

FACTS OF THE CASE

1 “Sisleri” is a Brand owned by M/s. Indian Foods and Drinks Pvt. Ltd., a Delhi based Company. The said brand is being used by the Company for packaged drinking water since 1990, though the company could get the trademark registration only in January, 2000. The quality of the water is so pure that it has earned an extensive goodwill in the market. The brand has earned goodwill in the market to the extent that any customer ordering a packaged drinking water in a restaurant would ask the waiter for a bottle of “Sisleri”, instead of ordering for Mineral water or packaged drinking water. In other words, the brand has acquired a secondary meaning for itself in the class of packaged drinking water. In view of the purity of the water being offered by the company, the same is priced substantially high, as compared to the other packaged drinking water available in the market.

2 The word mark “Sisleri” has an added tag line to it – “Pure drinking water with minerals”, and it would not be out of place to mention that the word “Sisleri” is registered as a whole along with the tag line.

3 In the year 1999, the Company engaged a famous artist Mr. Hussain to create the label for the product. Mr. Hussain is said to have created labels for various world famous Trade Marks. He charges anything between 5 Lakhs to 10 Lakhs for creating a label for a brand.

4 Mr. Hussain created an aesthetic label for the trademark “Sisleri, pure drinking water with minerals”. He kept the colour combination of the label as blue and white, both colours being symbolic of purity. In order to enhance the effect of purity of the packaged water and to correspond to the words in the tag line, the background label in blue has an artistic creation of water flowing from a range of mountains. The words along with the tag line are written in white. Any Indian who would see the water flowing from the mountains would generally relate it to the Himalayas.

5 After registering the said trademark “Sisleri, pure drinking water with minerals” along with the artistically created label for the Company, the Company got the copyright registration for the said artistic creation of the words and label in December, 2000.

6 In January, 2015, the Company noticed that in competition with the brand “Sisleri”, another brand exists in the market by the name of “Zisleri”, predominantly its market being central and south india, though not restricted to the said area. On further investigation, it was found that the brand “Zisleri” is being used by a Mumbai based Company named Zis drinks Pvt. Ltd. for packaged drinking water since December, 1999, though its application for trade mark and copyright registration is pending till date. It is also revealed on approaching Mr. Hussain that he created the artistic word and label marks for “Zisleri” in the year 2001, and since then the brand “Zisleri” is selling its packaged drinking water with the said label. The Trade Mark “Zisleri” also has a tagline “with purity and minerals of Himalayas”. The colour combination used in the artistic creation is dark blue and white, being descriptive of purity. The background of the label consists of Himalayan peaks. On investigation by IFD Pvt. Ltd. it was also found that the sales of the brand “Sisleri” actually dipped for the first time since its start and that the brand is causing damage to the profits of the brand “Sisleri”, “Zisleri” being one of the cheap options of packaged drinking water available in the market.

7 So, the Company Indian Foods and Drinks Pvt. Ltd. decided to file a suit for Trade Mark and Copyright Infringement, Passing off and damages in the trial Court. The Trial Court gave a finding in favour of the Plaintiff “Sisleri”, which however was over turned by the Hon’ble High Court in favour of “Zisleri”.

The SLP is now preferred by the Original Plaintiff “Sisleri” before the Hon’ble Apex Court. Parties to frame the following issues and argue accordingly:-

- 1) Phonetic similarity
- 2) Registration protection
- 3) Long User/ Goodwill creation
- 4) Bonafides and Malafides in adopting the mark

5) The Concept of Idea Expression Dichotomy in Copyright

6) Section 17 of the Trade Marks Act

7) Descriptiveness of a Trade Mark

8) It includes many things like the packaging, price point, distinction or words and stylisation.