Controversy surrounding Maggi Noodles - Legal Issues

Mubashshir Sarshar, National Law University, Delhi
CONTROVERSY SURROUNDING MAGGI NOODLES: LEGAL ISSUES

Abstract

This article examines the various legal issues surrounding the recent ban on Nestle’s Maggi Noodles imposed by FSSAI while briefly discussing each of them in broad detail.

A. Overview of laws

The food laws and regulations of a country are framed in order to meet its sanitary requirements while ensuring the safety and suitability of food for the consumers at large.

The Indian food industry, until 2006 was regulated under the Prevention of Food Adulteration Act, 1954 and various orders issued by the government including but not limited to the Fruit Products Order 1955, the Meat Food Products Order 1973, the Vegetable Oil Products (Control) Order 1947, the Milk and Milk Products Order 1992 and the Edible Oils Packaging (Regulation) Order 1998. However, in 2006 the Parliament of India enacted the Food Safety and Standards Act, 2006 (the “Act”) overriding all food related laws mentioned above and established a central food regulator, i.e. the Food Safety and Standards Authority of India (the “FSSAI”) to regulate the manufacture, storage, distribution, sale and import of safe and wholesome food for human consumption in India as per international standards.

In due course, the FSSAI framed various regulations\(^1\) to lay down the standards and guidelines in relation to the packaging and labelling\(^2\) and addition of additives\(^3\) among others with regard to various food items and specifying the appropriate system of enforcing such standards.

B. The Maggi Controversy

A nation-wide controversy erupted last month regarding the safety of Nestle’s ‘Maggi Instant Noodles with Tastemaker’ (hereinafter referred to as “Maggi”) after a presence of impermissible level of lead was detected in the product pursuant to the sampling and testing of Maggi by the Commissioner of Food Safety, Uttar Pradesh\(^4\). In keeping with the development, the FSSAI advised the Commissioners of Food Safety in various states to draw samples of Maggi and get the same tested from authorised laboratories which resulted in 14 Indian States banning the sale of Maggi.

C. Legal Issues

There are broadly three legal issues surrounding the above controversy. They are as under:

---

\(^1\) Section 92 of the Act.

\(^2\) The Food Safety and Standards (Packaging and Labelling) Regulation, 2011.

\(^3\) The Food Safety and Standards (Food product standards and Food Additives) Regulation, 2011.

\(^4\) Section 30 of the Act mandates the appointment of a Commissioner of Food Safety by each State Government for the efficient implementation of food safety and standards laid down under this Act and the rules and regulations made thereunder.
1. The presence of lead in excess of the permissible safety limits of 2.5 ppm as provided under the Regulation 2.1.1:1 of the Food Safety and Standards (Contaminants, toxins and residues) Regulation, 2011 (the “Contaminants Regulation”);

2. A violation of Regulation 2.4.5:18 of the Food Safety and Standards (Packaging and Labelling) Regulation, 2011 (the “Labelling Regulation”) with regard to the following label ‘No added Mono Sodium Glutamate (“MSG”) added’ whereas Maggi was found to contain MSG; and

3. The release of ‘Maggi Oats Masala Noodles with Tastemaker’ (hereinafter referred to as “Maggi Oats”) in the market without completing the process of risk/safety assessment and approval by the FSSAI.

D. Discussion

In terms of the issue relating to the excess lead content, Nestle’s officials in a hearing before the Chairman, FSSAI on June 4, 2015 put forth an argument that Maggi contains two parts i.e. the noodle and the tastemaker. The samples so far had been tested for each of the two components separately whereas it should have been tested as a combined end product, i.e. the form in which it is finally consumed.

However, the above argument is rendered flawed because the final edible product has minimal linkage with the product manufactured and placed in the market, and may differ based on the usage of other constituents, i.e. water and utensils in process of preparation.

With regard to the issue relating to Maggi containing MSG, it may be noted that the Food Safety and Standards (Food product standards and Food Additives) Regulation, 2011 (the “Additives Regulation”) under Regulation 3.1.11(xxiii) allows permissible level of MSG in the ‘seasoning for noodles and pasta’, i.e. the tastemaker in the case of Maggi. However, printing ‘No Added MSG’ in order to gain undue commercial advantage by creating a false impression in the minds of consumers is a clear violation of Regulation 2.4.5:18 of the Labelling Regulation.

With regard to the release of Maggi Oats in the market without obtaining product approval from FSSAI, it may be noted that FSSAI issued guidelines to be followed for product approval under various ‘Advisories’, the latest one being issued on May 11, 2013. It is important to note that the aforementioned Advisory was stayed by the Bombay High Court vide its order dated January 31, 2014 and although FSSAI has preferred an appeal before the Supreme Court, the entire process of product approval remains suspended until the final adjudication.

---

6 Although ‘permissible limit’ is not defined in terms of a numerical limit under the Additives Regulation, however it depends on ‘Good Manufacturing Practices’ as provided under the ‘Codex Alimentarius International Food Standard’, an internationally recognized food standard organization.
However, it is understood the FSSAI in its order\(^8\) has stated that although the Advisory remains suspended, Nestle would be still liable to face legal action under Section 26 of the Act which provides for the general responsibilities of a food business operator.

E. Order of FSSAI

In terms of the order passed by the FSSAI\(^9\), it has firstly directed Nestle to recall all approved variants of Maggi including Maggi Oats from the markets and stop further production of the same with immediate effect and secondly, rectify the label to remove ‘No added MSG’ on all packages to comply with the Labelling Regulation.

F. The Road Ahead

As things stand, Nestle may file an appeal against the aforesaid order before the Food Safety Appellate Tribunal\(^10\), however according to news reports it has preferred an appeal before the Bombay High Court seeking a judicial review of the order of the FSSAI.

Based on the severity involved, it would be interesting to see whether any of the appellate authorities would impose a civil or criminal liability on Nestle in terms of the penal provisions\(^11\) provided under the Act.

---


\(^9\) Ibid.

\(^10\) Section 70 of the Act.

\(^11\) Sections 53, 58 and 59 of the Act.