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November 27, 2013

Call for Evidence：Section 52 CDPA

Copyright Directorate

Intellectual Property Office

United Kingdom

Besides the practice as a patent attorney I have been engaged in the studies on the legal protection of industrial designs and published a number of papers and books in that field. Especially on the history of merchandising right I have watched the British movement with much interest since the decision of the "Popeye the Sailor Case"(1941) by The House of Lords. The fact that the Popeye dolls and brooches sold by the defendant in the United Kingdom were 'made in Japan' attracted my attention.

The Decision by the House of Lords reversed the appeal verdict and decided that such an industrial design could be protected by copyright. To my knowledge the decision by the House of Lords had a great impact on the British Industrial and legal field and there raised controversy on the subject.

After the Decision by the House of Lords in 1941, Section 10 in Copyright Act 1956 was effected. Then after Design Copyright Act 1968, Section 52 in CDPA 1988 was effected.

The regulation in Section 52 of CDPA 1988 became effective through such a complicated history, and the copyright period of an artistic work as a design applied to articles was decided to be 25 years, which is the same period for the registered design right.

To my surprise it is said that the regulation in Section 52 of CDPA 1988 will be abolished, which seems to me that the history would return back to the age of 100 years ago, that of Section 22 of the 1911 Copyright Act which was quoted by the House of Lords in 1941. I cannot agree to this return back and oppose to the abolition of Regulation 52 of CDPA 1988.

If UK would abolish Regulation 52 of CDPA 1988 because of her ratification of the EU Directive concerning the copyright law, UK should make the aforesaid regulations of her Copyright Law correspond to the Directive. I have not received any news yet if the Directive concerning the copyright law has become effective or not.

On the other hand UK should repeatedly claim that the spirit of her law be reflected on the Directive. UK has indeed a long history of discussion and practical experience of this problem and as the fruit of which Regulation 52 of CDPA 1988 was born, of which the nation can be pround before the whole world.

Reproductions of artistic works are protected by copyright. However, when an artistic work is applied to articles or products for the mass production, it is a subject of registered design law.

Protection under a copyright law should not be extended to applied articles, because overlapping legal protection under copyright and registered design right would reduce the meaning of design law.

In my more than fifty-years study days on Design Law and Copyright Law in Japan the most valuable reference has been Copyright in

Industrial Designs (1930～) by A. D. Russell-Clarke. Among the questions raised there the legal protection of merchandising right has been my main study subject, and especially in Japan how the legal protection of the merchandising right of characters in cartoons and animations should be is my chief subject of discussion, where my emphasis is on the point that our law model should be Section 52, CDPA 1988. In my paper, "The Way to the Merchandising Law – Limitation in Applying the Copyright Law", I called upon the enactment of a special law.

On the above-discussed question I have had no discussion with any of my old English acquaintances, Professor W. Cornish or Barrister Ms. C. Fellner.

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