



# Amendments to design legislation

Response to IPO consultation

## SUMMARY

The British Brands Group supports the equalization of remedies between community-registered and UK-registered designs and favours the granting of rights to holders of UK-registered designs to damages and an account of profits in instances of unintentional infringement (Proposal 2).

- 1 The British Brands Group welcomes the opportunity to respond to the IPO's consultation on the equalisation of remedies for unintentional design infringements.
- 2 The British Brands Group is a trade organisation that provides the voice for brand manufacturers in the UK. Branding is reliant on IP, including registered design rights, and so this consultation is directly relevant to members.
- 3 The Group supports the equalisation of remedies for infringement of UK and EU designs, favouring Proposal 2 that would grant the right to damages or an account of profits where UK registered designs have been innocently infringed. This would engender respect for the designs regime, be consistent with such member states as Germany, France and Italy, and encourage people to behave responsibly by conducting reasonable searches to establish existing rights. (We have not conducted a full comparative analysis of European jurisdictions.)
- 4 **Q1 Do you think there is any reason to maintain the status quo i.e. that financial remedies are available for unintentional infringement of a Community design but not for unintentional infringement of a UK registered design?**  
  
No. The current arrangements are illogical. Potential infringers should be expected to have a higher awareness of UK registered rights than those of the EU.
- 5 **Q2 What do you think the economic consequences would be for the owner of a Community design right if it cannot get damages for unintentional infringement of its right?**

The direct economic consequences would probably be minimal as innocent

infringement will be rare. However, withdrawing the right would send out a potentially damaging message on the importance of Community Designs and this may have an adverse economic effect over time. It could also weaken the design protection system by encouraging irresponsible behaviour in relation to such rights. It is in the interests of design holders that design rights are respected and that reasonable checks are undertaken before use of a potentially infringing design, otherwise the value of the system is eroded.

- 6 **Q3 Given that the UK register of designs is publicly available and searchable online, is it still necessary to prevent the courts from making an order for financial compensation for unintentional infringement of UK registered designs on the basis that the infringer was not aware and had no reasonable grounds for supposing that the design was registered?**

No. It is relevant that the register is publicly available and searchable online. Furthermore, the Judge would still have discretion over the level of damages awarded and could therefore reduce the level if there were mitigating circumstances. There should not be a presumption that damages will not be awarded.

- 8 **Q4 What are the economic consequences on users if section 24B of the Registered Designs Act 1949 is repealed? How serious would this be for users?**

This is a reasonable burden to place on the user of a design, but it may be advisable to raise the profile of the design protection regime and the need for searching. The level of damages is discretionary and so should reflect any reasonably diligent steps taken to establish earlier registered rights. Equally it should reflect flagrant infringement.

- 9 **Q5 Does the non-availability of an order for financial compensation in the case of unintentional infringement of UK registered designs alter the behaviour of those who use designs? If so, how does it do so?**

Excluding unintentional infringers from liability for damages can only encourage an irresponsible attitude towards registered designs.

- 10 We would be delighted to clarify any aspect of our response to this consultation, should this be helpful.