

**In The Matter Of A Trade Mark Application No. 2389/90 By
Four Seasons Hotel (Barbados) Ltd**

And

**Opposition By
Marhani Binte Abdul Mutalib
Trading As
House Of Burton (1888) Of Bloomsberry**

***Before Principal Assistant Registrar P Arul Selvamalar
19 June 2003.***

Trade Mark Application - Opposition - Whether mark distinctive - Whether marks are confusingly similar - Trade Marks Act (Cap.332, 1992 Ed) Sections 11, 23, 24, 26

The Applicants, Four Seasons Hotel (Barbados) Ltd, applied for a trade mark comprising the words "FOUR SEASONS" in Class 3 for the goods "cosmetics, toiletries and fragrances". The trade mark was accepted for registration and advertised. The Opponents, Marhani Binte Abdul Mutalib trading as House of Burton (1888) of Bloomsberry, filed an Opposition to its registration on the grounds that the it is similar to the Opponents' 2 applications for composite marks which contained various word and device elements of which two elements were the numeral and the word 4 SEASONS. The Opponents also argued that the Applicants' mark is objectionable under sections 23, 24 and 26 of the Act, that it is generic and objectionable under Section 11 and that the Applicants are guilty of passing off.

Held, allowing the application to proceed to registration:

- Of the Opponents' 2 trade mark applications, one had been abandoned and could not form the basis of an opposition. The other application was in class 14 for different goods, it was subsequent to the Applicants' application and was pending. Therefore it could not form the basis of an opposition under section 23.
- The opposition under section 24 failed as the marks were not identical, neither did they so nearly resemble each other. As the marks were in the names of different proprietors, section 26 was not applicable.
- The words "FOUR SEASONS" were not generic in relation to the goods applied for namely, "cosmetics, toiletries and fragrances". Therefore the Opposition under Section 11 failed.
- There was no evidence of use of the Opponents' mark to establish a reputation or goodwill in the mark as required under the law of passing off. Therefore, the opposition under this ground also failed.

Provisions of legislation discussed:

- Trade Marks Act (Cap. 332, 1992 Ed.) Sections 11, 23, 24, 26

Representation:

- Mr Jonathan Choo (M/s Drew & Napier LLC) for the Applicants
- The Opponents (absent)