

**SUMMARY OF INFORMATION RELEVANT OR PERTAINING THE TRADE DRESS
SHAPE AND IN GOODS IT IS APPLIED TO:**

BACKGROUND INFORMATION:

- Vaughan Hutchinson is the Applicant/Proprietor of patent applications, filed in Europe and the USA, and of granted patents in New Zealand, Australia, Canada, South Africa, Japan and China - for a splitting apparatus.
He and his daughter, Ayla Hutchinson, are the co-inventors listed in the patent documents.
- Vaughan Hutchinson is the sole director of Kindling Cracker Limited - incorporated on 3 March 2015 – that took over the commercialisation and promotion of the invention around the world.

The invention was created and the designs relevant to the physical versions were devised, BEFORE the company was incorporated on 03 March 2015

The company is licensed to use, promote and sell the invention.

Details are provided below, along with a url for the company website and a link to the Facebook page.

[KINDLING CRACKER LIMITED \(5618665\) \(NZBN: 9429041634202\) Registered NZ Limited Company](http://www.kindlingcracker.com/)

175 Surrey Road, Rd 8, Inglewood, 4388, New Zealand

The current website can be seen at: <https://www.kindlingcracker.com/>

The Facebook page was created on 23 June 2013:
<https://www.facebook.com/KindlingCracker/>

INTELLECTUAL PROPERTY PROTECTION



The original prototype of the invention is demonstrated to the left.

Ayla Hutchinson was 13 years old when this version was created.

The idea was protected via NZ patent applications providing priority for a subsequent PCT application and then National patent applications were filed in Europe, Australia, Japan, China, Canada, USA and South Africa.

The prototype was showcased at the New Zealand International Fieldays – in June 2013 – as shown in the photograph.

The success of the invention arising from that date has been significant

Following the prototype, Ayla and her father Vaughan worked collectively to create various embodiments of the invention. The first commercial version is the version represented in the trade dress trade mark. The following representations illustrate the various stages of development.

Following the filing of NZ patent applications, a collapsible embodiment below, was designed and protected as NZ Design Registration No.417790. This was filed 11 July 2013 and registered on 29 August 2013 - the illustration (far left) is taken from the Figures of the NZ Design Registration.



The first version manufactured, based on the New Zealand Design, was disclosed/published to the world, on 26 July 2013 via Facebook.

<https://www.facebook.com/KindlingCracker/photos/a.474522239307816/481466251946748/?type=3&theater>



The version was fully collapsible – as shown below:



Additional Facebook page disclosure (link provided below) is dated: 13 August 2013.

<https://www.facebook.com/KindlingCracker/photos/a.474522239307816/490050827754957/?type=3&theater>

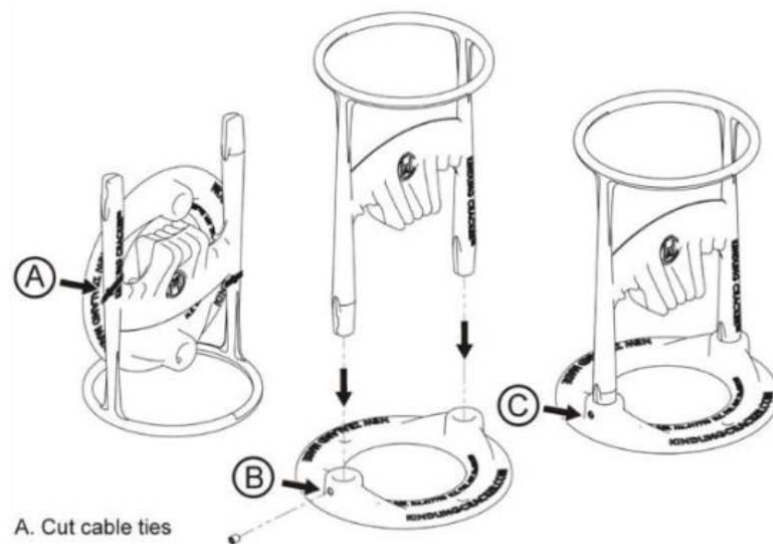
This page shows not only the above original collapsible version (as shown above), but also a CAD design for the second iteration – also collapsible – as shown below.

Based on the CAD design (left-hand image below), further design work for manufacturing the second collapsible iteration, was created in September 2013 (middle image below) and a commercial version (right-hand image below) was produced and first offered for sale on 13 October 2013.



This second collapsible design was showcased to the world, via the Facebook page below, on 3 December 2013.

<https://www.facebook.com/KindlingCracker/photos/a.474522239307816/547702411989798/?type=3&theater>



A. Cut cable ties

B. Place baseplate on the ground and loosen the grub screw (socket set screw)

C. Push the body firmly down and fasten the grub screw with the 4mm allen key (supplied)

D. If you didn't understand this diagram; step away from the cardboard box and please put the knife down that you opened the box with.

www.kindlingcracker.com

The above version formed the basis of the representation for the trade dress trade mark. Physical embodiments of this version reinforce the trade dress trade mark. As a result of the extensive promotion of these goods there is a clear connection in the minds of the public between the trade dress trade mark, the goods and the proprietor of the trade mark.

A huge, family owned US Company loved the invention and Ayla's story so much that they sought out the family, to be the worldwide distributor of the invention. Parties have contacted the family offering to be the local distributors in individual countries/regions. There is a well established network of distributors servicing the countries in Europe where the firewood splitter is sold and to which the trade dress trade mark relates.

Accordingly, significant reputation has been amassed in the trade mark, in Europe, in the period since 2013.

Relevant Trade Mark Details

The trade dress trade mark form part of a suite of trade marks used in relation to aspects of the business. For example, there are:



- **Community Trade Mark Registration:**
 VAUGHAN JOHN HUTCHINSON
 European Trade Mark Registration No.15729262
 HA KINDLING CRACKER & Design in International Classes: 6 and 8.
 Application Date: 5 August 2016
 Registered: 14 February 2017

Trade Mark also Registered in:

New Zealand Registration No. 980203
Application Date: 3 July 2013
Registration Date: 7 January 2014

Australia Trade Mark Registration: 1759237
Application and Registration Date: 17 March 2016

Canadian Trade Mark Registration No. TMA993192
Application Date: 7 May 2015
Registration Date: 26 March 2018

Japanese Trade Mark Registration No. 5982537
Japan Application Date: 15 March 2016
Registration Date: 22 September 2017

USA Trade Mark Registration No. 4996018
Filing Date: 6 May 2015
Registration Date: 12 July 2017

- **US Trade Dress Trade Mark Application:**
United States Trade Mark Application No. 88/341,254
Trade Dress Mark – applied to KINDLING CRACKER splitter International Class: 8
Application date: filed on 15 March 2019



- **US Trade Mark Application:** No. 88/064,258
KINDLING CRACKER – word mark
International Classes: 8
Application Filed: 3 August 2018
Registered: 23 July 2019

- **European Community Trade Dress Trade Mark Application:**
European Trade Mark Application No.18041202
Trade Dress Design in International Class: 8
Application date: filed on 26 March 2019





Unregistered Trade Mark:

VERY FIRST WEBSITE:

Following the launch of the KINDLING CRACKER firewood splitter in June 2013, Ayla and Vaughan Hutchinson had around 300 names and emails from people wanting them.

KindlingCracker.com was registered on 22ND of June 2013 and a Weebly single page website was set up. The first site was a one page site originally and it had a linked email address to hdl.hutch@xtra.co.nz .

(There is an attached download of some of the e-mails that flooded in at this time).

A Paypal system was set up to take orders and **30,000 of the KINDLING CRACKER firewood splitter sold in 30 minutes**. Initially, Paypal turned off the site as the site was new and they were worried the site had been compromised because it was having too much activity.

For example, see: <https://nzbpw.wordpress.com/2014/06/17/aylas-invention-sold-out-in-days/>

CURRENT E-MAIL AND WEBSITE BANNERS–WITH TRADE MARKS AS USED WITH THE GOODS.

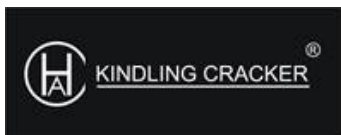
E-MAIL:

Kindling Cracker Ltd

Producing Innovative Ideas...

Fax: +64 (6) 762 4099
FB: <https://www.facebook.com/KindlingCracker>
E-mail: admin@KindlingCracker.com
Website: <http://www.KindlingCracker.com>

This e-mail may contain information that is confidential and legally privileged. If you are not the intended recipient, you are not authorised to copy, forward or in any way distribute or use this e-mail or any information or data contained in it. Please destroy the e-mail and any attachments immediately and notify us. Any views or opinions expressed or presented are solely those of the author and will not necessarily reflect the views of Kindling Cracker Ltd and associated companies..



TM
Kindling Cracker™
Patent Co-operation Treaty
Application No. PCT/NZ2013/000239



TM
Kindling Cracker King™
© Copyright 2013-2019 Kindling Cracker Ltd



CURRENT WEBSITE:

[Kindling Cracker™ | The world's safest wood chopper ...
https://www.kindlingcracker.com/](https://www.kindlingcracker.com/)

A safe solution to axe chopping, **Kindling Cracker™** firewood splitter is an innovative way to cut kindling. A high quality wood chopper that makes splitting wood ...



KINDLING CRACKER NEWSLETTER

Sign up to our newsletter

SUBSCRIBE

Contact Us

Have a question? Fill out the contact form. We'd love to hear from you

✉ info@kindlingcracker.com

🌐 www.kindlingcracker.com

Name	Phone Number
Email	Country.. <input type="text"/>
Enquiry Type	<input type="text"/>
Message	
<input type="button" value="SEND MESSAGE"/>	

Useful links

- Contact Us
- FAQ
- Legal Stuff

KINDLING CRACKER®

Kindling Cracker King™

Patent Co-operation Treaty
Application No. PCT/NZ2013/000239

Kindling Cracker King™

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Worldwide website www.kindlingcracker.com has the footer on all pages (see below links), including the buy now page which redirects people all over the world, this is the main website people see, or go to.

The website details www.kindlingcracker.com are on every box that has been produced and it is embossed into every KINDLING CRACKER firewood splitter ever made that has been sold (worldwide)

- <https://www.kindlingcracker.com/pages/kindline-cracker-king>
- <https://www.kindlingcracker.com/blogs/about-ayla>
- <https://www.kindlingcracker.com/pages/how-it-works-1>
- <https://www.kindlingcracker.com/pages/happy-customers>
- <https://www.kindlingcracker.com/blogs/its-in-the-blood-family-history>
- <https://www.kindlingcracker.com/pages/product-features>
- <https://www.kindlingcracker.com/pages/burning-news>
- <https://www.kindlingcracker.com/pages/awards>
- <https://www.kindlingcracker.com/pages/faq>
- <https://www.kindlingcracker.com/pages/legal-stuff>

All these sites redirect to the www.kindlingcracker.com site, too;
www.kindlingsplitter.com
www.kindlingcutter.com
www.kindlingcracker.co.nz

The buy now page is the Hub most people all go to before going to another country (the footer is on this page too)
<https://www.kindlingcracker.com/pages/buynow>

Also linking from this page are (which also includes the footer):

<https://www.kindlingcracker.com/collections/nz-products/?view=list>

<https://www.kindlingcracker.com/collections/nz-products/products/kindling-cracker-nz>
<https://www.kindlingcracker.com/collections/nz-products/products/kindling-cracker-king-nz>
<https://www.kindlingcracker.com/collections/ausi-products/?view=list>
<https://www.kindlingcracker.com/collections/ausi-products/products/copy-of-kindling-cracker-king-aus-xl>
<https://www.kindlingcracker.com/collections/ausi-products/products/kindling-cracker-au>

The “buy now” page links to;

<https://www.kindlingcrackereurope.com>

The footer is also on the bottom of each country’s home page in Europe – as follows:

<https://kindlingcrackereurope.com/language/french>
<https://kindlingcrackereurope.com/language/german>
<https://kindlingcrackereurope.com/language/swiss>
<https://kindlingcrackereurope.com/language/austrian>
<https://kindlingcrackereurope.com/language/italian>
<https://kindlingcrackereurope.com/language/finnish>
<https://kindlingcrackereurope.com/language/polish>
<https://kindlingcrackereurope.com/language/swedish>
<https://kindlingcrackereurope.com/language/spanish>
<https://kindlingcrackereurope.com/language/dutch>
<https://kindlingcrackereurope.com/language/flemish>
<https://kindlingcrackereurope.com/language/estonian>

Norway is the head office for Europe. The footer is also at the bottom of their page.

<https://kindlingcracker.no>

BACKGROUND TO THE INVENTION

- **The background below is provided to demonstrate acquired distinctiveness:**

BACKGROUND STORY

The story about the invention began when Ayla Hutchinson – then **13 years old** - thought up the idea designed to improve the way wood could be safely split to enable people to chop wood in to smaller pieces/kindling without risking injury from using axes. Injury can happen for a number of reasons – axe over-swing/missing the wood, the axe bouncing off the wood, axe becoming stuck in the wood, split wood flying apart, even bending down to pick up the scattered wood. She wanted to find a way for her mother to avoid being cut when she chopped the firewood – since she had seen her mother cut her finger while doing so.

She devised the first version and with the help of her father, Vaughan Hutchinson, they created the physical prototype. This prototype was publically launched at the New Zealand Agricultural Fielddays in 2013, when she entered it in to the “Inventors’ Section”. She won prizes for her invention, the public loved the invention, and orders flooded in.

Much of the information can be obtained from the Facebook page, which has had a huge following since it was created on 23 June 2013:<https://www.facebook.com/KindlingCracker/>

There was significant interest in the invention when the KINDLING CRACKER kindling splitter was launched and over the years since. To evidence this, we provide a variety of information – although one link that is particularly impressive is:

Reference to the “An Almighty girl” post on the Applicant’s Facebook page that went viral on Facebook, where the posting had 4.4 million “views”, 46,000 “likes”, 29,000 “comments” and almost a half million “shares” .

<https://www.facebook.com/amightygirl/photos/a.360833590619627/902441063125541/?type=3&theater>

See: <https://www.amightygirl.com/blog?p=12223>

The invention has become internationally known – because of her young age, the simplicity of the idea and the effectiveness of the invention. Due to her age and the success of the invention, there has been extensive media coverage. In addition, Ayla has won a number of international prizes and awards around the world and has been nominated and has been recognised across various sectors.

The invention is, for example:

Showcased in New Zealand’s Museum of Transport and Technology; and

Used in Science teaching curricula

By typing Ayla Hutchinson into any search engine, you will find publications dedicated to her and the invention.

blogs:

<https://coolminds.se/kvinnor-i-vetenskapen/>

<https://blogs.scientificamerican.com/at-scientific-american/meet-the-science-in-action-finalists-part-3-wearable-sensors-to-aid-the-aging-a-device-that-helps-people-with-developmental-disabilities-communicate-and-converting-wasted-heat-from-a-kitchen-stove-into-electricity/>

<https://nzbpw.wordpress.com/2014/06/17/aylas-invention-sold-out-in-days/>

<https://50campfires.com/gear-year-2016-kindling-cracker/>

<http://texasovenco.com/kindling-cracker/>

INTERNATIONAL AND NEW ZEALAND AWARDS

Ayla Hutchinson 'Kindling Cracker' 50 Campfires (United States of America) Top Product Award in the Fire Category (2016)

Ayla Hutchinson 'Kindling Cracker' International TeenBusiness Top Twenty List (2014)

Kindling Cracker

November 7, 2014 ·

WOW I can’t believe it but I have made a worldwide top 20 list!!!!!!

I received an email this morning that said:

"...you are one of the TeenBusiness Top Twenty for 2014. The selection is made by TeenBusiness.com.

CONGRATULATIONS!!"

Ayla Hutchinson 'Kindling Cracker' International Google Science Fair Regional Finalist (2014)

Ayla Hutchinson 'Kindling Cracker' International Scientific American Science in Action Award Nominee (2014)

Ayla Hutchinson 'Kindling Cracker' New Zealand Fieldays 'Vodafone's Peoples Choice Award' (2014)

Ayla Hutchinson selected to be a student of the Hyundai Pinnacle Programme (2014)

Ayla Hutchinson New Plymouth District Council 'Inspiration Award' (2013)

Ayla Hutchinson 'Kindling Cracker' Buy New Zealand Made 'Rising Star Award' (2013)

Ayla Hutchinson 'Kindling Cracker' New Zealand Innovation 'Most Inspiring Individual Award' (2013)

Ayla Hutchinson 'Kindling Cracker' New Zealand Fieldays 'Young Inventor of the Year Award' (2013)

Ayla Hutchinson 'Kindling Cracker' New Zealand Fieldays James and Wells IT Services 'JAWS Award' (2013)

ARTICLES/MEDIA RELEASES/INFORMATION

There has been significant media attention about the invention since 2013, because Vaughan Hutchinson's daughter (Ayla) first had the idea when she was 13 years old. It's now a family business.

After filing a patent application in NZ, the invention was showcased to the international scene in 2013 when she displayed her idea at an inventors' display at the internationally renowned Waikato Agricultural Fieldays. The **Fieldays** is the Southern Hemisphere's largest agricultural event and the ultimate launch platform for cutting edge technology. In 2013-2014 there were nearly 120,000 people who attended the Fieldays, 54 million people were reached in 90 days with Fieldays media items and, it is claimed that an additional 175 million dollars to New Zealand's annual GDP was attributable to the Fieldays in that year. In addition she won NZ\$4000 in prizes and there are photos of awards she has won – including the New Zealand Fieldays award.

At that time, the invention was discussed in the newspapers in New Zealand, and in interviews on TV and in releases across the world – such as the US Farm Show magazine; and within a year of this Ayla was honoured by being a Google Science fair regional finalist and an International Scientific American Science in Action Award Nominee for 2014. The invention was launched into overseas markets from the end of 2013 onwards.

Media from around the world picked up on the stories and reported them, also.

COMMERCIALISATION EVIDENCE RELEVANT WORLDWIDE, BUT SPECIFICALLY AS IT APPLIES TO EUROPE

Europe: <https://www.kindlingcrackereurope.com/>

BY 2014:



Kindling Cracker

November 12, 2014 ·

You can buy Kindling Cracker again in these countries, limited stock has been allocated to each of them, so tell your friends and family to be quick before they are all gone. Regards [The Team](http://www.kindlingcracker.com/buy-now.html)
<http://www.kindlingcracker.com/buy-now.html>



www.KindlingCracker.com

Packaging For The Goods.



ORIGINAL VERSION 11/12/2013 - mid-2015



CURRENT VERSION from June/July 2015

These boxes highlight the entrepreneurial successes of young Taranaki inventor Ayla Hutchinson and her KINDLING CRACKER product. The box includes text and images to both market the KINDLING CRACKER firewood splitter and tell the Ayla Hutchinson story.

FIRST PROMOTION OF THE TRADE DRESS VERSION:

Arising from media information and showcasing of the invention on Facebook and elsewhere.

First Sales Information: This is the first date of first use of the trade mark on the US Trade Mark Application filed at the USPTO.

Indication Of Quantity Of The Goods Delivered Directly To Europe:

On-Line Sales:

On-line sales include those generated through e-commerce sites. The orders are fulfilled and supplied from Northern Tools from the US to Europe.

Northern Tools and Equipment (USA) began supplying UK and Europe via online sales on November 2016.

Quantities sold would equate to at least 35,000, since e-commerce sites allow sales across a much greater geographical region.

Advertising:

<https://milled.com/northerntool-com/save-on-our-top-selling-kindling-cracker-free-shipping-RmYMx-jP4W3hOt1z>

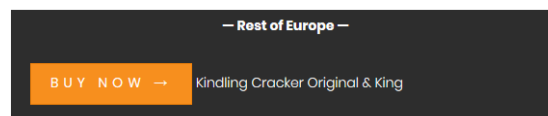
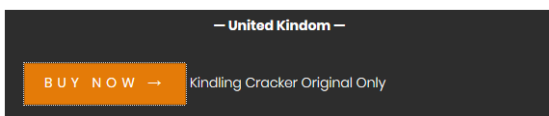


WEBSHOP:

As Northern Tools already had a set-up with e-commerce sites, some orders went that way. Products sold to the EU were primarily sent by Northern Tools up to Jan-Feb 2017, After that distribution was set up in Europe.

Information as to the predominant sales outlets

- **Predominantly via e-commerce sites**
At least via Amazon and Ebay over the same period from November 2016; and
- **via US/UK/European Distributors**
As advertised by them at the following sites:
KINDLING CRACKER.UK: kindling-cracker.co.uk/
KINDLING CRACKER Europe: www.kindlingcrackereurope.com/
KINDLING CRACKER main website: <https://www.kindlingcracker.com/pages/buynow>



Affiliations – working with Weta Workshop (of film-making fame such as Lord of the Kings, etc – when Ayla and Vaughan created the patterning on the KINDLING CRACKER KING version



Kindling Cracker

October 13, 2016 ·



Kindling Cracker

October 13, 2016 · 🌐



Do you love amazing stories about Kiwi 'can do attitude' and self-made Kiwi success stories? Can you imagine what would happen if these two Kiwis collaborated? Both families have created their success through hard work and perseverance. They are extra-ordinary Kiwis doing awesome things.

Richard and his wife Tania originally worked out of their one bedroom flat many years ago in Wellington, New Zealand. They now employ over 300 talented staff who work out of their very large facilities in Wellington. Their company, [Weta Workshop](#), is well known around the world for all their amazing film designs, costumes, creatures, props and weapons, etc. for the likes of the Lord of the Rings, The Hobbit, Avatar, District 9, Warcraft and many more. Their attention to detail is out of this world, and their quality of work is astonishing!

Ayla made a school science project, at the age of 13, called the Kindling Cracker. Many may know it is an amazing invention that lets you cut kindling safely and easily. The Kindling Cracker was completely self funded from prize winnings and any profit it generates. Her Dad (Vaughan) made a promise to her, that if she was to get more than 150 orders in the four days of the Fieldays, he would help her get it to market and teach her what he knows into making and launching a quality product. Ayla had 400+ orders after the Fieldays and her Dad kept his promise. It is an amazing story about a young girl's dream, determination, a supportive family, and the rollercoaster ride of her and her family getting her product to market. Ayla's product is now sold all around the world and the company manufacturing the Kindling Cracker in Australia, is on average, turning out 10,000 plus Kindling Crackers per month.

So you are wondering what are these two up to? Making a movie perhaps? 😊 Stay tuned to see what happens next!



9 Comments

12 Shares

18,786,201,201 Like

Comments

[View 7 more comments](#)



Richard Taylor I sure enjoy mine. I have already cracked over 100 pounds of kindling for this winter. I love the tones it creates while using it.

[Like](#)[Show more reactions](#)

[Reply](#)[2y](#)[Manage](#)

1

OBJECTION RAISED:
FEATURES OF THE TRADE MARK BEING PURELY FUNCTIONAL

The design features of the trade mark for an object that can be used, by extension does not mean that the features “look” is purely based on function. We have provided examples of varyingly different designs that comprise the same basic parts, yet look aesthetically different, suggesting that the trade mark and the goods to which the trade mark relates has not been purely based on the functionality of the features, but has in fact incorporated an aesthetic aspect.

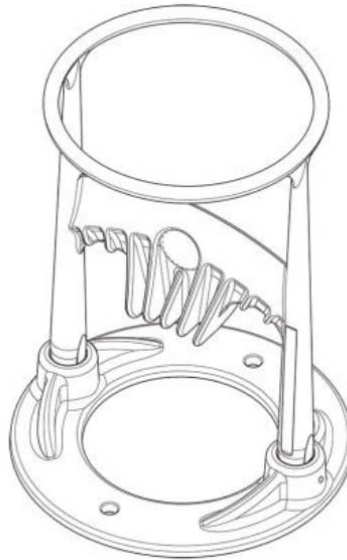
If there is an argument as to functionality and the “field” is “kindling/firewood splitters”, given the specific nature of the product itself, then the purest functional goods would be an axe or an upturned axe-head/wedge, since to split wood in a purely functional way, DOES NOT REQUIRE the vertical supports, nor the surrounding ring at the top of the representation forming the basis of the current trade mark application. Nor would it require that the upturned wedge be attached to any vertical supports.



If we were to consider the early prototype for the goods, it can be seen that it “looks” significantly different from the representation of the current application.



compared to



There are also a number of sufficiently different versions we have compiled, showing variations arguably demonstrating that the features of the trade mark representation are not purely based on function alone. This is discussed further below for your reference.

CONSIDERATION OF AESTHETIC FEATURES BASED ON CHOICE OF SHAPES, MATERIALS USED, ARRANGEMENTS

All of the various versions included below, surfaced after our client’s invention.

Those versions that are square, versions with four uprights, versions with angled bracing, versions having angle-iron features or box-steel features, versions with axe-shaped cutters - are all clearly different aesthetically.



Additionally, versions constructed from round pipe, those with ornate or solid bases, those with H-shaped bases, those with mixtures of round features and square features - are again, all clearly different aesthetically.



FIRST TO DISCLOSE

We advise that none of the versions, shown above/for sale, came on to the market until after the applicant's relevant designs.

Considering the features of the Trade Dress Trade Mark against the functionality objection.

It is poignant to look at the versions in the previous photographs, to see how they differ as regards look.

Bases and Tops:

These are different shapes, different sizes.

Blade design:

There are a variety of blade designs but most are strictly functional – being modified axe heads.

Uprights:

These vary in number, shape, materials used (which dictate look as well).

Sleeves:

Other basic versions that are welded don't include sleeves.

Bracing:

Some basic copies don't include bracing. (We have various other versions out there to demonstrate this).

Some basic copies do include bracing - but arguably that may be needed and more related to the quality of the manufacture.

Some versions have bracing associated with both the top and the bottom of the elongate support means.

Other versions don't have this and still function.

Ribs/fins:

Not needed - various other versions out there demonstrate this.

However, those parties that have copied the invention include them.

CONSIDERING THE OBJECTION AS TO ANOTHER LIKE DESIGN

To clarify the version cited by the examiner – being:



This version appeared in the market in the first quarter of 2019.

This version is made in China and is exported from China to the USA. Its manufacture and export infringes the Applicant's Chinese Patent No. **ZL201380067060.9**.

Action is being undertaken to address this issue in terms of the manufacturer, the traders selling it and the parties exporting it. The version also essentially infringes copyright in our client's very first designs for the collapsible version:



The US party advertising, offering to sell and selling this version on Ebay is also infringing UK Unregistered Design rights vested in the design; as well as infringing patents in New Zealand, Australia, Japan, South Africa, Canada – where it is advertised for sale and the sales platform enables versions to be sold and exported to these countries.

Action is being undertaken against all relevant parties dealing in this product.

As far as quality, the screws of this version fall out, it is not solid and jumps about, and it is damaging to the Applicant's goods, being a poor quality version on the market taking the concept of our client's invention.

CREATIVITY OF APPLICANT'S DESIGN

There are creative thoughts and processes that underpinned and were involved in the creation of the trade mark representation version.

Starting with the concept inception and the prototype:

1. Ayla Hutchinson's mother cut herself with a downwards operated axe.
2. Ayla considered how to create a different/safer way of cutting wood without swinging an axe/using a traditional axe.

Options that would have already been known and available to achieve the outcome would be:

- use a splitting wedge – no downward axe needed;
- use a mechanical wood splitter; - again no need to use an axe;
- use an upturned splitting axe-head fitted to a chopping block – while purely functional, it works, but is dangerous.

The initial version included an old splitting axe head welded onto a bit of metal plate.

Although this left the axe head exposed and this was dangerous.

It was considered that a halo-like arrangement above the splitting wedge could offer some protection from the wedge – but that this needed to be at a distance above the wedge edge to create a gap between the blade and the top so hands couldn't hit the blade.

To hold that in place (and strongly), pipe or reinforcing bars were considered.

So, the above formed the constructional considerations that went into the creation of the prototype.

However, there are multiple options available when considering the individual features that could be and have been employed in the versions since then.

Consideration as to the Features and options available:

Accordingly, giving specific consideration of the individual features – notwithstanding the practical option of using an axe, or an upturned axe head:

Vertical uprights:

There could be one upright, or two or more;

Length – could be of variable lengths and thereby would alter the visual impression.

Shape – could be round, square/box-shaped/spiral, solid

They could be perpendicular to a horizontal surface, angled inwards/outwards, a solid encasing arrangement, spiralled.

Safety Means:

Features that can apply: Any shape (square, round, hexagonal, oval, triangular), any thickness (thick, thin), any depth (flattened, round, walled), any size, differently sized and shaped opening.

Cutting means:

Cutting means typically require a cutting face.

Upturned cutting means – could be a wedge, standard shape, cone shape.

Could have multiple cutting edges, single cutting edge, crossed cutting edges.

Multiple cutting means, single cutting means.

Base:

Features that can apply: Shape of base - any shape (square, round, hexagonal, oval, triangular), any thickness (thick, thin), any size (overall or differences to the central opening).

Solid or with openings (central hole – square, round, punched out pattern, cross bars).

Sleeves:

Features that can apply: At the bottom of the vertical supports.

The shape could be square, round, etc.

They could be long, short, etc.

They could not be included at all if the supports were welded to the base.

Aesthetic Considerations

However, overlaying the above in terms of the version forming the basis of the trade dress trade mark, were aesthetic considerations such as:

- Something with rounded edges always looks better than square edges.
- Two uprights look good and uncluttered.

Even with these thoughts, there were still further aesthetic considerations. These are provided below.

Vertical arrangement:

- Spacing the features gives a better overall proportion and is as much an aesthetic consideration.

Uprights:

- The uprights were made thinner for aesthetic purposes and the dimensions were decided on based on overall aesthetic balance of the individual features.

The uprights were round because they feel better to hold.

Uprights being wider at the bottom and narrower at the top – is not needed for function, but gives an aesthetic emphasis to height.

The flared top of the elongate supports in turn partially mirrors the flared bottom of the supports.

Bracing/Gussets:

- The goods did not need the gussets/bracing at the bottom of the uprights. Rather, these were included to make it look stronger and made it look like it had a good hold onto the base and the ground.

They were also curved to look good on the eye.

However, these could be straight and square shaped and not contoured as they are.

The “sleeves” at the bottom ends of the uprights could have been square, wedge shape or round. Round was selected to complement the chosen round uprights. They do not have a function.

Blade:

- The blade looks nicer if shaped aesthetically. The inventors liked the look of Viking battle axe blades and so the shape of a Viking blade was taken in to consideration in terms of the aesthetics of a Viking blade, hence the shaped parabolic blade section.

The blade portion did not need to be at the bottom, so it was considered as to where else it could be located and how that would look. The inventors set the blade portion like a Viking blade, between the two pillars (instead of how it would otherwise look on a handle).

The blade was considered to look better if it was not large and cumbersome. So, a thinner top edge and a wider base, fixed proportionally to two uprights at a distance above the base ring and below the top ring was decided (so it does not look like a wedge or axe head).

- The solid area of the blade was turned into sculptural fins.
The fins on the blade are not needed. The blade could be a straight bit of plate with a sharpened edge, it could be an axe head attached to the base.

This blade of the trade dress trade mark is a cross bar with a bevelled/parabolic curved edge. It is attached to the elongate uprights – but it doesn't have to be. It could depend from the top ring, or be attached to the base, etc.

The top:

- The top includes an opening – but again, the size shape, etc does not dictate function. The top was round to be easy on the eye. It could be square or any shape you wanted it to be.

The base:

- A round base was again chosen because round is always easier on the eyes. The base could be any shape and could be simply a solid plate.

The base isn't necessarily needed for some versions and can be any shape, solid or otherwise. Those aspects of the look aren't directed to function – the choice of round is suggestively based on aesthetics.

The round base added proportionality and matched the top (mirroring the design top and bottom).

A subsequent version (the King) has a split level top; and the bottom is H-shaped to distinguish the two versions.

In terms of manufacturing the goods to which the trade dress trade mark applies:

The goods are manufactured using a specifically designed formula (of SG Iron (SGI)- known as Ductile Cast Iron, Nodular Cast Iron, or Spherulitic Graphite Cast Iron). This is poured into sand moulds that a large machine makes off the complex tooling designed for the unique features of the goods.

When it is not poured correctly one can have huge problems as it cools quickly and when it cools too fast it can be very brittle. However, the Applicant's process reduces/eliminates such problems.

Using poor quality scrap iron will exacerbate the problems and make the product weak - on top of not getting the main ingredients right and not employing correct techniques when pouring.

There is a science behind how the Applicant's version is manufactured that only they use, along with the raw materials to make them. The manufacture is designed to address safety, which is often not a consideration in the copies made by others.

Here is a demonstration of the Applicant's product taking a hammering.
<https://www.facebook.com/KindlingCracker/videos/391553078355448/>

The video link shows how fast the Applicant's goods come off the line in the factory, they then get put into an automatic finisher and onto an automated paint line before going onto the Applicant's automated packing line.

<https://www.facebook.com/KindlingCracker/videos/543614142750505/>

Images linked to manufacture of the goods:

Taken from pictures on the web pages of the major international distributor – Northern Tools and Equipment.

Images link to the manufacturing process:

The manufacturer gives a 5 year limited guarantee – which goes to indicate the high quality of the product.

https://www.northerntool.com/shop/tools/product_200676883

<https://www.kotulas.com/deals/kindling-cracker-firewood-kindling-splitter>

Australian Manufacture:







Hover over image to zoom





https://www.northerntool.com/shop/tools/product_200647343_200647343





Also see: Images below relating to the manufacture of the larger version – KINDLING CRACKER KING

