

**'Deceptively Similar Design': Bombay High Court Halts Sale of Polycab Wizzy After Atomberg Alleges Infringement**

**2022 LiveLaw (Bom) 423**

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**CORAM: R.I. CHAGLA; J.**

**14 September 2022**

**INTERIM APPLICATION (L) NO. 28883 OF 2022 IN COMMERCIAL IPR SUIT (L) NO. 28877 OF 2022**

**Atomberg Technologies Private Limited versus Polycab India Limited**

*Mr. Hiren Kamod a/w Mr. Vaibhav Keni, Ms. Neha Iyer, Mr. Rohan Lopes Mr. Anees Patel and Mr. Prem Khullar i/b Legasis Partners for the Plaintiff.*

*Mr. Vinod Bhagat a/w Ms. Prachi Shah, Ms. Fatema Kalolwala, Mr. Atif Sayyed and Mr. Karan Khiani i/by G.S. Hegde and V.A. Bhagat for the Defendant.*

**ORDER**

1. Mr. Kamod, Ld. Advocate for the Plaintiff, seeks to move without notice to the Defendant for the reasons set out in paragraph 26 of the Complaint and paragraph 4 of the Interim Application. It is submitted that sufficient averments and disclosures are made in the Complaint to sustain an ex-parte application.
2. When the matter was called out, Mr. Vinod Bhagat, learned Counsel for the Defendant had sought to oppose the Application being heard ex-parte and has submitted that he had noticed that the above matter is on board and had apprised the Defendant who had instructed him to appear when the matter was called out. He has tendered email dated 14th September 2022 from the Defendant instructing him to appear in the matter. He had called upon the advocates for the Plaintiff to serve copies of the paper and proceedings in the matter and the same has not been served on him.
3. Mr. Vinod Bhagat has requested for time to take instructions from the Defendant and in order to see whether they are willing to remedy the situation.
4. In response, Mr. Hiren Kamod, learned Counsel appearing for the Applicant/Plaintiff has submitted that this is a blatant infringement of the Plaintiff's product's design. He has assembled both the product i.e. the Plaintiff's product and the Defendant's product in Court in order to show that it is a blatant replica and/or reproduction of the overall design, shape, configuration, get-up of the Plaintiff's Atomberg Renesa Ceiling Fan. The design of the impugned fan is nothing, but the imitation of the Plaintiff's registered design and the adoption and/or use thereof cannot be matter of coincidence and/or honest.
5. Considering these submissions and noting that there appears to be prima facie substance in the submission of Mr. Kamod, I am unable to accept the plea of Mr. Bhagat. However, considering that the matter is being moved ex-parte and the object of ex-parte sought would be defeated, if notice is given to the Defendant, a case is made out for considering the Application ex-parte. Accordingly, the matter is being taken up ex-parte.
6. This is an action for infringement of the Plaintiff's registered design combined with a cause of action for passing off.
7. It is stated that the Plaintiff is a company incorporated under the Companies Act, 1956 and is in the business of manufacturing and/or trading in and/or dealing in and/or selling wide variety of home appliances such as ceiling fans, pedestal fans, wall fans, exhaust fans, mixer grinder and accessories thereof such as fan remote, fan motor, fan canopy, fan blades, fan down rod, etc.

8. It is stated that Plaintiff is engaged in the creation of the novel and original designs for its products which involve inter-alia making of product drawings based on which mould / tool drawings are made and finally the moulds / tools are built. It is stated that the effort, skill and knowledge of the experts of the Plaintiff has been translated into unique and novel designs and product drawings which are owned by the Plaintiff. It is stated that one of the products manufactured and sold by the Plaintiff is a Ceiling Fan named “Atomberg Renesa Ceiling Fan” which has a unique, innovative, distinctive, original and novel design. It is stated that the Atomberg Renesa Ceiling Fan was formerly known as “Atomberg Gorilla Renesa Ceiling Fan”. It is stated that Atomberg Renesa Ceiling Fan incorporates not only technically sound and efficient quality and features, but also comprises inter-alia of overall unique, novel and distinctive shape and configuration having attractive and aesthetic appeal which is pleasing to eye of the consumer/ customer. Photographs of Plaintiff’s Atomberg Renesa Ceiling Fan are at Exhibit A to the Plaintiff.

9. It is stated that design of the Atomberg Renesa Ceiling Fan was created in or about September 2018 by Sibabrata Das and Manoj Meena, Directors of the Plaintiff, who secured registration of the same bearing registration no.309694 in class 23-04 dated 8<sup>th</sup> September 2018 and gave their permission / consent to the Plaintiff to use the said design. It is stated that the said Design registration was assigned by Sibabrata Das and Manoj Meena to the Plaintiff herein vide Deed of Assignment dated 15<sup>th</sup> February 2021. Pursuant to the said assignment, the Plaintiff filed an application dated 10<sup>th</sup> March 2021 before the office of Controller General of Patents, Designs and Trade Marks to bring on record the name of the Plaintiff as the registered proprietor of the said registered Design bearing registration no.309694 in class 23-04, which is pending. Thus, it is stated that the Plaintiff is the registered proprietor of the copyright subsisting in the design of the Atomberg Renesa Ceiling Fan bearing registration no. 309694 in class 23-04, which registration is valid and subsisting. A copy of the certificate of registration of design together with its representation sheets qua the Atomberg Renesa Ceiling Fan issued by the office of Controller General of Patents, Designs and Trade Marks is at Exhibit B to the Plaintiff. A copy of the relevant application dated 10<sup>th</sup> March 2021 filed for bringing the name of the Plaintiff on record as the registered proprietor of the said registered Design is at Exhibit B-1 to the Plaintiff.

10. It is stated that the novelty in the design of the Atomberg Renesa Ceiling Fan resides in its shape and configuration. The novel features of the Plaintiff’s Atomberg Renesa Ceiling Fan are more particularly set out in paragraph 10 of the Plaintiff. It is stated that the shape and configuration and design of the Atomberg Renesa Ceiling Fan with its novel features is associated with the Plaintiff and none else. It is stated that the Atomberg Renesa Ceiling Fan is one of the largest selling fans of the Plaintiff. It is stated that the goodwill and reputation that has been achieved by the Plaintiff qua the Atomberg Renesa Ceiling Fan is evident from the perusal of the annual sales figures which is to the tune of over INR 100 crores only for the year 2021-22. A statement of annual sales figures for the Plaintiff’s Atomberg Renesa Ceiling Fan is at paragraph 11 of the Plaintiff and a copy of the Plaintiff’s Chartered Accountant’s Certificate in support thereof is at Exhibit C to the Plaintiff. Copies of representative invoices and promotional material qua the Atomberg Renesa Ceiling Fan are at Exhibit D and Exhibit E to the Plaintiff, respectively.

11. According to the Plaintiff, in or about the last week of August 2022, the Plaintiff’s representative learnt about the Defendant’s fan having shape, configuration, design and aesthetic appeal that is identical with and/or a fraudulent imitation and/or obvious imitation of the shape, configuration, design of the Plaintiff’s Atomberg Renesa Ceiling Fan for which the Plaintiff has secured design registration. The Plaintiff’s representative,

thereafter, purchased the Defendant's fan under the name Polycab Wizzy from the Defendant's dealer in Kerala. It appears that the Defendants are selling the impugned fan under the name Polycab Wizzy / Polycab Wizzy BLDC 1200 MM. Photographs of the Defendant's impugned fan purchased from the Defendant's dealer in Kerala are at Exhibit F to the Plaintiff. It is stated that the Plaintiff also conducted a search on the internet / website of the Defendant and learnt that the Defendant's impugned fan bearing the impugned design / shape is available for sale / can also be purchased from [www.flipkart.com](http://www.flipkart.com) and [www.amazon.in](http://www.amazon.in), including within the jurisdiction of this Court. Printouts of the pages from [www.flipkart.com](http://www.flipkart.com) and [www.amazon.in](http://www.amazon.in) are at Exhibit G to the Plaintiff. It also appears that the Defendant is promoting / advertising the impugned fan on [www.YouTube.com](http://www.YouTube.com), snapshots whereof are at Exhibit H to the Plaintiff.

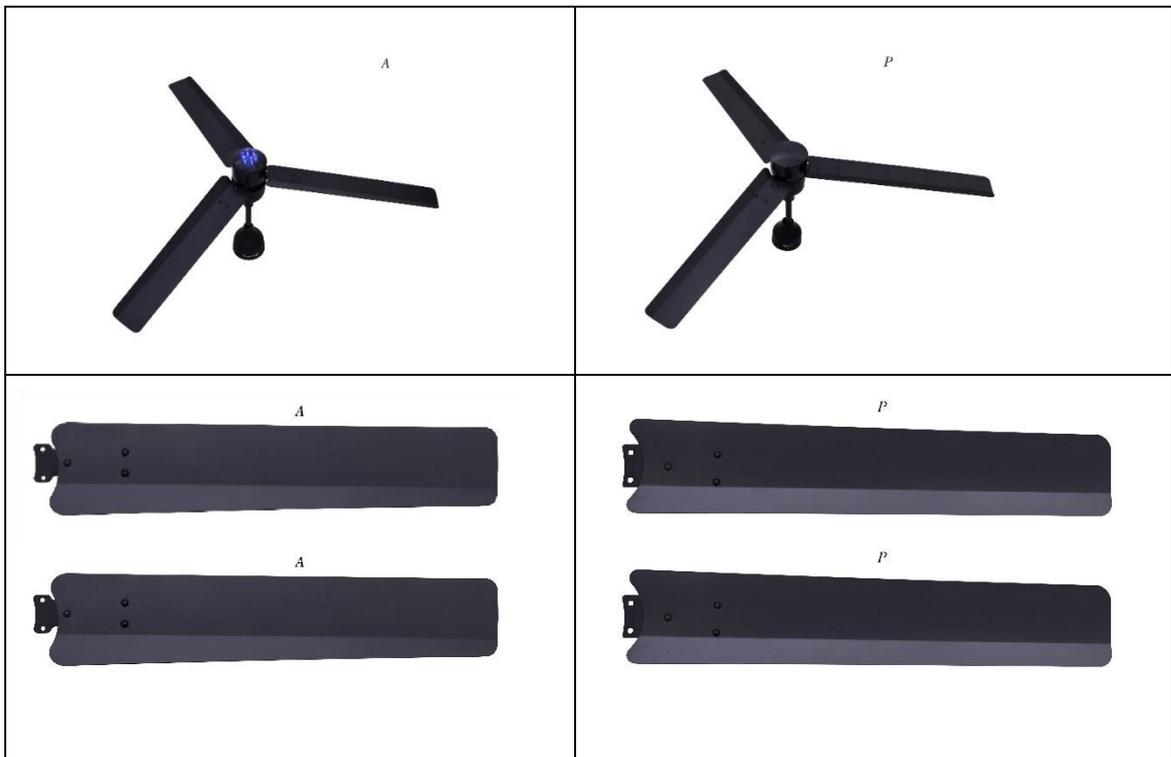
12. Mr. Kamod submits that a bare perusal of the impugned design / shape of the Defendant's impugned fan would reveal that its shape, configuration, design and aesthetic appeal is identical with and/or a fraudulent imitation and/or obvious imitation of the shape, configuration and design of the Plaintiff's registered design. He submits that imitation done by the Defendant is so fraudulent and/or obvious that it is difficult to distinguish between the Atomberg Renesa Ceiling Fan of the Plaintiff and the impugned fan of the Defendant. In support of his submissions, Mr. Kamod relies upon judgments of this Court in the case of Whirlpool of India Ltd vs Videocon Industries Ltd, reported in 2014 (60) PTC 155 (Bom). He submits that the Defendant has deliberately copied, created a replica and/or reproduced the overall design, shape, configuration, get up and even the features of the Plaintiff's Atomberg Renesa Ceiling Fan so as to derive undue, unlawful and illicit gains therefrom. He submits that the Plaintiff's customers often purchase the Atomberg Renesa Ceiling Fan on the basis of the recollection of the overall design and aesthetic appeal of the fan. Hence, confusion or deception is most likely on account of overall visual similarities in terms of said features, overall shape, get-up and design of the rival fans which amounts to passing off of Defendant's products / goods / fan and business as and those of the Plaintiff, apart from unfair competition. He submits that the Defendant has adopted the same / similar design / shape and/or get-up in order to come as close as possible to the Plaintiff's Atomberg Renesa Ceiling Fan. Mr. Kamod further submits that the dishonesty of the Defendant is apparent from the fact that the Defendant has also copied certain features / elements from the Plaintiff's packaging. A comparative table showing a side-by-side comparison of the rival packaging is at Paragraph 16 of the Plaintiff. He submits that the Defendant's acts amount to infringement of the Plaintiff's registered design and passing off.

13. Mr. Kamod submits that in the aforesaid circumstances, it is absolutely just and necessary that an *ex parte adinterim* order be passed restraining the Defendant from infringing the Plaintiff's registered design and passing off. He submits that as per the information available with the Plaintiff, the Defendant appears to have just launched the impugned fan bearing the impugned design and looking at the dishonest conduct of the Defendant, the Plaintiff apprehends that if the Defendant is given notice of the present application, there is a strong likelihood that the Defendant would remove the existing stock of the impugned fans from its factory, premises, godowns, warehouses, offices and/or shops and is likely to dump the impugned fans in the market and flood the market with impugned fans defeating the purpose of making the present application.

14. I have seen the Plaintiff's Atomberg Renesa Ceiling Fan and the Defendant's impugned fan, samples whereof, including its packaging have been placed before me. I have heard the submissions and perused the record. Prima facie, the Plaintiff has secured

statutory rights in the said registered design. A comparative table of the rival goods is reproduced below:

Plaintiff's Atomberg Renesa Ceiling Fan	Defendant's impugned fan
	
	
Plaintiff's Atomberg Renesa Ceiling Fan	Defendant's impugned fan
	
	



Visually the rival goods are nearly identical. Prima facie, it appears that the Defendant has blatantly copied, created a replica and/or reproduced the overall design, shape, configuration, get up of the Plaintiff's Atomberg Renesa Ceiling Fan. The design of the impugned fan is nothing but an imitation of the Plaintiff's registered design and the adoption and/or use thereof cannot be matter of coincidence and/or honest. The Defendant must have had the Plaintiff's Atomberg Renesa Ceiling Fan before it while designing the impugned fan. The members of the trade and public upon coming across the Defendant's impugned fan bearing a deceptively similar shape, configuration, design, aesthetic appeal as that of the Plaintiff's Atomberg Renesa Ceiling Fan are bound to be put in a state of wonderment and are likely to be confused and/or deceived into believing that the fans offered by the Defendant are those of the Plaintiff and/or are originating from the Plaintiff and/or are connected in the course of the trade with the Plaintiff.

**15.** In the circumstances, an overwhelming *prima facie* infringement of the Plaintiff's registered design and passing off is made out. The balance of convenience also lies in favour of the Plaintiff and unless the reliefs as prayed for are not granted, the Plaintiff will suffer irreparable loss, harm and injury.

**16.** In view of what is stated in paragraph 26 of the Plaint and paragraph 4 of the Interim Application and in view of the above discussion, I am satisfied that the object of granting the following reliefs would be defeated if notice of this application is given to the Defendant. There shall accordingly be an ad-interim order in terms of prayer clauses (a) and (b) of the Interim Application, which read as follows:

a) that pending the hearing and final disposal of the suit, the Defendant by itself, its directors, dealers, stockists, distributors, servants, agents and all person claiming under or through it be restrained by a temporary order of injunction of this Hon'ble Court from infringing / pirating the Plaintiff's design of the said Atomberg Renesa Ceiling Fan bearing registration no.309694 in class 23-04 by the use of the impugned fan or any other fan which is a fraudulent or obvious or slavish imitation or resembling with the Plaintiff's said Atomberg Renesa Ceiling Fan;

b) that pending the hearing and final disposal of the suit, the Defendant by itself, its directors, dealers, stockists, distributors, servants, agents and all person claiming under or through it be restrained by a temporary order of injunction of this Hon'ble Court from manufacturing and/or selling and/or marketing and/or retailing and/or exporting and/or distributing and/or trading and/or exhibiting for sale and/or advertising and/or otherwise dealing in fans bearing the shape, configuration, design of the impugned fan as shown at Exhibits "F", "G" and "H" to the plaint or any other fan bearing shape or design which is identical with and/or deceptively similar to the shape, configuration, design of the Plaintiff's said Atomberg Renesa Ceiling Fan / said Atomberg Renesa Ceiling Fan, so as to pass off or enable others to pass off the Defendants' fan/goods as and for the Plaintiff's well-known fan/goods or in any other manner whatsoever.

**17.** Liberty to the Defendant to apply for a variation, modification or recall of this order after at least 3 clear working days' notice to the Advocates of the Plaintiff.

**18.** List the above Interim Application for further ad-interim reliefs on 26<sup>th</sup> September 2022, high on board.

**19.** This order will continue until 27<sup>th</sup> September 2022.

**20.** This order will be digitally signed by the Private Secretary / Personal Assistant of this Court. All concerned will act on production of a digitally signed copy of this order.

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