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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ TR. P. (C) No.93/2018

Judgment reserved on : 02.08.2018
Date of decision : 11.06.2019

ANURAG SANGHI & ANR. Petitioners
Through: Mr. M.K. Miglani, Adv. with
Mr. Samreen Khan, Adv.
versus

M/S KNITPRO INTERNATIONAL Respondent
Through: Mr. Ajay Amitabh Suman, Adv.

And

+ TR. P. (C) No.94/2018

ANURAG SANGHI & ANR. Petitioners
Through: Mr. M.K. Miglani, Adv. with
Mr. Samreen Khan, Adv.
versus

M/S KNITPRO INTERNATIONAL Respondent
Through: Mr. Ajay Amitabh Suman, Adv.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioners Mr. Anurag Sanghi and M/s Sanghi International vide Transfer Petitions (C) 93/2018 & 94/2018 seek the withdrawal of the suit titled as *Knitpro International Vs. Anurag*

(M)

Sanghi bearing TM No.178/2017 & TM No.179/2017 both pending in the Court of the ADJ-04, PHC, New Delhi to this Court and seek that the same be tried with the suit titled as **Knitpro International Vs. Anurag Sanghi & Anr.** bearing CS (COMM) NO.867/2018 already transferred to this Court. Since the issue involved in both the transfer petitions is the same, the two petitions are being disposed of by the common order.

2. The proceedings in CS (COMM) 867/2018 which suit bearing No. CS 918/2017 was instituted before the learned Court of the ADJ at Patiala House Court, New Delhi was transferred in terms of Section 22(4) of the Designs Act, 2000 to this Court vide order dated 12.04.2018 of the learned ADJ-04, PHC, New Delhi in view of the defence taken by the defendants to that suit i.e. the present petitioners herein which suit had been filed by the respondent to the present petitions i.e. M/s. Knitpro International as plaintiff thereof, with the defendants in the said suit i.e. the present petitioners having contended that the Court of the ADJ did not have any jurisdiction to consider the prayer for the cancellation of the design of the plaintiff of CS No.918/2017 i.e. the respondent herein.

3. The said suit was re-numbered as CS (COMM)867/2018 on receipt in this Court. The proceedings dated 11.05.2018 in CS (COMM) 867/2018 read to the effect:

"I am informed by the learned counsel for the parties that three suits have been filed before the District Courts and all the three suits have to be heard by this Court in view of the judgment of the Full Bench of this Court in Mohan Lal, Proprietor of Mourya Industries v. Sona

(3)

Paint & Hardwares, AIR 2013 Delhi 143. The present suit is one of them and other suits are awaited. List on 23.07.2018."

4. The avowed contention of the petitioners herein arrayed as the defendants to the suit CS (COMM) 867/2018 is to the effect that in this suit CS (COMM) 867/2018, the respondent herein as plaintiff thereof has alleged the piracy of its registered designs by the petitioners herein and has sought to restrain the petitioners from selling LYKKE knitting needles having certain design features which the respondent herein are alleged are imitation of the respondent's SYMFONIE knitting needles and also violate terms of compromise arrived at between the parties in an earlier suit bearing No.CS(OS) No.2142/2015 as decreed by this Court.

5. It has been further submitted on behalf of the petitioners herein that on 12.09.2017 the respondent to the present transfer petitions filed two more suits bearing TM No.178/2017 titled as *M/s Knitpro International vs. Anurag Sanghi & Another* (i.e. for passing off suits) alleging cause of action for passing off by the petitioners herein involving the very same knitting needles as involved in the designs suit and that the respondent herein filed another suit bearing TM No.179/2017 titled as *M/s Knitpro International vs. Anurag Sanghi & another* (i.e. copyright suit) alleging infringement of copyright in the industrial drawings of one of the knitting needles as being the subject matter of the Designs suit and of the passing off suit.

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6. Copies of the plaint of the said suits bearing TM No.178/2017 & TM No.179/2017 as also of CS (COMM)867/2018 are placed on record.

7. It has thus been submitted by the petitioners that in view of the verdict of the Hon'ble Full Bench of this Court (comprising three Hon'ble Judges) in *Mohan Lal, Proprietor of Mourya Industries v. Sona Paint & Hardwares*, AIR 2013 Delhi 143 decided on 15.05.2013 where the suit for infringement of designs and suit for passing off had been filed in close proximity with each other, they may be tried together. The petitioners have also submitted that it would be in the interest of justice if the three suits are tried together by this Court in as much as they are based on the same cause of action arising out of the same set of facts and between the same parties and that it would also save judicial time and costs if the three suits are tried together.

8. The respondent has vehemently opposed the prayer made by the petitioners. It is essential to observe, however, that in the proceedings in CS (COMM) 867/2018 which is the suit alleging infringement of the designs in the needles as filed by the respondent, the counsel for the parties that would include the counsel for the plaintiff of CS (COMM)867/2018 i.e. the counsel for the respondent to the present petition had informed the learned Court of three suits having been filed before the District Court and that all the three suits had to be heard by this Court in view of the judgment of the Hon'ble Full Bench of this Court in *Mohan Lal (supra)* and that CS (COMM) 867/2018 was one of them and that the others were awaited.

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Furthermore, in TR.P (C) 15/2015 vide proceedings dated 30.07.2015 it is indicated that the said transfer petition was filed by the present petitioners against the same respondent on whose behalf, the counsel present had accepted notice and submitted that he had no objection if the suit bearing TM No.170/2015 that was pending in the Court of ADJ, PHC, New Delhi was transferred to this Court to be tried with CS (OS) 2142/2015 between the same parties in respect of the infringement of the 'design' pending in this Court. It has also been observed by this Court vide the said order dated 30.07.2015 to the effect:

"Both suits have to be tried together in view of the law laid down in Mohan Lal vs. Sona Paint & Hardware, 2013 (55) PTC 61 (Del) (FB).

Accordingly, file of suit bearing TM No.170/2015 pending in the court of Ms. Vrinda Kumari, Learned Additional District Judge, Patiala House Courts, New Delhi is withdrawn and transferred to this Court. The said suit on receipt by transfer be tried with CS (OS) 2142/2015.

The petition is disposed of in above terms."

9. The contention raised on behalf of the respondent is to the effect that there is a distinction in the causes of action in the suits filed, i.e.

- seeking the permanent injunction against piracy of registered designs;
- seeking an action against passing off suit;
- and seeking action for infringement of copyright in industrial drawings of the products.

(8)

10. It has been denied on behalf of the respondent that the products in the three suits i.e. TM No.178/2017, TM No.179/2017 & CS No.918/2017 now renumbered as CS (COMM) 867/2018 are the same and it has been submitted that the products in the copyright suit at one hand and designs and trademarks suit on the other hand are not identical and that CS No.918/2017 i.e. CS (COMM) 867/2018 pertains to the infringement of design and that Suit No.178/2017 pertains to the passing off and Suit No.179/2017 pertains to the infringement of copyright in the industrial design and that whereas the suit for infringement of designs had been transferred to this Court by virtue of operation of Section 22 (4) of the Designs Act, 2000 no such provisions are available under the Trademark Act and Copyright Act and different provisions of law are applicable in suits pertaining to infringement of designs, infringement of copyright in industrial drawings and passing off and that the defence available in the said three suits are different.

11. The respondent has further submitted that the questions of law involved in all the three suits are also different and that thus the transfer petitions are liable to be rejected. It has also been submitted on behalf of the respondent whilst placing reliance on the observations of the Hon'ble Full Bench of this Court (comprising three Hon'ble Judges) in *Mohan Lal (supra)* to para 33.3 to the effect:-

"We are also of the view that a composite suit for infringement of a registered design and a passing off action would not lie. The Court could, however, try the suits together, if the two suits are filed in close proximity and/or it is of the view that there are aspects

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which are common to the two suits. The discretion of the court in this matter would necessarily be paramount."

12. The chart submitted by the petitioners of the pending suits shows the subject matter, date of institution, status of the suits and products involved in the suits with the respondent's admission in relation thereto that the suits are to be tried together to the effect:

**CHART OF PENDING SUITS
T.R.P. (C) 93/2018 AND 94/2018**

<i>Suit No.</i>	<i>Subject matter</i>	<i>Date of institution</i>	<i>Status</i>
<i>C.S. 918/2018</i>	<i>Piracy of registered design</i>	<i>23.08.2017</i>	<i>Transferred to this Hon'ble Court, renumbered as C.S. (COMM) 867 of 2018</i>
<i>T.M.178/ 2017</i>	<i>Passing off</i>	<i>12.09.2017</i>	<i>Subject matter of TR.P. (C.) 93 of 2018</i>
<i>T.M. 179/2017</i>	<i>Infringement of copyright</i>	<i>12.09.2017</i>	<i>Subject matter of TR.P. (C.) 94 of 2018</i>

IDENTITY OF PRODUCT & CAUSE OF ACTION

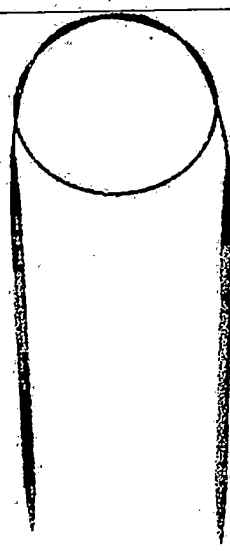
i. C.S. 918/2017

Product involved:- LYKKE's Fixed Circular Knitting Needle, interchangeable Knitting Needle & Cable thereof & Single Point Knitting Needle.

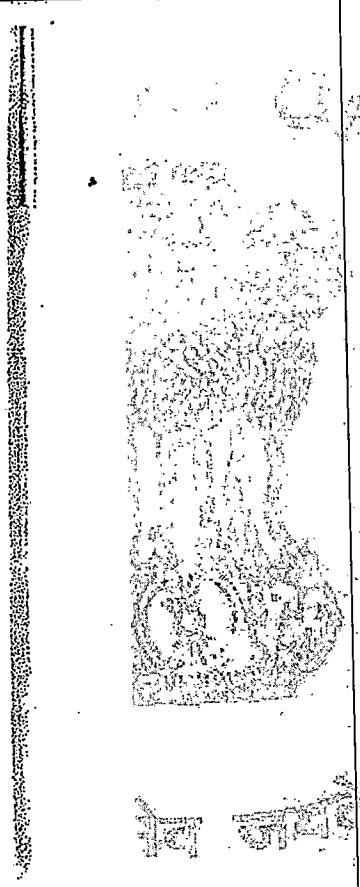
25. That the impugned designs are identical and/or a substantial and fraudulent imitation of the Plaintiffs said registered designs. The defendants have copied all the above mentioned designs of the plaintiff. The Defendants are applying the impugned design on their

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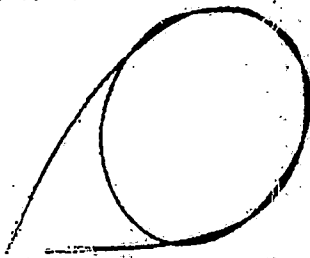
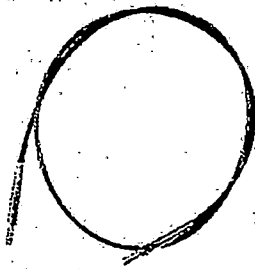
impugned goods for the purpose of sale. The defendants are also publishing, exposing or causing to be published or exposed for sale their impugned goods bearing the impugned design and are otherwise so using it in relation thereto in the course of trade. Comparison of defendants' impugned designs applied on the impugned goods and corresponding registered design and pending application of the plaintiff is produced herein-below:

Comparison of Plaintiff's product A and Defendants' product D	Plaintiffs Registered Design No. 249067 (KNITPRO BAMBOO FCN - US15)	Defendant's Impugned Design FCN-US7)
	 A	 D

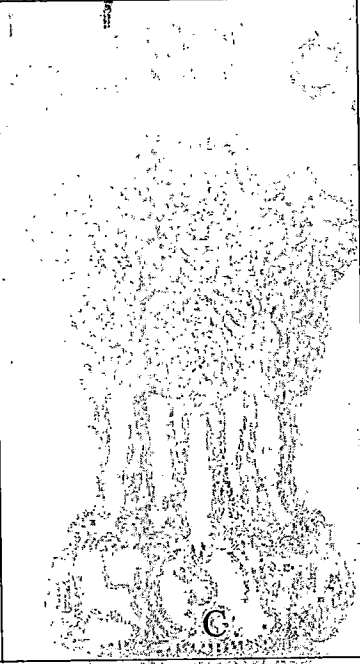
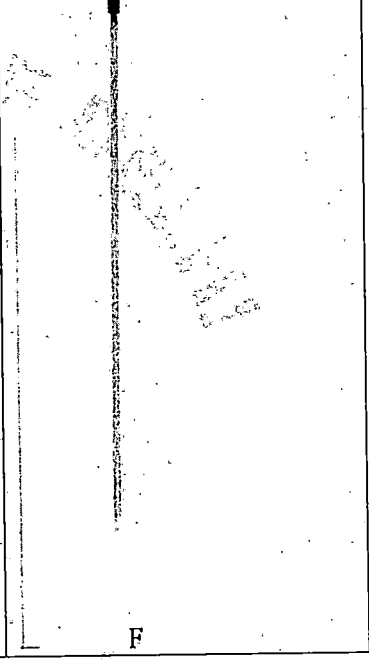
(11)

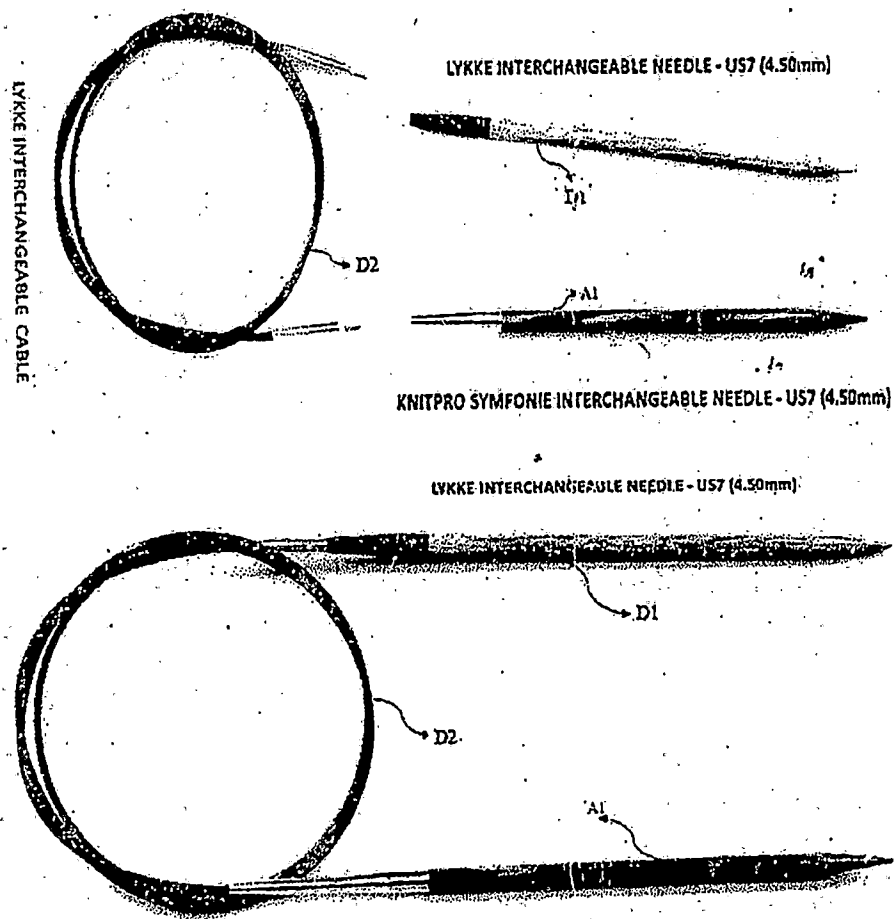
<i>Comparison of Plaintiff's product A1 and Defendants' product DI</i>	<i>Plaintiffs Registered Design No. 249067 (KNITPRO BAMBOO ICN - US7)</i>	<i>Defendant's Impugned Design (LYKKE ICN - US7)</i>
<i>Front View</i>	 A1	 DI

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Comparison of Plaintiff's product AZ and Defendants' product D2	Plaintiffs Registered Design No. 240967 (IOUTPRO CABLE)	Defendant's Impugned Design (LYKKE CABLE)
		 D2
Comparison of Plaintiff's product B and Defendants' product E	Plaintiff Registered Design No. 249066 (KNITPRO BAMBOO ICN - US15)	Defendant's impugned Design (LYKKE ICN US15)
	 B	 E

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<i>Comparison of Plaintiff's product C and Defendants' product F</i>	<i>Plaintiff's Registered Design No.263053 (KNITPRO BAMBOO STN – US 10)</i>	<i>Defendant's Impugned Design (LYKKE STN- US10</i>
		



Cause of Action :-

“36. The cause of action for the present suit has been set out in the preceding paras. The cause of action for the present suit has for the first time arose on the plaintiff become aware of the defendants' adoption and use of impugned designs when they came across the impugned LYKKE products of the defendants bearing the impugned

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designs in the month of Last Week of June 2017 in the market of New Delhi markets viz. Parliament Street, Barakhamba, Chanakyapuri etc. Cause of action further arose when plaintiffs enquiry made thereafter revealed that the defendants are commercially using, soliciting, selling, publishing, exposing, etc. the impugned designs in relation to the impugned goods and were doing so in the markets of Delhi including New Delhi markets and also through the various web-sites namely www.lykkecrafts.com, www.amazon.com, www.fringesupplyco.com, www.wolfandfaun.com etc. wherein the defendants are also soliciting distributors and retailers of their impugned goods under the impugned designs, the cause of action is still continuing and is accruing day-by-day and shall continue to so accrue till the defendants cease with its impugned adoption and user."

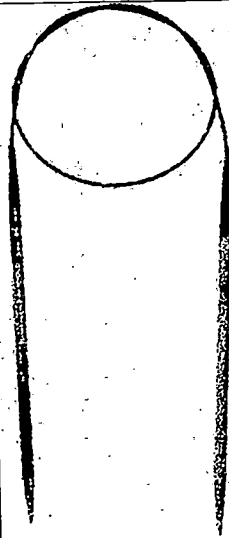
ii. T.M.178/2017

Product Involved:- *LYKKE's Fixed Circular Knitting Needle, interchangeable Knitting Needle & Cable thereof & Single Point Knitting Needle.*

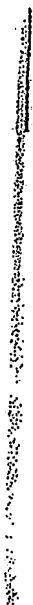
24. *That the impugned LYK.IC shape trademark/trade dress applied by the defendants in relation to their impugned goods and business are identical and/or a substantial and fraudulent imitation of the Plaintiffs*

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said 1011TPRO SYMFONIE shape trademark/trade dress. The defendants have copied all the above mentioned shape trademark/trade dress of the plaintiff. The Defendants are applying the impugned KNITPRO SYMFONIE shape trade mark/trade dress on their impugned goods for the purpose of sale. The defendants are also publishing, exposing or causing to be published or exposed for sale their impugned goods bearing the impugned shape trade mark/trade dress and are otherwise so using it in relation thereto in the course of trade. Comparison of defendants' impugned shape trade mark/trade dress applied on the impugned goods and the plaintiffs said KNITPRO SYMFONIE shape trade mark/trade dress is produced herein-below:

Plaintiff's said KNITPRO SYMFONIE SHAPE TRADE MARK/TRADE DRESS	Defendant's Impugned LYRIC SHAPE TRADE MARK/TRADE DRESS
	

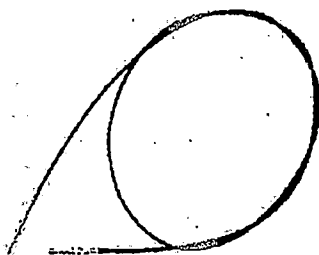
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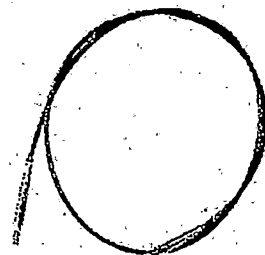
A1



D1



A2



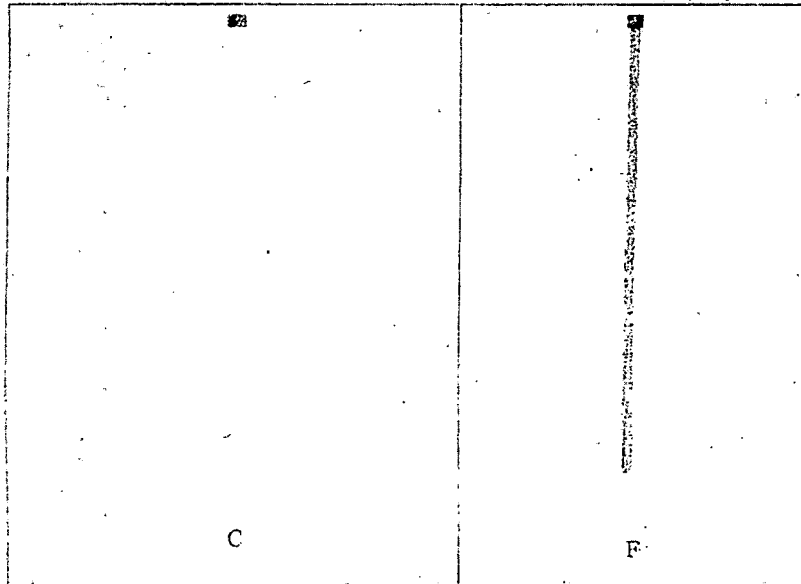
D2



B



R



Cause of Action:-

35. The cause of action for the present suit has been set out in the preceding paras. The cause of action for the present suit has for the first time arose on the plaintiff become aware of the defendants' adoption and use of impugned trademark/trade dress when they came across the impugned LYKKE products of the defendants bearing the impugned trademark/trade dress in the month of Last Week of June 2017 in the market of New Delhi markets viz. Parliament Street, Barakhamba, Chanakyapuri etc. Cause of action further arose when plaintiffs enquiry made thereafter revealed that the defendants are commercially using, soliciting, selling, publishing, exposing, etc. the impugned KNITPRO SYMFONIE shape trade mark/trade dress in relation to the impugned goods and were doing so in the markets of Delhi including New Delhi markets and also through the various web sites namely www.lykkecrafts.com. www.amazon.com.

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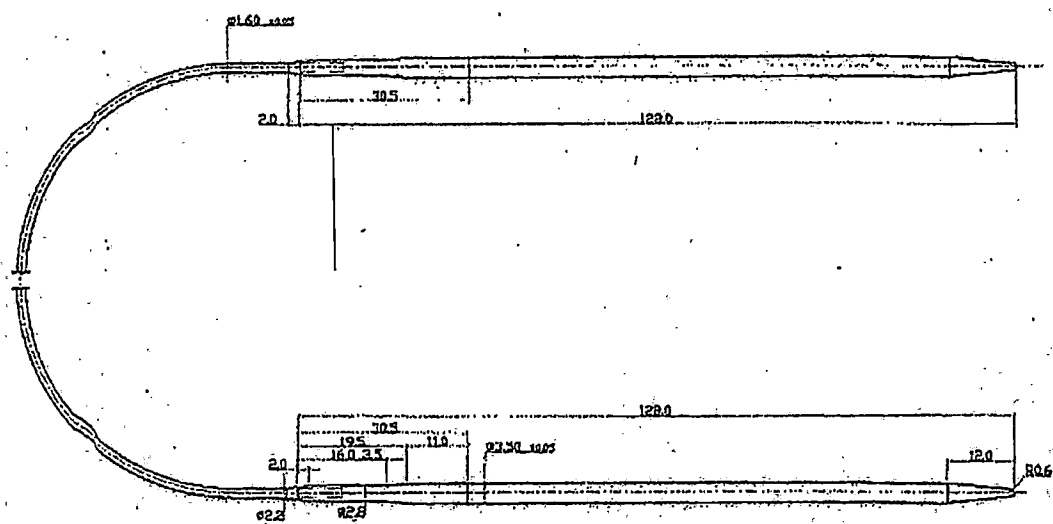
www.fringesupplyco.com. www.olfandfaun.com etc.
wherein the defendants are also soliciting distributors
and retailers of their impugned goods under the
impugned trademark/trade dress. The cause of action is
still continuing and is accruing day-by-day and shall
continue to so accrue till the defendants cease with its
impugned adoption and user."

iii. T.M.179/2017

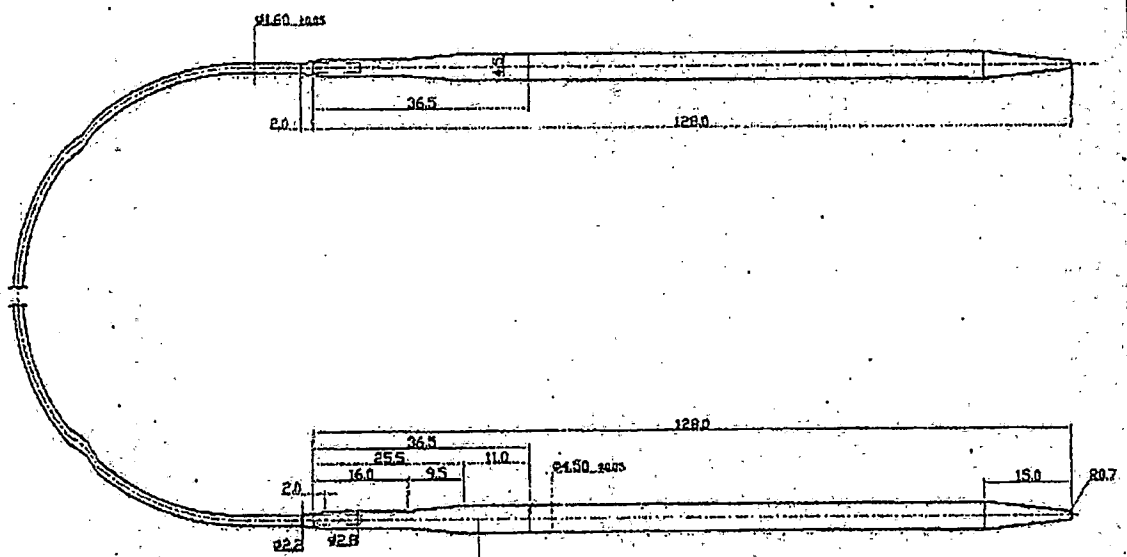
**Product involved:- LYKKE's Interchangeable
Knitting Needle & Cable assembly thereof.**

8. That by virtue copyright in the said industrial drawing,
the plaintiff has the exclusive rights therein, inter alia
within the meaning of Section 14 of the Copyright Act
1957 including to publish and reproduce the work in any
material form including its depiction in material form in
three dimensions of a 2-dimensional work and vice-verse
and otherwise deal with it in the course of trade. The
technical Industrial drawing of the subject matter
product namely KNITPRO SYMFORNIE inter-
changeable circular needle shall refer and include the
technical Industrial Drawing of its variant also. The
technical Industrial drawing of the plaintiff's subject
matter KNITPRO SYMFONIE inter-changeable circular
needle including its different variants has been given as
herein below:-

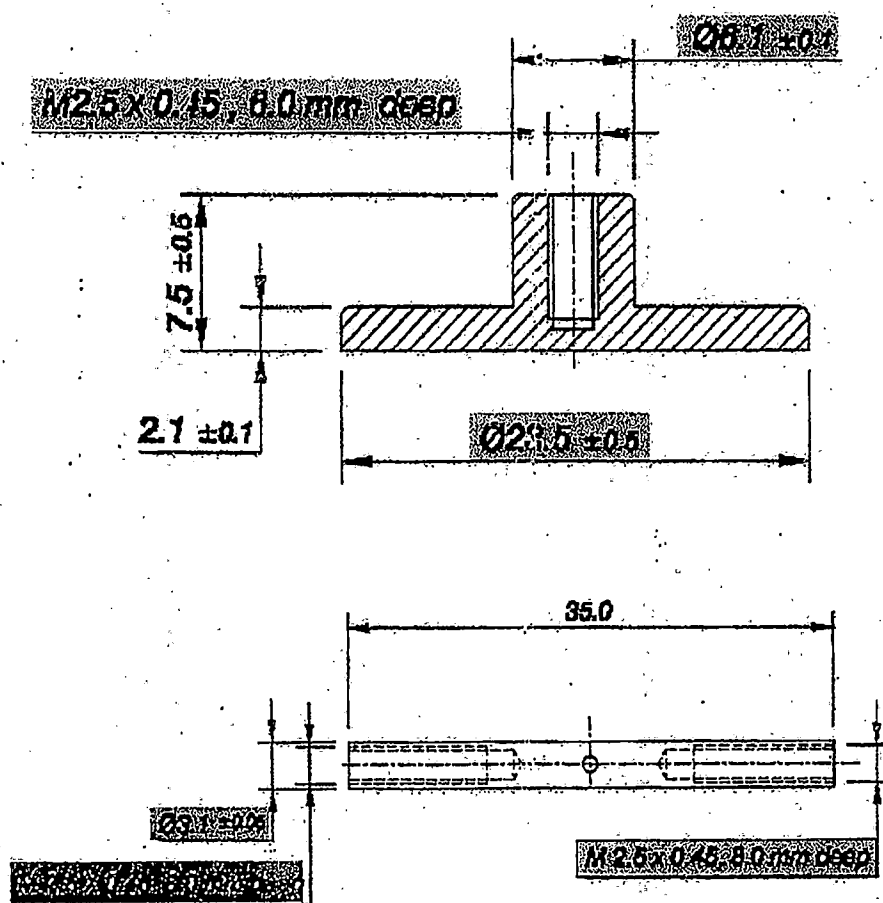
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The Industrial Drawing of KNITPRO SYMFONIE inter-changeable circular Needle (3.5 mm)



The Industrial Drawing of KNITPRO SYMFONIE inter-changeable circular Needle (4.5 mm)

[illegible]

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Cause of Action:-

34. The cause of action for the present suit has been set out in the preceding paras. The cause of action for the present suit has for the first time arose on the plaintiff become aware of the defendants' adoption and use of impugned Industrial Drawing when they came across the impugned goods under the impugned the impugned LYKKE products (based on the impugned Drawing) in the month of Last Week of June 2017 in the market of New Delhi markets viz. Parliament Street, Barakhamba, Chanakyapuri etc. Cause of action further arose when plaintiffs enquiry made thereafter revealed that the defendants are commercially using, soliciting, selling, publishing, exposing, etc. the impugned LYKKE products (based on the impugned Drawing) and were doing so in the markets of Delhi including New Delhi markets and also through the various web-sites namely www.lykkecrafts.com, www.amazon.com, www.fringesupplyco.com, www.wolfandfaun.com etc. wherein the defendants are also soliciting distributors and retailers of their impugned goods. The cause of action is still continuing and is accruing day-by-day and shall continue to so accrue till the defendants cease with its impugned adoption and user."

Respondent's admission that suits are to be tried together in:

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- **Order dated 11/05/2018 in C.S.(COMM) 867 of 2018**
 - **Order dated 30/07/2015 in TR.P. (C) no. 15 of 2015**

13. Reliance was also placed on behalf of the respondent on the verdict of this Court in ***Smithkline Beecham Consumer Healthcare GMBH and Ors. Vs. Hindustan Lever Limited and Ors. 2002 (1) ALLMR 1043*** decided on 03.07.2002 to contend that the three suits are based on separate causes of action with the reliance having placed on paras 19 & 20 of the said verdict which read to the effect:

"19. In the light of the principles laid down by the Privy Council and affirmed by the Supreme Court can it be said that the suit of the plaintiffs is barred by Order II, Rule 2 of the C.P.C.? The plaintiffs filed the suit in Delhi High Court for infringement of design and for passing off as also unfair competition. Primary relief claimed in that suit was injunction restraining the application of the design articles in question (toothbrushes) for the purpose of sale and by way of ancillary relief, mandatory orders including deactivation or handing over of moulds, dies and casts and other material used for applying design on the offending articles were claimed. The present suit of the plaintiff is based on the infringement of their copyright and relief has been claimed in that respect. The cause of action in the present suit is importation of infringing copy (moulds) into India. According to the plaintiffs it is only in August, 1999 they acquired knowledge of the existence of Bombay mould. In fact the learned Trial Judge has recorded a prima facie finding of fact that mould has been imported in Bombay in 1999. Thus the cause of action in the present suit has accrued much after the filing of the Delhi Suit. The issues involved in Delhi Suit are different from the issues involved in the present suit. The evidence in the Delhi Suit is entirely different from the evidence in the present suit. The Delhi Suit was based upon an action for design infringement for

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which the evidence required is a copy of the design registration. In respect of passing off the evidence to establish the right is advertisements and sale of toothbrushes of the plaintiffs. In a copyright action the evidence will be totally different. In any event every fresh act of importation of a fresh mould would give to the plaintiffs under Section 51 read with Section 2(m) of the Copyright Act, 1957. In the facts of the present case, admittedly the cause of action upon which the plaintiffs have sued is different and distinct from the cause of action in the Delhi proceedings. As observed by the Supreme Court in Bengal Waterproof Ltd.'s case whenever and wherever a person commits breach of a registered trade mark of another he commits a recurring act of breach of such trademark giving a recurring and fresh cause of action at each time of such infringement to the party aggrieved. The ratio of this judgment is clearly applicable to the facts of the present case. It is, therefore, not possible to sustain the finding of the learned Single Judge that the suit of the plaintiffs was barred by Order II, Rule 2.

Regarding question (iii):

20. Having held that the suit is not barred under Order II, Rule 2 of the C.P.C. the question of the said suit being an abuse of process of law really does not survive. Dr. Tulzapurkar, however, urged that if one looks into the material on which the Delhi Suit was filed, it is clear that cause of action was available to the plaintiffs when the plaintiffs discovered that the defendants Pepsodent Popular toothbrush were available in the market and that by reason of sale of said Pepsodent Popular toothbrush, plaintiffs rights were allegedly violated. He submitted that the plaintiffs could have also claimed infringement of copyright in Delhi Suit. Moreover, the plaintiffs chose not to agitate violation of copyright in that suit and when they could not succeed in getting interim relief they moved the Court at Baroda and thereafter this Court. This conduct of the

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plaintiffs, according to Dr. Tulzapurkar, amounts to abuse of process of law. Dr. Tulzapurkar relied upon the decision of the Supreme Court in the case of State of U.P. v. Nawab Hussein . We are unable to accept the submission of the learned Counsel. In Nawab Hussein's case the Supreme Court was concerned with a question whether the suit was barred by res judicata. There the petitioner who was dismissed from service filed a writ petition for quashing the disciplinary proceedings on the ground that he was not afforded a reasonable opportunity to meet the allegations against him and the action taken against him was mala fide. The Petition was dismissed. Thereafter he filed a suit in which he challenged the order of dismissal, on the ground, inter alia, that he had been appointed by the I.G.P. and that the Dy. I.G.P. was not competent to dismiss him by virtue of Article 311(1) of the Constitution. The Supreme Court held that the suit was barred by the principles of constructive res judicata. Thus the Supreme Court was dealing with a case where the previously instituted proceedings and the proceedings in which a decision was given were in respect of the same cause of action i.e. dismissal from service. The said decision has no application to the facts of the present case. In the present case the suit is based on totally different cause of action and the basis of the said suit is importation of moulds into Bombay in 1999. In the circumstances it is difficult to accept the argument that the proceedings in the said suit amount to abuse of process of law."

14. Undoubtedly, in view of the verdict of the Hon'ble Full Bench of this Court (comprising three Hon'ble Judges) in **Mohan Lal (supra)** it has been laid that the three suits are based on separate causes of action nevertheless in terms of the verdict of this Court in **Mohan Lal (supra)** itself it has been led vide para 33.3 as observed hereinabove where the said suits were filed in close proximity with each other it would be appropriate that they are tried together where

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the Court is of the view that there are aspects which are common to the all suits.

15. The verdict of the Hon'ble Full Bench of this Court (comprising five Hon'ble Judges) dated 14.12.2018 in **Carlsberg Breweries A/S. Vs. Som Distilleries and Breweries Ltd. AIR 2019 Delhi 23** indicate that the issue involved in **Mohan Lal (supra)** was subject matter of a reference which was taken up in **Carlsberg Breweries A/S (supra)** wherein the Hon'ble Full Bench formulated three questions to be determined by it with the third issue being to the effect:

"III. Whether the conception of passing off as available under the Trade Marks can be joined with the action under the Designs Act when the same is mutually inconsistent with that of remedy under the Designs Act, 2000?"

16. The Hon'ble Full Bench of this Court (comprising five Hon'ble Judges) in **Carlsberg Breweries A/S (supra)** thus observed vide para 45 & 46 thereof to the effect:

"45. It is clear therefore, that the basic facts which impel a plaintiff to approach a court, complaining of design infringement are the same as in the case of passing off. In such circumstances, it is inconceivable that a cause of action can be "split" in some manner and presented in different suits. In this context, this court notes that whereas Order II Rule 3 enables plaintiffs to join disparate causes of action, Order II Rule 2 compels the whole claim to be clubbed together. Speaking on the effect of the latter (Order II Rule 2) the Supreme Court, noting its previous rulings, said in M/s Raptakos, Brett vs M/S Ganesh Property AIR 1998 SC 3085 is an authority for the proposition that a suit cannot be rejected as partly barred.

46. We are also of the opinion that a composite suit has the advantage of a bird's eye view by the court, with respect to a common set of facts: if for some reason, the claim for design infringement is *prima facie* weak and the plaintiff cannot secure interim relief, it does not have to face uncertainty of another action before another court; the same court can review the same facts and evidence, and conclude *pendente lite*, if *prima facie* passing off is made out, necessitating interim relief."

After having made reference to the verdict of the Hon'ble Supreme Court in *Kusum Ingots & Alloys v. Union of India 2004 (6) SCC 254* observed vide para 44 to the effect:

"44. It is evident that there is a similarity between the nature of inferences and conclusions that are presented to the court, in the two causes of action

Significantly, the complaint of passing off as well as that of design infringement emanate from the same fact: sale or offer for sale, by the defendant of the rival product. In this context, it is relevant to notice that the expression "cause of action" was explained in this incisive manner in *Kusum Ingots & Alloys v Union of India 2004 (6) SCC 254* as:

"every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action."

thus, observing to the effect that the suits for complaining of design infringement and the suit of a case of passing off are based on basically the same facts which impel the plaintiff to approach a Court

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and thus it is inconceivable that the cause of action can be 'split' in some manner and be presented in different suits.

Vide paras 63 & 64 of the verdict of the Hon'ble Full Bench of this Court (comprising five Hon'ble Judges) in **Carlsberg Breweries A/S (supra)** the reference was answered to the effect:

63. On account of existence of common questions of law and fact between the two causes of action of infringement of a registered design and passing off, therefore to a considerable extent, the evidence of the two causes of action will be common. In such a situation to avoid multiplicity of proceedings there should take place joinder of the two causes of action of infringement of a registered design and passing off against the same defendant in one suit, otherwise multiplicity of proceedings will result in waste of time, money and energy of the parties and also of the courts.

64. The reference is answered by holding that one composite suit can be filed by a plaintiff against one defendant by joining two causes of action, one of infringement of the registered design of the plaintiff and the second of the defendant passing off its goods as that of the plaintiff on account of the goods of the defendant being fraudulent or obvious imitation i.e. identical or deceptively similar, to the goods of the plaintiff."

17. It is thus apparent that in the circumstances of the case, it becomes inevitable that the proceedings of the TM No.178/2017 & TM No.179/2017 have essentially to be transferred to the Court where the proceedings in CS (COMM) No.867/2018 are pending and the proceedings in TM No.178/2017 & TM No.179/2018 are directed to be transferred from the Court of the ADJ-04, PHC, New Delhi where they were pending initially to this Court to be taken up together with

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the proceedings in CS (COMM) 867/2018 to be placed before the Roster Bench on 05.07.2019 along with the records of the said cases.

ANU MALHOTRA, J. ¹¹⁻⁶⁻²⁰¹⁹

JUNE 11th, 2019/vm

सत्यमेव जयते