

Oxford International Intellectual Property Moot 2022

Corrections & clarifications

1. In paragraph [1], the reference to ‘artisan patisserie and bakery’ is to how Floyd’s Kitchins describes itself. Its marketing materials say that it ‘uses only the highest quality ingredients’ and that its ‘team of chefs bake everything on the premises’.
2. In paragraph [1], the instructions written by Ms Mummery covered how to bake the cake and how to make and execute the icing, frosting and decorations. The instructions were intended for other chefs employed by Floyd’s Kitchins.
3. The Birss Butterfly cake is sold at Floyd’s Kitchins stores and can be ordered online. When sold in-store, it is displayed in a glass display cabinet with other cakes. The customer selects the cake he or she wishes to purchase. That cake is provided to the customer in a cardboard box with the name and branding of Floyd’s Kitchins. When sold online, an image of the cake is displayed, without packaging. It is either collected in-store or delivered, in both instances in a cardboard box with the name and branding of Floyd’s Kitchin.
4. Mr Fysh is a consumer.
5. In paragraph [21](b), add the word ‘Butter’ so that the text on the final line reads ‘the traditional recipe for Burrellshire Brandy Butter Icing’.
6. In paragraph [23], the recipes cited by Ms Clarke all required approximately twenty percent Burrellshire Brandy.
7. In the section ‘**Copyright Act 1997 – extracts**’, add the following to section 9 (exclusive rights):

‘(2) Copyright, in relation to an artistic work, is the exclusive right:

 - (a) to reproduce the work in a material form;
 - (b) to publish the work; and
 - (c) to communicate the work to the public.’
8. There is a statutory regime for registered designs in Erewhon, which gives protection to registered designs for a maximum period of 25 years. (For comparison, the basic rule is that copyright subsists in an original artistic work for the life of the author plus 70 years.) Teams may, if they consider it relevant, note the existence of the registered designs regime in their arguments in relation to copyright. Given teams have not been supplied with any statutory provisions from the Copyright Act 1997 in relation to the copyright-designs overlap, they

should not explore the question of whether such provisions might have limited the copyright protection of the Birss Butterfly Cake.

9. Treaties are not self-executing in Erewhon. This means that they are not a direct source of law in Erewhon. Treaties may, however, be relevant to the content of Erewhonian law, for instance, to statutory interpretation.
10. Teams are reminded of the limitation in paragraph b of the Instructions in relation to new causes of action. To illustrate, it is not permissible to argue that, even if the Birss Butterfly Cake is an original artistic work, there was no infringement by Greenland Supermarket. On the other hand, teams may develop new arguments within the grounds of appeal.
11. It is permissible, for clarity and convenience, to refer to Floyd's Kitchens and the Erewhonian Burrellshire Brandy Association as the 'appellants' and Greenland Supermarket as the 'respondent', despite the existence of the cross-appeal.