

JUDGMENT

1. The Plaintiff instituted the present action against the Defendants seeking to have the following substantive and interim reliefs:
 - a. issue summons on the defendants
 - b. make a declaration that the defendants in the course of commercial activities has acted contrary to honest practices constituting to acts of unfair competition;
 - c. Make an order for the accounting in profits in respect of the units produced encompassing the plaintiff's undisclosed/confidential/commercially sensitive business information in respect of the functionality of the plaintiff's "Power strict with lightning surge and over voltage protection device" as of the day of judgement
 - d. Make an order directing the first and /or 2nd defendant to pay the plaintiff's the profits disclosed in respect of prayer "C" hearing
 - e. Grant a permanent injunction preventing the defendants and/ or any person holding under the defendants and/ or through the defendants from in any way or manner and/or any of its subsidiaries from directly or indirectly reproducing the layout design marked as X6 in any form or manner and/or importing and/or offering for sale and/or selling and/ or distributing the layout design marked as X6 within a product.
 - f. Grant a permanent injunction preventing the defendants and/ or any person holding under the defendants and/ or through the defendants from in any way or manner and/or any of its subsidiaries from directly or indirectly Making use of and/or disclosing the undisclosed/ confidential information/ commercially sensitive business information belonging to an obtained from the plaintiff's version of the "Power strict with lightning surge and over voltage protection device".
 - g. Grant an interim injunction preventing the defendants and/ or any person holding under the defendants and/ or through the defendants from in any way or manner and/or any of its subsidiaries from directly or indirectly reproducing

- the layout design marked as X6 in any form or manner and/or importing and/or offering for sale and/or selling and/ or distributing the layout design marked as X6 within a product.
- h. Grant an interim injunction preventing the defendants and/ or any person holding under the defendants and/ or through the defendants from in any way or manner and/or any of its subsidiaries from directly or indirectly reproducing the layout design marked as X6 in any form or manner and/or importing and/or offering for sale and/or selling and/ or distributing the layout design marked as X6 within a product.
 - i. Grant an enjoining order preventing the defendants and/ or any person holding under the defendants and/ or through the defendants from in any way or manner and/or any of its subsidiaries from directly or indirectly reproducing the layout design marked as X6 in any form or manner and/or importing and/or offering for sale and/or selling and/ or distributing the layout design marked as X6 within a product
 - j. Grant an enjoining order preventing the defendants and/ or any person holding under the defendants and/ or through the defendants from in any way or manner and/or any of its subsidiaries from directly or indirectly Making use of and/or disclosing the undisclosed/ confidential information/ commercially sensitive business information belonging to an obtained from the plaintiff's version of the Power strip with lightning surge and over voltage protection device".
2. The Plaintiff also sought several injunctive reliefs against the Defendants. On January 18, 2019, the court granted an interim injunction against the Defendants as per prayer (h) of the plaint.
 3. The Plaintiff's action against the Defendants is based on an alleged act of unfair competition concerning a particular device, namely the Power Strip with Lightning Surge and Over Voltage Protection Device, which the Plaintiff claims to have invented.

4. The 1st Defendant is the Sri Lanka Telecom PLC, while the 2nd Defendant is a fully owned subsidiary of the 1st Defendant, and is responsible for the installation and maintenance of cable systems and network infrastructure.
5. Abeykoon Electrical Engineering PVT is a duly incorporated company founded by the Plaintiff's father. After pursuing higher education, the Plaintiff joined his father's business. According to the plaint, the Plaintiff developed a voltage protection device with several novel features. Similarly, the Plaintiff developed a Lightning Surge Protection Device, which also had several novel features.
6. In November 2017, the Plaintiff had a meeting with the Investment Promotion Manager of the 2nd Defendant company, where the Plaintiff introduced his version of Over Voltage Protection Device (OVPD) and demonstrated it.
7. Subsequently, on December 16, 2017, an official meeting was held at the premises of the second Defendant, where the Plaintiff demonstrated the OVPD to the representatives of both the 1st and 2nd Defendants.
8. The Plaintiff's main complaint is that the Defendants forcibly opened the devices submitted by the Plaintiff for testing purposes, contrary to the Plaintiff's instructions, thereby gaining access to the confidential technical information and technology used by the Plaintiff in designing those devices.
9. The Plaintiff averred that the 1st and 2nd Defendants' act of unlawfully opening the Plaintiff's prototype without the Plaintiff's consent and knowledge is a dishonest act contrary to honest trade practices.
10. The Plaintiff further asserts that the Defendants have been using the Plaintiff's undisclosed, confidential, and commercially sensitive business information specifically regarding the functionality of the Plaintiff's power strip with lightning

surge and over-voltage protection to benefit themselves or other parties through unlawful, illegal, and dishonest trade practices.

11. Thus, the Plaintiff contends that the Defendants are engaged in, or intend to engage in, unfair competition with the Plaintiff as outlined in Chapter XXXII of the Intellectual Property Act No. 36 of 2003.

12. The Plaintiff further asserts that the layout design of the integrated circuit in its power strip with lightning surge and over-voltage protection is an original creation, not simply a reproduction of another layout. This design is the result of the Plaintiff's intellectual effort.

13. Therefore, the Plaintiff asserts that the exclusive rights to the layout design of the integrated circuit are vested in the Plaintiff. Any attempt to reproduce this layout design, as found in the Plaintiff's power strip with lightning surge and over-voltage protection, without the Plaintiff's knowledge or consent, constitutes an unlawful and wrongful act under Section 148 of the Intellectual Property Act No. 36 of 2003.

14. In their answer, the Defendants assert that the Plaintiff has failed to plead or demonstrate any specific act or conduct by the Defendants that infringes the Plaintiff's purported rights. They state that all communications between the Defendants and the Plaintiff occurred solely on the basis of the Plaintiff representing the corporate entity Abeykoon Electrical Engineering (PVT) Limited. It is further stated that, at the time of handing over the devices referred to in the plaint, the Plaintiff was acting on behalf of Abeykoon Electrical Engineering (PVT) Limited, and the Defendants' dealings were exclusively with Abeykoon Electrical Engineering (PVT) Limited, not with the Plaintiff personally.

15. The Defendants further assert that there is no originality in the product or layout design claimed by the Plaintiff, as similar or identical technical features are present in most lightning surge protectors or over-voltage protection devices available on the market.

16. Furthermore, the Defendants deny that the device was intended solely for external testing, arguing that external testing alone would be inadequate to fully assess the device's functionality and safety attributes. The Defendants also deny that the Plaintiff ever informed or indicated that the device submitted contained confidential attributes.
17. Moreover, the Defendants deny that the tests they proposed were limited solely to evaluating the device's functionality. They state that the purpose of obtaining the device was to assess its nature, functionality, components, manufacturing attributes, and safety when used by customers. Consequently, the Defendants assert that extensive testing was necessary, as the device had not previously been tested by any accredited institution or commercially sold.
18. Furthermore, the Defendants assert that, as indicated in document P12, the device was provided to them expressly for technical investigations. They argue that a proper technical investigation of the product required more than simply testing its functionality. An in-depth inspection and analysis of the internal circuitry, assembly, and design were necessary, as these elements could not be examined without a thorough technical review.
19. The Defendants further assert that the Plaintiff has not provided any document or proof indicating that the scope of the investigation at the time of handing over the device was limited solely to functionality testing.
20. Additionally, the Defendants state that they are not involved in the business of manufacturing or producing equipment or devices for sale and, therefore, are not competitors of the Plaintiff as defined under Section 160 of the Intellectual Property Act.
21. Upon completing the tests, the Defendants concluded that the device did not meet the necessary quality or standards to be recommended to their customers and

subsequently rejected the offer made by Abeykoon Electrical Engineering (PVT) Limited.

22. The Defendants seek Rs. 100 million from the Plaintiff as compensation for the damage to their reputation caused by the Plaintiff's wrongful and malicious conduct, including the filing of this action against them.

23. At the pre-trial, following admissions were recorded by both parties.

1. Paragraphs 2(a), 2(b), 2(c), 3(a), 3(b) and 4 of the plaint.
2. It is admitted that the 2nd Defendant's Investment Manager, Chandana Hettiarachchi, met with the Plaintiff sometime in November 2017.
3. It is admitted that a follow up meeting was held between the Plaintiff and the representative of the 2nd Defendant on or around 16th December 2017.
4. It is admitted that a meeting was held between the Chief Regional Officer of the 1st Defendant and the Plaintiff on or around 27th December 2017.
5. It is admitted that a meeting was held on or around 26th March 2018 at the offices of the 1st Defendant attended by the Plaintiff, the Chief Regional Officer of the 1st Defendant, the General Manager of the 2nd Defendant and two other officers of the Defendants.
6. Receipt of "P15" & "P16" is admitted.
7. The Defendants admit that a follow up meeting was held between the Plaintiff (representing Abeykoon Electrical Engineering (Pvt.) Ltd) and the 2nd Defendant's representative in or around December 2017 as set out in paragraph 12 of the Answer.
8. It is admitted that the Plaintiff's device marked as Exhibit Y was submitted to the 1st and 2nd Defendants by the Plaintiff.
9. It is admitted that the Plaintiff's device marked as Exhibit Y opened by the 1 and 2nd Defendants in the circumstances pleaded in paragraph 17 of the answer.
10. The Defendants admit documents "P11" and "P12" annexed to the Plaint.

24. Parties are at variance of the following issues:

1. (a) Does the information within the Plaintiff's device marked as Exhibit Y (the said information which was handed over to court under confidential cover via markings 'X1' to 'X6') constitute Undisclosed/ Confidential/ Commercially Sensitive Business Information as envisaged in the Intellectual Property Act No. 36 of 2003?

(b) Does the information handed over to court under confidential cover via markings 'X1' to 'X6' constitute the information relating to the functioning of the Plaintiff's device marked as Exhibit Y?
2. (a) Was the Plaintiff's device marked as Exhibit Y handed over to the 1st and 2nd Defendants purely for the purposes of testing, and not for acquiring the information contained within the said device?

(b) Did the Defendants break open the Plaintiff's device marked as Exhibit Y without the consent of the Plaintiff?

(c) Are not the Defendants precluded from using and/or disclosing the information in respect of the Plaintiff's device marked as Exhibit Y acquired without the consent of the Plaintiff?
3. Does the opening of the Plaintiff's device marked as Exhibit Y by the 1st and 2nd Defendants amount to a breach of confidence in relation to Undisclosed/ Confidential/ Commercially Sensitive Business Information proprietary to the Plaintiff?
4. Are the 1st and 2nd Defendants precluded from replicating the Integrated Circuit Layout Design of the Plaintiff marked 'X6' without the Plaintiff's consent?
5. Have the Defendants failed to disclose a lawful defense in their Answer?
6. If one, several or all of the aforesaid issues are answered in favour of the Plaintiff, is the Plaintiff entitled to the reliefs prayed for by the Plaintiff through his Plaint and Replication?

7. (a) Has the Plaintiff failed to demonstrate any specific act or conduct of the Defendants or any circumstances which infringe upon his purported rights claimed in this action?
 - (b) Is the Plaintiff's action not predicated upon facts?
 - (c) Are the Plaintiff's allegations based on conjecture?
 - (d) Is no factual or imminent infringement of any right of the Plaintiff pleaded in the Plaintiff?
 - (e) Do the Plaintiff and/or the documents annexed to the Plaintiff not disclose any cause of action against the Defendants?
 - (f) Is the Plaintiff's action premature, speculative and imaginary?
 - (g). Is the Plaintiff's action therefore wholly misconceived both in law and in fact?
 - (h) Ought the Plaintiff's action therefore be rejected and dismissed in limine?

- 8.(a) Had the Plaintiff not had any dealings or communications in his individual capacity with the Defendants?
 - (b) Were all communications conducted solely between the Defendant and Abeykoon Electrical Engineering (Pvt) Ltd?
 - (c) Was the Plaintiff acting on behalf of Abeykoon Electrical Engineering (Pvt) Ltd.?
 - (d) Did the Defendants deal only with Abeykoon Electrical Engineering (Pvt.) Ltd?
 - (e) Was the letter P15 sent by Abeykoon Electrical Engineering (Pvt) Ltd. And not the Plaintiff?
 - (f) Has the Plaintiff failed and neglected to make Abeykoon Electrical Engineering (Pvt) Ltd. a party to this action?
 - (g) Is the Plaintiff therefore guilty of non-joinder?
 - (h) Does the Plaintiff not have locus standi to have and maintain this action?
 - (i) Therefore, should the action be dismissed in limine?

9.(a) Did Abeykoon Electrical Engineering (Pvt) Ltd make an unsolicited proposal to manufacture and provide lightning protectors and over voltage protectors?

(b) Consequent to discussions with the Defendants, did Abeykoon Electrical Engineering (Pvt) Ltd produce a device incorporating a lightning surge protector and an overvoltage protector?

(c) Was a meeting sought to show the said device to the Defendant?

(d) At a meeting held on 27th December 2017, did the Plaintiff representing Abeykoon Electrical Engineering (Pvt) Ltd. Show the device to the Defendant?

10.(a) Did the Defendants inform Abeykoon Electrical Engineering (Pvt) Ltd. By email P11 to submit a sealed proposal regarding the device it had offered to manufacture?

(b) According to P12, had the said device been delivered to the Defendants for the express purpose of “technical investigations”?

11.(a) Did the Defendants obtain the device only for the purpose of checking its nature, functionality, components, manufacturing attributes and its safety?

(b) Did the Defendants have a duty to ensure that the device would be safe and would not cause any damage to any person(s) or property when used?

(c) Did the Defendant have a duty to conduct extensive tests as to the device as it had never been previously tested by any accredited institution or commercially sold?

(d) Was it therefore imperative for appropriate tests to be carried out to the internal circuitry and components in the device?

12. As Pleaded in Paragraph 17 of the Answer;

- a. Were the Defendants under a duty to subject the device to rigorous and in-depth testing?
- b. Could the device not be tested without ascertaining if its safety attributes and internal layout complied with the required safety standards?
- c. Was it necessary for the device to be connected to a power source emitting extremely high voltage electricity simulating lightning and power surges?
- d. Was it unsafe to test the functionality of the device unless the internal safety mechanism, assembly and circuitry were tested and verified?
- e. Therefore, did the Defendants dismantle the outer cover and examine the internal circuits, assembly and components of the device?
- f. Did the Defendants thereafter conduct in depth tests with regard to the circuitry and the materials used in the device to ascertain its safety and internal functions?
- g. Was a report prepared by the Defendants after testing the device?

13. As Pleaded in Paragraphs 17 and 19 of the Answer;

- a. Did the Defendants find that the said device was of poor quality and was not up to the required standard?
- b. Therefore, was it determined that the device failed internal safety requirements?
- c. As such was no further testing of its functionality done by the Defendants?
- d. Did the Defendants act in good faith when obtaining the device for in-depth testing as described above?
- e. Have the Defendants at all times acted legitimately, reasonably and in good faith?

14. As Pleaded in Paragraph 23 of the Answer:

- a. Is the purported layout design claimed by the Plaintiff not original?

- b. Is the purported layout design claimed by the Plaintiff not entitled to any protection?
- c. Had the Plaintiff not commercially exploited the said device at or prior to the time of handing over to the Defendants?
- d. Had the purported layout design been submitted for registration only the 30th May 2018 almost 6 months after the said device having been handed over to the Defendants for testing?

15. As Pleaded in Paragraph 24 of the Answer:

- a. Has the Plaintiff no legitimate entitlement or right to any purported layout design as claimed in the Plaintiff?
- b. Does the purported layout design not comply with the mandatory requirements of section 147 of the Intellectual Property Act?
- c. Is the purported layout design not original?
- d. Is the purported layout design commonplace among creators of layout designs and manufacturers of integrated circuits?
- e. Are there many lightning and voltage surge protection devices commercially sold in the market that incorporate identical or similar integrated circuits and layout designs to that purportedly claimed by the Plaintiff?
- f. Is the Plaintiff not entitled to protection for the purported layout design by virtue of the provisions in section 148(2) of the Intellectual Property Act?
- g. Has not the Plaintiff commercially exploited the purported layout design referred to in the Plaintiff in relation to any product or device?
- h. Is the Plaintiff not entitled to protection of the purported layout design by virtue of the provisions in section 149(1) of the Intellectual Property Act?

16. As Pleaded in Paragraph 25 of the Answer:

- a. Did the Plaintiff not submit any material or information to the Defendants categorizing same to be confidential?
- b. Was the information provided by the Plaintiff already in the public domain?

- c. Has the Plaintiff not disclosed any information which falls within the scope of undisclosed information within the meaning of section 160 of the Intellectual Property Act?
- d. Had the Plaintiff not obtained from Defendants any written confidentiality obligation at the time of handing over the device?
- e. According to P12 was the device handed over expressly for the purpose of 'further technical investigations'?
- f. Has the Plaintiff failed to describe the scope or parameters of investigation to be carried out on the device handed to the Defendants?
- g. Did the Plaintiff not expressly stipulate any restrictions applicable to the evaluation of such device?
- h. Has the Plaintiff failed and/or neglected to define any restriction with regard to the "technical investigations" the Defendants were permitted to carry out?

17. As Pleaded in Paragraph 25 of the Answer:

- a. Do the evaluations, inspection, and analysis conducted by the Defendants not violate or infringe any right as alleged by the Plaintiff?
- b. Are the technical investigations conducted by the Defendants within the legitimate rights of evaluation and analysis as stipulated in section 148(2) of the Intellectual Property Act?

18. As Pleaded in Paragraph 25 of the Answer:

- a. Does the device claimed by the Plaintiff not satisfy the requirements of novelty, industrial applicability or contain any inventive step?
- b. Are the device and the attributes incorporated therein obvious to a person having ordinary skill in the art?
- c. Are the Plaintiff's device and attributes incorporated therein not entitled to any patent, layout design or other intellectual property claims under the law?

19. As Pleaded in Paragraphs 26 and 32 of the Answer;

- a. Are the Defendants not engaged in manufacturing, importing or marketing lightning and voltage surge protection devices?
- b. Are the Defendants not engaged manufacturing, producing, or sale of any equipment or products and in particular any product similar to that claimed by the Plaintiff?
- c. Therefore, are the Defendants not competitors in relation to any product similar to that claimed by the Plaintiff?
- d. Is there no factual or imminent likelihood of any infringement of any purported right as claimed by the Plaintiff due to current and future business activities of either of the Defendants?

20. (a) Do the Defendants only recommend third party supplied devices and equipment to customers for use with telecommunication and ICT facilities provided by the 1st Defendant?

(b). Are the Defendants obliged in law to ensure that products and devices recommended for use by their customers meet required safety and regulatory standards?

(c) Are the equipment/devices sourced or obtained by the Defendants required to be certified by the Telecommunications Regulatory Commission of Sri Lanka (TRCSL)?

21. As Pleaded in Paragraphs 32-39 of the Answer:

- a. Has the Plaintiff instituted this action with a sinister and collateral motive of gaining publicity and creating a reputation which he never had?
- b. Is the Plaintiff's action *mala fide* and an abuse of process of this Court?
- c. Had the Plaintiff relied upon deliberate misrepresentations and suppressions of material facts?

- d. Has the Plaintiff deliberately suppressed that he has never previously invented or produced any device, equipment, integrated circuit or layout design which has been commercially exploited?
- e. Is the Plaintiff not a known inventor, supplier or manufacturer of any electrical products?
- f. Has the Plaintiff attempted to mislead this Court that he was an inventor of such products?
- g. Has the Plaintiff suppressed the fact that similar lightning surge protectors and voltage surge protectors are commercially sold and available in the market?

22. As Pleaded in Paragraphs 42- 50 of the Answer;

- a. Has the Plaintiff filed the present action without having any legitimate right?
- b. Has the Plaintiff filed the present action solely for the purpose of harassing and intimidating the Defendant and to achieve a collateral purpose?
- c. Has the Plaintiff caused newspaper and online articles containing gross misrepresentations of facts to be published?
- d. Is the Plaintiff attempting to use the present action to gain publicity for himself?
- e. Has the Plaintiff filed the present action to create a name and reputation for himself and/or his product which never previously existed?
- f. Has the Plaintiff not come to Court with clean hands?
- g. Has the Plaintiff's conduct resulted in grave and irreparable harm and damage to the Defendants?
- h. If so, what is the quantum of damages suffered by the Defendants?

23. If any one or more or all the issues numbered 7-22 are answered in favour of the Defendants, are the Defendants entitled to the reliefs as prayed for in their answer?

25. At the trial, the Plaintiff presented his evidence-in-chief through an affidavit marked as 'A,' along with documents marked P1-P16, X1-X6, and Y. In the affidavit, the Plaintiff detailed his academic qualifications, work experience, and the process by which he developed the device mentioned in the plaint. He also described how he introduced his devices to the Defendants and the subsequent events that led to the Defendants testing the device.
26. According to the Plaintiff, on or around 27.12.2017, a meeting was called with the Chief Regional Officer of the 1st Defendant, where the Plaintiff demonstrated his version of Power Strip with Lightning Surge and Over Voltage Protection Device.
27. On or around 02.01.2018, the Plaintiff received an email from the CEO's office of the 2nd Defendant requesting the Plaintiff to submit the device to the 2nd Defendant. A copy of the said email was marked as P11.
28. The Plaintiff contends that he informed the Defendants that the technology used in manufacturing the device is confidential. The Defendants assured him that an external test would be conducted to evaluate the device's functionality and to prepare a technical report.
29. The Plaintiff further states that on January 16, 2018, he submitted his device to the 2nd Defendant and was informed that it would be tested within two weeks from the submission date. He was also assured that a report evaluating the performance of his invention would be provided to him.
30. However, after a period of six weeks, the Defendants contacted the Plaintiff by phone and asked him to collect the device. On March 6, 2018, when the Plaintiff went to collect the device, he discovered that his prototype had been forcefully opened.

31. In light of the evidence presented by the Plaintiff, the central question in the Plaintiff's claim is whether the tests conducted by the Defendants on the Plaintiff's device contradicted the representations made by the Plaintiff. It is also significant to determine whether the Defendants, by forcefully opening the device, acquired commercially sensitive information regarding its functionality and thus engaged in unfair competition.
32. The Plaintiff contends that the technology used in the device in question differs from typical devices available in the market. Furthermore, the Plaintiff states that the unique feature of the device lies in its combination of two sections: an integrated service and a mechanical arrangement of the circuit.
33. According to the Plaintiff's evidence, the Defendants were aware that the device was part of a patent application, as indicated in the acknowledgment letter. It is evident that, even after the alleged incident, the Plaintiff sold three or four devices to a few individuals. However, the Plaintiff further states that due to the pending case, he has been unable to market the device any further.
34. The Plaintiff consistently maintains that there was no need to physically open the device for testing purposes, and he never consented to the device being opened and examined.
35. During cross-examination, the Plaintiff admitted that there are numerous products designed to protect appliances from lightning and voltage fluctuations. However, he asserted that the methodology used in the device in question differs from that of any existing products in the market.
36. As the Plaintiff admits, neither the 1st Defendant nor the 2nd Defendant is engaged in manufacturing or selling voltage protectors or lightning protectors. The Plaintiff testified as follows:
- Q. So now here is the position. Sri Lanka Telecom does not manufacture or sell voltage protectors or lightning protectors?***

A. *Yes, your honor.*

Q. *So that the 2nd Defendant not engaging sale or production or manufacturing of such products. They provide telecom services, internet connections, mobile connections and similar services?*

A. *Yes, your honor.*

(Vide pages 10 & 11 of the proceedings dated 22.03.2023).

37. It is significant to note that neither the Plaintiff's affidavit nor the plaint asserts that the Defendants are unfairly competing with the Plaintiff or that there is a possibility they might compete with the Plaintiff in the future. As per proceedings dated 11.07.2023, at page 2 and 3, the Plaintiff admitted that unfair competition could occur if the Defendants manufacture a voltage stabilizer or lightning surge protector, or if they engage a third party to manufacture a device using the information contained in the device created by the Plaintiff.

38. The Plaintiff testified further as follows:

Q. *Now in your affidavit as well as in the plaint that was filed in Court, you have assumed the position that the Defendants are either unfairly competing with you or there is a possibility that they might compete you unfairly in the future?*

A. *Correct, your honor.*

Q. *So, unfair competition that you say could occur if the Defendants manufacture a voltage stabilizer or lightning surge protector or get some third party to manufacture a device using the information that is contained in the device that you manufactured and start selling that is when unfair competition occur?*

A. *Correct, your honor.*

39. An application for a patent was made to the Registrar of Patents on January 19, 2018, three days after the device was given to the Defendants for testing. In the patent application, the Plaintiff clearly described how he arranged the device and its internal circuits.
40. From January 19, 2018, the patent application became part of the public record, and anyone could examine it if needed, as the application contains all the information related to the specific device.
41. As observed from the Plaintiff's testimony during cross-examination, the Plaintiff demonstrated the operation of the device to the Defendants, as referenced to in paragraph 19 of the affidavit. Following that, there was a discussion about a lightning surge protector as well. The Defendants requested the Plaintiff to combine the lightning surge protector and the over-voltage protector into one device. This indicates that the Defendants were not satisfied with the presented device at the initial stage; therefore, the Plaintiff was asked to modify it by incorporating both the lightning protector and the high-voltage protector into a single unit.
42. As the Plaintiff admitted during cross-examination, none of the Defendants were engaged in selling, marketing, or importing lightning surge protector devices; however, they were interested in recommending something to their clients when setting up an internet system and a modem. The Plaintiff further acknowledged that if his device was deemed suitable for the services provided by the first and second Defendants to their clients, they would recommend it to them. However, at the time of the meeting with the Defendants, that possibility had not been discussed.
43. It is important to note that when the Plaintiff provided the Defendants with the device for inspection, it had not yet been subjected to a simulated lightning charge. Furthermore, the Plaintiff did not have the technical capacity to perform

such a test. Therefore, it is clear that the Defendants were required to conduct further testing to verify the functionality of the device.

44. Thus, it is evident that the Plaintiff was well aware of the extent of the technical investigations that the Defendants were supposed to perform. The document marked as P12 further confirms this position.

45. The most decisive aspect of the Plaintiff's testimony is that he had not informed the Defendant in writing about the scope or parameters of the investigations to be conducted regarding the device in question. The document marked as P12 is the letter issued by the Plaintiff when the device was handed over to the Defendants for testing purposes.

46. However, it is important to emphasize that nowhere in the letter does the Plaintiff advise the Defendant not to open the device during testing. Nor does he specify that it should be tested only by plugging it into an electrical or lightning simulator, or an over-voltage simulator. More importantly, the Plaintiff was uncertain whether he had provided such advice, even orally.

47. The Plaintiff's testimony during cross-examination on July 11, 2023, establishes that he did not impose any restrictions on the Defendants regarding how the device should be tested.

The Plaintiff testified as follows:

Q. Now when you gave this device, did you give in writing anything to say these are the tests that you can conduct, this is the scope of the that investigation or the technical investigation that you refer to that should be conducted, did you tell the Defendants?

A. No, your honor. It was mentioned these surge protector, high voltage surge protector so, in order to check certain voltage conditions, technical people from

such a company know actually what you use and not to use to check such device, that is how they taken it.

Q. Now your question is that the Defendants should not have opened the device?

A. Yes, your honor.

Q. When you gave this device for testing, you issued this letter P12. You have signed P12?

A. Yes, Your Honor.

Q. Did you say that this device should not be opened and only tested by plugging it to some electrical or lightning simulator or over voltage simulator?

A. No your honor, I have not mentioned in the document itself, I have not mentioned such way.

Q. Did you mention verbally?

A. I may have, I am not sure Your Honor

48. What is discernible from the above evidence is that the Plaintiff never informed or instructed the Defendants not to open the device during the testing process. A careful examination of the Plaintiff's evidence reveals that, since he did not use screws to secure the outer cover of the device but instead sealed it with adhesives, the Plaintiff expected the Defendants would refrain from opening the device during testing. However, as the Plaintiff admitted, no written or oral instructions were provided to the Defendants in that regard.

49. Although the Plaintiff claims that the Defendants could have tested the technical parameters of the device without opening it, he has not substantiated this assertion with reliable evidence. The following evidence from the Plaintiff indicates that once the device is handed over to a party for testing, it is that party's prerogative to decide what procedures to follow.

Q So, in your view, your position is that the Defendants could have tested these technical parameters of this without opening this device?

A. Yes your honor. If they have their labs and such company backed capacity. They should have the protection devices prior to plugin to that device. So, whatever, that is plugged into if the device has a fault, they will be able to shut down itself and then not let any harm to happen.

Q. I suggest to you witness that the position is totally incorrect and misconceived. You misunderstood that is not the correct position. In the industry that is not the accepted position. You agree or disagree?

A. Actually, that is not within my power to check, actually if I have given the device to another party to check that their condition whether they have certain devices or checking parameters or how they have going to follow the criteria is up to them your honor. Actually, manufacture the device is up to that is my responsibility. Checking the device is up to them as they have requested.

Q. You don't also know at the time you handed over the device, you didn't know the type of equipment or the scope of the facilities that were available with the Defendant to conduct the testing?

A. I did not know whether they had the devices or equipment your honor.

(Vide pages 37 and 38 of the proceedings dated 11.07.2023)

50. Thus, it is difficult, if not impossible, to infer that the Defendants acted dishonestly or contrary to the Plaintiff's instructions when testing the device. The Plaintiff claims that the device he designed contains novel features and has also been submitted for a patent.

51. A widely-cited test described by Oliver J. in ***Windsurfing International Inc vs. Tabur Marine [1985] RPC 59***, have four stages.

➤ The court must identify the inventive concept embodied in the patent;

- It must assume the mantle of the normally skilled but unimaginative addressee in the art at the priority date and impute to him what was, at that date, common general knowledge in the art in question;
- It must identify what, if any, differences exist between the matters cited as being known or used and the alleged invention; and,
- It must ask itself whether, viewed without any knowledge of the alleged invention, those differences constituted steps which would have been obvious to the skilled man, or whether they required any degree of invention.

52. In ***William vs Nye (1890) 7 RPC 62***, CA a patent was struck out for lack of inventive step because it was simply the combination of two known machines, a mincing machine and a sausage-filling machine.

53. The question of inventive step is, of course, a question of fact in each case, and if there is no inventive step, the application will fail for obviousness. ***Pozzoli SpA vs BDMO SA [2007] EWCA Civ 588***. In this case an application for a storage device for CDs which failed for obviousness.

54. In the present case, although the Plaintiff claims that the device in question includes certain novel features or inventive steps, the Plaintiff has failed to disclose what these novel features or inventive steps are.

55. The substantive reliefs sought by the Plaintiff are:

- b) a declaration that the Defendants in the course of commercial activities has acted contrary to honest practices constituting to acts of unfair competition,
- c) an order for the accounting of profits in respect of the units produced encompassing the Plaintiff's undisclosed/confidential/commercially sensitive business information in respect of the functionality of the Plaintiff's power strip with lightning surge and over voltage protection device as of the day of judgment, and,
- d) an order directing the 1st and 2nd Defendants to pay the Plaintiff the profits disclosed in the above prayer.

56. As the Plaintiff's claim against the Defendants is based on unfair competition, Section 160 of the Intellectual Property Act No. 36 of 2003 is highly relevant.

Section 160 reads:

(1) (a) Any act or practice carried out or engaged in, in the course of industrial or commercial activities, that is contrary to honest practices shall constitute an act of unfair competition.

(b) The provisions of this section shall apply independently of, and in addition to, other provisions of the Act protecting inventions, industrial designs, marks, trade names, literary, scientific and artistic works and other intellectual property. Interpretation. Unfair competition and undisclosed information.

(2) (a) Any act or practice carried out or engaged in, in the course of industrial or commercial activities, that causes, or is likely to cause, confusion with respect to another's enterprise or its activities, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition.

(b) Confusion may, in particular, be caused with respect to —

- a. a mark, whether registered or not;*
- b. a trade name;*
- c. a business identifier other than a mark or trade name;*
- d. the appearance of a product;*
- e. the presentation of products or services;*
- f. celebrity or a well-known fictional character.*

57. To qualify as an act of unfair competition, the act complained of must have been done contrary to honest practices in the conduct of industrial or commercial activities.

58. The Defendants provide internet services to customers through modems. The purpose of introducing a lightning surge protector is to safeguard these

modems and other devices from lightning surges and voltage fluctuations during use.

59. Therefore, before recommending any device to their customers, the Defendants must ensure that the technology, quality, and functionality of the device comply with the required standards.

60. Therefore, it is illogical to expect the Defendants to recommend the Plaintiff's device to their customers without conducting an internal analysis to assess the product's quality and functionality.

61. The Plaintiff also relies on the report marked as X5, prepared by the Arthur C. Clarke Center, following its testing of the device in question. The Plaintiff contends that the Arthur C. Clerk Center did not open the device during its testing. It is important to note that there is a clear distinction between the objectives of the tests conducted by the Defendants and those performed by the Arthur C. Clerk Center.

62. The report X5 was prepared based solely on tests conducted to assess the device's functionality and does not indicate that the device is approved for use with any specific product or equipment. In contrast, the Defendants conducted tests with the intent to recommend the device to their customers for protecting the internet equipment supplied by the Defendants from lightning surges and voltage fluctuations.

63. During cross-examination dated 11.07.2023, the above position was admitted by the Plaintiff at page 40,41 as follows:

Q. Then item 6 Arthur C Clerk Center will not of any opinion advice or recommend with respect to the suitability or otherwise of the item for any application or use.

A. Correct Your honor.

Q. So what the Arthur C Clerk Center did was according to the report itself is test and see whether it functions?

A. Correct your owner.

Q. But on the other hand, the Defendants in this case were going to collaborate with you if the equipment was suitable to offer it to their customers saying this is a suitable equipment to be used?

A. Correct your honor.

Q. So, Arthur C Clerk Center is categorically saying we are not going to recommend or suitable for use, they have categorically said that?

A. They are not recommending your honor.

64. After the Plaintiff concluded presenting evidence, the Defendants called witnesses. Chaminda Gunathilake was the first witness to testify on behalf of the Defendants. His evidence-in-chief was also submitted through an affidavit, along with documents marked as D1 to D5(D).

65. The witness categorically stated that the Defendants are not engaged in the business of manufacturing, importing, or marketing any equipment or devices related to lightning and voltage surge protection. The Defendants only recommend third-party-supplied devices and equipment to customers, as needed, for use with or in relation to the telecommunication and ICT services provided by the Defendants.

66. Any equipment or devices obtained or sourced by the Defendants must be certified by the TRC. The witness also explained the events that led to the Plaintiff handing over the device to the Defendants. At no time did the Plaintiff inform the Defendants that the device submitted contained confidential features.

67. The witness further stated that the purpose of obtaining the device was to identify it, examine its nature, functionality, components, manufacturing attributes, and ensure its safety for customer use.

68. Moreover, the witness stated that they needed to ensure the device could be effectively used at customers' premises to protect appliances and equipment connected to the Defendants' communication apparatus from high voltage surges. It was further stated that the Plaintiff explicitly mentioned that the purpose of handing over the device was for technical investigations, as indicated in the document marked P12.
69. The witness states that the Plaintiff was fully aware that no technical investigation of the product would be conducted based solely on its functionality. Additionally, the witness notes that the Plaintiff has not submitted any documentation indicating that the scope of the investigation at the time of handing over the device was limited to testing its functionality.
70. The witness further explained the procedure they followed in testing the device. Since the Defendant found that the device was of poor quality and did not meet the required standards, and because it failed internal safety requirements, no further functionality testing was carried out by the Defendants.
71. The witness further states that after the device was delivered to the Defendants for testing, the Plaintiff did not communicate in writing or otherwise the scope of the investigations that could be conducted regarding the device. Furthermore, the Defendants' witness asserts that there is no originality in the product layout design claimed by the Plaintiff, as similar or identical technical features are found in most lightning surge protectors available on the market.
72. More importantly, the witness states that the layout design does not comply with the mandatory requirements of Section 147 of the Intellectual Property Act and therefore does not qualify for protection under Section 148(2) of the Act.
73. The documents marked as D3A to D3L indicate that similar products are available in the market. In response to questions posed during cross-examination, the witness explained the necessity of examining the internal

circuitry before connecting the device to the power supply. If the internal circuits are not properly designed, there is a risk of the device exploding when connected to the power supply.

74. Although this witness was extensively cross-examined, the credibility of his evidence remains intact. Furthermore, the witness's testimony regarding the quality expected for recommendations to customers, as well as the necessary precautionary tests to ensure safety, has not been disputed or challenged by the Plaintiff.

75. The second witness called by the Defendants is M.D. Karunananda, an engineer associated with Sri Lanka Telecom (SLT). His evidence-in-chief was presented through an affidavit, along with the documents marked as D2 to D5(d).

76. D2 is the report prepared by the witness regarding the device in question. This witness also states that the Plaintiff never informed him that the submitted device had any confidential features.

77. According to his evidence, it is the Defendants' responsibility to conduct the necessary tests to ensure the safety of the device before recommending it to their customers who use internet services.

78. Furthermore, since there is no written agreement between the Plaintiff and the Defendant company to have the relevant device tested or any agreement on any conditions regarding the device, the Plaintiff's failure to specify restrictions at the time the device was handed over to the Plaintiff can be pointed out as a reason for negligence on the part of the Plaintiff.

79. It is significant to emphasize that in the absence of any express written or verbal instructions from the Plaintiff, the procedures followed by the Defendants in

conducting the technical investigation of the device cannot be considered as contrary to honest practices in trade and commerce.

80. Since the Defendant company has failed to prove that it has acted with dishonest intent in relation to the Plaintiff's device in accordance with section 160(1) (a) of the Intellectual Property Act, it appears that no unfair competition has arisen in this case.

81. The witness also states that there is no originality in the product or the purported layout design claimed by the Plaintiff, and that the Plaintiff had not commercially exploited the product at the time it was handed over to the Defendants. While referring to D2, the witness explained how the device was technically investigated and why he did not recommend it for further investigation through the Arthur C. Clerk Center.

82. The Defendants do not have the facility to test for lightning surges, as such testing can only be conducted at the Arthur C. Clerk Center. According to the document marked as X5, the device was submitted to the Arthur C. Clerk Center for testing, and a report was obtained on May 9, 2018. However, the device was submitted to the Defendants on January 23, 2018.

83. The witness admitted that he was not aware of the pending patent application when he opened the device for testing. He further acknowledged that had he known it was submitted for patent, he would not have opened it for testing.

84. According to the witness, the device had no identifying name when it was handed over to the Defendants for investigation. As a result, there is no proof indicating whether the device submitted for the patent was the same or a different device.

85. The witness also testified that the Defendants do not have facilities to test the device for lightning surges, although they do have facilities to test for voltage fluctuations.

86. Nevertheless, due to the device's poor design, the witness chose not to subject it to the voltage fluctuation test, explaining the specific defects and the reasons for concluding it was poorly designed.

87. The Plaintiff's contention that the information contained in the device is confidential cannot succeed because the information in question is not identified with sufficient detail.

88. As held in ***Coco vs Clark [1969] RPC 41***, in order to establish a claim for breach of confidence, the claimant must show that:

- The information is capable of being protected;
- The Defendant owes the claimant an obligation to keep the information confidential; and,
- The Defendant used the information in a way that breached the duty.

89. In ***Thomas Marshall (Exports) Ltd. vs Guinle [1979] Ch 227***, Megary VC suggested that four elements were necessary when considering the quality of confidence:

- The release of the information would be injurious to the owner of it or of advantage to the rivals;
- The owner must believe that the information is confidential, ie not in the public domain;
- The owner's belief in the above is reasonable; and,
- The information must be judged in the light of the usage and practices of the industry concerned.

90. In ***Devon & Cornwall Autistic Community Trust vs. Pyrah & Others [2012] EWPC 46*** it was held:

If a claimant does not identify the information in sufficient detail, their action may be struck out on the basis that it is speculative and an abuse of process.

91. In ***Ocular Sciences [1997] RPC 289, 359***, Laddie J. reiterated this position in which he said that the claimant should give full and proper particulars of all confidential information upon which they intend to rely. It is further stated that if the claimant fails to give proper particulars, it is open to the court to infer that the purpose of the litigation is harassment rather than the protection of the claimant's rights. On this basis, the action could be struck out as an abuse of process.
92. In the present case, the Plaintiff has failed to specify what confidential information is related to the device submitted to the Defendants. The evidence presented by the Defendants clearly establishes that similar devices are available in the market. More importantly, since the Plaintiff has not demonstrated any novel features within the device, the question of confidential information does not arise.
93. Furthermore, there is no evidence that the Defendants have used or intend to use any technology or information related to the device commercially, as they are not engaged in the commercial production, import, or distribution of lightning surge protectors or voltage fluctuation protectors. In fact, this position was admitted by the Plaintiff during cross-examination.
94. As can be observed from the relief sought in the plaint, the Plaintiff instituted this action on the basis that the Defendants are commercially engaged in manufacturing, importing, or selling devices similar to the one submitted by the Plaintiff. This further demonstrates that the Plaintiff's action is based on mere speculation rather than factual evidence.
95. It is also pertinent to note that the evidence presented by both parties indicates that it was Abeykoon Electrical Engineering PVT Ltd. that dealt with the Defendants, not the Plaintiff in his individual capacity. It appears that the Plaintiff was merely representing Abeykoon Electrical Engineering PVT Ltd.

96. The Plaintiff is also not entitled to protection under Chapter XXXI of the Act, as the device in question lacks originality. Accordingly, I shall proceed to answer the issues as follows:

97. Based on the above factual and legal analysis, I shall dismiss the Plaintiff's action.

98. The Defendants claim Rs. 100 million in damages for the harm caused to their reputation and credibility due to the Plaintiff's initiation of this action. The Defendants allege that the institution of the present action by the Plaintiff was wrongful and malicious.

99. Since the Defendants are not commercially engaged in manufacturing, importing, or selling devices similar to the one submitted by the Plaintiff, I am of the view that the Defendants' reputation or credibility was not tarnished by this case. More importantly, the Defendants have not presented sufficient evidence to prove the damages they allege were caused to them.

100. Therefore, I am not inclined to award damages to the Defendants. Accordingly, I dismiss the Defendants' claim in reconviction.

101. Nevertheless, I have not overlooked the frivolous and vexatious nature of the Plaintiff's action, particularly the speculative and baseless nature of the reliefs sought.

102. Therefore, the Plaintiff is ordered to pay costs in the sum of Rs. 750,000 to the Defendants, which, in my opinion, will suffice to meet the ends of justice.

103. Accordingly, I answer the issues as follows:

1. (a) No

(b) Yes

2. (a) Yes

(b) Only the act of breaking and opening the device has been established.

(c) No

3. No

4. No

5. No

6. No

7.

(a) Yes

(b) Yes

(c) Yes

(d) NO

(e) Not disclosed

(f) Yes

(g) Yes

(h) Yes

8.(a) Yes

(b) Yes

(c) Yes

(d) Yes

(e) Yes

(f) Yes

(g) Yes

(h) Yes.

(i) Yes

9.(a) Yes

(b) Yes

(c) Yes

(d) Yes

10.(a) Yes

(b) Yes

11.(a) Yes

(b) Yes

(c) Yes

(d) Yes

12.

(a) Yes

(b) Yes

(c) Yes

(d) Yes

(e) Yes

(f) Yes

(g) Yes

13.

(a) Yes

(b) Yes

(c) Yes

(d) Yes

(e) Yes

14.

(a) Yes

(b) Yes

(c) Yes

(d) Yes

15.

(a) Yes

(b) Yes

(c) Yes

(d) Yes

(e) Yes

(f) Yes

(g) Yes

(h) Yes

16.

(a) Yes

(b) Yes

(c) Yes

(d) Yes

(e) Yes

(f) Yes

(g) Yes

(h) Yes

17.

(a) Yes

(b) Yes

18.

(a) Yes

(b) Yes

(c) Does not arise in view of the answers given Yes

19.

(a) Yes

(b) Yes

(c) Yes

(d) Yes

20.

(a) Yes

(b) Yes

(c) Yes

21.

(a) Not proved

(b) Yes

(c) Yes

(d) Yes

(e) Yes.

(f) Yes

(g) Yes

22.

(a) Yes

(b) Not proved.

(c) Not proved.

(d) Not proved.

(e) Not proved.

(f) Not proved.

(g) Not proved.

(h) Based on the answer given to the above question, does not arise.

23. Yes

104. In view of the above answers given, I hereby dismiss the Plaintiff's action against the Defendant and the Claim in reconvention of the Defendant.

105. Cost is summarily assessed in the sum of Rs. 500,000/-

Pradeep Hettiarachchi,

Judge of the Commercial High Court

Colombo 12.

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