
(2017) 01 CAL CK 0027
In the Calcutta High Court
Case No : AID No. 3 of 2013

Atul Narsibhai Patel

APPELLANT

Vs

The Assistant Controller of Patents & Designs

RESPONDENT

Date of Decision : 17-01-2017

Acts Referred:

Designs Act, 2000 — Section 19

Citation : (2017) 1 MIPR 421

Hon'ble Judges : Soumen Sen, J.

Bench : Single Bench

Advocate : Mr. Gautam Roy, Smt. S. Ghosh, Advocates, for the Plaintiff; Mr. R.P. Mookherjee, Advocate, for the Defendant No. 1

Final Decision : Dismissed

Judgement

Soumen Sen, J.—Apparent conflicting decisions of the respondent No.1 concerning the designs of the petitioner in respect of a seal has given rise to this appeal.

2. Two separate applications for cancellation of the same design, namely, Design No.200628 under Class 09-07 registered on 2nd August, 2005 for the article "Seal for packaging" in the name of Patel Brothers were heard by the same controller on two different dates, namely, 29th May, 2012 and 24th September, 2012, respectively.

3. The application filed by Ganesh Plastic Industries for cancellation of the said registered design was heard on 29th May, 2012 and the judgment was delivered on 13th March, 2013 allowing cancellation whereas a similar petition filed by Artiben Subhashbhai Panchal, proprietor of Atlas Plastic heard on 24th September, 2012 was disposed of by a judgment dated 13th March, 2013 rejecting the said application for cancellation.

4. The grounds stated in both the petitions for cancellation under Section 19 of The Designs Act, 2000 were:-

1. That the design has been previously registered in India,
2. That the design has been published in India or in any other country prior to the date of registration,
3. That the design is not a new or original design,
4. That the design is not registrable under The Designs Act, 2000,
5. That the design is not a design as defined under clause (d) of Section 2 of the Act.

5. It appears from the impugned order that was passed the day following allowing the application for cancellation of design apparently did not take into consideration the factors on the basis of which the cancellation application filed by Atlas Plastic was rejected. The order dated 12th March, 2013 is a detailed order in which the same controller made the following observation in respect of the novelty of the impugned design:-

"Thus there exists a difference between shape and configuration. Both the petitioner and respondent claim novelty to be resided in the shape and configuration of their respective designs. Novelty of a design is not all about shape but also configuration involving relative placement of features, finally to be judged as of overall visual appearance.

The impugned design depicts a seal consisting of a female part, a connecting wire and a male part. The male part consists of two sets of fangs followed by a horizontal rib below the fangs. Articles of the impugned design as well as of the petitioner's cited designs are viewed as a whole for overall ocular impression and I opine that the designs are not same. None of the petitioner's cited design teaches placement of a horizontal rib below the fangs as present in the impugned design. It is also noted that internal locking arrangement of the female part is to corroborate the locking arrangement of the male part, thus the female part of the impugned design has to have internal arrangement to accommodate the horizontal rib also. Female or body part of the seal is same in all the petitioner's design also. The impugned design cannot be said to be devoid of newness and originality just because of the petitioner's earlier designs as the overall visual impact of both the designs are not same. It is also not significantly indistinguishable from the visual impression. Design of the fangs of the male part is attributed by the function the article has to perform, but placement of the horizontal ribs is not attributed by functionality of the article.

This analogy also prevails for the grounds of previous registration or prior publication of the impugned design. As the impugned design is not same to the prior published designs, it cannot be said that the impugned design is previously registered or previously published in view of petitioner's prior designs.

Upon consideration of the Statement of Case, Counter Statement, evidences and submissions offered by both the parties at the hearing and after careful analysis

of the documents submitted by both the parties in the instant case as referred in the preceding paragraphs, I construe that the petitioner has not been able to establish the grounds taken by him for cancellation of registered design no.200628."

6. The only noticeable difference occurs in the impugned order dated 12th March, 2013 is reference to a tender document published by the Gujarat Electricity Board dated 7th October, 2003, addressed to M/s. Krishna Plastic Industries. The tender enquiry dated 7th October, 2003 was accompanied by a technical specification for temper proof polycarbonate seals along with a general arrangement drawing of plastic seals (revised) vide drawing No. O&M X 359 dated September 20, 2003. The controller appears to have taken into consideration the specifications mentioned in the pages 17, 18 and Schedule A of the tender document. As per clause 4 of the tender document, it was stated that specification framed out by the Board shall be separately brought out in the tender document. The drawing dated 20th September, 2003 depicts diagrammatic representation of a plastic seal consisting of:-

- (a) A male part having two sets of protruded fangs.
- (b) A female part which is enabled to hold the male part while lock in position.
- (c) Connector between the male & female part which is made of reinforced twisted wire.

7. The controller held that the features of the impugned design No.200628 dated 2nd August, 2005 are similar to the features depicted in the aforesaid drawing. Although, size of the parts in the impugned article is slightly different but in design it is the shape and configuration that matters.

8. The observations of the controller in the order dated 13th March, 2013 allowing the petition for cancellation are:-

"Comparison of the design of the seal as depicted in the said drawing dated 20/9/2003, with the design of the impugned registered design no.200628 dated 2/8/2005 clearly reveals that the broad features of shape and configuration of both the designs are same. Respondent pleaded that the impugned design consists of embellishments over the fundamental form of the article. No such distinctive element of design is seen in the impugned design which could be sufficient to alter the character or the identity of the prior design. Respondent's design is not significantly distinguishable from the design suggested in the specification of Gujarat Electricity Board. As such, respondent's design no.200628 cannot be held as new design. As per Section 2(g) of the Designs Act, 2000," "Original", in relation to a design, means originating from the author of such design and includes the cases which though old in themselves yet are new in their application". Here the application of prior designs in the respondent's design is not original as the application of prior designs is made to same article. Hence the respondent's design cannot be held as new or original."

9. This tender document apparently was not taken into consideration in the order dated 12th March, 2013.

10. A design is not registrable, inter alia, if it is found that it has been disclosed to the public in India or abroad by publication in tangible form or by use or in any other way prior to the filing of the application for registration.

11. Design is a conception, suggestion or idea of a shape and not an article. If it has been already anticipated it is not "new or original". Publication before registration defeats the proprietor's right to protection under the Act. (Niki Tasha Pvt. Ltd. v. Faridabad Gas Gadgets P. Ltd., AIR 1985 Delhi 136)

12. The features of shape, configuration, pattern and ornament, when applied to an article are design. What actually constitutes the design is, therefore, that peculiar combination and arrangement of lines which give such features. A design is necessarily part and parcel of the article manufactured.

13. The learned Counsel appearing on behalf of the petitioner referred to Bharat Glass Tube Limited v. Gopal Glass Works Limited reported at (2008) 10 SCC 657 to submit that when a design is sought to be applied to an article unless two articles are simultaneously produced for examination, the controller could not have held that there was no novelty or originality in the design of the petitioner.

14. The private respondent is not represented.

15. In Gopal Glass Works Limited v. Assistant Controller of Patents & Designs & Ors. reported at 2006 (3) CHN 188 originates from this court. In Paragraph 30 of the said judgment, it was observed that under the law presently in force in India, specifications, drawings and/or demonstrations in connection with registration of a design do not per se constitute publications which prohibit future registration of that design. Had publication of design specifications by a registering authority, particularly a registering authority in a foreign country, in connection with registration of a design, in itself, amounted to prior publication, that would hit all future applications in India for registration of designs, prior registration in India would not separately have been made a ground for cancellation of a registered design. Moreover, it is significant that Parliament consciously, made publication in a country other than India a ground of cancellation, in addition to publication in India, but expressly restricted the embargo of prior registration to registration in India. Registration in a country other than India has not been made a ground for the cancellation of a registered design.

16. Moreover, in order to destroy the novelty of a design registration, prior disclosure whether by publication or use or any other way, must be of the pattern, shape and/or configuration applied to the same article.

17. The relevant observations can be found in Paragraphs 39 to 46 of the report which are :-

"39. The next question, in issue before this Court, is whether the finding of the

respondent No. 1 that the document downloaded from the internet from the website of the Patent Office of the United Kingdom, might be taken as prior publication of the impugned design, is legally sustainable.

40. It is true that publication has not been defined in the 2000 Act. Yet, for reasons discussed above, mere publication of design specifications, drawings and/or demonstrations by the Patent Office of the United Kingdom, or for that matter, any other foreign country, in connection with an application for registration, would not, in itself, amount to publication that would render a design registered in India liable to cancellation.

41. To constitute prior disclosure by publication to destroy the novelty of a registered design, the publication would have to be, in tangible form, of the design applied to the same article. Prior publication of a trade catalogue, brochure, book, journal, magazine or newspaper containing photographs or explicit picture illustrations that clearly depict the application of the design on the same article, with the same visual effect would be sufficient.

42. When the novelty of an article is tested against a prior published document, the main factor required to be adjudged is the visual effect and the appeal of the picture illustration.

43. If the visual effect of the pattern, the shape or the combination of the pattern, shape, dimension, colour scheme, if any, are not clear from the picture illustrations, the novelty cannot be said to have been destroyed by prior publication, unless there are clear and unmistakable directions to make an article which is the same or similar enough to the impugned design.

44. In the case of *Rosedale Associated Manufacturers Ltd. v. Airfix Ltd.*, reported in 1957 RPC 239, Lord Evershed M.R. held as follows:

"In this respect the test of prior publication of an alleged invention, should, in my judgment, be no less applicable in the case of a registered design, and as regards the former, I venture to cite once more the oft-quoted language of Lord Westbury in *Hills v. Evans* : "The antecedent statement must, in order to invalidate the subsequent patent, be such that a person of ordinary knowledge of the subject would at once perceive and understand and be able practically to apply the discovery without the necessity of making further experiments." By a like reasoning, to my mind, if a document is to constitute prior publication, then a reader of it, possessed ordinary knowledge of the subject, must from his reading of the document be able, at least, to see the design in his mind's eye and should not have to depend on his own originality to construct the design from the ideas which the document may put into his head."

45. The illustrations in the form of drawings downloaded from the website of the United Kingdom Patent Office depict the patterns that may be applied to glass sheets. The patterns may be same but the illustrations do not give the same visual effect as the samples of the glass sheets produced by the appellant in

Court. There are also no clear unmistakable instructions or directions for production of glass sheets of the pattern illustrated.

46. The visual effect and/or appeal of a pattern embossed into glass sheets by use of embossing rollers could be different from the visual effect of the same pattern etched into glass sheets manually. The respondent No.1 has not considered these factors."

18. The aforesaid judgment was considered by a Full Bench of the Delhi High Court in *Reckitt Benkiser India Ltd. v. Wyeth Ltd.* reported at AIR 2013 Delhi 101 (FB) in Paragraphs 21 and 22 of the report which read:-

"21. We have reproduced a large number of paragraphs both of the judgments, of the learned Single Judge in *Gopal Glass work's* case, and of the Supreme Court in the appeal from the judgment of *Gopal Glass Work's* case in *Bharat Das Tools Ltd.* because, it is only on the reading of these paras it becomes clear that the Supreme Court in no manner laid down an absolute rule that there can never be prior publication although in the public record of the Registrar of Design abroad a particular design is found to be registered. The Supreme Court in fact has specifically held that facts in each case have to be very minutely examined and Courts have to be extremely cautious by thoroughly scrutinizing the evidence in each case for deciding whether the public record available in Registrar of Design abroad could or could not be taken as prior publication, and in the peculiar facts of the case before the Supreme Court when we refer to paragraphs 45 to 47 it becomes clear that the Supreme Court approved the view of the learned Single Judge of the Calcutta High Court in *Gopal Glass Work's* case because even the Supreme Court found that sufficient evidence was not led on behalf of the objector to the registered design and that the documents downloaded through internet from the website of U.K. Patent Office did not add that amount of clarity for the same to be said to be prior publication for seeking cancellation on the basis of such alleged prior publication of a design registered in India.

22. What has been observed by the Supreme Court in the case of *Bharat Das Tools Ltd.* is reinforced by the following paragraphs of Russell-Clarke and Howe on Industrial Designs VIIIth Edition:

What counts as "published" for the purpose of calling into question the novelty of a later design registration" This is broader than the word at first suggests. It is by no means limited to the publishing of a design in a printed publication, although it includes that. In practical terms, there are two main ways in which a design can be published: by prior use of the design, by selling or displaying to the public articles to which the design has been applied; and by paper publications of one sort or another. It is not, in fact, necessary that publication should be on paper; an oral disclosure, provided it is non-confidential, will amount to publication.

Re-registration of the same design for different articles, or a similar design for

same or different articles.

A special exception existed to the general rule that the novelty of a design will be destroyed by the prior registration or publication of that design as applied to any kind of article. By Section 4(1) of the RDA(A), the proprietor of a registered design was entitled to apply for registration of the same design, or a design with modifications or variations not sufficient to affect its identity, in respect of another article. His own previous registration, or the publication of his design as registered, does not then destroy the novelty of his new design registration in respect of the new article, but his term of protection is limited to the term of the original design. This, in effect, gave the proprietor of a design registration the ability to extend the scope of the registration during its lifetime to cover further articles, although in formal terms each application to protect his design on a new article will be a separate application leading to a separate design registration. It appears that his application for registration of the design on the new article must precede his actual use of the design on the new article. This is because, if he uses the design on an article which falls outside the scope of his earlier registration, then that will not 3-106 count as a publication "of the registered design", which is all that section 4(1) of the RDA(A) shields him against as regards the novelty of his new application.

A person who makes an application to register a design and finds that it has previously been registered in respect of a different article was allowed to buy up the earlier design registration while his own application was still pending, and if he did so he could take advantage of this rule in the same way as if he had himself been the owner of the earlier registration all along.

The same rule applied to the registration (whether in respect of the same article or a different article) of a design which is not exactly the same as the earlier registered design, but has "modifications or variations not sufficient to alter the character or substantially to affect the identity thereof". However, this provision has been interpreted narrowly so that practically any significant change or difference between the earlier and later design will destroy the protective effect of this provision. For an applicant to rely on section 4(1)(b), the subject of his application must have substantial identity with his prior published design.

In *Sebel Ltd's Application (No.1)*, it was held that substitution in the old design of a different stand did substantially alter the identity of the article (a rocking horse), and that the subsection did not apply. Since the stand had already been published in an advertisement showing it applied to another horse, it was held that design failed to qualify for novelty under section 1, the said stand being a mere trade variant. In *Sebel Ltd's Application (No.2)*, a design was held not to fall within section 4 because the character of the design was different from the character of the applicant's earlier design. Thus it seems that the applicant's own earlier design may be sufficiently similar to destroy the novelty of his later application for protection of his modified design, and yet too different to allow him to take advantage of the protection of RDA(A) section 4(1). This is an odd

and unfortunate result if it is indeed correct.

Publication in documents In cases of publication of a design by prior use as applied to an article, normally the only questions which arise are whether it has been published at all (i.e whether the articles to which it has been applied have been disclosed to the public), and whether the design is similar enough to the design in suit to destroy the latter's novelty. But where the novelty of a design is tested against a prior published document, a number of additional questions can arise which do not arise in the case of a prior use.

First, it may not be clear whether or not the document discloses a design as applied to an article at all. A trade catalogue containing photographs or illustrations of articles to which a design has been applied may be a clear enough case.

But the publication in a document of a pattern or picture does not as such destroy the novelty of a design which consists of applying that pattern or picture to an article. For it to destroy the novelty of such a design, the paper publication must suggest explicitly or implicitly by context that the pattern or picture should be applied to an article.

Secondly, the pattern (if it is two-dimensional) or shape (if it is three-dimensional) of the design may not be clear from the document. Particularly in a case where it involves a written description rather than an explicit picture or illustration, there may be room for argument as to the precise nature of the design which the document discloses, before one can go on to ask whether or not it is similar enough to the later design to destroy novelty.

Thirdly, a paper publication may be shielded from destroying the novelty of a later design registration by the special provisions of sub sections 6(4)-(5) of the RDA(A). These provisions allowed the owner of copyright in an artistic work to exploit his work so long as he did not apply it industrially to an article, without his own exploitation of it counting against the novelty of his own later application for a design registration covering the artistic work as applied to an article.

Does the document disclose a design applied to an article.

In order to destroy the novelty of a design registration, an earlier design must be published "in respect of the same or any other article". Mere publication of the pattern which constitutes the design was therefore not sufficient to destroy the novelty of a design registration, which consisted of the application of that pattern to an article. In principle, the same holds true of the publication of a shape, although it is less easy to envisage cases where the publication of a shape does not implicitly convey the article to which that shape is to be applied. Thus, novelty may reside in the application of an old shape or pattern to new subject-matter. This was first laid down in the leading case of *Saunders v. Wiel*. There, the design consisted of the handle of a spoon made to represent Westminster Abbey seen from a particular point of view. The design had actually been copied

from a photograph of the Abbey.

The validity of the design was upheld, Bowen L.J. saying "It seems to me that the novelty and originality in the design, within this section, is not destroyed by its being taken from a source common to mankind...The novelty may consist in the applicability to the article of manufacture of a drawing or design which is taken from a source to which all the world may resort. Otherwise, it would be impossible to take any natural or artistic object and to reduce it into a design applicable to an article of manufacture, without also having this consequence following, that you could not do it at all in the first place unless you were to alter the design so as not to represent exactly the original; otherwise there would be no novelty in it, because it would be said that the thing which was taken was not new. You could not take a tree and put it on a spoon, unless you drew the tree in some shape in which a tree never grew, nor an elephant unless you drew it and carved it of a kind which had never been seen. An illustration, it seems to me, that may be taken about this is what we all know as the Apostles spoons. The figures of the Apostles are figures which have been embodied in sacred art for centuries, and there is nothing new in taking the figures of the Apostles, but the novelty of applying the figures of the Apostles to spoons was in contriving to design the Apostles figures so that they should be applicable to that particular subject-matter. How does a building differ from that" In no sense it seems to me.

It should be recalled that under the 1949 Act, if a pattern (or shape) has been published in respect of any article, the publication will destroy the novelty of any design which consists of the application of that pattern (or shape) to an article of any kind, however different it is from the kind of article to which the publication suggests that the design should be applied. However, the publication will not invalidate such later design registrations if it does not suggest the application of the pattern (or shape) to an article at all. Thus, a series of pictures published in a fine art catalogue would not destroy the novelty of a later design consisting of the application of one of those pictures to, say, the back of a chair, because a painting or picture simpliciter is not an "article". But the same pictures published in a catalogue of patterns for application to wallpaper would destroy the novelty of such a later design registration, because wallpaper is an article.

What design is disclosed by a prior published document"

Assuming that a prior published document does satisfy the requirement that it discloses a design, i.e a shape or pattern, as applied or to be applied to an article, the next question may be what is the shape or pattern which it discloses" In some cases this will be clear, for instance where the publication contains explicit pictures or illustrations. However, it may be less clear and the disclosure may consist in whole or in part of written text which needs to be interpreted, or general instructions which can be put into practice in a variety of ways. In such cases the test to be applied is that borrowed from the pre-1977 patent law of anticipation, i.e that the prior art document must contain "clear and unmistakable directions" to make an article with the shape or pattern which is

the same as , or similar enough to the registered design in suit to deprive it of novelty.

This was laid down in *Rosedale Associated Manufacturers Ltd v. Airfix Ltd*. Lord Evershed M.R. said "In this respect the test of prior publication of an alleged invention should, in my judgment, be no less applicable in the case of a registered design, and as regards the former, I venture to cite once more the oft-quoted language of Lord Westbury in *Hills v. Evans*: "The antecedent statement must, in order to invalidate the sub-sequent patent, be such that a person of ordinary knowledge of the subject would at once perceive and understand and be able practically to apply the discovery without the necessity of making further experiments. By a like reasoning, to my mind, if a document is to constitute prior publication, then a reader of it, possessed 3-123 of ordinary knowledge of the subject, must from his reading of the document be able at least to see the design in his mind's eye and should not have to depend on his own originality to construct the design from the ideas which the document may put into his head."

On the same point Romer L.J. said:

"In *Flour Oxidising Co v. Carr & Co* Parker J. (as he then was) said: "Where the question is solely a question of prior publication it is not, in my opinion, enough to prove that an apparatus described in an earlier specification could have been used to produce this or that result. It must also be shown that the specification contains clear and unmistakable directions so to use it. These observations by Parker J. were cited with approval by Lord Dunedin in *British Thomson Houston Co v. Metropolitan-Vickers Electrical Co*, and again (when delivering the judgment of the Judicial Committee) in *Pope Alliance Corporation v. Spanish River Pulp & Paper Mills, Ltd*. In the latter case and at the same page Lord Dunedin posed the test as follows: "would a man who was grappling with the problem solved by the Patent attacked, and having no knowledge of that Patent, if he had the alleged anticipation in his hand, have said "that gives me what I wish" It is true that these citations were related to anticipation of inventions, but it seems to me that they apply by analogy to alleged anticipation by "paper publications" of registered designs."

It is not permissible to make a mosaic of a number of prior documents for the purpose of attacking novelty. If the attack on novelty is to succeed, the design must be disclosed in the single prior document. If, however, one document contains a reference to another document, the two may be read together."

(emphasis supplied)

19. The principle that emerges from the judicial decisions as well as from the authorities on the subject is that, in the event, it is found that the impugned design has substantial identity with the prior published design, it is liable to be cancelled. In order to claim novelty, there has to be a significant change or difference in the design, although, it may have a common source. A mere trade variant without significant and substantial noticeable features would destroy

novelty. A drawing or publication of a design in any form must suggest explicitly or implicitly by context that the pattern or picture should be applied to an article.

20. There cannot be doubt that the said drawing is required to be applied to an article which is known and the prior disclosure by publication is of the pattern, shape and/or configuration which is applied to the same article.

21. The Single Bench decision in *Gopal Glass* (supra) held that in relation to designs, the expression "original" includes designs which though old in themselves are new in their application. The relevant observations of the learned Single Judge, in this regard, can be found in Paragraphs 34 to 37 which read:-

"34. In order to destroy the novelty of a design registration, prior disclosure whether by publication or use of any other way, must be of the pattern, shape and/or configuration applied to the same article. The use of the embossing roller, to emboss a pattern ornament or configuration on a glass sheet, a material totally different in composition, nature, fragility, durability and look from leather, rexin or even plastic, in itself, involves inventive ingenuity.

35. In the case of *Gammeter v. Patents Design Controller*, reported in AIR 1919 Cal. 887, relied upon by Mr. Sudipto Sarkar appearing on behalf of the appellant, Division Bench held as follows:-

"....was the "Novelty" band for a purpose so different from and for a use so similar to the purpose and use of the bracelet that the design may be said to be new and original" To my mind the purpose and use of the band are entirely different from the purpose and use of the bracelet. The "Novelty" band is intended to attach a watch to the wrist. The object of wearing a watch on the wrist is generally different from that of wearing a bracelet - one is for a useful purpose and the other is ornamental.

The result is that all these facts lead me to the conclusion that although in view of the bracelet produced by Messrs Cooke and Kelvey, the shape of the "Novelty" band by itself cannot be said to be new and original, the application of it to a watch to be worn on the wrist was for a purpose so different from and for a use so dissimilar to the purpose and use of the bracelet that the design in question may be said to be original."

36. Design is defined in the 2000 Act to mean the features of shape, configuration, pattern, ornament or composition of line or colours applied to any article whether in two dimensional or three dimensional or both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye, but does not include any mode or principle of construction, or anything, which in substance is a mere mechanical device.

37. The embossing rollers manufactured by the German Company are only the device for producing the impugned design. It is immaterial that the embossing rollers were not developed by the appellant. Furthermore, in relation to designs,

the expression "original" include designs which though old in themselves are new in their application. The brochures of the German Company do not contain any photograph or illustrations of the impugned design on glass."

22. In the instant case, it cannot be said that the impugned design is new in its application.

23. In *Saunders v. Wiel* reported in Reports of Patent, Design and Trade Mark, Vol. X, No.4, Page 29, it was held that new or original design not previously published did not require novelty in the idea of the design but novelty in the application of the design to some article of manufacturer. It is found that the design is novel in its application, its novelty and originality is not destroyed by its being taken from source common to mankind.

24. The decision of the Assistant Controller in the other application holding that the design of the appellant is novel is of no assistance to the appellant in the instant proceeding as the controller did not have the opportunity to consider the evidence of prior publication produced in the instant proceeding. The proof of prior publication defeats the right of registration.

25. It has to be remembered that the respondent No.1 is an expert body and has the required expertise to decide the matter. The said authority on consideration of all aspects of the matter clearly opined that "the broad features of shape and configuration of both the designs are same and did not find any distinguishable features which would suggest that the tender containing the sketch as disclosed in the proceeding is different from the impugned design or that the impugned design is substantially different from the published document". Moreover, the said document contained clear and unmistakable directions to make an article with the shape or pattern which is the same or similar enough to the registered design. The Appellate Court ordinarily will not interfere with the finding of the controller unless it is found that the controller has proceeded on some wrong principle. The controller must, prima facie, be the judge of novelty having regard to its knowledge and experience in the matter and certainly in this case, I see nothing wrong in principle what the said controller has done. This Court is of the view that the controller was justified in the circumstances in cancelling the registered Design No.200628 dated 2nd August, 2005 in respect of "Seal for packaging" in Class 09-07.

26. This application, accordingly, fails. However, there shall be no order as to costs.

27. Urgent xerox certified copy of this judgment, if applied for, be given to the parties on usual undertaking.