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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) NO. 158 OF 2013**

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Judgment dated 30.04.2014

PEPSICO. INC & ANR. Plaintiff
THROUGH: Ms. Bitika Sharma and
Ms. Anusuya Nigam, Advs
VERSUS
AQUA MINERAL (INDIA) & ANR Defendants
THROUGH:

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. The plaintiffs have filed the present suit for permanent injunction restraining violation and infringement of rights in the trade mark, trade name, label AQUAFINA, infringement of copyright, rendition of accounts, dilution, and delivery up.
2. Summons were issued in the suit on 29.01.2013. On an application filed by the plaintiff for appointment of Local Commissioner moved, a Local Commissioner was appointed in the matter. None appeared on behalf of defendants despite service and hence defendants were proceeded ex parte on 15.01.2014.
2. Plaintiffs have filed affidavit by way of evidence of Director-Legal at the Plaintiff No. 2 Company and the authorized signatory of the Plaintiffs, Mr.Vinod Kaushal(PW1).
3. PW1 has deposed that plaintiff No.1 i.e. PepsiCo, Inc. is a corporation existing under the laws of North Carolina, United States of America, having its principal office at 700, Anderson Hill Road, Purchase New

York, USA and Plaintiff No. 2 i.e. PepsiCo India Holdings Limited, is a fully owned subsidiary of plaintiff No. 1, and is fully authorized on behalf of Plaintiff no.1.

4. PW1 has further deposed that the Plaintiffs are world renowned manufacturers and sellers of beverages under the trademarks PEPSI, MIRINDA, 7UP and MOUNTAIN DEW, among others and are also the largest manufacturers and sellers of snack foods including the brands LAY'S, CHEETOS, TOSTITOS, DORITOS, LEHAR and KURKURE. It has also been deposed that one of the leading businesses of the Plaintiffs is the manufacture and sale of packaged drinking water under the trademark/name/logo/label AQUAFINA.
5. Mr.Vinod Kaushal, PW-1 has further deposed that the present case relates to the trademark AQUAFINA and the adoption and use by the Defendant of an identical trademark/name/logo/label AQUAFINE for packaged drinking water. Coloured printout of plaintiffs' product label AQUAFINA and Defendants' label AQUAFINE are exhibited as Ex. PW-1/3 and Ex. PW-1/4 respectively.
6. It has also been deposed that the mark AQUAFINA is a unique word coined and adopted by the Plaintiffs and has been exclusively used by Plaintiffs since 1994 and in fact, AQUAFINA drinking water is the brand with the highest market share among bottled drinking water in the United States. He has also deposed that the word AQUAFINA, having no obvious meaning, is an invented word and is entitled to the highest degree of protection and it is completely distinctive of the Plaintiffs and their products.
7. PW-1, has further deposed that the AQUAFINA product was launched in India as early as 1999. It has also been deposed that in India, the bottling plant has been set up at Roha in Raigarh district of Maharashtra with an

investment of over Rs.5 crores and apart from the plant at Roha, the Plaintiffs have also spent over Rs.50 crores in the setting up of 17 other manufacturing plants in India. He has also deposed that the AQUAFINA product is manufactured with a special reverse osmosis ultra purification system which ensures the purity and quality of the said product.

8. He has further deposed that due to the extensive advertising and promotional campaigns which have been launched by the Plaintiffs, the trade mark AQUAFINA has gained enormous recognition and popularity in a short period of time and is today considered as one of the premium brands for bottled drinking water. It has also been deposed that Plaintiffs have promoted the AQUAFINA brand with various tag lines like “AQUAFINA the purest part of you”, “AQUAFINA -- pure water from PEPSI” etc., which have established an inseparable connection between AQUAFINA and the Plaintiffs. Moreover, due to various safeguards which have been adopted by the Plaintiffs to maintain the quality of water, the product under the mark/logo/label AQUAFINA has been able to capture a substantial market share in India due to its quality, purity and freshness.
9. It has also been deposed that the Plaintiffs have applied for the registration of the trademark AQUAFINA, as also the label and logo design in numerous countries. The list of countries where the mark has proceeded to registration includes, but is not limited to: Algeria, Argentina, Armenia, Australia, Austria, Bahrain, Belarus, Benelux, Brazil, Bulgaria, Canada, Chile, China (people’s republic of), Colombia, Costa Rica, Cyprus, Czech republic, Egypt, Estonia, Ethiopia, European Union, Finland, Germany, Greece, Honduras, Hong Kong, Hungary, Japan, Jordan, Kazakhstan, Kuwait, Latvia, Lebanon, Lithuania, Macao, Malaysia, Morocco, New Zealand, Nigeria, Oman, Pakistan, Panama,

Philippines, Peru, Poland, Portugal, Qatar, Romania, Russian Federation, Saudi Arabia, Singapore, Slovak Republic, South Africa, South Korea, Taiwan, Thailand, Turkey, Ukraine, UAE, Venezuela, Vietnam and Yemen. Copies of few foreign registration certificates, online printouts of registration certificates and current status of the mark from the respective online database of Trade Marks Offices and a list of worldwide registrations of Plaintiff No. 1 for the mark/logo/label AQUAFINA are exhibited and/or marked as ‘MARK B’ and Ex. PW-1/7 respectively.

10. PW1 has further deposed that in India, the mark AQUAFINA, in the unique writing style and the font and label, is a registered trade mark of Plaintiffs. Details of the registration are as under:

Reg. No.	Date	Class	Trademark
774285	29.4.1997	32	AQUAFINA
1129381	28.8.2002	32	
1308951	15.9.2004	32	

The copy of the Legal Proceeding Certificates of registration No. 774285

and 1129381 for AQUAFINA label are exhibited as Ex. PW-1/8 and Ex. PW-1/9, respectively. Further, a printout from the Indian Trademark Registry website (www.ipindia.nic.in) depicting the trademark registration of the mark AQUAFINA NOVEAU (label mark) in favour of Plaintiff No 1 alongwith Trademark Journal extract is exhibited as Ex. PW1/10 (Colly). It has also been deposed that the plaintiffs are the exclusive owners and proprietors of the said label and use of a deceptively similar label by the Defendant constitutes infringement of the Plaintiff's rights in the AQUAFINA label.

11. PW1, Mr. Vinod Kaushal, has also deposed that logo of the product under the mark features AQUAFINA written in a stylized font, in white, with the first and last letters being taller and more elongated than the other letters and is extremely unique and has a blue color background with the distinctive artistic device wedged between the two "A's" of the word AQUAFINA. It has also been deposed that under Sec. 17 of the Copyright Act, all rights in the label are owned by the plaintiffs and the said label is distinctive and is an original artistic work under Sec. 2 (c) of the Copyright Act and is entitled to the highest degree of protection.
12. He has also deposed that the AQUAFINA Label design is registered as a copyright in the United States Copyright Office under Registration No. VA-1-099-341 and the said registration is fully applicable, enforceable and protectable in India by virtue of it being a signatory to the Berne Convention and being a WTO country. A copy of the US copyright registration certificate is exhibited as Ex. PW1/11.
13. W1 has also deposed that in India, the Plaintiffs' AQUAFINA product is sold in two forms viz., bottled form and bulk form. The popularity of the product AQUAFINA is evident from the growing sales of the said product. Total Gross Revenue from sales of bottled AQUAFINA

manufactured by the Plaintiffs for the cases sold to retail outlets are as follows:-

YEAR	Raw MM Cases	Value (In Crores)
2002	4.7 MM	56
2003	7.2 MM	81
2004	7.6 MM	85
2005	10.6 MM	123
2006	12.3 MM	153
2007	36 MM	165
2008	41MM	200
2009	54MM	264
2010	68.9MM	367
2011	87.7	485
2012	103.2MM	596
2013	99.6MM	650

14. It has also been deposed that the Plaintiffs have spent enormous amount on advertising of AQUAFINA packaged water in India. The advertising budgets for the last few years are as under:

Year	Amount (Lakhs)
2005	155

2006	167
2007	319
2008	874
2009	410
2010	453
2011	50
2012	50
2013	NIL

15. It has further been deposed that worldwide, AQUAFINA is the eighth largest beverage brand in the PepsiCo portfolio and has estimated worldwide retail sales of over 2 billion dollars (U.S.). Copies of publicity material and various press clippings, internet printouts of online articles/press releases for mark/label of AQUAFINA are exhibited as Ex. PW-1/12 and Ex. PW-1/13.
16. He has also deposed that the mark AQUAFINA is a “well-known mark” within the meaning of Sec. 11(8) of Trade Marks Act, 1999, as the same has been protected by the Hon’ble High Court of Delhi through various Judgments. He has further deposed that the stated brand of the plaintiffs is marketed and sold all over the country through a vast business network and is therefore to be considered as a “well-known mark” under Sections 11 (6) and 11 (7) of Trade Marks Act, 1999. Therefore use of the said mark or any other deceptively similar mark to that of the Plaintiffs’ by any other party in respect of any class of goods whatsoever, without the permission or authorization of the Plaintiffs, constitutes passing off of such goods or business as that of the Plaintiffs or that is connected with the Plaintiffs.
17. He has further deposed that in compliance of the direction of the Hon’ble

Court the local commissioner visited the said Defendant's premises on 06.02.2013. On checking the premises, 327 cans with the labels/stickers AQUAFINE were found. The cans were seized and sealed under the signature of Local Commissioner and handed over to one the partners of defendants on superdari.

18. I have heard counsel for the plaintiffs and carefully perused the documents which have been placed on record along with the affidavit by way of evidence which have been filed. The evidence of the plaintiffs remained un rebutted. The registration certificates of the plaintiffs trademarks AQUAFINA have been exhibited as Ex. PW-1/8 and Ex. PW-1/9. Coloured printout of plaintiffs' product label AQUAFINA and Defendants' label AQUAFINE are exhibited as Ex. PW-1/3 and Ex. PW-1/4 respectively.
19. On the basis of the documents placed on record, the plaintiffs have established that plaintiff no. 1 is the owner of the trademark, trade name, logo and label AQUAFINA and the plaintiff have the exclusive right to use the same. Plaintiffs have also established that they are using a particular label in respect of their product and said label was created for and on behalf of the plaintiffs and that the said label of plaintiffs is an original artistic work that falls within the meaning of Section 2(c) of the Copyrights Act, 1957. Plaintiffs have also established that on account of enormous amount spent on advertisement of AQUAFINA packaged drinking water in India, plaintiffs have been able to generate vast turnover for years and that during the past many years, the plaintiffs have built up an unparalleled reputation and goodwill with respect to their trademark, trade name, label and logo AQUAFINA. Plaintiffs have also established that the trade mark AQUAFINA used for packaged drinking water is highly distinctive and is identified with plaintiffs only. Plaintiffs have also

established that the defendants by using the trademark AQUAFINE, which is identical and/or deceptively similar to plaintiffs' mark AQUAFINA, in respect of packaged drinking water, are causing infringement of rights in the trademark and copyright of the plaintiffs.

20. In view of the above, the plaintiffs are entitled to a decree of permanent Injunction against the defendant from dealing with the goods having infringing mark in terms of prayers (a) and (b) of paragraph 31 of the plaint.
21. The plaintiff has also claimed damages on account of illegal activities of the defendant along with delivery up of the goods bearing the impugned trade mark/trade name of the plaintiff.
22. In case of **Time Incorporated v. Lokesh Srivastava and Anr.**, reported as 2005 (30) PTC 3 (Del) the court has recognized third type of damages as punitive damages apart from compensatory and nominal damages. The court has held that:

“The award of compensatory damages are aimed at deterring a wrong doer and the like minded from indulging in such unlawful activities.”

"This Court has no hesitation in saying that the time has come when the Courts dealing actions infringement of trademark, copy rights, patents etc. should not only grant compensatory damages but award punitive damages also with a view to discourage and dishearten law breakers who indulge in violations with impunity out of lust for money so that they realize that in case they are caught, they would be liable not only to reimburse the aggrieved party but would be liable to pay punitive damages also, which may spell financial disaster for them."

23. For the reasons stated above, the order dated 29.01.2013 is confirmed and the suit is decreed in favour of the plaintiff and against the defendants. Plaintiff is also entitled to damages to the tune of Rs.5.0 lacs.
24. Decree sheet be drawn up accordingly

G.S.SISTANI, J

APRIL 30, 2014

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