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A Law Firm Specialising in Intellectual Property and Information Technology

Designing Britain's Future
A personal reflection
IPAN 22nd November 2018

Woman in a slurry Farmers Build v Carrier (1998)

Protected good engineering – poor man's patent

Configuration of throwers hoppers and perforated drums

Parker v Tidball (1999)

Lambretta v Teddy Smith and Next (2004)

Section 51 barrier

2002 Design Regulation, effective April 2003

Whole or any part of an article which is new and has individual character. Novel, not made available to the public, not known in circles concerned. Useful add-on but by no means a cure all.

More difficult to advise on as you take on guise of the informed user and must consider the design corpus.

Big advantage – pan European remedies (Art 82 and 83)

But how true or useful is this for smaller design businesses?

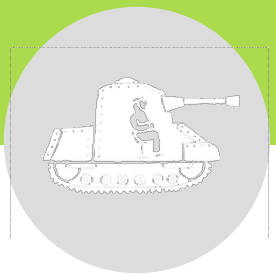
Where you claim against defendant domiciled in UK (Trunki –the reality)

Where Defendant not domiciled in UK? Limited benefit

Where multiple Defendants, Nintendo v BigBen Interactive

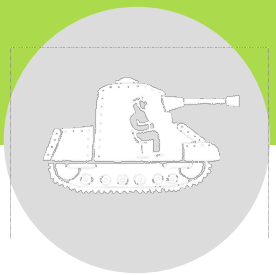
Remedies in different member states – no injunction in UK for 10 years, whereas easier to get in Germany and Netherlands

2014



- One big improvement (registered design only) and some fiddling round the edge of the envelope
- The smaller stuff: Removal or any aspect of any article from definition design (aspect removed so part of part not covered), prior use defence, commissioner not first owners, definition original limited to commonplace in specific area UK EC and some other countries), streamlined qualification rules
- Commitment to opinions service?
- Extending Hague

2017



- Neptune v De Vol (testing 2014 limitation and vigorous case management (hostile court limits claimant to 6 designs)
- Repeal of Section 52 CDPA (as inconsistent with EC 2006/116)
- Hensher v Restawhile (1976), Lucas Films v Ainsworth (2011) (What is a work of artistic craftsmanship, what is a sculpture)
- IPO Guidance and preparing clients with potential to be owners of WAC such as Tom Dixon and Jasper Morrison

After March 2019, transition and beyond

- SI will transpose CUDR into national law.
- Pan European rights and jurisdiction go – but how big a problem is this?
- Importance of strong domestic provisions to protect home market. What else can be done? Extend term of what was CUDR to match UK right, consolidate law – one set of rules develop law on injunctions and cross undertakings in IPEC.
- Free trade deals – must stay focused on standards and not allow design protection to slip in context of Free Trade Deals. Ensure TRIPS referred to and incorporated into each deal and scrutinise where countries we deal with may be falling short.

Margaret Briffa (margaret@briffa.com)

Eamon Chawke (eamon@briffa.com)

Briffa

Business Design Centre

52 Upper Street

London N1 0QH

(020) 7288 6003

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Website: **www.briffa.com**

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