

MANU/DE/0116/2003

Equivalent Citation: 2003(67)DRJ370, 2003(26)PTC309(Del)

IN THE HIGH COURT OF DELHI

Suit No. 1124/2002 and IAs. 5804 and 7767/2002

Decided On: 04.02.2003

Appellants: **Frito Lay India and Ors.**
Vs.

Respondent: **Shivdeep Food Products Pvt. Ltd. and Anr.**

Hon'ble Judges/Coram:

J.D. Kapoor, J.

Counsel:

For Appellant/Petitioner/plaintiff: Rajiv Nayar, Sr. Adv., Pratibha M. Singh, Anubha and Sashi Bhushan, Adv

For Respondents/Defendant: Gopal Subramaniam, Sr. Adv., M. Gorvinder Singh and Ratnesh, Advs.

Subject: Intellectual Property Rights

Case Note:

Intellectual Property Rights - Permanent injunction - Suit filed for permanent injunction for restraining the Defendants from using the "KURRAM KURRAM" packaging with similar expressions - Held, Defendants were restrained from using "KURRAM KURRAM" with the letter K and also directed to prominently display the word "BIKAJI" and restrained from using the aforesaid slogans having deceptive similarities which even otherwise the Defendants have agreed to change - Suit decreed.

JUDGMENT

J.D. Kapoor, J.

1. This is a suit for permanent injunction for restraining the defendants from using the "KURRAM KURRAM" packaging with similar expressions or any other packaging/expressions which is a substantial reproduction or colourable imitation of the plaintiffs "KURKURE" packaging/expressions, in relation to snack food products or any other products in any manner whatsoever, so as to constitute infringement of the plaintiffs' copyright.

2. The case of the plaintiffs is that they created the "KURKURE" brand as a separate brand. The product was also given a completely different look. The packaging was designed in such a manner as to make it completely innovative and a mere look at the depiction of the snack product on the packaging would make it clear that the product is "KURKURE". The appearance of the product is so different and unique that no other existing snack product looks similar to this product. The mark "KURKURE" is one that was adopted by the plaintiffs for the first time for a ready-to-eat snack product. The same has acquired enormous distinctiveness and has also acquired a secondary meaning and connotes and denotes products originating from the plaintiffs. The defendants have used packaging style which is a blatant imitation of plaintiff's unique and artistic packaging design apart from using a mark (KURRAM KURRAM) which is an outright example of being phonetic and visual similarity with plaintiffs' well established mark/product "KURKURE". The defendants are carrying on business for profit and gain by manufacturing and selling snack products (Namkeen) under the name and logo "KURRAM KURRAM" which is almost identical and deceptively similar to the name and logo of the plaintiff company i.e. "KURKURE". The packaging and the inscriptions on the same are almost identical and are derived from the plaintiffs' "KURKURE" packaging. The expressions used in both the packaging detailed in para 8 of the plaint in tabular form are alleged to be identical and similar. Another grievance of the plaintiffs is that the word 'BIKAJI' is not so prominently displayed on the wrapper as it should have been to avoid confusion.

3. It appears that the controversy and the grievance of the plaintiffs can be affectively redressed if the defendants change the spelling of the word "KURKURE" by substituting the word 'K' with 'Q' as suggested by the plaintiff. Similarly the word 'BIKAJI' if displayed prominently would redress plaintiffs' complaint. As regards slogans printed on the back of wrapper of the plaintiffs, there are deceptive similarities in respect of two of them. First slogan is "Bindaas Snack" whereas the slogan printed on the back of wrapper of defendants is "Bindaas Fun". Defendants are advised to change the word "Bindaas" which they have agreed to change. Second slogan of the plaintiffs is "Major mazaa" and that of defendants is "Total mazaa". Both are different and there is nothing to change. However, the third slogan of the plaintiff is "Chatpata taste" and that of

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defendants is "Chatpata swaad". Defendants may change the word Chatpata. There are no deceptive similarities in respect of following slogans :-

plaintiffs

"Munching night or day"

"Spice bhar de"

"Unlimited Crunchy"

Defendants

"Anything of night of day"

"A bit of spice"

"A bit of crunch"

4. In the result, the suit is decreed in the following terms :-

"Defendants are restrained from using "KURRAM KURRAM" with the letter K and are also directed to prominently display the word "BIKAJI" and restrained from using the aforesaid slogans having deceptive similarities which even otherwise the defendants have agreed to change."

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