High Court injunction is sweet relief for salty sour candy

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PULSE candy copycat ordered to desist from using imitative trade dress, colour scheme and get-up; defendant had copied colour schemes of not one but three different flavours. The PULSE range of candies with flavours that have struck a unique chord in a vast cross section of consumers enjoys tremendous popularity in the country with an ubiquitous presence from mainstream retail to local hawkers and corner stores. The PULSE candy packaging is instantly recognisable for its unique packaging and distinctive colour scheme. Unsurprisingly, imitators look to cash-in on its reputation by the use of colourable names and trade dress, well knowing that these products are bought by largely undiscerning purchasers and the frenetic environment at the point of sale easily aids their deceptive scheme. The plaintiff became aware of the me-too product sold by the defendant under the mark PLUSS+. In addition to a deceptively similar trade name the defendants used packaging and a colour scheme identical to the PULSE packaging: an imitation which was carried over three distinct flavours all of which were based on the flavours sold by the plaintiff. In its application for an interim injunction in proceedings before the High Court the plaintiff submitted that the defendant's misappropriation of its PULSE mark and trade dress constituted infringement and passing off. Moreover, the defendants had not complied with the requirements of the Food Safety and Standards Act 2006, having failed to provide details of the Food Safety and Standards Authority of India (FSSAI) licence on the labels of their products. The court noted that a prima facie case of infringement and passing off had been made out and the balance of convenience rested in favour of the plaintiff and irreparable harm and injury were likely to result if the defendant wasn't restrained from its activities. The court granted an interim injunction against the defendant restraining it from using the plaintiff's trade mark, trade dress and copyright for their PLUSS+ candies or other products. *Dharampal Satyapal Sons Pvt Ltd. v. Mr Aftab Alam & Anr; before the Delhi High Court; order dated 30.05.2017*

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