



news

ANTI COPYING IN DESIGN

Issue 49  
2013



# GOVERNMENT WELCOMES ACID MARKETPLACE

ACID  
MARKETPLACE  
HAS ARRIVED

**Minister for Intellectual Property, Lord Younger** "The design sector is a really important part of the UK's creative economy - with nearly £16 billion invested in designs each year. ACID has shown real initiative in taking this bold step to develop the ACID Marketplace. This will now mean that people are going to better understand the value of designs, and it will also help our world class designers to market and sell their innovative creations."

**IPO's Rosa Wilkinson**  
"WHAT IP FOR  
BUSINESS CAN DO  
FOR YOU"

> PAGE 2

**MEET THE NEW  
ACID LEGAL  
AFFILIATE TEAMS**

> PAGE 6

**Kevin McCloud**  
on Design Law  
Reform

> PAGE 3

## Dear Acid Member ●●●

2013 A trio of achievements - Design law reform, the launch of our ACID Marketplace (an industry-led initiative!) and the creation of our newly, expanded team of ACID Legal Affiliates. What a year!

Having campaigned for many years, 2013 saw an IP Bill announced by Her Majesty, The Queen in Westminster in April now passed by the House of Lords and currently being debated in the House of Commons. We were surprised that design icon Sir James Dyson has appeared to turn his back on supporting the UK's designers by his staunch opposition (through his lawyers and the IP Federation) to Clause 13 (criminal provisions for intentional registered design infringement) but delighted that ACID Ambassadors Kevin McCloud and Sebastian Conran took such a pro-active and vociferous stance to support UK designers, many of whom are lone, micro and SME. Many will agree, I am sure, with Sebastian's remarks that, "Innovation is a high risk strategy and defending rights' infringement can be onerous" and the sentiments expressed in Kevin McCloud's letter to Ed Vaisey requesting unregistered designs to be added to Clause 13, when he said, "Britain is stuffed with talented designers whose work often goes unnoticed or uncredited. I'm making a plea for a new appreciation of the human effort and energy that go into designing and making everything around us". And, of course he is right!

Thank you to so many ACID members who took the time and trouble to write to your MP's. Your voice was heard loudly and clearly from grass roots to Ministerial level. Vince Cable wrote to many of you as did Viscount Younger, Minister for Intellectual Property.

So have you tried ACID Marketplace yet? Every year we receive a staggering (18-25,000) designs to be lodged onto our Design Data Bank. As you know this does not add to rights but provides independent evidence of the date they are received by us. It didn't make sense to hide them away from potential buyers so as an added benefit to membership you now have the option of either inviting individual buyers to view your new designs or make them available for open view. 75% of membership uses this free service for which there is a £1 handling charge for each submission or set of designs. Don't forget too that for those of you who don't want anyone to view them, their status remains absolutely confidential on our safe server. Hurry now and take advantage of 3 free images to go on your profile and, reassuringly all design buyers register through IP Tracker and sign the ACID Buyer's Charter. This initiative is a first for the UK and we aim for it to be the best online design exchange to foster growth through safer trading. Call the ACID team NOW if you need a walk through the process!

All it remains for me to do, as ever, is to thank the remarkable and committed ACID team, our terrific original ACID Legal Affiliates, McDaniel & Co and DMH Stallard and, of course, you our members for engaging so positively to support our work.

Warm regards and best wishes for 2014

**Dids Macdonald,**  
Chief Executive of ACID



# Intellectual Property Office

**Welcome to Rosa Wilkinson,  
Innovation Director of IPO  
as this issue's guest editor**

## "IP FOR BUSINESS" What it can do for you!



Britain's designers, creators, and inventors hold the key to growth. Their ideas will capture the customers and generate the income that builds company strength and creates employment. It matters that those innovators have a business environment which supports development of their ideas, that encourages continued innovation and that offers help to translate ideas into reality and value.

Government understands this. That's why recent years have seen a sharpening up of the Government's business support offer and more targeted services delivered by more business-savvy advisers.

My own organisation, the IPO, has been part of the revolution.

The IPO knows that firms perform better, grow faster and are stronger when they manage their intellectual property well. Big firms do it, but too often smaller firms don't maximise their potential returns. Perhaps that's not surprising. SMEs and the self-employed are short on time. Their prime directive is to focus on the tried and tested things that bring in income.

Over the past 18 months we've been working hard to encourage a new approach. To help businesses seize the IP opportunity we've developed a whole new range of tools and services: improved business guides and apps; new tools like our IP Healthcheck; new services like IP Audits Plus; and new connections like our IP attachés who offer support in the trickiest IP markets like China and India. See our '[IP for Business](#)' web pages for more. We've also invested in making IP a mainstream theme of general advisory conversations by training public and private sector business advisers in the IP basics so they can support their clients better.

Underpinning all this, we're working to transform the IP business environment. We've reformed the IP court system and the IP Bill currently in Parliament will help to cut costs, simplify and strengthen design protection and make the confusing legislative world of IP a little more intelligible.

These are valuable developments, but the IPO is not alone in working to make the UK the best place to run an IP-rich business. ACID's work to support businesses is vital. I particularly welcome the launch of your [A©ID Marketplace](#) as a safer online trading platform to showcase designs to prospective design buyers.

Together we are moving in the right direction. A recent independent survey ranked ours as the best IP regime in the world. I'm proud we're top of the pops, but I know there's no room for complacency. If you have ideas, I want to hear them.

[www.ipo.gov.uk](http://www.ipo.gov.uk)

# DESIGN LAW REFORM

## ACID Ambassador Kevin McCloud Speaks Out

Ed Vaizey MP  
Minister for Culture, Communications  
& Creative Industries  
Department for Culture, Media and Sport  
House of Commons  
London SW1A 0AA

Dear Ed,



We have met a couple of times. You may not know that, as well as presenting television programmes, I have also worked as a designer most of my adult life. In 1987 I set up a manufacturing company, producing top-end bespoke contemporary and historic lighting fixtures. At one point we employed 26 crafts people. I'm now in the business of building houses through my development company, Hab Housing, where I work with the very best designers to maximise the potential of design and bring about the highest quality experience of buildings and public realm.

I wholeheartedly support an IP bill that values and respects original design. New and innovative ideas are vital to the design industry and the future of the UK's economy. Britain is stuffed with talented designers whose work often goes unnoticed or uncredited. I'm making a plea for a new appreciation of the human effort and energy that go into designing and making everything around us. We should value the care that goes into every object we sell and value the people that make them by investing more in design and rewarding them fairly and free from infringement. I'm frustrated, as a designer, that the majority of SMEs and design sole-traders do not have the funds to pay for design registration as they compete against the majority of copyists who are the mega retailers and manufacturers.

I understand that the Intellectual Property Bill is to be debated in the House of Commons and would ask for your support for Clause 13 to be extended to unregistered designs as the majority of UK (and EU designers) rely on unregistered designs. Those arguing against this suggest that this would distort the balance of competition by the existence of a searchable register for designs. When only 4000 designs are registered each year this pales into insignificance when judged against the thousands of designers who rely on unregistered designs (UDR). There is also a view that including unregistered designs would have a chilling effect on innovation but this does not seem to have happened in copyright (unregistered rights) based sectors such as the music, video games, TV, film and publishing sectors.

Sadly, the strategy of many well known retail names is to look to innovators like us on which to create their own, cheaper lookalikes, often produced in China, rather than supporting British designers. 350,000 designers are involved in the design sector. We rely on our ongoing future and job certainty free from the threats of intellectual property infringement with policy that will support us as growth creators. Design infringement is a continual problem mainly by large companies who do not have respect for those who create original designs and who, to date, are rarely made accountable.

I am told that opposition to including criminal provisions for registered design infringement in the IP Bill has also come from patents lawyers and large businesses who rely on patents, a very different right to design right. They say that the flood gates will open if design is brought in line with copyright and trademark provisions. To date, criminal prosecutions for IP infringement have been used sensibly, sparingly and appropriately.

I hope you are able to support an extension to Clause 13.

Yours sincerely

Kevin McCloud

c.c. David Heath, MP Somerton & Frome

# CAROLINE GARDNER DELIGHTED WITH THINK OF ME RESULT

ACID member Caroline Gardner Publishing recently had concerns regarding a number of card, wrap and bag designs produced by Think of Me Ltd, which the company believed were remarkably similar to their own original designs.

The matter is now resolved and Caroline Gardner is delighted with the result and the fact there was no need to issue legal proceedings.

Angus Gardner, of Caroline Gardner, commented: "This was a very serious issue for us. We invest huge amounts of time and effort in creating original designs and we have to protect our interests, as well as those of our retailers, against what we perceive to be infringement. "We will not hesitate to act again in future should this be required but, for now, we are delighted with the result we have achieved with this case."

Speaking generally, he added: "It's a sad fact that the reputation and efficacy of what is actually a fantastic British creative industry, can be damaged by a small proportion of it who think that the quick route to success lies in plagiarism.

"We're now looking forward to getting back to what we do best, designing original products, but we remain resolute that blatant piracy in all sectors should be stamped out. "An infringement case in Germany recently resulted in a very successful outcome for us, but there such matters are dealt with far more effectively, with serial offenders actually facing potential prison sentences – perhaps too draconian for our tastes, but I would certainly suggest that a simple boycott of known perpetrators would be a way of beating this malaise."

Caroline Gardner Publishing was represented in this matter by ACID-accredited law firm McDaniel & Co.

IP lawyer Kelly Hudson commented: "Caroline Gardner make such high-quality, unique products they needed to confirm their stance on IP infringement. They were determined to maintain the strong individual identity which underpins their position as one of the foremost stationery and gift designers and manufacturers in the UK."

ACID Comment: "Caroline Gardner recognise that their unique designs make them a desirable target for infringers so it's important that the company recognises that a robust IP strategy is a key priority in its brand and product protection."

[www.carolinegardner.com](http://www.carolinegardner.com)



# RAFT TAKES MORE SUCCESSFUL ACTION TO STOP TRADE MARK INFRINGEMENT BY REALLY COMFY BEDS LTD t/a LOAF

Anti Copying in Design (ACID) members RAFT have taken action to put a stop to infringing use of its trade mark by Really Comfy Beds Limited t/a Loaf. This follows successful action previously taken by RAFT against Harvey's for a similar issue. Loaf began selling furniture under the mark RAFT which was a clear infringement of RAFT's registered Community Trade Mark E006461826. RAFT also brought about an allegation of passing off. All use of the RAFT name has now stopped and LOAF have paid costs in the matter as a result of RAFT taking quick action and instructing ACID accredited law firm McDaniel & Co. to take action.

Mick Quinn, Director of RAFT commented, "This is a great result for us, we have successfully enforced our rights twice now and the result is we have sent a clear message that we will not tolerate infringement of our rights in a business that we have worked incredibly hard to build and create a strong reputation for within the market as a quality, ethical brand."



Kelly Hudson, solicitor at McDaniel & Co. commented "RAFT have again successfully enforced their rights here and took action immediately upon discovering the infringement in this case. This is one part of an effective IP protection strategy in ensuring potential infringements are followed up immediately. RAFT now have a reputation within the industry as an informed company who enforces its IP rights, this is very valuable indeed."

ACID Comment, "A business plan is not a business plan without a robust IP strategy. Part of that strategy means budget allocation for IP infringement when it is necessary and to use this to protect one of the most important aspects of any business, its trade mark or brand".

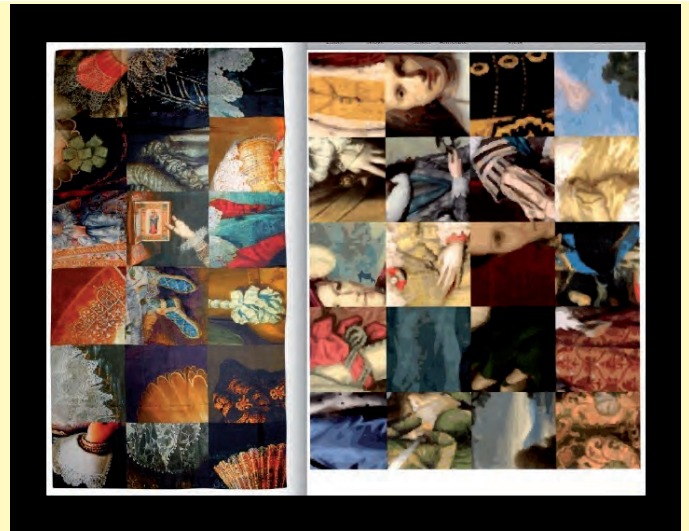
[www.raftfurniture.co.uk](http://www.raftfurniture.co.uk)

# AGNES MURRAY and THE ROYAL COLLECTION

## Copy or coincidence?

ACID member and budding designer Agnes Murray submitted her design board for a competition organised on behalf of The Royal Collection but, despite all her efforts, Agnes wasn't successful in winning the competition. However, she was shocked and surprised to see that a scarf which seemed remarkably similar to her own design and entry into the competition has appeared in the Royal Collection Shop

When she wasn't successful Agnes was told that The Royal Collection



did like her work but was asked to provide further examples for consideration. However, despite this encouragement, Agnes was told that her particular project would not be taken forward.

Attached to this post are 2 images. One is Agnes work and the other is the work used by the Royal Collection.

The Royal Collection denies that any copying took place (although the Retail Director of the Royal Collection seems to take the opposite view) or that they have used Agnes's Work.

**WHAT DO YOU THINK – COPY OR COINCIDENCE?**

# MARKS & SPENCER RESPOND POSITIVELY IN RECENT LOOKALIKE DISPUTE!

Despite denying any liability or offering compensation, M & S have settled a lookalike dispute. Following correspondence between ACID member Stuart Gardiner and Marks & Spencer regarding a complaint about a remarkably similar tea towel to his own original design being sold by Marks & Spencer, they have removed 3500 tea towels from their stores. Over the past 5 years Stuart has been developing a successful niche market business design and the design in question "A season Guide to British Fruit & Vegetables" was one which he designed in 2009 and for which he owns the copyright.

Stuart Gardiner said, "I was alerted to the alleged copy by two people whose exact words were, 'Have you seen this – M & S have ripped you off!' When I wrote to Marks & Spencer I said that I was surprised, given their Annual Report's reference to innovation as a key value to discover what appeared to be a remarkably similar product. However, I am delighted with such an early resolution and only sorry, that despite offering M & S an opportunity to stock my original design, they declined".



ACID Comment, "To witness such a speedy response from M & S to an alleged design infringement is a real step forward and I would extend a warm welcome to their buyers to support our new initiative, ACID Marketplace, which will offer buyers a huge opportunity to discover new designs and to support British original designers in an online safer trading conduit. Things have definitely moved on since the costly and time consuming recent Rachael Taylor and M & S challenge. A quick, positive response is much more preferable than a long drawn out legal battle!"

[www.stuartgardiner.co.uk](http://www.stuartgardiner.co.uk)  
[info@stuartgardiner.co.uk](mailto:info@stuartgardiner.co.uk)

## LEGAL AFFILIATE



ANTI COPYING IN DESIGN

# INTRODUCING THE NEW ACID LEGAL AFFILIATE TEAMS

## ACID WELCOMES NEW LEGAL AFFILIATE TEAMS

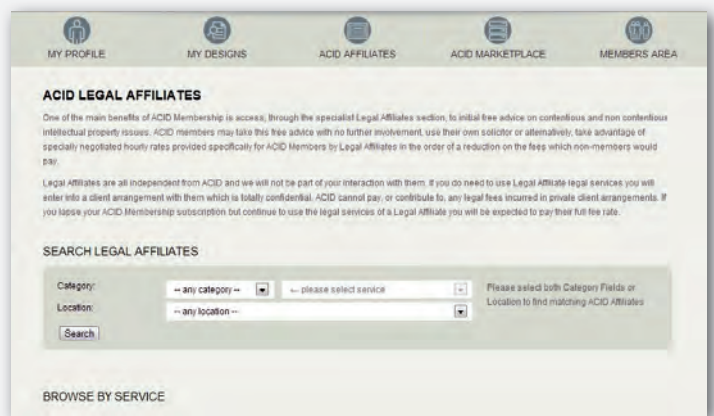
ACID is delighted to welcome new Legal Affiliate teams from Bircham Dyson Bell, Boulton Wade & Tennant, Davenport Lyons, Farrer & Co, Taylors and Venner Shipley who join our existing teams from DMH Stallard, McDaniel & Co and also Barton in the USA.

As part of the new Marketplace development ACID Members now have independent access to a larger group of ACID Legal Affiliates. Members can now search on a number of criteria, including location, specialist services and a range of other non-contentious legal options.

Members can now log into their personal profile on the website and enter the Affiliates section where they can choose the team from which they wish to ask advice. An initial free period of advice by telephone or e-mail is still available and discounted rates are given to ACID Members should they need to engage a lawyer and enter into a client relationship.

All the Legal Affiliate teams are independent of ACID and all correspondence between legal teams and Members will continue to be confidential. This valuable addition to ACID Membership benefits has been created in response to Membership feedback and we hope this underlines the importance of our Members requests, which we always try to act upon if we have the opportunity to do so.

If you would like to know more about using the Legal Affiliate service then visit the ACID website where you will find extra information available under About ACID and Services.


**BARTON**

Roger Barton  
Managing Partner

Graybar Building, 18th Floor  
420 Lexington Avenue, New York, NY

T: +1 (0) 21 2687 6262

F: +1 (0) 21 2687 3667

www.bartonesq.com

E: info@bartonesq.com

Barton is comprised of an elite team of former partners of "Big Law" who have created a client-focused, highly sophisticated, and results-oriented law firm. Our mission is to provide effective and efficient delivery of high quality legal services. We develop long-term relationships by partnering with our clients so that we thoroughly understand their businesses and goals. We then apply our expert legal talents, business acumen and practical problem-solving approach. Our clients value us as their trusted advisors who assist them in identifying and minimizing risk while maximizing opportunities.



Serena Tierney  
Consultant

Neil Emerson  
Partner

50 Broadway, London SW1H 0BL

T: 020 7227 7000 F: 020 7222 3480

www.bdb-law.co.uk

E: enquirieslondon@bdb-law.co.uk

We assist with all areas of intellectual property including the registration of trade marks, designs and patents, negotiating publishing contracts, providing branding advice and developing domain name strategies and work with lawyers throughout the world to ensure that brands and marks are properly protected.



Charlotte Duly  
Trade Mark Attorney

Sarah Merrifield  
Partner



Verulam Gardens  
70 Gray's Inn Road  
London WC1X 8BT

T: 020 7430 7500

www.boulton.com/ E: boulton@boulton.com

Boulton Wade Tennant is a specialist Patent and Trade Mark firm. We exist to help individuals and businesses protect, manage and enforce their intellectual property rights on a global scale. Our aim is simple - we aim to work with our clients, not just for them. This means we place emphasis not only on the quality of our work but also on the quality of the service we provide. Our award winning approach is down-to-earth and jargon-free. Our attorneys are renowned for being committed to helping our clients succeed and for providing a service that is focussed and aligned with our clients' commercial objectives.



**Gavin Llewellyn**  
Partner



**Jo Bixby**  
Associate



6 Agar Street  
London WC2N 4HN

T: 02074682600 F: 02074378216

E: gllewellyn@davenportlyons.com  
www.davenportlyons.com

Intellectual Property (IP) rights are key assets for businesses and creative individuals in today's competitive global marketplace. At Davenport Lyons we understand the commercial value of these rights, allowing us to work with our clients to ensure their successful development, protection and exploitation. Davenport Lyons is renowned for acting for clients at the forefront of rights protection and exploitation across the business spectrum.



**Nick Kounoupas**  
Partner



**Tim Ashdown**  
Partner



Gainsborough House, Pegler Way, Crawley,  
West Sussex RH11 7FZ

T: 01293 605000 F: 01293 543760

www.dmhstallard.com

E: enquiries@dmhstallard.com

DMH Stallard have been ACID accredited lawyers since 2006. Throughout this time we have provided specialist legal advice to ACID members to help them resolve a variety of Intellectual Property related disputes. We are committed to supporting ACID and its members and our service is structured to provide IP advice that is focused on achieving the right commercial results and as delivered on time and to budget. In keeping with the client experience we want to create, there is a high level of partner participation on assignments, supported by our associates.



**Peter Wienand**  
Partner



**Anthony Misquitta**  
Partner



66 Lincoln's Inn Fields  
London  
WC2A 3LH

T: 020 3375 7000

F: 020 3375 7001

www.farrer.co.uk/

E: acid@farrer.co.uk

Farrer & Co is a very well respected London-based law firm. It is renowned for the high quality and cost-effectiveness of its legal advice. The IP team applies those exacting standards to its fast-growing IP litigation practice and its non-contentious technology work.



**Kelly Hudson**  
Senior Solicitor



**Niall Head-Rapson**  
Partner



19 Portland Terrace, Jesmond  
Newcastle Upon Tyne NE2 1QQ

T: 0191 281 4000 F: 0191 281 4333

www.mcdanielandco.co.uk

E: legal@mcdanielslaw.com

McDaniel & Co Commercial are a niche practice servicing those businesses whose core asset lies in Intellectual Property. Led by Niall Head-Rapson the team are highly experienced in dealing with a broad range of Intellectual Property based issues. The Team will be in a position to assist and advise you on protection of your ideas, managing your Intellectual Property Assets, securing ownership, raising capital, structuring business and dealing with your employees and suppliers who are integral to you in your creative ideas.



**Elaine Hurn**  
Managing Partner



**Tony Catterall**  
Senior Partner



Rawlings House,  
Exchange Street  
Blackburn BB1 7JN

T: 0844 800 0263

F: 0844 800 0264

www.taylors.co.uk/

E: contact@taylors.co.uk

Taylors is a North West-based commercial law firm with a recognised expertise in Intellectual Property and particular specialisms in the textiles, home furnishings, manufacturing and software sectors. The Intellectual Property team at Taylors, led by Tony Catterall, provides a full range of strategic advice covering intellectual property disputes, contracts and licensing. Tony's awareness of textiles, interior design and wallcoverings markets ensures he is nationally regarded as a leader in the field of design and copyright.



**Alex Brown**  
Partner



**Ian Grey**  
Partner



200 Aldersgate, London EC1A 4HD

T: 020 7600 4212

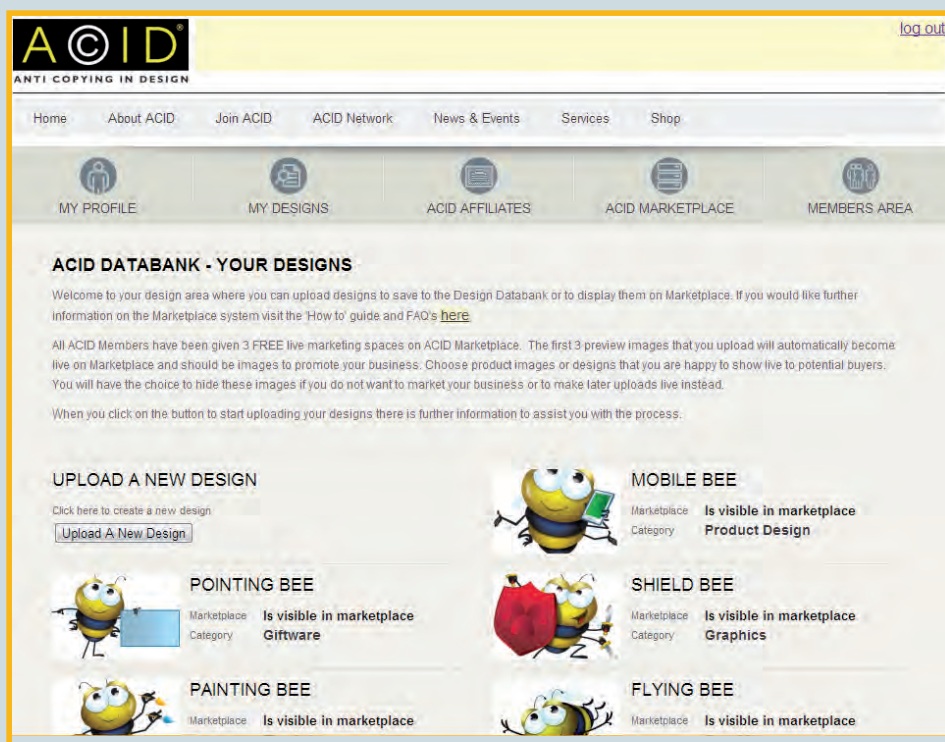
F: 020 7600 4188

www.vennershipley.co.uk

E: mail@vennershipley.co.uk

Venner Shipley is one of the leading firms of European patent, trade mark and registered design attorneys. We are a modern forward-thinking firm with a long history and a vast amount of experience in relation to all aspects of patent, trade mark and design related work. Representing a broad range of clients from individual inventors to major corporations, we aim to provide a leading intellectual property service to each of them. Venner Shipley has a team of over 50 partners and associates.

# ACID MARKETPLACE IS HERE!



**WHAT IS ACID MARKETPLACE? It is a digital design exchange, an ONLINE safer platform where design buyers can view the newest and latest designs created by ACID Members supported by an enhanced ACID Design Databank to store designs online and a tracking system, developed from ACID's IP Tracker!**

For many years ACID has accepted designs in hard copy, on CD's and memory sticks and more recently online, to store confidentially on our Design Databank system. Our Membership feedback tells us that Members are keen to engage with design buyers and retailers but they often feel vulnerable when showing their designs to third parties, particularly if no confidentiality

agreement is in place.

ACID has developed ACID Marketplace as a Member- only benefit to try and address the issue of wanting to market designs but also needing to keep them secure. We looked at how we could modernise the existing, very successful Design Databank to incorporate features that Members had requested; online electronic file submissions, security, proof of design viewing and the ability to manage their own files. We are sure that Marketplace has achieved all these goals.

Each ACID Member has been given 3 FREE 'live' exhibiting spaces on Marketplace and these will automatically upload live images to

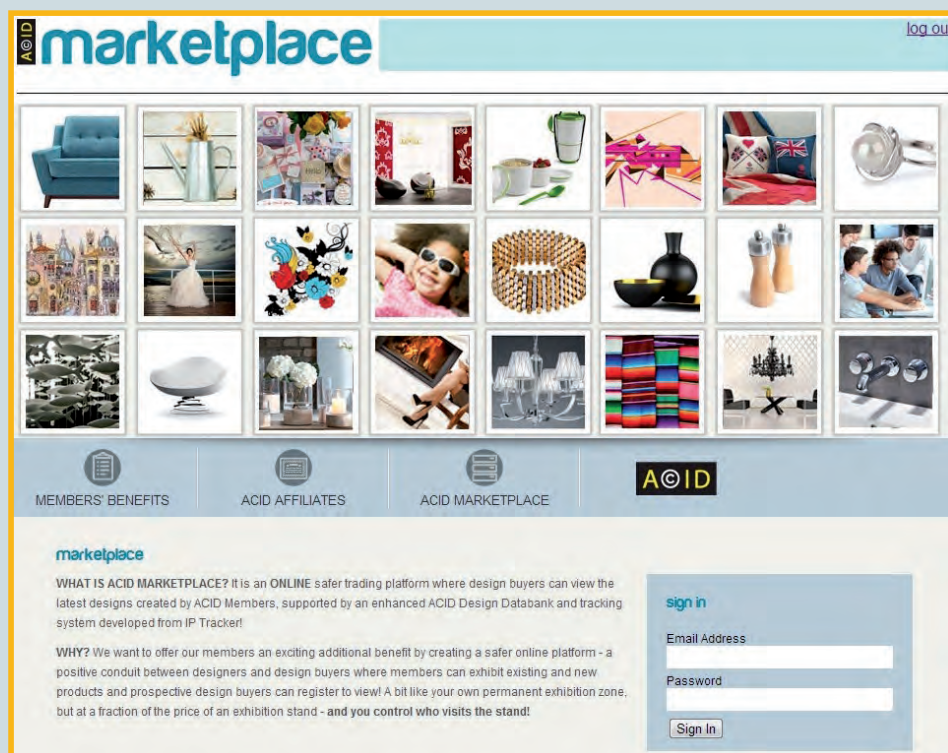
Marketplace for you to promote your business. If you do not wish to make your designs live you do also have the choice to keep them hidden. If you would like to promote additional designs you can purchase more 'live' Marketplace space too.

The new Marketplace design service allows you to upload 6 image files, individually up to 2MB in size, and up to 6 files of additional supporting documents per £1.00 submission. At least one image file needs to be uploaded first to act as your preview image. This helps to identify your submission in 'My Designs' on your personal profile and also if you choose to promote your design on Marketplace using one of your 3 Free live exhibition spaces, this is the image that will be shown. If a design buyer asks for more details they can also view the other image files that you have uploaded.

The .pdf files that you upload as supporting documents could even contain many extra designs within each 2MB file. You can choose to keep your images hidden, make them invitation only to invite specific buyers to view them, or you can make them live on Marketplace. These files will be stored for the life of your membership at no additional charge.

Members now also have the benefit of administrating their own membership area online with a personal profile where contact information can be managed, account users added and you can check who has looked at your

# DON'T JUST STORE YOUR DESIGNS – PROMOTE THEM!



designs, as all viewings are tracked and put onto your profile, together with a complete list of all the design submissions you have made.

**Minister for Intellectual Property, Lord Younger** *"The design sector is a really important part of the UK's creative economy - with nearly £16 billion invested in designs each year. ACID has shown real initiative in taking this bold step to develop the ACID Marketplace. This will now mean that people are going to better understand the value of designs, and it will also help our world class designers to market and sell their innovative creations."*

## Is the Design Databank still available?

The Design Databank still works in exactly the same way as it did before. Any designs that you submitted previously are still stored at no charge, although they will not be visible on your profile. Each submission made through Marketplace still provides you with independent third party evidence and underpins your unregistered intellectual property rights.

It is simple for ACID Members to upload designs online to ACID Marketplace. You can upload up to

6 image files per submission and also 6 additional supporting documents, which can be in PDF format. All files need to be under 2MB individually and you can choose to promote your images live on Marketplace or just to store the designs at any time. You can also invite specific buyers to register to view your designs if you make them invitation only. Remember, whoever views your live designs is tracked and their details are automatically kept in your profile!

At just £1.00 plus vat per submission for up to 12 files of information this offers great value for money!

If you have any questions, or need help with uploading your designs, do call the Membership office and we will be happy to help.

**ACID Ambassador John Noble, Director of the British Brands Group** *"Here is another outstanding, leading initiative from ACID which promises to provide designers with unique and essential support in both protecting and commercialising their designs. I fully anticipate that ACID Marketplace will become an effective trading platform, with the accompanying Buyer's Charter building all-important trust and confidence. This is a brand in the making."*

## FREE LAUNCH OFFER TO THE FIRST 100 ACID MEMBERS!

Not only have we given every ACID Member **3 FREE** live preview exhibition spaces on Marketplace – we are also offering **FREE uploads** of your first 3 live images on Marketplace! Contact us for more information. [info@acid.uk.com](mailto:info@acid.uk.com)

# Social Media, IP and Ethics



The emergence of social media in the 21st century, especially in the last decade, has been a spectacular metamorphosis and transition of communication methods. In 2013 the top three social media platforms YouTube, Facebook and Twitter have 4 billion, 1.1 billion and 500 million users per day. Light years from the first email being delivered in 1971 and heady stuff when you consider Alexander Bell's invention of the telephone which changed our lives in the 19 century. Traditional methods of communication have had a wake-up call and there are new kids on the block turning the world inside out with different rules of engagement. A whole new shorthand of messaging where individuals can reach out globally in milliseconds and it is considered the norm.

Embracing social media positively and ensuring that it is used in an ethical way must be the key objective so it is important to learn about some of the rules, especially when it comes to intellectual property. Privacy and intellectual property concerns will continue about the public sharing of personal information on social networks, so it is important to get it right. So, here are a few tips to think about and add to the ones already known!

**If you discover a copy of your design,** ensure that you don't accuse someone publicly because it is likely there will be a backlash and you could be sued not only for defamation but for making a groundless threat if it is subsequently proved otherwise.

**Making libellous comments Defamation (or slander)** - social media content can potentially be seen by millions, it's a bit like a world notice board, so take care of what you say, be fair not accusatory. Libel is the communication of false information about a person, group or organisation and defined as defamation by printed words, images or gestures. Slander is defamation by the spoken word. Libel laws were created to protect us from unsolicited attacks on ours and others' reputations.

**Using images without permission** - copyright law not only protects printed 2d work but digital publication together with photographic images and graphic art work. The bottom line is that images are protected by copyright and cannot be used without the permission of the originator so always ask permission. Images and photographic work must be acknowledged as the original creator, the copyright owner, also has moral rights. If in doubt, don't leave yourself open to challenge. IP creators are becoming much more "IP savvy" and rightly so.

**Blogging** - Don't get into trouble with what you are blogging about! The basic rule is to acknowledge someone else's IP. Reportage, facts and figures and ideas are not protectable, think of yourself like a traditional newspaper reporter expressing a critical opinion. So check

your facts, don't say anything that is untrue or defamatory. Freedom of speech is for all and the use of quotations is considered fair use, but if you are in any doubt at all check with your lawyer. Questions are often asked about deep linking to web pages and so far no Court has ruled on this subject.

**IP Crisis** - whether it is an IP crisis i.e., your rights are infringed on social media, or you have been publicly challenged by a creator, it really is best to consult an IP lawyer. ACID members are entitled to initial free advice to assess the best course of action. But lawyers are in business too and will only act if they are engaged and paid, though ACID members do get the benefit of discounted fees.

In the situation where any social media activity results in a media backlash or negative publicity this can spiral very quickly so it is important that you have discussed this internally. Trust in a brand is one of the most valued assets. If you have made a genuine mistake, front up and say I'm sorry! It is human after all! Social media is meant to be a fun, light hearted shorthand in communication. Engaging positively with those who you may have upset is the best way forward. In a relatively new media environment mistakes will happen and we can learn from our own and others' mistakes.

**Trade Marks and Brands** - A trade mark is a badge of origin or name by which your company is known and there are issues both with misuse by others and one's own misuse of trade marks on social media. So what can one do proactively to protect your brand? Internally, a company should start with a set of rules about the use of its trade mark professionally and socially, It's a good foundation of protection, together with a written code of conduct, providing a protocol for anyone who engages in social media on behalf of the brand. It is also advisable to have a tracking protocol in place for any misuse. If you discover misuse of your trade mark by a third party systematically gather together all the evidence and consider whether it is worth issuing a "takedown notice" through the social media website or approaching them with a formal legal letter from your solicitor. Evaluation of any loss or damage to reputation is key and acting quickly and decisively will mitigate any future problems. If someone challenges you for misuse of their trade mark its best to consult an IP expert immediately.

**Case Study - Tatty Devine and Claire's Accessories** - for most micro and SME's taking on large companies for suspect IP infringement is impossible because of the cost, the time taken to pursue and the scale of opponent. So, when Tatty Devine discovered that Claire's Accessories were selling products almost identical to their own they decided to start what became a very effective media campaign. Tatty Devine simply put the original and alleged copy of their jewellery on social media and asked their customers to give an opinion with a cleverly worded "Spot the difference" banner.

As with the Rachael Taylor and Marks & Spencer case, the design community is quick to recognise what they consider to be unfair and responded vociferously. Sufficient enough to achieve a result in Claire's Accessories removing the products from sale in a cheap, effective and a quick way! But do beware; this strategy is not risk free and it is important to remember the point about groundless threats and to avoid using any defamatory statements. Jeremy Phillips of the famous IPKat blog commented on the case, "Social network sites also have limitations - they can't provide any financial compensation for the victims of copycat products or guarantee that imitations will be permanently taken off the market."

As ACID has found, it is advisable to use the right language which does not leave the aggrieved in a worse position or open to challenge. Using social media to engage the design community in alleged mis-use has to be carefully handled and, preferably, by an organisation or IP expert with experience of these types of campaigns.

ACID has never shied away from naming and shaming but it is also important to remember about engagement and IP as a positive force. Through the soon to be launched ACID Marketplace, a solution-led initiative and safer online trading conduit between design buyer and designer, this will be provided - watch this space! [www.acid.uk.com](http://www.acid.uk.com)

# DESIGN RIGHTS EXPLAINED

## more answers to your FAQ's



I import furniture from a Company in the Far East. They produce fantastic contemporary items and I have the exclusive right to sell them in Britain. Someone has been copying the designs. What can I do?

There are 4 types of design right which affect the UK. They are UK and Community Registered Design Right and UK and Community Unregistered Design Right. The length of protection is as follows;

Type of Design Right	Length of Protection
Community Registered Design Right	25 years
UK Registered Design Right	25 Years
UK Unregistered Design Right	10years
Community Unregistered Design Right	3 years

### I DON'T HAVE ANY REGISTERED DESIGNS

Well then you may be covered by either Community unregistered design right or United Kingdom unregistered design right. They arise automatically

Community Unregistered Design Right lasts for 3 years from the date the design was first made available to the public. UK Unregistered Design Right lasts for 10 years from the end of the year in which the design is first put onto the market.

### WHO CREATES THE DESIGNS?

The designs are created by a team of designers in the factory and then shown at trade fairs in China

There will definitely be Community Unregistered Design right. When the Designs are offered in fairs in the Far East then that is the first time they are offered to the public. The 3 year time will start to run from that date.

You probably don't have UK unregistered design right though. There is a qualification to be met for UK unregistered design right. There are 3 types of qualification:

- By reference to the creator of the design
- By reference to the commissioner of the design or the employer of the designer
- By first marketing

### DESIGNER

In order to qualify designer must be a qualifying person which is either an EU or EEA national (EEA includes Iceland, Liechtenstein and Norway) or a national of New Zealand and some obscure rocks that are still owned by the UK. As the creators of Designs do not fall in to this category then UK Unregistered Design Right cannot arise this way.

### COMMISSION

The Design needs to be commissioned by a "qualifying person" or the creator needs to be employed by a qualifying person. As the relationship does not fall in to this category then UK unregistered Design Right cannot arise this way.

### FIRST MARKETING

Design Right can arise by the first marketing within the EEA of the design irrespective of either the nationality of the Designer or the Commissioner. As the designs are first put onto the market outside the EEA then UK unregistered Design Right cannot arise this way.

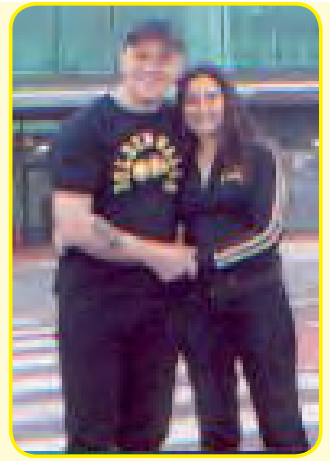
### BUT THE DESIGNS ARE MORE THAN 3 YEARS OLD

Well you probably have no rights to enforce against infringers. In circumstances where the designs are not registered then after 3 years of the designs being marketed in the Far East the market will be open to anyone for that design in the UK.

Going forward you should think about registering the Designs. Registered Designs can be applied for up to 12 months after the Design has first been made available to the public.

# GOLDEN BALLS – LOST IN (LEGAL) TRANSLATION

**David & Goliath – right versus wrong –  
what do you think?  
Golden Balls v Ballon D’Or**



**ACID interviewed Inez Bodur of GI Productions and asked what was the background to the 6 year legal battle with Ballon D’Or?**

“Coming from a background in the fashion industry, Inez Bodur said, as with most budding entrepreneurs giving a name for our new funky sports brand covering all sports presented a dilemma! Finally, we decided on my husband’s nickname, Gus ‘Golden Balls’. Gus’s initials are GB, he’d played football for many years and as the World Cup in Japan & Korea was coming up, we started off with a football range.

We realised that registered our trade mark was very important

So, In 2001, we registered our first trade mark “Golden Balls” (and added classes and WIPO registration subsequently when we could afford it), registered our domain name [www.goldenballs.tv](http://www.goldenballs.tv) and started trading in 2002. Gwyneth Paltrow was seen wearing one of our t-shirts in Covent Garden and following a blaze of publicity, ASOS approached us and they sold out of our t-shirts within the hour. What an amazing start for Golden Balls!

Since starting many have tried to use our name without permission and if they ignored us we used lawyers. One large company, Next, used the name but they had to back down and stopped selling merchandise with our name and a copy of our logo.

**When did the trade mark challenge happen and from whom?**

Never just a football clothing company we covered other sports such as rugby, tennis, football, cricket &

Golfand in 2007 we licensed our name to Endemol UK Plc for the Golden Balls Gameshow hosted by Jasper Carrott OBE on ITV and merchandise Worldwide. 2 months after signing the Licensing Deal we received a threatening fax in French from the legal representative of the owners of the Ballon D’Or, Madame Laborde, asking us to stop trading and sign over all our trade marks and domain names with 14 days, if not they would take legal action.

Our difficulties were compounded because we had to have everything translated into French. Subsequently a French order (the only one we ever received) was from an investigator for Companies based in France.

**What were the origins of the football award, Ballon D’Or?**

The football award, Ballon D’Or



translates to Ball of Gold or Balloon of Gold. Creating a football award was never our business and we said this since day one, but they still went ahead with this unnecessary dispute. Our lawyers said there was no case to answer because the reputation of the award was always known as The European Footballer of the Year and the British Newspaper Archives would reinforce this. When this dispute started Ballon D’Or started changing their press releases and said ‘Ballon D’Or and they would have Golden Ball in brackets. This is when they were trying to change the name of their award.

In 2010 OHIM completely rejected their oppositions but they joined up with FIFA a few months later and their award is now called the FIFA Ballon D’Or.

Mme Laborde said they wanted to settle but wanted us to give up using football then they demanded us to give up all sports and we knew they were being duplicitous as well as talking negatively to the press. With huge regret, escalating costs meant that we could not risk signing for a 5 year lease on our shop.

The licensed game show was a massive success and was due to be sold worldwide but Endemol did progress this with an ongoing legal dispute nor did a lottery scratch deal for the same reasons. The knock on effect was that we couldn’t make any more merchandise; we had no more funds and had to stop using our lawyers. So we started a social media campaign following which we were contacted by a lovely gentleman and guardian angel called Jeremy Phillips (a friend and ally of ACID) who was shocked at

our story and our legal costs and we would never have got this far without him.

### When this finally reached Court what was the judgment?

Eventually the Judgment went in our favour at The General Court of Europe helped by the fantastic Michael Edenborough QC of Serle Court who very kindly acted for us Pro bono. OHIM and Intra Presse had until 16th November to appeal, but we don't know why they would as the judges made it very clear there is no confusion or similarity with our names or businesses. They confirmed that Ballon D'Or translates to Ball of Gold or Balloon of Gold.

Amazingly, we have a copy of a fax and yes, they have appealed the General Courts' decisions. Thankfully Jeremy Phillips, Michael Edenborough, Shireen Smith and Mark Anderson are all 100% behind us. Ballon D'Or just won't accept the truth and the facts, so the nightmare continues.

### Clearly the ongoing legal case had a profound effect on you and your family, what makes you carry on and pursue it?

This whole debilitating debacle was completely unnecessary. Our business was nothing to do with a football award. We had never heard of the Ballon D'Or as their reputation in the UK was always the European Footballer of the Year. It was also the principal, we knew we had done nothing wrong, there was no

confusion, translation or similarity and we were not going to be bullied.

We felt totally helpless because of the scale of our opponents who told our lawyers their clients had millions to outspend us. This is the reason many small companies end up losing to the big corporations, even if they are right. Over 6 years having to fight for what is rightfully ours has been a nightmare and no money will ever be enough for what they put me, Gus and our beautiful children through over the years.

They, on the other hand, have only moved forward as they joined up with FIFA and are huge, as they are now linked to the FIFA World Player of The Year plus FIFA in France and the Tour de France will also celebrate its 101st Anniversary and they will be coming to the UK. If this dispute has not been resolved, we will be at the London stage and our voices will be heard.

### What advice would you give anyone facing this sort of problem?

If you know you are completely in the right and there is no basis to any opposition, when they first contact you, write to them to try and meet up with them and seek mediation. Should they threaten to sue within 14 days, let them take you to court and fight your corner.

If we could turn the clock back we would have done this and it would have saved six years of stress, sleepless nights, the standing still of our business and very high legal costs and time lost with our children growing up. We believe we would have won if this had gone straight to court.

We did offer to meet Madame Laborde and her clients over the years, but they refused. They also told our lawyers many times they wanted to settle and would withdraw their oppositions. This never happened and we believe it was to stop us talking to the media.

### Lone, Micro and SME challenges

I believe the IP Trade Mark laws protect small companies, but if you are fighting a large corporation who will not deal with you direct and



lawyers have to be involved this can prove very costly. With our other company dispute, the Design laws, we felt were completely different and you don't really stand a chance if your designs are copied with the law as it stands. This really needs to be changed.

### How can the ACID Community help?

We believe the ACID Community can really help because they support each other and spread the word to raise awareness. The legal team also help with advice for free which is so helpful to small companies. The Gallery with Members designs and products also helps protect registered designs. Also because ACID has dealings with the Government, voices and views like ours can be heard.

Anyone wishing to support Inez and Gus and engage in social media should tweet @mrsgoldenballs



# AWARD WINNING MEMBERS IN 2013

ACID would like to congratulate all the Members who have been shortlisted and won awards this year. The ACID Membership team wish you all very best wishes for a Happy New Year and hope that 2014 will continue to be as successful. Remember, if you do win an award or want to share your news, contact the Membership office and we will be happy to add your story to our social media program to share with other Members.

## ACID MEMBER: B3 DESIGNERS

**AWARD:** Restaurant Bar Design Awards 2013  
for Kitchen Table / Bubbledogs (London)  
Standalone restaurant



## ACID MEMBER: BELLY BUTTON DESIGNS

**AWARD:** The Henries Award 2013 , Best  
Relations & Occasions



## ACID MEMBER: Nature's Purest Ltd

**AWARD:** Citrus Media Award 2013,  
Highly commended for Social Media Newcomer  
of the Year



## ACID MEMBER: Victoria Eggs

**AWARD :** Freelance & Home-based Business of  
the Year Finalist 2013



## latest new members list ●●●

Company Name	Industry ID	Company Name	Industry ID
JF Designs	Ceramics	Red Hot Lemon Ltd	Giftware
PerBella	Childrenswear	The Typecast Gallery	Giftware
Pixie and Dixie Limited	Childrenswear	Warbeck & Cox	Giftware
Sanderson Studios Limited	Design Agency	Archiepba Ltd	Graphics
Seascape Curiosities	Fabric & Textiles	Shen Marketing Limited	
Tracey Walsh Design	Fabric & Textiles	T/as Pink Chillies	Graphics
Ameo Designs	Fabrics & Textiles	Blank Inside	Greetings Cards
Beyond the Fridge (Frome) Ltd	Fabrics & Textiles	Cockadoodle Design	Greetings Cards
Carmen Woods Limited	Fabrics & Textiles	LOLA DESIGN LTD	Greetings Cards
Eskimo Consulting Ltd	Fabrics & Textiles	Love from Lemonade Ltd	Greetings Cards
Frock & Mol	Fabrics & Textiles	Niche Arts Ltd	Greetings Cards
Jane Mosse Designs	Fabrics & Textiles	ROSANNA ROSSI	Greetings Cards
Melissa Smith Textiles	Fabrics & Textiles	Studio Seed	Greetings Cards
Ruth Duncan Design	Fabrics & Textiles	Creative Clouds Ltd.	Interior Accessories
Urban Meadow Designs	Fabrics & Textiles	Ellie Cashman Design	Interior Accessories
Be Unlimited Ltd	Fashion	From Brighton With Love	Interior Accessories
Eclipse	Fashion	Maggie Dymond Designs	Interior Accessories
Jack Masters Ltd	Fashion	PLMRS LTD t/a Bloobry	Interior Accessories
Wow Women Ltd	Fashion	Rachel Richardson-Jones	Interior Accessories
Corrigan Cribs	Furniture	Stars Stripes and Snowflakes	Interior Accessories
Fun Furniture Collection	Furniture	Tim Plunkett	Interior Accessories
Furmanac Ltd	Furniture	Macdonald Interiors	Interior Design
Inspire Design International Ltd	Furniture	Erin Cox Jewellery	Jewellery
Joined and Jointed Ltd	Furniture	Kate Wimbush Jewellery	Jewellery
Kristian Pettifor Designer Maker	Furniture	Little Shop of Limited	Jewellery
Marketing Awareness Ltd	Furniture	Mila Jewellery	Jewellery
Miltonpriest	Furniture	Otis Jaxon	Jewellery
Notion Furniture	Furniture	Royce Morgan Ltd	Kitchen & Bathroom
Out There Interiors	Furniture	Avivo Lighting Ltd	Lighting
Radiance Furniture Design	Furniture	Quartz LC Ltd	Lighting
The Shed Studios	Furniture	The Lighting Consultancy Ltd	Lighting
Tom Aylwin Bespoke Furniture	Furniture	Vispres Ltd.	Lighting
Turnpost	Furniture	Chalet Verbier Limited	Product Design
Garden on a Roll Ltd	Garden Products	Designure Ltd	Product Design
Tenacious Bloom	Garden Products	Global Games International Ltd	Product Design
Jane Frost	Giftware	Mutley's Hut Ltd	Product Design
Kelly Connor Designs	Giftware	PARTTEAM (M.S.N.F.	
martha and hepsie ltd	Giftware	Soluções Informáticas Lda.)	Product Design
Natural Selection Fossils	Giftware	Ruth Dent	The Arts
Paper and Scissors	Giftware	Philip Edward Barsby	Toys

### ACID's Joining Criteria for New Members

"In accordance with our policy that all new members are provisional members for the first 6 months of their subscription

period, we publish a list in each newsletter of companies which have recently joined ACID. In the event that there is any complaint against a new member, please write to the Chief Executive together with any substantiated facts. Hearsay, rumour or unsubstantiated facts will not be considered under any circumstances.

Any complaint that should arise will be put before a panel comprising ACID's legal advisor, Chief Executive and two Corporate ACID Members from a different industry sector. If the panel decides that a complaint should be upheld their decision will be final and no correspondence will be entered into.

## top drawer London

Top Drawer Spring/Summer  
London  
12th – 14th January 2014  
[www.topdrawer.co.uk](http://www.topdrawer.co.uk)

## INTERIORS UK

19 - 22 JANUARY 2014 | NEC BIRMINGHAM

Interiors UK  
NEC Birmingham  
19th – 22nd January 2014  
<http://www.interiorsuk.com/>

## SPRING FAIR INTERNATIONAL INSPIRING BUYING

Spring Fair International  
NEC Birmingham  
2nd – 6th February 2014  
[www.springfair.com](http://www.springfair.com)



IP Protect Expo  
London  
11th – 12th March 2014  
<http://www.ip-protectexpo.com/>

# CLAUSE 13, ONE IP BILL, TWO VIEWS

Lord Tim Clement  
Jones and  
Sebastian Conran



Attendees at the 2nd Annual ACID DMH Stallard Debate held in November focused on the design reforms in the IP Bill recently passed by the House of Lords, in particular, the controversial Clause 13 and criminal provisions for deliberate registered design infringement. ACID has also campaigned for unregistered designs to be included as the majority of UK (and EU) designers rely on unregistered design right.

Introducing the debate, ACID's CEO Dids Macdonald said, "Why should a furniture designer have fewer IP rights than a songwriter or artist? It simply doesn't make sense! Whilst we welcome criminal provisions for intentional registered design, we believe that Government is making a massive mistake by not supporting criminal provisions for unregistered design infringement".

Kicking off the debate Liberal Democrat peer Tim Clement-Jones steered the IP Bill through its passage in the House of Lords said, "When I first joined Government the words intellectual property hardly passed a Minister's lips so we have come a long way. Now, remarkably, we have an IP Bill on patent and design reform. At the moment Clause 13 only includes criminal provisions for registered designs but we live in hope that unregistered designs will be included even at this late stage. Government is still not quite listening hard enough."

ACID Ambassador Sebastian Conran, MD of Conran Associates said, "I believe that IP is a key catalyst and engine of innovation for growth. It is tremendously important for our future. Innovative designers understand that we cannot lead without people following, however we should expect to be suitably rewarded for our efforts without having our initiative stolen. Innovation is

a high risk strategy and defending rights' infringement can be onerous".

Chairing the debate, Nick Kounoupas ACID's Chief legal Counsel and a partner at DMH Stallard said, "History confirms that criminal provisions have been used sensibly, sparingly and appropriately as a last sanction for deliberate copyright and trade mark infringements, I see no value in the argument that the floodgates will open for design cases"

Speaking as an Officer of CIPA (Chartered Institute of Patent Attorneys), Jan Velck opposing Clause 13 said, "We have great concerns about the collateral damage if Clause 13 is passed in the IP Bill. Registered designs are unexamined which raises the issue of validity problems and big businesses such as Rolls Royce and Dyson are against it. There is a risk that people will be locked up by mistake"

Rounding off the panel debate, Kieron Sharp DG of the FACT said, "During my police career as a law enforcement officer I believed that enforcing the law for the victims of crime was to make people's lives better and having a criminal law enables you to move more quickly. However, the CPS requires massive tests to go through and it has to be in the public's best interest do so. Clause 13 provides an opportunity to better protect designs"

In a vote taken at the end of the debate, the vast majority of the audience which included Government officials, lawyers, trade mark attorneys, barristers, designers, educationalists and manufacturers supported the motion for Clause 13 and criminal provisions for both deliberate registered and unregistered rights infringement.

## A©ID®

ACID (Anti Copying in Design) Ltd.  
PO BOX 5078  
Gloucester, GL19 3YB  
[www.acid.uk.com](http://www.acid.uk.com)

## HOTLINES...

Membership Office:  
+44 (0)845 644 3617  
Membership fax:  
+44 (0)845 644 3618  
Email: [help@acid.uk.com](mailto:help@acid.uk.com)



**marketplace**

For more details click here >>  
[www.acid.uk.com](http://www.acid.uk.com)