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Success for Red Bull as Delhi High Court grants injunction against use of RED HORSE mark and label

India - [Nishith Desai Associates](#)

- Bakewell sold candy using the RED HORSE mark and label on its website
- Red Bull argued that such use was in bad faith and constituted an infringement of its RED BULL marks
- The court restrained Bakewell from using the impugned marks or any other mark which was deceptively similar to Red Bull's marks

In [Red Bull AG v Bakewell Biscuits Private Limited](#) (CS(COMM) 227/2021, 18 May 2021), the Delhi High Court has granted an *ex parte* interim injunction to Red Bull AG against Bakewell Biscuits Private Limited. The dispute concerned the use of the mark RED HORSE and a RED HORSE label including a blue/silver trapezoid (the 'impugned marks'), which Red Bull alleged was identical and/or deceptively similar to its registered RED BULL marks. The court restrained Bakewell from using the impugned marks or any other mark which was deceptively similar to Red Bull's marks (as defined below) until the next hearing date.

Background

Red Bull AG is a wholly-owned subsidiary of Red Bull GmbH, which is a well-known manufacturer and marketer of energy drinks. Red Bull AG has acquired various trademark registrations in India, including for the word marks RED, RED BULL and RED BULL ENERGY DRINK, and the 'red bull', 'single bull', 'double bull' and 'blue/silver trapezoid' devices ('Red Bull's marks'). Notably, the trademark RED BULL is specifically recorded as a well-known mark at the Trademarks Registry in India. Further, the 'double bull' and 'single bull' devices were also declared to be well-known trademarks by the Delhi High Court in 2018 (*Red Bull AG v C Eswari* (CS (COMM) 1062/2018)).

Red Bull submitted that the use of the impugned marks by Bakewell was in bad faith and constituted an infringement of its marks. Further, it argued that Bakewell had adopted an identical and/or deceptively similar RED HORSE mark and RED HORSE label, which incorporated the blue/silver trapezoid device and the device of two charging animals with a yellow backdrop/sun disk. Further, the font, stylisation and colour combination of the impugned marks were also identical to Red Bull's marks.

Bakewell sold candy using the impugned marks on its website. Red Bull issued a cease-and-desist notice to Bakewell, but the latter did not provide any written response. Even after Red Bull contacted Bakewell through its counsel, it did not comply with the cease-and-desist notice. Red Bull also stated that it had filed an opposition against Bakewell's application for the registration of the RED HORSE mark.

Decision

The Delhi High Court, without providing any further reasoning in relation to Red Bull's arguments, held that Red Bull had established a *prima facie* case in its favour. The court also held that the balance of convenience lay in favour of Red Bull and that, if an *ex parte* interim injunction was not granted, irreparable loss would be caused to Red Bull.

The court directed that, until the next hearing date, Bakewell, its officers and all those connected with its business, among others, were restrained from using the impugned marks or any other mark which was deceptively or confusingly similar to Red Bull's marks. This restriction would apply to any use in respect of goods including candy and confectionery items, or any other use in any manner which was not authorised by Red Bull and would amount to infringement or passing off of Red Bull's marks.

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