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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CS(COMM) 737/2022, I.A. 17234/2022, I.A. 16026/2023 & I.A. 42551/2024

TRODAT GMBH & ANR. .....Plaintiffs

Through: Mr. Jayant Mehta, Sr. Adv. with Mr. C.A. Brijesh, Mr. Krisna Gambhir, Ms. Simranjot Kaur and Mr. Vikramaditya Sanghi, Advs.
M: 9478515115

versus

ADDPRINT INDIA ENTERPRISES PVT. LTD. .....Defendant

Through: Mr. Sandeep Sethi, Sr. Adv. with Mr. Neeraj Grover, Dr. Shilpa Arora and Ms. Ria Kumar, Advs.
M :9971234481
Email: drshilpaarora@gmail.com

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

% 06.05.2025

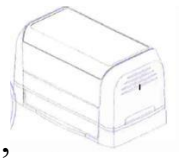
MINI PUSHKARNA, J:

I.A. 42551/2024 (Application on behalf of the defendant seeking clarification for the launch of an alternative non-infringing product)

Introduction:

1. The present application has been filed on behalf of the defendant seeking clarification for launch of an alternative non-infringing product, on account of the fact that the defendant has already been restrained from

selling its rubber stamp product, under the brand name 'KVIK' by an interim order dated 28th October, 2022, holding therein, that the said product of the defendant, is fraudulent and obvious imitation of the plaintiffs' designs, i.e., subject matter of the present suit.

2. The present suit has been instituted by the plaintiffs, *inter alia*, seeking a decree of permanent injunction restraining the defendant from infringing the plaintiffs' registered designs bearing design registration numbers 272348 and 272349 for brand names, "FLASHY 6330", i.e.,  and "FLASHY 6903", i.e., , respectively, and for passing off with respect to its self-inking stamp products, under the brand "FLASHY".

3. The dispute in the present suit essentially pertains to the allegations of infringement/piracy of plaintiffs' registered designs arising from the defendant's adoption and use of a slavish imitation of the same in connection with its stamp products marketed and sold under the brand name, "KVIK".

4. Since there is an interim order in favour of the plaintiffs herein, the instant application has been filed on behalf of the defendant seeking a clarification that the design of the proposed product of defendant, does not fall within the ambit of the *ex-parte ad interim* order dated 28th October, 2022, passed by this Court and that the defendant may be permitted to manufacture and market the said product.

Brief Facts of the Case:

5. The facts, as canvassed in the plaint, are as follows:

5.1. The plaintiff no. 1 in the present suit is a part of TroGroup GmbH, a leading global stamp business operating under the brand name Trodat. Further, plaintiff no. 2, i.e., Trodat Marking India Pvt. Ltd., is a wholly owned subsidiary of plaintiff no. 1.

5.2. The plaintiffs, *inter alia*, are engaged in the manufacture and sale of stamp products under the brand name "FLASHY", the designs of which, are duly registered under the Designs Act, 2000 (**"Designs Act"**). Specifically, the designs are registered under registration nos. 272348 for the product under brand name "FLASHY 6330" and 272349 for the product under brand name "FLASHY 6903".

5.3. The plaintiffs' products under the name "FLASHY" were first designed in Austria in the year 2015, and launched in India in the year 2017. The said products are also manufactured in India by the plaintiffs.

5.4. The plaintiffs came across defendant's products, i.e.,  and  being manufactured and sold under the brand "KVIK" in the same line of business and observed that the defendant was using an imitation of the plaintiffs' registered designs. Thus, the present suit came to be filed.

***Proceedings before the Court*:**

6.1 This Court *vide* order dated 28th October, 2022, passed an *ex-parte ad-interim* injunction in favor of the plaintiffs restraining the defendant, in the following manner:

> "*xxx xxx xxx*
>
> *20.* ***Owing to the fact that the overall getup, layout, colour combination, look and feel of the products of the Plaintiffs and the Defendant is almost identical, this Court is satisfied that the Plaintiffs have made out a prima facie case for grant of an ex parte ad interim injunction****. Accordingly, till the next date of hearing,* ***the Defendant is restrained from fresh manufacturing of rubber stamps (stamps) which are a fraudulent and obvious imitation of the Plaintiffs' designs no. 272348 and 272349 or any rubber stamp products which are similar in look and feel, get up, colour combination, etc. to the Plaintiffs' rubber stamp products.*** *The Defendant is however permitted to sell already manufactured products after filing an application before this Court giving the complete stock statement and the monetary value thereof.*
>
> *xxx xxx xxx*"
>
> *(Emphasis Supplied)*

6.2 Subsequently, this Court *vide* order dated 24th August, 2023, referred the parties to the Delhi High Court Mediation and Conciliation Centre. During the course of mediation, the defendant developed an alternative design and proposed the same to the plaintiffs as an alternative product. The defendant showed the alternative design for their product, however, the same was not accepted by the plaintiffs, and the plaintiffs did not consider the said proposed product as significantly different. Thus, the mediation did not fructify in a settlement and the mediation proceedings were closed as *'Not Settled'*.

6.3 After failure of the mediation proceedings, the defendant is stated to have made some more changes to the alternative design as was shown to the plaintiffs in the mediation process.

6.4 Hence, the present application has been filed by the defendant, seeking clarification that the new design proposed to be adopted by the defendant, is not covered under the scope of *ex-parte ad interim* injunction order dated 28th October, 2022, and seeking permission to manufacture and market the same.

Applicant/Defendant's submissions:

7. On behalf of the applicant/defendant herein, the following submissions have been made:

7.1 The alternate design now proposed to be adopted, is totally different and distinct from the plaintiffs' registered designs. The defendant has *bonafidely* caused many changes in the alternate design as shown to the plaintiffs during mediation proceedings. The product design of new proposed prototype cannot be termed as an imitation of the plaintiffs' suit designs in any manner.

7.2 Defendant had introduced the first box type flash stamp across the industry in India in the year 1999, i.e., 15 years before the plaintiffs entered the market. Further, the innovative approaches undertaken by the defendant had also led to the development of various box type flash stamps, including, Sun Stamper, Exmark, and Neo, all registered as designs before the year 2011.

7.3 The defendant has been the pioneer in the box type designs for stamps and have also secured three design registrations for the box type designs of

stamps, which are much prior to the plaintiffs' suit design registrations, i.e., before 2015.

7.4 Furthermore, apart from the defendant, other third parties had also launched box type stamp design much before the plaintiffs' suit design registrations, i.e., much before 2015.

7.5 The plaintiffs do not enjoy any specific monopoly in respect of the box type designs, glass cover top, side grip lines and shape of the stamp, in view of the prior published designs, including, that of the defendant.

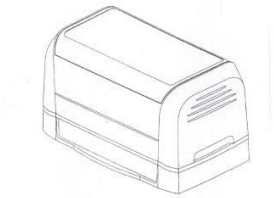
7.6 There is no overall similarity between the plaintiffs' suit designs and the defendant's newly proposed product, which has significant variations even from the defendant's own products under the brand "KVIK".

7.7 On account of the *ex-parte ad interim* order, the defendant has sustained huge loss of sales and business, as the defendant has not been able to manufacture its products under the brand name "KVIK". Furthermore, the defendant has been receiving various orders for self-inking segment design products, but is unable to respond to these customers, due to the continuance of the injunction order.

Plaintiffs/non-applicants' submissions:

8. On behalf of the plaintiffs/non-applicants herein, it has been submitted as follows:

8.1 The proposed design of the defendant when placed side by side with the plaintiffs' product, "FLASHY 6903" stamp, registered under design no. 272349, showcases the similarities in shape and configuration of the said design.

8.2 On a comparison of both the designs, the features of the new design, i.e.,  as proposed by the defendant still replicates the essential features subsisting in the plaintiffs' registered designs/products under design no. 272349, i.e., , in terms of identical body shape, configuration and visual features and the said similarities overpower any alleged dissimilarities between the products/designs.

8.3 On an overall view and by visually comparing the two designs side by side, one can apprehend that the proposed design of the defendant is an imitation of plaintiffs' registered designs. Furthermore, even independent of the design infringement, the similarity of essential features makes it evident that there is an action of passing off, as well. The overall comparison of the proposed design with the plaintiffs' product, clearly demonstrates that there are no stark dissimilarities between the two.

8.4 The test is to judge the similarities or differences through the eye alone by taking the product as a whole. Upon applying the said test, the similarities of the defendant's proposed design are obvious. Both the rival designs in terms of body shape, configuration and visual appeal features, are almost identical.

8.5 Similarity between the two designs shows that the defendant still intends to pass off its products as that of the plaintiffs, in order to ride upon the reputation and goodwill of the plaintiffs' and to further show a relationship with the products/business of the plaintiffs, by overriding the substantial similarities.

8.6 With respect to the contentions of the defendant that the alleged design registrations of the defendant for various box type flash stamps, including, Sun Stamper, Exmark, are prior to the registrations of the plaintiffs, it is submitted that the said designs are not at all similar to the registered designs of the plaintiffs.

8.7 The submission made by the defendant that the similar box type stamp designs were also launched by various third parties prior to the plaintiffs' design registrations is not admitted, as the images and links referred by the defendant are not verifiable, and a bare perusal of the same, makes it clear that there are material dissimilarities in the distinctive elements/aesthetics of the plaintiffs' designs and the third-party designs.

8.8 In terms of the order dated 28th October, 2022, an *ex-parte ad interim* injunction has already been passed against the defendant. Therefore, it is not open to the defendant to slightly modify its designs, thereby, attempting to further infringe the plaintiffs' products.

8.9 Consequently, the clarification as sought by the defendant to manufacture and market the proposed design, 'irrespective of the size' of the product, would run afoul of the subject matter of the defendant's application, since only one design has been proposed by the defendant, which still imitates the suit designs of the plaintiffs.

Findings and Analysis:

9. At the outset, this Court notes that *vide* order dated 28th October, 2022, an injunction has been granted against the defendant herein, wherein, the product of the defendant under the brand name 'KVIK' has been *prima facie* held to be identical in overall getup, layout, color combination, look and feel of the products of the plaintiffs. Therefore, in adjudicating the present application, this Court is required to see whether the proposed product of the defendant does not impinge upon the *ex-parte* injunction already operating against the defendant. Each design would have to be considered separately, and protection granted to the plaintiffs for its designs *qua* one design of the defendant, would not automatically extend to any other design of the defendant.

10. In this regard, it is to be noted that this Court in a similar situation *vide* order dated 23rd January, 2024, in the case of ***Purosis International LLP Versus V3 Poly Plast & Ors.***, ***CS(COMM) 741/2023***, has held as follows:

> *"xxx xxx xxx*
>
> *10……..**In the present case, the Court initially found a prima facie case in favour of the Plaintiff with regard to Defendant No. 1's impugned products, leading to the injunction order in respect of those designs. Given that the scope of the injunction extends to any designs deceptively similar to the injuncted ones, the Court's task now is to meticulously compare the Plaintiff's registered design with the new design proposed by Defendant No. 1**……*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

11. On the aspect of determination of the question of piracy/infringement of a registered design, the test laid down is the eye of an Instructed Person/ Informed User, i.e., he should know what was common trade knowledge and

usage in the class to which the design applies. It is settled principle of law that unlike matters involving trademarks, where the relevant test is to apply the standard from the point of view of an average consumer with imperfect recollection, the relevant test standard to be applied in design matters, is the *'Test of informed user'* and through *'Instructed eye'*. An informed user is a user who has experience of other similar articles and is able to appreciate whether an alleged infringement produces a different overall impression. Thus, in the case of ***Diageo Brands B.V. and Another Versus Alcobrew Distilleries India Pvt. Ltd.***, ***2022 SCC OnLine Del 4499***, this Court has held as follows:

> *"xxx xxx xxx*
>
> ***189.*** *On the principles of infringement of design Patent, the Federal Court observed thus:*
>
> > *"More than one hundred years ago, the Supreme Court established a test for determining infringement of a design patent which, to this day, remains valid. Gorham Co. v. White.* ***This test requires that "if, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same, if the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other, the first one patented is infringed by the other."*** *Id. at 528, 20 L. Ed. 731.*
> >
> > *For a design patent to be infringed, however, no matter how similar two items look, "the accused device must appropriate the novelty in the patented device which distinguishes it from the prior art. "Sears, Roebuck & Co. v. Talge, Horwitt v. Longines Wittnauer Watch Co. That is, even though the court compares two items through the eyes of the ordinary observer, it must nevertheless, to find infringement, attribute their similarity to the novelty which distinguishes the patented device from the prior art. …*
>
> *xxx xxx xxx*
>
> ***190.*** ***The hypothetical "informed user", through whose "instructed eyes" the aspect of infringement is to be addressed, has been given***

colour and complexion by the judgment of the Supreme Court of the UK in Procter & Gamble Co. v. Reckitt Benckiser (UK) Ltd, the ratio decidendi of which stands thus reproduced in Halsbury's Laws of England*:*

> *"**A design infringes the right given by registration if it does not produce on the informed user a different overall impression. An informed user is not the same as a person 'skilled in the art' of patent law nor the average consumer of trade mark law. The informed user is a user who has experience of other similar articles and who will be reasonably discriminatory; he is able to appreciate enough detail to decide whether a design creates an overall impression which has individual character and whether an alleged infringement produces a different overall impression.**"*

191. The informed user, for the purposes of design infringement, or piracy, is, therefore, a specie sui generis. *He is neither a "person skilled in the art" nor, as Mr. Sibal would seek to contend, an "average consumer".* ***He-***

(i) ***has experience of other similar articles,***

(ii) ***is reasonably discriminatory and***

(iii) ***is able to appreciate enough detail.***

xxx xxx xxx

194. The decision of the coordinate single bench *of Vipin Sanghi, J. (as the learned Chief Justice then was)* ***in Carlsberg Breweries also underscores this position.*** *From the passages from the said decision extracted in para 54 supra, the following elucidations of the law emerge:*

(i) ***A pirated design "must be the exact thing; and any difference, however trifling it may be or however unsubstantial, would nevertheless protect it from being made the monopoly of the particular designer who thought proper to take it".***

(ii) ***The aspect of novelty and originality alone render the design entitled to protection.***

(iii) ***"To determine the question if infringement of a registered design, the eye should be of an instructed person i.e. he should know what was common trade knowledge and usage in the class to which the design applies".***

> *(iv)* ***The issue has to be decided by a "close examination and comparison of the two designs".***
>
> *(v)* ***"It is often helpful to look at what was available before the priority date of the registered design as the eye of the interested addressee could be drawn to details, only if the registered design differs from the prior art by such details. It is only when the new design differs radically from the previous designs, that the interested person's eye would more likely concentrate on and more likely remember the general form of the new design rather than the details."***
>
> *(vi)* ***"The Court is required to see whether the essential part or the basis of the plaintiff's claim for novelty forms part of the alleged infringing copy".***
>
> *xxx xxx xxx*
>
> ***196.*** *As against this,* ***Section 22 of the Designs Act does not use the word "infringement". Significantly, it uses the word "piracy". The distinction between these two words is important and, in my opinion, has to be kept in mind and cannot be ignored. The provision, thereafter, proceeds to hold that piracy of a registered design takes place where the defendant's design is a fraudulent or obvious imitation of the design of the plaintiffs. Again, the use of the word "imitation" is significant, especially when juxtaposed with the word "piracy".***
>
> *xxx xxx xxx*
>
> ***208.*** *An ignorant observer, who is uninformed of the state of prior art and is merely comparing the design of the plaintiff with the product of the defendant, cannot, therefore, be the person from whose view point the aspect of infringement is examined.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

12. Thus, the scope of adjudication of the present application is primarily to ascertain the similarity of new proposed design of the defendant, when compared with registered designs of the plaintiffs on the touchstone of obvious or fraudulent imitation from the point of view of an instructed eye.

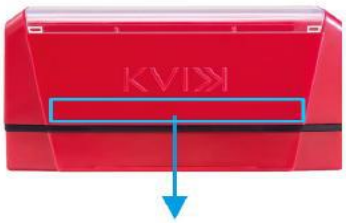
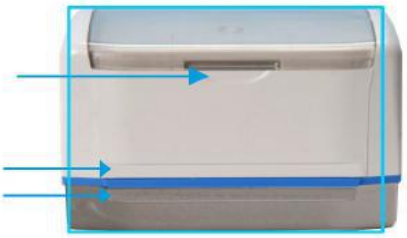
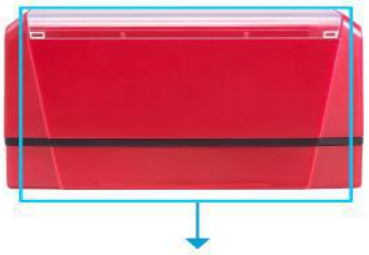
13. On the aspect of Test of Design Infringement, or Design Piracy, as encapsulated in Section 22 of the Designs Act, *Halsbury's Laws of England*

in *5th Edition*, *Volume 79*, in *Para 739*, elucidates as under:

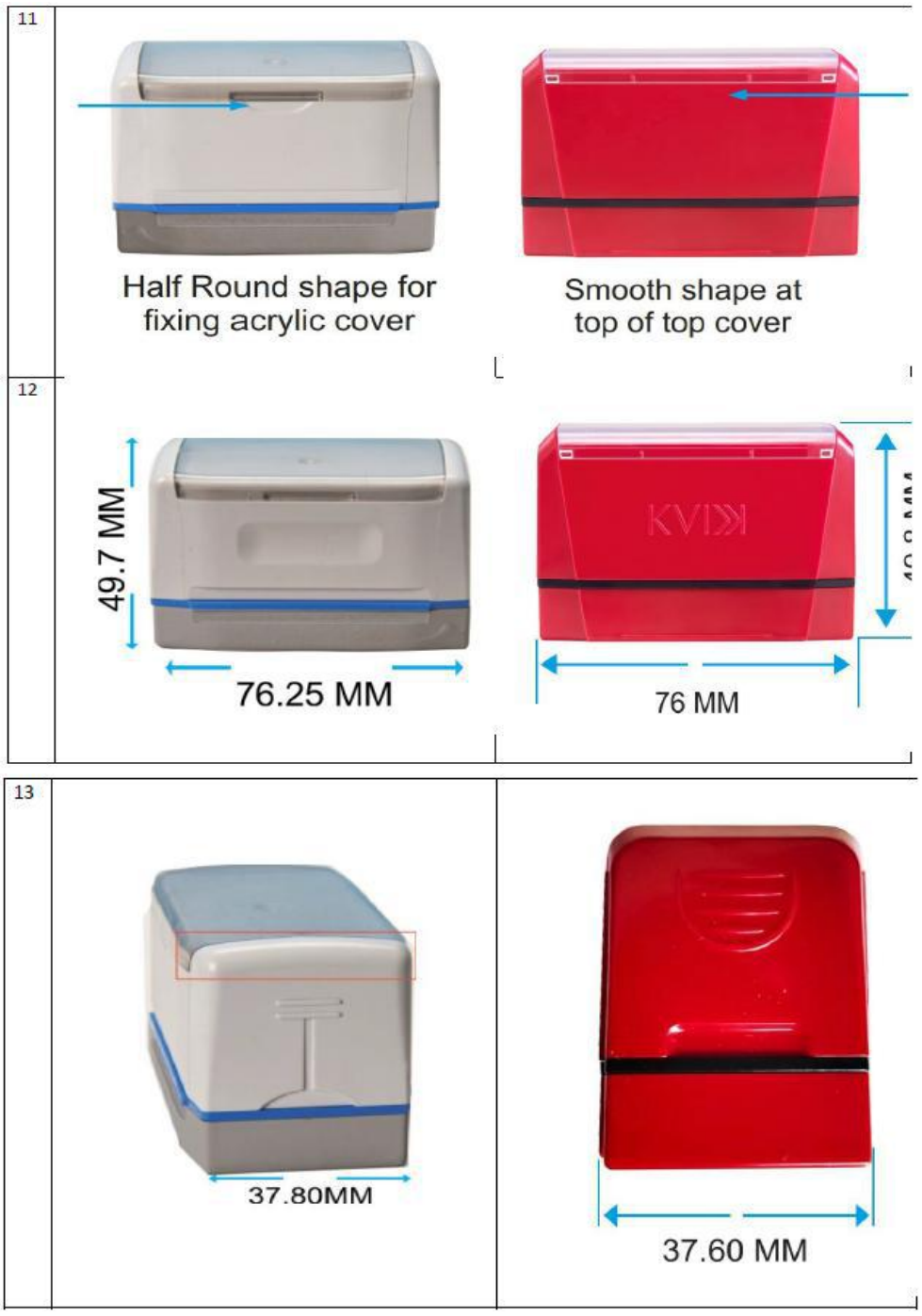
> *"xxx xxx xxx*
>
> ***739. Test for infringement.*** *A design infringes the right given by registration if it does not produce on the informed user a different overall impression[1]. An informed user is not the same as a person 'skilled in the art' of patent law[2] nor the average consumer of trade mark law[3]. The informed user is a user who has experience of other similar articles and who will be reasonably discriminatory; he is able to appreciate enough detail to decide whether a design creates an overall impression which has individual character and whether an alleged infringement produces a different overall impression[4]. The test of different overall impression is imprecise as it is necessarily subjective[5].* ***It is sufficient to avoid infringement if the accused product is of a design which produces a 'different overall impression'; there is no policy requirement that the difference be 'clear'[6]. The overall impression is what strikes the mind of the informed user when it is carefully viewed, not what he may recollect afterwards[7].***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

14. This Court notes the comparison as brought forth by the defendant between the defendant's proposed alternate product, and the earlier injuncted product, which is reproduced as under:

S. No.	Defendants' newly proposed alternate product	Defendants' earlier injuncted product KVIK
1	 Smoky Top Cover with curved shape	 Crystal Clear glass cover
2	Front  Different place dugged surface front boy face	 PROJECTED STEP TYPE FRONT BODY FACE

3	 Dugged shaped body surface	 BRAND NAME MARK ON A PLANE BODY SURFACE
4	 Dugged shaped at bottom of top cover	 Plane shaped at bottom of top cover
5	 Dugged shape at bottom of top cover	 Smooth shape at bottom of top cover
6		 PROJECTED STEP TYPE BACK BODY FACE

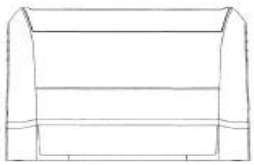
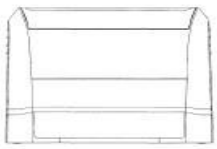
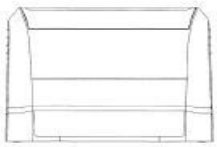
7	 Two line grip connected with dugged bottom line	FINGER EDGE TYPE GRIP 
8	 Two line grip connected with dugged bottom line	Seperate Four line grip & bottom square shape 
9	 Round shape dugged grip on bottom of top cover	Square grip on bottom of top cover 
10	 Dugged shape at top of bottom cover	 Smooth shape at top of bottom cover

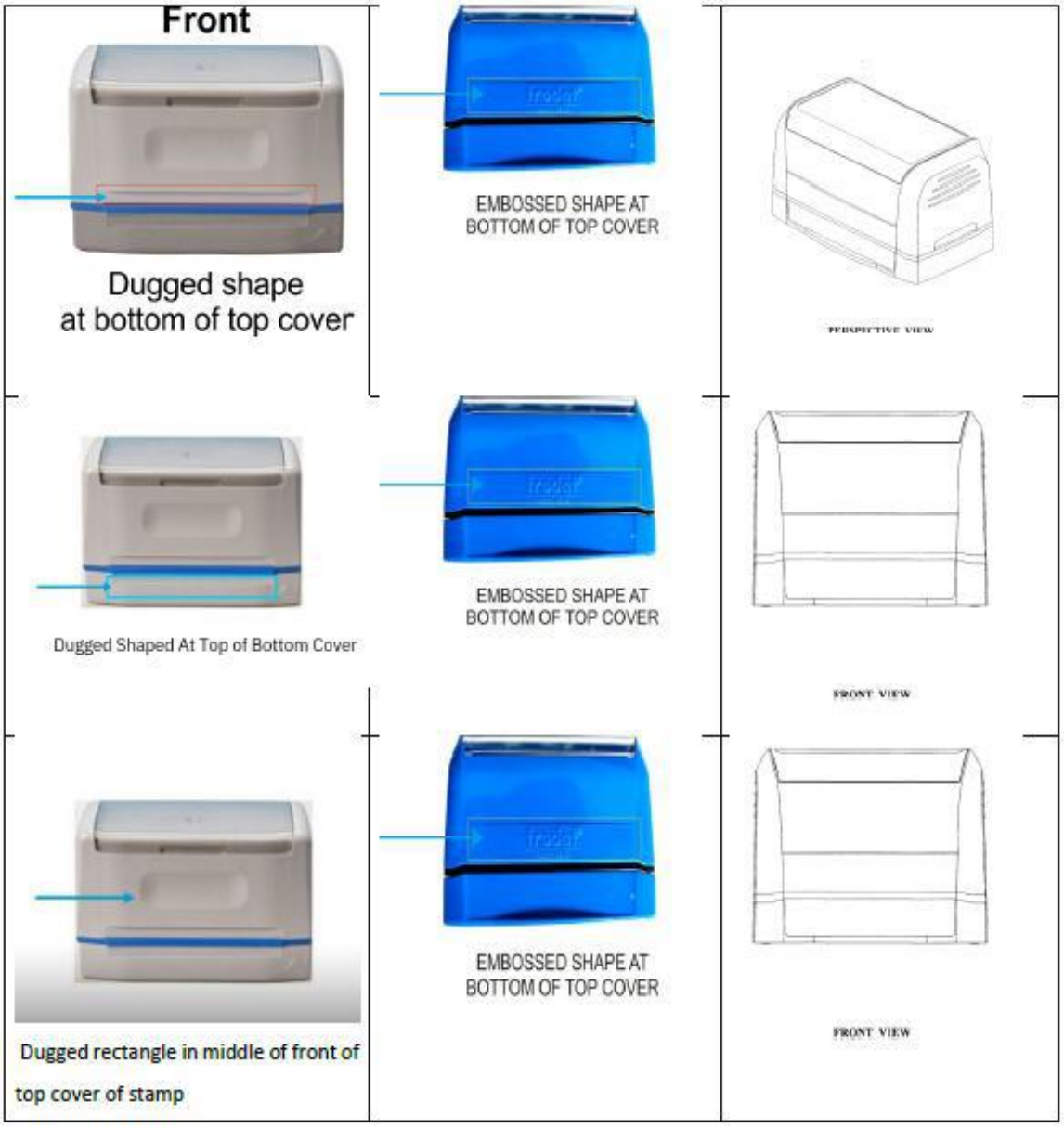


15. Perusal of the aforesaid clearly brings forth distinguishing features and several conspicuous and prominent differences between the earlier injuncted design of the defendant, and the proposed design.

16. The prototype of the products in question, i.e., the plaintiffs' registered design, the defendant's injuncted design and the defendant's proposed alternate product, have been handed over to this Court, and the Court had the occasion to consider the same.

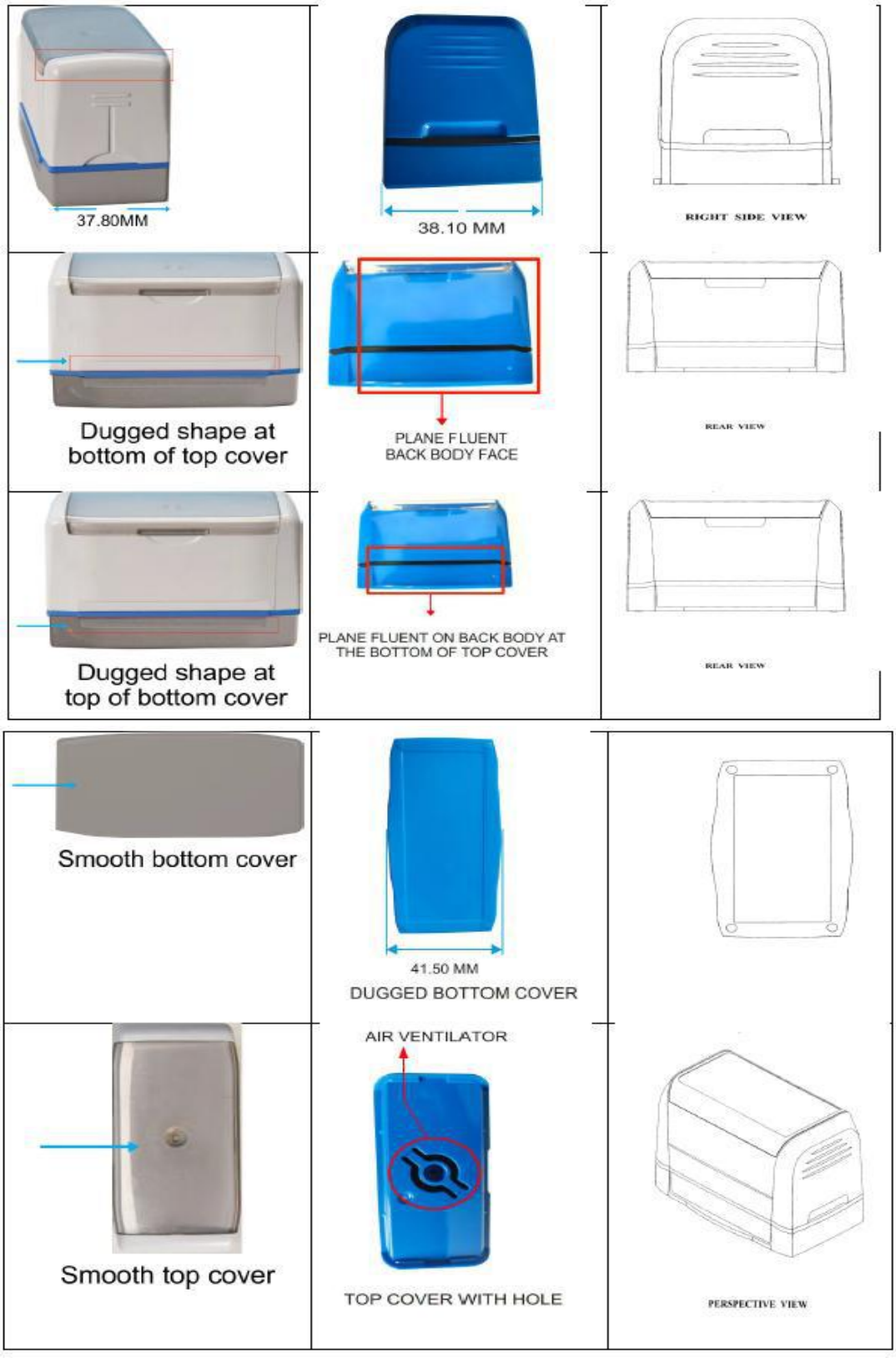
17. This Court further notes the distinction as brought forth by the defendant, with regard to the proposed alternate product, and the plaintiffs' design registration representation and its product, i.e., "FLASHY". The tabular comparison with regard to the same, on record before this Court, is reproduced as under:

Defendants' newly proposed alternate product	Plaintiffs' FLASHY Design	Plaintiffs' design registration representation's views (Design no. 272349)
Front  Smoky Top Cover with curved shape	TRODAT FLASHY 6904  Crystal Clear Top Cover	 FRONT VIEW
Front  Half square bigger front for top cover lock	TRODAT FLASHY 6904  Front opening with small lock	 FRONT VIEW
Front  Dugged ovel shape on center of top cover	TRODAT FLASHY 6904  BRAND NAME ON EMBOSSED SURFACE ON BOTTOM OF TOP COVER	 FRONT VIEW


Front
Dugged shape
at bottom of top cover
EMBOSSED SHAPE AT
BOTTOM OF TOP COVER
PERSPECTIVE VIEW
Dugged Shaped At Top of Bottom Cover
EMBOSSED SHAPE AT
BOTTOM OF TOP COVER
FRONT VIEW
Dugged rectangle in middle of front of
top cover of stamp
EMBOSSED SHAPE AT
BOTTOM OF TOP COVER
FRONT VIEW

Front  Blue Colour straight plunger body edge	 BLACK COLOUR WAVE PLUNGER BODY EDGE	 FRONT VIEW  PERSPECTIVE VIEW
 Two line grip connected with dugged bottom line	 FOUR LINE GRIP	 LEFT SIDE VIEW


Round shape dugged grip on bottom of top cover
SQUARE SHAPE DUGGED GRIP ON BOTTOM OF TOP COVER
RIGHT SIDE VIEW
Straight body line & top big round curve
CURVE BODY ON TOP
RIGHT SIDE VIEW
49.7 MM
76.25 MM
52 MM
80 MM
FRONT VIEW


37.80MM
38.10 MM
RIGHT SIDE VIEW
Dugged shape at bottom of top cover
PLANE FLUENT BACK BODY FACE
REAR VIEW
Dugged shape at top of bottom cover
PLANE FLUENT ON BACK BODY AT THE BOTTOM OF TOP COVER
REAR VIEW
Smooth bottom cover
41.50 MM
DUGGED BOTTOM COVER
AIR VENTILATOR
Smooth top cover
TOP COVER WITH HOLE
PERSPECTIVE VIEW

18. Thus, it is manifest that there are various distinguishing features in the defendant's alternate product, i.e., when looked at from the *'top view'*, a smoky glass is seen in comparison to the clear glass in the plaintiffs' product. Whereas, when looked at from the *'side view'*, a plunger shaped aberration on the sides attached to the grips, which are embossed with two lines can be seen, which is distinctive from the four lines embossed in the plaintiffs' product. Furthermore, when looked at from the *'bottom view'*, the surface is completely smooth in contrast to the plaintiffs' product, which has a dugged bottom along with four round embossed edges. When viewed from the front, there is dugged rectangle in middle of front of the top cover of stamp of the defendant, in comparison to the embossed shape at bottom of top cover, in the plaintiffs' product. Therefore, the proposed alternate product of the defendant looks visually different and has dissimilar visual effect, from the design of the plaintiffs. The overall getup, look and layout of the defendant's proposed design, is substantively different, from the plaintiffs' registered suit designs. Thus, the defendant's proposed design does not appear to infringe upon the plaintiffs' registered design.

19. The court at this stage is not considering the novelty of the designs of the plaintiffs, or the defendant's plea of invalidity of the plaintiffs' suit design registrations. Further, the defendant has categorically stated during the course of hearing, that the plea of invalidity of the plaintiffs' registered designs is not pressed, for adjudication in the present application.

20. Considering the aforesaid comparison and finding, this Court is of the *prima facie* opinion that the proposed alternate design of the defendant, as noted hereinabove, falls outside the purview of the injunction order dated

28th October, 2022. Accordingly, the defendant is granted permission to proceed with the manufacturing and marketing of the proposed product of the defendant's design. However, the defendant shall scrupulously follow and abide by the specifications of the proposed alternate product design, and shall not vary or modify the same.

21. The defendant is also directed to maintain an account of its production and sales of the proposed alternate product design, which shall be filed before this Court, on quarterly basis.

22. It is clarified that the finding given by this Court by way of the present adjudication, is only *prima facie* in nature and shall not affect the final outcome of the present case, post-trial. Rights and contentions of both the parties are left open, to be considered at the time of final hearing of the matter.

23. On account of the opposition of the plaintiffs *qua* the proposed alternate design of the defendant, the plaintiffs are granted liberty to amend their suit to incorporate their challenge to the proposed alternate design of the defendant. The objections of the plaintiffs with regard to the proposed alternate design of the defendant, shall also be subject matter of trial in the present suit, as and when appropriate amendments to the plaint, are carried out by the plaintiffs.

24. The present application is disposed of, with aforesaid directions.

(MINI PUSHKARNA)
JUDGE

May 06, 2025
kr/ak/au