

**Presence of a different house mark does not, by itself, defeat a passing off claim where the overall trade dress is deceptively similar, especially for low-cost, fast-moving consumer goods purchased on the basis of memory and visual impression**

The **Delhi High Court** in the case of **GRM FOODKRAFT vs KS AGRO IMPEX [CS(COMM) 637/2024]** dated **May 29, 2026**, has confirmed the ex parte ad interim injunction granted on 1 August 2024 and held that, until disposal of the suit, the Defendants and all persons acting on their behalf are restrained from selling, offering for sale or advertising Golden Sella Basmati Rice in the impugned trade dress/packaging that is confusingly or deceptively similar to the Plaintiffs' trade dress/packaging. At the same time, the Court clarified that Defendant No. 1 is not precluded from continuing its business in Golden Sella Basmati Rice if it uses packaging that is distinct and not deceptively similar to the Plaintiffs' packaging.

The Court also clarified that in a passing off action based on packaging/trade dress, the Court must assess deceptive similarity on the basis of the overall visual impression of the competing trade dresses, focusing on similarities in the ensemble rather than dissecting individual differences. Even where individual elements such as colours, imagery or certain words may be generic or common to trade, protection may still be granted if their distinctive combination, arrangement and presentation has acquired goodwill and if the defendant has adopted a substantially similar overall get-up likely to cause confusion.

The Court essentially ruled that presence of a different house mark does not, by itself, defeat a passing off claim where the overall trade dress is deceptively similar, especially for low-cost, fast-moving consumer goods purchased on the basis of memory and visual impression. In the case of edible products such as rice, the threshold of deceptive similarity is lower and greater sensitivity is required because consumer confusion is more readily occasioned.

The High Court observed that the governing test in a passing off action concerning trade dress is one of overall impression and deceptive similarity, to be assessed from the standpoint of a consumer of average intelligence and imperfect recollection, with greater attention to similarities than dissimilarities. On comparing the rival packaging, the Court found striking similarities in the green and gold colour scheme, gold lettering styled to resemble Urdu/Arabic script, the use of the word "Zarda" in similar stylisation, hanging lanterns and stars, and imagery of a pulao dish with minarets, and concluded that Defendant No. 1 had copied the essential elements of the Plaintiffs' trade dress and attempted to come as close as possible to it.

The Court rejected the defence that the presence of the house mark "DOUBLE CHABI" was sufficient to dispel confusion, observing that in the case of rice, a fast-moving edible commodity sold through common trade channels, purchasing decisions are predominantly influenced by visual recognition of packaging rather than careful textual scrutiny of brand distinctions. The Court also held that even if "Zarda" were assumed to be generic or descriptive, that did not materially weaken the Plaintiffs' claim because the gravamen of the action lay in the deceptive imitation of the overall trade dress and visual presentation.

The Court further found that the Plaintiffs had prima facie established goodwill and distinctiveness in the relevant packaging by producing material showing cumulative sales of more than Rs. 86.16 crores under the 10X Zarda King packaging, GST invoices for printed laminated packaging, promotional material, endorsements, hoardings, online listings and a CA certificate. It observed that the sales figures and expenditure could not be treated as nominal for an FMCG product such as rice and were sufficient at the interim stage to support the Plaintiffs' claim of strong market presence and goodwill in the impugned trade dress.