

## Nestlé India restrained from using local defendant's mark



In a suit filed by Moods Hospitality Pvt. Ltd., a local plaintiff, the High Court of Delhi restrained Nestlé India Ltd from using the marks 'MASALA YO!' or 'CHILLY CHOW YO!' on their instant noodle packs as these marks infringed the registered trademarks of the plaintiff, namely, 'Yo!' and 'Yo! China'.

The plaintiff started its operations in India in the year 2002 under the trademarks 'Yo!' and 'Yo! China' and claimed that these marks, by virtue of their continuous and widespread use, had become distinctive of the plaintiff in the eyes of the consumers and had thereby, acquired a secondary meaning. It was argued that the expression 'Yo!' was coined and adopted by the plaintiff in combination with red and yellow colors which signified energy and that when 'Yo!' was used with 'China', it portrayed American Chinese food, which was specific and unique to the plaintiff's business. Accordingly, the plaintiff submitted that it had built, developed and nurtured the trademark 'Yo!' and 'Yo! China' since the year 2002 and held registrations in respect thereof in various classes. It was also the plaintiff's claim that they were using the mark 'Yo!' in conjunction with other elements to form trademarks such as 'Yo! Box', 'Yo! On the Go', 'Yo! Dimsum', 'Yo! Carts', etc. The plaintiff stated that 'Yo!' was neither descriptive of its goods nor did it have any reference to the nature or quality of its goods and services, thus making it inherently distinctive.

It was the case of the plaintiff that Nestlé's manufacture and marketing of instant noodles under the name and style "Maggi Cuppa Mania Instant Noodles" in two flavors 'Masala Yo!' and 'Chilly Chow Yo!', was solely with the intention of misleading the consumers and deriving unfair gains by riding over the goodwill and reputation of the plaintiff's registered trademark 'Yo!'.

The defense of Nestlé was mainly two fold. First, that the trademark 'Yo!' *per se* was one of the most common and popular expressions used by youngsters worldwide, including India, as a substitute for "Hello". Secondly, Nestlé argued that 'Yo!' being an expression that was common to the trade was incapable of distinguishing the goods or services or function as a badge or indication of trade origin or source of any one particular trader and that registrations obtained by the plaintiff were, therefore, invalid.

Having considered the respective arguments of the parties, the High Court of Delhi rejected Nestlé's claims and found a *prima facie* case in favour of the plaintiff. It was found by the Court that the mark 'Yo! China' was not descriptive of the goods of the plaintiff and that Nestlé offered no explanation for use of the exclamation mark along with the word 'Yo'. Rejecting the

'common to trade' argument of Nestlé, the Court found that the use of the mark 'Yo!' in relation to other goods or businesses could not be an excuse for Nestlé to use the said mark in relation to the same class of products and services for which the plaintiff had obtained registration of the said mark.