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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 247/2023 & I.A. 2987/2024**
THE COCA-COLA COMPANY Plaintiff

Through: Ms. Anuradha Salhotra and Mr.
Aman Venugopal, Advs.

versus

MR. SUBHASH CHAND Defendant

Through:

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

07.02.2024

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I.A. 2987/2024 (under Order VIII Rule 10, CPC)

1. This application has been filed under Order VIII Rule 10, Code of Civil Procedure, 1908 (“CPC”) on behalf of the plaintiff seeking a decree in absence of defendant’s written statement. It was noted in the previous order of this Court dated 9th January, 2024 that the right to file written statement of the defendant has been closed and he may be proceeded *ex-parte*. There has been no response by the defendant in the applications or the plaint. Accordingly, this application is pressed seeking a decree.

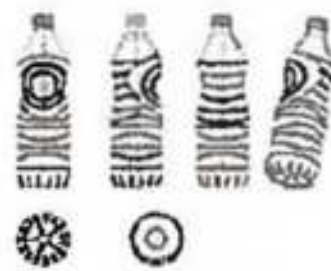
2. The suit had been filed by plaintiff seeking decree of permanent injunction against defendant and all those acting on its behalf from selling, offering for sale, marketing, advertising, manufacturing, directly or indirectly dealing in any goods bearing the impugned trademark ‘KENLEY’ or any other trademark identically or similar to the plaintiff’s trademark ‘KINLEY’.



3. Plaintiff, i.e., the Coca-Cola Company is a corporation organised and existing under the laws of State of Delaware, U.S.A. and is the registered owner of trademark '**KINLEY**'. Present suit had been filed in relation to



misuse of the mark '**KINLEY**', , ('**KINLEY**



Marks"), the distinctive bottle shape ("Danube



bottle shape") and the label /



("Two Drop design label").

4. Grievance of plaintiff pertains to use by defendant of the mark '**KENLEY**' which was identical to the plaintiff's marks being sold in the bottle of which the trade dress and shape was virtually identical to the distinctive Danube bottle shape identical to the Two Drop design label use by the plaintiff. Comparison of the products is as under:

PLAINTIFF'S TRADE MARK	DEFENDANT'S TRADE MARK
KINLEY	KENLEY
	



PLAINTIFF'S LABEL	
DEFENDANT'S LABEL	

PLAINTIFF'S BOTTLE SHAPE	DEFENDANT'S BOTTLE SHAPE
Front View	
Bottom view	



PLAINTIFF'S TRADE DRESS	DEFENDANT'S TRADE DRESS
Front View	
	
Back view	
	

5. Plaintiff claims that they have obtained the following registrations for their ‘KINLEY’ marks:



S. No.	Trade Mark	Regn. No. and Date	Class	User Detail	Renewed Up to
1.		2561225 08/07/2013	32	Proposed to be used	08/07/2023
Goods: beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages					
2.		2097362 09/02/2011	32	01/05/2008	09/02/2031
Goods: beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.					
3.		2541578 31/05/2013	32	Proposed to be used	31/05/2023
Goods: beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.					
4.		2322340 26/04/2012	32	Proposed to be used	26/04/2032
Goods: beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.					
Associated Trademarks: 264524, 1433964, 1682367, 1682368					

6. An *ex parte ad interim* injunction was granted by this Court on 27th April, 2023 in favour of the plaintiff. Counsel had appeared on behalf of the defendant on subsequent dates. However, no further appearance was noted since the last few hearings.

7. Accordingly, plaintiff will be entitled to the judgment and decree in



their favour, as per provisions of Order VIII Rule 10, CPC.

8. Since the pleas of the plaintiff stands un rebutted, the suit stands decreed in terms of Prayers (i), (ii), (iii) and (iv) of the plaint, extracted as under:-

- i. *Pass a decree of permanent injunction against the Defendant, its Directors, authorized representatives, successors, franchisees, licensees, distributors, assignees, agents, and anyone acting for and/ or on its behalf from selling, offering for sale, marketing, advertising, manufacturing, and directly or indirectly dealing in any goods bearing the trade mark KENLEY and/or any other trade mark identical or similar to the Plaintiffs well-known KINLEY Mark as a trade mark/part of a trade mark, trade name/part of a trade name, domain name/part of a domain name and/or in any other manner whatsoever, which would amount to infringement of the Plaintiffs registered trade mark;*
- ii. *Pass a decree of permanent injunction against the Defendant, its Directors, authorized representatives, successors, franchisees, licensees, distributors, assignees, agents, and anyone acting for and/ or on its behalf from selling, offering for sale, marketing, advertising, manufacturing, and directly or indirectly dealing in any goods bearing the trade mark KENLEY and/or any other trade mark identical or similar to the Plaintiffs well-known KINLEY Mark as a trade mark/part of a trade mark, trade name/part of a trade name, domain name/part of a domain name and/or in any other manner whatsoever, which would amount to passing off of the Plaintiffs trade mark/products;*



- iii. *Pass a decree of permanent injunction against the Defendant, its Directors, authorized representatives, successors, franchisees, licensees, distributors, assignees, agents, and anyone acting for and/ or on its behalf, from selling, offering for sale, marketing, advertising, manufacturing, and directly or indirectly dealing in any goods bearing the Impugned Trade Dress, bottle shape, label and/or any other trade dress/ bottle shape/ label identical or deceptively similar to the Plaintiffs registered DANUBE BOTTLE shape*



and the TWO DROP design label



and/or any other label /packaging/bottle shape/ Trade Dress identical or deceptively similar to KINLEY trade dress/ bottle shape/ label in any manner whatsoever;

- iv. *An order of permanent injunction restraining the Defendant, their directors, proprietors, promoters, agents, servants, distributors and any other person(s) acting for and on behalf of the Defendants from selling, offering for sale, marketing, advertising, manufacturing, and directly or indirectly dealing in any goods, bearing the Plaintiffs original artistic work in the TWO DROP design label under which the Plaintiff sells their products bearing the well-*



known brand KINLEY, together with its distinctive elements or any imitation thereof in any manner whatsoever amounting to infringement of the Plaintiff's copyright;

9. Further, it has been pointed out by the counsel for the plaintiff that, as per directions of this Court on 27th April, 2023, a Local Commissioner was appointed to visit the premises of the defendant at M/s Rawat Water Udyog 1, Near Devi Ka Mandir, Bahabalpur, Faridabad, Haryana, 121004 to inventorise and seize all infringing goods and hand them over to the defendant on *superdari*. Local Commissioner's Report dated 8th May, 2023 notes that a large amount of inventory was seized and deposited on *superdari* with the defendant.

10. In view of the decree which is being passed, it is directed that the Authorized Representative of plaintiff and defendant, along with counsel for the parties shall visit the defendant's premises and take delivery of the goods which were given on *superdari* by the Local Commissioner and will proceed to destroy the same in accordance with applicable norms/rules for disposal of such materials.

11. A copy of this order shall be supplied to the defendant, if so requested.

12. Assistance of the SHO of the local police station within whose jurisdiction the defendant's premises lie may also be taken, if so required, by the Authorized Representative of the plaintiff.

13. Decree sheet be drawn accordingly.

14. Accordingly, the present suit is disposed of. Pending applications, if any, are rendered infructuous.

15. The next date of hearing stands cancelled.

16. *Dasti*.



17. Order be uploaded on the website of this Court.

ANISH DAYAL, J

FEBRUARY 7, 2024/MK/sc