

IP Hotline

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FERRERO AWARDED RS1 MILLION IN DAMAGES FOR INFRINGEMENT OF FERRERO ROCHER TRADE DRESS

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BACKGROUND

Plaintiff Ferrero Spa is an Italian confectionery giant which is part of the Ferrero Group, founded in 1946. It is ranked amongst the biggest four confectionery producers in the world. The plaintiff was also listed as the most reputable company in the world by the Reputation Institute Survey of 2009 and as reported by the *Economist* and *Forbes Magazine*.

The plaintiff conducts business in India through Ferrero India Private Limited. Although the Indian entity was incorporated only in 2008, the plaintiff's products were sold on the Indian market much earlier. Further, the plaintiff's Ferrero Rocher products have been available in India for a considerable length of time and enjoy a formidable consumer base, "who swear by the chocolates' uniqueness of taste, as well as their distinct visual appeal".

The plaintiff has secured numerous trademark registrations in India and worldwide for its FERRERO ROCHER mark and the other elements making up its mark - ie, the trade dress. The plaintiff has been extremely vigilant in protecting its rights in the mark and trade dress across the world; as a consequence, judicial forums worldwide, including in India, have recognised and enforced the plaintiff's rights in the mark and trade dress on several occasions and granted the plaintiff relief against third parties.

Ruchi International (the first defendant) is an importer and marketer of chocolates in India under the brand name Golden Passion, which are lookalikes of the plaintiff's Ferrero Rocher chocolates, sold under the FERRERO ROCHER mark and trade dress. These chocolates are manufactured and exported from China by the second defendant under the brand Golden Passion.

During the pendency of the suit, the first defendant settled the matter amicably with the plaintiff. A compromise decree was passed by the High Court of Delhi in an order dated May 26 2016, and the suit proceeded *ex parte* against the second defendant.

Ferrero awarded Rs1 million in damages for infringement of Ferrero Rocher trade dress

– Puja Saha & Pooja Kapadia

You can direct your queries or comments to the authors

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