

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI.**  
**Suit No.905 of 2014**

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DATE: ORDER WITH SIGNATURE(S) OF JUDGE(S).

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For hearing of CMA No.7417/2014

**19.09.2016**

Mr. Muneer Ahmed Khan, Advocate for the Plaintiff.  
Ms. Mehmooda, Advocate holding brief for Shaikh  
Abdul Malik, Advocate for the Defendants.

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Through the listed application, counsel for the Plaintiff has made a prayer to restrain the Defendants from infringing his trademark; the counsel in the Court presented a copy of the trademark as registered by the Plaintiff, which is a box, wherein perforations have been made for airing of the ingredients contained inside the box to the atmosphere. The learned counsel has on page 219 submitted original samples of the Plaintiff's and on page 221, the Defendant's products, which carry trademark "KING" and the boxes are of different in colour and trade dress, however, it could be noted that the perforations thereon are of identical configuration as compared to the Plaintiff's box. Since the Plaintiff intends to stop the Defendants from using physical configuration of a box of which no intellectual property right has been secured by it and as a matter of fact, the said box has been used by various traders over a long period of time, and since there is no monopoly in the shape and configuration, which is part of prior art as well as which does not have any distinctive feature, it's unwarranted to restrain the Defendants from selling their products on those grounds. This fact also finds support from a copy of the copyright as provided by the Plaintiff and reproduced on page 217, which is a shape of different

packaging, not used by the Defendant. To the contrary, the Defendants have procured the box having the perforations through his Copyright Registration No.29469, reproduced as annexure D to his Counter-Affidavit.

From the examination of the rival products, it appears that the restraint, which the Plaintiff is seeking is unwarranted, not protected by any law and that there exists no monopoly in the shape and configuration of the box itself, for which appropriate design right ought to have been protected. Notwithstanding therewith, the perforations are utilitarian performing a scientific job and ought not to be protected unless some intellectual property is introduced therein.

In the light thereof, I do not find any substance or any ground relying on which the Plaintiff could restrain the Defendants from using the products as reproduced on page 221. The instant application is, therefore, dismissed.

Judge

Manzoor