names from the lighting industry such as Phillips, Osram, ACID Media Supporter Total Lighting Magazine and ACID Member DAR Lighting Group.

The awards were presented by ACID's CEO Dids Macdonald, who was delighted to see young designers rewarded for creating innovative designs, both from a technical and aesthetic

perspective. ACID awarded 1 year free ACID Memberships to the award winners and an ACID Safe Pitch Kit, which contains standard legal agreements and advice on pitching to third parties – vital information for designers wishing to put their prototypes into production. The ACID Safe Pitch Kit can be purchased on the ACID Trading website by visiting [www.acidtrading.eu.com](http://www.acidtrading.eu.com)

**Below some of the award winners from the presentation ceremony**



**Above Left to Right :**  
*Peter Hunt, CEO Lighting Association*  
*Beth Jackson*  
*LA Student Designer of the Year 2009*  
*Dids Macdonald , CEO ACID*



**Above :**  
*Beth Jackson's winning 'Air' Design*



TRADE ASSOCIATION PARTNER



**Above :**  
*Faye Whitear, Children's Student Lighting Designer*  
*with her winning Nuno Design*

### STOP PRESS: Lighting students – brush up on your intellectual property.

For the first time in 2010 new criteria for entrants to the Lighting Association Awards will include;

- 1) Identify the IP rights created in your design
- 2) Demonstration of what has been put in place to produce new designs
- 3) Demonstration of an IP strategy and communications policy



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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 2009

## HOTLINES...

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## ACID recommends the following ACID Accredited Law Firms:



DMH Stallard: [www.dmhstallard.com](http://www.dmhstallard.com)  
McDaniel & Co: [www.mcdanielandco.co.uk](http://www.mcdanielandco.co.uk)

ACID Accredited Law Firms can be contacted by Acid members via the Acid Legal Hotline:  
**+44 (0) 0845 230 5742**

# ACID<sup>®</sup>

**news**

**ANTI COPYING IN DESIGN**

Issue 36  
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**SHOWCASING SHINING TALENT >> SEE BACK PAGE**

## **Super Dry Foils Primark Lookalike**

**Copied - Iconic classic leather jacket worn by David Beckham > SEE PAGE 5**

**Join ACID's No. 10 Campaign Sign Up Now!**

> PAGE 6

**Sebastian Conran Urges Government To Strengthen IP Laws**

> PAGE 3

**Inventor of the Year Tanya Ewing Becomes 1st Female ACID Ambassador**

> PAGES 10

## Dear ACID Member ●●●

Designers have once again been sidelined in the latest Government White Paper following the consultation on Damages. Despite a recommendation in the 2006 Gowers Report on Intellectual Property to improve damages awarded for intellectual property theft, the Ministry of Justice has failed to address the lack of a deterrent effect within the existing damages regime. To wait over two years to make little or no changes to the damages system for intellectual property theft has made scant attempt to recognise the severity of the problem within the UK, estimated at a loss of just under £10 billion pounds per year. It also says little about Government support for those who are most at risk within creative industries. The creative industries currently produce 8.2% of GDP. Unless there is a dissuasive damages system in the UK, creators will become disincentivised.

So what can you do to make a difference? If you care about design, if you care about design protection and discouraging those who freeride on the back of others and indiscriminately copy in order to get the competitive edge, please read the ACID LOBBY see back page' to 'see page 7. We invite you to sign two No 10 petitions to support:

- 1) Criminal sanctions for design right infringement and
- 2) Changes to the copyright and unregistered design right infringement damages regime to create greater deterrent against IP theft

As ACID moves into its second decade, the Board has taken the decision to set up an ACID Council which will meet twice a year in London. The objective of the Council will be to influence strategy and create a vision for ACID's future. I will be inviting a representative from each of the main industry sectors, starting with Furniture, Lighting, Giftware and Jewellery and two representatives from our other sectors. However, if you have a burning ambition to be part of an ACID think tank to help carve out ACID's strategy for future growth, please do let me know. ACID Council members will be asked to commit to a two year period on the Council.

We already have five influential ACID Ambassadors who are champions of our organisation, well-known names within the creative industries – all with a passion for the respect of intellectual property. Latest to join the impressive list of ACID Ambassadors is Female Inventor of the Year, Tanya Ewing – read her story on Page 10. I am absolutely delighted that we have Tanya as the first female ACID ambassador. She is a credible example and someone who is one of the best role models for IP – ensuring that she gets her house in order and, as a result being able to attract investment for growth.

And finally, as we approach the exhibition season – don't forget, if you are bringing out new designs, ideally these should be registered at the UK Intellectual Property Office [www.ipo.gov.uk](http://www.ipo.gov.uk) or OHIM [www.oami.europa.eu](http://www.oami.europa.eu) Failing this, if you are an ACID member send copies to the Design Data Bank – it is free and it makes sense! ACID now holds over 300,000 copies of designs. Sending them to ACID ensures independent third party evidence of their existence – essential to any design audit trail as proof of ownership.

Best wishes  
**Dids Macdonald,**  
 Chief Executive of ACID



## Guest Editor

"Last year, the UK public spent £1.7 billion on greeting cards"



**Say's**  
**Jakki Brown,** EDITOR  
 Progressive Greetings Worldwide  
[www.max-publishing.co.uk](http://www.max-publishing.co.uk)



**H** As I write this, some **14,000 greeting cards have arrived at our office, the facelessness of the mountain of Jiffy bags, cardboard boxes and brown envelopes belies the treasures they hold inside. These are the entries for The Henries 2009, the greeting card publishing industry's Oscars equivalents that are judged by a panel of 30 top retail buyers. Collectively these Henries entries provide proof indeed of Britain's world leading creative talent and how a product that could be considered 'old-fashioned' (given the choice of faster methods of social communication) has remained relevant and very much part of our social and aesthetic culture.**

And we now have proof to the extent of this relevance! As the brand new UK Greeting Card Market report, commissioned by the GCA (Greeting Card Association) has shown the industry is worth even more than was initially thought. Last year, the UK public spent £1.7 billion on greeting cards, equating to 1.5 billion cards – that means that every adult in the UK bought 31 greeting cards last year. Of course greeting cards are sentiment driven, but if the designs and editorial were not spot on with the current tastes of the public, this consumption (and spend) would be much lower.

It is now 12 years since we launched The Henries (so called after the philanthropic Victorian entrepreneur Sir Henry Cole, who produced the first commercial Christmas card in the UK and was also a founding director of the V&A) but each and every year the finalists and winners list of The Henries includes some brand new companies and designers, in some cases 'one man bands' beating well established publishers for the coveted trophies. These new design treatments and fresh approaches to greeting cards should help ensure that the culture of card sending will not wane.

Like every industry, plagiarism remains a worry for publishers and card designers, but these worries are probably less than in other sectors (especially within the industry itself ie publishers blatantly copying other publishers, which is uncommon). Maybe this is because the industry is so fast evolving and the product lifespan is so short as well as the strong sense of community and mutual respect among publishers.

However, with the sheer number of designs and high retail exposure card publishers not surprisingly feel vulnerable to having their designs plundered by companies in other product areas. Hence the reason that so many card publishers are grateful to ACID for providing the support in helping to safeguard their assets. Many ACID members within the greetings card industry use the ACID logo on the back of each and every greetings card they produce, not only an effective IP communicator but also showing support for the innovation and creativity that makes this industry one of the best!

# SEBASTIAN CONRAN URGES MINISTER AND MPS TO 'LEAD THE WORLD IN HAVING ROBUST IP LEGISLATION'

*ACID (Anti Copying in Design) Ambassador and Product designer Sebastian Conran threw down the gauntlet to his host David Lammy, the Minister for Intellectual Property, recently when he addressed a meeting at the House of Commons about the importance of intellectual property.*



Sebastian Conran

"There needs to be a fundamental change in attitudes that supporting IP theft is as much a crime as other acquisitive theft such as burglary," he told a group of MPs and representatives of rights owners and IP professionals. "If this is seen as an opportunity and this country were perceived to lead the world in having robust IP legislation, then the UK might be seen as a particularly benign and attractive environment to nurture creativity of all types."

David Lammy MP agreed that IP was now "an incredibly contested political space" and no longer seen as a principally legal issue. "In the past, members of the public were not exposed to the 'wiring' of IP. That is now changing," he said. "IP is presenting politicians with great challenges in public policy. Look at what has

happened in Sweden, where politicians have been elected on an IP piracy ticket. Not all politicians in the UK appreciate the importance of IP and IPAN's work in improving public –and political – awareness and understanding of IP is more important than ever before."

Dr Paul Leonard, Chairman of the IP Awareness Network, which organised the event, agreed that there are still many misunderstandings about how the IP system works. He quoted a recent national newspaper article that referred to a major corporation's 'secret patents' – a basic error, as patenting involves full publication of the technology involved. He went on to tell the group that the UK is now the 'most IP-rich society in the world' and announced that IPAN now had some 50 member

organisations, making it the most comprehensive and impartial source of information about all aspects of intellectual property.

Dids Macdonald commented "Sebastian Conran speaks for the whole of the design industry when he describes IP theft as a real crime, let us hope that Government will start to take notice of the real threat that this poses to the creative industries".

The parliamentary briefing was part of a campaign being waged by the Intellectual Property Awareness Network, whose members include brand owners, anti-counterfeiting organisations and membership associations for intellectual property professionals.



Left to Right: David Lammy, Paul Leonard, Dids Macdonald and Sebastian Conran



David Lammy MP

## Intellectual Property Awareness Network (IPAN)



The IPAN Network was formed in 1993 aiming to bring together the separate IP awareness, activities and concerns of a wide range of professional, educational and business organisations. There are currently about fifty member organisations, of which ACID (Anti Copying in Design) is one, who demonstrate the breadth of experience from many quarters dealing with a wide variety of IP issues.

IPAN is not a lobbying organisation but seeks to provide balanced, evidence-based statements to improve general understanding of important IP issues. These statements

are not binding on individual members of the Network. In a world where lobbying plays such a key role in influencing decision-making around IP issues, IPAN does not provide opinion nor express views on the lobbying merits of any individual organisation within its membership but can provide an unbiased response and resource on IP intelligence, issues, education and information sharing. The IPAN network is diverse, experienced and informed.

[www.ipaware.net](http://www.ipaware.net)

# IP Doctor

## Your Questions Answered



Andrew Lee of  
McDaniel & Co

### **Will posting a copy of my work to myself help to prove its origination?**

Known as the "poor man's copyright", posting a copy of your work to yourself is not a reliable method for proving origination. The reason is that the method can be easily faked and manipulated.

For example, an empty

and unsealed envelope can be posted and the work sealed inside at a later date to give the impression it was created earlier. It is unlikely this evidence would stand up in Court.

The best way to deal with origination issues is to ensure all preparatory documentation that goes into the creation of a work is signed by the author, and dated, then stored in a safe place. Such documentation could include sketches, drafts, plans etc. However, once the work is complete, filing a copy of the work with a recognised third party such as a solicitor, bank or independent organisation will help provide independent evidence of a latest possible date of creation. ACID offer such a service through the ACID Design Data Bank and all members should take advantage of this.

### **If I commission someone to create something for me, do I own the rights in it?**

When something is created, unregistered rights such as copyright, UK unregistered design right and European Community unregistered design right may subsist in that particular design. These rights may subsist individually, or they may all subsist together, depending on the nature of the work created.

The default position under the legislation is that the creator of the work, not the commissioner, will be the owner of any copyrights and European Community unregistered design right whereas the commissioner, and not the author, will be the owner of UK unregistered design right. Therefore different people could own different rights in the same work, with each of those rights having a different scope and duration.

The situation is further complicated in that, generally, if you commission the creation of something for a particular purpose, then an implied licence will arise in your favour to use the work for that purpose. However, determining the scope of any implied licence can often be difficult and

has led to much litigation.

In summary of the above, unless the ownership of rights is dealt with expressly by the parties through a written agreement (at a later date a disagreement may arise over the use of that work) enlisting the help of lawyers and the Courts to sort it out will be expensive. ACID members therefore should consider using the Freelance Designer generic agreement to ensure the ownership of rights is dealt with expressly at the outset so everyone is clear of the position.

### **If I change 7 things is it ok to copy something?**

This is a very dangerous and common myth. For example the test for copyright infringement is whether the alleged infringing piece reproduces the whole, or a substantial part, of the work. The test for this is qualitative not quantitative. Therefore, if someone copies what may only be a small amount of the work, but qualitatively speaking that part is a substantial part of the author's skill and labour, they will be infringing.

Furthermore, someone may reproduce a work in a completely different form but still infringe. For example, a written story in a book could be infringed by someone creating a picture board of that narrative. Two totally different expressions - but one would still infringe the other.

### **Do I have any automatic protection abroad?**

Depending on which rights subsist in your work, you may have some protection abroad. European Community unregistered design right extends to all 27 member states. UK unregistered design has reciprocal protection in certain countries, the most notable being New Zealand. Copyrights also have protection in other jurisdictions, as the UK is a signatory to various international conventions which provide for reciprocal protection.

However, you should always consult a lawyer for specific advice because whilst the above is set out in simple terms, a careful analysis is required to determine the scope and extent of your protection abroad.

### **Does obtaining a registered design for my work offer any benefits that unregistered rights do not?**

In short, yes. Both UK and Community Registered Designs can last for 25 years compared to the UK and European Community versions of unregistered design right, which last for a maximum of 15 and 3 years respectively. In addition, the main advantage of having a design registration is that it protects against those who copy and also those who do not. With unregistered rights, the protection is only against those who copy your work, so if someone creates something that looks the same, but they have not copied, there is no infringement. With a registration, you are protected as you are granted a monopoly over that design. Those are the main benefits, but there are others which you should discuss with your lawyer.

## ACID Member Helped by Dragon Peter Jones



Grandmother of four, Sue Scott-Horne decided to start educational resources company Egar after a broken ankle ended her 25-year career – with a little encouragement from Dragons' Den Peter Jones.

### **Where did you get the idea?**

I was recuperating from a fall for three years when I decided to start the company. We make non-judgemental and self-empowering cards to help teenagers talk through various social issues. But it was Peter Jones who really inspired me to carry on.

### **How has Peter Jones helped?**

I presented the idea to him at an event. In order to grasp it he role played being a teenager and was actually a very good actor. Afterwards, he said he liked it a lot. I met him again recently and he said he'd be able to help. Hopefully he can introduce me to people and get the company noticed.

### **How did you fund it?**

I used £30,000 of my own savings to fund the business. When that ran out, I also got grants through Camden and Islington Councils. But I'm still looking for more.

### **What marketing have you used?**

We have been profiled by organisations such as the Business & IP Centre the British Library. We've also managed to sell a lot through road shows. Our customers are schools, life skills coaches, youth workers and colleges. Although, we still haven't marketed enough yet to let everybody know we are out here.

### **Where next?**

In five years time I want to be the market leader in educational resources. There are social problems like knife crime that our products could really help young people to address. Particularly as they cover all age ranges from year six to sixteen plus.

### **Original Article featured on [www.smallbusiness.co.uk](http://www.smallbusiness.co.uk)**

[www.egar.co.uk](http://www.egar.co.uk)

# Superdry v Primark

**Zoe Wood reported in The Guardian recently on a legal tussle between Superdry and Primark. Superdry are makers of an iconic leather jacket style, favoured and worn by David Beckham and they had accused Primark of copying.**

Zoe writes "The worn-in leather jacket with double collar costs £175, and has become something of a classic since Beckham first stepped out in it in 2007, with 70 thousand unit sales to date and 25 thousand on order for this autumn."

Superdry director, Theo Karpathios said "It's an ingenious design and one of our bestsellers. We won't put up with our designs being copied." Cheltenham-

based Superdry accused Primark of copying elements of its signature Brad leather jacket and the two parties reached an out-of-court financial settlement.

ACID was asked to comment on the case for the Guardian and CEO Dids Macdonald gave her opinion. "The investment isn't there for a company to do the design research and development. Instead retailers look at what's selling - and it tends to be design-led companies that bring out the hottest stuff - take it, change it a bit and hope that's OK. To bring a product to market takes time, investment and creative skills. There are a lot of companies out there that are free-riding on another's designs as a fast track to market."

You can see the Superdry range at [www.superdry.co.uk](http://www.superdry.co.uk)



## DON'T MESS WITH FIESTA!

*Andy Kingston of Fiesta Collectables is no stranger to people ripping off his artists' work - that is why he has become very knowledgeable about intellectual property rights and why he is determined to send a very clear message out to the perpetrators. Having successfully fought off Nemesis at last year's Spring Fair, the word was out through extensive Anti Copying in Design trade press coverage that the best selling Green Man Oak (part of the Greenwood Range) was definitely out of bounds. Customers and shopkeepers who remain fiercely loyal to the Fiesta brand were the first to let Andy know about what appeared to be a knock off.*

Andy contacted the supplier and asked whether they realised they were infringing his designs. He also sent several graphics of the original and alleged copy. They admitted that the look alike bore a close resemblance to Fiesta's Green Man Oak and gave Fiesta written assurance no more would be produced and that they had very few left. In fact they were very professional and sorted the matter quickly. Although they denied infringement, luckily for Andy they paid a four-figure sum in lost royalties and confirmed that no more lookalikes would be produced.

Following the successful challenge Andy Kingston said, "Belonging to ACID is a great help and it makes people think twice before they try copying. Since being members we have seen the number of instances fall dramatically. It is a great shame that more businesses do not join ACID and abide by the protocol. We at Fiesta Collectables Ltd will always pursue copying to protect the talented artists with whom we work and support".

[www.fiestacollectables.com](http://www.fiestacollectables.com)

**ACID Comment, "Increasingly, those who seek the fast track to market through copying will find out that more and more people are becoming aware of their intellectual property rights. It really isn't rocket science - basically if you create an original work and it is novel and has not been copied from something already in existence you create your own copyright or design right automatically. Putting belt and braces around your intellectual property by sending all new designs to the ACID Design Data Bank provides independent evidence should it ever be required".**

# FACEBOOK

## THINK ABOUT USERNAMES!



**Facebook is a social networking phenomenon. It has 200 million users worldwide and increasingly is being used by businesses for commercial purposes.**

### So, what is the issue?

Since 13 June, Facebook users have been able to sign up for individual URLs incorporating their own chosen username. This means that each user will have a unique Internet address for their Facebook profile page comprising [www.facebook.com/\[insert your chosen username\]](http://www.facebook.com/[insert your chosen username]). Any username at all can be chosen. The only restriction is if someone has already chosen that username before you. This is a worrying development for trade mark owners as it is highly likely that some users will choose registered trade marks as their username, for example [www.facebook.com/adidas](http://www.facebook.com/adidas).

### The username feature

Facebook is rolling this out in two phases. In phase one, from 13 June users whose Facebook account was active before 31 May 2009 will be able to select their chosen username. In phase two, from 28 June 2009 all other users will be able to select a username. Usernames will be allocated on a "first come first served basis".

### Is Facebook offering any protections for trade mark owners?

Yes, provided you are looking to protect registered trade marks. Facebook does not offer any specific protection for unregistered trade marks.

### Registered trade mark owners may:

- 'reserve' URLs incorporating their trade marks by completing a form provided by Facebook online; and/or
- complain that someone has a URL incorporating their trade mark and ask for it to be removed by completing Facebook's online IP infringement form.

### What should trade mark owners do?

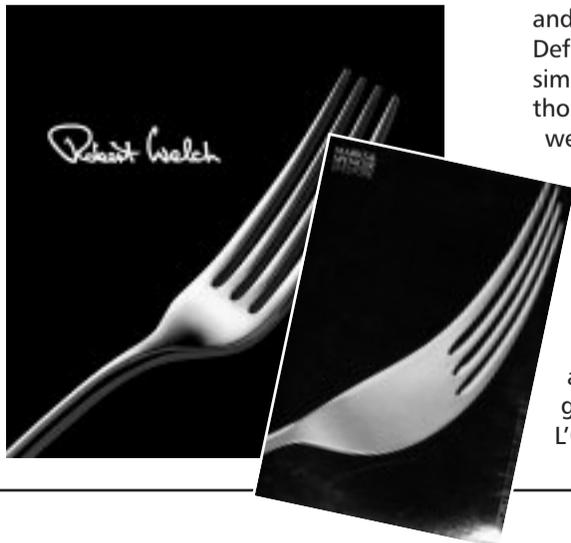
1. If you have a registered trade mark and a Facebook account which was live before 31 May 2009, you should immediately:
  - complete the online reservation form; and
  - request a username which is in line with your business name and/or trade mark. If you discover that another user has got there before you, then fill in the IP infringement form.
2. If you have a registered trade mark but not yet a Facebook account, you should immediately:
  - complete the online reservation form;
  - sign up for a Facebook account;
  - on 28 June, request a username which is in line with your business name and/or trade mark. If you discover that someone has got there before you then fill in the IP infringement form

### Patricia Jones PhD, Partner, Hammonds LLP says:

*"Although there is nothing particularly new about personalised URLs on social networking sites, the enormous reach of Facebook makes its introduction of them a potential cause for concern for brand owners. Facebook have put in place a number of protections for brand owners in addition to those mentioned in this article, for example a restriction on the transfer of usernames and a requirement that usernames comply with Facebook's 'Statement of Rights and Responsibilities' which prohibits actions by users that may infringe another's rights. Facebook also reserves the right to remove any username at any time and for any reason. It remains to be seen whether these will adequately protect brand owners, in particular those with unregistered trade marks. In the meantime, by following the guidance in this article, brand owners will have the best prospect of maintaining their IP rights and may even be able to take advantage of the business perks of Facebook by enjoying contact with millions of users".*

## WHY IMITATION IS DEFINITELY NOT THE HIGHEST FORM OF FLATTERY

Examples of product packaging courtesy of Robert Welch



A decision of the European Court of Justice following a reference from the Court of Appeal in *L'Oreal SA & Ors v Bellure NV & Ors*, may have implications for businesses marketing products as "look a like" of famous brands. The decision effectively introduces a law of unfair competition which will prevent businesses "riding on the back" of famous brands to promote cheap imitations. However, it is likely to be restricted to well known brands, which have a reputation, protected by registered trade marks.

L'Oreal owns registered trade marks for the names and packaging of its Trésor, Miracle, Anaïs-Anaïs and Noa Noa perfumes ("the Marks"). The Defendants marketed perfumes claiming they were similar in smell to L'Oreal's. The Defendants sold those products in bottles and packaging which were similar, but not identical, to the Marks.

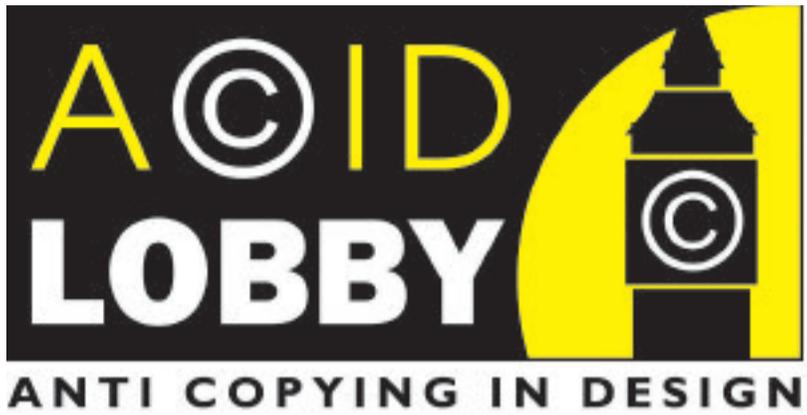
However, the degree of similarity would not mislead or confuse the public or affect the essential function of the Marks which was to guarantee the origin of L'Oreal's goods.

Andrew Lee of ACID Accredited law firm McDaniel & Co. comments, "The Defendants admitted that their products were intended to give "a wink of an eye" to L'Oreal's products. L'Oreal alleged the imitation of the names and

packaging of its perfumes by the Defendants' and the sale of those products in the imitative packaging took unfair advantage of, or was detrimental to, the distinctive character or the repute of the Marks and was trade mark infringement."

The ECJ held that the taking of an unfair advantage of the distinctive character or repute of a trade mark did not require a likelihood of confusion or a likelihood of detriment to the distinctive character or repute of the trade mark, or harm to the owner. It was sufficient that the advantage arising from the use, by a third party, of signs similar to the trade mark was an advantage unfairly taken of the distinctive character or repute of the trade mark, where that use sought to "ride on the coat-tails" of the trade mark in order to benefit from the power of attraction, the reputation and the prestige of the trade mark and to exploit, without paying financial compensation, the marketing effort expended in maintaining the trade mark's image by the owner.

We are all familiar with the "look a like" brands in supermarkets. Quite often you establish a link between the "look a like" and the famous brand but realise they are different products. Now, it seems those imitations may pay the price.



Nick Kounoupas, ACID Lobby Lead Counsel and IP Lawyer, DMH Stallard

# MOJ FAILS TO DELIVER ON DAMAGES THAT FIT IP CRIME – DESIGNERS SIDELINED... AGAIN!

**In the recently published Government response to the consultation paper "Law of Damages", The Ministry of Justice has ignored a Government implementation commitment on all recommendations in the 2006 Gowers Review on intellectual property to improve damages awarded for intellectual property theft. Despite this commitment, the MoJ has failed to address the lack of a deterrent effect within the existing damages regime. Gowers had recommended that the MoJ consult over the creation of such a deterrent function for civil damages awards for IP crime.**

Comments Dids Macdonald, "Following Gowers, over two years with little or no changes to the damages system for intellectual property theft shows scant attempt has been made to recognise the severity of the problem within the UK, estimated at a loss of just under £10 billion pounds per year. It also says little about Government support for those who are most at risk within creative industries. The creative industries currently produce 8.2% of GDP. Unless there is a dissuasive damages system in the UK, creators will become disincentivised."

Nick Kounoupas, ACID Lobby's Chief Counsel said, "It's not just political history that tends to repeat itself but also IP legislative history. Time and time again important sounding groups or committees are set up to investigate IP, lengthy reports and consultation papers are issued and detailed recommendations are issued. But time and time again the recommendations get stuck in a political quagmire and do not see the light of day. The lot of designers has been particularly unhappy and it is difficult to see what financial incentive there can be for a designer to make a living from designs without adequate enforcement tools."

Malcolm Wicks, the then Minister for Science and Innovation said to ACID on 26 Feb 2007, "The Gowers Review also recommends that the DCA (now MOJ) seek evidence to ensure that an effective and dissuasive system of damages exists for civil cases and bring forward any proposals for change. As you will no doubt be aware the Government has welcomed the Gowers Report and plans to implement all recommendations made to it over the next two years".

## ACID has created two No 10 Petitions and invites all those who support

- 1) Criminal sanctions for design right infringement and
- 2) Changes to the copyright and unregistered design right infringement damages regime to create greater deterrent against IP theft"

**To sign up by visiting [www.acid.uk.com](http://www.acid.uk.com) and clicking on the No.10 link.**

## ACID MEMBERS ROBERT WELCH WIN PRESTIGIOUS RED DOT AWARD...

...and, according to Housewares Live Magazine, in total 3,231 products from 49 nations faced the expert judgement this year. The award-winning products are exhibited to an international public in the Red Dot design museum in Essen, Germany. Commenting on the award, Rupert Welch, managing director of Robert Welch Designs, said: "We set out to design and engineer the best knife in the world and worked with professional chefs on the development of the Signature range.

The international jury of design experts in the Red Dot scheme examines and tests the products and assesses them according to criteria such as degree of innovation, functionality, ergonomics, longevity, ecological compatibility and clarity of function. The Signature knife block and knives were designed in-house by Paul deBretton Gordon and Rupert Welch. They have been found to be in the world's top 3% of all knives tested for initial sharpness and edge retention.

Details of the award-winning knives can be seen at [www.housewareslive.net](http://www.housewareslive.net) and [www.welch.co.uk](http://www.welch.co.uk)



## TAKING LEGAL ACTION AGAINST THE RIP OFFS

### what does it actually mean and what is involved?

Taking legal action against someone who has ripped off your designs is not for the faint hearted. But does it mean going all the way to Court? Well, yes, in some cases, but there are many other more cost effective ways in which a designer or company can achieve their commercial objectives through the legal process, including alternative dispute resolution and "low fee, no win" or conditional fee arrangements. ACID's experience of over 350 settlements on behalf of members proves that a settlement can be achieved in the majority of cases without going all the way to Court - in fact only three ACID cases have reached a final Court hearing. Often sending a letter before action (sometimes called a "cease & desist") will achieve a binding settlement for a relatively small amount of money. Going to Court, as many may know, can go into the tens of thousands of pounds.



***"The good news for ACID members who achieve a settlement and therefore "win" is that ACID has an ongoing "naming and educating" campaign and publicises all successful settlements in trade publications"***

So often the thought of "getting legal" against someone who has infringed your intellectual property can be very daunting, especially when it is virtually impossible to know to what extent the "other side's solicitors" will perpetuate any legal challenge, thus making it difficult to assess what costs will be involved and to budget properly. It is also difficult for your solicitor to accurately estimate what the likely costs are because every case is different and the circumstances are rarely the same.

Many often think that they should not have to pay lawyers to act on their behalf when they believe their rights have been infringed, but the reality is that in order to achieve your objectives it will be necessary to appoint (and pay for) the services of a specialist lawyer. (ACID members benefit from specially negotiated rates from the ACID Accredited law firms together with fast track information gathering tools). Whichever way you choose to take action, the one common denominator is that you will have to fund the process yourself and, therefore, it is important in any budget planning within your intellectual property policy (yes, everyone should have one!) to earmark budget to achieve your objectives. If you discover an alleged copy, you will need to carry out a risk

assessment to see how much quantifiable damage it is doing to your company and then take a commercial decision whether to pursue this legally. NEVER sue on principle alone! It is always a good idea too; to find out as much as you possibly can about your "opponents" financial health e.g. do they have deep pockets to stonewall any legal challenge?

**There are several choices available to redress infringement:**

- 1) Instructing an intellectual property specialist to act on your behalf, agreeing the fees which will be charged and asking them to write a letter before action, therefore self-funding legal redress through the legal process i.e. an exchange of letters between solicitors.
- 2) Asking your solicitor to write to the alleged infringer suggesting an alternative dispute resolution method via mediation. (Don't forget that if a company refuses to go to mediation and the matter goes all the way to Court and they lose, this can have significance on the costs awarded to you and against them). In mediation both parties agree, by negotiation, through an independent mediator, the terms of an agreement.
- 3) Asking your solicitor to seek another alternative dispute resolution option through arbitration. This is the settlement of a dispute between two parties by a third party known as an arbitrator or the arbiter.
- 4) Entering into a "Low Fee/No Win" arrangement

# MAXIMISING YOUR LITIGATION STRATEGIES

Many designers do not realise that intellectual property (IP) law is based on property law. When you are buying a house, most people will spend several hundred pounds on employing a solicitor to check that the house is free from any unforeseen nightmares such as the seller not being the legal owner of the property, resident sitting tenants, or squatters. It is the same with IP law in that it is essential that you can prove that you own your designs to your solicitor, and this can take time (which is money!).

Standard practice is for the alleged infringer to deny that you own those rights or indeed that they subsist in your design. Therefore in order for step 1, i.e. a "cease and desist" or "letter before action", to be written any IP lawyer will need to be satisfied, beyond any doubt, that you actually own those rights, just as you would when buying a house. You are relying on that solicitor's experience to spot all the potential pitfalls, to act in your best interests and that the solicitor has all the ammunition possible to fight for your rights.

If there are any documents which are required to PROVE the ownership of your designs, these will need to be drafted and signed before an action can commence. This is when it can be costly, however, don't forget that it is never wasted money; it will cover you for the future.

If you are in possession of a Registered UK design obtainable from the UKIPO [www.ipo.gov.uk](http://www.ipo.gov.uk) or a registered Community design [www.oami.europa.eu](http://www.oami.europa.eu) ensure that this

information is readily available. This is usually compelling evidence and it is difficult for the other side to challenge. However, if you are relying on unregistered UK or EU design right, ensure you have signed and dated design drawings available. This is where the FREE ACID Design Data Bank is so useful. ACID holds over 300,000 copies of members' designs. This does not add to your unregistered rights, but provides valuable, independent third party evidence of the existence of your designs, from the date the images of these designs are received at the ACID membership office. Don't forget that for a design to attract registered or unregistered rights it must be new, novel, have distinctive character and must not be copied from another.

By your lawyer asking you to PROVE YOUR CASE you are ultimately being asked to prove your case to the Court and the other side – it is your lawyer's job to make sure that the rights are in place at the start, so that the strength of your case is not damaged.

## POINTS TO REMEMBER

**Be prepared - save expensive legal time by having all the following in place:**

1. Archived drawings and documents ready to prove the history of your designs
2. A complete set of legal documents, including contracts of employment with designers, written agreements with freelance designers, suppliers, manufacturers and customers, confirming that you own all the rights in your designs
3. If your designs or trade marks are registered at the UK Intellectual Property Office or OHIM (The Office for Harmonization in the Internal Market) retain and archive all these valuable certificates and ensure that the information is easily accessible

# INSTRUCTING SPECIALIST LAWYERS UNDERSTAND THE PROCESS

If you have to instruct a lawyer to act on your behalf don't forget it is a solicitor's responsibility to read and interpret small print with a fine toothcomb and their sole objective is to act in your best interests. Lawyers, and particularly specialist lawyers, take years to become experts. Just as you or your company earns its revenue by the sale of products or services, lawyers earn their revenue by giving specialist, legal advice and their currency is TIME!

Be clear from the outset what your objectives are in taking legal action and make sure that your solicitor knows, so that he or she is aware of what you are trying to achieve.

- **Discuss with your solicitor the possibility of setting a budget for a particular matter so that you have no nasty surprises when it comes to billing time.**

This is often possible in relation to non-contentious matters such as the drafting of a contract, e.g. a royalty agreement. Solicitors will usually be happy to provide an estimate for the first draft of an agreement, and then will probably charge on a time basis for all subsequent work (e.g. negotiating with the other party to the agreement).

- **You need to know that law firms are bound by fairly onerous money laundering regulations which came into force in 2004.**

This means that solicitors have to ask all clients for proof of their identity, especially if that client is an individual or a partnership rather than a company registered at Companies House (whose

records are a matter of public record). Therefore you should expect your solicitor to ask you for certain documentation proving your identity before they can open a file and start working for you. This is standard policy across the profession.

- **It is also standard policy for solicitors to ask clients for a certain amount of money to be held on client account.**

This is to cover up-front disbursements and as a form of security against non-payment of bills.

- **Remember, solicitors will generally work for a firm whose policy it is to charge for work carried out in set units of time, e.g. 6 minute units.**

Therefore, avoid asking your solicitor to do things which you or a colleague could do yourselves for free, e.g. asking for a duplicate of a letter to be sent through which you suspect might already be in your office somewhere.

- **If you have a meeting with your solicitors, make sure you arrive on time.**

Some solicitors will be busy and may have appointments booked back-to-back so if you turn up late there is no guarantee you will have as long as you wanted. Ensure that you establish the cost of any meeting in advance (if possible) and if it is going to be free-of-charge, check exactly how much time you have for the meeting.

- **Your solicitor will generally need to know all relevant background information**

and see all relevant documentation before being able to provide you with worthwhile advice or to take meaningful action on your behalf. Therefore, if your solicitor asks you to supply certain information you should endeavour, wherever possible, to provide:

- all of it
- all in one go
- an explanation regarding any missing information, even if it is "I don't know" or "I can't remember"

If you don't have something to hand but think you can track it down, let your solicitor know and get it to him/her as soon as possible.

- **Try to avoid the situation where your solicitor has to chase you for information.**

Similarly, never withhold any information from your solicitor which may be relevant to the case, particularly if it may not be helpful to your case. Doing so will only result in your costs increasing and probably reducing the likelihood of achieving your objectives.

- **Intellectual property is a complex area of law.**

In order to assess your claim or the validity of an opponent's defence, your solicitor may need to spend a certain amount of time not just checking the relevant legislation but also relevant case law, both of which are in a constant state of development. They may also need to discuss the facts of your case with a colleague with even greater experience in the area, in order to find solutions. So long as all this work is necessary and reasonably incurred, you can expect it to be reflected in your bill.

- **Keep your solicitor's administration time down to a minimum.**

Whilst you will rely on him or her to tell you the law, you can make your solicitor's job easier (and therefore your bill lower) if you do as much work for him or her in advance. So, for example, when you send in paperwork, ensure it is presented in a logical order, e.g. chronologically.

## POINTS TO REMEMBER

**Whenever possible, keep your points of contact with your solicitors to a minimum.**

The fewer the channels of communication, generally speaking, the more efficient and cost-effective will be the service you receive. If you have more than one contact within your business dealing with your solicitors there is a risk that your solicitor will have to repeat his or her advice to ensure that everyone is being kept updated. This could have cost consequences for you.

On the other hand, it is useful for your solicitor to have more than one point of contact so that there are no delays in obtaining instructions. You should therefore ensure that you keep all contacts within your business up-to-date with what has been discussed with your solicitor, which will again reduce your legal costs.

## ACID AMBASSADORS



"ACID's continuing communication of the importance of vigilance against design theft coupled with its commitment to, and delivery of, education, protection and deterrence are initiatives I applaud and champion."

**Sebastian Conran**

<http://www.conranandpartners.com>



"ACID has worked tirelessly to protect the intellectual property rights in original design and to vigorously represent the rights and interests of its members in the design community."

**Kevin McCloud**

<http://www.granddesignslive.com>



"It is easy to copy; difficult to create. That is why the intellectual products of creative minds are valued so highly and poached so consistently. It is vitally important that designs are afforded protection and I am very proud to be associated with ACID and to support them in their excellent work."

**Frederick Mostert, Richemont Group**

<http://www.richemont.com>

and **The Authentics Foundation**

<http://myauthentics.com>



"Distinctive design is the source of competitive edge and crucial to business success. It is essential to protect that distinctiveness and ACID fights effectively and tirelessly to do just this. It is the leading organisation in design protection."

**John Noble, British Brands Group**

[www.britishbrandsgroup.org.uk](http://www.britishbrandsgroup.org.uk)

## TANYA EWING BECOMES ACID'S FIRST FEMALE AMBASSADOR!



**ACID is delighted to announce our first female ambassador, 2008 British Female Inventor of the Year Award winner, Tanya Ewing. Tanya will be joining ACID's other Ambassadors Sebastian Conran, Kevin McCloud, John Noble Director of the British Brands Group and Frederick Mostert of My Authentics, all of whom are champions in their pursuit of respect for intellectual property within the creative industries.**

On being made ACID's first female Ambassador, Tanya Ewing said, "I am honoured to be asked to be associated with this unique and creative organisation that I have got to know so well through my membership over the last three years.

Tanya is the inventor of Ewgeco an energy-monitoring device that uses a 'traffic-light' display to show real-time use of electricity, water and gas took home the top prize as the 2008 Inventor of the Year at the tenth annual British Female Inventor and Innovator of the Year Awards in Cardiff held last year. Top of her priorities was to apply for an international patent and design registrations for her idea. She has no formal engineering or product design training, having left school at 17 to take up a vocational career as a dental hygienist. As a dyslexic herself, she was very keen to develop an easy-to-read 'traffic-light' display for her energy-monitoring device.

It was Tanya's frustration at trying to extract useful information from her utility bills, coupled with her concern for improving energy efficiency, that gave her the idea of designing a single device to display how much energy and water a building is using at any moment.

Says Tanya, "I started sketching what I thought a meter inside a home should look like and that ultimately led to Ewgeco. The business now employs seven people in Scotland and was valued at £3.4m in September 2008. We are currently going through our third round of fundraising, and are aiming to get the maximum value from our IP. In our first two rounds we raised £920,000 from business angels, and our intellectual property was vital. Everybody always wanted to know who owned the IP (the company) and how well protected it was. Right

from the onset our intellectual property was very well protected. For example, we have used many consultants and all of them signed assignment agreements, so anything they worked on (product design, feasibility, electronics etc) was owned by the company. We have applied for a patent and protected the look of the meter through design rights, and the Ewgeco name through a trademark".

Tanya's search for IP advice started with the Intellectual Property Office website. She received a lot of help via the Innovators Counselling and Advisory Service for Scotland, which offers free advice to help people protect and commercially exploit their ideas. As a member of ACID she also received useful practical help and advice and even before becoming an ACID Ambassador advised many other inventors and designers to contact the ACID hotlines".

[www.ewgeco.com](http://www.ewgeco.com)

**Tanya Ewing's advice to other would-be inventors is, "Get your IP house in order right from the beginning. I was lucky, in Scotland there is the Intellectual Asset Centre, a unique centre to assist in deriving value from their Intellectual Assets. Supported by the Scottish Government, the Centre was developed in response to the demand from businesses to learn more about their Intellectual Assets. Initial studies showed that, despite the number of businesses asking for advice, there were still many more that were not aware. Moreover, the value of unexploited Intellectual Assets lying in Scottish companies were judged to be several billion pounds! The IA has helped me enormously in underpinning the credentials of the company and enabled me to create a sound business case to attract more funding for growth".**



## latest new members list ●●●

Company Name	Industry ID	Company Name	Industry ID
Eddie's Mum	Childrenswear	Lava Jewellery Design	Jewellery
Oddies	Childrenswear	Mangobeads	Jewellery
Smith and Coates	Childrenswear	Rings by Ron Henry	Jewellery
Astuto Design	Design Consultancy	Silver Forge	Jewellery
Angharad McLaren Textiles	Fabric & Textiles	Time in Hand Ltd	Jewellery
Je Vous en Prie	Fabric & Textile	Cadisch GIGB Ltd	Lighting
IK Accessories	Fashion	Christopher Hyde Ltd	Lighting
Vanda Burrows Turbans	Fashion	John Cullen Lighting	Lighting
Andrew Hunt	Furniture	Facio (UK) Limited	Other
Re-Ply Designs	Furniture	Umbrellas at Lindy Lou Ltd	Other
Wayne Scholfield	Furniture	Vert POS Ltd	Other
Hi Grow (Yorkshire) Ltd	Garden Products	AP Art & Design	Product Design
Janette Lazell	Garden Products	Callum Associates Ltd	Product Design
New Barn Timber Products	Garden Products	Dave Clark Designs	Product Design
Chiki Design Ltd	Giftware	Ed Harrison Design	Product Design
Belly Button Designs Ltd	greeting cards	Faye Whiteart	Product Design
Black Sheep International Ltd	greeting cards	Natural Scenics Ltd	Product Design
Doodles Designs Ltd	greeting cards	Rodd McClintock	Product Design
Sacred Connections Ltd	greeting cards	Russell Anthony Brooks	Product Design
B3 Designers	Interior Design	Sam Mooney	Product Design
Creative Resource Ltd	Interior Design	Thomas Stanley	Product Design
PaperBoy Interiors Ltd	Interior Design	Tom Brett	Product Design
Will Evans	Jewellery	Totseat Ltd	Product Design
Bellini Rocks	Jewellery	Vpod Solutions Ltd	Product Design
Gourlay	Jewellery	RJR Moles	The Arts
HooLaLa	Jewellery	The Tinmen Licensing Ltd	Toys

MEDIA SUPPORTER



Together we are helping to create **awareness** and a **safer commercial** environment for all!



ACID has received huge support from editors and journalists, who place the subject of intellectual property awareness high on their agenda and continually feature success stories, initiatives, concerns and warnings against the potential devastation of intellectual property infringement. Many thanks to the above publications who are all ACID Media Supporters.

### WORLD IP HEALTH 2009 - HOW SAFE IS YOUR INTELLECTUAL PROPERTY?

In a global economy it is necessary to take a holistic approach to IP rights and it is worthwhile appointing legal advisors who have multi-jurisdictional experience from an international viewpoint together with grass roots local knowledge. Their job will be to keenly examine and evaluate the territories in which you trade to

investigate the opportunities such as using volume registrations to maximise protection. They should also look at different territories in terms of access to the legal system, strength of IP rights, ease of registration and protection and pay particular attention to the commercial culture in which innovative companies can flourish. Take a look at the table

below which is based on an innovative analysis of surveys to provide an assessment of the best and worst jurisdictions to obtain, exploit, enforce and attack particular types of IP infringement. Clearly this indicates caution in the BRIC countries and, surprisingly, puts the UK at the top of IP listings as a safe IP haven.

1 UK	7 Ireland	13 Spain	19 Turkey
2 Germany	8 New Zealand	14 South Africa	20 Poland
3 USA	9 France	15 South Korea	21 Russia
4 Australia	10 Singapore	16 Mexico	22 Brazil
5 Netherlands	11 Japan	17 UAE	23 India
6 Canada	12 Israel	18 Italy	24 China

Table produced by Taylor Wessing

## GET YOUR IP TAPED!

Imagine unwittingly sending your precious original designs to an interested retail buyer who may not have the same regard for your design ownership as you do. Then imagine doing this with no IP protection. Handing over your creativity and original work to a buyer without ensuring there is an audit trail or adequate protection does not make commercial sense. Although most retail buyers have integrity, we do hear of some ACID members who have fallen foul of the buying process. So how do you protect yourself?

When you buy a computer programme you are automatically asked to enter into a license agreement - and it's just the same when you use ACID license parcel tape. The tape works in conjunction with the reusable ACID License Tape Agreement. The recipient is warned by the wording on the tape not to open the parcel, unless they agree to be bound by the terms of the license agreement (which is attached to the outside of the pack). By breaking the seal the recipient accepts the terms of the licence, which prevent the recipient from making use of the designs without the sender's prior consent. **For further details visit: [www.acidtrading.eu.com](http://www.acidtrading.eu.com)**



## ACID DESIGN DATA BANK - DON'T DELAY!

Are you relying on unregistered rights? If you create original designs but do not officially register them (with a registration body such as UKIPO or OHIM) then you may well be! To rely on unregistered rights you need to prove ownership of your design and the date of origination. By sending your designs to the ACID Design Data Bank, ACID can act as an independent third party who can verify your design audit trail.

To download the Design Data Bank Form and ACID logo, visit the Members Area of the website [www.acid.uk.com](http://www.acid.uk.com) or e-mail [info@acid.uk.com](mailto:info@acid.uk.com)

## USE YOUR LOAF... USE THE LOGO!

The powerful ACID brand is your brand of deterrence.



All ACID members are licensed to use the logo and are encouraged to use it on their marketing materials, websites, product packaging and stationery. Additionally, stand out from the crowd by using the logo as a benchmark to show that you produce original design. Only design originators, companies with in house design teams, or those that license original designs can become ACID Members - **so make a statement, use the logo.**