

## IP Hotline

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### VICTORY FOR COCA-COLA: DELHI HIGH COURT GRANTS PERMANENT INJUNCTION AGAINST USE OF KINLEY

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- Coca-Cola sought permanent injunction for infringement and passing off of KINLEY mark
- Court found that defendants used mark dishonestly without Coca-Cola's authorisation
- Court issued permanent injunction prohibiting defendants from using KINLEY and passing off goods as Coca-Cola's

In *The Coca-Cola Company v Glacier Water Industries* (CS (COMM) 1290/2016), the High Court of Delhi has granted plaintiff The Coca-Cola Company a permanent injunction against Glacier Water Industries (first defendant) for infringement and passing off of the plaintiff's registered trademark KINLEY. In doing so, the court reaffirmed the protection afforded to well-known trademarks in India.

#### BACKGROUND

The plaintiff is one of the largest soft drinks companies in the world, with operations in more than 200 countries. The plaintiff is engaged in the manufacture and sale of non-alcoholic beverages to the public in glass and PET bottles, cans and other containers.

The KINLEY mark was adopted and launched by the plaintiff in India in 2001 in relation to its brand of high-quality bottled water. The plaintiff's authorised bottler in India applied for and obtained registration of the mark in Class 32 in the country. The plaintiff has also been using the mark in 35 other countries worldwide.

The plaintiff came across the use of the mark KINLEY by the first defendant in relation to water purification systems using reverse osmosis. The first defendant falsely claimed to have launched its water system in collaboration with Coca Cola India Pvt Ltd, a subsidiary of the plaintiff's authorised bottler.

Upon conducting an investigation into the first defendant, it was further identified that the latter openly advertised its products and prominently displayed the KINLEY mark on its advertising and promotional material when supplying its products to customers in India through its franchisees. Detailed evidence in this regard was filed by the plaintiff with the Delhi High Court.

In addition, the plaintiff observed that the first defendant had also applied for registration of the KINLEY mark (Application No 2329491) in Class 11 in relation to "water purifiers, water supply and sanitary purposes", claiming use since April 1 2011.

The Delhi High Court, on a preliminary evaluation of the aforementioned facts, granted an *ex parte ad interim* injunction in favour of the plaintiff on April 29 2013. The first defendant:

1. was restrained from manufacturing, selling, advertising or in any other manner whatsoever using the KINLEY mark, and/or any other mark deceptively similar to the plaintiff's mark, in a way which infringed the plaintiff's mark or passed off its goods as those of the plaintiff; and
2. was ordered to transfer the domain names 'kinley.in' and 'kinleyro.com', and/or any other domain name similar to the plaintiff's mark, to the plaintiff.

The plaintiff then filed an application to implead two of the partners of M/s Balaji Enterprises, a franchisee of the first defendant - namely, Mr Mukesh and Mr Manoj. The Delhi High Court, in an order dated September 15 2016, allowed the application partially and impleaded M/S Balaji Enterprises as second defendant. The preliminary injunction was also extended to the second defendant.

The Delhi High Court, in its order dated September 15 2016, decreed that the current suit should proceed *ex parte* against the first defendant. In addition, since the second defendant did not file a written statement within the stipulated period of time, the Delhi High Court, in an order dated July 11 2017, decreed that the suit should also proceed *ex parte* against the second defendant.

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JUDGMENT

The Delhi High Court, while relying on the evidence submitted by the plaintiff, observed that, due to its extensive use over a substantial period of time, the plaintiff's mark had acquired reputation and goodwill in India, as well as globally.

Additionally, the Delhi High Court held that the first and second defendants had dishonestly used the KINLEY mark, which is identical to the plaintiff's mark, without any explicit authorisation by the plaintiff. This was based on the evidence submitted by the plaintiff, which it accepted as true and correct, and was not rebutted by either the first or the second defendant.

Consequently, the Delhi High Court held that the use of the mark by the first and second defendants amounted to infringement and passing off of the plaintiff's mark. The court thus issued a permanent injunction ordering that the first and second defendants should:

- 1. refrain from using the KINLEY mark, or any mark deceptively similar to the plaintiff's mark in any manner whatsoever, including but not limited to domain names;
- 2. refrain from passing off their goods as those of the plaintiff;
- 3. transfer the domain names 'kinley.in' and 'kinleyro.com', and/or any other domain name similar to the plaintiff's mark, to the plaintiff; and
- 4. withdraw Application No 2329491.

– [Abhishek Senthilnathan](#) & [Aarushi Jain](#)  
You can direct your queries or comments to the authors

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