Food for thought – the proposed revisions by the FSSAI

News & Updates • July 30, 2019

Colour coding of food products, its impact on the trade dress of products and the intent of the FSSAI – Safir Anand and Shilpi Jain share their views on the Food Safety and Standards (Packaging and Labelling) Regulations 2011 in a guest post for the World Trademark Review. The riveting guest post titled "Why India's colour-coded label plan should be a concern for FMCG brand owners" was published last week. It focuses on the proposed revision of the Food Safety and Standards (Packaging and Labelling) Regulations 2011 which aims at regulating the labelling and packaging of food products, amongst others. More importantly, colour coding of food products, for example, red for unhealthy products, amber for moderately healthy products and green for healthy products. These regulations as intended by the FSSAI warrants serious consideration by the food and beverage industry. The informative post can be read at WTR's online publication (see image below) - "...Manufacturers of packaged foods may therefore soon have to display red colour coding on the front of packets of products that have high levels of fat, sugar or salt content. While this step is an attempt to make consumers aware of nutritional content of packaged food, it is a major cause of concern for fast-moving consumer goods companies..."

WTR World Trademark Review

22 Jul 2019

Why India's colour-coded label plan should be a concern for FMCG brand owners

- **FSSAI rules would require colour coding on food packaging of particular products**
- **Draft regulations currently open for comment, consultation window closes 31 July**
- **Industry experts warn of potential negative impact for food producers and trade dress**

The Food Safety and Standards Authority of India (FSSAI) is in the process of a comprehensive revision of the Food Safety and Standards (Packaging and Labelling) Regulations 2011, with the objective of creating three different regulations dealing separately with packaging, labelling, and advertising and claims. As part of that process, its new labelling and display regulation is ready for draft notification and the comment period on the plans ends on 31 July.

The draft regulations would require colour-coding on particular product types. In this guest post Safir Anand and Shilpi Jain of Anand & Anand warn over the negative impact for rights holders in the food and drinks industry, particularly those predominantly using a single colour on their packaging,

Guest analysis

The Food Safety and Standards Authority of India (FSSAI) has recently released its long-awaited draft on food labelling regulations, which is open for comments by stakeholders. FSSAI's proposed draft mandates the introduction of 'traffic light labelling' for packaged food products in India based on their fat, sugar, and salt content. Red is for unhealthy products, amber for moderately healthy products and green for healthy products.

Manufacturers of packaged foods may therefore soon have to display red colour coding on the front of packets of products that have high levels of fat, sugar or salt content. While this step is an attempt to make consumers aware of nutritional content of packaged food, it is a major cause of concern for fast-moving consumer goods companies.

Firstly, a few stakeholders have claimed that 'traffic light labelling' is unscientific because it does not take into account the fact that consumption of fat, sugar and salt depends on various factors such as age, lifestyle, health patterns, culture, weather conduciveness, etc.

Another downside of these colour-coding rules could be faced by companies that are predominantly using the single colour red on their packaging, such as Red Label, KitKat, Coca-Cola, etc. Colours used in packaging are one of the important elements that set a business apart from others and often the packaging colours are chosen to send the right subliminal messages to attract a potential customer. As per the new rules, the colour red which currently acts a 'source identifier' for the products of a few companies, will now be associated with 'unhealthy products'.

If companies decide to change their packaging, then a consumer who associates the colour red with a particular company may find him/herself in a fix in a market with completely changed trade dresses. This would impose a burden on FSSAI to spread awareness about the new regulations in a country like India, with a large proportion of illiterate and semi-literate consumers.

According to the news sources, nearly 70% of the packaged products fall under the 'Red Category'. Thus, in a market flooded with red category products, there are chances that red packaging for food products would lose distinctiveness and this could also result in an increased number of counterfeit products. In fact, proprietors seeking to register trade dresses as trademarks with the colour red as an essential feature, may face objections from the Trademarks Registry on the ground that red is a commonly used colour in the trade.

Moreover, companies that have been using other single colours as a source identifier for their products, such as Cadbury (which has been using the single colour purple for Dairy Milk), may also find it hard to add a tint of red and change their packaging in accordance with the new regulations.

Finally, considering the various disclosures regarding nutritional information and colour coding on the front of the packs, companies will have to change their packaging either entirely or substantially. The FSSAI, in its endeavour to encourage informed choices among consumers, seems to have ignored that brand owners have spent significantly in gaining consumer recognition and safeguarding their rights in their trade dresses, which they may now have to change.

Nonetheless, it would be interesting to see the overall impact of these regulations once they come into force, and also if a representation is made by food companies against them.

RELATED INDUSTRIES

IT AND E-COMMERCE LAWS

RELATED PRACTICES

COPYRIGHT
PATENTS