



## India - M&S faces accusations of violating India's single-brand retail policy

By Seher Hussain

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Stalwart British brand Marks & Spencer **has been accused by the Department of Industrial Policy & Promotion** of violating India's single-brand retail policy by selling sub-brands at its shops across the country. Although the government has yet to make an official decision on the issue, trademark counsel caution that retail brands interested in entering the market make full disclosures about any sub-brands in their applications to the Indian government in conjunction with a wait-and-see approach.

Introduced in 2006, the single-brand retail policy permits foreign brand-owners to enter the Indian market under certain conditions. One of those specifies that multiple brands or sub-brands owned by the same company can neither be sold under one roof nor sold by the same firm. However ambiguity remains as to what the definition of a 'sub-brand' is and whether it falls under the umbrella of the single-brand retail policy.

"The single-brand retail FDI policy may not have been drafted to encompass different organisations' various brand strategies," says Cyril Abrol, partner designate at **Remfry & Sagar**. He explains that branding can play out in two main ways in India. "It's either the branded house strategy or the house of brands strategy," he says; "the former promotes reliability and keeps all products under a single brand, but the latter strategy is often employed to use diverse brands to penetrate different segments of the market."

Examples of both are clearly visible in the Indian marketplace, particularly in the automobile sector as Audi pursues a branded house strategy to retain the premium feel of its product, while Hyundai puts forward a host of different brands to reach out to a mass audience. As such, when the Indian government introduced the retail policy, it wasn't completely equipped to address the many ways that companies use branding to sell their products; an ambiguity which M&S may have fallen afoul of.

"There have been a number of approvals granted to foreign brands under this policy," says Sandeep Dudeja, senior partner at **Luthra & Luthra**, "and some of those brands have disclosed their associated brands to the regulator already so those are not a problem. It's those applications that have shared the main brand but not the sub-brands where questions are being raised." In the

M&S case, trademark counsel suggest that it is a question of going back to their initial application and reviewing whether they had disclosed their associated brands or not, and which specific permissions had been granted by the regulatory authority.

Whether the Indian regulator classifies a sub-brand as part of the larger brand or considers it to be a different brand entirely is often decided on a case-by-case basis, say trademark counsel. It can depend on whether the sub-brand includes the main brand's name, such as Zara and its associated brands Zara Man or Zara Woman, or whether other clear linkages exist between the two. In the case of M&S, its sub-brands in India include Autograph, Limited Collection and Blue Harbour.

While M&S waits to see how this will play out in the marketplace, other retail brands that are looking to enter the market are advised to ensure that their applications are as comprehensive as possible. "Care needs to be taken about the information that is supplied at the time of approval so that all relevant aspects are disclosed," says Dudeja. "The application for approval should clearly explain how their sub brands are closely linked with their main brand and how that position is repeated in their shops globally. Despite the ambiguity in the policy it is still possible to get a favourable view from the regulator if you clearly explain and disclose your business model," he concludes.

Taking that into account, retail brands overall are urged to take a wait-and-see approach while the government reviews the retail policy in light of the M&S matter. "Only such business models that work on a single branded house strategy should move in the direction of applications to the Indian government right now," says Abrol, "because the law might not change in the near future."

## Comments

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