

**In The Matter Of Application No. 8502/95
By Qinghai Medicines & Health Products Import & Export Corp.
To Register A Trade Mark In Class 5**

And

**In The Matter Of Opposition Thereto
By Wing Thye Loong (A Partnership)**

*Before Assistant Registrar Chua Ser Ching
25 May 2001*

Trade Mark - Application for registration - Opposition - Defects in evidence - Distinctiveness of mark - Proprietorship of mark - Whether goods are of the same description

The Applicant applied for the registration of a trade mark consisting of the words "ROOSTER BRAND", the Chinese characters for rooster and a device of a rooster (the subject mark). The specification reads "Traditional Chinese herbs, namely, cordyceps, boxthorn fruits; all included in Class 5".

The Opponent is the applicant for two Class 5 marks, one of which comprises a rooster device and Chinese characters which means "rooster" while the other comprises the same rooster device but with the Chinese characters for "Golden Chicken". The goods are of the same description as the Applicant's goods. The Opponent also has a registration for the "Golden Chicken" mark in Class 31 for "Natural plants and flowers". It is not disputed that the Applicant's mark is very similar to the Opponent's.

The Opponent contends that it is the true owner of the subject mark. It claimed to have used its Rooster mark in Singapore on cordyceps since the 1950s and the "Golden Chicken" mark on similar goods since 1990. However, it is also the Opponent's evidence that it has been importing the goods from China suppliers all along and said marks are used by these suppliers. A number of the Opponent's exhibits were also not translated into English. In addition, there was evidence that in 1992, the Opponent and the Applicant entered into a joint venture for the import of the Applicant's goods bearing the subject mark into Singapore. The Applicant's evidence is that it has been using the subject mark since 1965 in China and in Singapore since 1982.

The Opponent also contends that:

- i. by virtue of its Class 31 registration, the subject mark is barred from registration under Section 23 of the Act; and
- ii. the subject mark is not distinctive nor capable of distinguishing the Applicant's goods as there are a number of traders using similar marks both within and outside Singapore.

Held, dismissing the opposition:

- The evidence shows that the Opponent's claim to the subject mark is not bona fide. The Opponent has, all along, merely resold its suppliers' goods in their original packaging and marks.
- The Opponent's s23 objection fails as the Opponent's Class 31 goods are not of the same description as the Applicant's goods which are medicinal in nature.
- The Opponent's submission that the subject mark is not distinctive fails as there is insufficient evidence to show that the subject mark is common in the trade concerned.
- The Opponent's failure to lodge English translations of various documents submitted in evidence resulted in adverse inferences being drawn against it.

Provisions of legislation discussed:

- Trade Marks Act (Cap. 332, 1992 Revised Edition), sections 10, 11, 12, 15 and 23.

Cases referred to:

- Jellineks [1946] 63 RPC 59
- Re J & J Colman (1929) 46 RPC 126
- J Darnell & Sons Ltd's Application [1957] RPC 177

Representation:

- Ms Shireen Abdullah (M/s Khattar Wong & Partners) for the Applicant
- Ms Jacqueline Baruch (M/s Drew & Napier) for the Opponent