

Quintessential Designs India Pvt. Ltd. and Others Vs Puma Sports India (Pvt.) Ltd. and Others

Court: Madras High Court

Date of Decision: June 23, 2015

Acts Referred: Copyright Act, 1957 - Section 15(2), 17, 17(c), 19, 2(c)
Designs Act, 2000 - Section 22

Citation: (2015) 64 PTC 17

Hon'ble Judges: K. Ravichandra Babu, J

Bench: Single Bench

Advocate: M.S. Krishnan, Senior Counsel for Sarvabhauman Associates, for the Appellant; P.S. Raman, Senior Counsel for Rajesh Ramanathan, Advocates for the Respondent

Final Decision: Disposed off

Judgement

@JUDGMENTTAG-ORDER

K. Ravichandra Babu, J.

The applicants in O.A. Nos. 305 to 307 of 2015, who are the respondents in A. No. 2890 of 2015, are the

plaintiffs in C.S. No. 215 of 2015. For the purpose of convenience, the rank of the parties are indicated as they are ranked in O.A. Nos. 305 to

307 of 2015 in C.S. No. 215 of 2015. The applicants/plaintiffs have filed the above suit for grant of the following reliefs:

(i) permanent injunction restraining the defendants, whether by themselves, their promoters, employees, servants, agents, legal representatives or

any one claiming through them from infringing or attempting to infringe the Copyright vested with the plaintiffs, subsisting in style No. PMA1008LP

product conceptualized, designed and product developed by the plaintiffs for the defendant No. 1 and exhibited during the Road Show for Season

Spring '14 by manufacturing, causing to manufacture, marketing either directly or indirectly or in any manner dealing with the said style No.

PMA1008LP in any manner whatsoever;

(ii) permanent injunction restraining the defendants, whether by themselves, their promoters, employees, servants, agents, legal representatives or

any one claiming through them from infringing or attempting to infringe the Copyright vested with the plaintiffs, subsisting in style No. PMA1013LP

product conceptualized, designed and product developed by the plaintiffs for the defendant No. 1 and exhibited during the Road Show for Season

Spring "14 by manufacturing, causing to manufacture, marketing either directly or indirectly or in any manner dealing with the said style No.

PMA1013LP in any manner whatsoever;

(iii) permanent injunction restraining the defendants, whether by themselves, their promoters, employees, servants, agents, legal representatives or

any one claiming through them from in any manner infringing the Copyright vested with the plaintiffs, subsisting in balance 23 of 25 designs, more

fully mentioned in Schedule I hereunder, which were product conceptualized, designed and developed by the plaintiffs for the defendant No. 1 and

presented to defendant No. 1 for the limited purpose of selection for the Road Show for Season Spring "14 by developing, manufacturing,

marketing either directly or indirectly or dealing in any manner whatsoever;

(iv) to direct the defendants, their men, agents, successors in business, assigns, representatives or any other person or entity claiming through or

under them to deliver up the 32 samples of the 11 styles listed in Schedule II hereunder including copy/copies thereof and other copyright

protected materials of the plaintiffs in physical, mechanical or electronic form without making or retaining any copy/copies, alterations,

reproductions or duplicates of the same in any form whatsoever;

(v) to direct the defendants to pay to the plaintiffs a sum of Rs. 2,58,49,215/- as liquidated damages, and

(vi) for costs of the proceedings.

2. Pending disposal of the above suit, the plaintiffs have filed O.A. Nos. 305 to 307 of 2015, seeking for interim injunction, as follows:

(i) Original Application No. 305 of 2015: to grant an ad-interim injunction restraining the respondents, whether by themselves, their promoters,

employees, servants, agents, legal representatives or any one claiming through them from infringing or attempting to infringe the Copyright vested

with the applicants, subsisting in style No. PMA1008LP product conceptualized, designed and product developed by the applicants for the

respondent No. 1 and exhibited during the Road Show for Season Spring "14 by manufacturing, causing to manufacture, marketing either directly

or indirectly or in any manner dealing with the said style No. PMA1008LP in any manner whatsoever.

(ii) Original Application No. 306 of 2015: to grant an ad-interim injunction restraining the respondents, whether by themselves, their promoters,

employees, servants, agents, legal representatives or any one claiming through them from infringing or attempting to infringe the Copyright vested

with the applicants, subsisting in style No. PMA1013LP product conceptualised, designed and product developed by the applicants for the

respondent No. 1 and exhibited during the Road Show for Season Spring "14 by manufacturing, causing to manufacture, marketing either directly

or indirectly or in any manner dealing with the said style No. PMA1013LP in any manner whatsoever, and

(iii) Original Application No. 307 of 2015: to grant an ad-interim injunction restraining the respondents, whether by themselves, their promoters,

employees, servants, agents, legal representatives or any one claiming through them from in any manner infringing the Copyright vested with the

applicants, subsisting in 23 designs morefully mentioned in Schedule I hereunder, which were product conceptualized, designed and product

developed by the applicants for the respondent No. 1 and exhibited during the Road Show for Season Spring '14 by manufacturing, causing to

manufacture, marketing either directly or indirectly or dealing in any manner whatsoever.

3. This Court, by order dated 25.03.2015, granted interim injunction for a period of two weeks, only in O.A. No. 307 of 2015 in respect of those

samples for which products have not been launched so far. In the other two Original Applications, notice was ordered returnable in two weeks.

After noticing the said order dated 25.03.2015, the respondents/defendants filed common counter affidavit in all these applications along with

vacate-injunction-application in A. No. 2890 of 2015 in O.A. No. 307 of 2015. The said order of interim injunction was extended periodically

and is still in force.

4. The case of the applicants/plaintiffs in common in all these applications is as follows:

(a) The first applicant is a Company incorporated in India under the Companies Act, 1956, as an apparel manufacturer and ""full service vendor"" in

the specialised area of apparel bottom-wears (pants) for both men and women. ""Full service vendor"" includes apparel trade, which provides in

addition to manufacturing services (FOB), additional services, such as line and product conceptualization, design, sourcing, product translation and

prototyping, sales sampling, including production and delivery of an FOB product. The second applicant was formed with strategic alliance with an

American owned Hong Kong based Company, which was also incorporated under the Companies Act, 1956, with an objective to complement

the strengths of the first applicant-Company. The first respondent/first defendant is a Company incorporated in India, wholly owned subsidiary of

the second respondent-Company (second defendant).

(b) The first applicant was introduced to the first respondent in their Bangalore Office on 09.01.2013. The first respondent was thoroughly

impressed with the bestiary engineering finesse employed by the first applicant and expressed interest to explore the possibilities of working with

the first applicant. One Mr. Vibhu Gupta, the first respondent-Company's personnel visited the first applicant-Company's manufacturing facility in

Sriperumbudur near Chennai on 25.01.2013 and he was completely convinced about the first applicant's calibre and infrastructure to cater to the

requirements of the first respondent in the sphere of apparels. The first respondent offered to engage the first applicant as a manufacturer vendor

with orders for apparel bottom-wears (pants) for the first respondent from their existing line which they had developed and had been marketing.

This arrangement was not commercially viable to the first applicant and therefore, it was suggested by them that their expertise may be utilised as a

full service vendor. Mr. Vibhu Gupta indicated that he would confirm the same after consulting with one Mr. Atul Bajaj, Director-Merchandising of

the first respondent-Company. The meeting was fixed with Mr. Atul Bajaj on 13.01.2013 in Bangalore, where the first applicant made a

presentation to exhibit their capability as a full service vendor. The excellence of design and execution by the applicants left the first respondent

thoroughly impressed. Mr. Atul Bajaj requested a line of 25 styles to be product-conceptualized, designed, product developed and presented to

the first respondent in view of the forthcoming Season Spring '14 and the Road Show for the same Season of the first respondent. It was agreed

by the first applicant that they would design and develop this line specifically to be adopted by the first respondent for the said Season Spring '14,

which would be in the retail stores between February 2014 and June 2014 and the Road Show for the same Season of the respondents was to be

held around June 2013.

(c) In pursuant to the said agreement, the first applicant invested heavily both monetarily and in the form of tremendous time and effort, intellectual

input, opportunity cost, man hours and labour to develop the said 25 styles requested by the first respondent and they took up the services of the

second applicant. The said 25 styles were created in an exceptional short time of 90 days as against the normal industrial standards of 180 days.

The applicants in an earnest attempt to deliver the consignment at such a short notice as promised, refused services to the other potential clients

and kept all other orders in abeyance. Apart from the said 25 styles of bottom-wears, designed by the first applicant, they were also provided by

the first respondent, a grid of eleven numbers of the styles of the first respondent, of which the first applicant received eight tech-packs and

sketches, vide e-mails dated 22.03.2013 and 27.03.2013 to translate them into the products to be presented to their technical designer from

Germany. The applicants reluctantly agreed to execute five such tech-packs as communicated through e-mail dated 30.03.2013. This exercise,

according to the first respondent was aimed at evaluating the translation capabilities and the capacity of the applicants to contribute intellectually

and create technically superior products from the first respondent's tech-packs. On 28.03.2013, the first applicant expressed through e-mail that

this exercise of translating the tech-packs would be commercially unproductive, which was noted and acknowledged by the first respondent

through their email dated 30.03.2013. The applicants went on to product-develop and translate the said five tech-packs of the first respondent's

design into premium products. The applicants invested huge money, intellectual resource and human effort in this exercise only on the solemn

assurance given by the first respondent that the orders received based on these products would be awarded to the applicants.

(d) On 14.05.2013, the first applicant presented 25 styles before Mr. Atul Bajaj and Mr. Vibhu Gupta in Bangalore office of the first respondent.

Further, the improvisation to be made by the applicants on the styles of the first respondent's tech-packs, had also been discussed. Both the

abovesaid persons were impressed with the presentation and requested the applicants for the presentation samples (25 numbers) to be left behind

for their review and selection by their team. The presentation samples were left behind on their request and collected on the subsequent date, i.e.

on 15.05.2013. The abovesaid two persons had also expressed their concern on the pricing structure, as it was 10% higher than what had been

indicated to. The first respondent selected five styles from the first applicant's presentation of 25 styles for the Season Spring '14 and the Road

Show. Mr. Atul Bajaj further requested for five styles designed by the first respondent to be translated and enhanced by the applicants and sales

sampled for the Season Spring '14 and the Road Show, using fabrics and trims selected and sourced by the applicants. The applicants reposed

enormous trust on the first respondent in agreeing to carry out the execution of the sales samples for five styles of the first respondent for no

consideration other than that of the award of the orders promised by the first respondent. The first applicant went ahead with the sales samples, ten

styles in total, five products-conceptualized, designed and product developed by the applicants and five products" design translated, enhanced and

product developed from the tech-packs received from the first respondent. On 02.06.2013, all completed sales samples, totalling 30 numbers of

garments (three numbers each of the selected ten designs), as requested, were delivered to the first respondent along with fabric tubes for colour

reference (57 numbers). The entire consignment of the samples, along with fabric tubes, was received by Mr. Vibhu Gupta on 03.06.2013 on

behalf of the first respondent, who acknowledged the receipt of the samples through e-mail dated 18.06.2013. Thus, the first respondent has been

totally put in possession of 25 designs/styles including physical samples in respect of ten designs/styles created and developed by the applicants.

(e) However, to the complete shock and disappointment of the applicants on 07.08.2013, the first applicant was informed by Mr. Vibhu Gupta

that no orders were generated for the styles submitted by the applicants for Season Spring '14 and that had been prototyped and sales sampled

and provided as full service by the applicants. According to the first respondent, the applicants' designs were too winterized and the pricing was

high. The first applicant sent a pre-emptive e-mail dated 12.08.2013 to the first respondent requesting that all samples be returned to the applicants

immediately, as they were the applicants' creative work and their exclusive intellectual property. The first applicant also vide the said e-mail sought

to dis-allow the first respondent from using the styles and designs created by the applicants for the first respondent. The e-mail response of the first

respondent claimed proprietary rights over the designs that were created by the applicants. The first respondent claimed that they had the right to

retain the samples. The applicants being the author of the designs created, is the owner of the copyright of the same, including the physical samples

and the first respondent did not have any right or interest over the same. The series of e-mail correspondences between the parties from

07.08.2013 to 13.08.2013 are a testimony to the evasiveness of the first respondent. On 06.12.2013, the first applicant received a Caveat from

the first respondent and therefore, the first applicant raised suspicion that the first respondent would infringe their copyright works and produce the

same with the other manufacturers without the consent of the applicants.

(f) The applicants earnestly sought to resolve the dispute and a series of e-mails addressed to the top level executives of the second respondent in

Germany between 22.03.2014 and 19.05.2014 show the applicants' bona-fide. On 07.05.2014, another Caveat was received by the first

applicant. The first applicant visited the first respondent's outlet in Express Avenue Mall, Royapettah, Chennai and purchased a Women's Capri

on 16.02.2014 which was style No. PMA 1013LP and billed as the first respondent's style No. 56774002. This Capri was the duplicate of the

designs created by the applicants. Another visit undertaken by the representatives of the first applicant to the first respondent's outlet in Phoenix

Market City, Velacherry, Chennai, on 09.03.2014, and it was found that another pant, a Women's style, which was style No. PMA 1008 LP,

was billed as first respondent's style No. 56744101, which had been duplicated based on the design blueprint created by the applicants. The

applicants have incurred various expenses in executing the work undertaken by them at the behest of the first respondent and the applicants

compute the total damages to be at Rs. 2,58,49,215/- under various heads and claim the same from the respondents.

(g) The infringement of the applicants' copyright in Design Nos. PMA 1008 LP and PMA 1013 LP resulted in a loss of novelty, since the designs

were put in the public domain. Apart from the said two designs, which have been wrongfully usurped by the first respondent, the applicants had

also presented 23 other designs to the first respondent, which were in physical possession of the first respondent and subsequently returned to the

applicants. Since two of these 25 designs have already entered the market clandestinely without the consent of the applicants, they reasonably

apprehend that the first respondent is also ready to launch products based on the remaining 23 designs presented by the applicants. Therefore, the

abovesaid suit along with the abovesaid three interlocutory applications are filed by the applicants/plaintiffs before this Court.

5. The case of the respondents/defendants in the common counter affidavit filed by them before this Court along with the vacate-injunction-

application, is as follows:

(a) The very suit filed by the applicants is not maintainable, as there is no cause of action. The applicants have suppressed material facts.

(b) The first respondent-Company is an indirect subsidiary of the second respondent-Company, which is a multi-national company having been

established in the year 1948. The respondents' product under the mark PUMA are very popular throughout the world. The respondents generally

authorise and engage the services of various manufacturers/service providers who can manufacture PUMA clothing, foot-wear, accessories and

other products as per the specific standards, sizes, designs, inputs, feedback, etc., given by the respondents using the raw materials, idea, concept,

know-how and intellectual resources of the respondents. The products which are produced by such manufacturer/service provider, are forwarded

to the Design Department of the first respondent-Company and only after their clearance, the products are shown to the customers. The first

respondent-Company was keen on engaging the services of manufacturers/service providers for putting together the designs developed by the

respondents using the respondents' raw materials and developing samples for Spring 2014. Apart from the first applicant-Company, there were

other service providers to develop the samples. The first respondent-Company forwarded all the relevant documents including PUMA code of

conduct, PUMA testing requirements, PUMA quality submission and approval procedures, PUMA cost sheet format, guidelines and expectations

from the supplies, accessory and trim requirements, hand tag and sticker guideline, Spec sheets for both men and women, bottom styles, basic

blocks of PUMA, pattern documents, measurement guide, design sheets, sketches of apparels and various other relevant information for

developing the sample product on par with PUMA standards available in the market. These details were forwarded to the first applicant under

various mails, dated 21.12.2012. It was made clear that no payment would be made for development/sampling. Between 05.03.2013 and

22.03.2013, the first respondent also forwarded the accessories and trim requirements, which included requirements for closures, zippers, hand

tag and stickers, art work for woven pants, woven shorts, measurement guidelines, pattern documents, men's shorts with art work, pants, front

and back sketches for pants, shorts, etc.,

(c) The various instructions given by the respondents touching upon every aspect of the garments, show that only the respondents' idea and

concept of design had been put together by the applicants and the sample was developed and that the applicants had merely assembled on the raw

materials, information and technical know-how supplied by the respondents and developed the design conceptualized by the respondents.

Therefore, the applicants herein cannot claim to be the author/creator of the design. In pursuant to the Road Show that took place in June 2013,

the respondents informed the applicants that the pricing was too high and they should wait for the completion of the Road Show 2014. The

feedback received by the respondents from the Road Show was that the product was winterized and the pricing was on the higher side. The

applicants refused to bring down the pricing and therefore, the respondents were constrained to engage the services of another

manufacturer/service provider to re-create the design conceptualized by the respondents. The new service provider gave the finished product with

much lower price than the one offered by the applicants. Since the samples so provided by the applicants, were based on the theme, idea and

concept of the designs provided by the respondents, it is highly illegitimate on the part of the applicants to claim any right over the samples.

Therefore, the suit is filed on false and frivolous claims.

(d) All the resources so provided to the applicants consist of the intellectual property rights of the respondents. The applicants cannot claim any

proprietary rights under the Copyright Act or the Designs Act over the samples so created. The present suit is not maintainable against the

respondents under the Designs Act, 2000, as no registration has been claimed by the applicants over the samples produced by them.

6. A common reply affidavit was filed by the applicants/plaintiffs, wherein they have denied the various allegations made by the

respondents/defendants in the affidavit filed in support of the vacate-injunction-application and reiterated their contentions further elaborately as

raised in the affidavit filed in support of their applications.

7. The sum and substance of the arguments advanced by Mr. P.S. Raman, learned Senior Counsel appearing for the applicants/plaintiffs and the

written submissions filed on behalf of the applicants/plaintiffs, are as follows:

(i) There are two types of engagement of the plaintiffs by the first defendant. The first assignment of the engagement is that the plaintiffs have to

design, product conceptualize and product develop in respect of the line of 25 styles for the first defendant's Season Spring '14 and the Road

Show. This is evident from the communications between the parties from 16.01.2013 to 03.06.2013, which are made available in the typed set of

documents filed by the plaintiffs during March 2015, especially in page Nos. 3, 12, 16, 38, 71, 118 and 119. Towards this first assignment, the

first plaintiff invested heavily both monetarily and in the form of tremendous time and effort, intellectual input, opportunity cost, man hours and

labour, which were admittedly not for any monetary consideration. The plaintiffs never meant to share tech-packs of the said 25 styles of the first

assignment of the engagement and made that fact very clear by e-mail dated 21.03.2013. The tech-packs are required only when translation is

required to be done by a third party or during the manufacturing process. In the present case, since the plaintiffs were going to manufacture the said

25 styles, there was no need to share the tech-packs. Upon creating the said 25 styles, the same were presented before the first defendant-

Company officials, who no doubt selected five out of the said 25 styles for proto-sampling, as is evident from the communication between the

parties.

(ii) The second assignment of the engagement between the parties is to translate eight tech-packs sent by the first defendant through e-mails dated

22.03.2013 and 26/27.03.2013. The plaintiffs do not claim any copyright over the sales samples derived from the defendants in respect of the

above tech-packs received from them. These tech-packs are not the subject matter of the interlocutory applications. The plaintiffs agreed to

translate five out of eight tech-packs into proto-types and in that process, the plaintiffs invested heavily both monetarily and intellectually,

admittedly not for any monetary consideration. The pricing of the products were comprehensively discussed and agreed to between the parties.

(iii) As requested by the first defendant, the plaintiffs delivered three samples in each of the ten styles (five styles from the first assignment and five

styles from the second assignment of the engagement), along with two other samples. Thus, totally, 32 numbers of sales samples along with fabric

tubes for colour reference were delivered to the first defendant. Those sales samples were show-cased in the Road Show. However, the first

defendant stated that the product was good, but highly priced. Thereafter, the first defendant claimed that the product was too winterised. Actually,

the first defendant received orders and went on to place such orders with the other vendors, thereby deceived the plaintiffs of their rewards and

subsequently infringed the styles of the plaintiffs.

(iv) The e-mail dated 04.01.2013 referred to by the first defendant is in respect of the three tech-packs which were sent for the purpose of

determining the cost and the present claim of the plaintiffs is confined to 25 styles created by them and they do not pertain to any tech-packs sent

by the first defendant. Through e-mail dated 21.03.2013, the plaintiffs clearly indicated the first defendant that they would not share the tech-packs

with the first defendant in respect of 25 styles already created by the first plaintiff. There was no mix and match of the designs, as contended by the

defendants. Had there been any mix and match, there should have been objection raised by the first defendant during the presentation of those 25

designs by the first plaintiff while selecting the styles for the Road Show. No such objection was raised at any point of time and therefore, there is

no question of mix and match issue that can be raised before this Court.

(v) As it was agreed between the parties that in respect of the first assignment of the engagement, the plaintiffs would design, create and

manufacture the pants, there was no requirement to prepare or share the detail tech-pack with the first defendant, as admittedly, the defendants

were not going to manufacture the plaintiffs' designs. The plaintiffs' 25 designs were presented to the first defendant as physical proto-types on

14.05.2013, which shows that they are the styles designed by the plaintiffs. The plaintiffs claim copyright over the designs, which is the subject

matter of their case and they are not claiming any copyright on the pants. The plaintiffs have designed the artistic work in respect of 25 styles and

the said artistic work is entitled for copyright under Section 2(c) of the Copyright Act. Since the work done by the plaintiffs with the first defendant

is on a principal to principal basis and not as an employment, application of Section 17(c) of the Copyright Act does not arise. The relationship

between the parties is that of a contract for service and not contract of service, in view of the fact that admittedly, no passing-off of the

consideration had taken place between them. Mr. Syed Layak Ali, who is the author of the styles, is the Chief Executive Officer of the first

plaintiff-Company and the Director of the second plaintiff-Company and as such, any work done by him in the course of his employment becomes

the property of the plaintiffs and not that of the defendants. The declaration filed by the said Mr. Syed Layak Ali is only in the nature of clarification

of what is already obvious and irrespective of such declaration, it is clear that the plaintiffs are the first owners of the copyright in respect of the

styles.

(vi) The plaintiffs have not suppressed any facts before this Court. There is no delay in filing the applications, as the defendants had kept the

plaintiffs busy with the communications between 22.03.2014 and 19.05.2014 and that on 05.02.2015 and 28.05.2015, the plaintiffs, by way of

purchase of the infringed styles, came to understand that the defendants have exploited the two infringing styles. The plaintiffs have not claimed any

compensation in respect of the infringement of their copyright, whereas, the claims have only been made on the losses incurred and profit lost due

to the blocked production capacity, in view of the defendants' clandestine activities. When once the rights of the plaintiffs are established, the

injunction ought to follow.

(vii) In support of the above contentions, the learned Senior Counsel appearing for the applicants/plaintiffs relied on the following decisions:

(a) 2009 (107) DRJ 484 (DB) (Delhi High Court) (Rajesh Masrani Vs. Tahiliani Design Pvt. Ltd.);

(b) 2015 SCC Online Bom. 958 (Pranda Jewelry Pvt. Ltd. Vs. Aarya) and

(c) Sri Lalgudi G. Jayaraman, No. 29, Ramajunam Street, T. Nagar, Chennai 600 017, Mrs. Sujatha Vijayaraghavan, No. 20 Murrays Gate

Road, Alwarpet, Chennai 600 018 and Mrs. Radha Pushpanjali, 8A Lambeth Avenue, Off Bawa Road, Chennai 600 018 Vs. Cleveland Cultural

Alliance and Mr. A. Lakahmanan .

8. Per contra, the sum and submission of Mr. M.S. Krishnan, learned Senior Counsel appearing for the respondents/defendants and the notes of

arguments submitted on their behalf, are as follows:

(i) The defendants have clearly established that the designs have been developed only from out of the tech-packs given by them and on their

instructions and guidance at every stage. Admittedly, the designs have been specifically made by the plaintiffs for the defendants, and therefore,

there cannot be any copyright for the plaintiffs. The non-production of the assignment of the first owner, namely Mr. Syed Layak Ali and the total

lack of pleadings regarding the assignment, show that the plaintiffs have no title to the copyright. Even assuming without admitting that the plaintiffs

have a copyright, they have the remedy of damages and can be adequately compensated. The grant of interim injunction is not going to the benefit

of either party, as the plaintiffs have not pleaded that the defendants infringed and commercially exploited the disputed designs.

(ii) The tech-pack is detailed information of the inputs that go into creating a product. It consists of the sketch of the product, measurements of the

product, fabric to be used, the colour to be used, and the trims and elements which go into the product treatment to be given to the product/fabric.

The plaintiffs have to first establish that the designs created are original, novel and developed by them. A mere glance of the designs of the plaintiffs

shows that there is nothing original in the design and a comparison of the same with the tech-packs given by the first defendant shows that the

design which the first plaintiff claims to be their original creation, is nothing but a mix and match from the tech-packs given by the first defendant

and a mere comparison of Design Nos. PMA 1008 LP and PMA 1013 LP with the tech-packs of the first defendant, demonstrates the above

fact. A mere perusal of e-mail dated 21.03.2013 of the plaintiffs and its attachment, clearly demonstrates that what was forwarded was only a line

presentation, which is nothing but pricing. Therefore, the contention of the plaintiffs that their tech-packs were prior in time, is totally false. The

plaintiffs who claim to have created the designs, have not produced the so-called tech-packs relating to their designs. A reading of various e-mails

exchanged between the first plaintiff and the first defendant, clearly shows that at every stage, the first plaintiff had been requesting instructions from

the first defendant.

(iii) The styles PMA 1008 LP and PMA 1013 LP and the remaining 23 styles, are not the original creation of the first plaintiff, but they are the

products developed by lifting from various facets from out of the tech-packs sent by the first defendant to the first plaintiff. The plaintiffs cannot

maintain the suit as they are not the first owners of the designs, as the same belonged to the first defendant. Even assuming without admitting that

the so-called author of the design is Mr. Syed Layak Ali, there is no assignment deed to show that the design had been assigned to any of the

plaintiffs or both of them. There is no pleading regarding the assignment. The plaintiffs in their typed set of papers, filed a declaration, in which the

said Mr. Syed Layak Ali confirms having assigned the rights to the second plaintiff. This declaration does not contain any of the ingredients

mandated under Section 19 of the Copyright Act. Therefore, the plaintiffs cannot claim ownership of the designs under Section 17 of the Copyright

Act. Even assuming without admitting that the plaintiffs have conceptualized and created the designs, the same had been developed only for the

defendants and therefore, even on this count, the defendants are the first owners of the designs. When a fabric is reproduced more than 50 times, it

looses the protection granted under Section 15(2) of the Copyright Act and if the plaintiffs want to claim protection under Section 22 of the

Designs Act, then the design has to be registered thereunder.

(iv) The cause of action pleaded by the plaintiffs was that on 16.02.2014, they had seen their Style No. PMA 1013 LP being sold in the first

defendant's outlet in Chennai and that on 09.03.2014, in another of the first defendant's outlet in Chennai, the first defendant's Design No. PMA

1008 LP was being sold as Style No. 567441. The first plaintiff also saw the product being sold in a store at Bangalore on 05.02.2015. The first

defendant expressly denied the plaintiffs' ownership to the designs as early as on 13.08.2013 and the defendants claimed to be the owners.

Further, the plaintiffs, from their very pleading, have acquiesced to the ownership of the first defendant, inasmuch as, even after purchasing the

product on 16.02.2014, the plaintiffs had come to Court only in the month of March 2015. Therefore, there is inordinate delay in approaching the

Court, which clearly dis-entitles the plaintiffs to the equitable relief of injunction.

(v) The plaintiffs have not placed before this Court any material in support of their contentions regarding the said 25 disputed designs/styles. In

other words, no tech-pack for these 25 designs/styles are placed before this Court.

(vi) In support of the above submissions, the learned Senior Counsel appearing for the respondents/defendants relied on the following decisions:

(a) Mandali Ranganna and Others etc. Vs. T. Ramachandra and Others, AIR 2008 SC 2291 : (2008) 4 CTC 360 : (2008) 8 SCALE 277 :

(2008) 11 SCC 1 : (2008) AIRSCW 3817 ;

(b) 1990 (Supp) SCC 727 (Wander Ltd. Vs. Antox India P. Ltd.);

(c) Power Control Appliances and Others Vs. Sumeet Machines Pvt. Ltd., (1994) 2 JT 70 : (1994) 1 SCALE 446 : (1994) 2 SCC 448 : (1994)

1 SCR 708 and

(d) Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Ltd., AIR 1999 SC 3105 : (1999) 4 ARBLR 399 : (1999) 4 CompLJ 1 : (1999) 6 JT 89

: (1999) 5 SCALE 95 : (1999) 7 SCC 1 : (1999) 1 SCR 560 Supp : (1999) AIRSCW 3050 : (1999) 7 Supreme 240 .

9. Heard the learned Senior Counsels appearing on either side and perused the written submissions and the materials placed before this Court by

both parties.

10. The point for consideration in these applications is as to whether the applicants/plaintiffs have made out a case for grant of interim orders during

the pendency of the suit.

11. The first plaintiff-Company is an apparel manufacturer, specialized in bottom wears (pants) for both men and women. The second plaintiff-

Company is formed with a strategic alliance of an American owned Hong-Kong based Company to strengthen the first plaintiff-Company. Both

the plaintiff-Companies are incorporated under the Companies Act, 1956. The second defendant is a German Multi National Company, well

known for marketing their products under their brand name ""PUMA"" in the field of sports, etc. The first defendant-Company is an indirect

subsidiary of the second defendant-Company. The case of the respective parties and the nature of reliefs sought for in the main suit as well as in the

interlocutory applications, are already extracted supra, and therefore, I am not reiterating the same once again hereunder. From the respective

pleadings of the parties in these applications, as well as the submissions made on their behalf by their respective learned Senior Counsels, it is clear

that the crux of the dispute between the parties is in respect of the claim of copyright/ownership over 25 styles of pants designed. According to the

plaintiffs, those 25 styles were product conceptualised, designed and product developed by themselves and therefore, they are the owners of the

same. On the other hand, the defendants claim that they are the owners of those 25 styles under dispute, as the same were made by the plaintiffs

for and on behalf of the defendants from the technical details and tech-packs supplied by them to the plaintiffs. It is also the contention of the

defendants that those 25 styles prepared by the plaintiffs are nothing but the mix and match of the tech-packs and the technical details sent by them

to the plaintiffs.

12. Admittedly, no agreement or deed in any form reduced into writing, was entered into between the parties in respect of the nature of the job or

contract to be done by the plaintiffs on behalf of the defendants. It is also admitted by both parties that except certain e-mail communications made

between them in respect of the said 25 styles in dispute, there is no other material, much less an agreement reduced into writing, has been entered

into between the parties. This Court wonders as to how such nature of transaction had taken place between the parties only through email

communications, not reducing the terms of the contract or understanding into writing, especially on the admitted fact that, had the transaction been

materialised between the parties, it would have run into several Crores of Rupees of monetary value. However, the fact remains that such volume

of business is sought to be done purely based on the email communications, presumably by reposing the trust and confidence on either side by the

respective parties. Therefore, the relevant e-mail communications are the only crucial materials for deciding the real dispute between the parties. If

those communications are not clear and categorical in spelling out the actual intention, the terms and conditions of the transaction between the

parties, or the real understanding between them, it is needless to say that the oral evidence to be let in by both parties, plays much more important

role for the Court to come to a just and proper conclusion. In other words, if the e-mails are in such a nature requiring explanation as to what was

the actual intention of the parties, the same is possible only by adducing oral evidence of the author of those e-mails. Therefore, the relief sought for

in the main suit, can be considered and decided after considering not only the respective e-mail communications, but also the oral evidence

explaining or substantiating the intention of the parties to such communications. However, at this stage, this Court has to only see as to whether the

plaintiffs have made out a prima-facie case for grant of interim injunction based on the given facts and circumstances. Keeping the above situation

in mind, let me consider the issue involved in these interlocutory applications.

13. It is not in dispute that those 25 disputed styles were sent by the plaintiffs to the defendants. Several e-mail communications made between the

parties are also not disputed. Therefore, there cannot be any doubt that those 25 styles under dispute have originated only from the plaintiffs to the

defendants. No doubt, it is an admitted fact that those 25 styles were designed for the defendants in pursuant to their request made to the plaintiffs.

The dispute is as to whether those 25 styles were product conceptualised, designed and product developed by the plaintiffs themselves or they

have been made from the technical details or the tech-packs furnished by the defendants also, by way of mix and match, as contended by the

defendants. Therefore, it has to be seen first as to whether any material is placed before this Court to show that the defendants have furnished

those technical details and tech-packs to the plaintiffs as claimed by them for preparing the styles as per their specifications, especially under the

admitted position that those 25 styles originated only from the plaintiffs to the defendants. A bare perusal of the e-mail communications referred to

by both parties in support of their respective claims, does not prima-facie indicate that those 25 styles were made by the plaintiffs only based on

the technical details or tech-packs sent or furnished by the defendants. On the other hand, according to the defendants, it is a mix and match job

done by the applicants/plaintiffs. Was there a mix and match game played by the plaintiffs or not, is a question involving technical appreciation of

facts, and therefore that can be answered only after conduct of the trial. Therefore, this Court at this stage, is not in a position to accept the

contention of the defendants that the plaintiffs have performed a mix and match in this matter. Even assuming that there is a mix and match game, it

would only show that by way of such mix and match, new creations are made by the plaintiffs. Whether the defendants are entitled to claim any

right over such new creations resulting out of such mix and match, is also a question that has to be gone into at the time of hearing the main suit.

Further, it is not in dispute that after making those 25 styles, the plaintiffs entrusted the same with the defendants for their selection to the Road

Show for the Season Spring '14. If really there was a doubt in the minds of the defendants that the plaintiffs have mixed and matched the designs

or technical details alleged to have been furnished by the defendants, what prevented the defendants from making any objection then and there, is

not known or explained. On the other hand, out of 25 styles submitted by the plaintiffs, the defendants have selected five styles for their Road

Show. At the time of selecting those five styles after retaining the remaining 20 styles with them, the defendants have not objected or raised any

doubt as if those styles are an outcome of the alleged mix and match. Therefore, this Court is of the prima-facie view that the mix and match

theory, as projected by the defendants, cannot be sustained. When once that becomes the view, the only alternative presumption would be that the

disputed designs were the creations of the plaintiffs alone.

14. The defendants strongly relied on the e-mail, dated 04.01.2013 sent by them to the plaintiffs to contend that based on the technical packs

submitted through that e-mail, the plaintiffs prepared the disputed 25 styles by playing the mix and match game. A proper appreciation of the e-

mail dated 03.01.2013 sent by the plaintiffs to the defendants and the e-mail communication, dated 04.01.2013, would show that the intention of

the parties in respect of the three tech-packs sent by the defendants through that communication, was not for preparing any style, and on the other

hand, it was intended only for costing of the said styles. The above e-mails dated 03.01.2013 and 04.01.2013 read as follows:

From: ""Sanjeev Rakhra"" <sanjeev.rakhra@qdesigns.in>

To: ""Vibhu Gupta"" <VIBHU.GUPTA@PUMA.COM>

Date: 01/03/2013 10.51 AM

Subject: Styles for costing

Dear Vibhu,

To provide you with an accurate costing for the 3 styles that

you have given us, request you to share with us the following:

1. Spec Sheets for each style.
2. Ratio's
3. Order size for each style.

If you have any targets for these styles, please let us know so that we can work as sharp as possible to achieve them.

Also, look forward to your confirmation on the meeting for the 9th of Jan.

Regards, Sanjeev.

From: Vibhu Gupta

Sent: Friday, January 04, 2013 1:29 AM

To: sanjeev.rakhra@qdesigns.in

Subject: Re: Styles for costing

Hi Sanjeev,

Target for mens pant: INR 350

Spec attached.

Can consider 750 pcs per colour with ratio as

S/1, M/2, L/2, XL/1, XXL/0.5

Spec attached for mens shorts:

Can consider 750 pcs per color with ratio as

S/1, M/2, L/2, XL/1, XXL/0.5

Spec attached for boys pants:

Can consider 500 pcs per colour with ratio as 104/1, 116/1,

128/1, 140/1, 152/1, 164/1

- Have also mailed you 3 tech-packs separately for costing. Please revert on the same.

- Have confirmed my availability for the meeting on the 9th. Designers wont be available.

Regards

Vibhu Gupta

Puma Sports India Pvt. Ltd.

509, CMH Road, Indiranagar,

Bangalore-560038, INDIA,

Cell +918553001589

15. From the above communication of the defendants sent through e-mail dated 04.01.2013 at 1.29 a.m. to the plaintiffs in reply to the e-mail sent

by the plaintiffs on 03.01.2013 at 10.51 am, it could be seen that three tech-packs were sent for costing only. Therefore, this Court, based on the

abovesaid communications, is not in a position to come to a conclusion that those three tech-packs were sent by the defendants to the plaintiffs

only for the purpose of preparing the styles as claimed by the defendants.

16. Further, the e-mail communication sent by the plaintiffs to the first defendant on 21.03.2013, also strengthens the claim of the plaintiffs that the

disputed 25 styles are that of their creations, as a full service vendor. The said e-mail communication dated 21.03.2013 reads as follows:

To: ""Vibhu Gupta

Cc: ""Sanjeev Rakhra""

Ali""

Date: 03/21/2013 07.58 AM

Subject: [RMX:##] Line plan draft

Dear Vibhu,

As you requested here is the plan draft of the styles we

intend to present.

Men and women.

We may not be able to share tech packs etc., as these are done differently.

Please let me know if this is what you are looking for and or if you need anything else.

We will run 2-3 cols in each style offering. We will make 1 pce per col and then the additional cols, we intend to make a tubes only. Please

confirm the buyers can buy off tubes in the additional cols?

Regards,

Aarti [attachment ""Line presentation puma 3.20.13. xls"" deleted by Vibhu Gupa/BLR/APAC/PUMA]

17. In the above e-mail communication, the plaintiffs have made it clear that they will not share the actual tech-packs to the defendants, as they are

done differently. Further, the said communication also speaks that as per the request made by the defendants, the plaintiffs have presented the plan

draft of the styles which they intended to present. At this juncture, it is to be noted that the attachment made to the above e-mail also referred to

the plan draft of the styles intended to be presented by the plaintiffs referred as ""Line presentation Puma"". This attachment is questioned by the

learned Senior Counsel appearing for the defendants by contending that this cannot, by any stretch of imagination, be considered as though the

plaintiffs have sent the said 25 styles made out of their own designs. But a perusal of the abovesaid communication made by the plaintiffs makes the

position very clear and answers the question raised by the other side to the effect that the plaintiffs were not willing to share the actual tech-packs,

as they were done differently. Even in respect of the buttons, only the plaintiffs have made an art-work and sought for confirmation of the same

from the defendants, which is evident from the e-mail communication dated 25.03.2013. Likewise, in the e-mail communication dated 27.05.2013,

sent by the plaintiffs to the defendants, they attached ten numbers of Puma Spring 14 Road Show Sample details, which show that out of ten

sample details, five styles were differently given the numbers commencing with the letters PMA, whereas the other five styles were given only the

numbers. It is an admitted fact that the numbers of the styles, namely 567226, 567228, 567227, 567231 and 567230, are the styles made out of

the designs supplied by the defendants, and there is no dispute between the parties with regard to these five styles. The remaining five styles are

given the numbers as: PMA1025MP, PMA1005MP, PMA1008LP, PMA1012LP and PMA1013LP. These five styles are claimed to have been

made out of the designs conceptualized by the plaintiffs. Therefore, from the very sample details attached with the abovesaid communication, it is

seen that there are two sets of styles with distinguishing numbers, which shows that the plaintiffs have given specifically the style details in respect of

the design prepared by them for PUMA, namely the defendants by specifically giving the letters PMA before each style designed by them. If all the

styles are only made out of the designs of the defendants as contended by them, there would have been no occasion for the plaintiffs to give the

different distinguishing numbers of the styles made out of the design prepared by them. It is to be noted at this juncture that the defendants never

objected to the assignment of different and distinguishing style numbers by the plaintiffs. Therefore, these facts also support the case of the

plaintiffs.

18. Further, in the communications sent by the plaintiffs by e-mail on 13.08.2013 and 04.11.2013, the plaintiffs have categorically asserted and

claimed that those 25 designs are that of the plaintiffs. For proper appreciation, the relevant paragraph of the abovesaid e-mail communications are

extracted hereunder:

From: alli@qdesigns.in

Sent: Tuesday, August 13, 2013 11.48 AM

To: Atul Bajaj

Cc: Vibhu; Sanjeev Rakhra; Aarti Mudaliyar; ALI

Subject: QD/Puma Spring 14 bottom line

Dear Atul,

Reference Vibhu's mail below and just so you have a clear understanding, the line of bottoms consisting of 25 Nos. of samples designed and

product developed (including trims and packing) by us for Puma Spring '14 had all fabrics selected and used from Arvind Mills Spring '14

collection, which has been put together by their design studio based out of France with input and feedback from some of the world's leading

designers for a global market.

.....

(emphasis supplied)

From: ali@qdesigns.in

Sent: Monday, November 04, 2013: 3:13 PM

To: Aarti Mudaliyar

Subject: Fw: QD/Puma Opportunity

As a chaser to my mail.

-----original message -----

To: Atul Bajaj

Cc: ALI

Subject: QD/Puma Opportunity

Sent: Jun 3, 2013 1:56 PM

Dear Atul,

In my last mail I had forgotten to share with you one of the more important things I intended to put down, on the ""Opportunity"".

I think, and I am sure you would agree that the current mechanism being used for the Purchase and Retailing of the QDS product would definitely

affect the Size and Reach of the ""Opportunity"" or have one or other of us compromise and be dissatisfied.

The cost of Intellectual input, Product Development and Source and Resource being added to the FOB price of the product would be loading the

cost of product unreasonably and twice as far as the consumer is concerned.

In the normal course Puma would be designing, merchandising, sourcing, traveling and coordinating in product development of a line, and hence a

cost for such a team and a management and administrative cost as well. In the case of QDS, Puma doesn't incur any or all of such costs as

otherwise would.

(emphasis supplied)

19. In the communication dated 04.11.2013, more particularly in paragraph 4, it is categorically asserted by the plaintiffs that the PUMA, namely

the defendants, does not incur any or all of such costs as otherwise would have been incurred. In other words, it is seen from the abovesaid

communication that the plaintiffs have made the designing, merchandising, sourcing, travelling and coordinating in product development of a line, in

respect of the above 25 disputed styles, which in the normal course, the defendants would have incurred.

20. From the above stated facts and circumstances, it is seen that the said five styles prepared by the plaintiffs are made out of the designs given by

the defendants and the other five styles are designed and conceptualized by the plaintiffs themselves. Only out of those five styles designed by the

plaintiffs, two styles, namely PMA 1008 LP and PMA 1013 LP were marketed by the defendants, which gives the cause of action for the plaintiffs

to file the present suit. While things stood thus, the defendants failed to give any order to the plaintiffs on the reason that the cost is very high and

the styles are more winterized. This is evident from the communication of the defendants through e-mail dated 07.08.2013, which reads as follows:

From: Vibhu Gupta [mailto: Vibhu.Gupta@puma.com]

Sent: Wednesday, August 07, 2013 10:24 AM

To: aartimudaliyar@qdesigns.in

Cc: ali@qdesign.in; arvind@qdesigns.in; "Raja Ganesh";

sanjeev.rakhra@gmail.com; sushil@qdesigns.in

Subject: Re: Introduction to Puma.Safe

Hi Team QD,

Below is the feedback on the range presented:

-The samples are very winterized and are more applicable for an early autumn delivery.

-Pricing is high and quantities can be very limited at these price points.

Hi Raja,

The audit process is not required at the moment.

Regards,

Vibhu Gupta

PUMA Sports India Pvt. Ltd.,

509, CMH Road, Indiranagar,

Bangalore-560038, INDIA

Cell: +918553001589

21. To the abovesaid communication dated 07.08.2013, the plaintiffs sent a reply mail on 12.08.2013 to the following effect:

From: ""Aarti Mudaliyar

To: ""Vibhu Gupta

Cc: , ,

Raja Ganesh"" ,

, ,

Atul Bajaj

Date: 08/12/2013 01.36 PM

Subject: RE: Introduction to Puma.Safe

Dear Vibhu,

Reference your below mail. Please send back/return all our samples/mocks sent to you for the Spring '14 Puma Road Show and trade bookings

ASAP. Thanks.

We are sure you would agree that a great amount money, time and effort, intellectual input and years of experience have be invested to bring about

the line developed and handed over to Puma for their road show of Spring '14 season.

Since the line of samples have not been paid for or the intellectual input gone into the creation of the line has not been compensated, we feel it

would be fair to request Puma not to use the subject samples for inspiration or replication in any line of Puma for the NEXT 2 SEASONS unless

produced by Quintessential Designs India Pvt. Ltd.

While we are confident that given Puma's high standards of working values and business ethics, our samples designed, translated and product

developed (including packaging and trims) for Puma's Road Show Spring '14 bottoms would be treated as the intellectual property of

Quintessential Designs India Pvt. Ltd., and as such no inspiration would be taken from them and used in any line of Puma for the next two seasons.

To be clear and to make sure that not even by coincidence that all or any one of our samples in full or in part show up in your product line for the

next two seasons, we thought it would be best to list them out for better understanding as follows:

- 1) None of the fabrics used by us in the subject samples should be used in any of your designs.
- 2) None of our designs used in the subject samples should be used in alternate fabrics.
- 3) The cosmetic appearance of our garment dyed processes is not to be used.
- 4) Our interpretation of your logo as design elements in embroidery, print or in the use of trims is not to be used.
- 5) Trim elements used in the subject samples such as custom designed twill tapes etc should not be used.
- 6) Replication of embroidery and placements of same of the subject samples are not to be used.

7) Replication of buttons in design or metal finishes are not to be used.

8) Replication of the signature construction and sew details used on any samples in the line presented cannot be used.
Above are a few points of

what we would consider as an infringement of intellectual property and trust that Puma would show great consideration in respecting our effort by

complying with our request.

Regards,

Aarti Mudaliyar.

(emphasis supplied)

22. In the abovesaid communication dated 12.08.2013, the plaintiffs have made it clear that they have put the intellectual input for creation of the

line and that they suffered great amount of money, time and effort, intellectual input and years of experience to bring about the line developed and

handed over to the defendants. Only at that point of time, all of a sudden, the defendants made a counter-claim through their e-mail dated

13.08.2013 as a reply to the above communication dated 12.08.2013, stating that all samples with PUMA are the sole property of PUMA

INDIA and no design is owned by the plaintiffs. The said e-mail communication dated 13.08.2013 reads as follows:

From: Vibhu Gupta [Vibhu.Gupta@puma.com]

Sent: Tuesday, August 13, 2013 7.32 PM

To: aartimudaliyar@qdesigns.in

Cc: ali@qdesigns.in; arvind@qdesigns.in; "Atul Bajaj";

sanjeev.rakhra@gmail.com; sushil@qdesigns.in

Subject: RE: Introduction to Puma.Safe

Hi Aarti,

- The samples were made purely based on the mutual understanding of making an attempt to present to customers and test if the same works with

them or not.

- All designs briefs, brand-guidelines based on which the samples have been made have been given by us to QD. No design is owned by QD.

- All samples with PUMA branding belong to PUMA and are the sole property of PUMA INDIA.

- We have not agreed to any sample payments/return of samples OR gotten into any other agreement.

Please ensure that you do not use any of the PUMA data, specs, guidelines, artworks, trims, etc in any of your products as they are our

proprietary.

Regards,

PUMA Sports India Pvt. Ltd.,

509, CMH Road, Indiranagar,

Bangalore-560038, INDIA

Cell: +918553001589

23. It should be noted that before passing on the above communication, the defendants have not made their claim over the designs as that of

themselves at any point of time. On the other hand, a perusal of the typed set of papers filed by the plaintiffs, more particularly the contents in page

Nos. 202 to 337, would show that they are the plaintiffs' style illustrations in respect of 25 styles presented to PUMA for the Season Spring '14.

Thus, I am of the view that the plaintiffs have made out a strong case in their favour in contending that the said 25 styles were designed by

themselves and those 25 styles are their own creations.

24. Insofar as the contention of the defendants that no copyright for fabric and pants is available on anybody, is concerned, it is rightly pointed out

by the learned Senior Counsel appearing for the plaintiffs that the artistic work in respect of the 25 styles which had been presented to the

defendants as physical proto-types, are entitled for copyright under Section 2(c) of the Copyright Act, 1957. Section 2(c) of the Copyright Act

defines the term "artistic work" as follows:

2.

(c) "artistic work" means,--

(i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work

possesses artistic quality;

(ii) a work of architecture; and

(iii) any other work of artistic craftsmanship.

25. A perusal of the abovesaid definition shows that even a diagram, map, chart or plan, whether or not any such work possesses artistic quality,

also comes within the meaning of the term "artistic work". Further, as per Section 2(c)(iii), any other work of artistic craftsmanship also comes

under the definition of the term "artistic work". In any event, whether the said artistic work claimed by the plaintiffs, entitles for copyright or not, is

a matter for consideration while hearing the main suit, and therefore, at this stage, this Court is not inclined to go into the said question and decide

the same. However, based on the definition given to the term "artistic work" as discussed supra, this Court is of the view that the plaintiffs have

made out a prima-facie case for claiming such a right.

26. Further, learned Senior Counsel appearing for the defendants relied heavily on proviso (c) to Section 17 of the Copyright Act, to contend that

even assuming that the work was done by the plaintiffs, the defendants become owner of the same, since the said work was done by the plaintiffs,

admittedly, for and on behalf of the defendants, and therefore, he contended that the plaintiffs being an agent of the defendants, the designs created

even assuming to be that of the plaintiffs, cannot be claimed to be that of the plaintiffs as full owners. Provisos (a) to (c) to Section 17 of the

Copyright Act read as follows:

Section 17: First owner of copyright: Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:

Provided that--

(a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper,

magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar

periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work insofar as the

copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the

purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;

(b) subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph

film made, for valuable consideration, at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first

owner of the copyright therein;

(c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or

clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.;

....

27. The abovesaid provision deals with the aspect as to who is the first owner of a copyright. A perusal of proviso (c) to Section 17 only indicates

that the author of a work shall be the first owner of the copyright therein provided that there must be an employer-employee relationship under a

contract of service or apprenticeship. In this case, admittedly, no amount is agreed to be paid by the defendants to the plaintiffs for the work done by

them, and therefore, there is no question of claiming that the principal and agent relationship exists between the parties. As rightly contended by the

plaintiffs, it is seen that the work done by them for the defendants, is on a principal to principal basis and not as an employment. Therefore, the

contention of the defendants on this aspect, cannot be accepted.

28. The next contention of the defendants is that the declaration made by one Syed Layak Ali, claiming to be the author of the styles, cannot have

any validity, as there is no written assignment of such styles in favour of the plaintiffs. It is not in dispute that the said person, namely Syed Layak

Ali is the Chief Executive Officer of the first plaintiff-Company and the Director of the second plaintiff-Company, and therefore, he is an employee

with the plaintiffs. When that being the admitted position, proviso (c) to Section 17 of the Copyright Act, as discussed supra, would come to the

rescue and strengthen the case of the plaintiffs. Hence, even in the absence of any assignment of the styles or designs by such person in favour of

the plaintiffs, the first plaintiff-Company becomes the first owner of the copyright of those designs, as the said person is in employment of the first

plaintiff-Company. Therefore, the abovesaid contention of the defendants cannot be countenanced.

29. The learned Senior Counsel appearing for the respondents/defendants, by relying on Section 19 of the Copyright Act and Section 22 of the

Designs Act, contended that no assignment of the copyright shall be valid, unless it is reduced into writing and signed by the assignor. Therefore, he

contended that the declaration dated 13.05.2013 issued by the said Syed Layak Ali, cannot be considered as a valid assignment.

30. To the above objection, learned Senior Counsel appearing for the applicants/plaintiffs contended that the said declaration issued by the said

Syed Layak Ali is only confirming the assignment made already by the said person in favour of the plaintiffs, and therefore, the said declaration is to

be taken as a proof that the disputed designs were made by the said person on behalf of the plaintiffs.

31. In my considered view, these are all matters which need not be gone into at this stage while deciding these interlocutory applications. Even

otherwise, I am of the view that it is a matter between the plaintiffs and the said person, namely Syed Layak Ali, in respect of effecting the said

assignment, and even assuming that there is such procedural irregularity, the same cannot be taken advantage of by the defendants in any manner to

defeat the claim of the plaintiffs.

32. Further, it is strongly contended by the learned Senior Counsel appearing for the defendants that when once the styles are made on behalf of

the defendants, the plaintiffs cannot claim any right over the same, even assuming that it is designed and conceptualized by them only. In this aspect,

the decision of this Court relied on by the learned Senior Counsel appearing for the plaintiffs, reported in Sri Lalgudi G. Jayaraman, No. 29,

Ramajunam Street, T. Nagar, Chennai 600 017, Mrs. Sujatha Vijayaraghavan, No. 20 Murrays Gate Road, Alwarpet, Chennai 600 018 and

Mrs. Radha Pushpanjali, 8A Lambeth Avenue, Off Bawa Road, Chennai 600 018 Vs. Cleveland Cultural Alliance and Mr. A. Lakahmanan , can

be safely relied on, wherein, paragraphs 33 to 35 read as follows:

33. But unfortunately for the first defendant, the ballet in dispute, does not fall under any of the categories enumerated in clause (b) of the proviso

to Section 17. It will fall either under the category of dramatic work as defined under Section 2(h) and covered by clauses (a) of the proviso to

Section 17 or under the category of a work not covered by clauses (a) or (b) and hence covered by the residuary clause (c). As observed earlier,

a person other than the author, claiming copyright by virtue of the operation of clause (a) or (c) of the proviso to Section 17, will necessarily have

to establish - a) that the author of the work was under a contract of service or apprenticeship with him; b) that the work was made in the course of

his employment; and c) that there was no agreement to the contrary.

34. In the case on hand, the plaintiffs have come to Court, as the authors of the ballet JAYA JAYA DEVI. That the plaintiffs are the authors of the

said work, is admitted by the first defendant, atleast insofar as the plaintiffs 1 and 3 are concerned. Therefore, the plaintiffs are protected, prima-

facie, by the general rule under Section 17, that the author of a work shall be the first owner of the copyright therein.

35. Once it is admitted that the plaintiffs are the authors of the work in question and consequently the owners of the copyrights therein by virtue of

the operation of the general rule in section 17, the burden of proof shifts to the defendants to show that the case falls under any of the clauses under

the proviso to Section 17, so as to enable them to claim copyrights, as persons who have employed the authors. Therefore, the first defendant is

obliged to establish (a) that the plaintiffs were under a contract of service and (b) that the work was made in the course of employment.

33. In fact, in the above referred to case, the plaintiff therein was paid for the work done by him and even then, this Court has found that in the

absence of any contract of service between the parties, the defendants therein cannot seek protection under the proviso (c) to Section 17 of the

Copyright Act. In the case on hand, it is still worse insofar as the defendants' case is concerned. Here, admittedly, no amount is paid to the

plaintiffs. Therefore, in the absence of passing off of any consideration and in the absence of any written contract of service between the parties,

the defendants cannot contend that they are protected under the proviso (c) to Section 17 of the Copyright Act in any manner.

34. Learned Senior Counsel appearing for the plaintiffs also relied on the decision reported in *Rajesh Masrani Vs. Tahiliani Design Pvt. Ltd.*, AIR

2009 Delhi 44 : (2008) ILR Delhi 211 Supp : (2009) 39 PTC 21 , wherein the Division Bench of the Delhi High Court considered the scope of

Section 2(c) of the Copyright Act and found that the plaintiff therein is entitled for protection under that Section.

35. On the question of delay in approaching the Court, as raised by the defendants, learned Senior Counsel appearing for the plaintiffs relied on the

decision of the Bombay High Court reported in *Pranda Jewelry Pvt. Ltd. and Others Vs. Aarya 24 kt and Others* (2015) 3 ABR 447 : (2015) 3

BomCR 250 : (2015) 62 PTC 254 , wherein in paragraph 19, after following the decision of the Supreme Court reported in *Midas Hygiene*

Industries P. Ltd. and Another Vs. Sudhir Bhatia and Others, (2004) 28 PTC 121 : (2004) 2 SCALE 231 : (2004) 3 SCC 90 , it was held as

follows:

19. The Defendant contends that there is a delay on the Plaintiffs' part in approaching this court and, therefore, the Plaintiffs are not entitled to any

interim reliefs. First of all, delay per se is never considered as a ground in itself to refuse relief in an action to protect intellectual property. The

Defendant must allege a case of acquiescence or estoppel or special equities arising in favour of the Defendant as a result of such delay. That is not

the case here. Besides, the adoption of these artistic works for producing their goods by the Defendants is prima facie suggestive of dishonesty. It

is not believable that the similarities in the two works are a matter of chance. Besides, the Plaintiffs have an arguable case that the Defendants

changed their designs later, after the Plaintiffs' Ex-Manager, Head Sales, joined the Defendants as the latter's CEO. The Supreme Court in *Midas*

Hygiene Industries P. Ltd. and Another Vs. Sudhir Bhatia and Others, (2004) 28 PTC 121 : (2004) 2 SCALE 231 : (2004) 3 SCC 90 held as

follows:

5. The law on the subject is well settled. In cases of infringement either of trade mark or of copyright, normally an injunction must follow. Mere

delay in bringing action is not sufficient to defeat grant of injunction in such cases. The grant of injunction also becomes necessary if it prima facie

appears that the adoption of the mark was itself dishonest".

In *Express Bottlers Services Pvt. Ltd. Vs. Pepsi Inc.* (1989 (7) PTC 14), the Court held as follows:

..... Mere delay in taking action against the infringers is not sufficient to hold that the registered proprietor has lost the mark intentionally unless

it is positively proved that delay was due to intentional abandonment of the right over the registered mark"".

The Plaintiffs claim to have noticed the offending use of the artistic works by the Defendants in August 2010; they have caused issuance of a cease

and desist notice to the Defendants thereafter; the Defendants have refused to comply and on the other hand, denied infringement; and the Plaintiffs

have thereafter proceeded to file the present suit in September 2011. There is no case of any culpable delay and absolutely no case of intentional

abandonment of the Plaintiffs' rights or acquiescence or any special equities. Besides, as noted above, the adoption by the Defendants in prima

facie dishonest.

36. Learned Senior Counsel appearing for the defendants relied on the decision of the Supreme Court reported in Colgate Palmolive (India) Ltd.

Vs. Hindustan Lever Ltd., AIR 1999 SC 3105 : (1999) 4 ARBLR 399 : (1999) 4 CompLJ 1 : (1999) 6 JT 89 : (1999) 5 SCALE 95 : (1999) 7

SCC 1 : (1999) 1 SCR 560 Supp : (1999) AIRSCW 3050 : (1999) 7 Supreme 240 , to contend that if the damages alleged are recoverable at a

common law, no interlocutory injunction should be granted. Paragraph 17 of the said decision reads as follows:

17. On a clear analysis of the speech of Lord Diplock, it appears that if damages, recoverable at common law, would be an adequate remedy and

the defendant would be in a financial position to pay the same, no interlocutory injunction should normally be granted, howsoever strong the

plaintiff's claim appears to be at that stage. Lord Diplock went on to observe further that in the event of there being any doubt, as to the adequacy

of the respective remedies and damages available to either party or both, then and in that event, the question of balance of convenience arises and

the same will vary from case to case.

37. No doubt, the damages alleged can be compensated and recovered through common law procedure. But in this case, the applicants/plaintiffs

are not only having a grievance against the damages caused by the respondents/defendants by marketing two styles, namely PMA 1008 LP and

PMA 1013 LP, but also are seeking a preventive order restraining the defendants from marketing the other 23 styles under dispute, which are

admittedly not marketed so far. Therefore, when that being the factual position, I do not think that the above decision relied on by the defendants

would help them in any way or prevent this Court from granting interim order in favour of the applicants/plaintiffs insofar as those 23 styles are

concerned.

38. The decision of the Supreme Court reported in Power Control Appliances and Others Vs. Sumeet Machines Pvt. Ltd., (1994) 2 JT 70 :

(1994) 1 SCALE 446 : (1994) 2 SCC 448 : (1994) 1 SCR 708 , was also cited by the learned Senior Counsel appearing for the defendants to

state that the application for interlocutory injunction should be made immediately after the plaintiffs became aware of the infringement of the mark.

Paragraph 33 of the said decision reads as follows:

33. Now, we come to the principles in relation to the grant of interim injunction. The case in K.E. Mohammed Aboobacker Vs. Nanikram

Maherchand (1957 (2) MLJ 573) makes a reference to the case-law and holds at pages 574-75 as under:

The principles which should govern the Court in granting or withholding a temporary injunction in trade mark infringement actions are well-settled:

See recent decision Henry Hemmings, Ltd. Vs. George Hemmings, Ltd. (1951 (68) RPC 47). As a temporary injunction is merely of a provisional

nature and does not conclude the rights of the parties in any way, the Court will exercise its discretion in favour of the applicant only in strong

cases. The plaintiff must make out a prima facie case in support of his application for the ad interim injunction and must satisfy the Court that his

legal right has been infringed and in all probability will succeed ultimately in the action. This does not mean, however, that the Court should examine

in detail the facts of the case and anticipate or prejudice the verdict which might be pronounced after the hearing of the suit or that the plaintiff

should make out a case which would entitle him at all events to relief at the hearing. Colman Vs. Farrow and Co. (1898 (15) RPC 198), Hoover,

Ltd. Vs. Air-way Ltd. (1936 (53) RPC 399), Upper Assam Tea Co. Vs. Herbert and Co. (1890 (7) RPC 183), Star Cycle Co., Ltd. Vs.

Frankenburg (1906 (23) RPC 337). In fact the Court will not ordinarily grant an interlocutory injunction if a large amount of evidence is necessary

to support the plaintiff's case. The proper course in such a case is to ask for the trial of the action. The injury must be actual or imminent. Pinel and

Cie v. Maison Pinet, Ltd. (1895 (14) RPC 933) Where the defendant disputes the plaintiff's title to the mark or contends that the plaintiff is not

entitled to relief by reason of the acquiescence or delay or other estoppel or of the defendant's concurrent rights, the Court will be guided by the

balance of inconvenience which may arise from granting or withholding the injunction as well as the justice of the cause after considering all the

circumstances in the suit. In other words, where the plaintiff's title is disputed or the fact of infringement or misrepresentation amounting to a bar to

the action or some other defence is plausibly alleged upon the interlocutory motion, the Court in granting or refusing the interim injunction is guided

principally by the balance of convenience that is by the relative amount of damage which seems likely to result if the injunction is granted and the

plaintiff ultimately fails or if it is refused and he ultimately succeeds; Read Brothers Vs. Richardson and Co. (1881 (45) LT 54), Hommel Vs.

Bauer and Co. (1903 (20) RPC 801).

... It is necessary that an application for interlocutory injunction should be made immediately after the plaintiff becomes aware of the infringement of

the mark. Improper and unexplained delay is fatal to an application for interlocutory injunction. The interim injunction will not be granted if the

plaintiff has delayed interfering until the defendant has built up a large trade in which he has notoriously used the mark. North British Rubber Co.,

Ltd. Vs. Gormully and Jeffery Manufacturing Co. (1894 (12) RPC 17), Army and Navy Cooperative Society, Ltd. Vs. Army Navy and Civil

Service Cooperative Society of South Africa Ltd. (1902 (19) RPC 574), Hayward Bros. Ltd. Vs. Peakall (1909 (26) RPC 89), Yost Typewriter

Co. Ltd. Vs. Typewriter Exchange Co. (1902 (19) RPC 422), Royal Warrant Holders' Assn. Vs. Slade and Co., Ltd. (1908 (25) RPC 245).

39. Another decision of the Supreme Court reported in 2008 (1) SCC 1 (Mandali Ranganna Vs. T. Ramachandra), is also relied on by the

learned Senior Counsel appearing for the defendants to state that the delay in approaching the Court would not entitle the plaintiff to get an order

of injunction. Paragraph 22 of the said decision reads as follows:

22. Grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal with the properties

exclusively, ordinarily would not be entitled to an order of injunction. The Court will not interfere only because the property is a very valuable one.

We are not, however, oblivious of the fact that grant or refusal of injunction has serious consequence depending upon the nature thereof. The

Courts dealing with such matters must make all endeavours to protect the interest of the parties. For the said purpose, application of mind on the

part of the Court is imperative. Contentions raised by the parties must be determined objectively.

40. Insofar as the objection raised by the defendants regarding the delay on the part of the plaintiffs in approaching the Court, is concerned, it is to

be noted that only two styles, namely, PMA 1008 MP and PMA 1013 LP, out of 23 styles sent by the plaintiffs, have been marketed by the

defendants, and insofar as the remaining 23 styles are concerned, admittedly, they are yet to be marketed. Therefore, there is no question of

contending that there is a delay on the part of the plaintiffs in approaching the Court, when admittedly, the present suit is filed, also to prevent the

defendants from marketing those 23 styles made out of the designs of that of the plaintiffs.

41. Learned Senior Counsel appearing for the defendants further relied on the decision of the Supreme Court reported in 1990 (Supp) SCC 727

(Wander Ltd. Vs. Antox India P. Ltd.), to contend that the interlocutory injunction can be granted only at a stage when the existence of the legal

right is asserted by the plaintiffs. Paragraph 9 of the said decision reads as follows:

9. Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiffs and its

alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The Court, at this stage,

acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object

of the interlocutory injunction, it is stated

..... is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in

the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of

the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be

adequately compensated. The Court must weigh one need against another and determine where the "balance of convenience" lies.

The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie case. The Court also, in

restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a

relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case

considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted.

42. I do not think that the above decision helps the defendants in any manner, especially when this Court has found that the plaintiffs have a strong

case based on the given facts and circumstances.

43. Considering all the above stated facts and circumstances, I am of the view that the applicants/plaintiffs are entitled for grant of interim injunction

insofar 23 styles are concerned, as has been granted by this Court in O.A. No. 307 of 2015, since admittedly, the respondents/defendants have

not marketed those 23 styles. Further, I am of the view that the balance of convenience is also in favour of the applicants/plaintiffs for grant of such

interim injunction, otherwise, the applicants/plaintiffs would be put to irreparable injury.

44. Accordingly, the interim order of injunction already granted in O.A. No. 307 of 2015 is made absolute and consequently, O.A. No. 307 of

2015 is allowed and Application No. 2890 of 2015 filed for vacating the said interim injunction, is dismissed.

45. Insofar as the other two applications in O.A. Nos. 305 and 306 of 2015 are concerned, in view of the fact that already two designs/styles

which are the subject matter of those two applications, have already been marketed even before filing the above suit, no purpose would be served

by granting the interim injunction as sought for in those two applications during the pendency of the suit. However, in order to protect the interest of

the applicants/plaintiffs, the respondents/defendants are directed to render accounts of such sale of those two styles, namely PMA 1008 LP and

PMA 1013 LP, to this Court at the time of trial, so that a just and proper decision could be arrived at in the main suit. Accordingly, O.A. Nos.

305 and 306 of 2015 are disposed of in the above terms.

46. No costs.