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## India: 'Appy Fizz' v. 'Fizzy Apple' – Parle Agro Pvt. Ltd. v. Walmart India Pvt. Ltd. & Ors.

Yashvardhan Rana (Intellectual Property Lawyer) · Monday, November 23rd, 2020

It is not common that local Indian companies sue multinationals for infringement in India – and win. However, recently, just that happened: Parle Agro Pvt. Ltd. (“[Parle](#)”) sued multinational retail giant Walmart India Pvt. Ltd. and Ors. (“[Walmart India](#)”) at the Bombay High Court for violating its trademark/trade-dress when it launched a deceptively similar packaging and sold an apple-flavoured drink called “Fizzy Apple”. Parle is a well-known Mumbai-headquartered beverage company founded in 1985, which is currently dominating the sparkling juice segment providing an alternative to other carbonated, sugary and sweetened drinks, with an over 90% market share. On the other hand, Walmart India, a wholly owned subsidiary of Walmart Inc., the world’s leading retailer renowned for its efficiency and expertise in logistics, supply chain management and sourcing, entered India in 2007.

Walmart India started marketing, producing and selling an apple flavoured drink under the name of ‘Fizzy Apple’ using the packaging shown below on the right. Parle brought an action for infringement at the Bombay High Court based on its trademark ‘Appy Fizz’ registered for a variety of fruit-based beverages, as well as its trade dress. Their product looked as shown below on the left.



Parle contended that the apple drink sold by Walmart India under ‘Fizzy Apple’, used a product packaging/label that was identical and deceptively similar to their own, and that it was trying to ride on its longstanding goodwill and reputation in order to seek wrongful gains. As counsel for Parle put it: *“It is obvious that the defendants are trying to sail as close to the wind as possible and have made all possible attempts to come as close as possible to ‘Appy Fizz’.”*

Walmart India argued that the term “Fizzy” was a common descriptive word and hence, no one could claim a monopoly over the same. However, it was not successful with this defence: A single-bench of *Justice B. P. Collabawala* on July 9, 2020 (through Video Conferencing), after an exhaustive scrutiny of arguments advanced, granted an [interim injunction restraining Walmart India](#) from retailing the disputed product until further orders. It was also made clear by the Hon’ble Judge that this order has not been decided on merits but was only a temporary arrangement. Recently, this was converted into an undertaking recorded before *Justice KR Shriram*, whereby [Walmart India undertook not to use the company’s label](#) for its apple drink. As a consequence, the interim application filed by Parle was disposed of.

In recent years, legal disputes for matters pertaining to trademark infringement are increasing. David v. Goliath situations seem to be on the rise. In this case, Parle was successful defending its successful brand. Its victory also brings about an increased awareness regarding passing off and striking the right balance. This can help to reignite the trade mark law consciousness in the country in these troubling times.

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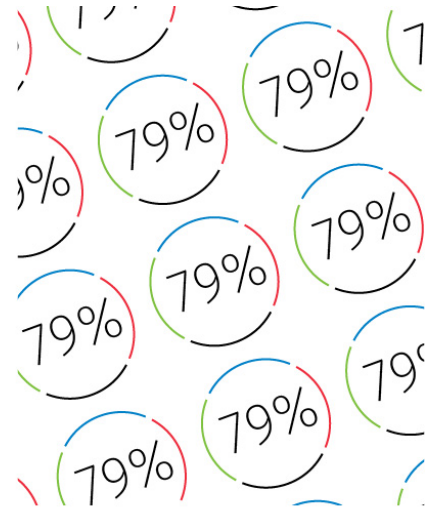
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