

Welcome to the sixth edition of DesignWrites

At Bird & Bird we're passionate about design. DesignWrites will unravel and explore the seemingly complex world of design protection, offering practical advice by looking at recent design cases, hearing from industry experts and sharing stories from the wider design community.



Get in touch

If you would like advice on how best to protect your designs or take action to stop copycats, please contact Ewan Grist via ewan.grist@twobirds.com



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Focus on fashion - clothing design cases sashay through the UK courts

Unregistered design rights are an important IP right in the fashion industry, given that the lives of clothing designs are often short and may not justify the cost of design registration.



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There has been a recent flurry of cases before the UK courts concerning rights in fashion designs, specifically unregistered design rights: *G-Star Raw v Rhodi Ltd*; *Superdry v Animal (DKH Retail Ltd v H Young (Operations) Ltd)*; *John Kaldor Fabricmaker UK Ltd v Lee Ann Fashions Ltd*; and *Dalco v First Dimension* (see following pages).

Of these four cases (decided between late 2014 and early 2015), three were heard in the Intellectual Property Enterprise Court (IPEC). Established in 2013, IPEC was intended to provide a less expensive and more streamlined alternative to intellectual property actions in the High Court. Employing strict cost recovery caps of £50,000 and taking a proactive approach to case management to reach a swift resolution, IPEC is widely considered to be meeting this aim.



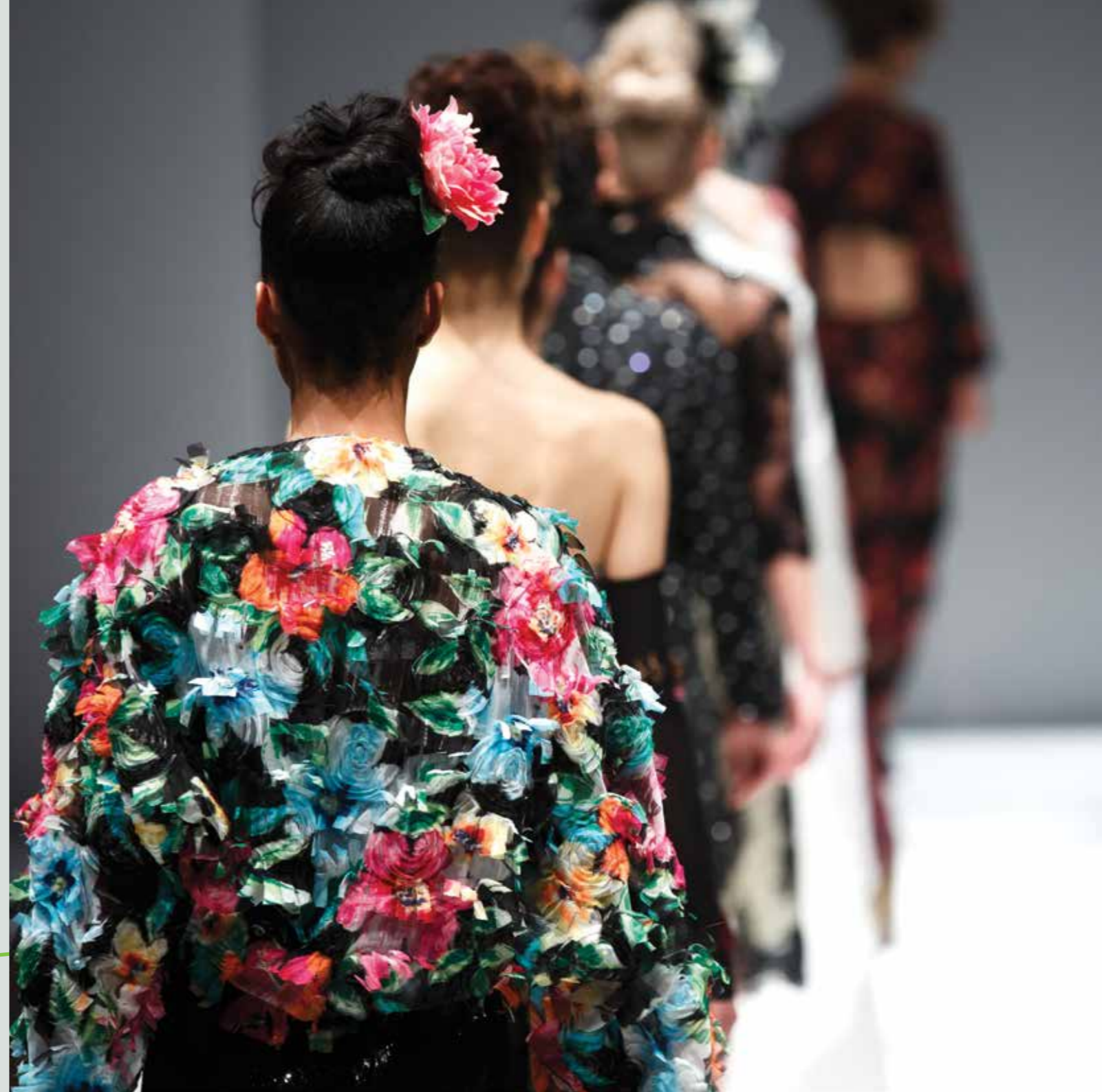
Unregistered Rights in the fashion industry

- There are two categories of unregistered design right (UDR) in the UK; UK and Community UDR.
- Both UK and Community UDR arise automatically and protect the whole or part of its appearance arising from its shape or configuration. However, Community UDR also provides protection for the appearance of a product resulting from its colour, texture, materials and/or ornamentation, and has effect throughout the EU.
- Unlike registered designs, in order to succeed in a claim for infringement of UDR (Community or UK), it is necessary to show that the relevant design was copied by the alleged infringer.
- Copyright may also subsist in patterns on fabrics. Copyright is again an unregistered right and arises automatically for original works.



Practical tips

1. **Keep a design trail.** The alleged infringer in *John Kaldor Fabricmaker UK Ltd v Lee Ann Fashions Ltd* was able to show credible evidence from its print designer as to how, stage-by-stage, she came to design Lee Ann's 'tribal print' fabric independently of John Kaldor's tribal fabric design. Conversely, in *G-Star Raw v Rhodi Ltd*, the absence of a paper trail showing how Rhodi came up with its jeans design contributed to a finding of infringement. Likewise, in *Dalco v First Dimension*, an absence of evidence showing that First Dimension's design pre-dated Dalco's was fatal to its defence. Accurate and contemporaneous records of how, when and by whom the design was created by are essential.
2. **Beware of over reliance on others' designs.** Fashion, by its nature, often involves the amalgamation of different aspects of earlier designs. However, in *G-Star Raw*, evidence that Rhodi had used a sample of G-Star Raw's 'Arc Pant' to communicate design ideas to the manufacturers of its infringing pants was damaging to its case.
3. **Don't forget copyright.** Copyright can sometimes be relied upon in addition to design rights. For example, in *John Kaldor*, the claimant's tribal design was created on a computer. Therefore, the relevant computer file was protected by copyright and the design itself (i.e. the output of the computer file) was protected by Community UDR.
4. **Don't necessarily dismiss UK UDR.** While Community UDR protects aspects of surface decoration which is not protected under UK design law and colour which will often be central to fashion designs, Community UDR only lasts for 3 years. UK UDRs have a longer life and last for at least 10 years.



Recent fashion cases

G-Star Raw CV v Rhodi Ltd & Ors [2015] EWHC 216 (Ch)

Date:

February 2015

Court:

High Court

Rights:

Unregistered UK design right

Outcome:**Infringement**

Rhodi's nine separate styles of jeans infringed G-Star's unregistered UK design rights in its 'Arc Pant' jeans design, which was characterised by a highly architectural cut with an asymmetric tapered leg that turned around the human leg. The similarities were striking, there was evidence that Rhodi had used a sample of the Arc Pant to communicate design ideas to its manufacturers, and it was unable to produce evidence of independent design.



Source: BAILII Database

Superdry v Animal (DKH Retail Ltd v H Young (Operations) Ltd [2014] EWHC 4034 (IPEC)

Date:

December 2014

Court:

Intellectual Property Enterprise Court

Rights:

UK & Community unregistered design right

Outcome:**Infringement**

H Young's Animal branded gilet infringed the unregistered design rights in parts of DKH's Superdry branded hooded gilet. However, only secondary infringement by importing and selling was alleged (for which it must be shown that the alleged infringer knew or had reason to believe that the articles were infringing). Therefore, while Superdry's unregistered Community design rights were found to have been infringed, its UK unregistered design rights were only infringed from the date of Superdry's cease and desist letter to Animal, as Superdry had produced no evidence to show that those in the clothing industry would otherwise know that copying a garment would constitute an infringement of IP rights.

John Kaldor Fabricmaker UK Ltd v Lee Ann Fashions Ltd [2014] EWHC 3779 (IPEC)

Date:

November 2014

Court:

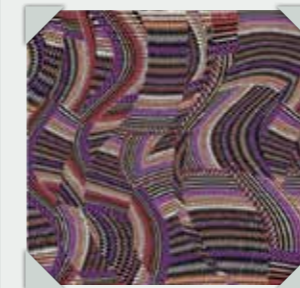
Intellectual Property Enterprise Court

Rights:

Unregistered Community design right; copyright

Outcome:**No infringement**

A dress fabric supplied to Marks & Spencer by Lee Ann did not infringe the copyright or unregistered Community design right in John Kaldor's fabric as copying could not be proven. Lee Ann's evidence of independent design was credible, and the similarities between the two designs were not so compelling as to point to unconscious copying.



JK Fabric



LA Fabric

Source: BAILII Database

Dalco v First Dimension [2015] EWHC 760 (IPEC)

Date:

February 2015

Court:

Intellectual Property Enterprise Court

Rights:

UK & Community unregistered design rights

Outcome:**Infringement (summary judgment granted)**

First Dimension's 'Daniel Rosso' shirt infringed Dalco's unregistered design rights in its 'Dalco' shirt design. The two were essentially identical, and First Dimension had no prospect of proving that its Daniel Rosso design pre-dated the Dalco shirt design, or any evidence of independent design.



The increasing importance of international design registrations under the Hague system

Two of the world's biggest economies, namely the USA and Japan, recently joined the Hague System for the International Registration of Industrial Designs.



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International Design Registrations

For designers needing protection of their designs in more than one country particularly where protection is needed outside the EU, an International Design Registration (IR design) may be the perfect tool.

By filing a single application with the WIPO (World Intellectual Property Organization), an applicant can obtain protection for up to 100 designs belonging to the same Locarno class in up to 83 countries, namely in the 64 Hague member states and territories covered by intergovernmental agreements (EU/OHIM¹ & OAPI). Unlike the registered Community design, which is a single right enjoying protection throughout the EU, the IR design is comparable to a bundle of national design applications. Therefore, the IR design is treated in the designated territories under the respective national design laws.

IR designs are usually more time and cost efficient where protection in multiple territories is sought, as the filing, renewal or any changes (limitation, assignment, etc) can be done in one step only and in English, French or Spanish language. However, IR designs can only be filed by a person or entity that has its seat or domicile in one of the member states of the Hague system.

The WIPO only verifies that the application meets all formal requirements but does not undertake substantive examination (e.g. for novelty of design) and, therefore, cannot reject an application on substantive grounds. The national or regional offices undertake the substantive examination (if any) and decide whether the design is granted protection in the designated member state.

USA and Japan joining the IR system

The USA and Japan have recently joined the Hague system. Since 13 May 2015, US and Japanese applicants are able to file IR design applications. Further, applicants filing IR design applications are now able to designate the USA or Japan for design protection.

Applicants that wish to designate the USA or Japan should be aware of some specific requirements. For example, when designating the USA, the applicant has to additionally submit a Declaration of Inventorship, or, if not possible, a Substitute Statement in Lieu of a Declaration of Inventorship. It is also recommended to add a description of the reproductions filed. Further, the applicant should be aware that no deferment of publication of the design (so called "filing under secrecy") can be requested in the USA.

For designs created in the USA, the applicant first needs to obtain a license from the United States Patent and Trademark Office (USPTO) before filing a design registration outside of the USA.

Unlike many national offices and OHIM which only check for formalities, the national offices in the USA and Japan carry out a substantive examination of design applications, which might lead to correspondence with the examiner and a longer registration process.

While the registered Community design allows a protection in the EU for up to 25 years (five-year terms of renewal), the maximum duration of design protection in Japan is 20 years and only 15 years in the USA.



Comments

Even though the Community design system is - with more than 80,000 applications per year - still much more popular, the IR design system with about 3,000 applications per year is constantly growing. In 2013, the WIPO counted 27,838 active registrations that contained 116,571 designs.

For many years, the Hague member states only comprised a number of European countries and some African countries, while American and Asian countries were missing altogether. The accession of the EU/OHIM and OAPI in 2008 increased the number of countries, but many countries of economic importance were still missing.

After South Korea joined the Hague system in 2014 and the recent additions of the USA and Japan, the importance of the IR design system will certainly increase. However, other major countries like Australia, Canada, China or Russia are still missing and IP right owners will therefore need to file additional national applications in these countries.

¹ EU-wide protection can be requested through the international registration system.



3D printing & Intellectual Property - what you need to know

The ability to easily, quickly and cheaply design and manufacture items is no longer just a pipe dream - 3D printing is becoming part of everyday life for domestic users, independent designers and large scale manufactures alike. 3D printing offers a multitude of opportunities. Rapid prototyping, spare part production and customisation are all being revolutionised and industries ranging from fashion & luxury goods to biomedical sciences to aerospace are all taking advantage. But a myriad of intellectual property issues lurk just below the surface...

Can I 3D print whatever I want?

If you are 3D printing an article which you designed, there's no problem.

If you are 3D printing an article which was originally designed by someone else, you may well be infringing their IP rights. The original designer could for instance own registered and unregistered design rights in the shape and appearance of the article; and a separate copyright in the CAD file for that article. If you 3D print such an article without the original designer's consent, you could be infringing those rights.

If the article also bears a third party's trade mark, you could be infringing that trade mark if you were then to offer or sell the article.



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Are there any exceptions?

Yes. Firstly, design rights and copyright only last for a certain period of time (ranging from 3 years up to 70 years after the death of the creator, depending on the right). If protection has expired, then the article can be freely copied. Secondly, design protection is usually not available for spare or component parts, so these can sometimes be freely copied.

Finally, there are certain exemptions where articles are made solely for private and/or for non-commercial purposes.

If I pay to download a 3D design file (i.e. a CAD file) from the internet, do I have the right to 3D print an article to that design?

Not necessarily. It still depends on whether you have the consent of the original designer. Just as with downloading music / films, there are certain websites from which you can download authorised files and others where the files are unauthorised.

Note that copyright can subsist in the CAD file itself (as distinct from any design right in the article embodied in that CAD file). Just as with music and film files, file sharing without the consent of the copyright owner is unlawful.

Am I ok to use a 3D scanner to create my own CAD file?

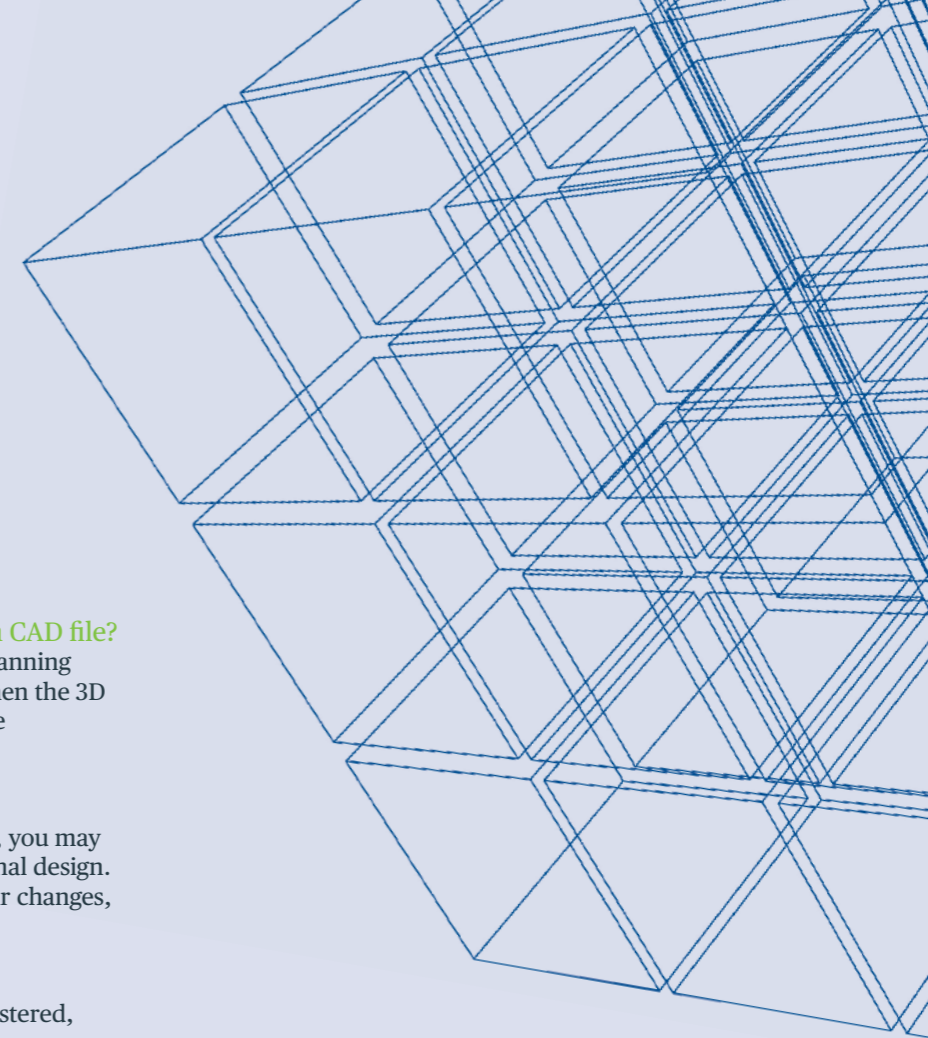
It depends on what you are scanning. If you are scanning someone else's article without their permission, then the 3D printing of the resulting CAD file could still infringe their rights.

What about customising an existing design?

Depending on the extent of the changes you make, you may still be infringing the rights in the underlying original design. It is a question of degree; the more substantial your changes, the lower the risk of infringement.

How can I protect my own original designs?

There are a variety of rights, registered and unregistered, which may be available to you. For designs that are particularly important, get them registered to give more robust, longer protection. Other designs can still benefit from the limited protection offered by unregistered rights, but it's important to keep comprehensive evidence of their creation.



Blocking validity in The Netherlands - minor variations of earlier designs and the thin line between practicality and mere functionality

KOZ Products is a developer of cable blocks for the wiring of cables. For many years Adinco had sold KOZ products, including the KOZ Uni blocks which were protected by four RCDs filed in 2005 and 2006.



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Following the end of the commercial relationship between Adinco and KOZ, Adinco started to produce its own cable blocks under the name Fox Uni. KOZ brought preliminary injunction proceedings against Adinco before the District Court of The Hague, claiming that the Fox Uni blocks infringed its registered Community designs (RCDs) and copyright and furthermore constituted an unlawful act (slavish imitation). The PI was refused and the court dismissed all of KOZ's claims.

Judgment

The court in The Hague found that there was a serious chance that KOZ's two RCDs filed in 2006 would be declared invalid in proceedings on the merits or before OHIM as they lacked individual character in comparison with KOZ's two earlier RCDs filed in 2005. Whilst the parties agreed that a designer of cable blocks would have limited design freedom, and the informed user would therefore notice small details, the court was of the view that a minor difference of three as opposed to a single 'connection point' would be insufficient to create a different overall impression (see highlighted picture of the 2006 RCD).

Unfortunately for KOZ, the court was also of the opinion that there was a serious chance that the 2005 RCDs would also be declared invalid for lack of individual character. The court based this view on an earlier design from the German company Formzeug, for which a German utility model had been registered in 1996. In the court's preliminary view, the 2005 RCDs did not evoke a different overall impression than the Formzeug design, as both blocks were designed in a minimalist industrial style, had three or four cut-aways to guide the cables and were made from smooth material of a rectangular shape. KOZ noted a difference in the coverings at the bottom of the cable block (see highlighted picture of the 2005 RCD) but, according to the court, these coverings could not give the design individual character as they were solely dictated by their technical function (Article 8(1) of the Community Design Regulation).

For similar reasons, the court ruled that the KOZ Uni blocks did not merit copyright protection, since technical functionality must be left aside in a copyright assessment. As for the other characteristics of the Uni block, these were dictated by aesthetic/creative choices rather than functionality and were too minimal to warrant copyright protection.

Finally, the supply of Fox Uni blocks did not constitute an act of unlawful competition either. Adinco took sufficient measures to prevent confusion between the KOZ Uni blocks and the Fox Uni blocks. The inclusion of similar coverings at the bottom of the block was deemed lawful, since omitting this feature would detract from the reliability and usability of the Fox Uni. The fact that until several years ago Adinco had sold the KOZ Uni did not result in a different conclusion as the design of a product which is available on the market is public knowledge, rather than KOZ's proprietary know how. The mere fact that Adinco had knowledge of KOZ's customer relationships was insufficient to give a presumption of unlawfulness and to find otherwise would impede freedom of competition.

Comments

This judgment once more demonstrates the tension between on the one hand developing a product which is the most practical for its use and on the other hand ensuring that the product is more than merely functional and sufficiently different from other competing products so as to qualify for design right protection. Furthermore, the case confirms that where only small changes are made to a product, registering the design of the updated product as a new design may be difficult because the earlier generations of the product may be cited as novelty-destroying or individual character-destroying prior art.



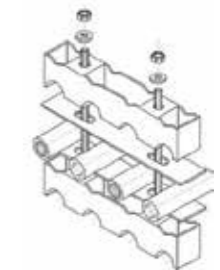
KOZ RCD (2005)



KOZ RCD (2006)



Adinco Fox Clamps



Formzeug cable block

Source: IE Forum

UK: copyright in tableware surface designs

The case of *Bodo Sperlein Ltd v (1) Sabichi Ltd and (2) Sabichi Homewares Ltd*² related to an allegation of copyright infringement in a tableware design called ‘Red Berry’, designed in 2001 by Mr Sperlein of Bodo Sperlein Ltd (BSL). The Red Berry collection was a signature collection of BSL. In 2013 BSL noticed that the defendants Sabichi had been selling items of tableware which BSL considered had been copied from the Red Berry design. The Sabichi range was called ‘Red Blossom’ and a comparison of the two designs is below:



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Source: BAILII Database

BSL claimed copyright in the Red Berry design and sued Sabichi for copyright infringement at the Intellectual Property Enterprise Court (IPEC).

In order to establish copyright infringement in respect of artistic works such as the surface decoration on tableware, it must be shown that there has been copying of a substantial part of the original work. No copyright infringement will be found if a defendant can show that their design was independently created.

There is rarely clear evidence of actual copying. However, as noted in our report on *John Kaldor Fabricmaker UK Ltd v Lee Ann Fashions Ltd* (in our March 2015 edition of DesignWrites,

page 18), if there is sufficient similarity between the works, then copying can be inferred; the more similar the works are, the more convincing the defendant’s evidence of independent design will need to be to overcome this inference.

In this case, the judge found that the similarities shown above were so great that they gave rise to an inference of copying. He noted various differences pointed out by the defendants (such as the smooth twig of the Red Blossom design as opposed to the more realistic and detailed appearance of the Red Berry design), but overall the judge considered that he would struggle to say which was which without close inspection. One key similarity was the colour; the judge found it unlikely that Sabichi would employ the same shade of red as BSL out of coincidence; Sabichi claimed that this was a shade from its standard colour palette, however the judge rejected this, noting that Sabichi had not submitted evidence of any other of its products using that same red.

The judge then considered Sabichi’s evidence of independent design. Sabichi’s designer was adamant that she had never seen any designs by BSL. However she did admit that she read the Sunday Times Style magazine and attended the 2006 Maison et Objet design show; in both of which the BSL’s Red Berry collection had been shown.



The judge was not convinced by Sabichi’s evidence of an alternative source of inspiration for the designs; although the designer stated that the inspiration came from photographs found on the internet. Overall he found that Sabichi had not explained away the similarities between the designs; although he accepted that the designer did not recall seeing the BSL design, he could not exclude the possibility that she had seen them but had now forgotten.

As a result, the judge found that there had been copying of a substantial part of BSL’s design, which resulted in copyright infringement.

The judge allowed an application by both parties to submit late evidence at the trial itself; however he was in particular critical of Sabichi for failing to provide relevant disclosure documents in a timely manner.

Usually, in English proceedings the question of liability and the question of quantum (damages) are dealt with in separate trials, with the liability part of the case dealt with first. However in the IPEC, which is designed for lower value IP disputes, these issues can be dealt with at the same trial, which occurred in this case. If the defendant is found liable for copyright infringement, among other remedies the claimant can choose between damages and an account of profit. In this case, the judge accepted BSL’s request for an

account of profits from Sabichi - in other words, Sabichi was compelled to pay over its profits earned from the sales of the infringing items.

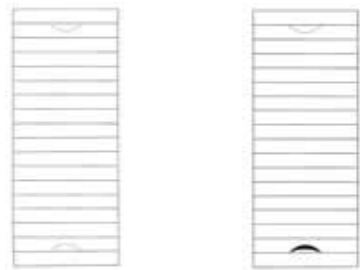
The court considered what costs could be deducted from revenue in order to arrive at an appropriate figure for Sabichi’s profits. The judge reiterated the rule that general overheads cannot be deducted - only costs which are associated solely with the acts of infringement. In this case, the judge allowed deduction of import duty incurred by Sabichi when importing the items from China, however he did not allow any general overheads. As a result, the judge awarded BSL over £30,000, plus interest.

This case highlights the importance of creating a paper trail when making a design. As well as the date of the design and the designer, the documentation should record the influences behind a design; this will help in the event of any future dispute, to either support the originality of the copyright work, or to rebut an accusation of copying.

² [2015] EWHC 1242 (IPEC).

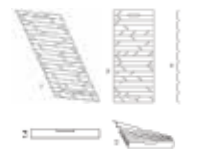
General Court looks at design freedom in Argo v. OHIM

In 2010, Clapbanner filed an application for registration of an RCD for ‘advertising articles’, as show below. The designed advertising article was intended for group events. Unfolded it would be used as a signboard that conveyed a message when it was held up. Folded like an accordion it could be used to produce ‘clapping’ sound effects.

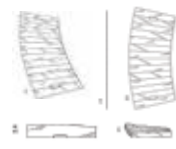


Source: OHIM database

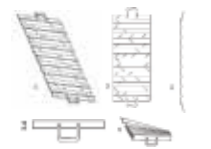
In April 2011, an application for a declaration of invalidity was filed at OHIM against the RCD (pictured above). In support of its claim, the intervener (Argo) referred to several of its own earlier designs for similar advertising articles, as shown below.



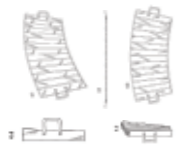
Source: OHIM database
No 796 446-0001



Source: OHIM database
No 796 446-0002



Source: OHIM database
No 769 446-0003



Source: OHIM database
No 796 446-0004

³ ECFI 28 January 2015, Case T-41/14, *Argo Development and Manufacturing v. OHIM*.



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In first instance, the Invalidity Division revoked Clapbanner’s RCD for lack of individual character. However, the Board of Appeal (BoA) subsequently found that the Clapbanner design had individual character, and reinstated the RCD.

The General Court’s decision

In its judgment dated 28 January 2015³, the General Court (GC) confirmed the findings of the BoA. The GC found the contested design was new in that the appearance of its handles differed in more than immaterial details, as was perceptible when placing the contested design and prior designs side by side. The GC agreed with the BoA that, because of the nature and function of the underlying product, there was very little design freedom for the shape and size, and the foldable nature of the signboard. As a result, the handles were deemed to be the key design features, conveying a different overall impression. Moreover, the GC considered the argument that parts of the handles were not always visible as being irrelevant, stating that such prerequisite only applies to component parts of a complex product (Article 4(2) of the Community Designs Regulation); the advertising article was not deemed to be a complex product. Finally, the GC confirmed that bad faith does not in itself constitute a ground for RCD invalidity.

Comments

One noteworthy point of the judgment was the GC’s definition of the relevant product for the purpose of determining the constraints on the designer’s freedom. Indeed, that issue remained undetermined even following the *Grupo Promer*⁴ judgment. In this case, the GC was willing to restrict the relevant product to a lightweight signboard used at group events to convey written messages in unfolded state and to produce a clapping sound in folded state. This limited definition was instrumental in the GC’s finding that there was equally limited design freedom.

Another issue was whether market expectations could serve to constrain design freedom. In this case, the GC appeared to think they could. The GC opined that a rectangle was the “most obvious” shape for this type of signboard and therefore agreed to disregard the significance of that part of the contested design. However, arguably market expectation is largely a self-imposed constraint. Put another way, does a signboard look like the ones on the market because it needs to or because it would be expected to do so? By accepting market expectation as a relevant constraint on design freedom, this further limits the scope of protection afforded to the contested design and that of earlier designs to which

it is being compared. Accepting such a constraint will also considerably lower the standard for individual character. As such, it arguably becomes a matter of policy to decide what level of innovation merits the reward of design protection. Note in this regard that Recital 14 of the Community Designs Regulation calls for a design that conveys an overall impression that is clearly different from the design corpus.

Once the GC had established the very limited degree of design freedom, it found that the (only) remaining features where there was some design freedom (i.e. the handles) played an essential role in the overall impression created by the design. That is surprising given that the handles of the contested RCD were depicted by dotted lines (top and bottom of left, and top of right representation). As discussed in the March 2015 edition of *DesignWrites*⁵, dotted lines typically represent a disclaimed or non-essential feature. In the case at hand, dotted lines were combined with a filled line (bottom of the right representation), arguably representing the handle in its open and closed state. This aided in distinguishing the contested design from the design corpus.

⁴ CJEU 20 October 2011 Case C 281/10, *Grupo Promer Mon Graphic v. OHIM*.

⁵ <http://www.twobirds.com/-/media/PDFs/NewsLetters/2015/DesignWrites%20by%20Bird%20%20Bird%20March%202015.PDF>

Innovation and challenges in architectural and community design - Q&A with Hello Wood

Hello Wood is an architecture and design studio, organising projects and events defined by openness, experimenting, social sensitivity, innovation and development. It was founded by Peter Pozsár, architect / curator; András Huszár, architect and David Ráday, media designer / art director.



This longstanding project had become the Popular Choice and Jury winner of the Architizer A+ Awards in the category of Architecture + Learning! DesignWrites invited the three founders for a short Q&A.

Hello Wood started as an art camp in 2010 for architecture and design students and has grown into a unique international project involving more than 30 countries. The program welcomes university students and young professionals yearly from Sweden to the United States who work in teams for 8 days to bring the project to life. The teams are led by experienced and successful workshop leaders from prestigious architecture studios around the world to provide an interdisciplinary and international working environment complementing university studies.



By Bettina Kovacs
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Q1 - You have been organising your signature event, the summer art camp, for years. What are the biggest accomplishments and challenges it brings?

Perhaps the biggest accomplishment was being able to make the program visible in an international scene. Professionals, whose work is important to us, are interested in the program, they accept our invitations and participate in our workshops. Last year we cooperated with the Miralles-Tagliabue Studio from Barcelona, this year we have the opportunity to welcome workshop leaders like Piers Taylor from Invisible Studio or Katsuya Fukushima from Japan and the incredible Urban-ThinkTank studio. Our biggest challenge is to constantly develop the program professionally and to communicate the results in a way that reaches a wider public.

Q2 - What are your favourite designs or products and why?

It's hard to pick one product, but in general we like things that give a smart and innovative response to a problem, besides being aesthetically valuable of course. Objects that are capable of making life easier in a way. We prefer products that are designed in a way that considers the entire life cycle of the product, from production to recycling. We also aim to work this way, it is an extremely important task in the field of mobile and temporary architecture.

Q3 - According to your opinion how are Intellectual Property rights valued in this very changing field of temporary architecture and design?

It's difficult to talk about property or intellectual property in this field for several reasons. On the one hand, often the life time of a temporary object is shorter than the time it takes to get the legal protection. Also, when it comes to the workshop and festival, the product is really the know-how, the methodology. Protecting this is the most important yet most difficult task, that's why the support of Bird & Bird is extremely valuable to us.

Q4 - What do you think are the most useful / powerful tools for protecting the interest of the authors, designers or your company (legal, marketing or any...)?

For a program that changes so dynamically, where not only the events, but the resulting installations are also temporary, the best protection is publicity and always making something new. Of course this only works if the legal background is deliberate and guaranteed. Luckily we've only had few minor negative experiences, but as the project evolves, the legal guarantees must be developed as well.

Q5 - There are emerging trends of open source architecture platforms like Paperhouses? What impact do you foresee these could bring?

Open source is drifting back from online to off-line, facing all challenges of this border crossing. In my opinion (Peter Pozsár) that most important difference is that in the off line work open source is "only" able to generate a plan, a methodology, that still awaits to be realised. What I find difficult about this is that however precise a plan is, the building and realisation of it requires further skills. Several impressive projects seem to get stuck or develop slowly due to the lack of these skills perhaps. In our camps we focus on developing these skills, and we tried to summarise our experiences and methodology in a book recently. Practice is key in gaining skills and capability for building; it can hardly be substituted by other tools. 3D printing could resolve this concern. Open source and 3D printing could supplement each other perfectly, creating an efficient and revolutionary result.



Q6 - Hello Wood brings several socially sensitive projects to life. What are the commercial possibilities in your work and what strategies do you follow for maximising it?

We always try to consider social aspects in our commercial works as well, aiming to carry a socially responsible message and designing an entire life cycle for the object. Due to the visibility of our program, we are contacted with commissions, our team runs an architect and design studio throughout the year, we focus on designing and building temporary wooden structures for events, festivals, public space, etc. Also, we organise team buildings based on our experience and methodology of the camps. The first step of maximising these strategies is to do quality work. The best communication is if the client is satisfied, they should feel that no matter how small or big the scale is, the project receives maximum attention. We also develop products; so far only on a small scale but soon we would like to enter the market with more complex developments.

Q7 - You have just won two Architizer A+ awards, and also published a book on your experiences and experiments of the last couple of years. Based on your experiences and the rapid technological development (such as 3D printing) what the future would bring to the architecture and design business?

Yes, the awards are a great honour to us. It gave us another feedback that it's worth working so hard and that an architectural program coming from a small country can be internationally recognised. We believe not only architecture, but in a wider scope our material world is facing major changes right now, that can be perhaps compared to the revolution of book printing. Upcoming new technologies could liberate basically unreachable forms and content, not only in form, but in function as well. We hope these new technologies will be truly accessible to everyone, however it will create several questions in the field of intellectual property rights as well.

For more information about Hello Wood and their work, please visit <http://www.hellowood.eu/>



Registered Community designs for a plastic fork found to be valid and infringed in France

In the recent case of *Europlastiques v Germay Plastic*⁶, the Court of Appeal of Paris upheld the first instance decision finding the following registered Community designs (“RCDs”) for a plastic fork belonging to French company *Europlastiques* to be both valid and infringed:



By Benoit Lafourcade

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Source: OHIM Database
RCD No. 001647769-0001 (filed December 15, 2009)



Source: OHIM Database
RCD No. 001647769-0002 (filed December 15, 2009)

Validity

The defendant (*Germa Plastic*) argued that the RCDs of the claimant (*Europlastiques*) lacked novelty and individual character due to prior fork designs, in particular designs by Sodebo which were alleged to be prior art. The court however found that the defendant had failed to prove that the Sodebo’s forks were disclosed before the date of filing, stating that the mere communication of an affidavit from the purchasing manager of Sodebo was insufficiently reliable given that it did not include any reproduction of the designs in question. Images of the Sodebo design separately communicated by the defendant to the court were not dated and only partially legible.

The court held that the other earlier designs relied upon by the defendant displayed different features to the RCDs and, as such, were not novelty destroying.

The court then held that the informed user, by reference to which the individual character of the claimant’s RCDs were to be assessed, was any person buying a pasta box sold with a ready to use fork. Turning to design freedom, the court noted that the defendant itself argued that a fork must include certain technical features (e.g. for pricking food). The court considered however that the RCDs showed specific features (general symmetrical and curved shaped and shape of the spoon on the opposite side) that were not present in any of the prior art relied upon by the defendant, hence it had failed to show that the RCDs lacked individual character.

The counterclaim for invalidity was accordingly dismissed.

Infringement

The court then proceeded with the assessment of infringement, noting that the defendant had only challenged the claimant’s infringement claim by way of disputing the validity of the RCDs. The court held that despite the slight difference in the width of the forks, the disputed forks manufactured and commercialized by the defendant produced the same overall impression on the informed user as the RCDs. The court accordingly upheld the first instance decision and found the claimant’s RCDs to have been infringed.



Comments

The outcome of this case may have been different had the defendant been able to demonstrate the effective disclosure of Sodebo’s earlier fork design by submitting solid and objective evidence. As demonstrated in this case, affidavits in themselves are not sufficient to prove a fact such as the disclosure of an earlier design, although they may serve to corroborate and/or clarify the accuracy of additional documents (see OHIM, decision of 14/10/2009, R 316/2008-3 - ‘Fireplaces’, para. 22). Nonetheless, it is clear that affidavits and other documentary evidence originating from parties having an interest in the proceedings have a lower probative value compared to documents having a neutral source (judgment of 14/06/2011, T-68/10, ‘Watch attached to a lanyard’, para. 33-36).

⁶ Court of appeal of Paris, 5/12/2014, case 14/03506



Lego takes action against copycat toy figures in Poland

On 5 January 2015, the court ruled in favour of LEGO Juris A/S (LEGO) in a design infringement case brought against the Polish company, Artyk sp. z o.o. (ARTYK) (case No. XXII GWwp 24/13). The ruling is not yet final.

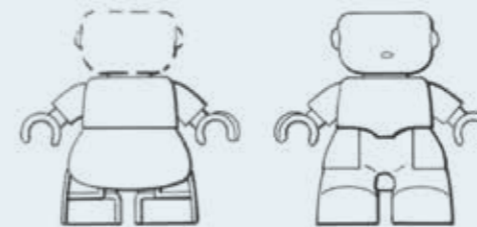


By Piotr Dynowski and
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ARTYK imported 246 sets of toy figures alleged to infringe LEGO's registered Community designs 128681-0004 and 128681-0002. The court ruled that, as ARTYK's products only had different shape of the figures' heads, they did not produce a different overall impression on the informed user.

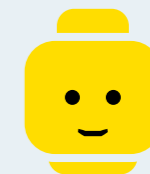


Source: OHIM Database

Whilst ARTYK did not challenge the validity of LEGO's RCDs, it argued that their scope of protection should be narrow on the basis that there was only limited design freedom available. The court found however that LEGO's designs protect the specific shape of toys, which may be used in different products or toy sets, be made of various materials and decorated in different ways. The court did not agree with ARTYK that LEGO was trying to monopolise the human shape of toy figures because a human-toy may be represented in different ways and shapes.

The designer's freedom in developing the designs was wide - there were many considerably different toy figures on the market with a human shape.

The court agreed that design freedom may be limited by functional, technical and commercial reasons but disagreed that market trends and fashion should be taken into account; to conclude otherwise would result in narrowing the protection for new and original designs as they gained popularity and economic value due to the designer's efforts.



UK Government announces policy for extension of copyright term for industrially manufactured works



By Mark Livsey

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Section 52 of the Copyright, Designs and Patents Act 1988 currently limits copyright protection for artistic works which have been industrially manufactured: where more than 50 copies of any such artistic works have been made by or with the licence of the copyright owner the period of copyright protection is limited to 25 years.

The Intellectual Property Office has published the government's response to its consultation on the repeal of section 52 and has announced that the repeal will come into force on 6 April 2020. The government has also announced that it will exercise its powers to ensure that businesses trading in copies of industrially manufactured 2D and 3D artistic works will have an indefinite period to sell off existing copies, are prevented from making or importing new unlicensed copies and may freely deal with existing copies after the repeal comes into force.

Therefore, after **6 April 2020** all artistic works, including those that have been industrially reproduced, will benefit from the full term of copyright protection of the life of the author plus 70 years.



DESIGNS OF THE YEAR 2015

DESIGN MUSEUM

Past winners of Designs of the Year

Designs of the Year Award 2014
Heydar Aliyev Cultural Centre
Designed by Zaha Hadid Architects,
for the Republic of Azerbaijan

Designs of the Year Award 2013
GOV.UK website
Designed by Government Digital Service
UK

Designs of the Year Award 2012
London 2012 Olympic Torch
Designed by Edward Barber and
Jay Osgerby for the London Organising
Committee of the Olympic and
Paralympic Games, UK

Brit Insurance
Designs of the Year Award 2011
Plumen 001
Designed by HULGER and
Wilkinson, UK

Brit Insurance
Designs of the Year Award 2010
Folding Plug
Designed by Min-Kyu Cho
USA

Brit Insurance
Designs of the Year Award 2009
Barack Obama poster
Designed by Shepard Fairey
USA

Brit Insurance
Designs of the Year Award 2008
One Laptop Per Child
Designed by Yves Béhar
USA

Designs of the year 2015

With special thanks to Gemma Curtin, Curator.

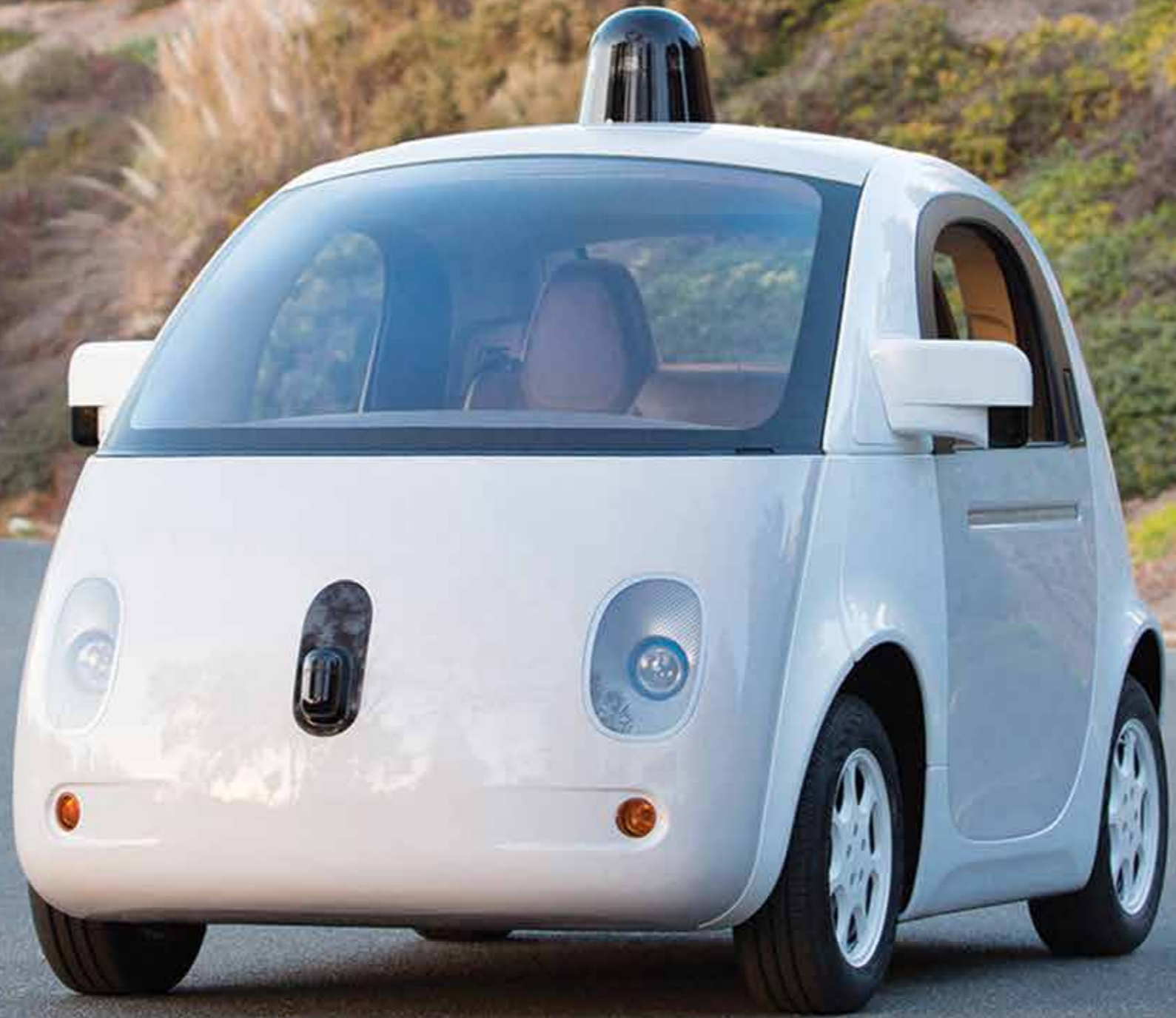
Now in its eighth edition, the Designs of the Year awards and exhibition provide a snapshot of the most stimulating new work from around the world, across six categories: Architecture, Digital, Fashion, Graphics, Product and Transport. Past winners of the Design of the Year include the One Laptop Per Child project, the 2012 Olympic Torch and the UK government's website GOV.UK.

Each year an international team of critics, curators and practitioners are invited to select the year's most inspiring and innovative designs. This year, 76 projects have been chosen. They include work from emerging practices and also well-established ones. Some question preconceptions about the role of design, others offer pragmatic solutions to consumer needs. In their range they express a diversity of intent and reveal the vital role of design as a problem-solver, a predictor of future developments and a cultural force. This year a set of criteria was issued to the nominators to outline the Design Museum's definition of a Design of the Year as...Design that promotes or delivers change; Design that enables access; Design that captures the spirit of the year and Design that extends design practice. This clarity has in no way reduced the comprehensive selection of design and the exhibition is as ever full of the diverse, the unexpected and the uplifting.

Among this disparate gathering there are themes and trends that emerge two of which are the growth of crowd-funding to support

designers to by-pass the manufacturer by funding production costs with the aid of websites such as Kickstarter and the development of sustainable design to the point that the environment has become a core element of mainstream design briefs.

The exhibition opened to the public in late March 2015 and shortly after the opening this year's judges the artist Anish Kapoor, the fashion writer Hilary Alexander, the Director of Ecole cantonale d'art de Lausanne Alexis Georgacopoulos, the Architect Farshid Moussavi, and Studio Director of Land Rover Richard Wooley spent a day of good humour and strong debate to make the difficult decisions to choose a winner of each category and an overall winner. The judges were united in their responsibility to award projects that emphasise design's impact on our lives now and in the future. Design that solves diverse problems with innovation, intelligence and wit, from an advertising campaign to promote the reduction of food waste: Inglorious fruits and vegetables, designed by Marcel for Intermarché; an environmentally conscious University and business centre, UC Innovation Center - Anacleto Angelini, designed by Elemental; a medical chip to revolutionise drug testing, Human Organ-on-Chips, designed by Donald Ingber and Dan Dongeun Huh; a driverless car, Google Self-driving car designed by YooJung Ahn,



Jared Gross and Philipp Habana; a crowd-funded initiative to rid the sea of plastic waste, The Ocean Cleanup designed by Boyan Slat, Jan de Sonnevle and Erwin Zwart and a complex fusion of skilfully cut garments, Thomas Tait AW13/14 collection, designed by Thomas Tait.

One of these will be chosen as the Design of the Year 2015, this overall winner will be announce in late June but you will be able to visit the exhibition at the Design Museum until March 2016.



Industry news



By Lindsay Gibbons
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Designs for the future: a new wave energy device

A group of pupils from Castlemilk High, Glasgow, have designed a floating wave energy converter and have now been named the Junior Saltire champions at the Celebration of Science and Engineering at the Glasgow Science Centre.

The team was lucky enough to test their gadget in the world's most advanced ocean simulator at the University of Edinburgh's FloWave Ocean Energy Research.

The winning design is simple but effective - it hangs vertically in the water and generates electricity by moving up and down with the waves. The students' main idea was its use in disaster areas as it can be easily and quickly deployed.

The competition which is funded by the Scottish Government in partnership with Skills Development Scotland (SDS), saw over 200 teams from around.

Find out more at:

<http://www.eveningtimes.co.uk/news/pupils-making-waves-209928n.128624542>

Twitter launches video feature

On 11 June, Twitter launched their own video feature enabling users to shoot, edit and upload videos straight to the "twittersphere".

All you need to do is download the app, which is available on iPhone and Android, to get started.

For more details go to:

<https://about.twitter.com/videos-on-twitter>

Upcoming industry events and awards



The London Design Festival

19-27 September 2015

London, UK

The festival features hundreds of design events taking place across the city of London.

<http://www.londondesignfestival.com/events>

Paris Design Week

5-12 September 2015

Paris, France

Featuring design shows and open studios around the city.

<http://www.parisdesignweek.fr/>

AIGA Design Conference

8-10 October 2015

New Orleans, USA

The conference features over 90 guest speakers, networking receptions and exhibitions relative to the design community.

<http://www.designconference.aiga.org/>

Open Design Cape Town

13-23 August 2015

Cape Town, South Africa

The third edition of Open Design Cape Town will focus on the theme "Design is for tomorrow".

<http://opendesignct.com/>

Furniture China

9-12 September 2015

Shanghai, China

The 21st China International Furniture Expo, featuring a wide range of designs.

<http://www.furniture-china.cn/en-us/>

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