

**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR**  
**COMMERCIAL DIVISION**  
**[SUIT NO: D-22(IP)-1360-2005]**

**BETWEEN**

**THREE V MARKETING (M) SDN BHD** ... **PLAINTIFF**  
(Company No: 294103-W)

**AND**

1. **CUN HING TRADING (M) SDN BHD** ... **1<sup>ST</sup> DEFENDANT**  
(Company No: 370953-W)
2. **HENG YONG TING** ... **2<sup>ND</sup> DEFENDANT**  
(NRICNO: 341012-08-5327)
3. **HENG LIK HEE** ... **3<sup>RD</sup> DEFENDANT**  
(NRICNO: 590213-08-5443)
4. **TUBE HOME (M) SDN BHD** ... **4<sup>RD</sup> DEFENDANT**  
(Company No: 206062-P)

***INTELLECTUAL PROPERTY:** Industrial design - Ownership of the industrial design - Whether plaintiff was the lawful owner of the design shape and configuration of plaintiff's MY03-00515 - Whether plaintiff had the locus standi to sue for infringement*

***INTELLECTUAL PROPERTY:** Industrial design - Infringement of - Plaintiff's MY03-00515 and unlawful interference of trade - Whether plaintiff's MY03-00515 was a method or principle of construction and therefore not an Industrial Design by definition - Whether plaintiff's MY03-00515 was not "new" or unique in its features of shape and*

*configuration - Whether the shape and configuration of plaintiff's MY03-00515 clothes dryer differed from the prior disclosed clothes dryer as depicted in D46, D14, D48 and D55 - Overall similarities existing - Whether plaintiff's MY03-00515 clothes dryer was a variant of clothes dryers commonly found and used in the market - Whether defendants successfully challenged plaintiff's MY03-00515 for lack of newness*

**[Plaintiffs claim dismissed with costs; 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants' counterclaim allowed and the plaintiff's MY03-00515 revoked.]**

**Case(s) referred to:**

*Benchairs Ltd v. Cha Centre Ltd [1974] RPC 429 (refd)*

*Bristol Myers Application [1969] RPC 146 (refd)*

*Dalgety Australia Operations Ltd. v. Seeley (FF) Nominees Pty Ltd 64 ALR 421 (refd)*

*Firmagroup v. B & D Doors (Vic) [1986] 6 IPR 377 (refd)*

*Gaskell & Chambers v. Measure Master Ltd [1993] RPC 785 (refd)*

**Legislation referred to:**

Industrial Designs Act 1996, ss. 3, 9(2)(a), 12, 27

**Other source(s) referred to:**

Russell-Clark and Howe, *Industrial Designs*

## **JUDGMENT**

The dispute in this action revolves around a common household article, namely clothes dryer, which is also known by various names such as clothes hanger.

The Plaintiff is the owner of Industrial Design No. MY03-00515 (hereinafter to be referred as the Plaintiff's MY03-00515), applied to a clothes dryer. Since December 2003, the Plaintiff has been manufacturing, distributing, offering for sale clothes dryer called "12 Bars Fan Hanger" manufactured by an industrial process, which applied the Plaintiff's MY03-00515.

It is the Plaintiffs case that the 1<sup>st</sup> and 4<sup>th</sup> Defendants have respectively sold and are still selling to the public clothes dryer called "Super Hanger Mapo 1818", which had also applied the Plaintiff's MY03-00515.

In the Plaintiffs Amended Statement of Claim, there are two (2) causes of action against the Defendants, namely, (i) infringement of the Plaintiffs MY03-00515 and (ii) the unlawful interference with the Plaintiff s trade.

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants counterclaim that the Plaintiffs MY03-00515 be declared invalid and unenforceable on the ground that the Plaintiffs MY03-00515 does not meet the requirements of Section 12 of the Industrial Designs Act 1996 (the Act).

The 4<sup>th</sup> Defendant also counterclaims for the invalidation of the Plaintiffs MY03-00515 because it is not new; and that the Plaintiff is not the original owner as the clothes dryers of the Plaintiffs MY03-00515 are within the realm of common general knowledge of such manufacturers and designers in the relevant market.

Three V Marketing (M) Sdn Bhd (the Plaintiff) is a private limited company and having its registered address at No. 271 Room A, Jalan Maarof, Bangsar, 59000 Kuala Lumpur and its business address at Lot 1857 dan 8381, Kawasan Perusahaan Bukit Angkat, Sg. Chua, Kajang 43000 Selangor Darul Ehsan.

Cun Hing Trading (M) Sdn Bhd (the 1<sup>st</sup> Defendant) is a private limited company and having its registered address at Level 3, No. 17, Jalan Ipoh Kecil, 50350 Kuala Lumpur and its business address at No. 6, Jalan Bunga Tanjung 8A, Taman Muda Mukim Ampang, Cheras, and 56100 Kuala Lumpur. The 1<sup>st</sup> Defendant is and was at material times involved in the distribution and sale of furniture. Heng Yong Ting (the 2<sup>nd</sup> Defendant) and Heng Lik Hee (the 3<sup>rd</sup> Defendant) are at all material times the directors of the 1<sup>st</sup> Defendant company. Tube Home (M) Sdn Bhd (the 4<sup>th</sup> Defendant) is a private limited company and having its registered address at 2-3-11, (3<sup>rd</sup> Floor),

Menara KLH Business Centre, Bt 2 1/2, Jalan Ipoh, 51200 Kuala Lumpur, Wilayah Persekutuan.

On 15.08.2003, Innovative knowledge Sdn Bhd has applied to the Industrial Designs Registration Office for the registration of an industrial design applied to a clothes dryer. On 2.4.2004, the Registrar of Industrial Designs registered the Plaintiffs MY03-00515 for clothes dryer.

It is the Plaintiff's case that the Plaintiff's MY03-00515 depicts the features, shape and configuration of a clothes dryer and it is appeal to the eye. The registration of the Plaintiff's MY03-00515 is prima facie to its validity based on the evidence of the facts stated therein. Subsequently, Innovative Knowledge Sdn Bhd assigned its rights and interests in respect of the Plaintiffs MY03-00515 to the Plaintiff.

Since March 2004, the Plaintiff has launched extensive advertising campaigns and promotions for the 12 Bars Fan Hanger and as the result, the Plaintiff has obtained substantial reputation and goodwill on the same. It is the contention of the Plaintiff that as the result of the extensive use of the 12 Bars Fan Hanger clothes dryers

and the novel features of the shape and configurations applied to the 12 Bars Fan Hanger clothes dryers as set out in the Plaintiff's MY03-00515, the trade and the public have come to associate and still associate the Plaintiff's MY03-00515 and the 12 Bars Fan Hanger clothes dryers with the Plaintiff and no other party.

According to the Plaintiff, the Defendants have infringed the Plaintiff's MY 03-00515 by applying the same design fraudulently or by obvious imitation of it to the Defendants' clothes dryers (the Infringing goods) and, also selling, offering for sale, and/or keeping for sale the infringing goods, without the express or implied consent or license of the Plaintiff.

Moreover, according to the Plaintiff, the Defendants interfered with the Plaintiff's trade by manufacturing, distributing, selling, offering for sale causing or enabling others to distribute, sell or offering for sale the infringing goods that are identical reproduction of the whole and/or obvious imitation of the Plaintiffs MY03-00515 without the Plaintiffs license or consent. The Plaintiff added that the Defendants used unlawful means to interfere with the Plaintiffs trade by infringing the Plaintiffs MY03-00515. It was the Defendants' intentions to benefit their own reputation and/or sales, and to injure

the Plaintiff by damaging the Plaintiff through the acts mentioned earlier. The goodwill and reputation of the Plaintiff have been injured with direct and/or indirect negative consequence on the Plaintiff's sales.

As a result, the Plaintiff claims, *inter alia*, the following against the Defendants for infringement of the Plaintiff's MY03-00515 and unlawful interference of trade:-

- i) An injunction to restrain the Defendants from infringing the Plaintiff's MY03-00515 and/or any industrial design which is substantially similar to the Plaintiff's MY03-00515 in the course of trade;
- ii) An order for delivery up within 7 days from the date of judgment, all infringing reproductions of the Plaintiff's 12 Bars Fan Hanger, all documents and records connected to the manufacture, storage, supply, distribution, sale, offer for sale or disposal of the infringing reproductions of the Plaintiff's MY03-00515.
- iii) An order that the Defendants disclose within 7 days from the date of Judgment, the name and address of everyone to whom

the Defendants have supplied the infringing reproductions of the Plaintiff's MY03-00515, and full details of the dates and quantities of each supply and offer, and

iv) Damages.

In view of the Defendants' counterclaim for revocation as well as for rectification by expunction of the Plaintiff's MY03-00515, I will have to deal with and resolve the counterclaim in the first instance.

Before dealing with the specific issues, which arise for the decision in the counterclaim, there is one preliminary matter raised by the Defendants, which at the outset calls for determination. It is this: whether the Plaintiff is the lawful owner of the design shape and configuration of the Plaintiff's MY03-00515 and whether the Plaintiff has the *locus standi* to sue for infringement? Emphasizing this point, learned counsel for the Defendants argued there are doubts that the Plaintiff had lawfully acquired the rights to the Plaintiff's MY03-00515.

Nevertheless, the product designer, Puah Cheok Peng (PW1) in his evidence said that he is the designer for the Plaintiff's MY03-00515. He further stated that he had been commissioned by Innovative Knowledge Sdn Bhd to come up with the design and was

paid RM5,000 for his services. Now, pursuant to section 10(2) of the Act where an industrial design is created in pursuance of a commission for money or money's worth, the person commissioning the industrial design shall, subject to any contrary agreement between the parties, be treated as the original owner of the industrial design.

Further on this point, in exhibit D57 one Law Say Moi, a director Innovative Knowledge Sdn Bhd clearly stated that Innovative knowledge Sdn Bhd is the owner of the Plaintiff's MY03-00515. As is apparent from the above, the original ownership of the Plaintiff's MY03-00515 vests in Innovative knowledge Sdn Bhd. Then, the Plaintiff obtained the same via an assignment from Innovative knowledge Sdn Bhd dated 2.4.2004. This being the case, I am satisfied that on the balance of probability it has been established that the present lawful owner of the Plaintiffs MY03-00515 is the Plaintiff. Hence, I agree with the submission of Ms M.K Lam, learned counsel for the Plaintiff to the effect that the Plaintiff has the *locus standi* to sue for infringement.

I now move on to consider the Defendants' counterclaim. It is contended, *inter alia*, by the Defendants that the Plaintiff's MY03-

00515 suggests or indicates a method or principle of construction and therefore is not an Industrial Design by definition. This contention is not free from difficulties. It is true that Section 3 of the Act excludes the definition of industrial design “a method or principle of construction”. Here, I will briefly summarize the scope of the statutory exclusion as explained by the authors in **Russell-Clark and Howe on Industrial Designs**. In the first place, according to the learned authors, the statutory exclusion only applies where the conception arrived at is only a conception as to some general construction, the definite shape or configuration capable of variation within wide limits. To allow registration of a conception of such general characteristics of shape or configuration might well be equivalent to allowing the registration of a conception relating to the mode or principle of construction. The authors further explain:

*Thus, in Moody v. Tree the design registered was the picture of a basket, the claim being for the pattern of the basket consisting of the osiers being worked in singly and all the butt ends being outwards. Obviously, there could be made by this method of construction any number of baskets differing in pattern except that all would have a certain common*

*characteristic due to the method of construction and visible to the eye. It was held that the registration was bad as being an attempt to register a conception as to the mode of construction and not as to shape, configuration, pattern or ornament. A similar decision was Re Bayer's Design.*

The author further added the other sense in which, “method or principle of construction” has been used is as being a process or operation by which a shape is produced, as opposed to the shape itself.

In my view, the Plaintiff's MY03-00515 falls within neither of the exclusion as explained by the authors because in the first place, Plaintiff's MY03-00515 has a definite conception as to shape or configuration of the clothes dryer. Second, it does not seek to protect a process or operation by which a shape is produced. Thirdly, the fact that the Plaintiff's MY03-00515 requires assembly upon purchase however, it does not mean the Plaintiff's MY03-00515 secures a method of construction.

From this point, I will deal with the Defendants' contention that the Plaintiff's MY03-00515 is not “new” or unique in its features of

shape and configuration. It cannot be disputed that the onus of proof in disputing the Plaintiff's MY03-00515 lies on the Defendants (see: *Dalgety Australia Operations Ltd. v. Seeley (FF) Nominees Pty Ltd* 64 ALR 421)

Before I embark into considering the issues arising for decision on the question whether the Plaintiffs MY03-00515 is not "new", I will quote the relevant provision that is relevant for the current discussion. Section 27 of the Act provides:

**27. *Revocation of registration and grant of compulsory license.***

*(1) At any time after the registration of an industrial design, any person may apply to the Court-*

*(a) for the revocation of the registration of the industrial design on the ground, subject to section 12, that the industrial design has been disclosed to the public prior to the priority date of the application for registration of the industrial design;*

*(b) For the cancellation of the registration of the industrial design on the ground that the registration of the industrial design has been procured by unlawful means; or*

*(c) for the grant of a compulsory license in respect of the industrial design on the ground that the industrial design is not applied in Malaysia by any industrial process or means to the article in respect of which it is registered to such an extent as is reasonable in the circumstances of the case,*

*In addition, the Court may make such order on the application as it considers just.*

The relevant portions of section 12 read as follows:

***12. Registrable industrial design.***

*(1) Subject to this Act an industrial design shall not be registered unless it is new.*

*(2) An industrial design for which an application for registration is made shall not be considered new if, before the priority date of that application, it or an industrial design differing from it only in immaterial details or in features commonly used in the relevant trade:-*

*(a) Was disclosed to the public anywhere in Malaysia;*

There are two (2) points to be emphasized before proceeding further. First, the filing of the Plaintiff's MY03-00515 is on 15.8.2003 and there is no priority has been claimed. Thus, the Defendants must prove there is disclosure of the Plaintiff's MY03-00515 prior to 15.8.2003. Second, the relevant trade in the present case is the manufacture and sale of collapsible clothes dryer, a generic product that is commonly used by members of public.

This brings me to the statement of novelty of the Plaintiff's MY03-00515; it is stated therein "the novelty of the design resides in the shape and configuration of the article as shown in the accompanying representations" (see: pg. 2 of BD2-A). It can be seen that the statement of novelty is accompanied with representations of the Front View, Side View and Perspective View of the Plaintiff's MY03-00515.

As it can be understood from the novelty statement and the representations therein, the Plaintiff is claiming a monopoly in respect of the overall visual appearance of the Plaintiff's MY03-00515 as a whole.

To put the matter in perspective, it is imperative to take a closer look at the clothes dryer of the Plaintiff's MY03-00515. PW1 had outlined the features of the clothes dryer as a whole in the following manner:

*"It consists of a pair of fan like frame, a pair of legs with castors, 12 horizontal bars as well as 6 pairs of t-shaped connectors; and 4 horizontal bars with bent-ends to hold the legs in place. The said fan-like frame comprises a series of metal tube joined together using rivets such as it forms a pattern of 3 adjoining diamond shapes."*

As it is evident from the above, the clothes dryer of the Plaintiff's MY03-00515 comprises of many individual components parts, which are intended to be connected and assembled into the finished and completed clothes dryer. The point to make here is this: in the Plaintiff's MY03-00515, there are no claims for any particular parts nor are there claims for any partial design protection.

It has to be said at this point that the Plaintiff has put great emphasis in respect of the t-shaped connector. In view of the general nature of the novelty statement, I do not think the Plaintiff has

monopoly over the t-shaped connector. The fact is that there is no indication at all in the representations of the Front View, Side View and Perspective View that the Plaintiff is claiming a monopoly over the t-shaped connector. In my view, the Plaintiff is not entitled to isolate the t-shaped connector for the purposes of distinguishing the Plaintiff's MY03-00515 against the prior disclosed clothes dryers. To put it another way, any comparison must be made between the clothes dryer as a whole as the Plaintiff's MY03-00515 claims for monopoly in its overall appearance.

It needs to be emphasized that the registration of the Plaintiff's MY03-00515 is for the finished and completed clothes dryer. It is equally important to note that the t-shaped connector is only an element or part of the entire clothes dryer that is registered under the Plaintiff's MY03-00515. More will be said further on about this point at a later stage of this judgment.

Coming back to the counter claim that the Plaintiff's MY03-00515 is not "new", the Defendants' contention is that the features in the shape and configuration of the clothes dryer of the Plaintiff's MY03-00515 have been disclosed in the following prior disclosed clothes dryers available in the market on or before 15.8.2003:

1. The Plaintiff's own clothes dryers of the model FH640 and JB640 (exhibit D46);
2. The 1<sup>st</sup> Defendant's own clothes dryer under Malaysian utility Innovation No. MY 111585A (exhibit D14).
3. The 1<sup>st</sup> Defendant's model No. 3927, Model No. 606 and Model No. (Exhibit D48).
4. Clothes dryer of the type, (Design No. 1) (Exhibit D55).

Exhibit D55 is an admissible relevant copy of prior published and disclosed document. It is a certified true copy of the letter written by the 3<sup>rd</sup> Defendant on 3.3.1997 (see: Section 9(3) of the Act). It is filed in the Designs Registry office in connection with Malaysian Utility Innovation No. MY 111585A. Any person may obtain copies of any entry or document in the Register. Any person has the right to access it. This is provided for in section 9(2)(a) of the Act.

Prior disclosure will occur if there is disclosure of a representation of a design to a single member of the public. The degree of dissemination of the information is irrelevant (see: *Bristol Myers Application* [1969] RPC 146). In my view, the availability of exhibit D55 for inspection by the public is sufficient to show that there

has been prior disclosure to the public to the design which constitutes a prior art to the Plaintiff's MY03-00515.

More than that, the 3<sup>rd</sup> Defendant in his evidence said that his father's then business Syarikat Perniagaan Chun Heng manufactured the clothes dryer depicted in exhibit D55 and sold about 30-40 of the said clothes dryer between the years 1999-2000. According to the witness because these clothes dryers were made from iron and heavy and that there were other flaws, this model of the clothes dryers was not welcomed well in the market and did not receive any acceptance from the traders. The evidence of the 3<sup>rd</sup> Defendant regarding the sale of the clothes dryer depicted in exhibit D55 is corroborated by the evidence of DW2. It is my finding that they are credible witnesses and are telling the truth after watching their demeanor in the witness box, the manner in which they had testified and after anxiously scrutinizing their answers in examination-in-chief, cross-examination as well in re-examination. It is for this reason, I am unable to agree with the contention of learned counsel for the Plaintiff to the effect that the 3<sup>rd</sup> Defendant "*fabricated evidence including procuring a certified true copy of an obviously falsified letter (D55);*

*fabricating/making the D55 clothes hanger; and procuring the assistance of a relative to lie in court’.*

Now, where a registered design is challenged for lack of newness, the comparison is between the previous disclosed design (whether in use or in printed publications or in printed form), and the design depicted in the certificate of registration (see: *Firmagroup v. B & D Doors (Vic)* [1986] 6 IPR 377). It is also permissible to compare the three dimensional form of the article depicted in the drawing of the certificate with the prior disclosed similar articles, provided the conditions that the features depicted in the certificate are clear and the three dimension article of the registration clearly displays all these identical features (see: *Benchairs Ltd v. Cha Centre Ltd* [1974] RPC 429).

It is also important to keep in mind this principle: whether or not the shape and configuration of the clothes dryer of the Plaintiff’s MY03-00515 differs from the prior disclosed clothes dryer as depicted in D46, D14, D48 and D55 is a matter for the eyes of the court (see: *Dalgety Australia Operations Ltd v. F.F. Seeley Nominees Pty Ltd (supra)*). What I gather from decided cases is that the eye for this purpose would be the notional eye of the customer. By this, I come to

understand that in order to decide this question, the court must adopt the mantle of an interested customer and decide the question for itself (see: *Gaskell & Chambers v. Measure Master Ltd* [1993] RPC 785). In this regard, evidence from an expert may assist the court in appreciation of the differences and similarities between the designs in question (see: *A Fulton Co. v. Totes Isotner (UK) Ltd* [2003] RPC 27).

I have had benefit of examining the clothes dryer of the Plaintiff's MY03-00515 and the prior disclosed clothes dryers depicted in D46, D14, D48 and D55. In comparing all these, I observe and find, *inter-alia*, the similarities between these prior disclosed clothes dryers and that of the clothes dryer of the Plaintiff's MY03-00510, which can be briefly described as follows:

- 1) They all have collapsible parts. They are all modular in that they are manufactured as separate component parts that may be joined by connector means to form a clothes dryer.
- 2) They are all modular in that they are manufactured as separate component parts that may be joined by connector means to form a clothes dryer.

- 3) There are 2 lower portions both of which ends with roller wheels.
- 4) The 2 lower portions are positioned in place and strengthen by means of 2 cross bars.
- 5) An upper portion consisting of various bars and connecting means that may be assembled in relation to the base portions to constitute the essential clothes-hanging portion of the article, which is the clothes dryer.
- 6) The upper cross bars maybe so positioned as to number more than one so that each bar is parallel to each other. The said parallel bars being positioned and accommodated into the side lateral bar by a joint, connector or catchments means.
- 7) The means by which the parallel bars are held together and affixed into position with the lateral bar may be a connector or a t-joined kind.
- 8) The cross bar to which clothing are hanged may consist of just a single instead of a double parallel bar without the need for a t-joined connector piece.

In this context, it is relevant to note that all the witnesses agreed that the conception of configuration of the clothes dryer of the

Plaintiff's MY03-00515 is the same as that which is expressed in the prior disclosed clothes dryers depicted in D46, D14, D48 and D55. It is nowhere more clearly expressed than the evidence of Ernst Le Roux (PW4), a mechanical engineer, who had agreed when cross examined by Mr. S.F.Wong, learned counsel for the 1<sup>st</sup> - 3<sup>rd</sup> Defendants, that in light of the similarities, the objective and function, collapsible clothes dryers could be of similar features and substantially of the same design.

Now, learned counsel for the Plaintiff in her submission emphasized the t-shaped connector shown in the drawings of the Plaintiff's MY03-00515. She referred to the evidence of PW4 where, *inter alia*, the witness said:

*"... In particular, the cascading arrangement of the T-shaped connector on the lattice structure and their distinct curved shapes gives MY03-00515 individuality and makes MY03-00515 striking to the eyes. The curved shape of the t-connector appeal to the eye, are not functional and present on element of novelty.*

"Learned counsel then referred to another part of PW4's testimony as follows:

*“The overriding distinct feature of MY03-00515 is its t-shaped connectors. “*

Learned counsel for the Plaintiff in her closing submission in reply emphasized again the importance of the t-shaped connector when she said that there is absolutely no proof of any prior art where a clothes dryer has 12 bars or plastic t-shaped connector. She ended her submission on this point by saying at para 106 to the effect that the t-shaped connector is its most striking feature, which has been adapted and copied by the Defendants.

As it has been explained earlier, it needs to be made clear that the Plaintiff’s MY03-00515 is for the shape and configuration of the entire clothes dryer, not the t-shaped connector alone. I agree with the argument of Ms L.K. Chow, learned counsel for the 4<sup>th</sup> Defendant that it is the finished and completed three dimensional forms of the clothes dryer that must be the basis for comparison. I do not think it is right to separate and take only the t-shaped connector for comparison with the other prior articles.

The two dimensional forms of the drawings and the entire three dimensional form of the clothes dryer of the Plaintiffs MY03-00515

must be compared with the complete three dimensional form of the prior disclosed clothes dryers.

Now, the t-shaped connector is never sold separately but together with all other component parts and bars packed in a box. It is not a matter of claiming that the t-shape connector is a striking essential feature.

In any event, the Plaintiff's t-shaped connector is merely an improvement made to exhibit D55 by exchanging the metal connector with plastic connector.

To put it briefly, it is my findings that the striking similarities between the prior disclosed clothes dryers and the clothes dryer of the Plaintiff's MY03-00515 are that they all have collapsible parts, 2 lower portions both of that ends with roller wheels and are connected by 2 or more cross-bars which can be used to hang clothes, 2 upper portions consisting of lateral bars and connected by cross bars to form the essential clothes hanging portion of the article. By and large, the overall appearance and manifestation are unmistakable. In my judgment, the shape and configuration of the clothes dryer of the Plaintiff's MY03-00515 did not have any new visual impression when compared with those prior disclosed clothes dryers. In my view, the

dissimilarity between the shape and configuration of the clothes dryer of the Plaintiff's MY03-00515 and the other prior disclosed clothes dryers depicted in exhibits D46, D14, D48 and D55 are not substantial enough, that is to say they differ only in immaterial aspects. At best, the shape and configuration of the clothes dryer of the Plaintiff's MY03-00515 is an apparent adaptation and modification from the shape and configuration of these prior disclosed clothes dryers. This makes, to my mind, the clothes dryer of the Plaintiff's MY03-00515 is variant of clothes dryers commonly found and use in the market for clothes dryers.

In my view due to the overall objective and the numerous and overall similarities existing in both the prior disclosed clothes dryers and the clothes dryers of the Plaintiff's MY03-00515, this would overwhelm the t-shaped connector. In this way, the t-shaped connector is not striking or conspicuous to the eye of the court. That is to say, the inclusion of the t-shaped connector makes no obvious differentiation.

This is the reason why I am unable to agree with the submission of learned counsel for the Plaintiff that due to the inclusion of the t-shaped connector, the overall design of the clothes

dryer of the Plaintiff's MY03-00515 is materially different. On the other hand, I agree with the submission of learned counsel for the Defendants that the Plaintiff's MY03-00515 is at all time not "new" in its feature of shape and configurations as the Plaintiff's MY03-00515 do not differ in material details and respect.

In my judgment, the Defendants have successfully challenged the Plaintiff's MY03-00515 for lack of newness.

To sum it up, based on all the previously mentioned reasons, I allow the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Defendants' counterclaim; I order that the Plaintiff's MY03-00515 be revoked. Accordingly, I make the following order:

- (a) I grant an order in terms of prayers 18.1, 18.2, 18.4 and 18.5 of the counterclaim of the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Defendants.
- (b) I grant an order in terms of prayers 22.1, 22.3 and costs of the counterclaim of the 4<sup>th</sup> Defendant.

Consequently, I dismiss the whole of the Plaintiffs claim with costs.

**(AZAHAR MOHAMED)**  
Judge  
High Court Malaya  
Kuala Lumpur.

**Date:** 16 MAC 2010

**Counsel:**

*For the Plaintiff - M K Lam (Noor Hamimah with her); M/s V Chong W Lam*

*For the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants - S F Wong (A Dhevi with him); M/s Shearn Delamore*

*For the 4<sup>th</sup> Defendant - L K Chow; M/s Josephine L K Chow & Co*