

Dids Macdonald, CEO of
Anti Copying in Design
and Gavin Llewellyn
Partner, Stone King and
ACID Legal Affiliate

It's time to get "IP Savvy!"

London 23 May 2018



About ACID

It's time to get "IP Savvy!"

London 23 May 2018





**“imitation
isn’t flattery if
it costs
you
YOUR
livelihood”**



**protect & safeguard your IP and maximise
growth by creating a proactive IP strategy**



**A brand of deterrence
against IP & design crime**

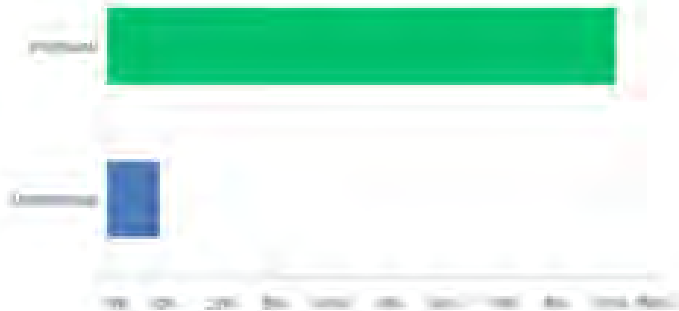
Recent ACID research confirms the need for creating a proactive IP strategy to protect your IP to enable growth



A brand of deterrence
against IP & design crime

Do you think copying, generally, is
intentional or **unintentional**

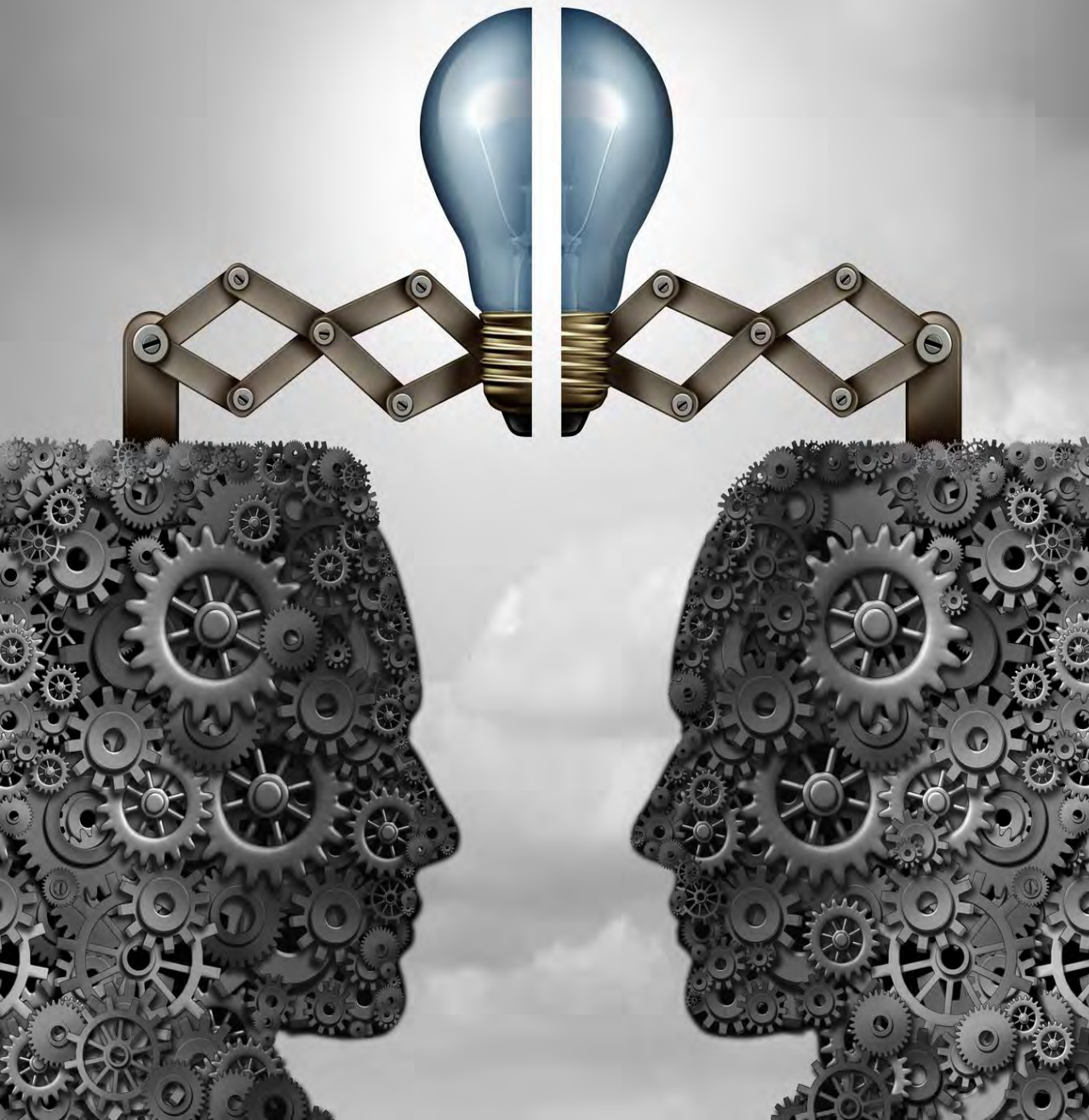
- Intentional **90%**
- Unintentional **10%**





We **champion** original design, its **protection** and **enforcement** and work on behalf of our members as a leading UK campaign group for **design law reform**.

15 year ACID campaign resulted in **2014 IP Act** and **intentional infringement** of a **registered design** is now a **crime**

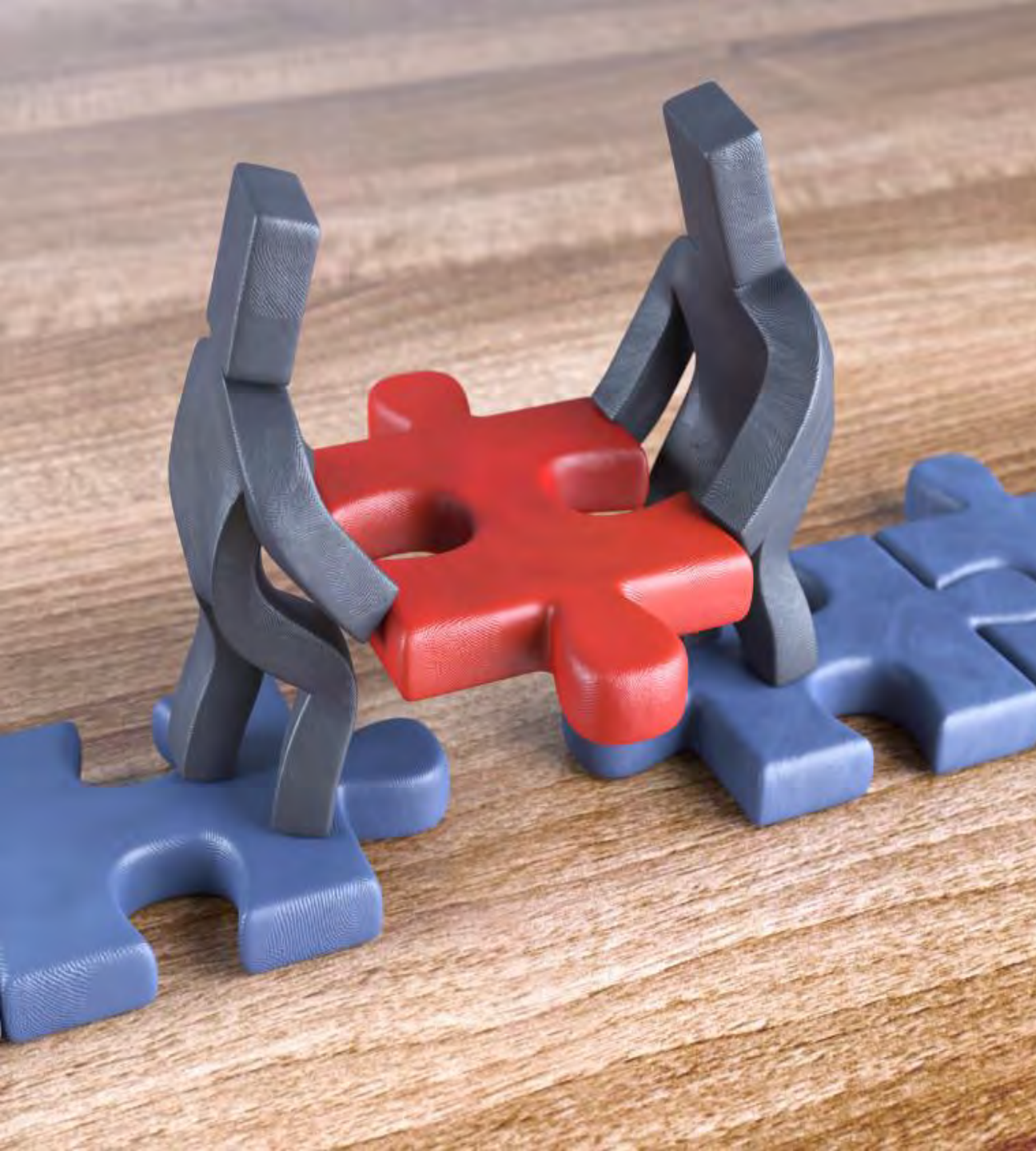


ballet, film, theatre, specialised photographic images, film libraries, screenwriting, independent film makers, universities, creative story telling, lifestyle picture libraries, screenwriting, creating digital content, graphic designers, performance practitioners, interactive system designers, visual arts, solicitors, independent film makers, architects, creating stories unleashing children's talent, washable, squashable children's high chair harnesses, online platforms, government, publications, graphic designers, brand image creators, not on the high street.....



**Intellectual
Property?**

**One size
doesn't fit
all needs!**



**But there
are common
themes**

“my **ideas** & **writing** skills
are not just my **brand**, they
represent me as a person”

“**creating
graphic
design** is how
I earn my
living”

“**designing** and
making **new
products** is how my
workers earn and
how we develop our
business”

“my income includes royalties on
the sales of **recorded music**
which has been eroded **by illegal
downloading** of music files”

“when we **pitch**,
our innovative
ideas & approach
win the day!”

“our **know how**
and trade secrets
are what makes us
unique to our
customers”



How
important
is **IP** to
your
business?

“I need to understand and identify what IP I own relevant to my business and how I can leverage it better to achieve growth - and how I can protect it effectively”

© now and for the future.....



How
important
is **IP** to
your
business?



Intellectual capital
is a critical asset,
the **DNA** running
through most
creative businesses
whether micro or
macro



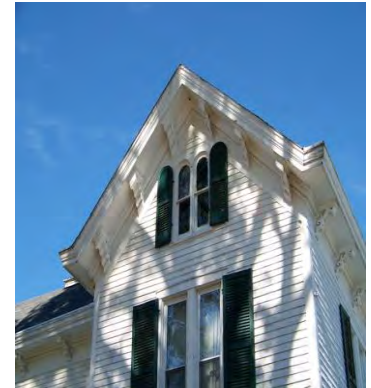
Intellectual property
is a **property** right -
lease, sale, sub-
letting, rent, share
you don't
want...**squatting?**
IP is about
ownership and
permission.



WHAT IS IP?

Physical Property:

House, car, house contents, clothes, belongings



Intellectual Property:

Copyrights, Patents, Trade Marks, Designs,
Trade secrets

IP

copyright

It's time to get "IP Savvy!"



Think about what IP rights there are in a smart phone!



COPYRIGHT

Copyright: Every new innovation or technology is protected by copyright almost by default. **No registration is required but ACID members can lodge on our IP Databank.**

Books, newspapers, publishing, music, film, computer software, TV, radio, satellite, internet, databases, art, photography, surface decoration, typographical arrangements.

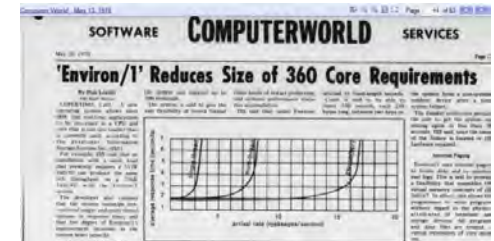
Protection from **25** years to life of author plus **70** years delivering strong protection for three generations.



[This Photo](#) by Unknown
Author is licensed
under [CC BY-NC-ND](#)



[This Photo](#) by Unknown Author is licensed under [CC BY-SA](#)



COPYRIGHT

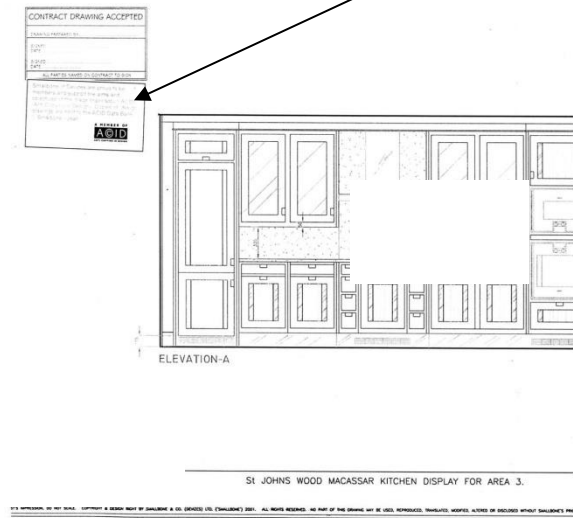
Case study



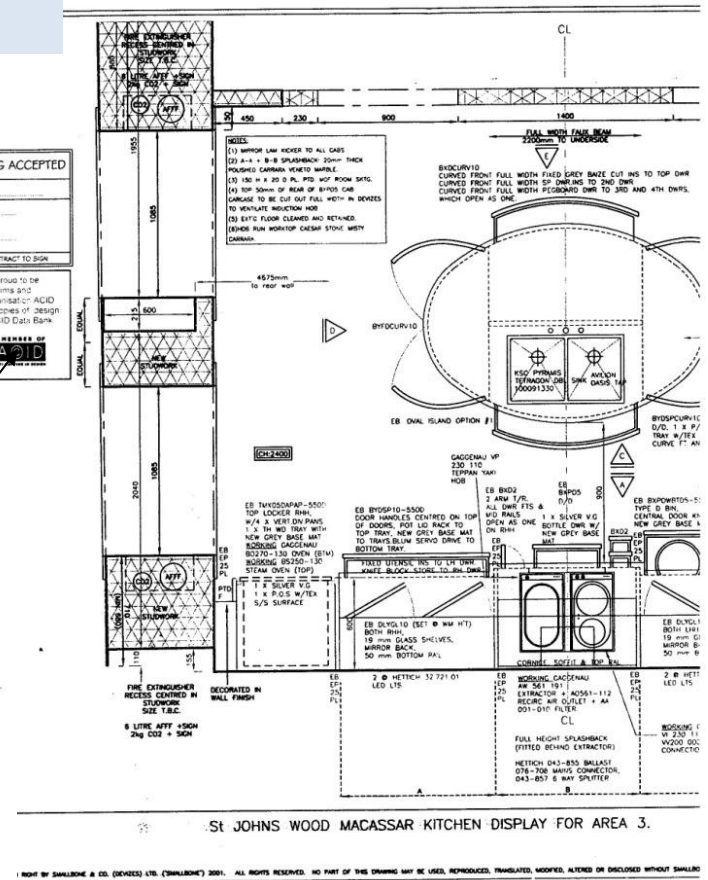
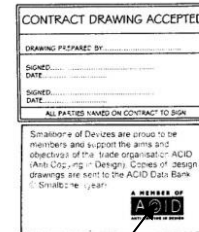
M & S T-shirt Rachael Taylor original artwork on right

Rachael Taylor and
Marks and Spencer

IP ownership – communicate it = DETERRENCE!



Burbidge are active members of ACID (Anti Copying in Design). All intellectual property rights in our designs are and will remain the property of **Burbidge**. All infringements will be taken seriously. All our designs and copies of tenders are sent to the ACID IP Databank, each file has its own unique reference number



Members use the ACID brand to take every opportunity to communicate an anti copying message i.e. here to those who may take plans and copy them

Use design drawing plans to communicate your IP ownership and creation

Think about what IP rights there are in a smart phone!



A©ID[®] FAQ's

The IP myths - the most frequently asked questions or statements.

- How do I register my copyright?
- If someone else makes 7 changes or a certain percentage change to an artwork it becomes a new design?
- My freelance designer doesn't have any claim to the rights in our commissioned artwork
- If I do not include © symbol I will not benefit from copyright protection

TRUE OR FALSE?



Essentials of an IP Strategy

Don't fall into a trap that many do – know your IP rights and how they protect you

Design right

It's time to get "IP Savvy!"





DESIGNS

Four different types of design protection in UK!

- UK registered designs
- EU registered designs
- EU unregistered designs
- UK unregistered designs

**First 3 are all based on the same test.
The 4th is different!**

IP



IP

DESIGNS

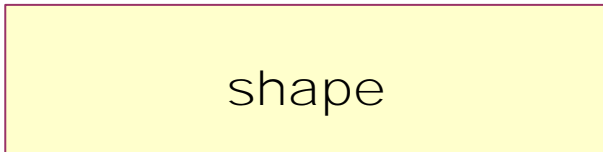
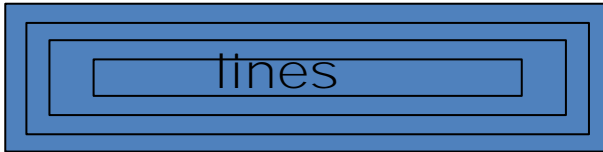
UK unregistered design rights

- Protects functional designs
- Protects any original aspect of shape or configuration
- Lasts for **10—15** years

EU (and UK registered) design rights

- Protect the novelty and individual character of a design & in particular contours, shape, lines, colour, ornamentation, materials and texture
- Registered – lasts **25** years
- EU unregistered design right – lasts **3** years

UK and EU Registered Design



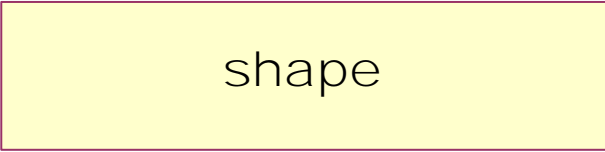




**Registration
provides stronger
protection against
copying**

What is a design?
“**design**” means the
appearance of the
whole or a part of a
product resulting from
the features of, in
particular, the ...

EU unregistered design lasts **3** years

UK unregistered design lasts a max of **15** years

EU		UK
✓		✓
✓		✗
✓		✗
✓		✓
✓		✗
✓		✗
✓		✗



**What is the
difference
between EU
unregistered
designs and UK
unregistered
designs?**

Examples of registered designs



**Designs:
registration,
protection and
enforcement**

000642376-0008 [+ info](#)



Design information

Design number 000642376-0008

Filing date 22/12/2006

Locarno class number 06.03

Indication of the product Furniture

Design status Registered and fully published (A.1.)

Reference nhr/stott/001

Owner information

Owner ID number 281053

Owner name Paul Stott Design Limited

Representative information

Representative ID number 31959

Representative name MCDANIEL & CO.

Design number
4003081

Status
Registered

Registration date
6 June 2007

Renewal date
6 June 2017

[Overview](#) [Illustrations](#) [Names and addresses](#) [History](#)

Application date

6 June 2007

Description

A pedestal table

Classification

Class 06 - Furnishing

Sub class 03 - Tables and similar furniture

Indication of goods Tables - Circular and oval



The aim of this guidance is to help designers when registering designs

OBTAIN THE BROADEST POSSIBLE PROTECTION



When selecting representations ensure they **ACCURATELY** reflect what the design is intended to protect and ask...
"How might the design be exploited by others and does the application cover this design"

If filing a UK design and you want to protect the **SHAPE** either file in cad or, preferably, line-drawing and don't forget to use the

DISCLAIMER OPTION

to disclaim ornamentation & surface decoration.

The key is

WHAT AM I TRYING TO PROTECT?



Consider making

MULTIPLE APPLICATIONS

when filing for UK registered design right protection, so file applications in **CAD** (using a disclaimer), **LINE DRAWINGS** and in the various design **COLOURS** of the intended product range



Find the **BEST WAY** to protect the shape of a product when registering your design

By filing **LINE DRAWINGS**

To represent the **SHAPE OF YOUR DESIGN**



ENSURE CERTAINTY & CLARITY WHEN SUBMITTING REGISTERED DESIGN APPLICATIONS

Following the recent disappointing supreme court decision in the Magmatic Limited v PMS International Group plc judgment, concerning the iconic Trunki ride-on suitcase and the **uncertainty** that ensued, the Intellectual Property Office (IPO) has issued a practice notice <https://www.Gov.Uk/government/publications/designs-practice-notice-dpn-116> however, in an ACID survey 85% felt they would still need to consult a lawyer to register so acid has provided these ACID tips and advice for guidance on the use of representations of designs when applying for UK registered designs. They are not intended as legal guidance and you should always refer to the intellectual property practice notice.

"What you submit is what you rely on, so you've got to make sure it's right."

Dids Macdonald, ACID CEO.



TRUNKI LESSONS LEARNED

To the right is a line-drawing #1 followed by a grey scale drawing (cad) #2
If you file using either

REMEMBER

to disclaim ornamentation & surface decoration #3



#1

SHOW A DESIGN IN LINE DRAWING



#2

THE DESIGN SHOULD SHOW OUTLINE IN GREY SCALE



#3

REGISTER ALL DESIGNS WITH ALL POSSIBLE SURFACE DECORATIONS IN COLOUR COMBINATIONS TO BE SAFE

Think about what IP rights there are in a smart phone!





**ACID IP
DATABANK for
unregistered
designs and
copyright works
– lock up your
IP, unlock
growth!**

A©ID[®] FAQ's

The IP myths - the most frequently asked questions or statements.

- If someone else makes my design in a different material it becomes a new design
- Registering designs is useless because if you make one slight percentage change in the design the registration is invalid
- I want to register my design to protect the way it works

TRUE OR FALSE?



Essentials of an IP Strategy

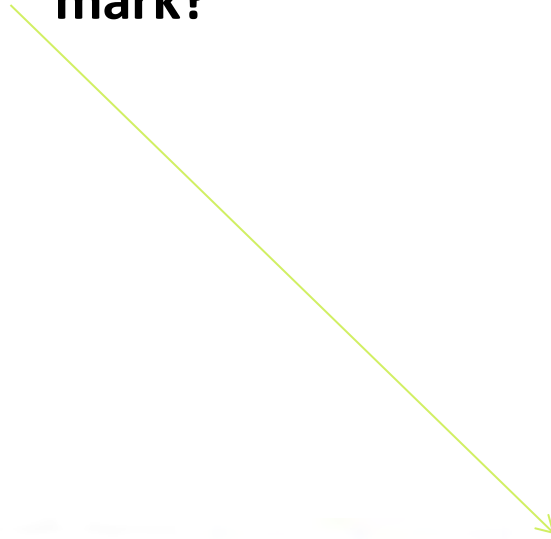
Don't fall into a trap that many do – know your IP rights and how they protect you

Trade marks

It's time to get "IP Savvy!"



What is the value of a registered trade mark?



Brand Protection

A sign which is capable of being represented **graphically** - **A sign** which is capable of **distinguishing** the **goods** or **services** of **one business** from **another**.

REGISTERED TRADE MARKS

- Protects names, logos, slogans, shapes, smells. The most well known and best trade marks are invented names e.g., KODAK, ADIDAS, COCA COLA, BASS (the oldest TM)
Confers monopoly

PASSING OFF

Unregistered Trade Marks

If you do not register – need to rely on common law, unsatisfactory!

Passing off difficult to prove





logo

A combination of
3D Shape & colour

a 3D design

a word design

a sound

a single colour

a combination of colours

con swing

Voice 1
ci di - ver - tia - mo un mon - do di no - la no non ce n'è

Voice 2
mo - bi - le con - ve - nien - za noi li de - di - chia - mo a te mon - do

Voice 3
con - ve - nien - za ah la no - stra

Voice 4
for - za è il pre - zzo oh di - bi - di - da - bi - ah

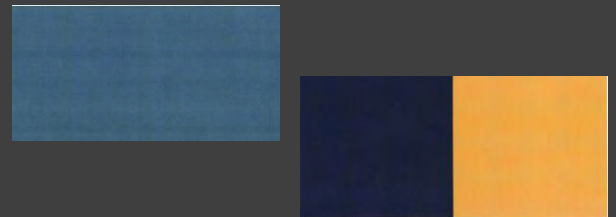


The Kitchen Furniture Co.

BY BURRIDGE

Trade mark information

Name	The Kitchen Furniture Co. BY	Fig. 1/2013	18/04/2013
Fig. 1/2013	Fig. 1/2013	Fig. 1/2013	20/06/2013
Fig. 1/2013	Fig. 1/2013	Fig. 1/2013	18/04/2013
Fig. 1/2013	Fig. 1/2013	Fig. 1/2013	18/04/2013
Fig. 1/2013	Fig. 1/2013	Fig. 1/2013	18/04/2013
Fig. 1/2013	Fig. 1/2013	Fig. 1/2013	18/04/2013
Fig. 1/2013	Fig. 1/2013	Fig. 1/2013	18/04/2013
Fig. 1/2013	Fig. 1/2013	Fig. 1/2013	18/04/2013
Fig. 1/2013	Fig. 1/2013	Fig. 1/2013	18/04/2013
Fig. 1/2013	Fig. 1/2013	Fig. 1/2013	18/04/2013



Trade Marks

Split into different classes 34 goods classes and 11 services

Limited to territory *e.g.* UK or EU or individual countries

Think about clearance searching

Post-registration – renewal typically every 10 years. If you don't use it, you lose it!

TM can be assigned and/or licensed

Enforcement very difficult outside UK if no registration

Summary

- Search before use & register for relevant goods and services
- Watch for 3rd party similar marks and oppose where necessary



Protecting brand value cannot be under-estimated – look how these brands are expanding their ROI



Tutankhamun Exhibition Promotion

Community Trade Mark
E2133908



..and again, maximising ROI

Registered Trade Mark
2209287

Specsavers



Registered Trade Mark
2217899

Image rights



Think about what IP rights there are in a smart phone!





The IP myths - the most frequently asked questions or statements.

- **I have protected the name of my business because I have registered the name at Companies House**

TRUE OR FALSE?



Essentials of an IP Strategy

Don't fall into a trap that many do – know your IP rights and how they protect you

Patents

It's time to get "IP Savvy!"



Patents: Confer registered protection for innovation:
new inventions or processes



IP

MAR. 22, 1910.

Patented June 13, 1911.

5 SHEETS-SHEET 1.

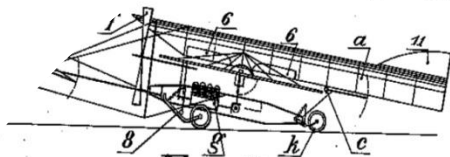


Fig. 2.

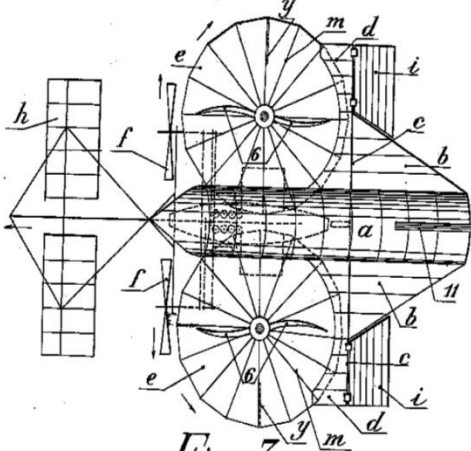
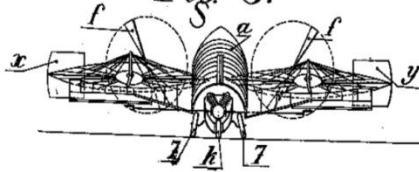


Fig. 3.



995,361.

APPLICA.

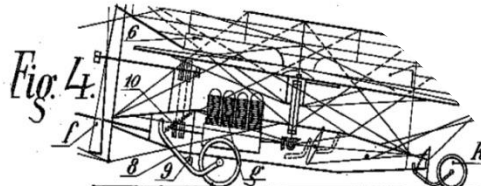


Fig. 4.

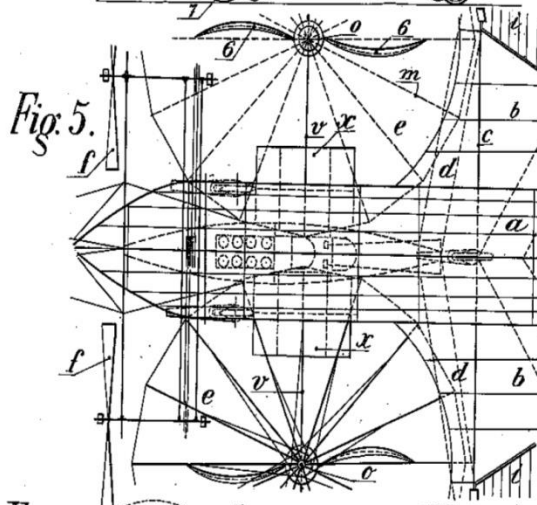


Fig. 5.

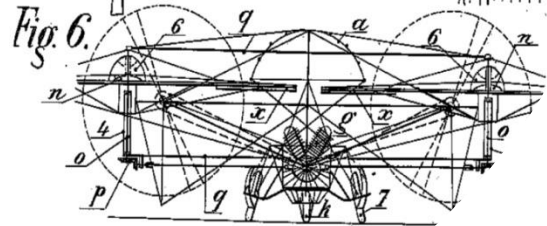


Fig. 6.

Inventor:
Louis Ross
by George H. H. H.
Attorney.

Witness:
Louis Ross
Charles H. H.
Attorney.



IP



IP

Fees

Stage	Apply online	Apply by post
Application fee	£20	£30
Search	£130	£150
Substantive examination	£80	£100
Total	£230	£280

Think about what IP rights there are in a smart phone!





The IP myths - the most frequently asked questions or statements.

- **Where can I patent my design?**
- **If I disclose my patent to someone else before I register, I can't then apply for a patent?**

TRUE OR FALSE?



Essentials of an IP Strategy

Don't fall into a trap that many do – know your IP rights and how they protect you

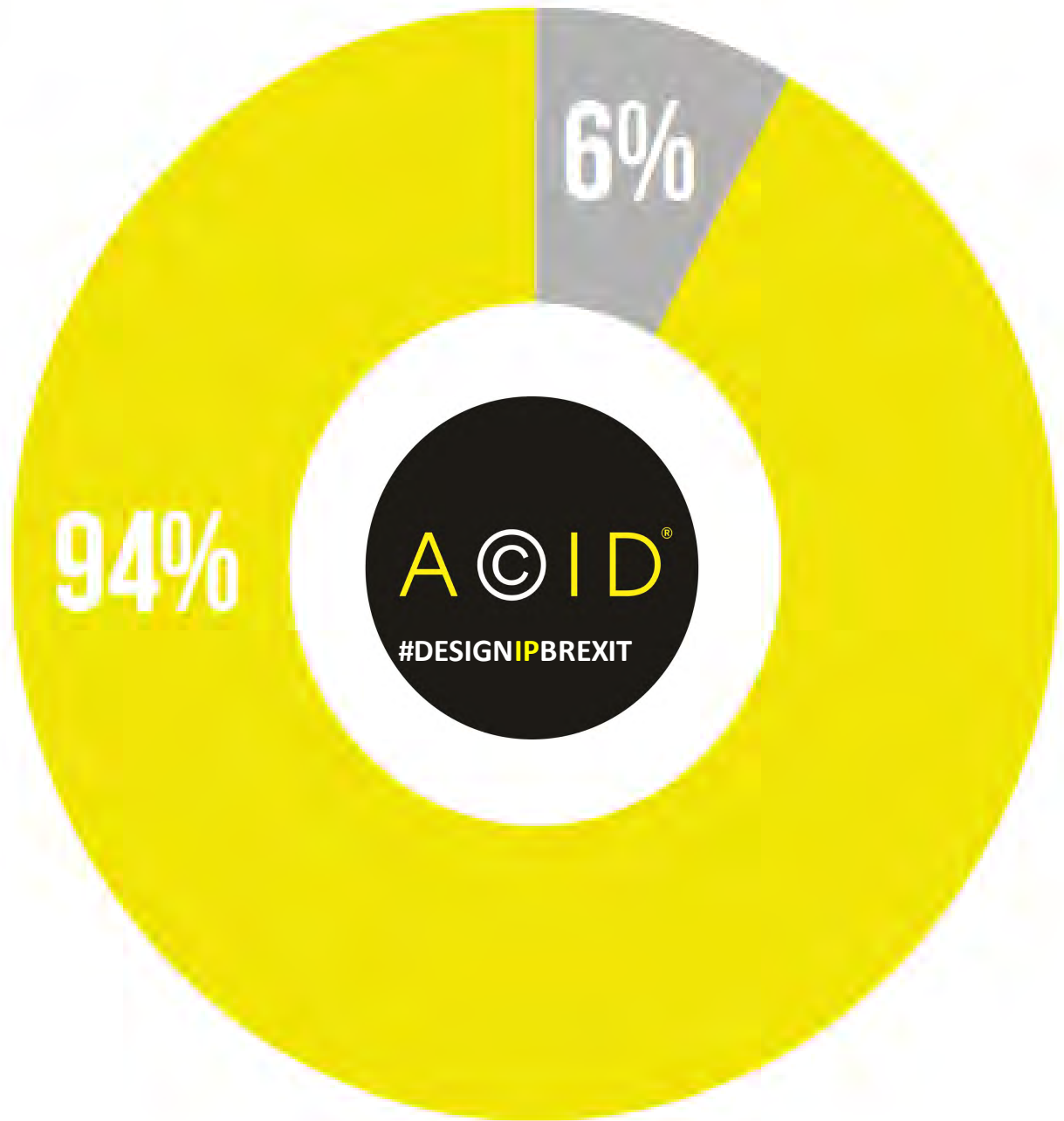
Brexit & Design

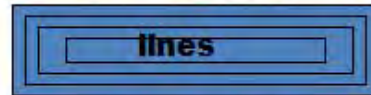
It's time to get "IP Savvy!"



SHOULD EU
UNREGISTERED DESIGN
RIGHT MIRROR UK
UNREGISTERED DESIGN
RIGHT AND LAST FOR
15 YEARS INSTEAD OF 3
YEARS?

■ YES
■ NO





Rob Law, MBE., MD of Magmatic t/a Trunki

“My company Magmatic Ltd T/A Trunki designs & manufactures children’s travel products. We employ **80** people at our HQ in Bristol and manufacturing facility in Plymouth. Our t/o is approximately **£8.5million**, all of which is generated by products protected by registered and unregistered design.

If we lose protection of our unregistered rights in **28** member states, and are unable to enforce our rights, we predict approximately **25%** of our sales could be lost. This could effectively quarter our turnover and lose approximately **20%** of our workforce.”



Images

It's time to get "IP Savvy!"



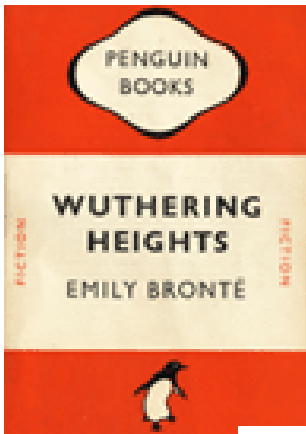
Typical surgery question

What does a product photographer do when a design magazine uses their lifestyle images, that the photographer styled, shot and holds the rights to, WITHOUT prior consent, WITHOUT offer of any payment or a credit?



LICENSING BASICS AND CASE STUDY ARTS MEETS MATTER AND PENGUIN





**Using licensing
effectively to maximise
IP**

**Connecting natural
affinity between books
and leisure and
translating this into an
exciting range of
products**

**Penguin had the vision
to see the potential -
designer had creative
thought and business
acumen to make this
happen**

Licensing – to expand your brand

IP rights are the assets of your business and can be leveraged like any other asset

A way of generating revenue where insufficient resources or manpower (*e.g.* new territories, new manufacturing techniques/media)

A way to spread your brand's reach (geographical and product/service)

Types of licence – do you know the difference?

- Exclusive
- Sole
- Non-exclusive



**Using licensing
effectively to maximise
IP**



Licensing – to expand your brand

Who owns the rights? A licence is not an assignment.
Interpretation – definition of the terms, what do they mean?

Grant of Licence – Don't confuse sole, exclusive and non-exclusive licences

Financial Provisions – Who's paying what, how will it be managed, how will it evolve?

Use of Licensor's name – Acknowledgement!

Adaptations/Modifications – Explaining the rules!

Confidentiality – Respect for confidential nature of information passing between parties



**Using licensing
effectively to maximise
IP**



Licensing – to expand your brand

Duration – how long will the agreement last?

Termination – mechanism for ending the agreement & what happens afterwards

Communication – confirms contact addresses

Which country? – confirms Governing Law and Jurisdiction

IF CLAUSES CAN'T BE AGREED – don't play email (legal) ping pong, it can be expensive



**Using licensing
effectively to maximise
IP**



Licensing – to expand your brand

ROYALTIES – HOW MUCH? WHAT PERCENTAGE?

Large % of a small pie?

Small % of a large pie?



**Using licensing
effectively to maximise
IP**



WHAT TO DO IF YOU ARE COPIED?



What to do if your IP is infringed?



What is the first answer to this question?

Don't panic – it can be an emotional time – a knee jerk reaction is the worst reaction!



What to do if your IP is infringed?

Evidence – identify your rights & IP ownership and seek advice as to how to assert them

Gather as much evidence/information as possible – it will save time later

Groundless threats - Beware! - If you wrongfully threaten someone, there can be significant consequences. Ensure you have the correct facts before you make contact with the alleged infringer

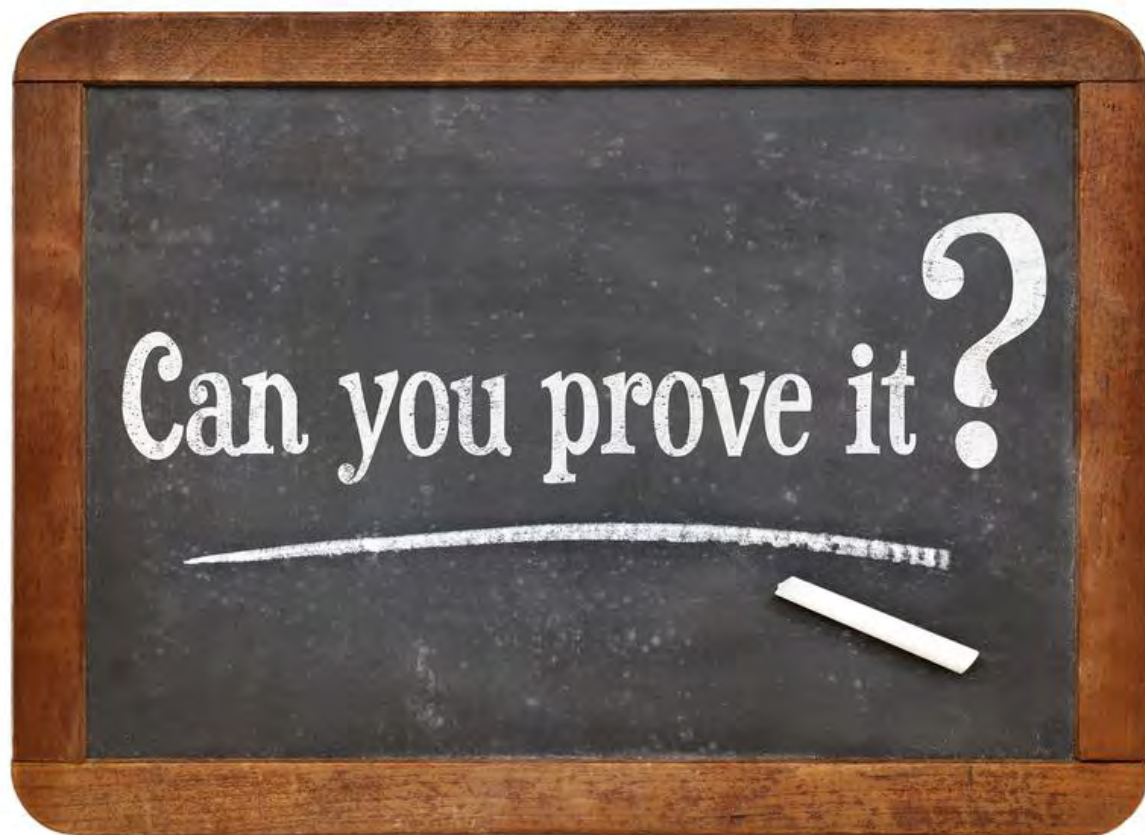
Copyright/design rights - Generally the person who created the copyright work/design (or their employer) is the owner of the copyright/design right



What to do if your IP is infringed?



If relying on **unregistered design** do you have an **IP audit trail**?



Gather **evidence** and
Seek **advice** – don't
panic!

Relying on a registered
design? You **don't** have
to **prove copying**

If unregistered design
**gather your design audit
trail evidence** (ACID IP
Databank). Often a
strongly worded **letter
before action** with
supporting evidence will
be enough to settle a
case

Case Study

You commission a freelance web programmer to create a website for you....



What to do if your IP is infringed?



Case Study

You commission a freelance web programmer to create a website for you and you also commission a photographer to create images for the main page. The website is finished, you pay the developer in cash and use it for a year. Then...

You discover the web site creator creates his own identical website and you see that the photographer is selling the images you used on your site.

Can you assert a case of copyright infringement?



What to do if your IP is infringed

- Screenshot and date every single website and infringing use of your IP.
- Your solicitor (and wallet) will thank you for it!

VITAL EVIDENCE!

ESSENTIALS OF A PROACTIVE IP STRATEGY



step
by
step



A summary of a
proactive IP
strategy - take
the first step....



**Essentials of an IP
Strategy**

Start by creating one!

Step ONE!

**Recognise and Value
your intangible assets**

Know and learn about...



By attending days like this!



**Essentials of an IP
Strategy**

Step TWO!

Become IP “savvy!”

HOME

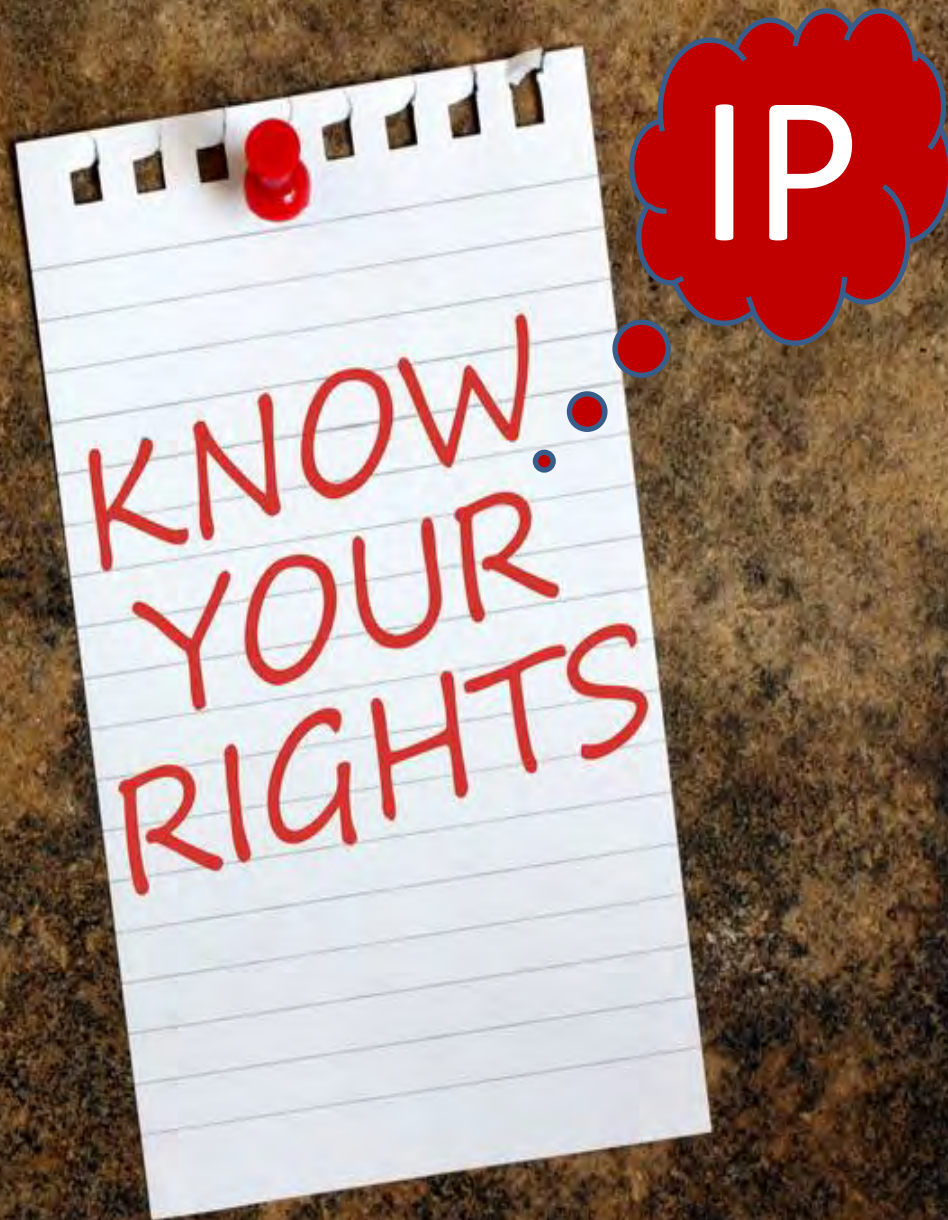


**Essentials of an IP
Strategy**

Step THREE!

**IP isn't rocket
science!**

**Think about
practical steps.**



**Essentials of an IP
Strategy**

Step FOUR!

**Identify and
understand the IP
rights that protect
your brand!**



Know your design right from your copyright, your trade marks from your patents - understand the “myths” about IP.






Essentials of an IP Strategy

Step FIVE!

Learn about IP protection and enforcement

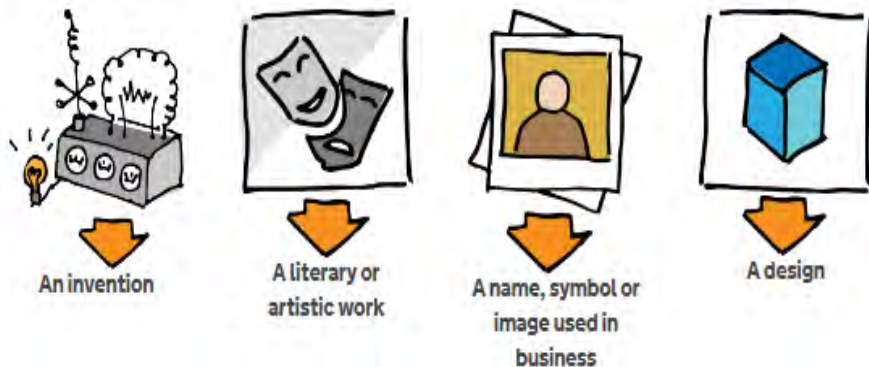
Intellectual Property Training

 Open session
  Save session
  Download certificate

What is intellectual property?

IP TUTOR – A GOOD WAY TO LEARN ABOUT IP

Intellectual Property (IP) concerns creations of the mind. IP can be:



IP can be protected by patents, trade marks, design and copyright (known as IP rights) and gives ideas their value. Without protection IP becomes less valuable. IP rights protect your work. Whether you design, invent, write, perform or research, IP matters.

In 2013, Apple was ranked as the most valuable brand in the world by leading business magazine Forbes. Apple's success is partly due to their approach to business, but





**If your IP is infringed in another territory
where is your IP support? Have you registered
your IP in that country? BRIC countries – Help
at hand with IP attachés**



**Essentials of an IP
Strategy**

Step SIX!

**Identify the
territories in
which you trade**



Essentials of an IP Strategy

Step SEVEN!

Agreements

**Trade
Secrets/employees –
guard confidential
information carefully**



Essentials of an IP Strategy

Step SEVEN!

**Create confidentiality
agreements for
sensitive information**



Essentials of an IP Strategy

Step SEVEN!

**Who owns the IP –
clarity of ownership is
essential**



Essentials of an IP Strategy

Step SEVEN!

**If you've got a good
idea – keep it safe!**



Intellectual property =
respect
ethics

Ethics

Ethics in business
moral principles
rules and regulation
of right conduct rec
values that guide t



Essentials of an IP Strategy

Step EIGHT

**Encourage an ethos of
respect, compliance
and respect for
intellectual property!**



Essentials of an IP Strategy

Step NINE!

**Keep watch, look at
the competition, who
is copying you? Is your
brand safe?**



Essentials of an IP Strategy

Step NINE!

If you are unlucky enough to experience design infringement – prove a design audit trail of key stages

An illustration of a design audit trail. It shows a white sheet of paper with technical line drawings of a mechanical part. Several wooden clothespins are used to hold the paper down. A roll of clear tape is also visible, with a red Coca-Cola logo on its end. The background is a wooden surface with some other papers and a small orange object.

Signed, dated, drawing number, any registrations

©



Essentials of an IP Strategy

Step NINE!
Get expert sector IP
advice, ACID,
specialist IP lawyers &
IPO



Intellectual
Property
Office



Essentials of an IP Strategy

Step NINE!

**Choose battles carefully –
is there quantifiable loss?
Evidence of IP ownership?
£ Size of opponent?
Publicise any settlements
as part of a proactive IP
strategy**



Essentials of an IP Strategy

Step TEN!

**Positive
Communication**

**If you don't want to
be copied, say so!**

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All intellectual property rights are and will remain the property of Fantastic Designs.co.uk. Any infringements will be taken seriously

or



All intellectual property rights are and will remain the property of Fantastic Designs.co.uk. Any infringements will be taken seriously

Websites, email signatures, marketing materials invoices, advertisements, press releases, plans, design drawings



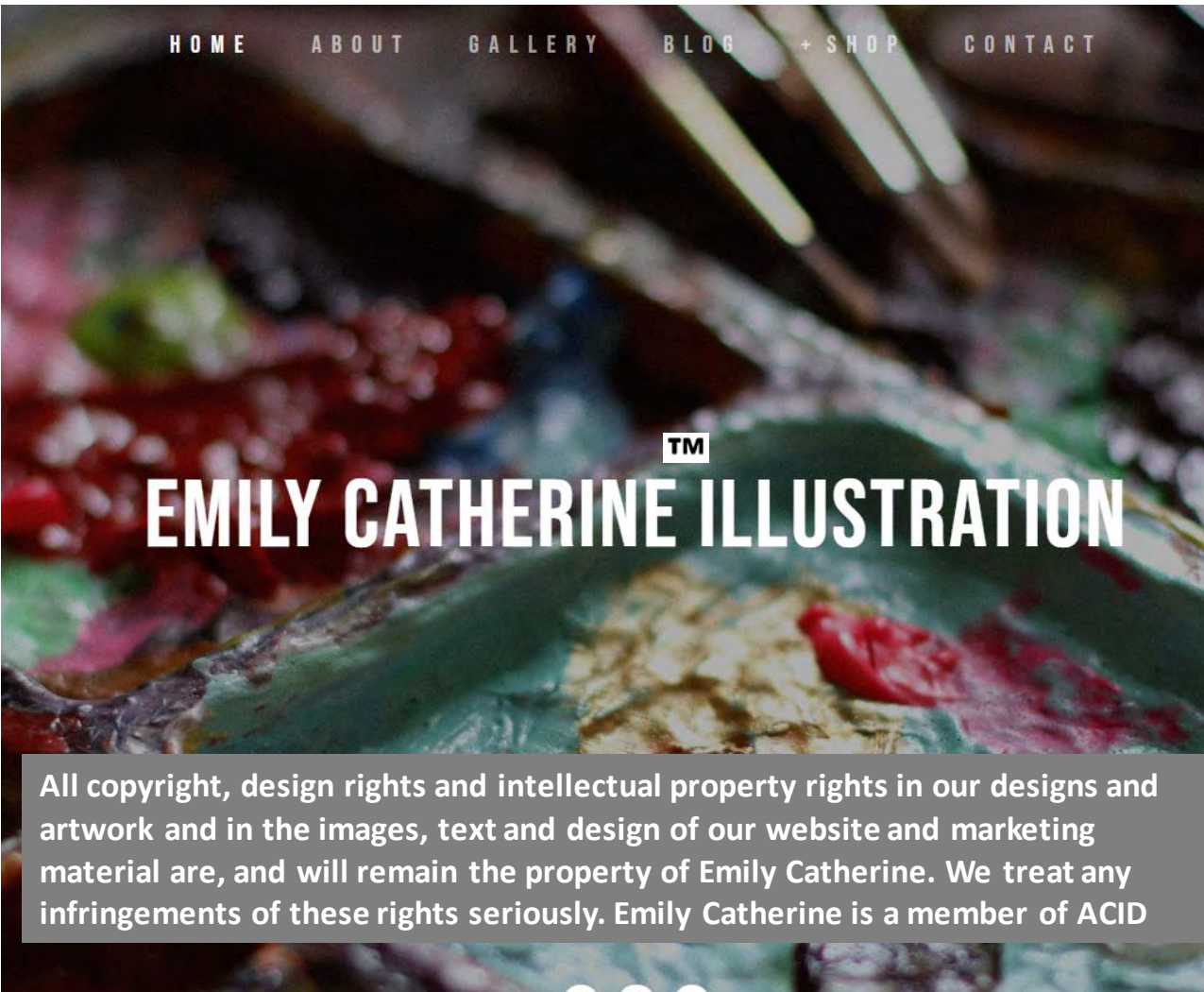
Essentials of an IP Strategy

Step TEN!

If you don't want to be copied, say so! But how?



Other ways to communicate a proactive IP message deterrent



All copyright, design rights and intellectual property rights in our designs and artwork and in the images, text and design of our website and marketing material are, and will remain the property of Emily Catherine. We treat any infringements of these rights seriously. Emily Catherine is a member of ACID



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Other ways to communicate a proactive IP message deterrent



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“Naming & Educating!”

ACID has had 1000's of settlements & publicise them all even if there is a confidentiality agreement – there are ways around this!


Social Media – spot the difference? Original or copy?





**“The UK is
excellent at
creating IP but
not so good at
looking after it.”**

**Ian Livingstone Creative
Industries council**



Essentials of an IP Strategy

**IP education & awareness,
deterrence, prevention
access to specialist support
and understanding the
value in the intellectual
capital behind your brand**

Design Matters.....



A George II writing chair part of the Frederick Parker collection



from iconic...

...to everyday, design is all around





**Design
matters....**

**solving problems, adding
value**

You're so sweet...



HAPPY VALENTINE'S DAY



**Design
matters....**

Making us happy,
knowing we are
loved!

THE **ACID** TEST

THANK YOU!

Ensure you know
your IP rights to
protect what you
create

ACID is here to
help you and
thank you to CDW
for hosting us
today!

@acid_tweets

@TheDesignLawyer

Get IP savvy NOW!

**Dids Macdonald, CEO of
Anti Copying in Design &
Gavin Llewellyn, Partner
Stone King and ACID
Affiliate Lawyer**

Dids Macdonald, CEO of
Anti Copying in Design
and Gavin Llewellyn
Partner, Stone King and
ACID Legal Affiliate

THANK YOU!

www.stoneking.co.uk
www.acid.uk.com

London 23 May 2018

