



PATENTS, TRADEMARKS, COPYRIGHT AND INDUSTRIAL DESIGN
T. A. BLANCO WHITE AND ROBIN JACOB

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INDUSTRIAL DESIGNS

By

T. A. Blanco White

One of Her Majesty's Counsel

and

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PREFACE

The demand for a further edition of this little book comes at a very appropriate time. On the one hand, we were able to incorporate, as well as the usual fresh judicial decisions, two new Acts of Parliament: one extending the Trade Marks Act to cover service marks, the other confirming that computer programs are copyright. On the other hand, we have been warned that major legislation in the industrial property field is due in the next year or two. Thus we have been able to provide a short and up-to-date account of the background against which the industrial property "white paper" (presumably out before this book went on sale) and the ensuing bill and Act need to be judged.

The main impact of the promised legislation seems likely to be directed at the use of copyright in the field of industrial designs. There are here indications that not only the British Government, but also the European Commission and our own House of Lords (whose judgment on the appeal in *Leyland v. Armstrong* was awaited when this book went to press) consider that our present law, as stated in Chapter 6, will not do. We have hinted in the text at some obviously likely changes. Readers should in addition note that it is currently being considered that the Patent Office be changed into a sort of "quango," but this should result in only relatively minor changes in the administrative procedures described within this book.

We would urge anyone interested to read the white paper: but to read this book first.

The Temple,
January 1986

T. A. B. W.
R. J.

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PART I
INTRODUCTION

CHAPTER ONE

IMITATIONS AND REMEDIES

IMITATIONS

THE subject of this book is the law of commercial and industrial imitation: imitation by one manufacturer of another's products, imitation by one trader of the names and badges by which another's goods or business are known.

Overlap of the types of imitation

In law, these two varieties of imitation are best treated as distinct; in practice, they overlap. For one thing, the imitation of a rival manufacturer's goods often depends for its profitability on being able to tell customers that this is an imitation of something they will have heard of; people are usually willing to pay more for products they have heard of. For another, where imitation of goods is close enough for the imitation to look like the original, the similarity of appearance is usually itself enough to suggest to customers knowing the one product that the other is really the same thing. Again, in these days of advertising, it is often more important that a product should be convincingly advertised than that it should work well; and it may be that the main reason for wanting a product to be different from its rivals is to make it easier to advertise that product as being different.

The commercial use of legal rights

One result of this sort of overlap is that the various legal rights with which this book is concerned are by no means always used for the purposes that the law supposes them to serve. In legal theory, a patent—and much of this book is concerned with patents—should normally be reckoned as valueless unless it enables its owner to secure an order from the courts forbidding a competitor to make or sell something that competitor would otherwise want to put on the market. To some businesses, that is indeed the purpose of patents. To others, however, the mere possession of a patent, however rubbishy to the lawyer's mind, may be of real value for advertising purposes. Others again treat patents merely as cards in complicated games of business politics that no lawyer understands. Industrial designs, on the other hand, are given protection, in theory, to protect