Design Infringement

what are the rights being infringed?
- s.7 RDA49
  - s.7(2) use

right

protection
- s.3C, 7(6) and 8(1)
  - protection runs from priority date
  - 5yrs initially
- s.8
  - can renew every 5yrs up to max of 25yrs

how infringe?
- s.7A
  - carry out any of the rights exclusive to the reg owner without consent
  - anyone, any, without authority
  - making, offering, putting on the market, exporting, using
  - monopoly rights become manifest in breach
  - no need for the owner to prove copying to establish infringement
  - sufficient for there to be a design which doesn't produce on the informed user a different overall impression

explanatory memorandum for Designs Reg
- the right conferred by the Reg Comm Des is a monopoly right.
- The right holder has an exclusive right as regards the use of the design and he can enforce his right against any similar design even in cases where the infringing design has been developed in good faith

central Q
- Colston Does the design alleged to be an infringement create or not create a different overall impression on the informed user
- s.7(6)
  - no proceedings may be brought for acts committed before the grant of the cert of registration

offences
- s.33-35A RD49

exceptions and defences
- s.7A(2)(a-f), s.7A(4-5)
  - corresponds to defences in patents
- s.60(5)(a-b) CDPA88
  - exhaustion occurs when the product has been put on the market in the community by the holder of the community design or with his consent

s.1C(2-3) RDA49
- have must fit exception, there is no must match exclusion yet in reg designs
- s.7A(5)
- no protection for spare parts used to restore appearance
- if parts are registered as designs, may not be able to enforce
- combine with exclusion for purely functional designs should assist reg design owners to use reg design law to establish a monopoly in spare parts

s.11 RDA49
- cancel or declare invalid at request of owner
- grounds of invalidity, absolute and relative are specified
  - absolute objection based on the design itself
  - relative objections made because of the rights of others
  - accepted that the grounds of invalidity may be raised as grounds of defence in infringement proceedings

s.9
- no damages may be awarded against the innocent infringer

s.26
- for groundless threat of infringement

remedies

injunctions

account of profits

competition law
- pre Des Reg 01
- Competition Act 98
  - introduced prohibition system corresponding to arts 81-2 EC
  - s.2 prohibits agreements that prevent, restrict or distort

E Commission proposed amendments in a report on spare parts in 2004
- s.1C(2-3) RDA49
- only some protection in the UK
- not yet harmonised in Europe

problem