

# A © I D<sup>®</sup>

## news

### ANTI COPYING IN DESIGN

Issue 39  
2010



**Creating IP.....Adam Aaronson  
glass maker  
[www.adamaaronson.com](http://www.adamaaronson.com)**

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## Dear ACID Member ●●●

The new Government has wasted no time in pruning many quangos and SABIP (the Strategic Advisory Board for Intellectual Property) did not escape the axe wielding. Despite previously meeting with SABIP to present ACID's view, I did not feel that their level of work and understanding within design related issues was in line with their focus on other intellectual property rights (as recommended in the report by Andrew Gowers). However, it is hoped that their otherwise excellent research programme on the Economic Value of Intellectual Property to the UK will be taken forward by the team at the IPO headed by Tony Clayton. These are tough times, with the recent loss of the Film Council also it is sad when organisations that put intellectual property at the heart of policy making, lose their voice.

However, these cuts come at a time when the CBI has stepped up its voice to Government on IP issues and in July launched a blueprint for the Creative Industries – "Creating Growth". Along with many other IP stakeholders, I have had several meetings with Ed Middleton, CBI Director of Corporate Affairs, to whom I have presented ACID concerns and I, along with others will be delighted to see that IP is fast becoming a mainstream CBI lobbying focus. Further ACID talks are planned.

At the recent CBI "Creating Growth" campaign launched by The Rt. Hon Jeremy Hunt, MP, Secretary of State for Culture, Olympics, Media and Sport, CBI President, Helen Alexander said, "On intellectual property we want to ensure that firms can derive proper value. IP in particular copyright, is the lifeblood of the Creative Industries but enforcement in an online environment is increasingly difficult, so we'll be monitoring the impact of the Digital Economy Act. She continued, "The Government must provide certainty about the IP regime so companies can derive value from their rights. It must also be active in international forums, since IP is a global issue". I think it is important to recognise that the UKIPO have been at the forefront of activity in international forums and they are to be applauded for this. They have been leaders in the global IP arena. The Government clearly listens to the CBI and I welcome this statement. However, ACID and many other IP stakeholders have been lobbying for several decades on the CBI's suggestion for Government to provide, "Certainty about the IP regime so that companies can derive value from their rights". What we now need is real pressure from the CBI to follow this through and to urge Government to create an IP regime that is moving in tandem with 21<sup>st</sup> century needs and fast moving demands. Greater exemplary damages, easier access to a cost effective legal system, increased IP awareness and education, easier access to IP registration, a robust enforcement system and declared IP in corporate responsibility would be a good start.

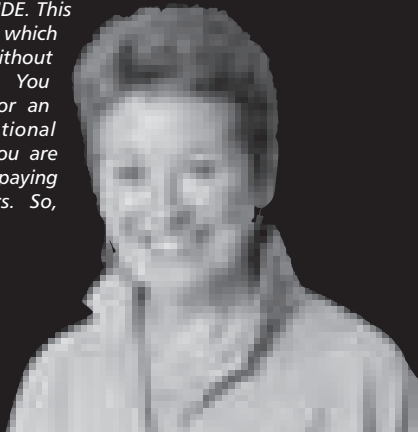
At a recent IPAN (Intellectual Property Awareness Network) meeting, Joff Wild (Editor of the Intellectual Asset Management Magazine) stated that David Kappos (the Director of the United States Patents and Trade Marks Office) has a direct line to President Obama. This is clear from a major statement The President made in March, "We're going to aggressively protect our intellectual property. Our single greatest asset is the innovation and the ingenuity and creativity of the American people...It is essential to our prosperity and it will only become more so in this century. But it's only a competitive advantage if our companies know that someone else can't just steal that idea and duplicate it with cheaper inputs and labor. The competition is keener; the challenge is tougher; and that is why innovation is more important than ever." It would be nice to think that our own John Alty, incoming CEO of the UKIPO and Helen Alexander of the CBI could have a direct line to David Cameron who would champion the UK's IP, not only at home but on his high profile world wide trade missions.

Design underpins the UK's knowledge-based and manufacturing industries. Every successful product has been designed and intellectual property in design has great value for the UK economy – provided it is properly protected. The UK is increasingly earning more from designing successful products than from manufacturing them. This is particularly true for the creative industries sector, which contributes 8.2 per cent (£118 billion) of the UK's GDP. This is expected to continue to grow by an average of four per cent a year. <sup>CBI</sup> Professional designers provide the unifying thread in all creative industry sectors. Improving IP understanding will be key to maintaining international competitiveness.

And finally, as the exhibition season fast approaches I would urge all members to look out for an Exhibitors Directory called EXPO GUIDE. This has replaced FAIRGUIDE which many members signed without reading the small print. You think you are signing for an online FREE international directory. You are not you are signing and agreeing to paying 1181 euros for 3 years. So, please don't be taken in.

Best wishes

**Dids Macdonald,**  
Chief Executive of ACID



**Say's**  
**Ray Molony,** EDITOR  
Lighting Magazine  
[www.lighting.co.uk](http://www.lighting.co.uk)  
Follow Ray on Twitter: [raymolony](https://twitter.com/raymolony)

## Guest Editor

ACID welcomes

Ray Molony as guest editor to this edition of the Newsletter.

Ray Molony is a writer on architectural lighting and editor of the monthly Lighting Magazine.

**“ It's always fun walking the aisles of an exhibition – usually in Asia, but not always – and spotting the copies. ”**

"Oh look, there's a version of Starck's Romeo Soft – and here's Artemide's Tolomeo crossed with the PH5."

"That's the first time I've seen a Lingotto made from folded aluminium."  
"Never mind the exposed screws – this Taraxacum costs only \$70!"

And, to ram home the point, you'll also get lookalike logos and rip-off catalogues (often using the original manufacturer's photography).

My list of the most-copied lighting manufacturers would include iGuzzini, Artemide, Sill and Zumtobel. Special mention too must go to Louis Poulsen and Flos, whose entire back catalogues are plundered by the pirates.

The fittings that are most faked are the Arco, the Artichoke and the Lingotto. But the copiers will usually have a go at anything – no matter how complex and high tech the manufacturing process. For God's sake I've even seen copies of Moooi's extraordinary Horse floor lamp.

You could argue that it's a compliment, that people who will buy a genuine Archichoke pendant light for £2,000 wouldn't touch a \$100 copy and that it's not worth the legal costs in trying to close it down, but ignoring the problem is simply creating a charter for cheats.

In the lighting business, the Asians have got a name for intellectual property infringement, but we shouldn't feel superior. In some cases, someone from the West has asked the Asian manufacturer to reengineer a well-known fitting. Chinese manufacturers have also complained to me that it's Western importers and buyers who demand cost cutting measures: "Take the internal fusing out and that'll save us a dollar."

But I've seen plenty of UK companies copying UK companies. This is especially true of light fittings specifically aimed at the British domestic market – downlights which are aimed at complying with our Building Regulations, for instance.

Sometimes the aggrieved party comes to us at the magazine, looking for help. They're often angry – and I don't blame them. But beyond tea and sympathy, I struggle. "Er, have you tried Trading Standards?" Obviously, we can give them publicity if they take some legal steps – but most are reluctant to engage m'learned friends because of the eye-watering sums involved.

In the highly regulated and organised society that we live in, wronged manufacturers are often surprised by the paucity of options before them.

This is why the existence of ACID is so welcome. To have such a unique support organisation is a Godsend. And its brilliant Mediate to Resolve programme is perfect for small to medium organisations who want their design dispute resolved as rapidly and cost-effectively as possible.

**“ I look forward to the day when I won't be able to play Spot the Copy at an exhibition again. ”**

# BRAND VALUE – WHAT IS YOUR COMPANY REALLY WORTH?

ACID members will particularly understand the problems associated with quantifying the valuation of loss of business opportunity and/or valuation of damage, because of infringement.

For the valuer this is not usually a problem when these rights and liabilities take an accepted form, such as design right, trademarks, patents or copyright, which are well enough known. This is not the case with intangibles such as know-how and proprietary technology, which can include the talents, skill and knowledge of the workforce, training systems and methods, designs and technical processes, customer lists, distribution networks etc. Overall risk affects valuation analysis, corporate valuation must reflect risk and most importantly risk assessment should reflect IP value. Understanding the value of IP is vital in most commercial exploitation strategy and in infringement actions.

One of the key factors affecting a company's success or failure is the degree to which it effectively exploits intellectual capital, manages IP protection, and values risk. Management obviously need to know the value of the IP and those risks for the same reason that they need to know the underlying value of their tangible assets; because business managers need to know, or should know, the value of all assets and liabilities under their stewardship and control, to make sure that values are maintained. Markets (restricted or otherwise), institutions and shareholders need to be educated. Exploitation can take many forms, ranging from outright sale of an asset, litigation or a joint venture of licensing agreement. Inevitably exploitation increases the risk assessment.

Valuation is an art more than a science and is an interdisciplinary study drawing upon law, economics, finance, accounting, and investment. It is rash to attempt any valuation adopting so called industry/sector norms in ignorance of the fundamental theoretical framework of valuation.

Valuation procedure is, essentially, a bringing together of the economic concept of value and the legal concept of property. The presence of an asset is a function of its ability to generate a return and the discount rate applied to that return. The cardinal rule of commercial valuation is; the value of something cannot be stated in the abstract; all that can be stated is the value of a thing in a particular place, at a particular time, in particular circumstances. I adhere to this and the questions 'to whom?' and 'for what purpose?' must always be asked before a valuation can be carried out. This rule is particularly significant as far as the valuation of intellectual property rights is concerned. More often than not, there will only be one or two interested parties, and the value to each of them will depend upon their circumstances. Failure to take these circumstances and those of the owner, into account will result in a meaningless valuation.

There are four main value concepts, namely, owner value, market value, tax value and fair value. Owner value often determines the price in negotiated deals and is often led by a proprietor's view of value if he were deprived of the property. The basis of market value is the assumption that if comparable property has fetched a certain price, then the subject property will realise a price something near to it. The fair value concept, in its essence, is the desire to be equitable to both parties. It recognises that the transaction is not in the open market and that vendor

**"Intellectual capital is recognised as the most important asset of many of the world's largest and most powerful companies to the smallest SME",**

says Kelvin King, a founding partner of Valuation Consulting now part of BNP Paribas; "It is the foundation for the market dominance and continuing profitability of all companies. It is often the key objective in mergers and acquisitions and knowledgeable companies are increasingly using licensing routes to transfer these assets to low tax jurisdictions. It is often the most infringed asset class. Accounting Standards are not helpful in representing the worth of intellectual property ("IP") in company accounts." The questions to be answered should be:

- © What is the IP used in the business
- © What is the value (and hence level of risk)
- © Who owns it (could I sue or could someone sue me)
- © How may it be better exploited (eg licensing in or out, of technology)
- © At what level do I need to insure the IPR risk agreement)

and purchaser have been brought together in a legally binding manner. Tax valuation has been the subject of case law worldwide since the turn of the century and is an esoteric practice. There are quasi-concepts of value which impinge upon each of these main areas, namely, investment value, liquidation value, and going concern value.

Acceptable methods of the valuation of identifiable intangible assets and intellectual property fall into three broad categories. They are either market based, cost based, or based on estimates of future economic benefits. In an ideal situation, an independent expert will always prefer to determine a market value by reference to comparable market transactions. This is difficult enough when valuing assets such as bricks and mortar because it is never possible to find a transaction that is exactly comparable. In valuing an item of intellectual property, the search for a comparable market transaction becomes almost futile. This is not only due to lack of compatibility, but also because intellectual property is generally not developed to be sold and many sales are usually only a small part of a larger transaction and details are kept extremely confidential. There are other impediments that limit the usefulness of this method, namely, special purchasers, different negotiating skills, and the distorting effects of the peaks and troughs of economic cycles. In a nutshell, this summarises my objection to such statements as 'this is rule of thumb in the sector'.

Cost based methodologies, eg the cost to create or the cost to replace, assume that there is some relationship between cost and value and the approach has very little



to commend itself other than ease of use. The method ignores changes in the time value of money and ignores maintenance.

The method of valuation flowing from an estimate of future economic benefits can be broken down to four limbs; capitalisation of historic profits, gross profit differential methods, excess profits methods, the relief from royalty method and discounted cash flow analysis.

While the capitalisation process recognises some of the factors which should be considered, it has major shortcomings, mostly associated with historic earning capability. The gross profit differential methods are often associated with trade mark and brand valuation. The excess profits method is associated with earnings capability in order to induce investment and, while theoretically relying upon future economic benefits from the use of the asset, the method has difficulty in adjusting to alternative uses of the asset. Relief from royalty considers what the purchaser could afford, or would be willing to pay, for the licence. The royalty stream is then capitalised reflecting the risk and return relationship of investing in the asset.

Discounted cash flow analysis is probably the most comprehensive of appraisal techniques. Potential profits and cash flows need to be assessed carefully and then restated to present value through use of a discount rate, or rates. With the asset you are considering, I will need to consider the operating environment of the asset to determine the potential for market revenue growth. The projection of market revenues will be a critical step in the valuation. The potential will need to be assessed by reference to the enduring nature of the asset, and its marketability, and this must subsume consideration of expenses together with an estimate of residual value or terminal value, if any. This method recognises market conditions, likely performance and potential, and the time value of money. It is illustrative, demonstrating the cash flow potential, 'or not', of the property and is highly regarded and widely accepted in the financial community. The discount rate to be applied to the cashflows can be derived from a number of different models, including common sense, build-up method, dividend growth models and the Capital Asset Pricing Model utilising a weighted average cost of capital. This appraisal technique will probably be the preferred option.

These processes lead one nowhere unless due diligence and the valuation process quantifies remaining useful life and decay rates. This will quantify the shortest of such as the following lives: physical, functional, technological, economic and legal.

Kelvin King is a Senior Director of Valuation Consulting (now a BNP Paribas company) and can be contacted on 0207 338 4830 or email: Kelvin@valconsulting.co.uk www.valuation-consulting.co.uk



# LUMINATI SENDS STRONG IP MESSAGE TO THE DISPLAY SECTOR

ACID (Anti Copying in Design) members Luminati Waycon trade under the name of Luminati, a recognised brand in the supply of engineered display solutions, supplying a vast range of display products. Like most companies in the 21<sup>st</sup> century, their website is one of their key means of marketing, being the main showcase of their products. Recently they have found many competitors copying the distinct look and text of their website which has proved to be an important selling tool.

One of the key product ranges marketed through Luminati's website is its acrylic photo frames. The company had found that the website advertising of this product had been highly successful. Luminati recently discovered that one of their competitors had copied the literary text and layout of the webpage advertising the

company's acrylic photo frames. A letter before action was sent by ACID Accredited law firm McDaniel & Co. alleging copyright infringement. Following receipt of this letter the company concerned spoke with Luminati and agreed to remedy the infringement and pay Luminati's legal costs.

**Dids Macdonald, ACID's CEO said,**

*"Increasingly ACID members are finding that sending a strong letter before action can achieve the right results. Taking legal action does not mean going all the way to Court and in this instance Luminati is sending a clear message not only to the sector but to this particular competitor that they are not going to tolerate any IP infringement now or in the future."*

**Luminati's Managing Director, Steve Senior said,**  
*"In this particular sector most of the key players know one another and there is no room for those who seek the fast track to market by producing look alike web pages appearing to trade off our brand identity. The way in which this was discovered was a fantastic new free service called Copyscape. By entering our own web text a result came back which confirmed that the majority of the text had been slavishly copied. Our brand protection policy takes priority and we will always be assertive in pursuing any intellectual property infringement."*

Luminati produce a variety of acrylic and Perspex display products including greetings card display stands, postcard

racks, display cases, display cabinets, acrylic cubes, leaflet dispensers and information carousels, poster holders, photo frames, merchandising and display systems, FSDU's, shelf management systems, sign holders, slat wall fittings, clear acrylic trays, wall mounted dispensers and lightboxes. They have a wide variety of customers ranging from large corporations to private individuals. The team at Luminati have an intimate knowledge of our chosen materials and pride themselves in the quality of their products and designs.

[www.luminati.co.uk](http://www.luminati.co.uk)  
[www.copyscape.com](http://www.copyscape.com)



LUMINATI

## SPIRIT FIRES RETAINS CVO BRAND IN IP DISPUTE

Award winning ACID (Anti Copying in Design) members Spirit Fires have been granted an order against Go Modern Limited for infringing its CVO trade mark in a recent ruling by His Honour Judge Fysh. An initial payment of £5,000 was ordered with costs and damages to be assessed later.

Spirit Fires have built their reputation using a unique flueless gas fire technology. So when they discovered that one of their competitors, Go Modern Limited, had high jacked the domain names cvofires.com, cvofires.co.uk, cvo-fires.com and cvo-fires.co.uk., they immediately instructed trade mark agents. By high jacking these domain names, Go Modern were using this technique to direct users and potential new customers to their website.

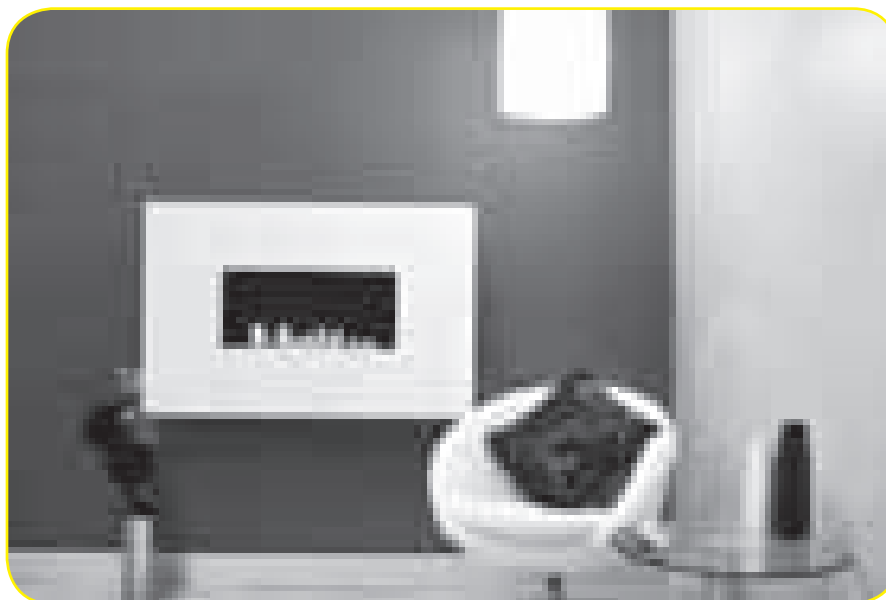
Initially the trade mark agents from whom they sought advice had been reticent about enforcement and advised them to use a domain name dispute resolution procedure. However, as brand protection is a key Spirit Fires strategy, they decided to call Niall Head Rapson of ACID Accredited law firm McDaniel & Co who advised them to issue proceedings for infringement

of their Registered Trade Mark 'CVO' on 21 June 2010.

ACID commented, "Being in possession of a Registered Trade Mark enabled McDaniel & Co to advise their client, Spirit Fires, to take instant decisive action in the form of issuing proceedings. In this case, it proved to be the most effective and timely means of achieving Spirit Fires' objectives, to stop their competitors free riding on the back of their reputation."

Christine McLoughlin, a Director of Spirit Fires said, "Our aim is to grow the Spirit Fires brand across Europe, supplying our clients with high quality designer flueless gas fires and flueless fireplaces using our unique gas fire burner technology - all hand made here in the UK. We are proud of our reputation which has seen our sales grow by 67% over the last 3 years. We are determined that our brand will not be eroded by unfair competition and I am delighted that we were granted an Order and Injunction against Go Modern."

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



CVO FIRE

# LIGHTING ASSOCIATION STUDENT AWARDS 2010

– IP included in judging criteria for the first time

ACID's Trade Association Partner, the Lighting Association (LA), recently held their Gala Awards Night at Stratford Manor, Warwickshire. ACID was sponsoring the awards along with other well known names such as Philips, Osram, The Energy Saving Trust, Spearmark and ACID Members Dar Lighting. The after dinner speaker was the former MP and TV celebrity Gyles Brandreth whose speech was full of LA Member in-jokes and was extremely cleverly worded and performed.

For the first time ever, ACID supplied an intellectual property questionnaire to the LA to incorporate into the judging process and this section was marked by Peter Hunt, CEO of the LA. ACID also offered 6 free 1 year memberships of ACID together with Safe Pitch Kits containing legal agreements and advice to set the new designers on the right road when striking commercial arrangements with prospective manufacturers.

Again, the standard was very high this year with the overall winner, John Etherington from Nottingham Trent University reigning supreme with his beautifully crafted ARC table lamp. An interesting piece of work from Joseph Roberts from Aston University, Sputnik, an orb which traversed a metal arc and was multi positional, took second place with third place being filled by RCA's Chris Taylor and his innovative Stem Light. The Children's sector was won by a partnership of Lise Carrillo & Marie Bachoc who joined

forces at Central St. Martin's College of Art & Design to produce the child-friendly Buddylight. The best flatwork section was awarded to Catherine Bailey, another Nottingham Trent University student, for her Mr. and Mrs. design.

## Judges

Peter Hunt	Lighting Association
Ivan Hayward	Ivan Hayward
Nicola McGuirk	Dar Lighting Ltd
Fiona Elliott	Elliott Associates
James Russill	Energy Saving Trust Ltd
Nic Mallinson	LIF
David Ellis	Osram Ltd
Simon Farmer	Spearmark International Ltd

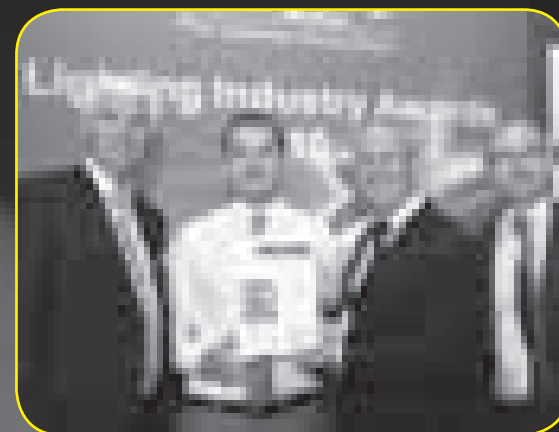
The prestigious Phillips Award went to two new talents, Isabel Heubl of the University of Falmouth with her egg-shaped Rocky design and Charles Jarrett from Coventry University with his unbelievable Pouring Light ceiling lamp. The range of different University courses which the students attended was heartening as it showed that innovation can come from many areas and still be adapted for a particular industry.

The presentations were made by Gyles Brandreth, Rune Marki of Osram and Jonathan Lucas, President of the Lighting Association and Managing Director of ACID Member Elstead Lighting.



### Student Lighting Designer of the Year 2010

Name: **John Etherington**  
University: Nottingham Trent University  
Course: Product Design



### 2<sup>nd</sup> Place

Name: **Joseph Roberts**  
University: Aston University  
Course: Industrial Product Design



### 3<sup>rd</sup> Place

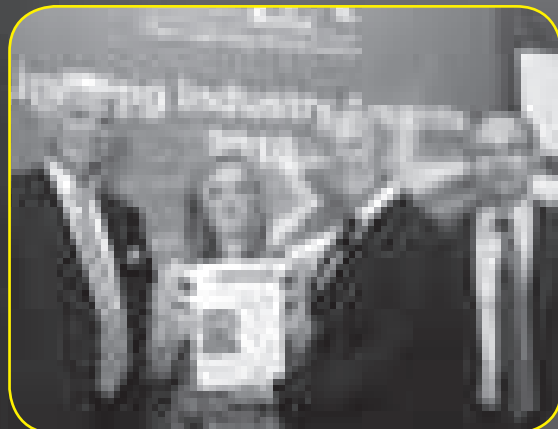
Name: **Chris Taylor**  
University: Royal College of Art  
Course: Ceramics & Glass

### Children's Student Lighting Designer of the Year

Name: **Lise Carrillo  
& Marie Bachoc**

University: Central  
Saint Martin's  
College of Art &  
Design

Course: MA  
Industrial Design



### Phillips Award 2010

Name: **Isabel Heubl**

University: University College Falmouth  
Course: 3D Design



### Runner Up Phillips Award 2010

Name: **Charles Jarrett**

University: Coventry University  
Course: Industrial Product Design

# INTELLECTUAL PROPERTY HIGHLIGHTED AT AUTUMN FAIR

An ACID Exhibition Intellectual Property (IP) Group was formed to consult with EMAP via ACID on current and emerging IP issues, to build on existing progress and cooperation with the organisers and to develop new initiatives to address exhibitor concerns on the increase of copying within this sector. The IP Steering Group comprises: Dan Black of Black & Blum, Patrick Heeley - Villeroy and Boch, Claire Farthing - Creative Tops, Angus Gardner - Caroline Gardner Publishing, Andy Kingston - Fiesta Collectibles, Angela Hewitt - Angela Hewitt Designs, Penny Laughton of LSA and Clare Farthing of Jan Constantine Ltd. Discussion points for the first consultation were formed as a result of issues raised by the ACID IP Steering Group.

Following set up of this IP group, ACID met with Spring & Autumn Fair organisers EMAP to outline some of the ACID IP Steering Group's issues. Among the issues discussed were more high profile "No Photography" signage at every opportunity,

heightened security briefing and action to stop unauthorised photography. These and other issues all come under the umbrella of ACID Accredited Organiser status criteria. The Spring & Autumn Fair management team headed by Louise Young confirmed Emap's ongoing priority and commitment to protect the IP of all of its customers. At this year's Autumn Fair exhibitors and visitors will have the chance to put their IP questions to ACID and other industry watchdogs in one-to-one surgery sessions and seminars at the event.

ACID's IP seminar '**Say no to copying - make money from your intellectual property**' will cover practical tips and advice on how to protect your products whilst also looking at the positive aspects of brand protection and making money from ideas. ACID will be supported by intellectual property (IP) specialist Niall Head Rapson, Partner, McDaniel & Co, (an ACID Accredited law firm) who has helped and advised Spring & Autumn Fair exhibitors

## NO PHOTOGRAPHY



A MEMBER OF  
**ACID**  
ANTI COPYING IN DESIGN

**NO CAMERAS  
NO PHONE CAMERAS  
THANK YOU**

A MEMBER OF  
**ACID**  
ANTI COPYING IN DESIGN

for many years. ACID's familiar "IP Doctor" one to one surgeries will continue to offer advice on many subjects such as; licensing – what are the key elements? Making money through Franchising, Design Protection, Creating an IP strategy, Exhibiting (tips, guidance, advice on how to protect your IP) and will also include advice from IP specialists on copyright, trademarks, design right and patents.



# SAY NO

TO COPYING –  
MAKE MONEY FROM  
YOUR INTELLECTUAL  
PROPERTY

Do you have an intellectual property strategy? Take time out at AUTUMN FAIR to hear IP experts talk about how you can capitalise on your intellectual property and make money from ideas. The session will also provide simple, practical advice on brand protection.

The Seminar will take place at Autumn Fair, NEC, Birmingham on Tuesday 7<sup>th</sup> September 2010 at 2.00pm. Visit the Autumn Fair Website for further details [www.autumnfair.com](http://www.autumnfair.com)

## Louise Young, Managing Director, said:

"Offering surgery sessions and places on seminars that will explore how the law can help exhibitors protect their IP is another way for us to help our customers to grow their business. While they enjoy bulging order books, they can now also learn how to protect the products behind those sales. Anyone at the show will be able to see Emap's commitment to protecting the IP of its customers. New signs will make it clear that anyone who wants to take photos of a stand will need to ask the stand holder first. This will also extend to key feature areas such as Cook Live and the Catwalk Shows where only official photographers will be allowed to take images."

## Dids Macdonald added,

"One of the other issues raised by the IP Steering Group was a request that every participant at a trade show event should sign a legal agreement upholding professional standards regarding intellectual property and confirm that they own the rights or have a licence to market the products on their stands. Louise Young confirmed that this was already a fundamental condition of entry to Spring & Autumn Fair and had been for many years. As this would appear not to be generally known, ACID will ensure that this valuable element of extra protection is widely communicated from every available platform, thereby strengthening the IP position of each and every exhibitor who upholds standards of respect for their own and others intellectual property."

# EXHIBITING- A © I D's TEN TOP TIPS

Exhibitions are one of the most valuable marketing venues but they can also be vulnerable to copying - taking a few simple steps to protect your designs and products can make the difference and maximise the returns in the design and investment of new product. Discovering a copy of one of your products at an Exhibition or Fair can be traumatic but remember that careful handling can lead to the swiftest and most satisfactory outcome. *Tempting though it is to march straight onto the alleged infringer's stand demanding to know what's going on, DON'T DO IT - in UK law you can be sued if you make a threat that proves to be groundless- speak to a lawyer first!*

## BEFORE ATTENDING ANY EXHIBITION



1

**ENSURE YOU HAVE DOCUMENTATION TO PROVE THAT YOU OWN THE COPYRIGHT/DESIGN RIGHT OR HAVE A LICENCE TO MARKET THE GOODS THAT APPEAR ON YOUR STAND.**



2

**MAKE SURE THAT THIS INFORMATION IS EASILY ACCESSIBLE. IN ANY DISPUTE THE ONUS IS ON THE COMPLAINANT TO BE ABLE TO PROVIDE EVIDENCE OF OWNERSHIP, ORIGINALITY AND DATE OF CREATION**



3

**Consider applying for a Registered Community Design (RCD)** before any exhibition. The RCD provides designers with the choice of both an Unregistered Community design (UCD) and a Registered Community Design (RCD). One application for a RCD will provide effective protection for up to 25 years in every EU Member State.



4

**It is very difficult to take action** at an exhibition or fair if there is no design audit trail or evidence to support UCD or a registration certificate available to support RCD. Applications can be made direct by email; [www.oami.europa.eu](http://www.oami.europa.eu)



5

**The RCD serves as a deterrent against infringement.** It is a rapidly obtained right with few formalities. It is a right valid throughout the EU market and it is a protection that allows you to:  
a) Forbid unauthorized production of your design in all the EU countries  
b) Stop imports into the EU at all possible entry points.

## AT THE EXHIBITION



6

**Don't forget to locate the ACID stand** where ALL exhibitors can gain immediate, FREE fast track advice if ACID are present, from ACID Accredited law firms. They can be contacted during the exhibition on +44 (0)7956 229876. If you are a member of ACID always display your ACID EXHIBITION STAND SIGN – deterrence is a key weapon.



7

**A simple spiral notebook for collecting business cards**, as well as being an excellent post-event marketing tool, is also invaluable for providing vital evidence if, in the future, you are unlucky enough to be copied. Don't forget to include the date, time and any action points or sampling given or promised. Remember – always ask for a business card – at a trade only show, all visitors should identify themselves to you on request.



8

**Do you have a No Photography policy?** Think about preparing your own No Photography sign. Remember in the age of digital cameras your designs can be across the other side of the world in seconds and mass produced before you pack up your stand from the exhibition.



9

**Don't forget to look out for the Accredited Exhibition Organiser sign** – it means that your exhibition organiser supports ACID, adheres to the criteria set by the organisation, declares a zero tolerance of plagiarism in order to create a safer trading environment for you as exhibitors.



10

**Protect yourself!** Generic legal agreements have been created to help you protect your best assets while maximising your commercial opportunities. A standard confidentiality agreement is an essential product in your IP tool kit while standard terms and conditions of business provide a sound platform for productive commercial relationships. ACID has developed many types of agreement to make your world a safer place for trading.

Confidentiality Agreement • Intellectual Property Agreement • Commercial Agents Agreement • Standard Terms and Conditions of Business • License/Royalty Agreement • Assignment of IP Rights • Freelance Designer Agreement • Deed of Assignment of Trade Mark • Assignment of Registered Designs and other IP Rights • Assignment of Intellectual Property Rights • Website Terms and Conditions of Business



[www.acidtrading.eu.com](http://www.acidtrading.eu.com)

## ●● IP doctor



In the latest IP Doctor article, IP lawyer Andrew Lee of McDaniel & Co answers your IP questions.

●●● What are the realities of protecting IP within the UK, the euro zone and worldwide? It seems protection and enforcement comes down to cost and some manufacturers feel they are unable to afford effective legal action?

●●● If a design or manufacturing company is creating intellectual property through their innovation, an integral part of any IP protection strategy is allocating sufficient budget to register new designs, if at all possible, and to allow for a budget to enforce those rights if there is infringement. With easy access to the UK and European Community-wide protection for designs and trade marks, the cost is much lower than it used to be. If a company is registering a series of designs the cost reduces considerably so for 11+ new designs it is as little as €60 to obtain a registered Community design which lasts for 25 years (renewable every five years) covering 27 EU member states. Many companies pay a small additional fee and defer publication (on the OHIM website [www.oami.europa.eu](http://www.oami.europa.eu)) so that competitors cannot see their new designs before they are launched and marketed.

The advantage of having a registered UK or EU design is that taking legal action is easier and more cost effective because you have a piece of paper, a numbered certificate which says you own the design and it cannot be used by third parties without authorisation. The EU design also has one set of uniform laws that apply in all 27 member states making enforcement simpler rather than having to rely on differing laws for different countries.

To ensure brand protection, there is an additional registration system for trade marks which can make registration more cost effective but there are no pan-national design registration systems outside the EU so national registration is necessary. Therefore, it makes sound sense to do a swot analysis of the countries in which your products will be marketed and allocate appropriate budget to ensure you have adequate IP protection.

●●● How can I ensure design protection in the USA?

●●● The USA does not have a design registration system as such and it is necessary to apply for

a 'design patent' in order to protect 3-dimensional wholly or partly functional designs. According to the United States Patent and Trade Mark office ([www.uspto.gov](http://www.uspto.gov)) "Design patents may be granted to anyone who invents a new, original, and ornamental design for an article of manufacture." Fees are expensive and it is advisable to instruct a local agent to draft and file the application. However, without such a registration it will be more or less impossible to prevent copies in the USA itself as there is no unregistered design right system unlike the UK or EU. Therefore, the investment could be worthwhile.

●●● What are the pros and cons of registered and unregistered design right in terms of effectiveness?

●●● Registered designs, both the UK and EU form, are the strongest form of protection because they give monopoly rights and can last for 25 years. They provide the holder with the exclusive right in relation to the making, offering for sale, marketing, importation, exportation or use of a product in which the design is incorporated or to which it is applied, or holding stock of such a product for those purposes. They provide protection against people who copy and those who do not. It is therefore a true monopoly. Unregistered rights on the other hand come in two forms. UK Unregistered design right lasts for 10 years from the end of the year of first marketing but remember third parties may copy the design after 5 years provided that they pay you a reasonable royalty. In Europe, Unregistered Community design right only lasts for 3 years from first being shown in public, however this right covers all of the EU. If a designer/manufacturer who relies on unregistered Community design decides to register the design they must do so within a year the design is first shown in public. Often, designers who are constantly innovating will, if there are budget restrictions, test the market to see if a product is successful and then, if so, allocate registration budget. Both unregistered rights rely on your design having been copied for you to be able to take action therefore if someone has a similar looking product which they have not copied from you, you cannot take action (unlike if you had the registered design). However, the advantage of unregistered rights is that they are free, arise automatically and are useful for fast changing markets (such as jewellery or clothes) where products have a short life span.

Those relying on unregistered UK or EU design right (if they are ACID members) can send their designs into the FREE and unlimited use of the ACID Design Data Bank to give dated evidence of the origination of designs, pitches and tenders. [www.acid.uk.com](http://www.acid.uk.com)

●●● Look alike products within my industry sector are prevalent, what is the best course of action when discovering an alleged infringement?

●●● ACID's advice is never to sue on principle. Establish what your objectives are in taking legal action and take specialist advice on the merits of your particular set of circumstances. Ask yourself, "If I take legal action against copyists, what do I want to achieve?" Consideration should be given to obtaining an undertaking that further alleged copy products will not be sold. Try to obtain damages to reflect quantifiable loss if any can be identified and obtain an admission of liability and your costs paid. Taking legal action does not necessarily mean going all the way to court. Often objectives can be achieved by a strong letter before action (LBA) in a cost and time effective way. Of ACID's 400+ settlements, less than 5 have reached a final Court hearing. Often, by taking legal action and obtaining a settlement this can be communicated in the trade press to reinforce your IP strategy and delivers a strong message that if anyone does copy you, you will sue them.

●●● What is a letter before action (LBA) or a cease and desist letter?

●●● The purpose of an LBA or "cease & desist" is to set out the basis of your complaint, warn of possible Court action and offer an opportunity to provide evidence that they have not copied you or admit liability without expensive Court action. The LBA will normally give a time limit for a reply and will reflect established facts about the complaint to achieve, hopefully, an early settlement. Court Rules also require an LBA to be sent before any proceedings are commenced, except in very urgent cases.

An effective LBA will take time to prepare – it is not just an ordinary letter written on solicitor headed paper. It encompasses every possible aspect to achieve your objectives in taking action against copyists. It is important to get the LBA right so that your case is clear.

An IP lawyer will need to be satisfied, beyond ANY doubt that you actually own your rights, just as you would when buying a house – think about what it costs to establish title when you are buying a property! You are relying on your solicitor's experience to spot all the potential pitfalls to act in your best interests – they are relying on being provided with all the ammunition possible to fight for your rights.

●●● How effective is an LBA?

●●● An effective LBA can often result in a speedy, cost effective settlement with many (if not all) objectives being met. Before taking action you should also consider the legal purchasing power of the opponent – there can be difficulties when two parties with unequal market power and resources resort to Court action.

# FASHION FRINGE

## FINALISTS IN ONE TO ONE MENTORING WITH ACID

The announcement of 3 Fashion Fringe finalists was made recently at The Club at The Ivy in London by John Galiano, Chairman of the Fashion Fringe Covent Garden platform. In the lead up to the finals in September at London Fashion Week, all Finalists will receive mentoring in various different skills by business specialists. Last week the trio of finalists, Alice Palmer, Jade Kang and Corrie Nielsen were briefed on intellectual property issues in a one to one mentoring by Anti Copying In Design's CEO Dids Macdonald. During the session Dids identified specific areas and concerns of the individual designers and gave an overview of practical ways in which all designers can better protect their creativity and innovative ideas. All Finalists were given a FREE year's membership of ACID. On the right are a few tips from the mentoring session.

**BE VIGILANT** – Not just about others copying your designs but actual prototypes and samples can be stolen too. So ensure that there is CCTV and adequate security for your design studio.

**KEEP A DESIGN AUDIT TRAIL** – Sign and date all your work. Register your designs in the UK or EU if at all possible. [www.ipo.gov.uk](http://www.ipo.gov.uk) or [www.oami.europa.eu](http://www.oami.europa.eu). ACID members can use the free ACID Design Data Bank to deposit their design at key stages from the seed of an idea to finished product. This provides valuable third party evidence to support prior art. [www.acid.uk.com](http://www.acid.uk.com)

**IF YOU DON'T WANT TO BE COPIED, SAY SO!** Make a strong statement on your website, promotional material, product labeling such as, "All intellectual property rights are and will remain the property of (insert your name). Any infringements will be taken seriously."

**AGREEMENTS** – **NEVER** send/leave prototypes or designs without a signed agreement

**SAY NO TO PHOTOS** – Unauthorised photography is the fastest and easiest way for other's to steal your ideas.



## BIID & A©ID INTELLECTUAL PROPERTY AND THE INTERIOR DESIGN SECTOR



How to fully protect, exploit and commercialise your IP

In the first of a series of intellectual property seminars led by ACID Accredited intellectual property lawyer Jo Potbury of DMH Stallard at the newly formed British Institute of Interior Design in Chelsea Harbour, delegates heard about the importance of protecting design drawings, registering new designs and the creation of an intellectual property strategy.

Jo Potbury said, "I cannot stress enough the importance of protecting your Intellectual Property rights. Intellectual Property is a fundamental part of your

*business and unfortunately, the more successful your business, the more likely you are to come under threat." Jo referred to Daniel Defoe's well known quote to underpin her message, "To print another Man's copy is much worse than robbing him on the Highway; for the Thief takes only what he finds about him, but the Pirate printer takes away his inheritance [which] both is and ought to be due, not to the Author only, but of his Family and Children."*

Using the recent Morgan versus PTT case to demonstrate some of the problems faced by those who respond to tender opportunities and find that their submission is used by third parties without authorisation, Jo set out ways in which belt and braces can be placed around submissions and responses to tender. One

of the ways is to send copies of tender/pitch responses to the ACID design data bank and ensure that the recipient is aware that a copy has been sent to ACID. In this way, it ensures that the subject of IP ownership is raised and asserted.

One of the objectives of the new BIID partnership is to feature IP as an integral part of BIID's CDP programme and ACID is looking forward to working closely with BIID to achieve this objective and to offer advice on IP issues which affect the interior design sector. One of the main benefits of this partnership is a 20% discount off ACID membership to BIID members.

To celebrate the beginning of the ACID/BIID partnership delegates will receive a complimentary copy of the ACID Safe Pitch Kit. In it they will find tips, guidance and

advice on various aspects of IP and some standard generic re-usable agreements which can be added to standard terms and conditions of business. These comprise a Confidentiality Agreement, Intellectual Property Agreement and Licence/Royalty Agreement. The intention is that bespoke clauses can be added to personalise them to suit particular requirements. Further advice can be accessed through Jo Potbury of DMH Stallard on 01293 605596 or email her on [joanna.potbury@dmhstallard.com](mailto:joanna.potbury@dmhstallard.com). There would be a charge for any additional work and ACID members receive a discounted hourly rate.

## ACID AND MUSEUM OF BRANDS FORM NEW AFFILIATE PARTNERSHIP

A new Affiliate Partnership has been launched between ACID (Anti Copying in Design) and The Museum of Brands. The Notting Hill based Museum of Brands houses an evocative and inspiring collection of over 12,000 original items, a kaleidoscope of images and iconic brands demonstrating just how well loved brands have evolved through their creative use of packaging and advertising.

A visit to the Museum of Brands is a fantastic journey through famous, household brands that have survived the test of time, all of them relying on the wealth of intellectual property they have created to secure brand survival. This is also a compelling, practical example where visitors can understand the importance of Intellectual Property and how it fits in with trade marks and packaging design.

Intellectual Property is high on the Museum of Brands list of priorities and, in a recently formed initiative with the UK Intellectual Property Office, visitors are encouraged to take part in a practical tutorial, encouraging

them to appreciate the purpose of different IP rights and the fundamental role they play in today's successful brands. The museum hosts around 100 events per year. The affiliation assures a 15% discount for all ACID members and affiliates.

Dids Macdonald, ACID's Chief Executive said, "I am delighted about the new partnership and ACID will work positively with the



Museum of Brands in their ongoing programme to raise awareness about the meaning of intellectual property and its relevance to society. Having a sound intellectual property strategy is a key component of any successful enterprise and it is interesting to note that raised Government awareness will concentrate on policies

to protect this type of investment from counterfeiting and free-riding in the future." Chris Griffin, Chief Executive of the Museum of Brands said, "All the successful, long established brands that we present in the Museum defend their intellectual property from being copied, so we are very pleased to affiliate and support the work of ACID."

Museum of Brands: The Museum of Brands,

Packaging and Advertising is a UK Registered Charity no 1093538. The Museum's role is to educate a broad range of audiences on the subjects of brands, packaging and advertising, through providing access to a unique collection open to the public six days per week. The collection contains thousands of examples of how intellectual property rights protect iconic British brands. A quarter of Museum visitors are students, and over 100 companies hire the museum each year for creative sessions and special events. The Museum recently collaborated with the IPO to produce an online higher education resource. <http://www.museumofbrands.com/IP/home.html>



website: [www.museumofbrands.com](http://www.museumofbrands.com)

## ●●● acid members

# ACID Member's Hit Hat At Ascot Races

ACID Member Hsiao-Chi Tsai recently wowed Ascot Races with her innovative reversible hat. Specially designed to be worn in more than one way, Tsai ensured that she had sent all details of her design to the ACID Design Data Bank before leaving for Ascot, where it would receive maximum exposure.

By ensuring that her design was recorded on the ACID Design Data Bank Hsiao-Chi had obtained third party independent proof of the date of the design's existence, thereby giving her dated evidence which potentially could pre-date a would be copyist. If you are relying on unregistered rights such as UK Unregistered design rights and EU Community design rights it is important that you have a paper trail of evidence showing the progression of your design. Copyists can rarely provide this type of independent information as they simply reverse engineer from the finished product so that they can replicate it. The ACID DDB will accept design progression as well as the final example and

is free and unlimited to all ACID Members.

Hsiao-Chi commented, "Making a dynamic hat is one of the latest developments of using my unique three dimensional textile

technique which I first developed in 2005 at the Royal College of Art. This sculptural hat was specially created for a lady to

wear to Royal Ascot this year. Submitting images of my latest creation to the ACID Design Data Bank, before the opportunity to expose it for the first time in public, really gives me confidence to showcase my



work in any big event, like Royal Ascot!"

Hsiao-Chi Tsai already has an impressive portfolio of work for such people as Harvey

Nichols, The Royal Botanic Kew Gardens and London's South Bank Centre which can be viewed on the website she shares with sculptor and collaborator Kimiya Yoshikawa <http://www.tsai-yoshikawa.com>

## Welsh Company Nomad Meet Sir Stirling Moss at Mobility Roadshow

ACID Member Nomad Wheelchairs, of Ciliau Aeron, near Lampeter, had the honour of meeting Sir Stirling Moss at an exhibition aimed at the disabled market – the Mobility Roadshow, at Peterborough recently.

As a wheelchair design and manufacture company, Nomad was selected out of some 100 exhibitors to meet Sir Stirling, due to Nomad Director Mark Owen's activities in motor racing, as well as the innovative new products they launched at the show.

"Sir Stirling was on fine form", says Jon Owen, Mark's brother and co-Director of Nomad, "you can still see that fire in the eyes".

Mark Owen and Sir Stirling swapped race track stories, as well as some technical thoughts on the one of Nomad's new products, a one-arm drive for a wheelchair, which makes use of motor racing technologies.

Mark adds "Getting positive technical feedback from a legend like Sir Stirling was amazing. He immediately saw the benefits

of applying the technology we have and thought we should do very well with it."



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



# latest new members list ●●●

Company Name	Industry ID	Company Name	Industry ID
Infinity Design Limited	Ceramics	Peace of Mind 925 Ltd	Jewellery
York School of Jewellery Ltd	Education	Tuscanor Limited	Lighting
Ruth Bridgeman	Fashion	Scenestealer Productions Ltd	Other
Ama Darko Williams	Furniture	Caroline Parrott Contemporary Aluminium	Other
Benjamin Adam	Furniture	Boxpark Ltd	Product Design
Working Detail Ltd	Furniture	Tactical Solutions (Northern) Ltd	Product Design
Solarcontemporary	Furniture	John Etherington	Product Design
Looby Lou Designs	Giftware	Lucian Boatright-Roberts	Product Design
MX Graphic Design	Graphics	Product Design Understood Ltd	Product Design
Paula Jane	Greetings Cards	Walk of Fame Ltd	The Arts
Pictish Designs	Jewellery	Bluw 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.

## ACID Member EGAR

Congratulations to ACID Member Sue Scott Horne of Eggar who has just been nominated for another award for her educational resource enterprise. Sue's inspirational story can be viewed at [www.everywoman.com](http://www.everywoman.com) and we would urge ACID Members to read the advice given by Sue. If you would like to vote for her to receive a Daily Mail Inspirational Woman Award Sue will put the link on her own website as soon as it is available. [www.eggar.co.uk](http://www.eggar.co.uk)

## ALLIANCE PUTS ITS WEIGHT BEHIND ACID'S LETTER TO BARROSO

The Alliance Against Intellectual Property Theft has supported ACID's letter to Mr. Barroso (see back page) by writing directly to the President of the of the EU Commission. Susie Winter (Director General of the AAIPT) recently sent the following letter.

Dear Sirs

Established in 1998, the Alliance Against IP Theft is a UK-based coalition of 20 associations and enforcement organisations with an interest in ensuring intellectual property rights receive the protection they need and deserve. Our members include representatives of the audiovisual, music, video games and business software, and sports industries, branded manufactured goods, publishers, retailers and designers.

The Alliance is concerned with ensuring intellectual property rights are valued in the UK and that a robust, efficient legislative and regulatory regime exists, which enables these rights to be properly protected. We are active members of the UK IP Crime Group and the EU Observatory on Counterfeiting and Piracy.

I am writing in support of recent correspondence you will have received from Dids Macdonald, Chief Executive of ACID (Anti-Copying in Design) and a member of the Alliance.

Like ACID, we are disappointed that the current draft of the Anti-Counterfeiting Trade Agreement (ACTA) allows for a partial exclusion of industrial design rights. Given that design can often not rely on other protected right such as trade marks or copyright, this exclusion weakens and undermines the role that industrial design rights play in today's economy. We are also concerned, given the importance of this document, at the impact it will have on the wider debate on the need for more effective enforcement of all intellectual property rights.

We urge the Commission, in its further negotiations on ACTA, to actively lobby for this exclusion to be removed and the same protection given to industrial design rights as afforded to trade marks and copyright.

Yours sincerely

Susie Winter  
Director General

●●● acid member

## Robert Welch Designs

is pleased to announce the launch of its latest cutlery pattern – Malvern – available exclusively to the hospitality sector from autumn 2010.

Inspired by the contours of the nearby Malvern Hills, this is an elegant and timeless design that flares softly to a curved base. The handles have a substantial feel and sit comfortably in the hand. Spoons and forks are made from 18/10 stainless steel; knives are forged from a single ingot of especially hardened stainless steel that maintains a cutting edge. This design is available in a bright finish only.

The company has been supplying high quality traditional and contemporary cutlery to the hospitality industry for over 50 years and believes in beautiful functional design at an affordable price. This new pattern will be on display at the Restaurant Show – 11-13 October (stands B59 and B61) together with the full range of cutlery and the award-winning Signature knives and utensils.

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



ANTI COPYING IN DESIGN

●●● events and exhibitions

EVENTS

ACID Seminar – Say No To Copying – Make Money From Your IP. 2.00pm 7th September, Autumn Fair Hall 4 Catwalk Stage, NEC

ACID Presentation – Design: The Challenges – Using IP as a Positive Force with Tanya Ewing for the UKIPO at Newport 12.45-2.00pm 20th October 2010

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

EXHIBITIONS

Autumn Fair NEC, Birmingham 5 – 8 September 2010

www.autumfair.com

ACID Stand Number – Entrance to Hall 3 L02



Top Drawer Autumn Olympia, London 12 – 14 September 2010 www.topdrawer.co.uk



GLEE NEC, Birmingham 20 – 22 September www.gleebirmingham.com

ACID Stand Number – Hall 5 Stand G68



100 Percent Design Earls Court, London 23 – 26 September 2010 www.100percentdesign.co.uk

ACID Stand Number – Stand C26



Decorex Royal Hospital Chelsea, London 26 – 29 September 2010 www.decorex.com



To: Mr José Manuel Durão Barroso President of the EU Commission Karel De Gucht EU Commissioner to External Trade

Dear Sirs

I am the CEO of ACID (Anti Copying in Design) a trade organisation of over 1000 members in the UK. Our members work in many different design sectors within the UK creative industries, many of whom work in a global marketplace. Our sole purpose is to assist our members in the protection, exploitation and commercialisation of their intellectual property. Our objectives are education, prevention, deterrence and support underpinned by a strong lobbying group - ACID LOBBY. We view the creation of intellectual property as a positive force and have striven through the past 12 years to provide a safer trading environment so that original design can flourish without the risk of IP infringement.

The Creative Industries sector plays a crucial role and contributes 8.2% (£118 billion) to the UK's GDP and this is expected to grow on average 4% a year from 2009CBI. There are approximately 2 million organisations within the Creative Industries sector and an estimated 232,000 designers in the UK (with a combined income of £15b) Design Council 2010. The majority of the UK's design companies and designers are micro enterprises or SME's with less than 4 employees.

Following the publication of the draft of the "Consolidated text concerning the Anti-Counterfeiting Trade Agreement (ACTA)" in Wellington, New Zealand during the 8th negotiation Round, ACID believes this is a really positive initiative and strongly supports both the nature and the scope of the Agreement. Intellectual Property (IP) will be one of the key factors in global economic growth and financial recovery and we firmly believe ALL IPRs must be protected across all legal, commercial and procedural levels.

The creation of a global agreement in the form of ACTA to establish international standards on intellectual property rights enforcement throughout the participating countries is something which all Governments, intellectual property organisations, legal professionals and IP creators must welcome. All stakeholders recognise the fact that this is necessary due to the increase in global trade of counterfeited goods and pirated copyright protected works. Thus, the scope of ACTA is quite broad, and establishes an effective international enforcement of the IP rights included in the TRIPS agreement through border actions, civil legal actions, criminal actions and fighting in the digital environment.

However, whilst welcoming this agreement, ACID has grave concerns about the content of art.2, section 2, par.2 concerning "Border Measures" in ACTA as below reproduced:

For the purposes of this section, "goods infringing an intellectual property right" means goods infringing any of the intellectual property rights covered by TRIPS. However, Parties may decide to exclude from the scope of this section, certain rights other



than trade marks, copyrights and GIs when [not protected exclusively by copyright and trade mark systems and] [protected by [nonproduct or sector-specific] [registration] sui generis systems.]

Our concerns are in the content of this paragraph which allows a partial exclusion of the industrial design intellectual property rights, foreseen in art 25 of TRIPS, where design cannot be protected by other rights such as trade marks or copyright, which evidently weakens and undermines the role that industrial design IPRs play in today's economy.

We must stress that rules on trademarks and copyright can offer a protection to industrial design only for residual cases such as shape trademarks and industrial goods that have artistic value, which represent a limited and particular amount of cases if compared to the estimated bulk of the European design production. Industrial design is a distinguished category among IPRs with its own peculiarities in terms of typology of products/services that need to be protected; an appropriate and equally effective alternative form of protection can seldom be applied.

In most countries there are criminal sanctions for copyright and trade mark infringement but still none for industrial design right infringement. There is also disproportionate strength of the copyright lobby which extends on behalf of entire record, film, computer, software, book publishers sectors etc) and there is nothing equivalent for industrial design right. It is also true to say that whereas the copyright lobby benefits international organisations, most European SME's are not adequately represented on industrial design right issues.

At this stage, the content of ACTA, with reference to the industrial design, risks is perceived as a step back opposing the common effort for establishing a concrete "IPRs friendly contest" where all IPRs have equal value and dignity because all of them are contributing to innovation and wealth. Therefore, we strongly request the European Commission that continuing work in the ACTA ongoing negotiations should include industrial design in the section regarding "Border measures", likewise in the sections concerning Civil and Criminal Measures. In our opinion this is the most concrete and appropriate way to establish a stronger enforcement IPR system which offers international standards for ALL intellectual property rights including industrial design.

I would be very happy to visit Brussels and explain our case to the EU Commissioner on External Trade, Mr de Gucht. Alternatively, I would be delighted to set up a video conference call with him and look forward to hearing from you in this respect.

Dids Macdonald CEO ACID



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www.acid.uk.com

www.acidtrading.eu.com

www.acid.eu.com/news

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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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Membership fax: +44 (0)845 644 3618

e.mail: help@acid.uk.com

ACID Members Legal Hotline: +44 (0)845 230 5742

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.mcdanielandco.co.uk

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

+44 (0) 0845 230 5742