

ACID[®]

ANTI COPYING IN DESIGN

news

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The Government has recently responded to ACID's petition to bring design right infringement in line with other IP rights and claim, "That unlike copyright and trademarks, design right infringement can often be inadvertent." ACID disagrees strongly as do many, including ACID member Rodney McMahon, Managing Director of Morgan Contract Furniture.



"As a British manufacturer of design led furniture within the contract sector employing 60 people, the intellectual property we create is the lifeblood on which the future of our organisation will rely. On a personal level, having been the recipient of intellectual property infringement on a significant scale, I find the Government's statement that design infringement may be inadvertent is way off the mark and misleading. As Chairman of the British Contract Furnishing Association the majority of our 200 members would also confirm that it is rare to experience inadvertent copying. For most, IP infringement is blatant and deliberate."

Rodney McMahon and Morgan's Soho sofa design above.



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Dear ACID Member ●●●

Following the Prime Minister's announcement of an Intellectual Property review to be undertaken by Professor Ian Hargreaves, I wrote to him welcoming this initiative. I explained that ACID members play an important role in creating IP and providing employment for many thousands of people within the creative industries and that ACID's main objectives are to assist our members in the protection of their IP rights through education and awareness, prevention, deterrence against infringement and fast track support when their rights are infringed. I reminded him that, through ACID LOBBY, we are determined to ensure that design's voice is heard loudly and clearly within IP policy.

In my letter I said that we are looking for a more level playing field for micro enterprises and SMEs to access a cost and time effective framework to address the growing problems of infringement, much of it emanating from China. China is a difficult country in which to do business and many find their IP is seriously at risk from local partners with little hope of redress because it is so difficult to take legal action in China. For example out of the UK's 250,000 designers 87% employ less than 10 people.

I outlined our disappointment with the last IP Review - the Gowers Report, whose mandate was to ensure that all intellectual rights were fully represented, to find that there was so little reference to design issues. The same was true of SABIP's research documents where there was absolutely no mention of design. I therefore hope that Professor Hargreaves will ensure that design's voice is heard within the consultative process.

Members may remember that Nick Kounoupas and I recently met with John Alty, CEO of the UKIPO, to discuss the inconsistencies which exist with regard to the protection of design rights in the UK. Unlike copyright infringement, design right infringement is not a criminal offence and can only be dealt with by way of civil proceedings. This gives rise to anomalies and inequality of treatment which are very damaging to hundreds of small businesses and designers across the UK and restricts the level of legal protection and support they can expect to receive. I very much hope that the independent review body will ensure that this disparity is rectified to ensure that designers are properly able to protect their intellectual property. Without this much-needed reform, the UK will be left with a damaging two-tier system of IP protection where infringement of one sort of IP is regarded as less serious and harmful than another.

In a disappointing response to ACID's petition for unregistered design infringement to be afforded the same privileges as copyright infringement I was surprised by the Government's claim, "That unlike copyright and trademarks, design right infringement can often be inadvertent!" ACID disagrees strongly as do many members, including Patrick Heeley, Managing Director of ACID member Villeroy & Boch who commented "I was astonished by the Government's clear lack of concern in this issue, and the reference to design infringement often being 'inadvertent'. It is a disgraceful dismissal of the problem." Villeroy & Boch employ 250 people in the UK.

If you would like to contribute to ACID's response to the above IP Review or have any comments about Government's statement that they believe most design infringement is "inadvertent", I would be delighted to hear from you.

ACID is delighted to announce that it has adopted as one of its 3 charities, FIT The Furnishing Industry Trust. www.fi-trust.co.uk. FIT is an independent charity enhancing the lives of those who are working, or have worked, in the furnishing industry and who are now facing financial hardship or a personal crisis. They provide grants for desperately needed one-off items and weekly grants for individuals, couples and their families suffering ongoing hardship. The money they give transforms lives for people and their families in the Furnishing Industry.

Despite all the challenges that the current economic weather throws at us, I hope that 2011 will be very rewarding. My huge thanks, as ever, go to the terrific ACID team headed by Jane Stephenson, to our Accredited lawyers, McDaniel & Co & DMH Stallard, our ever growing mass of supporters and, of course, to you, for continuing to support the work we do.

Best wishes

Dids Macdonald,
Chief Executive of ACID



Susie Winter, DIRECTOR GENERAL

The Alliance Against Intellectual Property Theft

Design is incredibly important to the UK. It is the chair we sit on, the cup we drink out of, the handbag we carry. But unlike copyright infringement, if a design is stolen no criminal offence has been committed; the designer's only recourse is under civil action. This gives rise to anomalies and inequality of treatment which are very damaging to hundreds of small business and designers across the UK.

"This is why the Alliance Against IP Theft is delighted to be working with ACID to address these anomalies and ensure that designers and creators have the same level of legal protection and support enjoyed by holders of other forms of intellectual property (IP)" said Lavinia Carey, Chair of the Alliance.

At the Alliance's recent policy planning day, the need to ensure legal parity across IP rights was identified as a key campaigning principle for the Alliance and its members with a need to address the inconsistency in protection for design rights agreed as a specific objective.

So how is this to be achieved?

The starting point when campaigning for legislative change is to a) be clear as to what change you would like to see (see above) and b) have a recommendation as to how that change can be delivered. Thanks to ACID's legal counsel, Nick Kounoupas of DMH Stallard, our recommendation is clear and straight forward; the introduction into the Copyrights, Design and Patents Act 1988 of two new sections which would give design rights the same protection afforded to copyright.

The next step is to build support for this change. Building on the ACID's existing lobbying activity, the Alliance and ACID have prepared a comprehensive programme of activity which will see

Guest Editor

ACID welcomes

Susie Winter as guest

editor to this edition of the Newsletter.

Susie Winter is Director General of The Alliance Against Intellectual Property Theft

the importance of design rights, and the damage being done by their exclusion from certain levels of protection, promoted to MPs, Government ministers, officials and other opinion formers.

Work is underway in identifying MPs and Peers to become design champions. We are meeting with MPs who are on the Business and Culture Select Committees and those who have portfolio responsibility for small businesses, intellectual property and innovation. In addition, there are a number of All Party Groups (policy forums for backbench MPs and peers which develop ideas and disseminate information) we will be engaging with in the coming months. These include the APPG on IP (the secretariat of which is run by the Alliance) and the APPG's on Furniture and Lighting. Such groups provide valuable opportunities to brief parliamentarians and build a bank of supportive MPs.

A further important aspect of our work will be the identification of supporters amongst the constituency MPs of ACID members. Building such a constituency link for MPs is often the strongest lobbying tool that can be developed. Any assistance ACID members can give us in this area will be gratefully received.

It is hoped that after such a programme of targeted, dedicated lobbying, utilising the full weight and combined voice of Alliance members from across the creative, manufacturing and retail sectors, we will start to see a real shift in attitudes and a greater appreciation of the contribution and value of design to the UK.



Lavinia Carey, Chair of the Alliance
www.allianceagainstiptheft.co.uk

THE ALLIANCE AGAINST IP THEFT HAS ADDED ACID'S MAIN LOBBYING ISSUES IN ITS STRATEGY FOR 2011 +



- Design right to have parity with copyright
- Increase in exemplary damages for IP infringement

ACID Ambassador Dr Frederick Mostert ACID's Chief legal counsel Nick Kounoupias and ACID's CEO Dids Macdonald recently held further constructive talks with UK IPO's John Alty to present the rationale behind ACID's claim for design rights to be brought in line with copyright and trade marks. ACID's argument is based on the fact that copyright is a property right subsisting inter alia in "artistic works" –see Section 1(1) (a) CDPA and Design right is a property right subsisting in original designs (S.213 (1) CDPA).

ACID believes that copyright and unregistered design rights are exactly the same type of legal right and should be treated similarly. ACID further argues the fact that copyright infringement is in certain circumstances a criminal offence (see Ss 107-110 CDPA, S.198 CDPA. Trade mark infringement is also a criminal offence S. 92 TMA). These crimes are punishable by up to ten years imprisonment. Infringement of design right is not a criminal offence and can be dealt with by way of civil proceedings only and we believe that this gives rise to anomalies and inequality of treatment.

Dids Macdonald said, "We have provided a compelling rationale and now that we have full backing from the influential Alliance Against IP Theft, I feel that this will be a positive step forward in ensuring that Andrew Gower's

recommendations to the UKIPO for parity in IP rights will be nearer reality. It is long overdue for the design industry. Our next step is to present our case to IP Minister Baroness Wilcox."



Dids Macdonald and John Alty.



BRINGING DESIGN RIGHT INTO LINE WITH COPYRIGHT INFRINGEMENT – NICK KOUNOUIAS EXPLAINS THE RATIONALE

Scope of Protection

- Copyright is a property right subsisting inter alia in "artistic works" – see Section 1(1) (a) CDPA.
- Design right is a property right subsisting in original designs (S.213 (1) CDPA).
- **So copyright and design rights are exactly the same type of legal right**
- The copyright protection of artistic works is usually restricted to 2 dimensional works but it does also protect 3 dimensional works. Section 4 CDPA states that artistic works means
 - a graphic work (2D), photograph (2D), sculpture (3D) or collage (2D or 3D) irrespective of artistic quality
 - a work of architecture being a building (3D) or model for a building (3D)
 - a work of artistic craftsmanship (3D)
- Graphic work is further defined to include any painting, drawing, diagram, map, chart or plan (2D)
- Sculpture is defined to include a cast or model made for purposes of sculpture (3D)
- The case law on works of artistic craftsmanship (unsurprisingly) requires a number of criteria to be met before a work will be considered as one of artistic craftsmanship and mass produced articles will not qualify.
- Design Right only subsists in 3D. The word "design" means the design of any aspect of the shape or configuration (whether internal or external) of the whole or part of an article (S. 213 (2) CDPA).
- Some 3D objects are therefore protected by both artistic work copyright protection and design right so long as they can be classified either as sculptures or as works of artistic craftsmanship but most 3D objects will be protected by design right alone.

Offences

- Copyright infringement is in certain circumstances a criminal offence (see Ss 107-110 CDPA, S.198 CDPA. Trade mark infringement is also a criminal offence S. 92 TMA). These crimes are punishable by up to ten years imprisonment.
- **Infringement of design right is not a criminal offence and can be dealt with by way of civil proceedings only.**
- This gives rise to anomalies and inequality of treatment.
- For example 2D design drawings are protected by copyright as artistic works. If these drawings are copied or a 3D object is made from the design drawing in circumstances where the person making the object knows or has reason to believe that he is making an infringing copy of a copyright work a criminal offence is committed. But if that same person takes the 3D object and copies that rather than the design drawing then unless the 3D object qualifies for copyright protection as either a sculpture or as a work of artistic craftsmanship no criminal offence will be committed.
- In the first case an offence punishable by ten years imprisonment is committed and the infringer gets a criminal record. If the infringer is a company S.110 CDPA confers criminal liability on directors, managers, secretary and other similar officers. Police and Trading Standards can be deployed to disrupt the business of the suspected criminal and to arrest and / or search premises. The suspect can be interviewed under caution.
- In the second case (on almost identical facts and certainly with no lesser harm caused to the victim) there is no criminal offence committed, neither the Police nor Trading Standards will be interested and disclosure of information and search of premises can only be obtained through expensive civil litigation remedies. This is unfair.
- Given that in nearly all cases the infringer will copy from the 3D design not from the 2D design document,

and that this is perhaps a more serious problem for the design right owner, it is clear that weaker legal protection is currently provided for more serious infringing behaviour.

Why the inequality of protection?

- There is no obvious reason for the disparity of protection. This may have been overlooked during the frenzied last minute lobbying and amendments made to the CDPA in 1988 as it was passing through Parliament. Design right protection was a relatively late innovation in 1988 and at the time it was probably felt that it was a step too far to extend to design right the new improved protection introduced for copyright in 1988. Certainly no rational basis for the inequality has been advanced by Government.

Solution

- The legal solution is to introduce into the CDPA two new Sections to mirror S.107(1) and 110 CDPA. The wording would be pretty much identical to Sections 107(1) and 110 and would be designed to criminalise the infringement of the design right subsisting in 3D designs. This can be done very simply by replacing the word "copyright" every time it appears in Sections 107(1) and 110 with the words "design right" and the words "copyright work" with the word "design." It would then be necessary to make consequential amendments to mirror Sections 107 (4), 107 (5) 107A, 108 and 109 CDPA.
- It is necessary to specifically spell out what is required. Simply to point out the inconsistent treatment might lead to attempts to water down the protection available to copyright owners of artistic works rather than increase the protection for design right proprietors.

Nick Kounoupias
Legal Counsel – ACID (Anti Copying in Design) LOBBY
Partner, DMH Stallard

www.dmhstallard.com

●●● acid members

ASPINAL OF LONDON REIGNS SUPREME AFTER £1.5m COPYCAT BATTLE

ACID Members Aspinal of London have secured a settlement after a long battle against copycat predators who marched off with their products, mimicked their website and shamelessly created a look alike business, free riding on the back of Aspinal's hard-fought-for brand identity and reputation. Despite denying liability, the defendants, in a confidential settlement, agreed not to trade in any capacity in the leather goods business for 10 years and to pass over all the assets including all the stock and their entire business to Aspinal. The case was described as being one of the most complex cases to come before the London Patents Court in fifty years.

An outraged Iain Burton the Chairman and Founder of Aspinal said, "This was an extraordinary example of unscrupulous business persons believing that they could, with impunity, walk off with an entire business and create a copycat trading company using every aspect of Aspinal's brand identity, including its look and feel, text, brand voice and communication

platform. The case boiled down to infringement of intellectual copyrights and also breach of numerous common law torts. The case was, of course, difficult to pursue and the costs were quite extraordinary, but in building a brand for generations to come it is an important principle that a company's intellectual property and its brand identity and its confidential information must be fiercely protected."

ACID Comment;

"The fact that we are not allowed to mention the other party's names is a great shame but the message to Aspinal's competitors (and others who may think about following the same business strategy), must be crystal clear, brand protection and the intellectual property that underpins the success of Aspinal of London is its lifeblood and any infringement whatsoever by third parties will be taken very seriously indeed in the future."



Aspinal of London, one of the UK's fastest growing British luxury brands, had been forced to take action against individuals with whom they trustingly shared an office and warehouse premises. Without warning, they vacated the shared premises and promptly set about to manufacture a wide range of more than 100 designs, copying or mimicking Aspinal's entire range of products and designs, the Aspinal "look and feel" and the entire Aspinal business model. The case against the defendants was pursued in two parts. The first was breach of copyright, Community rights, registered designs and unregistered designs. The second was a case of common law tort, including the misuse of confidential information and inducement of Aspinal's manufacturers to breach their agreements and exclusivity.

www.aspinaloflondon.com

BENTLEY SHOWS ITS IP METAL!

ACID member Bentley Designs showed their true metal in an IP dispute by instructing their lawyers McDaniel & Co to send a cease and desist letter to Metal Beds Limited following discovery of a look alike bed called "Jewel". This appeared to be a direct look alike of Bentley's registered design "Krystal". Following receipt of the letter before action, Metal Beds agreed to enter into an undertaking not to sell the Jewel as well as providing the name of the supplier of the Jewel, based in the Far East. Metal Beds also agreed to provide a sworn affidavit that they had no stock and had made no sales of the Jewel as well as pay Bentley's legal costs associated with the matter.

ACID Accredited lawyer Andrew Lee of McDaniel & Co commented, "This demonstrates the effectiveness of official design registrations and sending a timely cease and desist letter. By registering their designs, Bentley increases the scope and duration of their protection as opposed to any unregistered rights. In addition,

by instructing a cease and desist letter to be sent as soon as they were aware of the potential infringement, Bentley have ensured no Jewel beds are sold in the UK and can pursue the Far East supplier."

Bentley regularly obtains formal design registrations, through either the UK intellectual property office or OHIM, for the furniture that they sell. This allows them to monopolise that particular design against copyists and non-copyists and extend that protection for up to 25 years. This is

ACID Comment;

"The positive benefits of having a registered Community design are possession of a numbered certificate which, in effect, says you own the monopoly on that design. It is much easier for companies to take legal action if they have compelling evidence of design ownership."



a cost effective method of ensuring their products are protected and infringements can be pursued more effectively such as their "Krystal bed" for which they have a UK Registered Design.

Ray Davies, Bentley's Design Director said, "Following an ACID Intellectual Property Audit we now have a robust IP strategy. After all, Bentley spends an enormous amount on design, research and development of new products and we will continue to take action with any third parties who infringe our rights."

www.bentleydesigns.com



Within a week of a cease and desist letter being sent to Skye Tiles by Fairfull Ltd., Skye Tiles have agreed to provide undertakings to deliver up any remaining stock of lookalike tiles, make a payment of damages calculated in respect of the number of tiles sold and make payment of Fairfull's legal costs in pursuing an alleged infringement on behalf of Benaya Art Ceramics for whom they are distributors in the UK.

ACID members Fairfull Limited use the Canadian company, Benaya Art Ceramics, to produce a number of their ceramic range. They also act as UK agents for Benaya and many of Benaya's designs are exclusive to

HANDS FULL FOR FAIRFULL IN IP DISPUTE WITH SKYE TILES

Fairfull. Artist Patricia Bell has copyright in the artwork on the tiles as an artistic work. When Fairfull discovered that Skye Tiles were selling what appeared to be copies they decided, with Benaya's permission, to take legal action as a precaution against potential lost sales as the exclusive distributor of Benaya's products.

Fairfull instructed ACID accredited law firm McDaniel & Co at the Autumn Fair in September 2010, who advised them that the first step was to write a cease and desist letter to Skye Tiles putting them on notice of the infringement and requesting undertakings. Although Fairfull would be alleging infringement of copyright (an unregistered right and therefore requires proof of copying), the tiles offered by Skye Tiles were identical to those of Fairfull and therefore the only reasonable assumption was that copying had taken place. It was then incumbent on Skye Tiles to provide an innocent explanation as to why they were selling identical tiles.

Andrew Lee of McDaniel & Co comments: "Fairfull were determined to protect their market and because of their relationship with Benaya they also needed to take quick action against any copies of Benaya's artwork. This again shows how effective a cease and desist letter can be and Fairfull ensured they had one prepared as soon as they were aware of the infringement. This is one part of an effective IP protection strategy in ensuring potential infringements are followed up immediately."

www.fairfull.co.uk

ACID Comment;

"A compelling cease and desist letter often produces a quick and effective result in an IP dispute at a fraction of the cost of taking Court action. It is also a very speedy means by which a business can reinforce its IP strategy to a competitor."

MARTIN MOORE & CO AND AGA. COPYRIGHT – WHO OWNS IT?

Martin Moore & Co. is a specialist kitchen design and fitting company with several showrooms around the UK. In a joint project, they had agreed to use their design and expertise to create a bespoke kitchen especially for a photo shoot by one of the leading names in solid fuel ovens, AGA. The deal was that Martin Moore would provide a free kitchen for AGA so that the company could promote its ovens in a prestigious and design-led kitchen stage set. An express part of the agreement was that the photographic images could only be used by AGA with permission from Martin Moore.

Martin Moore was surprised, therefore, to see exactly the same image of their kitchen with the AGA oven on the website of a competitor kitchen manufacturer, J John D W Wood. To the consumer this could have provided confusion as to who had designed the kitchen and it would not be unreasonable to assume that the AGA oven was housed in a J John D W Wood designed kitchen. This prompted Martin Moore to

instruct ACID accredited law firm, McDaniel & Co. to send a letter before action to J John D W Wood who removed the offending photograph immediately.

Andrew Lee, from McDaniel & Co. commented, "Often a shot across the bows can be a very effective means of achieving an objective. In this case the copyright in the kitchen image belongs to Martin Moore and they are entitled to exclude others from using that image without their consent."

Martin Moore said, "We were surprised to see our kitchen on another supplier's web site. They were only claiming to represent AGA, but were most definitely giving the impression they had made the kitchen. Thanks to ACID membership and some excellent advice, we were able to have this misleading advertising removed. We will vigorously pursue those who infringe any of our design rights and our IP rights."

www.martinmoore.com



ACID Comment;

"We are seeing this type of unauthorised use of other people's images increasingly and would urge those who are using images on their websites to ensure that they have obtained the copyright owner's permission to do so."

EXHIBITIONS 2011 – BRINGING YOUR INTELLECTUAL PROPERTY (IP) TO MARKET

ACID Exhibition Intellectual Property Steering Group members have their say on the Government's response to the ACID petition on the disparities between copyright and design right. The Government says, "unlike trade mark and copyright disputes, design right infringement can often be inadvertent". The majority of ACID members disagree!

Whether you are a contract buyer for a multiple, retail or independent store there is no doubt that the exhibition venue is a unique environment to view new and existing products under one roof. Whilst there has been a significant upturn in online buying and selling, nothing replaces the look, touch and feel of the real thing! So intellectual property (IP) planning for exhibitions is critical. If exhibitors get their exhibition strategy wrong there will be little return on investment. If, however, you get it right you can establish relationships, consolidate the intellectual capital in your brand and communicate your anti copying policy - essential for those whose reputation and future depends on original design. ACID Accredited Exhibitions have a positive policy of encouraging and promoting original design and the respect for intellectual property.

Andy Vaughan, Interiors Event Director says,

"Having been an ACID accredited event for many years now, Interiors Birmingham has a zero tolerance policy to design infringement within the industry and therefore fully supports ACID's aims and mediation protocol to help to combat these issues." Louise Young, Managing Director of Spring Fair says "We understand the importance of IP to our customers and, as part of Emap's terms and conditions, all exhibitors agree not to infringe the rights of any third party. On the rare occasion where an infringement has been brought to our attention, the product is removed from the stand. In cases where an exhibitor believes there has been an infringement we will always suggest that in the first instance they seek specialist advice."

In 2010 ACID announced that IP Steering Groups had been created to work with ACID Accredited Exhibitions in raising awareness of copying issues on the

The Government response to ACID's petition to bring design right infringement in line with other IP rights stated,

"That unlike copyright and trademarks, design right infringement can often be inadvertent!"

ACID disagrees strongly, as do many including ACID member Rodney McMahon, Managing Director of Morgan Contract Furniture. Commenting on the Government's response Rodney said,

"As a British manufacturer of design led furniture within the contract sector employing 60 people, the intellectual property we create is the lifeblood on which the future of our organisation will rely. On a personal level, having been the recipient of intellectual property infringement on a significant scale, I find the Government's statement that design infringement may be inadvertent is way off the mark and misleading. As Chairman of the British Contract Furnishing Association the majority of our 200 members would also confirm that it is rare to experience inadvertent copying. For most, IP infringement is blatant and deliberate. I welcome the announcement of David Cameron's recent review of IP and hope that there will be a real commitment to provide a cost and time effective means of IP dispute resolution to meet the needs of business today. The British contract furnishings industry contributes £2.2 billion to the UK's GDP and employs approximately 25000 people."

Echoing Rodney McMahon's reaction, Tim Hudson, MD of Frank Hudson Ltd. who will be showcasing their new Gothic bed design at Interiors, said,

"I am, quite frankly amazed at the Government's claim that, design right infringement can often be inadvertent. In our experience it is generally deliberate. One of the reasons we are passionate about protecting what sits under the Frank Hudson brand is that, over the years, we have traded very successfully on our knowledge, craftsmanship and intellectual property and we will do everything to ensure our brand is not eroded by cheap look alikes of our design led ranges".



Patrick Heeley, Managing Director of ACID member Villeroy & Boch, exhibitors at Spring Fair, commented

"I was astonished by the Government's clear lack of concern in this issue, and the reference to design infringement often being 'inadvertent'. It is a disgraceful dismissal of the problem." Villeroy & Boch employ 250 people in their UK division.



Penny Laughton, Marketing Director of LSA, also showing at Spring Fair, employees 55 people in the UK, said,

"Like many other ACID members we welcome David Cameron's announcement of an intellectual property review and hope that real progress will be made to improve access to cost and time effective solutions to address IP infringement. Contrary to the recent Government response to ACID's petition, we find that copying within the industry is more often blatant and deliberate rather than inadvertent and hope that this issue will also be covered in the IP review."



exhibition floor. These groups comprise of ACID Members, small and large, who exhibit regularly. ACID recently asked for their views on the Government's response to ACID's No. 10 petitions and also to the announcement, by David Cameron, of an Intellectual Property Review for 2011. Given the current disparity between intellectual property rights, what do ACID Members put in place to protect their designs when they are exposed at the exhibition venue? One ACID member who puts intellectual property high on the list of priorities is Ray Davies of Bentley Designs,

MISUSE OF INFORMATION TECHNOLOGY (IT) BY EMPLOYEES

Our technology group has seen an increase in enquiries from businesses seeking to deal with the new challenges arising from misuse of technology by their employees. This is because private and business use of technology seems to be becoming increasingly blurred. Gone are the days when all employees are office-based and work from computers belonging to the business. Many businesses now allow or indeed encourage employees to work from home occasionally or as a matter of course. The use of private mobile devices at work is also on the increase. How can the employer remain in control of the employee's activities?

Whilst you cannot prevent all forms of harm, there is actually a lot that businesses can do to minimise the misuse of IT by the employees. These are just a few thoughts:

1. Who is using business equipment and personal equipment to carry out their duties?

- 2. Is there an adequate monitoring policy allowing the business to monitor email communications?
- 3. Do you have a social networking policy?
- 4. What is the business' culture in relation to the use of private mobile devices at work? Good old-fashioned line manager floor-walking with appropriate and clear penalties for misuse goes a long way towards encouraging appropriate behaviour at work.
- 5. Are misusers of IT disciplined – are the right messages being sent out?
- 6. Are employees subject to adequate and appropriate restrictive covenants in their contracts of employment?
- 7. Is access to confidential information appropriately restricted and password-protected?

Prevention is always better than the cure, but occasionally a crisis arises and has to be dealt with. For instance, a disgruntled employee blogs anonymously about the business, perhaps revealing confidential business information. This activity can cause real commercial and reputational damage. Steps can be taken to bring it to a halt, and to seek redress. Generally speaking, in a crisis situation where real harm has been done or is suspected businesses should:

- 1. Escalate the problem immediately to the highest level and confine discussion of the issue only to those who "need to know" – usually the senior management team.
- 2. Don't attempt to secure electronic evidence without first taking advice in case it is inadvertently damaged, potentially rendering it useless for the purposes of any subsequent criminal or civil case.

- 3. Protect customer/supplier relations – if an employee has done something to damage the business and third parties could be affected, the business must invest at a high level immediately in restoring the confidence of those third parties.
- 4. Take legal advice immediately so that the situation can be assessed at an early stage and an appropriate legal and commercial strategy implemented.

Should you require any more information about our extensive experience in this area please contact Partner Sarah Birkbeck via sarah.birkbeck@dmhstallard.com or on 01293 605078.



Sarah Birkbeck, Partner DMH Stallard

who are showing their DAKOTA bedroom collection at Interiors. Along with 80%+ of all ACID members, Bentley Designs send all their designs into the ACID Design Data Bank before exhibiting to ensure that an intellectual property audit trail lies behind each and every piece of designed furniture. In this way, it can demonstrate all the different stages between idea and eventual market place, essential to Bentley's IP armoury whilst communicating a strong anti copying message to the sector.



ACID member Alstons Upholstery is a regular Interiors exhibitor and their Design Director Matthew Cave said, "I would like to stress the importance of making an application for a "Registered Community Design" which may initially be costly, particularly if there are several products involved, but it's the only way of ensuring your products are fully protected."

If a designer is unlucky enough to be copied, but has a registered Community design (RCD), it is much more cost and time effective for an IP lawyer to write a powerful letter before action which will be more difficult to legally challenge. Investors, too, are more likely to be persuaded if they can see tangible evidence of tradable IP assets. Another key benefit of an RCD is that, for a small sum, publication (public disclosure) can be delayed (in the UK by 12 months

and in the EU by 30 months) so that competitors cannot see a new design/design range before its official launch. This gives originators a clear and fair lead in the marketplace plus the added protection assurance of an RCD.

The UK used to be a nation of shopkeepers and manufacturers (although we are still the 7th largest manufacturer in the world!). If a shopkeeper's stock is stolen, they can't trade. Now the UK is a knowledge economy. If an IP originators tradable knowledge is stolen, their capacity to continue to market and sell designs may be seriously eroded. EU and National policy makers should seriously consider reducing registration fees and making cost and time effective legal redress a priority in a significant policy shift change. Introducing accessible IP enforcement with meaningful exemplary damages wouldn't be a bad start.

IP doctor



In this edition we focus on frequently asked questions about furniture production.
Andrew Lee of McDaniel & Co.

Q I am an independent furniture designer but I do incorporate previous design features into my own original work, such as Chippendale style legs etc. Does this affect the rights in my design?

A The incorporation of common design features can in certain circumstances produce a new original design when taken as a whole. However, if someone were to copy the previous design features you had incorporated into your design in isolation then you could have no complaint. The originality and protection of your design would reside in the combination of features and therefore that combination would need to be appropriated for any claim to subsist.

However, it could be that another person copies your original parts without copying the old design features you had incorporated. In this situation it may be that you could rely on the originality of individual parts of your design that had been created by you.

In summary the incorporation of old features does not necessarily negatively affect your rights in your design but it could affect your ability to pursue others. Each case is always fact dependent and legal advice should be sought. The bottom line if in any doubt is to clarify your position with an IP specialist before marketing a new design which incorporates what could be described as the style of others.

Q My Company produces reproduction furniture based on items from the 18th and 19th centuries. Are we able to register any of the designs we produce?

A When applying for a registered design, the hurdle is whether the design applied for is new and of individual character. By new, this means that no new identical design has been made available to the public before the date on which the design for which protection is claimed is applied for. The design will be considered identical if its features differ only in immaterial details.

Further, a design shall be considered to have individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to

the public before the date on which the design for which protection is claimed is applied for. Various factors, such as the degree of freedom of the designer, technical constraints and legislative requirements are taken into account.

Each case will depend on its own facts, but those are the basic requirements. If your company is producing copies of furniture from the 18th and 19th centuries without any substantial additions in appearance, then it is extremely unlikely they would be registrable as identical

designs will have already been disclosed prior to the date you apply and those designs would give the same impression as the furniture you are producing.

Although there are typically no prior art checks undertaken by the relevant designs office, if the validity of the design was ever challenged, such as if you ever tried to enforce the registration against a third party, then the design would likely be invalidated for lack of novelty.

Q I have often seen furniture marketed as 'in the style of' for example, Charles Eames. Is this permissible under UK Design Law?

A Purely under a UK design law basis, the issue would concern the appearance of such furniture rather than its branding, therefore marketing such furniture in that manner would not offend against any design law.

However, any potential issues that may arise could be in respect of trade mark laws or passing off. If, for example, a famous name was registered in respect of furniture, then it would essentially depend in what manner you were using that name, i.e. you may not be using it in a trade mark sense (i.e. to distinguish your goods from a competitor), but purely to denote a characteristic of your goods, as in the example above, and hence not offend against the registration. However, each case will depend on its own facts, and whether for example that use is honest.

Furthermore, if the trade mark was a really well known mark, then it could be said you were taking unfair advantage of that mark even if you are using it to denote a characteristic.

If you are in any doubt about what is permissible, seeking legal advice is recommended.

Q My Company has been producing a very successful range of bedroom furniture for some years. Another company has recently approached me and said that now I have to allow them to produce it also. Is this right?

A Yes, potentially. If your furniture is the mass produced type, and you have not sought a formal design registration, then any protection is likely to be limited to the UK unregistered design right.

The right lasts for 15 years from the end of the calendar year in which that design document or that article came into existence (whichever occurred first).

However, if articles made to the design are sold anywhere in the world within the first five years then the design right will expire 10 years from the end of the calendar year in which the articles were first made available for sale or hire.

In the last 5 years of the right, any person is entitled as of right to a licence to produce your designs. If you cannot agree terms then this can be resolved by the Design Comptroller.

However, the matter may not be so simple. If your furniture for example is handmade, then it may be protected by copyright, to which no licence of right applies. In addition, any surface patterns, such as engravings, or prints on the furniture could also be copyright. In those circumstances, again, those parts of the furniture would not be subject to the licence of right.

In this situation, it would be advisable to seek legal advice as soon as possible.

Q I have produced a chair design which I think is suitable for mass production. What sort of documentation should I have in place before I contact manufacturers in the Far East for production quotes?

A Most people acknowledge that copying in the Far East is problematic. Furthermore, as those copyists are so far away, it can often be difficult to take action. On the other hand, this needs to be balanced with the fact that savings in production costs can be made by shifting production to those countries.

The first steps could be to contact any acquaintances who also use companies in the Far East as they may be able to recommend a trustworthy contact. However, when it comes to sending prototypes for quotes, there are measures you can put in place to offer at least some protection. The ACID Intellectual Property Agreement could be useful. This is a short agreement that you would give to the manufacturer and ask them to sign before sending them any prototype, or sample of your designs. Signed agreements provide clarity of ownership should you ever need to rely on them in any dispute.

The agreement outlines that you are the owner of the samples and any intellectual property rights. The manufacturer, by signing the agreement would acknowledge that and also agree not to do anything with the samples without your written consent. It would also subject the manufactures to English law and jurisdiction meaning it is simpler and less costly to take action.

Of course, this does not offer any guarantee that things will not go wrong but it simplifies matters as opposed to having no written agreement in place.

THE FURNITURE INDUSTRY

— WHY INTELLECTUAL PROPERTY (IP) MATTERS

Design know-how, skill and craftsmanship are the lifeblood of the UK furniture industry and recognised worldwide. Key to the industry's continued success is an IP heritage which is protected for future economic growth. For tomorrow's IP originators to flourish, craftsmen, designers and manufacturers need to identify and harness their intellectual property to fully protect, exploit and commercialise the IP they create. By adopting a proactive strategy this will help to reduce the risks of infringement and maximise the opportunities to trade positively.

Whether you are a micro-enterprise starting out or an established UK brand, your intellectual property (IP) is an important economic asset and vehicle for commercial success. In an industry which has an annual output worth nearly 10 billion pounds, employing a workforce of approximately 124,000 people, the intellectual capital that resides in UK furniture brands is a valuable asset nationally and to individual businesses. To succeed, a sound, communicated intellectual property strategy, with an attendant implementation budget, will be an integral part of an effective business plan.

Intellectual property is not rocket science – it is, quite simply, about ownership and use – as IP is based on property law. In the same way that you have title deeds for your home to prove your ownership, so you should have registrations, or an audit trail, to prove your creative ownership. And in the same way that you can choose to rent your home, sub-let it or share it, you can do this with your intellectual property to create a return on investment and income. Unauthorised use of your IP is exactly the same as unauthorised use of your home – it is unlawful.

So how do you begin evaluating your intellectual property assets? A good starting point is to identify what IP rights you have created. Intellectual property (IP) is, quite simply, the generic term for trade secrets, copyright and related rights, industrial property – designs, trade marks, patents and utility models.

Trade Secrets

A company or individual's "Trade Secrets" refers to confidential business information to which only a limited amount of people within a business have access to; such as your customer list, the methods you use to make your product specific to design, manufacturing or industrial processes. In short, anything that gives you a competitive advantage.

Copyright

The originators of works protected by copyright have the exclusive right to use this or authorise others to use it. So, for instance, your marketing material, databases, designs, advertisements are all covered by copyright. The good news with copyright is that it is an automatic (and therefore free) right.

Design Right

Design rights offer protection for designs which are new or original and have individual character and, naturally, have not been copied from another design. Again, like copyright, design is an automatic and free right but unlike copyright it can be registered which offers protection as a monopoly right.

Trade Marks

A trade mark is a badge of origin showing who makes a product. Words, logos, signs, shapes, colours or pieces of music can be registered as trade marks. A trade mark distinguishes the goods and services

of one trade from those of another. The more investment one makes in the name by which you are known, the more brand equity will be built up to give you a competitive edge.

Patents

A UK patent protects an invention and gives the proprietor the exclusive right to manufacture, use, import or sell in the UK, a product embodying the invention covered by the Patent. To be patentable, your invention must meet two main criteria: Novelty (which means it must never have been publicly disclosed anywhere in the world prior to the date you have filed your Patent Application) and be an Inventive step. This means that it must be something more than just an obvious modification of something that has already been disclosed to the public.

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, which combines first hand local knowledge from an international perspective. Their job will be to keenly examine and evaluate the territories in which you trade to investigate existing opportunities, such as using volume registrations to maximise protection. Legal advisors should also look at different territories in terms of access to legal systems, strength of IP rights, ease of registration and protection and also pay strong attention to the particular commercial culture in which innovative companies can flourish.

you can register your designs? In 2003 the registered Community design was introduced offering monopoly protection in 27 member states for 25 years. This means you have a numbered certificate which gives you design "ownership". This registration is very useful if you need to value your assets but is also invaluable if you have to enforce your rights. It is far more cost and time effective for any IP lawyer representing you if your rights have been infringed because you do not have to prove copying if you have taken out a registration. Always ensure that you have a system for ensuring that any registrations are kept up to date as they are usually renewable every 5 years.

- 3 Are your agreements sound? Do they clearly define IP rights ownership? If you are working with third parties such as freelance designers, subcontractors or in collaborative design, do the agreements make it clear who owns what? This is particularly important later on if there is dispute. Often it can cost very much more to legally untangle agreements where ownership is unclear.
- 4 Do you have the right sort of agreements in place to protect your intellectual property such as confidentiality or intellectual property agreements? Signed agreements will ensure that you have an audit trail behind any confidential meetings or disclosure of new designs should an infringement occur subsequently. These provide a sound paper trail of evidence should it ever be required.
- 5 If you are relying on unregistered rights – design right or copyright – do you have an efficient document management system? ACID has a free Design Data Bank for members, so, for example, if you are responding to a pitch you can send a copy of your pitch into the Design Data Bank. This will not add to your rights but provide third party evidential proof when they are received by the ACID office. Always sign and date your work and establish the date of origin.
- 6 If your designs incorporate the intellectual property belonging to any third party – it is essential that you obtain written consent or clearance.
- 7 Do you have standard terms and conditions of business and/or supply which include an intellectual property clause? If not this is relatively easy to add to ensure that your IP rights are acknowledged.
- 8 Do you have a system/process in place to monitor your market for potentially infringing products? Delegating one member of staff for this responsibility on a regular basis can pay dividends or, alternatively if you are a micro enterprise allocating a regular timeline for this is a good strategy. When breaches are found, consider creating a protocol for sending a letter before action to the alleged infringer.
- 9 If you don't want to be copied, say so! Do you communicate your IP strategy on your website or in your marketing material? A simple statement such as "All intellectual property rights are and will remain the property of XYZ. Any infringement of these rights will be taken seriously" will communicate that you know and understand your rights and you are prepared to assert them. Knowledge is a key strength and using a simple statement such as this will leave any would be copyists in no doubt about your IP policy.
- 10 Ensure that in any contracts of employment you have a statement on your company's policy on intellectual property and have a clause which confirms and clearly states employees' contractual obligations in terms of the company's IP.

ACID IP Guidelines

- 1 Ensure you have protected any new designs and the name under which you will trade under. For example, have you registered your trade mark? Many believe that they have protected the name of their company because they have registered the name at Companies House. They haven't – because a registered company name does not give you rights in the name which you can enforce against third parties – for this you need a registered trade mark. www.ipo.gov.uk or a Community trade mark www.oami.europa.eu
- 2 Are you clear about all the different types of intellectual property that you hold? For example are you aware that

Internet overtakes television to become biggest advertising sector in the UK

You may recall seeing this headline on The Guardian website earlier this year. In time, it may become a pretty memorable moment in the history of media. The UK has become the first major economy where advertisers spend more on internet advertising than on television advertising. The Guardian added: "It has taken the internet little more than a decade to become the biggest advertising sector in the UK."

The average Briton now spends 30 hours a week online; that's a couple of hours on the internet for work every day; 93% of us shop online, and Broadband is supposedly becoming as important to our quality of life as gas or electricity! So what's the relevance of all this for

businesses that attend exhibitions? Well, more buyers are now using the internet, and more specifically, exhibition websites as a permanent sourcing directory of products and suppliers. With that, comes the risk of unscrupulous copying by individuals and businesses.

Digital Commercial Director at Emap Connect, Iain Nicol states that "at the same time as helping exhibitors attract more buyers by enabling them to enhance their online company profile with product and stand images, press releases, newsletters, product catalogues etc, we are also continuing to work with groups such as ACID to help exhibitors protect their

intellectual assets. This includes; enabling exhibitors to add the ACID Accredited Exhibition Organiser logo to their online profile page; download useful guides to help exhibitors prepare for attending exhibitions and retailers to avoid risking design infringement."

Nicol adds "useful and relevant content attracts and motivates buyers and makes exhibitors and their products more visible and enticing both on the website and via search engines. It is equally important that we do all we can to help exhibitors protect themselves and their products as we do more than ever to help exhibitors enhance

their online presence on our websites and deliver a better return on investment for their time, effort and money".

Summing up Nicol stated "Emap is committed to protecting the IP of its customers, so these initiatives with ACID are considered just as important as the huge efforts we are making to increase their online visibility."

Article written by Iain Nicol, Commercial Director Digital (Exhibitions) Emap Connect

emap

Robert Welch Designs Excellence in Housewares award

UK-based Robert Welch Designs announced that its Signature knives won the Excellence in Housewares 'Cutting Edge' category for the second year running. The complete range of Signature knives and the knife block won the award in 2009 and in 2010, the 20cm cooks knife, the 16cm flexi utility knife and the 10cm vegetable knife (the new additions to the range) have also been successful in the same category.

The Excellence in Housewares Awards are owned and organised by Progressive Housewares magazine in conjunction with the Cookshop and Housewares Association and are considered to be the 'Oscars' of the housewares industry.

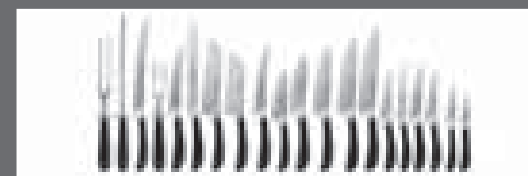
Speaking about the win just after the awards ceremony in London, Rupert Welch, Managing Director of Robert Welch Designs, said:

"Our initial reaction was surprise, swiftly followed by delight that the quality of the Signature knife range has been recognized yet again by an awards panel. We understand that until this year it was

unprecedented for a product/extension to a product range to win this award in two consecutive years. This is a wonderful endorsement of the Signature range and we are very proud to have won."

Key facts about the Signature knife range:

- The Signature knife block and knives were designed in-house by Paul deBretton Gordon and Rupert Welch.
- The 2010 Excellence in Housewares 'Cutting Edge' award is the latest success for the Signature knives which have also won an iF design award (Germany), the GOOD DESIGN™ award (from the Chicago Athenaeum: Museum of Architecture and Design), a red dot design award (Germany), the Excellence in Housewares 'Cutting Edge' award (UK) 2009 and a Gold accolade in the 'Product of the Year' awards organized by Housewares and DIY week magazine (UK). The knives have also achieved the highest possible rating from the Craft Guild of Chefs.



- The knives have been performance-tested by Sheffield's leading test establishment and found to be in the world's top 1% (of all knives tested) for initial sharpness and edge retention.
- Each blade is honed and tempered to razor sharpness using World Edge Geometry™ inspired by master sword craftsmen from Japan to produce a precision blade.
- Each block contains the innovative, patented Robert Welch Signature knife sharpening mechanism designed to care for the knives, simply and effectively.
- The block has been designed for ease of use when inserting and removing the knives. A magnetic locator in each slot prevents damage to the blade edge when inserting or removing the knives.
- The full range includes fourteen knives, two carving forks, a sharpening steel and a hand-held knife sharpener.

www.robertwelch.com

Drawn to the Light XL

ACID Member Scabetti, run by husband and wife team Dominic and Frances Bromley recently celebrated their 10th year exhibiting at 100% Design. This exhibition was also where their iconic 'Drawn to the Light' sculpture was first shown in 2003. Made of fine bone china, this sculpture also inspired their famous 'Shoal' lighting design. For the 2010 exhibition the 2 metre tall 'Drawn to the Light' sculpture consisting of 150 bone china forms surrounding a central light source was the centerpiece of their stand, forming a striking diamond shaped composition.

www.scabetti.co.uk

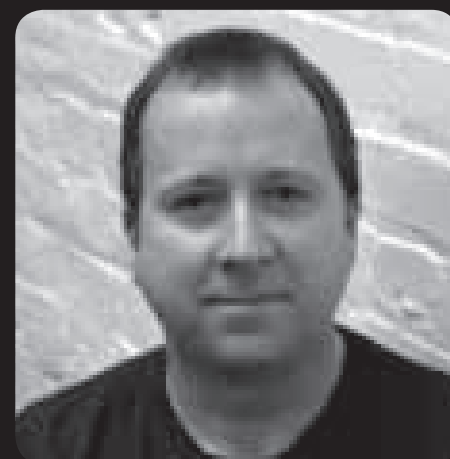


ACID Member Damian Evans

ACID Member Damian Evans of Element Design has just announced his latest innovative design for Joseph Joseph. He has developed a new style rotary peeler with three blades in a compact 90mm diameter case which can be split apart for ease of cleaning. The three blades are designed to work efficiently for hard skinned vegetables such as potatoes, soft skinned vegetables and fruit and also for cutting juliennes.

View his latest work on his website.

www.element-design.com





latest new members list ●●●

Company Name	Industry ID	Company Name	Industry ID
Fenella Smith Ltd	Ceramics	Archipelago	Giftware
Concept to Creation Ltd	Design Agency	Aspinal of London	Giftware
Iona Design	Design Agency	Inhabit	Giftware
Luma Creative Ltd	Design Agency	Konesar	Giftware
Anchor Management Education Ltd	Education	Made in Blighty Ltd	Giftware
Designbark	Fabric & Textiles	Inputadd Limited	Greeting Cards
Esther Cromie	Fabric & Textiles	jessica gully design	Greeting Cards
Maria Hatling	Fabric & Textiles	Yvette Jordan	Greeting Cards
Perilla Limited	Fabric & Textiles	Helena Seget	Interior Accessories
Quietly Eccentric	Fabric & Textiles	Katy Ray	Interior Accessories
Rapture and Wright	Fabric & Textiles	kgn design	Interior Accessories
Tigerlily Makes	Fabric & Textiles	Aradia Nista Art Jewellery	Jewellery
ahilya	Fashion	Lily & Will	Jewellery
Campus Couture & Bespoke	Fashion	Plastic Seconds	Jewellery
Impractical Clothes	Fashion	Putsborough Ltd	Jewellery
KOZA	Fashion	Atelier Areti Ltd	Lighting
M.I.L.K.	Fashion	Inspirallight Ltd	Lighting
Rosie Jacobs	Fashion	Official Design Co	Lighting
The Cutter	Fashion	1 Creator	Other
Paul Agnew	Fires & Fireplaces	Bradley Basso Llp	Other
CMS Ltd (Ergonomics)	Furniture	Evelyn Green Ltd	Other
Hornchurch Interiors Ltd	Furniture	FPC Sugarcraft	Other
House of Fontaine Limited	Furniture	Langlea Garden Design	Other
Julian Bowen Limited	Furniture	Susan Long Sculpture	Other
Neal Jones Furniture Ltd	Furniture	Clare Swayne	Photography
Paul Gower Furniture Ltd	Furniture	Charles Jarrett	Product Design
Po Shun Leong Studio	Furniture	Robert Hughes	Product Design
Sara Leonor	Furniture	Specialist Plastics Ltd	Product Design
Scarlett Design	Furniture	Steve Powell Furniture and Product Design	Product Design
We Play God	Furniture	Three Foot Three Design Ltd	Product Design
Bloominghigh Limited	Garden Products	Betsy Benn	The Arts
Burgon & Ball	Garden Products	Cissy Cook Designs	The Arts
Digworld Ltd	Garden Products	The Golden Envelope Company Limited	Toys
Flock-Follies	Garden Products	Marthe Armitage Wallpaper	Wallpaper Manufacturers
Potnotch	Garden Products		



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

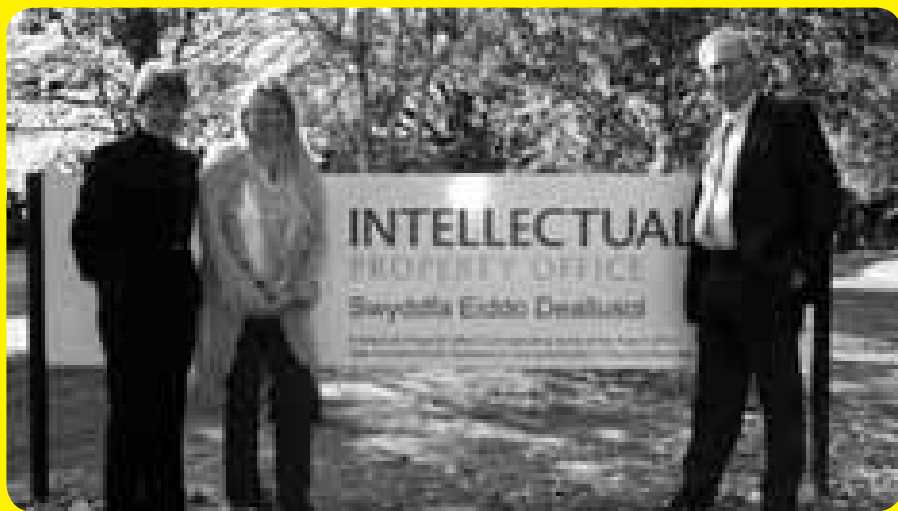


ACID has received huge support from editors and journalists, who place the subject of intellectual property awareness high on their agenda and continually feature success stories, initiatives, concerns and warnings against the potential devastation of intellectual property infringement. Many thanks to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

ACID Seminar at the IPO, Newport

Dids Macdonald, CEO of ACID was recently asked by the UKIPO to make a presentation to over 100 of their delegates at the IPO offices in Newport. Under the title of 'Design: The Challenges – Using IP as a Positive Force', the mandate was to focus on unregistered rights issues which do not receive as much attention as other intellectual property rights, and how to use them to advantage. ACID Ambassador Tanya Ewing of Ewgeco also made a presentation focusing on the setting up of her award winning business.

Tony Clayton, Chief Economist at the IPO thanked Tanya and Dids for their presentations adding,
"It was a really engaging talk and very much appreciated by the audience. It is invaluable for those of us at the Intellectual Property Office to understand more about Anti Copying In Design."



INVENTING THE 21ST CENTURY

In a celebration of British ingenuity the British Library recently explored the stories behind fifteen ground-breaking inventions from this century's first decade. Whether they were changing the world of sport, fighting climate change, or just making life a bit easier, each inventor had challenged the established way of doing things. From Dyson's revolutionary bladeless fan to President Obama's favourite dog bowl and it was also possible to trace the journey of an idea from that first spark of inspiration to the development of a business. The original

drawings, patent specifications and finished products had been made available to view.

One of the 15 inventions is the Money Saving Ewgeco Energy Monitor developed by ACID Ambassador and Member Tanya Ewing. Attached to a domestic or commercial power supply, this single device makes monitoring usage of electricity, gas and water easy through a simple traffic light warning system.

www.ewgeco.com





ANTI COPYING IN DESIGN

● ● ● events and exhibitions

EXHIBITIONS

Interiors Birmingham

NEC, Birmingham

23 – 26 January 2011

www.interiorsbirmingham.com

ACID Stand – Hall 2, Stand A17



Spring Fair

NEC, Birmingham

6 – 10 February 2011

www.springfair.com

ACID Stand – Entrance Hall 6, Stand 6AA



Top Drawer London

Earls Court, London

16 – 18 January 2011

www.topdrawer.co.uk

ACID Roving team present 16&17/1/2011



For further information on the above events please call the membership office.

DAVID CAMERON ANNOUNCES REVIEW OF INTELLECTUAL PROPERTY IN THE UK



Prime Minister David Cameron used a keynote speech to the business community in Shoreditch to announce a review of the UK's intellectual property framework. "We are reviewing our IP laws, to see if we can make them fit for the internet age. I want to encourage the sort of creative innovation that exists in America." The review, which will report next April, will recommend changes to UK law, as well as long-term goals to be pursued by the British government on the international stage.

Dids Macdonald, ACID's CEO said, "The IP review is a welcome initiative which I hope will focus on a relevant and robust framework to encourage IP creators and ensure that protection and enforcement are key priorities. For the majority of the UK's SMEs the costs and difficulties associated with enforcing IP infringement are prohibitive. Bringing IP to the top table as a significant contributor to the UK's growth and recovery will be a welcome boost for UK businesses."

IP Minister Baroness Wilcox, said, "The future of the economy lies in the highly skilled, technology sectors. For many of those companies their intellectual property is their most valuable asset. We must ensure the intellectual property system helps not hinders those companies. This review will look at what changes can be made to our intellectual property system to ensure it helps firms grow. The internet has fundamentally changed the business

landscape. Some sectors, such as the creative industries, have been transformed by the internet. The intellectual property framework must keep pace. An IP system created in the era of paper and pen may not fit the age of broadband and satellites. We must ensure it meets the needs of the digital age."

The review will look at:

- Barriers to new internet-based business models, including the costs of obtaining permissions from existing rights-holders;
- The cost and complexity of enforcing intellectual property rights within the UK and internationally;
- The interaction between IP and Competition frameworks;
- The cost and complexity to SME's of accessing services to help them protect and exploit their IP.

The review will also look at what the UK can learn from the US's "fair use" rules covering the circumstances in which copyright material may be used without the rights-holder's express permission.

The review will make recommendations on the changes the UK can make as well as the long-term goals to be pursued through the international IP framework. It is expected to report in April next year.

GOVERNMENT RESPONDS TO ACID'S PETITION ON CRIMINAL SANCTIONS FOR UNREGISTERED DESIGN INFRINGEMENT

Following ACID's (Anti Copying in Design) petition to introduce criminal sanctions for unregistered design right infringement The Government has responded by saying the current civil-based provisions provide a suitable IPR framework despite the fact that copyright infringement (which requires no substantive examination) attracts criminal sanctions. This gives rise to anomalies and inequality of treatment which are very damaging to hundreds of

small businesses and designers across the UK and restricts the level of legal protection and support they can expect to receive.

Nick Kounoupas, ACID LOBBY's legal counsel and an expert in IP infringement said, "We are only suggesting that design rights should be criminalised where there is actual knowledge like copyright. There is no obvious reason for the disparity of protection. This may have been overlooked during the frenzied last minute lobbying and amendments made to the CDPA in 1988 as it was passing through Parliament. Design right protection was a relatively late innovation in 1988 and at the time it was probably felt that it was a step too far to extend to design right the new improved protection introduced for copyright in 1988. Certainly no rational basis for the inequality has been advanced by Government."

Dids Macdonald, commenting on the Governments' response and, in particular, the statement that unlike trade mark and copyright disputes, design right can often be inadvertent said, "In my 20 years personal experience as a designer and latterly as CEO of a 1000+ member organisation (the majority of whom have joined because of design infringement threats), copying is generally deliberate and blatant rather than inadvertent. I would be interested to learn more about the Government's evidence to support their statement. However, I am encouraged to continue the debate via the recently announced review of the UK's IP and by the Government's commitment to explore any (and all) suggestions for improving the designs framework for the benefit of the UK design industry."



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www.acid.uk.com

www.acidtrading.eu.com

www.acid.eu.com/news

www.mediatetoresolve.com

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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 2011

HOTLINES...

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Legal Hotline fax:
+44 (0)845 644 3618

e.mail: legal@acid.uk.com

**ACID recommends the following
ACID Accredited Law Firms:**



DMH Stallard: www.dmhstallard.com

McDaniel & Co: www.mcdanielslaw.com

ACID Accredited Law Firms can be contacted by Acid members via the Acid Legal Hotline:

+44 (0) 0845 230 5742