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That’s the way the cookie crumbles

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By **Guest** | May 4, 2017



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The matter was brought before a bench headed by Justice Ranjan Gogoi which issued notice to Britannia Ltd and sought its response before the next date of hearing.

The court was responding to an appeal by ITC Ltd against a 10 March order of the division bench of the Delhi high court that had set aside the operation of an injunction order against Britannia, allowing the company to produce and sell its brand of digestive biscuits.

Claiming that Britannia's impugned product packaging is virtually indistinguishable to the unwary consumer, ITC alleged that Britannia's impugned packaging is a "clever imitation" of packaging of its product and the former had "blatantly imitated all the features and elements of its packaging, etc. in such a manner that it is "bound to cause deception and confuse unwary consumers."

ITC further said that Britannia's product is "not suitable for consumption by children" as it contains 'Sucralose' whereas its NutriChoice biscuits contain 'Maltitol,' which is a natural derivative of sugar and completely safe for consumption by all age groups.

The main point for consideration was whether or not the combination of yellow and blue used by ITC had become so identifiable with its biscuits that its use by others such as Britannia could be seen as an attempt to deceive the consumer. "ITC could not claim exclusivity over the color combination when it has been in use for a short span of time." the order held. The combination was in use by ITC since May 2016.

It was held that ITC's use of the color combination could not be seen to have gained enough visibility as to prevent competitors from using it.

Britannia replied and pointed out that it was the market leader in digestive biscuits with a 66% share as against ITC's 1.8%.

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