

PROMOTING CREATIVITY: HOW THE DIAGEO CASE SHAPES DESIGN LAW IN INDIA



In India, design protection hinges on whether a creation is 'New or Original.' This concept came under the spotlight in a recent legal battle with *Diageo Brands B.V. & Anr. vs Alcobrew Distilleries India Pvt.* The case revolved around whether Diageo's unique hipster whiskey bottles deserved legal protection or if they were just another iteration of existing designs. Let's dive into this case and understand what it means for designers and businesses today.

Background: The 'New or Original' Requirement:

Design protection in India has evolved over the years. Initially, the law required designs to be both 'New and Original,' a standard that emphasized both novelty and uniqueness. However, in 1930, the law was changed to 'New or Original,' allowing for either entirely new designs or creative tweaks of existing ones. This change aimed to encourage innovation by recognizing both fresh ideas and clever adaptations.

Today, the Designs Act of 2000 governs design protection in India. The Act defines 'original' as designs that come from the creator, including new uses of old designs. However, it doesn't clearly define 'new,' leaving it for the courts to interpret. This means that Court decisions are crucial in determining what counts as 'new' under the law.

The Diageo Case: A Modern Test

Diageo Brands claimed that their "Scotch Hipster", designed to look like smartphones and fit into a hip pocket, were novel and distinctive. They highlighted features like the rectangular shape, smooth rounded shoulders, V-shaped neck, rimmed rounded cap, and dimpled bottom as unique aspects of their design.

Alcobrew Distilleries, the defendant, argued that these features were common in the liquor industry and that the hipster design was based on old hip flasks used during prohibition. They claimed that Diageo's design was neither new nor original, pointing to similar existing bottle designs. The defendant argued against Diageo's claim of having exclusive rights to the hipster bottle design. They pointed out that the term "hipster" originally referred to people who used hip flasks during prohibition, which is an older, existing design. They also claimed that the design features Diageo highlighted were common in the liquor industry and that the dimpled base of the bottle was a practical feature for stability, which shouldn't be protected under design laws.

Court's Decision: The Informed Eye Test

Delhi High Court Justice C. Hari Shankar dismissed Diageo's plea for a temporary injunction against Alcobrew, emphasizing the importance of an informed perspective in design piracy cases.

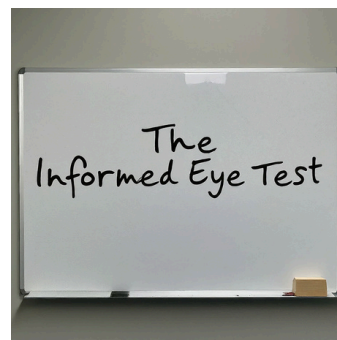
Key Points of the Judgment:

Informed Perspective: The Court highlighted that someone acquainted with prior should judge design piracy art, ensuring a thorough examination of the design's originality. This contrasts with the perspective of an average consumer, which might only involve a superficial visual check.

Design Law vs. Trademark Law: Justice Shankar distinguished between design law and trademark law. While trademark law focuses on protecting brand identity and preventing consumer confusion, design law is concerned with safeguarding the unique visual aspects of a product. The goal is to encourage new and original creations by granting them legal protection.

International Standards: The Court's decision aligns with international precedents, such as the Egyptian Goddess case in the US and the *Baili v. Apple* case in China. These cases emphasize the need for an informed perspective to judge design originality, ensuring only genuinely innovative designs receive protection and preventing monopolies on common design elements.

Ruling in favor of Alcobrew: After a detailed comparison with existing designs, the Court found that Alcobrew's bottle design did not infringe on Diageo's design. The Court concluded that the features claimed by Diageo were common in the industry and lacked the novelty required for legal protection.



Implications of the Decision:

This ruling reinforces the principle that design originality must be scrutinized with a knowledgeable eye, promoting innovation and ensuring that only truly unique designs are protected. The decision serves as a reminder that superficial similarities are insufficient grounds for design protection claims, thereby fostering a more robust environment for genuine creativity in product design. Thus, Court's ruling in favor of Alcobrew reinforces global standards, ensuring that design law continues to foster true originality and creativity.