

IN THE HON'BLE HIGH COURT OF DELHI AT DELHI

CM No. of 2024
 in
FAO (OS) (Comm) No. 241 of 2023

IN THE MATTER OF:

Hero Motocorp Limited

...Appellant

Versus

M/s Shree Amba Industries

...Respondent

APPLICATION SEEKING INTERVENTION UNDER ORDER 1 RULE 8A OF CPC READ WITH RULE 25 OF DELHI HIGH COURT IPD RULES 2022 READ WITH SECTION 151 OF CPC WITH PRAYER TO BE PERMITTED TO MAKE SUBMISSIONS ON QUESTION OF LAW PERTAINING TO THE INTERPRETATION OF THE TERM “ARTICLE” UNDER THE DESIGNS ACT, 2000 IN INDIA AS HELD IN ORDER DATED 16.08.2023 IN THE MATTER OF HERO MOTOCORP LIMITED V. SHREE AMBA INDUSTRIES [CS(COMM) 1078/2018] ARISING FOR ADJUDICATION IN PRESENT APPLICATION BY INTERNATIONAL TRADEMARK ASSOCIATION (INTA), NEW YORK, USA

IT IS MOST RESPECTFULLY SUBMITTED

1. The Applicant is preferring the instant application seeking intervention in the present matter to be permitted to make submissions on question of law pertaining to the interpretation of the term “Article” under the Designs Act, 2000 in India as held in order dated 16.08.2023 (hereinafter “the Order”) in the matter of *Hero Motocorp Limited v. Shree Amba Industries [CS(Comm) 1078/2018]* (hereinafter “the Suit”) arising for adjudication in present application by International Trademark Association (INTA), New York, USA.

I. Declaration

2. It is declared that the present brief was drafted by INTA independently of the parties in the case at issue. No party or counsel for a party made any contribution or sponsored the preparation or submission of this brief. It is also declared that INTA is not related to any of the parties in the suit, and it is not prohibited by any law in India in making the intervention sought under this application.

II. The Applicant (INTA)

3. The International Trademark Association (INTA), which is located at 675 3rd Ave 3rd floor, New York, NY 10017 USA was founded in 1878 and is a non-profit membership association of trademark owners and professionals dedicated to supporting intellectual property rights (IP rights), in order to foster consumer protection, economic growth and innovation. INTA's members consist of more than 6,400 organizations from 181 countries. The organization represents nearly 36,000 professionals, including brand owners from major corporations, small- and medium-sized enterprises, law firms, and nonprofits as well as government agency members and individual professor and student members. An important objective of INTA is to protect the interest of the public as a trusted and influential advocate for the economic and social value of IP rights. In this regard, INTA strives to advance the development of trademark and related intellectual property law throughout the world, based on the global public interest.
4. INTA has been an official non-governmental observer to the World Intellectual Property Organization (WIPO) since 1979 and actively participates in all trademark-related WIPO proposals. INTA has consequently contributed to WIPO trade-mark initiatives such as the Trademark Law Treaty. INTA is also active in other international and intergovernmental organizations including the Asia-Pacific Economic Cooperation Forum (APEC), the Association of Southeast Asian Nations (ASEAN), and the World Trade Organization (WTO).

5. INTA also provides expertise concerning IP rights to courts and IP offices around the world through the submission of *amicus curiae* (“friend of the court”) briefs or similar filings. Through these kinds of filings, INTA takes advantage of procedures that allow an independent third party to a proceeding to voluntarily offer an opinion on a legal matter—such as the proper interpretation or application of the law, or an explanation for certain policies. The purpose of INTA’s intervention in such cases is to ensure that the court or tribunal is fully informed about the relevant issues that may impact the law globally and in a given jurisdiction. Unlike the parties in litigations, who typically focus on the specific facts of a case and argue for a particular outcome, INTA plays a neutral role, addressing only the legal issues. INTA has acted several times in the capacity of *amicus curiae* before the European Court of Justice (ECJ) and in the United States of America and several other jurisdictions including several courts in India (*ref. Samsung Electronics Company Ltd. & Anr. vs. Kapil Wadhwa & Ors, Health for Millions Trust* before the Supreme Court of India; and *Tata SIA Airlines Limited v. Union of India* before the Delhi High Court).

III. Question of Law in respect of which the Applicant is seeking Intervention.

6. Definition of “Article” under the (Indian) Designs Act, 2000. As per Section 2(a) of the Designs Act, 2000, “article” is defined as below:

"article" means any article of manufacture and any substance, artificial, or partly artificial and partly natural; and includes any part of an article capable of being made and sold separately.

7. The question of law specifically identified and addressed by the Hon’ble High Court of Delhi under paras 36 to 69 of the Order dated August 16, 2023, in the Suit pertains to the registrability of spare / replacement parts (motorcycle front fender in this case) under the provisions of Designs Act, 2000; and in particular whether the spare / replacement parts would qualify as an “article” within the definition provided under the Act. The interpretation of the definition of “article”

adopted by the Hon'ble Court is recorded in part of para 61 of the Order as reproduced below:

“In my considered view, the words “any part of an article capable of being made and sold separately” used in Section 2(a) of the Indian statute have to be read to include parts of articles that can be sold as articles that have an independent life as articles of commerce and not merely as substitutes/accessories.” (emphasis supplied)

8. In light of the above interpretation, the Hon'ble Court concluded (in paras 65 – 66) that:

“fender has no independent life as an article of commerce in itself. It is specifically made for the particular model of motorcycle manufactured by the plaintiff company... fender is sold as a replacement part.. in my prima facie view, the Plaintiff company's front fender design is incapable of registration under Section 2(a) of the Designs Act.”

9. Thus, the relevant question of law can be identified as: Whether the words “any part of an article capable of being made and sold separately” used in the definition of “article” under Section 2(a) of the Designs Act, 2000 should be read to include only those parts of an article that can be sold as articles that have an independent life as articles of commerce and not merely as substitutes/accessories.

IV. Statement of Interest of the Amicus Curiae

10. INTA has a particular interest in this case as it has a significant impact on the rights and interests of design owners owing to the issue at stake, i.e. the interpretation of the term “Article” under Section 2(a) of the Designs Act.
11. Design owners have secured registration of designs in India for spare / replacement parts of articles, including automotive spare parts such as

motorcycle fenders, etc. which may or may not qualify the stipulated criteria of having an ‘independent life as an article of commerce’. These design registrations have been obtained to carry on business in India and to protect the owners’ rights in India. These design owners have made huge investments in India to develop and promote their products. These design owners shall be directly impacted by the interpretation of the statutory definition of term “Article” adopted by the Hon’ble Court under the Order of the Suit (as referenced above). As a representative body, INTA seeks to provide a perspective on the question of law related to the interpretation of the statutory definition of the term “Article” under Section 2(a) of Designs Act.” to assist in and contribute to the advancement of law in the interest of the public at large and the interest of the design right holders in a global economy. INTA’s membership is varied and extensive, representing a cross-section of industries and interests in and outside India, including design owners and practitioners. INTA is a balanced and reliable representative body for the identified question of law.

12. The interpretation of the statutory definition of the term “Article” given by the Hon’ble Single Judge in the Order is likely to have far-reaching ramifications for existing design registrations as well as registrability of designs in future. As per this interpretation adopted by the Hon’ble Court, any spare parts or other parts of any article are eligible to design protection in India only if they have an “independent life as an article of commerce”. In light of this interpretation, it is possible and likely that many design registrations already granted may also become vulnerable to cancellation.
13. To serve as a baseline standard to analyze or comment on national and regional design laws practice and regulations, INTA has adopted Model Design Law Guidelines. A copy of these Guidelines is filed with this application. Relevant portion of the Guidelines dealing with the design protection for parts of a product / article is provided in the submissions below.

14. INTA's submissions in the present case are prepared by the Association's International Amicus Committee and the Designs Committee, under the direct supervision of INTA's Executive Committee of the Board of Directors with support from INTA staff. Considering that the issue would have a far-reaching effect on rights and interests of various design owners and consumers, INTA prays to be permitted to be heard as amicus in the present case and hopes that its comments may be of assistance to the Hon'ble Court.

15. INTA takes no position on the ultimate merits of this case on whether the Plaintiff's design is registrable under the Designs Act as being new or original. INTA's submission here is limited to the identified question of law.

V. Arguments

16. INTA does not support the interpretation of the statutory definition of "Article" under the Designs Act, 2000 in India as held in the Order dated 16.08.2023 in the matter of *Hero Motocorp Limited v. Shree Amba Industries [CS (Comm) 1078/2018]*.

17. In particular, INTA does not support the interpretation of the Hon'ble Single Judge that the phrase "*any part of an article capable of being made and sold separately*" used in Section 2(a) of Designs Act is intended to include parts of articles that **can be sold as articles that have an independent life as articles of commerce** and not merely as substitutes/accessories. Accordingly, INTA does not support the observation of the Hon'ble Single Judge that a part of an article which has no independent life as an article of commerce in itself is not an article within the meaning of Section 2(a) of Designs Act, 2000 and thus not registrable.

18. In the Order, the Hon'ble Single Judge has referred and relied upon numerous decisions and arguments while addressing the question of law at hand. Applicant's submission of arguments with respect to these decisions and arguments is provided below:

Ford Motor Company Case, [1993] R.P.C. 399

19. This interpretation was based on the UK judgement of the Chancery Division of the High Court in the case of Ford Motor Company (1993) R.P.C. 399 which was also upheld by the House of Lords. In particular, the following paragraph from the decision is what the Single Judge relied on:

*“[F]or these reasons I have been compelled to give up the attempt to read the words of the definition literally, and will instead look behind them for the intention of the legislature. In my opinion the purpose was to distinguish between, on the one hand, an item designed for incorporation, whether as a spare part or as an original component, in a particular article or range of articles made by the manufacturer of the component, and on the other an item designed for general use, albeit perhaps aimed principally at use with the manufacturer’s own artifacts. Whilst it is often unwise to restate the effect of a statute in different words, since this may lead to the new formula being subjected to the kind of textual analysis which ought to be reserved to the statute itself, an answer will I believe be supplied in many cases by applying the criterion given by McCowan L.J., namely: **that to qualify under Section 44(1) a spare part has to have an independent life as an article of commerce and not be merely an adjunct of some larger article of which it forms part.**”*

(Emphasis supplied)

20. Further the Hon’ble Single Judge observed that:

“the aforesaid definition of “article” under the UK Act as interpreted by the House of Lords in Ford Motor Company (supra) is pari materia to the definition under the Indian Designs Act... Resultantly, the interpretation given by the House of Lords would have some bearing on the definition of the word “article” in the Indian Designs Act”.

21. In light of the above, the Hon'ble Single Judge held that the words "*any part of an article capable of being made and sold separately*" used in Section 2(a) of the Designs Act, 2000 have to be read to include parts of articles that can be sold as articles that have an independent life as articles of commerce and not merely as substitutes/accessories. The Hon'ble Single Judge also relied upon the judgement dated 18.09.2013 of Supreme Court of South Africa in Case No.722/2012 titled *Bayerische Motoren Werke Aktiengesellschaft v. Grandmark International (PTY) LTD* which also was based on the judgement of Chancery Division and the Division Bench in *Ford Motor Company Case*.

22. The term 'Article' is defined under relevant Section 44(1) of the then applicable UK Act as below:

" article " means any article of manufacture and includes any part of an article if that part is made and sold separately. (emphasis supplied)

23. Firstly, the interpretation taken by the Learned Single Judge is incorrect especially as the definition of "article" under Section 2(a) of Indian Designs Act is clear and unambiguous, leaving no scope or reason for incorporation of any additional qualifier / limitation of an article to have 'independent life as an article of commerce'. A statute must not be interpreted by the Courts to limit the right of the design owner when the limitation for such curtailing of rights is not specifically provided in the statute. When the provision of the statute is unambiguous, the literal rule of interpretation should be applied which means that the words need to be interpreted in the strict ordinary meaning and the scope should not be expanded beyond the ordinary meaning, particularly when the expanded scope is resulting in unnecessary curtailment of rights. The words are to be understood in their ordinary and natural meaning unless the object of the statute suggests otherwise. In the present case, the object of the statute suggests against such a restrictive interpretation.

24. Secondly, the definition of the ‘Article’ under the UK Act is different from the Indian Designs Act. The words “**capable of being made and sold separately**” in the Designs Act, 2000 have a different import as compared to the UK Designs Act wherein the language used is “**if** that part **is made and sold separately**” (which was interpreted as “if that part is to be made and sold separately”). In the UK Designs Act, the phrase “if” (or “if it is to be”) is implying a requirement or condition on the part of the article. In contrast, there is no “if” in the definition of “article” under Section 2(a) of the Designs Act, 2000, where the corresponding language is “capable of being”. The condition “capable of being” under the Indian Act implies that the part of article is only ‘capable of’ (and not necessarily actually) being made and sold separately. The word “capable” in Section 2(a) of the Designs Act categorically means that it is not a “must” to be made and sold separately. Therefore, the difference of the condition “if” (or “if it is to be”) as per the UK Act is different from the condition “capable of being” under the India Act, and there is no basis for identifying these definitions as *pari materia*.

25. Further, as per the then UK Designs Act, the requirement for an article to qualify as a Design means any article of manufacture and includes any part of an article if that part is **to be made and sold separately**. Therefore, the requirement for the article to have an independent life as an article of commerce may be relevant for the purpose of the UK Designs Act. However, the definition of Article as per the Designs Act, 2000 of India requires only that the product should be **capable of being** made and sold separately. Consequently, whether such article has an independent life as an article of commerce or not would be irrelevant for the purpose of the laws of India as long as the article is only “**capable of**” being made and sold separately. It is pertinent to mention that even articles which do not have an independent life as an article of commerce are capable of being made and sold separately. Hence, these articles are qualified to be registered as a design in India.

26. It is also pertinent to mention that the definition of “article” under the UK Design Act, as relied in the case of Ford Motor Company (*Supra*) has been repealed in the amendment of 2001 in the UK Design Act and the definition of the term “article” has been deleted from the Act. As a result of such amendment in the UK Design laws, the scope of the term “article” has also been enlarged in UK since the year 2001 and such restriction for an article to have an independent life as an article of commence is not a requirement under the UK Design laws as well. Despite noting this position in the impugned order, the Hon’ble Single Judge placed reliance on the definition as laid down in the case of Ford Motor Company (*Supra*) and considered the same to be *pari materia* to the definition under the Indian Designs Act, which is incorrect.

Amendment of Designs Act in 2000

27. The Learned Single Judge appears to have overlooked that the definition of the term “article” as under the Designs Act 1911 was amended in Designs Act 2000 to **enlarge** the scope of the term “article” to include part of an article. To this extent, the Learned Single Judge states the following from the Statement of Objects & Reasons of the Designs Act, 2000:

“law does not unnecessarily extend the protection beyond what is necessary to create required incentive for design activity”.

28. While relying on the above statement, the Learned Single Judge did not fully consider the following content from the Statement of Objects and Reasons of the Designs Act, 2000 which specifically states that the definition of the term “Article” has been changed to enlarge the scope:

“Since the enactment of the Designs Act, 1911 considerable progress has been made in the field of science and technology. The legal system of the protection of industrial designs requires to be made more efficient in order to ensure effective protection to registered designs. It is also required to promote design activity in order to promote the design element in an article of production. The

proposed Design Bill is essentially aimed to balance these interests. It is also intended to ensure that the law does not unnecessarily extend protection beyond what is necessary to create the required incentive for design activity while removing impediments to the free use of available designs."

To achieve these purposes the bill incorporates inter alia the following, namely-

(a) It enlarges the scope of definition of "article" and "Designs" and introduces definition of "original".

.....

29. Accordingly, Section 2(a) of the Designs Act, 2000 was amended and the erstwhile Designs Act, 1911 was repealed. As per Designs Act, 1911 the definition of the term Article was as below:

Section 2(2) "Article" means (as respects designs) any article of manufacture and any substance, artificial or natural, or partly natural:

In the Statement of Objects and Reasons of Designs Act, 2000, it has been categorically stated that the definition of "article" has been enlarged by Designs Act, 2000. This enlargement consists of the addition of the statement "*includes any part of any article capable of being made and sold separately*" in the definition of "article" as also highlighted above.

30. Adding the condition for the article to have an independent life as an article of commerce, to the definition of the term "article" as defined in the Designs Act, 2000 which is not stated in the provision of the Act, would unnecessarily restrict the scope of protection and the definition of the term "article". Such an interpretation would be against the purpose and Statement of Objects and Reasons of the Act. It is evident that the intention of the legislature was never to restrict the scope of the definition; instead, the new Act was introduced to enlarge the scope of protection.

31. It is submitted that by creating an artificial differentiation by calling fenders as replacement parts that do not have independent life as an article of commerce, the Hon'ble Single Judge has established an erroneous precedent namely that all replacement parts must be established to have an independent life as an article of commerce to obtain design registration. The replacement parts and spare parts of automobiles are usually capable of both being made and sold separately and thus should be registrable under the existing statutory definition of "article". This additional requirement of "having an independent life as an article of commerce", which is itself ambiguous without any set parameters or standards, is unnecessary, unwarranted, and without any legal basis.

Marico Case, AIR 2008 Bom 111 (DB)

32. As per the Order, the Hon'ble Court has also disagreed with the prior Indian precedent of Division Bench (Bombay High Court) which held that the definition of "article" under the Designs Act in UK is different from the definition of "article" in India. The prior Indian precedent *Marico Limited Vs. Raj Oil Mills Limited AIR 2008 Bom 111*, had come to the conclusion that the UK statute cannot be read into the Indian statute. The judgment is also clear that the aspect of interpretation of a statute should be based upon literal reading and if the literal reading results in a simple, clear, and unambiguous understanding, words cannot be incorporated into such a statute.

33. The Marico Case involved a design registration for a bottle cap. This bottle cap was a part of a bottle which was being sold but the bottle cap was registered independently as a separate design under the Designs Act, 2000. The relevant aspect and the ratio of the court is at Paragraphs 34, 35, and 37 that are reproduced as below:

34. In view of the clear words and plain reading of the definition of "an article" there is no question of reading in the definition that such article has to be a commercial identity in the market of its own, as held by the

learned Judge. Once a part of an article if falls within the ambit of the definition of "an article" and which is "capable of being made and sold separately", further enlargement of the definition and or restriction of any kind on the ground that such article and or part of an article has no commercial identity in the market of its own, its not an article, is not correct. The scheme of the Act with specific intention to enlarge the definition of "an article" even to cover a part of an article just cannot be overlooked, merely in view of the English statute and judgment passed upon the English Law.

35. Another facet is that, any design article which is capable of being made and sold separately, is a prerogative and or a right of the registered owner of the design to sale it separately or not. There is nothing pointed out and or shown to demonstrate that once the design is registered, it is non-transferable and or not assignable to third person. Even if such proprietor decide not to make and or sale it separately and or allow and or permit to any other person to use the said cap of the bottle of their products and or other products still in view of the definition, as the only requirement is that such article and or part of the article should have capacity and or capability being made and sold separately and no other. The purchaser, infringer, and or third person like Respondents cannot take shelter and take defence on this ground that the article so designed, cannot be made and or sold separately, and therefore, it is not "an article" within the ambit of the definition under the Act and the registration as granted be rejected.

37. The commercial identity of any article in the market cannot be judged from the point of view of the objector of the cap of a bottle or such other article. In the commercial market, the person like the Appellants who are registered owner of the designed article, entitled to claim exclusive right over the designed article. No third person is entitled to use and utilize the

said design on their articles without the consent and or permission from the registered owner.

(Emphasis supplied)

34. Thus, judgement of Marico Case has categorically dealt with Ford Motor Company Case and has come to the conclusion that the UK statute cannot be read into the Indian statute. The judgment is also clear that the aspect of interpretation of a statute should be based upon literal reading and if the literal reading results in a simple, clear, and unambiguous understanding, words cannot be incorporated into such a statute.

35. In another case of Calcutta High Court *Lucky Exports Vs. The Controller of Patents and Designs and Ors MANU/WB/1173/2019*, the single Judge of Calcutta High Court relied on the judgement of Marico Case and agreed with the same. In this case, the design at issue is a “coaster break hub” used in cycles. While the design was eventually invalidated on the grounds of prior publication, the Court made the following observation with respect to the meaning of “capable of being made and sold separately” under the Designs Act, 2000:

41. For an article to qualify as a design, in my view, it should have an eye appeal and not be a mere mechanical device. The definition of article in Section 2(a) makes it clear that the article, inter alia, includes any part of an article capable of being made and sold separately. It is immaterial whether the said article is visible or invisible. A subassembly of an article would constitute a part of an article and it can be capable of being sold separately as it happens in the instant case.

43. In order to protect part of an article, each part must meet the requisite condition of “capable of being made and sold separately”. If part of the article is capable of being made and sold separately and can be judged solely by the eye, design protection can be obtained for such part....”

Therefore, the issue of interpretation of the words “capable of being made and sold separate” has already been addressed by courts in India categorically distinguishing the same from the UK laws and judgements.

Impact on Existing Design Registrations and Rights of Design Owners

36. It is submitted that if the interpretation of the statutory definition of the “article” and the observation as provided by the Hon’ble Single Judge in the Order is accepted and applied, it may mean that:

- (i) Numerous design registrations will be rendered otiose if it is considered that a replacement part is not an article and thus not registrable under the Designs Act.
- (ii) All design registration for articles that are for parts or components of an article or which may not qualify to have an independent life as an article of commerce would become vulnerable to cancellation. There are numerous design registrations on the Register of Designs which are for parts of articles which are capable of being made and sold separately. For instance:



Plastic Bottle Cap with Flip
Design No. 393341



Tractor Hood Assembly
Design No. 392351

These components also appeal to the eye and therefore fall within the parameters of an "article" as defined under the Designs Act.

- (iii) A person who only designs and manufactures fenders or parts will be prevented from applying for design registration for such spare parts.

37. The Hon'ble Single Judge has not considered that a part can function both as a replacement part/spare part and simultaneously have a separate independent life as an article of commerce with or without the larger product. In fact, the presumption of the Hon'ble Single Judge that the spare / replacement parts do not have independent life as an article of commerce is itself incorrect.
38. Merely because a person purchases a replacement part does not automatically mean or it cannot be presumed that such person is not driven by the look of the spare part, or in other words such a spare part or replacement part should not be considered as appealing to the eye independent of the whole product.
39. There are numerous articles that are sold where parts are specifically designed for the articles such as covers for smartphones, tablets, etc. All such components will be without any protection if the interpretation of the Hon'ble Single Judge is considered.

INTA Model Design Law Guidelines

40. As per INTA Model Design Law Guidelines, INTA's position with respect to the registrability of the parts of articles is provided below:

Protection of Partial Designs

Proposal:

A part of a product should be registrable as a design provided that it otherwise meets the requirements for registration. This could include either the registration of a part of a product where (a) only such part is represented in the drawing; or (b) part of a product where the whole product is represented but the part or parts in which protection is not claimed are identified by the use of visual disclaimers which may be broken lines, blurring, color shading or by the use of added boundaries.

Rationale:

Some products may include portions that have appearances that by themselves are not new. Therefore, it should be possible to register only the design of the part of the product that is new. Examples of design portions that might not be

new include: the blade of a knife; the neck or the bottom of a bottle; and the handle or the brush of a toothbrush. Efforts made in relation to improvement of parts of designs should be protectable and the rights should be enforceable in addition to the design of the product in its entirety if the registrant so chooses. To accomplish this, the rules should permit applicants to show, by way of a visual disclaimer, parts of the design for which protection is not sought. The visual disclaimer must be clear and obvious, meaning the claimed and disclaimed elements of the design should be clearly differentiated. INTA recommends that visual disclaimers be achieved by indicating with broken lines the features of the design for which protection is not sought. The disclaimer may be achieved by other means such as blurring the features of the design for which protection is not sought, and/or including within a boundary the features of the design for which protection is sought. INTA also considers that, as an alternative, it may be permissible to file an application for a part of the product as a complete design where the whole product is not represented in the application.

41. A summary of INTA's arguments and submissions is as follows:

- (a) INTA does not support the interpretation of the statutory definition of "Article" under the Designs Act, 2000 as held in the Order dated 16.08.2023 in the matter of *Hero Motocorp Limited v. Shree Amba Industries [CS (Comm) 1078/2018]*. In particular, INTA does not support the interpretation of the Hon'ble Single Judge that the phrase "*any part of an article capable of being made and sold separately*" used in Section 2(a) of Designs Act is to include parts of articles that can be sold as articles that have an independent life as articles of commerce and not merely as substitutes/accessories. Accordingly, INTA does not support the observation of the Hon'ble Single Judge that a part of an article which has no independent life as an article of commerce in itself is not an article within the meaning of Section 2(a) of Designs Act, 2000 and thus not registrable.

- (b) The definition of "article" under Section 2(a) of Designs Act, 2000 is clear and unambiguous, and should be interpreted literally. There is no reason or ground for incorporating an additional limitation or restriction on rights under the definition when no such condition exists in the statute. Particularly when the statute was amended in 2000 to specifically enlarge the scope of the definition

of “article” to include parts of articles, the restriction in the interpretation deviates from the spirit of the object of the statute.

- (c) The definition of the term “Article” under the then UK Designs Act, as relied in the Ford Motor Company case, is different from the definition of Article under the Designs Acts, 2000 in India, wherein the UK Act treated the definition as a mandatory requirement ('must'), whereas the Indian legislation presents it as more as permissive or optional ('could').
- (d) The definition of “article” under the UK Design Act, as relied on in the case of Ford Motor Company (*Supra*) has been repealed in the amendment of 2001 in the UK Design Act and the definition of the term “article” has been deleted from the Act. As a result of such amendment in the UK Design laws, the scope of the term article has also been enlarged in UK since the year 2001 and such restriction for an article to have an independent life as an article of commerce is not a requirement under the UK Design laws as well.
- (e) The interpretation of the term “Article” as laid down by Hon’ble Single Judge would have a far-reaching ramification on the rights of design owners in India and must not be accepted by the Hon’ble Division Bench. It will severely impact the registrability of designs for parts of articles. Such interpretation would render a large number of registered designs for spare parts as well as parts of articles which may not be found to qualify the criteria of having an independent life as an article of commerce, vulnerable to cancellation.

42. INTA seeks leave to rely on documents and case laws a list whereof is hereto annexed, as well as any additional documents placed on record with the permission of this Hon'ble Court.

PRAYER

43. In light of the submissions made hereinabove, the Applicant most respectfully enters the prayer that this Hon’ble Court be pleased to:

- (a) Allow the present application for intervention and permit the Applicant to make submissions on question of law as detailed hereinabove and take into account the arguments and submissions made in respect thereof.
- (b) Allow the Applicant to make oral submissions in the court in respect of the relevant question of law; and
- (c) Pass such other order this Hon'ble Court deems fit in the facts and circumstances of the present case and in the interest of the justice.



INTERNATIONAL TRADEMARK ASSOCIATION

THROUGH



Aamna Hasan Ashwani Balyan Vaibhav Vutts
(D/2296/2012) (D/2689/2009) (D/290/2003)

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