

UK companies fail to invest in design



“UK registered designs have evolved to provide a powerful and cost effective form of monopoly protection for design innovations, but careful thought is required up front to maximise their value to a business”

– Stephen Carter,
Partner, Mewburn Ellis.

A new survey carried out by the Design Council reveals that 45 per cent of all UK companies are failing to invest in and recognise the value of design. As a result they are facing a competitive disadvantage in today's global business environment.

“The UK is a world leader in the design industry and has an outstanding record of innovation. The problem is that British businesses are ignoring these capabilities. Now the message is clear: use design or risk failure,” says David Kester, Chief Executive of the Design Council.

“It is equally important that businesses making the investment in design take appropriate steps to register those designs in order to protect the added value they are creating,” said Stephen Carter, Partner at Mewburn Ellis

Registered design protection is available in the UK directly or via a Community Design (giving EU-wide protection). Since the introduction of the ‘user-friendly’ registered Community Design in April 2003, the demand for UK design registrations has decreased significantly, prompting The Patent Office to review the way it handles design registrations in an attempt to encourage more British designers and innovators to protect their new designs.

Carter explained: “The proposed changes make the UK system very

attractive for businesses wanting protection in the UK alone, but businesses with wider aspirations in Europe are still likely to get better value for money from the Community Design system.”

Modernisation

The changes in the UK, which come into force on 1 October 2006, will offer designers a more modernised process which will

become more relevant to such a fast moving sector of the economy. Janet Folwell, Deputy Head of Designs, UK Patent Office, said: “The changes will make the system as affordable, quick and accessible as possible and will offer cost savings for customers making multiple applications on one form. The cessation of novelty examination will simplify and speed up the examination process and also mean that the UK system will be more in line with the majority of European countries, including France and Germany.”

“The option to defer publication of a design for up to 12 months, will also enable the official publication of the registration to coincide with the product launch and reduce the risk the design will be copied before it is mar-

keted by the designer,” said Carter. These simplified procedures are essential in light of the fact that the proportion of applications from unrepresented SMEs has more than doubled to 70 per cent since 2003. SMEs should be wary, however, of filing applications for registered designs without first giving serious thought to how the system can be best exploited to add value to their business.

Carter concluded: “Although the procedures are straightforward, the underlying law is far from simple and for any particular product there are many different ways you can consider using registered designs to provide valuable protection. Some careful planning in advance can maximise the value whilst keeping application costs to a minimum.”



UK T system unworkable

Since the introduction of parallel systems of international trade mark protection in 1996, the UK system, which worked well for many years while it was the only option available, has become unworkable and is currently under review.

The overall aim of the consultation process, which ended in May 2006, was to identify the changes required to remove certain inequities and anomalies from the UK system and to bring the position closer into line with the Community Trade Marks (CTM) system, enabling a better understanding for users of the different systems of registration, and resulting in them becoming complimentary rather than remaining contradictory.

Protection

For example, with the current differences in examination systems, it is easier to gain protection across the whole of the EU than it is in the UK alone. This is evidenced by the fact that, in

2005, the projected number of trade mark applications to the CTM Office (OHIM) was 65,000 – almost double the number of applications to the UK Registry.

It is estimated that this growing trend, if allowed to continue, would result in two thirds of the “relative grounds” objections raised by the national office in five years time, being based upon earlier CTMs, and in ten years time, at least three quarters of such objections being based upon CTMs.

After considering all of the responses to the consultation, the Registry has settled on option five, (search and notify both applicant and earlier mark's owner), meaning that both parties will be on an on an equal footing since they

will, in the future, both be informed of any objections. This will enable parties to become aware at an earlier (rather than later) date, thus avoiding any wasted significant investment by intended applicants of potentially conflicting marks.

The new system will be particularly helpful to SMEs which (often having limited resources and knowledge), will be relieved from having to pay for commercial watching services in order to monitor for later conflicting applications.

Changes

It is hoped that the proposed changes, once implemented, will maintain a sustainable change for at least the next 10 to 15 years without the need for further review. However, we are not expected to be able to see the completion of such changes until at least October 2007, which is when the required various legislative, administrative and procedural adjustments in order to take effect are expected to have been completed.



The Design Council warns that 45 per cent of all UK companies are failing to invest enough money in design