

(2021) 10 DEL CK 0054

In the Delhi High Court

Case No : Civil Suit (COMM) No. 190 Of 2021

Relaxo Footwears Limited

APPELLANT

Vs

Aqualite Industries Pvt Limited

RESPONDENT

Date of Decision : 08-10-2021

Acts Referred:

Designs Act, 2000 — Section 2(d), 2(g), 4, 5(1), 19, 19(1)(a), 19(1)(b), 22, 22(3)

Citation : (2021) 10 DEL CK 0054

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Pravin Anand, Saif Khan, Shobhit Agrawal, Deepank Singhal, Sandeep Sethi, Peeyoosh Kalra, C.A. Brijesh, Dhruv Grover

Judgement

Jayant Nath, J

IA No. 5717/2021 (u/O 39 R 1 & 2 CPC)

1. The present application is filed by the plaintiff seeking an ex parte injunction to restrain the defendant, its directors, etc. from manufacturing, selling, advertising, etc. the impugned footwear products which are said to be an imitation of the plaintiff's products/design/trade dress/get up. Other connected reliefs are also sought.

2. It is the case of the plaintiff that the plaintiff began as a small enterprise in the year 1976. It was incorporated in 1984. It is stated that beginning from manufacturing Hawaii slippers, the plaintiff through sheer commitment has grown into a large-scale enterprise. It is further stated that from a modest sales figure of Rs.10 lakhs in 1977, the turnover of the plaintiff grew up to Rs.2,400 crores last year. It is stated that the plaintiff manufactures over 6 lakh pairs of footwear per day and 18 crores pairs per year and has emerged as the largest footwear producer in India. The plaintiff's products are marketed under various distinctive trademarks/labels and with a unique get up and trade dress including the house mark RELAXO and various product specific brands like BAHAMAS,

FLITE, SPARX, SCHOOLMATE, etc. .

3. It is urged that the present suit pertains to intellectual property rights of the plaintiff in the design and/or overall trade dress/getup of certain footwear products. The defendant is said to have unlawfully imitated and pirated the said design/trade dress of the plaintiff in the said products.

4. Suit Product No. 1 is 'BHG136'. The same is depicted as follows:-

It is stated that a distinctive, distinguishable and prominent feature of the aforesaid design/getup/trade dress is the vertical ridges/grooving pattern running across the periphery of the entire slipper. The shape, configuration and surface pattern of the said product is said to be a duly registered design under the Designs Act, 2000 bearing Regn. No. 325071 dated 27.12.2019.

5. Suit Product No. 2 is 'BHG 137' which is as follows:-

It is stated that a distinctive and distinguishable feature of the aforesaid design is vertical ridges/grooving pattern running in the upper half of the periphery of the slipper. The said product is said to have been honestly and originally adopted by the plaintiff in November 2019. It is urged that by virtue of prior and continuous use, the plaintiff has acquired goodwill and reputation for the product. The said product is also said to have been duly registered under the Designs Act, 2000 bearing Design Regn. No. 325074 dated 27.12.2019.

6. Suit Product No.3 is 'BHG 147'. On 03.06.2021 while addressing arguments, learned counsel for the plaintiff had submitted that for the purpose of the present application, the plaintiff does not press any relief for the said design for the time being as the design is not a registered design. Hence, there is no further need to spell out the details for the said product.

7. It is the submission of the plaintiff that the getup/trade dress/design of the suit products are inherently distinctive, arbitrary and fanciful and having no commonplace existence for or connection with any existing products/footwear. It is stated that the plaintiff's products are sold throughout India and exported to various countries like UAE, Australia, Bahrain, etc.

8. It is stated that the plaintiff in February 2021 received information from their market sources about availability of certain lookalikes of the plaintiff's suit products being sold in the markets of Delhi. The plaintiff was shocked to see that the products were slavish replicas of the plaintiff's suit products copying the unique and distinctive elements of the plaintiff's products. It is urged that a mere perusal of the impugned products of the defendant would reveal that the defendant has deliberately and fraudulently imitated the plaintiff's products. The defendant is also pirating the trade dress of the plaintiff's products with malafide and fraudulent intentions of encashing on the hard-earned goodwill, reputation and success enjoyed by the plaintiff. A comparison of the two products, namely, of the plaintiff and of the defendant is given in the plaint as follows:-

9. It is further urged that the defendant is a habitual infringer and has no regard for the intellectual property rights of the plaintiff and continues with its unlawful acts. It is also pointed out that even in the past, the defendant had pirated many of the plaintiff's products. The plaintiff had instituted suits before this court being CS(COMM) 1510/2016 and CS(COMM) 1288/2018. CS(COMM) 1510/2016 was eventually decreed in terms of the mediation settlement arrived at between the parties wherein the defendant had undertaken not to manufacture and sell the products as specified therein. In the other suit being CS(COMM)1288/2018, no interim order was passed and an appeal being FAO(OS)(COMM) 145/2019 is pending adjudication before the Division Bench.

10. The defendant has filed their reply. The following pleas have been raised by the defendant:-

(i) The plaintiff has not come to the court with clean hands as it has suppressed the order dated 06.05.2019 passed by this court in CS(COMM) 1288/2018 where this court vacated the ex parte injunction order and held as follow:-

"This court is of the prima facie view that the plaintiff's design lacks novelty and originality. The subject design appears to be common to trade. The plaintiff lacks prima face case."

(ii) It is further urged that the subject designs cannot stand the test of novelty and originality. In fact, the adoption is dishonest and malafide.

(iii) It is further stated that the features cited in the Design Registration Certificates filed by the plaintiff are subject to prior art and are thus not subject to protection under Section 5(1) of the Designs Act, 2000. It is stated that well established position of law is that slight variations in a design do not qualify it for registration/protection. Further, it is stated that it is settled law that novelty in a design registration certificate must be construed in a narrow sense. Further, the registration certificate, at best, protects the whole design and not any specific part thereof.

(iv) It is further stated that the subject designs have been previously registered/published in India and in countries abroad and the designs in question are liable to be cancelled by virtue of Section 19(1)(a) and 19(1)(b) of the Designs Act, 2000. It is further stated that there are various designs existing before the priority date of the registered designs. In the written statement, the following registered designs have been reproduced on record to claim that the same/similar designs have been copied by the plaintiff with minor and non-substantial changes:-

(v) It is stated that the designs in question are common to trade. Reliance is placed on various photographs to the said effect.

11. I have heard learned counsel for the plaintiff and learned senior counsel for the defendant.

12. Learned counsel for the plaintiff has stressed that Suit Product No. 1-'BHG 136' has unique features including teeth like structure from the front to the back. It is also multi-coloured. Similarly, Suit Product No. 2 'BHG 137' has the same teeth like projection in the circular front. These are unique features. It is urged that the defendant has made a hue and cry of other persons having similar designs. It is submitted that the two designs in question relied upon by the defendant are also copies of the plaintiff's designs and legal notices have been issued to the infringers. Further, it has been urged that the defendant has themselves also applied for registration of their designs.

Reliance is also placed on the order passed in the suit filed by the plaintiff against the defendant being CS(COMM) 1510/2016 which was settled on 29.01.2018.

13. Learned senior counsel for the defendant relies upon Section 22(3), Section 19, Section 2(d), Section 2(g) and Section 4 of the Designs Act, 2000 to plead that there is nothing significantly novel in the designs of the plaintiff. Such a design has been around in the world for quite some time. It is stated that the claim of the plaintiff that the novelty exists in the shape, configuration and the surface pattern of footwear is a vague submission. Further, it is stated that there can be no right to any particular colour/colour combination.

Reliance is placed on the two designs reproduced in the reply to the present application to claim that the designs are subject matter of prior publication. It is further strongly urged that ridges as relied upon by the plaintiff are common to trade and various slippers of such designs are available.

It is further strongly urged that the designs of the defendant are entirely different as can be seen from the surface pattern, straps, etc. of the plaintiff's products.

Reliance is also placed on the judgment of the Division Bench of this court in the case of Crocs Inc. vs. Bata India Ltd & Ors., (2019) 78 PTC 1 to plead that the Division Bench has held that the footwear generally and sandals, in particular, have a design constrain i.e. worldwide footwear manufacturers have little "play" in creating new designs. Reliance is also placed on the judgment of a Coordinate Bench of this court in the case of APL Apollo Tubes Ltd. vs. Surya Roshni Ltd., 2017 SCC OnLine Del. 6380 to plead that mere registration of the design does not entitle the registrant of the design to claim protection. Reliance is also placed on the judgment of the Division Bench of this court in the case of Kellogg Company vs. Pravin Kumar Bhadabhai, (1996) 36 DRJ 509 (DB) where the court held that the whole thing has to be seen in its entirety and not parts in isolation.

14. In rejoinder, learned counsel for the plaintiff has urged that the plea that there is no novelty in footwear is wrong. The Designs Act, 2000 does not exclude footwear as is apparent from the Third Schedule of the Designs Rules, 2001 wherein entry 02-04 includes footwear.

Further, it is urged that the defendant who have themselves applied for registration of the footwear cannot urge or argue that the designs of footwear cannot be subject matter of registration. Reliance is also placed on the judgment of the High Court of Justice.-Chancery Division in the matter of Cartwright vs. Coventry Radiator Company, (1925) (42) RPC 351. It was stressed that the teeth like structure of the plaintiff has been copied by the defendant. Merely because the variation in footwear is small cannot be a ground to permit the defendant to get away scot free.

15. I may first look at the legal position in this regard. Reference may be had to the relevant provisions of the Designs Act, 2000 which read as follows:-

"Section 2

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(d) "design" means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in 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 is in substance a mere mechanical device, and does not include any trade mark as defined in clause (v) of sub-section (1) of section 2 of the Trade and Merchandise Marks Act, 1958 or property mark as defined in section 479 of the Indian Penal Code (45 of 1860) or any artistic work as defined in clause (c) of section 2 of the Copyright Act, 1957;

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(g) "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;"

"4 Prohibition of registration of certain designs. -A design which-

(a) is not new or original; or

(b) has been disclosed to the public anywhere in India or in any other country by publication in tangible form or by use or in any other way prior to the filing date, or where applicable, the priority date of the application for registration; or

(c) is not significantly distinguishable from known designs or combination of known designs; or

(d) comprises or contains scandalous or obscene matter,

shall not be registered."

"5. Application for registration of designs.-(1) The Controller may, on the application of any person claiming to be the proprietor of any new or original

design not previously published in any country and which is not contrary to public order or morality, register the design under this Act:

Provided that the Controller shall before such registration refer the application for examination, by an examiner appointed under sub-section (2) of section 3, as to whether such design is capable of being registered under this Act and the rules made thereunder and consider the report of the examiner on such reference."

"19. Cancellation of registration.-

(1) Any person interested may present a petition for the cancellation of the registration of a design at any time after the registration of the design, to the Controller on any of the following grounds, namely:-

(a) that the design has been previously registered in India; or

(b) that it has been published in India or in any other country prior to the date of registration; or

(c) that the design is not a new or original design; or

(d) that the design is not registerable under this Act; or

(e) that it is not a design as defined under clause (d) of section 2.

(2) An appeal shall lie from any order of the Controller under this section to the High Court, and the Controller may at any time refer any such petition to the High Court, and the High Court shall decide any petition so referred."

"Section 22. Piracy of registered design.

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(3) In any suit or any other proceeding for relief under sub-section (2), every ground on which the registration of a design may be cancelled under section 19 shall be available as a ground of defence."

16. In the above context reference may be had to the judgment of the Coordinate Bench of this court in the case of APL Apollo Tubes Ltd. vs. Surya Roshni Ltd.(supra) where this court held as follows:-

"65. It is well settled that a mere registration of the design does not entitle the registrant of the design to claim protection and it is always open to the defendant to plead and set up a defence of lack of novelty or eye appeal and of existence of prior art (see Metro Plastic Industries case [AIR 2000 Del 117]). In my view, reliance placed by Mr Sethi on the Eicher Goodearth (P) Ltd. case [(2015) 63 PTC 444] is of no avail, since I am of the view that there is no appeal to the eye in respect of the plaintiff's design and also in view of the fact that there is no novelty in the plaintiff's design as the same existed in prior art. Reliance placed on Bhatia Enterprises case [(2016) 65 PTC 364] is of no avail since the defendant has been able to show, prima facie, the publication of the prior art

many years before the registration of the plaintiff's design."

17. Hence, mere registration of the design would not entitle registrant of the design to claim protection. It would always be open to the defendant to plead and set up a defence of lack of novelty or existence of prior art.

18. The first issue is as to whether the defendant is guilty of having copied the designs of the plaintiff. In the course of submissions, it was submitted by the learned counsel for the parties that essentially the dispute pertains to the teeth like design on the two products in question as noted above.

19. Reference in this context may be had to the judgment of a Coordinate Bench of this court in CS(COMM) 630/2018 titled as "DART Industries INC & Anr. vs. Polyset Plastics Pvt. Ltd. & Ors., where this court held as follows:-

"33. The use of design not substantially different from the registered design would of course, amount to infringement. It is settled law the designs must be protected against imitations since the statutory right of exclusive use is granted only for a limited period of time. Damages can never be an adequate compensation to the plaintiffs if are deprived of their statutory right of commercial exploitation.

34. To find the extent of similarities in design, I may refer to *Alert India vs Naveen Plastics* 1997 PTC (17) (Delhi), which note:

36. Thus for determining whether two designs are identical or not, it is not necessary that the two designs should be exactly the same. The main consideration to be applied is whether the broad features of shape, configuration, pattern etc. are same or nearly the same and if they are substantially the same then it will be a case of imitation of the design of one by the other.

and in *Castrol India Ltd. V. Tide Water Oil Co. (I) Ltd.* 1996 PTC (16) the Court held as follows :

26. In a later portion of the judgment it was said:

...fraudulent imitation seems to me to be an imitation which is based upon, and deliberately based upon, the registered design and is an imitation which may be less apparent than an obvious imitation; that is to say, you may have a more subtle distinction between the registered design and a fraudulent imitation and yet the fraudulent imitation, although it is different in some respects from the original, and in respects which render it not obviously an imitation may yet be an imitation, imitation perceptible when the two designs are closely scanned and accordingly an infringement."

28. The petitioner's complaint is relatable solely to the shape of the containers and not to the mode of manufacture. The shape of a drinks bottle or a carton is clearly project able as a registered design even though the purpose behind the shape is to persuade a customer to purchase the contents of the bottle or carton rather than the packaging itself. See *Morris & Quest: Design, the Modern Law &*

Practice para 11.4.2.)"

20. Similarly, the Bombay High court in Whirlpool of India Ltd. vs. Videocon Industries Ltd., 2014 SCC OnLine Bom 565 held as follows:

"26. The question of what tests are to be applied in deciding what constitutes an obvious imitation and/or is actionable is no longer *res integra*. This question has been considered in several judicial pronouncements. The leading decisions on the point are the decisions in the case of Castrol India Limited v. Tide Water Oil Co. (I) Limited¹⁷ and Kemp & Co. v. Prima Plastics Limited¹⁸. In both the decisions, the Kolkata High Court and the Bombay High Court have laid down the following propositions as constituting the test to decide whether there is obvious imitation and/or piracy of a registered design.

Castrol India Limited v. Tide Water Oil Co.(I) Limited : (supra)

(i) The word 'imitation' does not mean 'duplication' in the sense that the copy complained of need not be an exact replica.

(ii) The Court is required to see in particular as to whether the essential part or the basis of the Plaintiff's claim for novelty forms part of the infringing copy.

(iii) The similarity or difference is to be judged through the eye alone and where the article in respect of which the design is applied is itself the object of purchase, through the eye of the purchaser.

(iv) The Court must address its mind as to whether the design adopted by the Defendant was substantially different from the design which was registered. The Court ought to consider the rival designs as a whole to see whether the impugned design is substantially different from the design sought to be enforced. (The test laid down on Benchchairs Ltd. C. Chair Center Ltd.¹⁹ was cited with approval).

(v) 'Obvious' means something which, as soon as one looks at it, strikes one as being so like the original design/the registered design, as to be almost unmistakable. Fraudulent imitation is an imitation which is based upon, and deliberately based upon, the registered design and is an imitation which may be less apparent than obvious imitation, that is to say, one may have a more subtle distinction between the registered design and a fraudulent imitation and yet the fraudulent imitation, although it is different in some respects from the original, and in respects which render it not obviously an imitation may yet be an imitation perceptible when the two designs are closely scanned and accordingly amounts to infringement. (The test laid down in Dunlop Rubber Co. Ltd. v. Golf Ball Developments Ltd.²⁰ was cited with approval. Kemp & Co. v. Prima Plastics Limited : (supra)

(i) If the visual features of shape, configuration pattern designs are similar or strikingly similar to the eye, it is not necessary that the two designs must be exactly identical and same. The matter must be looked at as one of substance

and essential features of the designs ought to be considered.

(ii) In a given case, where the registered design is made up of a pattern which has no one striking feature in it, but it appeals to the eye as a whole, it may very well be that another design may be an imitation of it which makes the same appeal to the eye notwithstanding that there are many differences in the details. (The opinion of Farwell J. in *Dunlop Rubber Co. Ltd. v. Golf Ball Developments Ltd.*²¹ was cited with approval).

(iii) In comparing rival designs the Court is required to see whether the impugned design/product is substantially different to the design which is sought to be enforced.

The aforesaid tests have been independently applied and/or followed in a series of judgments of various High Courts, including judgments in *JN Electricals (India) v. President Electricals*; *Alert India v. Naveen Plastics*; *Hindustan Sanitaryware v. Dip Craft Industries*, and *Dabur India v. Amit Jain*.

27. The principle which clearly emerges from the above is that the test in deciding such matters is: "judged solely by the eye are the essential features present or are the two substantially different".

21. Hence, this court has to judge the two designs solely by the eye to see whether the essential features of the plaintiff's designs have been copied in the impugned designs by the defendant.

22. The impugned products of the defendant have been compared with the products of the plaintiff in the plaint which have been reproduced above in para 8. A comparison of the impugned products of the defendant with the plaintiff's products as depicted in the plaint for products 'BHG 136' and 'BHG 137' shows a striking resemblance. The teeth like structure has been copied in the defendant's product code Fashion 919 in the entire circumference while in the defendant's product code Fashion 925 teeth have been copied in the upper half. A visual inspection of the two designs shows that the essential features of the designs of the plaintiff have been copied in the product of the defendant. It is clear that prima facie the defendant has copied the essential features of the plaintiff's products 'BHG 136' and 'BHG 137'.

23. The next issue would be as to whether on account of the plea of the defendant that the designs of the plaintiff lack originality or that the design is not new or original, this court should not pass any interim order in favour of the plaintiff as the plaintiff's design is not entitled to protection.

24. In this context reference may be had to the judgment of the Division Bench of this court in the case of *Crocs Inc. vs. Bata India Ltd. & Ors.*, (supra) where the Division Bench of this court held as follows:-

"22. It was next urged that design protection under the Designs Act could not be legitimately claimed by the plaintiff, because the impugned design is a

combination of known designs and thus is not registrable as a design under the Act. Section 4 of the Act prohibits registration of a design which is not significantly distinguishable from known designs or a combination of known designs. The impugned design was copied from the shape of traditional clogs and lacks novelty and originality. Besides, shoes with identical perforations, in the shape of traditional clogs, were used by several manufacturers prior to the registration of the impugned design. That the plaintiff merely added a strap to the footwear already available in the public domain and thus, by virtue of being a combination of known design, the impugned designs were not registrable.

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42. As far as the other aspect of novelty, is concerned (i.e. the distinctiveness of the Crocs design - its uniqueness being its ugliness, which in turn imparts comfort to the user) this court notices that footwear generally and sandals, in particular have a design constraint : unlike other objects of use, footwear have to necessarily cater to the somewhat irregular foot-shape, which is narrow at the heel and much broader at the toes. Therefore, worldwide, footwear manufacturers have little "play" in creating new designs : their single most constraining factor is the utility which is largely dictated by comfort. If one understands this basic constraint, the single judge's description that a "footwear is a footwear, shoe is a shoe is a shoe and sandal is a sandal" and further that the basic design has remained unchanged, cannot be faulted. No doubt, there are observations in several judgments that functionality is not such a constraint as to overbear the novelty of a particular design. Thus, in Mohan Lal the Full Bench had noticed that this peculiar challenge (i.e. functionality/novelty or uniqueness problem) was not incapable of resolution:

"There may be, however, cases where the design while fulfilling the test of being appealing to the eye, is also, functional. [See judgment in the case of Cow (P.B.) & Coy Ltd. v. Cannon Rubber Manufacturers Ltd. (1959) RPC 347]. In this case the diagonal ribs on a hot water bottle were both appealing to the eye as well as functional. They were functional in as much as they permitted the heat to be radiated without singeing the user. The conundrum of functionality was resolved by taking note of the fact that it would make no impact on the articles functionality if, the ribs on the hot water bottle were either horizontal or vertical or even diagonal formations."

43. Similarly, in Sommer Allibert (UK) Ltd. v. Flair Plastics Ltd. (1987) R.P.C. 599 at 621 it was held that grooves moulded into plastic garden chairs constituted part of the "shape and configuration" of the chairs."

44. In the opinion of this court, the statement of the single judge with respect to certain common place designs and the limited scope for variation in design expressed in an unusual manner per se did not render the application of the law incorrect. Rather, what appears from the record is that the two designs, over which Crocs Inc claims novelty and originality are repetitions of age-old designs,

with some variations - in strap, etc. A design for an article that simulates a well-known or naturally occurring object or person is unprotectible. Thus, a mere trade variation of an existing design does not entitle the originator of the design to protection through registration. Bernard Shaw once said "Shakespeare was a much taller man than I, but I stand on his shoulders". He did not mean to sound arrogant, but merely underlined an idea that knowledge is incremental. Every innovation - in ideas, in technology, in music or any other protectable form is founded on previous knowledge and the unique twist that the innovator gives to it. The expression of that births a copyrightable subject matter; the application of those and the product emanating is the subject matter of design and the strong association of it with goods or services sold becomes the object of trademark. The finding of the single judge on the issue of lack of novelty, based on the materials on record, cannot be faulted; it is reasonable."

25. As noted by the Division Bench, it is true that in case of footwear for novelty, footwear manufacturers have very little flexibility in creating new designs. But as rightly pointed out by the learned counsel for the plaintiff, it cannot be said that the Designs Act, 2000 does not apply to footwear.

26. The defendant has relied upon the design reproduced above in para 10 to claim prior user of the plaintiff's design. Defendant have also relied upon the following designs in support of its contention of prior user in the market:-

27. As pointed out by the learned counsel for the plaintiff it is not known as to when the above footwear were launched. The documents do not mention the date when they were specifically launched or published. In fact, one of the documents states on the top 'new arrival'. Hence, at this stage, the plea of the defendant of prior art cannot be accepted.

28. Regarding the other design as noted above in para 10 above, a closer visual look shows that prima facie the nature of the design is quite different when compared to that of the plaintiff.

29. It is also pointed out by the learned counsel for the plaintiff that the defendant have themselves applied for registration of the designs in question. There can be no reason now for them to claim that the said designs of the plaintiff being a footwear cannot be protected.

30. Reference may also be had to the judgment of the High Court of Justice.- Chancery Division in the matter of Cartwright vs. Coventry Radiator Company, (supra) where the court held as follows:-

"Mr. Watson has contended that there are three tests, none of which are conclusive, but which cumulatively become impressive, for ascertaining the question that I am now upon; first, would one Design be confused with the other? The answer is that it obviously would. Secondly, would the Defendants' have had any existence if it had not been for the Plaintiff's Design? I very much doubt it; the Defendants could have altered their previous Design in very many

ways without coming anywhere near the particular features of the Plaintiff's Design which has been pointed out. Thirdly, is the Defendant's Design nearer to the Plaintiff's than that of any of other prior users? The answer is, that it is identical in substance with the Plaintiff's, and the prior users' are nothing of the kind.

Mr. Bousfield, who has said, I think, all that can be said for the Defendants, has suggested that no one can claim a monopoly for putting a ribbed top on a Ford radiator, and I think that nobody will dispute what he suggests, but this is not putting a ribbed top; it is making a Design, which is different from previous designs, and consists, as to the various parts of the combination forming the Design, of matters which are in substance old, but the whole picture of Design, or combination is in itself one which has never appeared on the market before"

31. Keeping in view the above facts, it is manifest that the defendant has prima facie copied the two designs of the plaintiff. The claims of the defendant that the designs of the plaintiff lack originality or there being existence of prior art are issues which would require better examination and would be considered after evidence has been led. At this stage, the said pleas of the defendant prima facie cannot be accepted.

32. The plaintiff has made out a prima facie case. Balance of convenience is in favour of the plaintiff and against the defendant. The defendant, its directors, etc. are restrained from using the said registered designs of the plaintiff for Suit Product No. 1 - BHG 136 and Suit Product No.2-BHG 137 or any other design that is deceptively similar to the designs of the plaintiff.