



O.A.No.72 of 2023
in C.S.(Comm.Div).No.22 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.09.2023

PRONOUNCED ON : 13.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

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in
C.S.(Comm.Div).No.22 of 2023

TTK Prestige Limited

Having its registered office at:

Plot No. 38, SIPCOT Industrial Complex,

Hosur, Tamil Nadu – 635 126

India

And also at

No.91, Santhome High Road,

Karpagam Avenue,

Raja Annamalai Puram,

Chennai – 600 028

Represented by its Power Agent G.Ramesh Babu ... Applicant/Plaintiff

VS

Butterfly Gandhimathi Appliances Limited

Having its registered office at:

143 Pudupakkam Village,

Kelambakkam-Vandalur Road,

Kancheepuram District – 603 103,



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Tamil Nadu, India

Also at

No. 34, (2nd Floor),
Rajiv Gandhi Salai,
Egattur Village, Chennai – 600 130,
Tamil Nadu, India

... Respondent/Defendant

Prayer: Application is filed praying to grant an ad-interim injunction restraining the Respondent/Defendant, its directors, sister concerns, assigns in business, distributors, stockists, dealers and agents from manufacturing, selling, offering for sale exporting, advertising – whether online or offline – or directly or indirectly in any manner including through websites or other online shopping portals dealing in pressure cookers in any size or variation bearing the impugned design or any other design as may be fraudulent or obvious imitation of the Applicant's/Plaintiff's Design Registration No. 324727-001 amounting to infringement thereof pending disposal of the above suit.

For Applicant : Mr.Hemanth Singh
Senior Advocate
for M/s.Gladys Daniel

For Respondent : Mr.P.R.Raman
Senior Advocate
for M/s.T.D.Selvan Babu

ORDER



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The applicant herein seeks an injunction restraining the respondent/defendant from manufacturing, selling, offering for sale, exporting, advertising, in pressure cookers in any size or variation bearing the impugned design or any other design as may be fraudulent or obvious imitation of the applicant's design with Registration No.324727-001 amounting to infringement of applicant's registered design pending disposal of the above suit.

2. According to the applicant, it is engaged in the business of manufacturing, marketing and sale of kitchen home appliances including pressure cookers. The present application is in respect of the Svachh Deluxe Alpha Pressure Cookers (hereinafter referred to as 'Suit Pressure Cookers') with above said registration number.

3. It is the claim of the applicant that the Suit Pressure Cookers have got novel design and configuration and the respondent fraudulently copied and imitated novel features of applicant's registered design. Therefore, the



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present suit is filed for infringement of the registered design of the Suit Pressure Cookers.

4. The applicant obtained design registration for Suit Pressure Cookers on 13.12.2019. The lid of applicant's Suit Pressure Cookers is having circumferential depression from the centre with a peripheral upwards projection running around the circumference of the lid.

5. The peripheral projection in the suit pressure cookers prevents outflow of froth beyond top surface of the lid of the cooker. This enables the collected froth to evaporate on the top of the lid itself due to the high temperature of the pressure cookers. The lid of the applicant's suit pressure cookers is shaped entirely different from the lid of ordinary pressure cookers in the market granting it instant recognition owing to the novelty and aesthetic eye appeal of the design. The shape and configuration of the suit pressure cookers are the result of design expertise, skill and labour of technically qualified team of the applicant. Though the design of the applicant has got its functional advantages in terms of preventing spilling of froth, it's unique shape



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and design adds to its aesthetic appearance as distinguished from ordinary cookers available in market. The applicant also applied for grant of patent in respect of the inventions with variations pertaining to the pressure cooker handle and the pressure cooker lid confined to the functional features. The said application is pending consideration before the Controller of Patents. Notwithstanding the same, the overall shape and configuration of the pressure cooker of the applicant is entitled to design protection being aesthetically appealing and therefore, has been granted with design registration.

6. During last week of October, 2022, the applicant came to know that the respondent was about to launch a pressure cooker (hereinafter referred to as 'impugned design') being an imitation of the applicant's suit design. The applicant issued a cease and desist notice to the respondent on 01.11.2022. The respondent filed its reply dated 11.11.2022 requested the applicant not to initiate any legal action. But however, came up with the lodging of caveat petitions against the applicant.

7. It is the specific claim of the applicant that the respondent has blatantly copied and reproduced the overall design comprising the shape and



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configuration of applicant's design. The applicant is the pioneer and inventor of the novel lid design with a central depression and peripheral upward projection. The respondent imitated novel features of the applicant's design. The imitation of the respondent would amount to fraudulent imitation and hence, it shall be injuncted under the provisions of Section 22 of the Designs Act, 2000.

8. The respondent in his counter affidavit has stated that the impugned design namely Butterfly Blueline Spillfree Stainless Steel Pressure Cooker was adopted by the respondent during September/October, 2022. The design of the respondent has no similarity with the registered design of the applicant. It is specifically claimed by the respondent that as per the disclosure made by the applicant at the time of obtaining design registration, the novelty of the design of their pressure cooker resides in the shape and configuration of the pressure cooker with container and lid. Hence, suit pressure cooker and impugned cooker shall be compared only for overall similarity and appearance as a whole and the individual microscopic elements of the cooker cannot be compared with each other. It is claimed by the respondent that the suit design



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was published in YouTube channel of the applicant in a video uploaded on 11.11.2019, which is prior to the date of application for design registration (11.12.2019).

9. Due to prior publication, the design of the plaintiff is not registerable and its registration is liable to be cancelled under Section 19 of the Designs Act, 2000. It is the case of the respondent that uploading of video on YouTube channel would amount to prior publication of the design and hence, the design registration is liable to be cancelled. The applicant failed to point out what are the features of the suit design that distinguishes it from the design uploaded in you-tube.

10. It is also claimed by the respondent that the suit design is not a new or original design and it is only a trade variant of their existing number of pressure cookers, which had circumferential depression from the centre with peripheral upwards projection. It is also claimed by the respondent that the suit design has a functional feature namely prevention of froth leaking and therefore, it is not registerable under Section 2(d) of the Designs Act, 2000.



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The respondent further claimed that design of the lid *per se* is not registerable or valid and registration is only for the entire cooker.

11. Mr.Hemanth Singh, learned Senior Counsel appearing for the applicant submitted that the impugned design of the respondent is fraudulent imitation of registered design of the applicant. Merely because, there are some cosmetic changes in the design and appearance of the respondent's product, it cannot be said that the design of the respondent is different from that of the applicant. It is submitted that  shaped peripheral upwards projection instead of  peripheral upwards projection and an inclined plateau like central depression instead of  a central depression would not make respondent's design as the one different from suit design. However, some small changes in the core design of the applicant is made with fraudulent intention to escape from action for piracy and therefore, the design of the respondent would amount to fraudulent imitation. The learned Senior Counsel further submitted that the suit design is completely different from the design published in YouTube Channel and therefore, the registration of the applicant is not hit by prior publication. Further, it is also submitted that



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under Section 6 of Designs Act, 2000, a owner of the design is entitled to have registration of new variants. It is also submitted that the suit design is not the only one by which leaking of froth can be prevented. The same function can be achieved by number of other designs. Therefore, the suit design cannot be termed as the one, which is purely functional. In support of his contention, the learned Senior Counsel relied on the following judgements:-

- (i) ***Bharat Glass Tube Ltd., vs. Gopal Glass Works Ltd.***, reported in ***2008 (37) PTC 1 (SC)***.
- (ii) ***Castrol India Ltd., vs. Tide Water Oil Co. (I) Ltd.***, reported in ***1996 (16) PTC 202 CAL***.
- (iii) ***Walker, Hunter and Co. vs. Falkirk Iron Company*** reported in ***(1887) 4 R.P.C. 390***.
- (iv) ***Cow (P.B) & Coy. Ld. vs. Cannon Rubber Manufacturers, Ld.*** reported in ***(1959) RPC 240***.
- (v) ***Whirlpool of India Ltd. vs. Videocon Industries Ltd.***, reported in ***2014 (60) PTC 155 (Bom)***.
- (vi) ***Dart Industries Inc. & Anr. vs. Polyset Plastics Pvt. Ltd.& Ors.***, reported in ***2018 (75) PTC 495 DEL***.



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(vii) ***Videocon Industries Limited vs. Whirlpool of India Limited***

reported in ***MANU/MH/1248/2012***.

(viii) ***TTK Prestige Ltd., vs. KCM Appliances Private Limited*** reported in

2023 SCC Online Del 2129.

12. Mr.P.R.Raman, learned Senior Counsel appearing for the respondent submitted that the impugned design has no similarity with the applicant's design and therefore, there is no fraudulent imitation of the plaintiff's design by the respondent. The learned Senior Counsel elaborated it by saying that the circumferential protrusion in respondent's design is like a ridge and whereas, the circumferential protrusion in applicant's design is like a platform. He also pointed out that in defendant's design in the top of the lid, there is an outward inclination towards outer ridge and whereas, in the plaintiff's design the top of the lid is straight without any inclination. Therefore, it is the submission of the learned Senior Counsel that distinguishing features of the respondent's design makes it completely different from the plaintiff's design. The learned Senior Counsel further submitted that in case of infringement of designs, Court shall not see whether



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the impugned design would cause confusion or deception in the mind of the ordinary purchaser but it has to see whether the impugned design is an imitation of the registered design sufficient to destroy the exclusive right of user available to the proprietor of the design. He further submitted that distinguishing features pointed out by him make the impugned design of the respondent as the one different from the plaintiff's design and hence, no infringement of design can be inferred.

13. The learned Senior Counsel also submitted that the design of the plaintiff is not a novel one as there was a prior publication. He also submitted that central depression, peripheral upwards projection running around circumference of the lid prevents froth leaking and the said feature is functional one. Therefore, the applicant/plaintiff cannot seek monopoly of the same under the scheme of the Designs Act, 2000. Even before the introduction of the applicant's design there existed number of pressure cookers in the market with similar design as that of the plaintiff's design. Therefore, the plaintiff's design is incapable being registered under Designs Act, 2000. In support of his arguments, the learned Senior Counsel relied on the following



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judgments:-

- (i) ***ITC Limited vs. The Controller of Patents and Designs*** reported in ***MANU/WB/0137/2017***.
- (ii) ***Diageo Brands B.V. and another vs. Alcobrew Distilleries India Pvt., Ltd.***, reported in ***2022 SCC Online Del 4499***.

14. The applicant herein has filed this injunction petition with the prayer restraining the respondent from manufacturing, selling, offering for sale, exporting, advertising impugned design or any other design as the case may be fraudulent or obvious imitation of applicant's registered design in Design Registration No.324727-001. This application pertains to Svachh Deluxe Alpha Pressure Cookers manufactured and marketed by applicant with Design Registration No.324727-001 dated 13.12.2019. The applicant claimed that respondent had blatantly and fraudulently copied and imitated novel features of the applicant's Registration Design including the lid design and marketed Butterfly Blueline Spillfree Stainless Steel Pressure Cooker with impugned design. The applicant claimed that impugned design of the respondent is fraudulent imitation of applicant's registered design and hence,



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the respondent shall be restrained from marketing the same.

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15. The present application seeking interim injunction was mainly resisted by respondent on following three grounds:-

- (i) The design of the applicant is not registrable under the provisions of Designs Act, 2000, as there was a prior publication in the form of video uploaded on November 11, 2019, prior to registration of applicant's design, which embodies the design features of applicant's suit design.
- (ii) The novelty claimed by the applicant in the form of central depression on the top of lid of the pressure cooker prevents spilling of froth and therefore, the suit design involves performance of essential function and therefore, the applicant is not entitled to any protection.
- (iii) The impugned design of the respondent is having essential distinguishing features when compared to suit design of the applicant and therefore, when respondent's impugned design is different from applicant's suit design for an instructed eye, the applicant is not entitled to seek injunction.



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16. It is seen from the affidavit filed by respondent dated 27th June, 2023, the respondent applied for registration of impugned design under 373264-001 and owing to its distinctive and unique shape, on 14th June, 2023, the Controller of Designs had granted registration for impugned design of the respondent under Design Registration No.373264-001. When respondent himself applied for registration of its impugned design, which also has central depression as a prominent feature of its design, the respondent cannot raise the defence of functionality. Merely because, particular design performs a function, one cannot say the said design is not registrable under Designs Act, 2000. If it is shown very same function can be achieved by a different design, each of the design which achieves the very same function is registrable under Designs Act, 2000. In other words, only in cases where particular function can be achieved only by particular design and the same cannot be achieved by any other design, it can be said that particular distinct design is not registrable under Designs Act, 2000. In this regard, it would be appropriate to refer to the observations of the Bombay High Court in *Whirlpool of India Ltd. vs. Videocon Industries Ltd.*, reported in *2014 (60) PTC 155 (Bom)*. The



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relevant observation reads as follows:-

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“39. If a particular function can be achieved through a number of different forms, then a defense of functionality must fail. For the defence of functionality to succeed, it is essential for the Defendant to establish that the design applied for is the only mode/option which was possible considering the functional requirements of the products. Even otherwise, as submitted by the Plaintiff assuming that the shape also performs a certain function, that by itself is not determinative of the fact that the design is functional if that is not the only shape in which the function could be performed.”

17. The photographs of various products furnished in the typed-set of papers filed by the respondent would suggest that the function of preventing the froth from spilling can be achieved by different designs as distinguished from suit design and impugned design. Hence, the defence of functionality raised by the respondent is not acceptable to this Court. As far as the defence of prior publication raised by the respondent is concerned, the screenshots of YouTube video, which was claimed to be a prior publication is scanned and reproduced below:-



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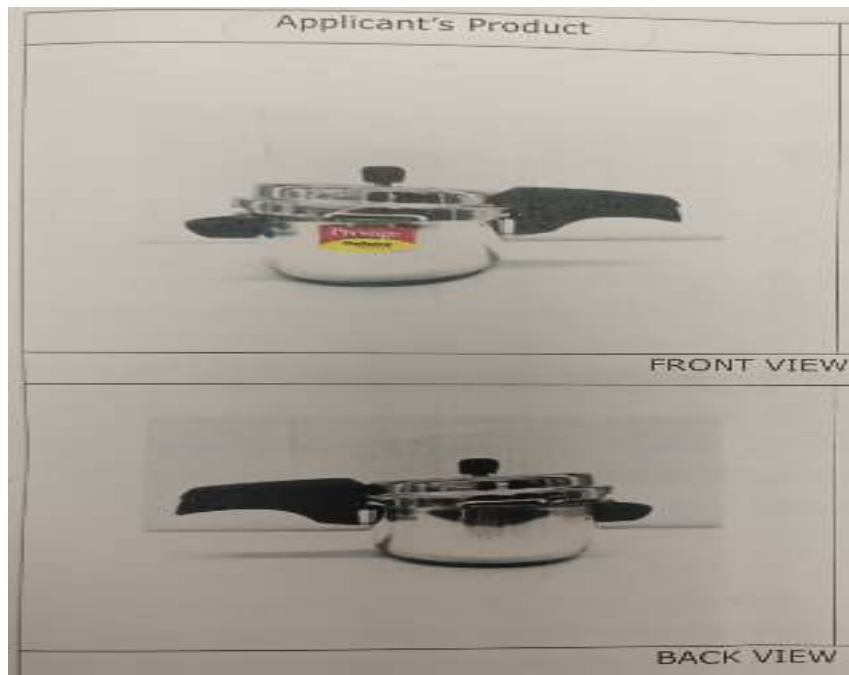
18. The applicant's suit design is scanned and reproduced below:-



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19. The comparison of the product available in YouTube video and the applicant's product make it clear both are entirely different. In applicant's product, there is a circumferential protrusion and thereafter, there is a depressed platform like structure around the lid. However, in the product available in YouTube footage, there is no depressed platform structure around the lid on the outer side of the circumferential protrusion. Further, the circumferential protrusion available in YouTube product is like a broad platform. However, in suit design of the applicant, the circumferential protrusion is narrow and not as broad as in the YouTube product. These distinguishing features pointed out between suit design and YouTube design make these two designs completely different from one another for an instructed eye as distinguished from eye of ordinary, average consumer. In such circumstances, this Court comes to the conclusion that the suit design is different from the design available in YouTube Channel and therefore, the defence of prior publication raised by the defendant is also not acceptable to this Court.



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20. It is settled law that the distinguishing features which differentiate two designs must be appreciable to an instructed eye which remembers special features of earlier design and distinguish the same with the striking features of impugned design. As far as infringement of design is concerned, we have to apply instructed eye test. Therefore, the test of confusion to eyes of ordinary, average consumer applied in trade mark cases shall not be applied in infringement of design cases. The said question has been clearly explained in following cases:-

(i) In ***TTK Prestige Ltd., vs. KCM Appliances Private Limited*** reported in ***2023 SCC Online Del 2129***, it was observed as follows:-

“134. (xxv) There is a subtle difference between the test which would apply when examining validity of the suit design vis-à-vis prior art and infringement of the suit design by the impugned design of the defendant. This difference arises essentially because the validity of the suit design vis-à-vis prior art is being examined at a point of time prior to the registration of the suit design, whereas the aspect of infringement of the suit design by the defendant's design is examined vis-à-vis the certificate of registration of the suit design, and the features of novelty and



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originality which have been certified to be existing in the suit design. Prior publication would invalidate the suit design only if the suit design itself has been published prior in point of time. Invalidation on the ground of want of novelty and originality, on the other hand, does not require prior publication of the suit design itself. What it does require, however, is the existence of a prior design which, when applied to an article, would reveal that, except for trade variants, there is no difference between prior art and the suit design. While examining infringement, on the other hand, the Court is required to examine the design and the prior art vis-à-vis, as it were. The eye with which the aspect of infringement is examined is an instructed eye, which is aware of prior art and of the features which impart, to the suit design, novelty and originality vis-à-vis prior art. The comparison of the design of the defendant's product with the suit design has to be made from the perspective of such an instructed eye thus examined, if it is seen that the features which impart, to the suit design, novelty and originality vis-à-vis prior art, and as certified in the certificate of registration of the suit design, stand replicated in the design of the defendant, the defendant is guilty of piracy.”

(ii) In ***ITC Limited vs. The Controller of Patents and Designs*** reported in ***MANU/WB/0137/2017 = AIR 2017 Cal 156***, it was observed as



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follows:-

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“62. The test of novelty is the eye of the judge who must place the two designs side by side and see whether the one for which novelty is claimed is in fact new. It is a matter of first impression. In The Wimco Ltd. v. Meena Match Industries, AIR 1983 Del 537, the Court held that "in the matter of novelty the eye has to be the ultimate arbiter and the determination has to rest on the general ocular impression. The court has to consider and look at the two designs in question with an instructed eye and say whether there is or there is not such a substantial difference between them that which has been published previously and the registered design to say that at the date of registration that was not published in India previously."

63. In Steelbird Hi-tech India Ltd. v. S.P.S. Gambhir & Ors., MANU/DE/0525/2014 : 2014 (58) PTC 428 (Del), it was stated that in the matter of novelty the eye was to be the ultimate test and the determination had to be on the normal ocular impression. In order to know its newness or originality it was necessary that a design identical with or even materially similar to the relevant design should not had been published or registered previously.

64. The novelty or originality of the particular part may be sufficient to impart the character of novelty and originality to the



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whole. (*Walker v. Scott*, (1892) 9 RPC 482). In *Hawkins Cookers Ltd. v. Zaverchand Liladhar Shah & Ors.*, MANU/MH/0519/2005 : 2005 (31) PTC 129 (Bom), the Court held that "it is now well settled that even a slight innovation or improvement in the design is a design by itself and can be registered as independently innovated design."

(iii) In ***Diageo Brands B.V. and another vs. Alcobrew Distilleries India Pvt., Ltd.***, reported in **2022 SCC Online Del 4499**, the Court Observed as follows:-

"203. Para 11 of *B. Chawla* clearly and categorically holds that, even on the aspect of infringement, the eye through which the lens has to be trained is the instructed eye. Though Mr. Sibal tried, valiantly, to wish away the finding of the Division Bench in para 11 of the report in *B. Chawla* by invoking the principle that the ratio decidendi of any case has to be understood in the light of the dispute before the Court, and sought to point that the Division Bench in *B. Chawla* was not concerned with the aspect of infringement, the argument fails to impress. The aspect of infringement cannot be said to be foreign to the dispute in *B. Chawla*. That apart, para 11 of *B. Chawla* is categorical in holding that, even on the aspect of infringement, the eye has to be instructed.



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“204. One may usefully refer, in this context, to a decision of the Federal Circuit in Egyptian Goddess Inc. v. VSM Swisa Inc.⁸¹ which, even while holding that infringement would have to be analysed from the point of view of an ordinary observer, clarified that the ordinary observer would have to be a person who was conversant with prior art. To quote the Federal Circuit, the test to be applied was whether “a purchaser familiar with the prior art would be deceived by the similarity between the claimed and accused designs, inducing him to purchase one supposing it to be the other”.

205. Diageo v. Great Galleon notices B. Chawla. It fails, however, to take particular note of the opening sentences in para 11 of the said decision, which clearly hold that, even on the aspect of infringement, the matter has to be examined from the point of view of the instructed eye. That being so, on the aspect of infringement, it is, with respect, not possible to follow the procedure followed by the learned Coordinate Bench in holding up the bottle of the plaintiff and the bottle of the defendant in each hand and comparing the two, or even assessing whether it would be possible to differentiate between the two when viewed at a distance of six to eight yards. In either case, the Coordinate Bench has not approached the issue from the point of view of the instructed eye, but from the point of view of an uninstructed ordinary purchaser. That is contrary to the law enunciated in para 11 of B. Chawla as well as the decision of the earlier coordinate bench in Carlsberg Breweries and the



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judgement of the UK Supreme Court in Procter & Gamble. B.

Chawla continues to remain the law on the point.

206. On the second issue of difference between Mr. Sibal and Mr. Lall as set out in para 154 supra, therefore, my prima facie view is that the aspect of design piracy has to be examined from the point of view of the instructed eye of a person who is instructed with prior art, reasonably discriminatory and able to appreciate enough detail. The test of the average consumer, who sees the bottles on a shelf from a distance, would not be the appropriate test to apply.

Emphasis Supplied

21. A scanning of above mentioned case laws would make it clear that the distinguishing features between two designs must be appreciable to an instructed eye which can remember the special features of earlier design and distinguish the same from the later design. Merely because, an eye of ordinary consumer with average intelligence could not find out the distinguishing features of two designs we cannot jump to a conclusion the later design is a fraudulent imitation of a previous design especially when instructed eye could find out the difference.

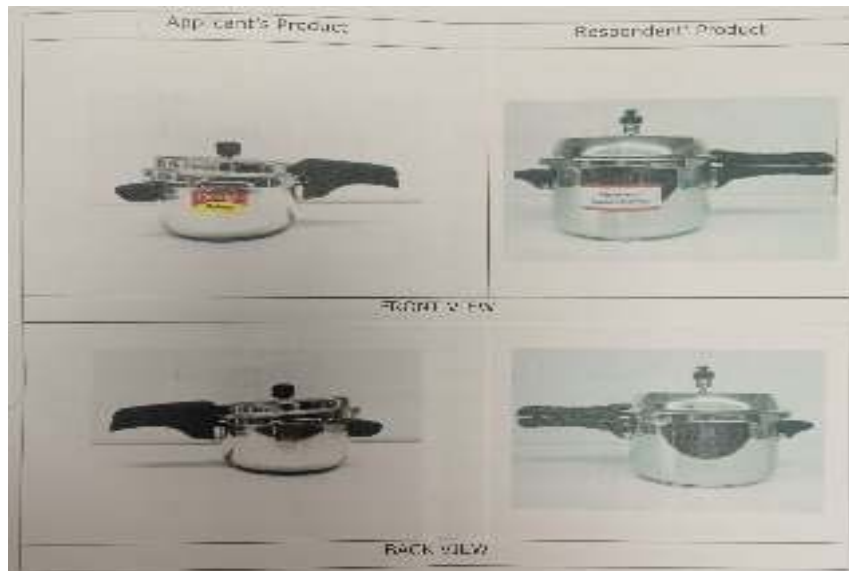


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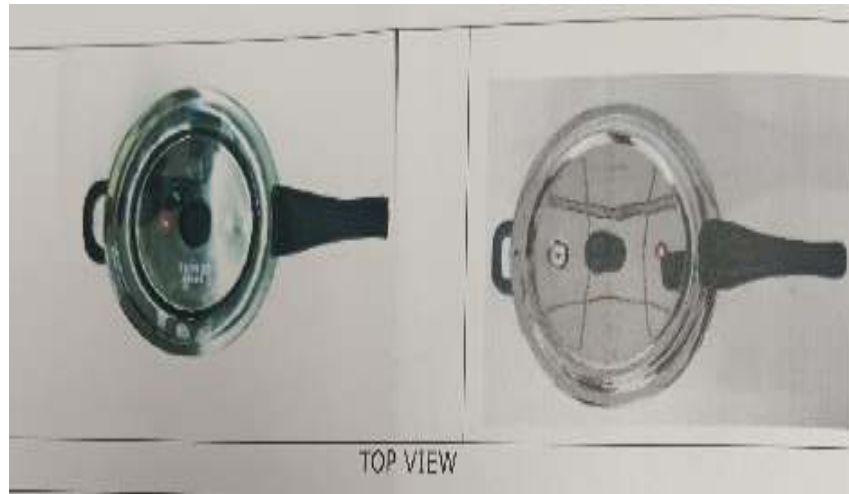
22. In the light of the above said settled proposition of law dealing with design piracy let us compare the suit design of the applicant with the impugned design of the respondent. The images of suit design and impugned design from various angles are scanned and reproduced below:-

(i) **Comparative Chart available in Page Nos.15 and 16 of the affidavit filed in support of the injunction application:-**





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(ii) Comparative Chart available in typed set of papers filed by the respondent/defendant dated 04.02.2023:-





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Design Comparison details

Butterfly –Bottom view



Prestige–Bottom view



Inference – Design on bottom view is different

Design Comparison details

Butterfly –Left side View



Prestige –Left side View



Inference – Design on Left side view is different



Design Comparison details

Butterfly Spill Free Cooker vs Prestige Svachh
Patent comparison regarding



Butterfly - Lid view

Angle of 3 degree

Prestige- Lid view

Flat

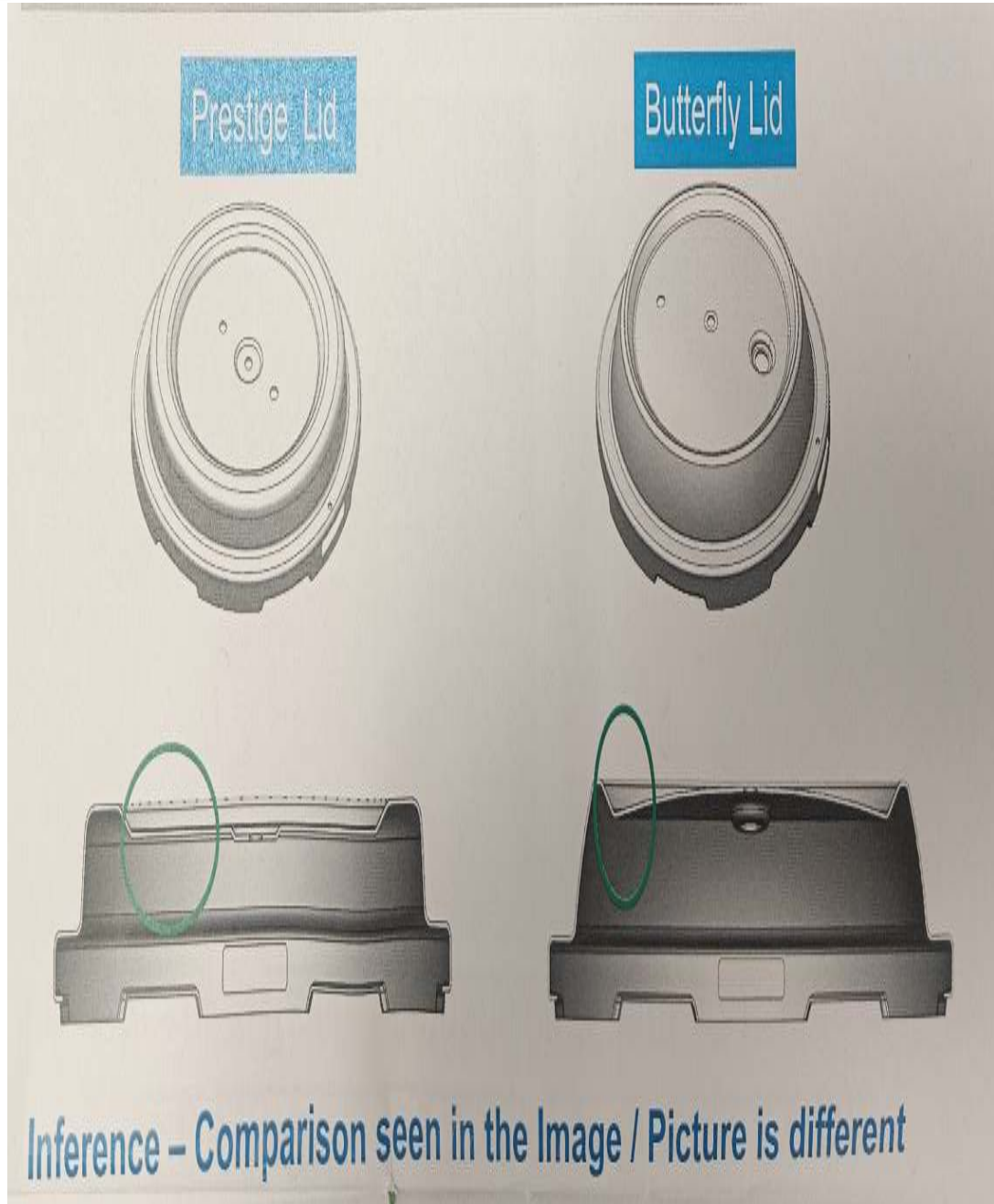


Inference - Invention / Patent of New feature in the design of the lid of pressure cooker is different from competition | Specification highlighted in Slide 12





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23. A close comparison of suit design of the applicant and impugned design of the respondent as reproduced above would suggest the following distinguishing features:-

- (i) The circumferential protrusion in applicant's product looks like a platform with a  shaped top. In impugned design of respondent, the circumferential protrusion looks like a r  h narrow shaped top.
- (ii) In suit design, there is a sharp vertical fall in the level from the top of the circumferential protrusion to circumferential platform around the lid. In impugned design of the respondent, there is a inclined fall in the level from the ridge like circumferential protrusion to the circumferential platform around the lid.
- (iii) There is an inner central depression on the central top portion of the lid



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around central outlet on the top of the lid in suit design. However, in impugned design of the respondent, there is no central inner depression around central outlet on the top of the lid.

- (iv) The top central depression in applicant's suit design is plain without any inclination. Whereas, in respondent's impugned design the top central depression inclined towards outer circumferential protrusion. Therefore, in case of impugned design of the respondent, the froth coming out of central outlet will go outwards collect near the circumferential protrusion and evaporate. In suit design, the central depression is plain with an inner depression surrounding the central outlet. Therefore, the froth is likely to collect in the inner central depression surrounding the central outlet and evaporate.

24. The above mentioned distinguishing features between the suit design and impugned design are prominent and recognisable by instructed eye, which is capable of remembering the striking features of suit design and distinguish the same from the impugned design of the respondent. When we



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apply the instructed eye test, there is no possibility of coming to a conclusion, atleast *prima facie*, the impugned design is a fraudulent imitation of suit design. Merely because, the idea of central depression, which performs function of preventing spill over of froth is also adopted by respondent, we cannot come to a conclusion the respondent fraudulently imitated the design of applicant. In this regard, I would like to refer to the following observation of Delhi High Court in a case involving the very same applicant in ***TTK Prestige Ltd., vs. KCM Appliances Private Limited*** reported in ***2023 SCC Online Del 2129:-***

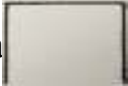
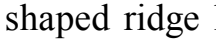
“134. (vi) “Design” is defined, in clause (d) of Section 2 as meaning only the features of shape, configuration, pattern, ornament or composition of lines of colours applied to any article. A design cannot, therefore, be a mere concept or idea. While it is true that the Designs Act protects the concept or idea, which is new or original, the right to such protection enures only when the idea becomes a “design” under the Designs Act, which requires its application to an article. Sans any article, therefore, there can be no design. The design must be intended to produce an article by industrial application, though the “design” is not the article itself, but “the conceptual design containing the features of a shape,



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configuration, pattern, composition of lines etc”.”

25. A reading of above decision would make it clear a mere concept or idea cannot be treated as a design within the meaning of Section 2 (d) of the Designs Act, 2000. An idea gets protection only when it is applied with reference to an article. The manner in which an idea or concept is applied in an article with a view to give visual or aesthetic appeal is entitled to protection. Therefore, mere adoption of central depression in impugned design would not amount to design piracy. The manner in which the idea of central depression is applied in the article namely the pressure cooker has to be taken into consideration. As mentioned earlier, in suit design, the idea of central depression is applied with inner central depression,  had outer protrusion, plain inner top within protruding outer circumference and abrupt vertical fall from outer protrusion to circumferential platform. However, in impugned design, the concept of central depression  plied without inner central depression, with narrow  shaped ridge like circumferential protrusion, inclined top of the lid with raised level on the central point and lower level near circumference and inclined fall from circumferential



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protrusion to circumferential platform surrounding the lid. Therefore, the idea of central depression had been applied to the product or article in a different way to enable an instructed eye to distinguish the product of the respondent from that of the applicant. Further, the handle in applicant product is completely different from handle in respondent's product in the sense there is a curve in the handle of respondent's product. The central slit between top and lower handle is well pronounced in respondent's product. All of these different features make impugned design of respondent is very well distinguishable for instructed eye. It is also pertinent to mention the design registration is for overall product but not for lid or central depression alone. Therefore, the applicant failed to make out any *prima facie* case with respect to the plea of infringement of design by the respondent.

26. In view of the conclusion reached by me that applicant failed to prove *prima facie* case for grant of interim injunction, the present original application is dismissed by directing the parties to get along with the trial.

27. It is made clear that anything said in this order is the *prima facie*



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opinion of this Court for the purpose of disposing the interim application and the same will not affect the rights of the parties during final disposal of the suit.

28. With this observation, the Original Application is dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

13.12.2023

Index : Yes
Speaking order : Yes
Neutral Citation : Yes
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dm

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