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**(2018) 02 DEL CK 0386**

**In the Delhi High Court**

**Case No :** Civil Suit (COMM) No. 1475 Of 2016 and IA No. 10016 Of 2014

Coca-Cola Company & Anr

APPELLANT

Vs

Dwarkanath

RESPONDENT

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**Date of Decision :** 15-02-2018

**Acts Referred:**

Code Of Civil Procedure, 1908 — Order 8 Rule 10

**Citation :** (2018) 02 DEL CK 0386

**Hon'ble Judges :** Jayant Nath, J

**Bench :** Single Bench

**Advocate :** Kangan Roda, Kripa Pandit, Shreya Sethi

**Final Decision :** Disposed Of

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## **Judgement**

Jayant Nath, J

1. The present suit is filed by the plaintiffs seeking a decree of permanent injunction to restrain the defendant, its partners, employees, etc. from

manufacturing, selling, marketing, etc. using the offending trade mark KWALTY and/or offending bottle shape as represented in the plaint and/or any

other mark which is deceptively or confusingly similar to the registered trade mark KINLEY (label) and DANUBE BOTTLE shape of plaintiff No.1

as a trade mark or part of a trade mark or any other mark to infringe the plaintiff's trade mark. Other connected reliefs are also sought.

2. It is contended in the plaint that plaintiff No. 1 is the registered proprietor of the trademarks DANUBE BOTTLE shape, KINLEY and KINLEY

(label) as detailed in para 3 of the plaint. Plaintiff No. 2 is the authorised bottler of plaintiff No.2. It is further pleaded that plaintiff No. 1 first adopted

the distinctive DANUBE BOTTLE shape in the year 2006 in Turkey and in India its use commenced in 2008. Since the launch of the said DANUBE

BOTTLE, the same has been continuously and extensively used and has acquired immense reputation and goodwill. It is pleaded that the consumers

associate the said distinctive DANUBE BOTTLE shape with the plaintiff and plaintiff's brand KINLEY. The plaintiff's brand/trademark KINLEY

was launched in India in 2001. It is pleaded that the plaintiffs have invested enormous amount of money towards the protection, promotion and

advertising of the trade mark KINLEY, the distinctive label and the DANUBE BOTTLE shape details of which are given in the plaint.

3. In May-June 2013, the plaintiff came across the product being packaged drinking water under the brand of KWALTY being offered for sale in a

bottle, the shape of which is virtually identical to plaintiff No.1's well known and distinctive DANUBE BOTTLE shape. Apart from copying the

shape of the bottle, the defendant has adopted a label which is virtually identical to the KINLEY(label) of the plaintiff. Various points of comparison

have also been detailed in the plaint including that the defendant's bottle is virtually identical to the plaintiff's distinctive DANUBE BOTTLE shape.

The defendant has copied the exact shape, silver colour and placement of the ribbon device as used by the plaintiffs in KINLEY. KINLEY (label) has

also been copied. The wordings used on the plaintiff's bottle have also been copied, namely, "Drinking water is good for your body.... You can

enjoy every drop of Kinley". Hence, it is pleaded that the shape of the bottle and the overall get up is virtually identical to that of the plaintiff's trade

mark.

4. It is pleaded that on 07.07.2013 a letter was sent by the counsel for the plaintiff to the defendant to cease and desist. The same was received back

by the postal department as "refused". It is further pleaded that as per the impugned bottles, the entity M/s Harshini Electronics is the

manufacturer. The investigation of the plaintiffs revealed that Mr.Dwarkanath, the defendant is the owner of the said entity. It is also pleaded that the

investigation conducted at the premises of the defendant confirmed that the defendant continues to manufacture the offending product under the mark

KWALTY (label).

5. The defendant was served through publication as it is pleaded that they had refused to accept service. The defendant was proceeded ex parte on

26.09.2017.

6. None has appeared for the defendant and he has also not filed any written statement within the time made available. In terms of Order 8 Rule 10

CPC a decree is passed in favour of the plaintiffs and against the defendant in terms of prayer A (i). The plaintiffs shall also be entitled to costs which

shall be based on the plaintiff's filing a bill of cost duly certified by the learned counsel for the plaintiffs.

7. Learned counsel for the plaintiffs submits that despite the injunction order passed by this court, the defendant continues to flout the interim orders

passed by this court. The plaintiffs are free to take steps as per law against the said act of the defendant.

8. The suit is disposed of in the above terms.