

CHAPTER 19: INTELLECTUAL PROPERTY

QUESTION 1

Outline the type of designs that may be registered under the Registered Designs Act 1949. How long will protection last?

Answer:

- Under the Registered Designs Act 1949 a design right is defined as the appearance of the whole or part of a product. Product covers any industrial or handicraft item other than a computer programme.
- The design can be of the product itself or part of the product, it can be mass produced or a one off item, it does not need to have aesthetic quality but it must create a different overall impression on the informed user.
- It covers 3D designs (e.g. the shape of light fittings, toys, and containers) and 2 D designs (e.g. patterns for wrapping paper, wall paper and fabrics).
- The design must be new and have individual character.
- The design must not be contrary to public policy or morality, make use of protected emblems or flags of other countries, or conflict with other registered designs.
- A registered design right lasts for 5 years but can be renewed up to a maximum of 25 years.

QUESTION 2

Charles, the author of a series of 'the worst wizard' children's books, visits Jane and accidentally leaves behind a copy of the next as-yet unpublished, 'The worst wizard goes camping' novel. Jane takes a copy of the entire book before returning it to Charles, and then gives book-readings, charging an admission fee of £5 per person. Explain how copyright law works and whether there has been a breach of copyright.

Answer:

- The law of copyright is governed by the Copyright Designs and Patents Act 1988. Copyright is an automatic right which is acquired by bringing a work into existence.
- In order for copyright to have arisen the work must fall within one of the categories protected by the CDPA 1988. These include an original literary work. Original means that it must not be copied from another source. It must be in permanent form (recorded in some way).
- 'The worst wizard goes camping' is a novel written by Charles. It falls within an original literary work. Although it is not published it is in permanent form because it has been written (or word processed).
- The creator of the work is usually the owner of the copyright and therefore, unless Charles wrote the book in the course of his employment, he will be the owner of the copyright.

- Copyright protection for an original literary work is 70 years from the death of the author (CDPA). Charles is clearly alive when Jane copies the book as she later returns it to him.
- Primary infringement of copyright is where someone exercises any of the exclusive rights of the copyright owner without his permission and this includes copying the work, and performing the work to the public. Jane has done both.
- Where copyright has been infringed the owner can take civil action. Charles will be able to take civil action against Jane and may seek an order preventing Jane from continuing with the readings and to hand over any copies she has of his book. He may also claim any profits she has made.

QUESTION 3

Pedro believes he has invented a waterproof mobile phone case totally different from anything he has seen or heard of and wishes to patent it. He has not told anyone about it but is thinking of taking his invention to a local trade fair next week. Advise Pedro on the steps he will need to take to register a patent in the UK and whether he should visit the trade fair with his invention before registration.

Answer:

- A patent is an exclusive right given to an owner of an invention to make use of and exploit their invention for up to 20 years in exchange for a full description of the invention.
- The process of registration of a patent is complex and Pedro may prefer to employ a patent agent to make the application on his behalf.
- The application is made to the UK Intellectual Property Office on line or by post. The application must include a description of the invention stating how it works and how it could be made, drawings to illustrate it, the technical features that are to be protected and a summary of all the important specifications. The specifications have to be very exact and comprehensible enough for a person skilled in the art to be able to produce the invention.
- When an application is received by the IPO will check that the specifications describe something that is new and inventive. If all the requirements are met a patent is granted and a notice is published in the Patents Journal. After 4 years the patent must be renewed annually for up to 20 years. (The renewable fees increase as the patent gets older).
- A patent can only be granted for an invention if, the invention is new, it involves an inventive step and it is capable for industrial application, Patents Act 1977. New means new to the public and therefore if Pedro tells people at a trade fair about his invention it will no longer be 'new'. He will need to patent his invention before visiting the trade fair with it.

QUESTION 4

Natural Beauty Ltd manufactures a range of cosmetic items. The company has expanded over recent years and the managing director believes that they should register the green leaf logo the company puts on its goods as a trade mark. Advise the company on the process and benefits of registering the mark in the UK.

Answer:

- Trade marks are a type of intellectual property which protect any signs (like brand names and logos) that distinguish goods and services in the marketplace.
- An application to register a trademark is made to the Trade Marks Registry (online or by post with the relevant fee). The application must include representation of the trademark itself and a statement of the goods (beauty products in this case) or services to which the trademark is to apply.
- The Trade Marks Registry classifies goods and services into 45 classes. An applicant has to state which class or classes of goods or services he is applying for. If the registrar has no objections to the application (e.g. it is likely to deceive the public or contrary to public policy) it will be published in the Trade Marks Journal for two months. During this time anyone can oppose it. Once any objections are resolved the trademark will be registered and a certificate provided.
- Once registered Natural Beauty Ltd will be entitled to put the ® symbol next to the brand and will have exclusive rights in that mark. They can use the mark in various ways, including putting the sign on their goods and using it in advertising. It is a property right and they can sell it, assign it or licence others to use it.
- Natural Beauty Ltd can take civil for any infringement of their trademark.
- The Trade mark will be registered initially for 10 years but can be renewed for further periods of 10 years indefinitely.