

**IN THE HEARINGS AND MEDIATION DEPARTMENT OF
THE INTELLECTUAL PROPERTY OF SINGAPORE
REPUBLIC OF SINGAPORE**

Trade Mark Application No. T03/01036B, T03/08893J and T03/08894I in Classes 14, 24 and
25

26 October 2006

**IN THE MATTER OF AN APPLICATION BY
KABUSHIKI KAISHA WORLD
TO REGISTER A TRADE MARK
And
OPPOSITION THERETO BY
WOLVERINE WORLD WIDE, INC.**

Hearing Officer: Ms Anne Loo
Principal Assistant Registrar of Trade Marks

Ms Cecilia Girvin and Ms Ruby Tham (M/s Drew & Napier LLC) for the Opponent
Ms Vicki Heng (M/s Donaldson & Burkinshaw) for the Applicant

GROUND OF DECISION

1 This is an opposition against the trade mark applications T03/01036B, T03/08893J and T03/08894I in Classes 14, 24 and 25 for the mark “HUSHUSH” in respect of the following goods:

Class 14 : “Alarm clocks; amulets; ashtrays of precious metal, for smokers; badges of precious metal; boxes of precious metal; bracelets; brooches; buckles of precious metal; chain mesh purses of precious metal; chains; charms; chronographs; chronometers; cigar boxes of precious metal; cigarette cases of precious metal; clocks; copper tokens; costume jewelry; cuff links; cups of precious metal; earrings; figurines of precious metal; flasks of precious metal; hat ornaments of precious metal; ingots of precious metals; jewel cases of precious metal; jewelry; key rings (trinkets or fobs); medals; necklaces; ornamental pins; ornaments; paste jewelry (costume jewelry); pins; plated articles of precious metal plating; powder compacts of precious metal; purses of precious metal; rings; shoe ornaments of precious metal; silver ornaments; tie clips; tie pins; trinkets; watch bands; watch chains; watches; wristwatches; all included in Class 14”;

Class 24 : “Banners; bath linen (except clothing); bed blankets; bed clothes; bed covers; bed linen; bedspreads; blinds of textile; coasters (table linen); coverings of plastic for furniture; covers for cushions; curtain holders of textile material; curtains of textile or plastic; diapered linen; door curtains; drugget; fabrics for textile use; face towels of textile; frieze (cloth); furniture coverings of textile; gauze (cloth); haircloth (sackcloth); handkerchiefs of textile; hemp cloth; household linen; jersey (fabric); knitted fabric; labels (cloth); linen cloth; linings (textile); mattress covers; napkins, of cloth, for removing make-up; net curtains; non-woven textile fabrics; pillowcases; place mats of textile; plastic material (substitute for fabrics); quilts; sanitary flannel; sheets (textile); sleeping bags (sheeting); table cloths (not of paper); table linen (textile); table mats (not of paper); table napkins of textile; tapestry (wall hangings), of textile; tissues of textile for removing make-up; toilet gloves; towels of textile; travelling rugs (lap robes); velvet; wall hangings of textile; washing mitts; woollen cloth; all included in Class 24” and

Class 25 : “Aprons; bandanas (neckerchiefs); beach clothes; belts; berets; blouse; boas (necklets); boots; brassieres; breeches; camisoles; caps; chemisettes (shirt fronts); clothing; clothing of imitations of leather; clothing of leather; coats; collar protectors; collars; combinations (clothing); corsets (underclothing); cuffs; drawers; ear muffs; footwear; frocks; furs; gaiters; garters; girdles; gloves; galoshes; half-boots; hats; headbands; headgear for wear; heels; hoods; hosiery; jackets; jerseys; jumpers; knitwear; lingerie; mittens; muffs; neckties; outerclothing; overalls; overcoats; pajamas; pants; parkas; pelerines; pelisses;

petticoats; pullovers; pumps (footwear); ready-made clothing; sandals; scarves; shawls; shirt fronts; shirt yokes; shirts; shoes; singlets; skirts; slippers; slips (undergarments); smocks; socks; spats; sports jerseys; sports shoes; stockings; stoles; stuff jackets; suits; suspenders; sweat-absorbent underclothing (underwear); sweaters; swimsuits; Tee-shirts; tights; topcoats; trousers; underclothing; underpants; vests; waistcoats; waterproof clothing; wristbands; all included in Class 25”.

2 The Applicant, Kabushiki Kaisha World, filed the application in class 14 on the 29 Jan 2003, and the applications in classes 24 and 25 on the 13 June 2003. The trade marks in Classes 14, 24 and 25 were accepted and advertised on the 6 June 2003, 17 October 2003 and 29 August 2003 respectively in the Trade Marks Journal.

3 The Opponent, Wolverine World Wide, Inc., filed Notices of Opposition against the applications in Classes 14, 24 and 25 on 3 October 2003, 16 February 2004 and 10 December 2003 respectively.

4 Pleadings in respect of all 3 applications were closed on the 7th June 2006.

5 At the Pre-Hearing Review on 7 July 2006, the Opponent informed parties that they would be proceeding on Sections 8(2), 8(3), 8(7)(a) and 7(6) of the Trade Marks Act 2005 Revised Edition (“the Act”). As the sales figures in the Applicant’s statutory declaration by Mr Izumi Onishi dated 24 November 2005 were stated in Japanese Yen, the Applicant were directed to file a further statutory declaration indicating the value of the sales figures in Singapore Dollars. The statutory declaration was filed on 18th July 2006 by Mr Maurice Cheong Chee Min, an associate partner in Donaldson & Burkinshaw, the Applicant’s solicitors.

Grounds of Opposition

6 The Opponent cited the following grounds in its Notice of Opposition:

- (i) The Applicant’s Marks and the Opponent’s Mark are confusingly similar and the Applicant are seeking to register the Applicant’s Marks in respect of goods

which are similar to the goods covered by the Opponent's registration and/or on which they have used their mark. Registration of the Applicant's Marks would be contrary to Section 8(2)(b) of the Trade Marks Act (Cap. 332) 2005 Revised Edition. ("the Act")

- (ii) The Opponent through the use of their mark claim valuable reputation and goodwill in their business worldwide as well as in Singapore. Registration of the Applicant's mark is calculated to deceive or cause confusion in the minds of the public and the trade; who are likely to be deceived or confused into believing that there is some connection in the course of trade between the Applicant and the Opponent when no such connection exists. Use by the Applicant will be damaging to the Opponent's goodwill and reputation and would be contrary to Section 8(3) of the Act.
- (iii) As a result of the Opponent's reputation and goodwill in Singapore and worldwide, and as a result of the similarity between the goods covered by the Application mark and the Opponent's marks, the use or proposed use by the Applicant will amount to misrepresentation in that consumers will be lead to believe that the Applicant's goods originate from the Opponent or are manufactured with their consent. Such misrepresentation is likely to damage the Opponent's substantial goodwill. Registration of the Applicant's Marks would be contrary to Section 8(7)(a) of the Act
- (iv) The Applicant's applications are made in bad faith, contrary to section 7(6) of the Act

Counter-Statement

7 In their Counter-Statement to the Notice of Opposition, the Applicant stated that the Applicant's and the Opponent's marks are not confusingly similar and that the Applicant have no knowledge of the Opponent's use or promotion of the "HUSH PUPPIES" mark in Singapore or worldwide. The Applicant further denied that the Opponent marks are or have become well-known in worldwide or in Singapore. The Applicant's mark has been invented and coined in good faith and the Applicant deny that their mark has been made in bad faith and put the Opponent to strict proof thereof of all their allegations.

The Opponent's Evidence

8 The Opponent's statutory declaration was filed by James D. Zwiers, the Assistant Secretary and General Counsel of the Wolverine Worldwide, the Opponent company. In his statutory declaration, he gives the history of the Opponent which has used the "HUSH PUPPIES" mark on a broad range of goods from as early as 1957. The Opponent's business began in 1883 in Rockfort, Michigan, United States of America, when G.A. Krause founded the company. The business was first involved in the distribution of electricity but in 1903, G.A. Krause and his sons built a shoe factory and began manufacturing and selling shoes made of durable horseskin. These shoes were first marketed under the brand name "1,000 Mile Shoes". National advertising took place as early as 1919. In 1946, Wolverine created a new leather, pigskin suede; and with horses disappearing from the American landscape, the business looked for new ways to use the pigskin suede. In 1957, the business created soft, suede casual shoes and marketed them under the brand name HUSH PUPPIES. The mark "HUSH PUPPIES" was created from a treat Southerners used to quiet their barking dogs.

9 The deponent states that the Opponent's business in its shoes under the "HUSH PUPPIES" mark grew significantly both locally and internationally. Consistently with this growth, the Opponent extended the use of the "HUSH PUPPIES" mark to other goods, including clothing, footwear, bags, toys, hair accessories and watches. The Opponent's domestic and international presence encompasses hundreds of retail locations worldwide which sell and distribute goods bearing the Opponent's "HUSH PUPPIES" trade mark. In the United States, the goods are sold and distributed through 94 trade locations. The Opponent's goods are distributed and sold internationally in some 122 countries. The Opponent's international distributors also advertise products under the "HUSH PUPPIES" trade mark in local media and publications, including point of sale materials. The goods bearing the "HUSH PUPPIES" mark are also promoted and sold online via the Internet through the Opponent's distributors. The Opponent states that the availability of the Opponent's goods online exposes the mark to many more people worldwide. The ease of the Internet means that the Opponent's reputation in the "HUSH PUPPIES" mark has spread

beyond the normal marketing channels and is exposed to consumers and the trade, worldwide on a daily basis.

10 The Opponent is the proprietor of the “HUSH PUPPIES” mark in 147 countries around the world as well as in the AIPO (African Union) and the European Union. Copies of registration certificates from the United States, United Kingdom, Australia, Hong Kong and Singapore were exhibited in the statutory declaration. The Opponent also has pending trade mark applications worldwide. As a result of the continuous and extensive use and promotion of the mark, the Opponent has developed a substantial and very valuable international goodwill and reputation in its business under the “HUSH PUPPIES” mark for a broad range of goods.

11 In Singapore, the Opponent has registered the “HUSH PUPPIES” mark from as early as 1966, and has several other registered trade marks in Singapore in classes 18, 24 and 25. The deponent states that with the expansion of business interests worldwide, the Opponent commenced use of the “HUSH PUPPIES” trade mark in Singapore in September 1990. Since then, the Opponent has used the trade mark continuously in Singapore in relation to the goods for which the mark is registered. The annual sales figures from 1995 to 2003 are set out below. Figures prior to 1995 are not available.

<u>YEAR</u>	<u>SGD</u>
1995	7,386,212
1996	5,888,571
1997	5,723,930
1998	5,533,486
1999	8,790,208
2000	11,484,538
2001	10,012,336
2002	9,625,272
2003 (Jan – June)	3,438,348

12 The “HUSH PUPPIES” mark has been advertised and promoted in Singapore since 1991 and has been consistently and prominently displayed in connection with the advertising, promotion and sales of the Opponent’s goods since that date. The annual advertising expenditure in Singapore from April 2001 to March 2003 (advertising records prior to April 2001 could not be located) is:

<u>Year</u>	<u>SGD</u>
April 2001 – March 2002	359,441
April 2002- March 2003	414,093

13 In the statutory declaration in reply to the Applicant’s evidence, Mr Zwiers refuted the contents of the Applicant’s evidence and deposed that the Opponent’s goods are sold in departmental stores such as Robinsons, Takashimaya and the OG Store, in designated areas for clothing. Similarly, the other products sold under the “HUSH PUPPIES” mark are sold in designated areas for such goods in the various departmental stores. The statutory declaration exhibits photographs showing the sale of the Opponent’s clothing apparel in departmental stores.

The Applicant’s Evidence

14 The Applicant’s evidence was filed by Izumi Onishi who has been working in Kabushiki Kaisha World, the Applicant Company, since 1995 and who currently holds the position of Intellectual Property and Legal Affair Department. The deponent gives the history and background of the Applicant company which is a company involved in manufacture and distribution of goods such as the goods in the Applicant’s Classes 14, 24 and 25 trade mark applications. The Applicant has been selling its goods in Singapore since 2004. The Applicant may also be found on the Internet at the website address **www.world.co.jp**

15 The deponent states that the Applicant independently coined its “HusHusH” mark in 1999. The “HusHusH” mark is derived from the key words “HUSH” and SHUSH” which in English, means “a signal and/or a sign that something sweet, memories or innovative feelings brings to people”. The capitalised letters “H” in the “HusHusH” trade mark stand for the phrases : “High quality”, “High Performance” and “High Sesity” which are distinctive

qualities characteristic of the Applicant's goods. To associate the Applicant company with these characteristics, the word "us" is inserted between each of the letters "H", and the combination of elements forms the word "HUSHUSH".

16 The Applicant has built up an extremely large and valuable reputation and goodwill in the "HUSHUSH" trade mark in Asia; and have used the mark in respect of the Class 14, 24 and 25 goods for which protection is being sought since 2004 and continues to do so. In 2004, the Applicant appointed Wing Tai Clothing, a Singapore company to distribute 4 Japanese labels including its "HUSHUSH" and to operate the Applicant's chain of retail outlets throughout the island. The "HUSHUSH" label made its first overseas debut outside of Japan at Seiyu Bugis in Singapore in 2004. The Applicant's second store in Singapore is located at Ngee Ann City and was also opened in 2004. The Applicant has obtained prior registrations in Hong Kong and Japan for the "HUSHUSH" trade mark. Extensive sales, advertising and promotional activities have been carried out in Singapore and in several Asian countries. The deponent exhibited random promotional materials, brochures, advertisements and expenditure, and product labels in support.

17 The recent sales and advertising figures of the "HUSHUSH" trade mark in Singapore are as follows:

Sales figures from September 2004 – May 2005 = SGD 1,040,673.50

Advertising figures from September 2004 – May 2005 = SGD29,846.21

18 The Applicant state that there is peaceful co-existence of the Opponent's "HUSH PUPPIES" mark with the Applicant's "HUSHUSH" mark in Japan and Hong Kong, and there have been no reported instances of confusion between the Applicant's and the Opponent's goods in Singapore. The Opponent has also unsuccessfully opposed registration of the Applicant's "HUSHUSH" mark in Classes 25 and 28 in South Korea. The Applicant state that their stores are one-stop shops which sell a wide variety of goods under one roof. Generally, the Applicant's goods are sold in the Applicant's stores or in designated areas in

departmental stores away from the shoe department, as such the Applicant's goods are never on display or available within close vicinity of the Opponent's goods.

The applicable law

19 The opposition falls to be determined under the Trade Marks Act (Cap. 332) 2005 Revised Edition.

Burden of Proof

20 It was not disputed that where an opponent raises objections under Section 8 of the Act, the onus is on the opponent to make them out. ***Kerly's Law of Trade Marks and Trade Names 14th Edition*** at paragraph 9-164:

“There is no overall onus on the applicant either before the Registrar or in opposition proceedings. And so when an opponent raises objections under section 5 of the 1994 Act [which is the corresponding provision to Section 8 of the Act] he must make them out.”

DECISION

Ground of opposition under section 8(2)(b)

21 The Opponent's first ground of opposition is based on section 8(2)(b) which reads as follows:

A trade mark shall not be registered if because —

(a) ...

(b) it is ***similar*** to an earlier trade mark and is to be registered for goods or services

identical with or ***similar*** to those for which the ***earlier trade mark*** is protected, there exists a likelihood of confusion on the part of the public.

The Act in section 2 defines “an earlier trade mark” as:

(a) a registered trade mark or international trade mark (Singapore), the application for registration of which was made earlier than the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks; or

(b) a trade mark which, at the date of application for registration of the trade mark in question or (where appropriate) of the priority claimed in respect of the application, was entitled to protection under the Paris Convention or the TRIPS Agreement as a well-known trade mark,

and includes a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of paragraph (a) subject to its being so registered.

22 The Opponent has several registered trade marks in Classes 18, 24 and 25 which satisfy the definition of an earlier trade mark under Section 2(a) of the Act. This was not disputed by the Applicant. Counsel for the Opponent had at the start of the hearing informed the Hearing Officer that for the purposes of the opposition hearing, the Opponent would only be relying on their marks in the English language and not the marks bearing the Japanese and Chinese characters equivalents of the “HUSH PUPPIES” marks. The marks relied on and the class of goods in which they relate to are as follows:

<u>Registration No.</u>	<u>Mark</u>	<u>Class</u>	<u>Specification of goods</u>
T95/02584A	HUSH PUPPIES	18	Leather and imitations of leather, travelling bags and sport bags, backpacks, umbrellas, purses, hand bags, belts made of leather or imitation leather and wallets.
T03/07070E	HUSH PUPPIES	24	Textile and textile goods, not included in other classes; bed and table covers; beach towels
T82/00235Z		25	Clothing, all for infants, toddlers and children; belts for

	HUSH PUPPIES		wear, socks
T66/39012Z	HUSH PUPPIES	25	Shoes and headwear for men, women and children

23 Under the section 8(2)(b) ground of opposition, the Opponents have the burden of proving that the following criteria are satisfied:

- a) that the application mark “HUSHHUSH” and the earlier trade marks “HUSH PUPPIES” are similar;
- b) that the goods of the application mark and of the earlier trade marks are identical or similar; and
- c) there is a likelihood of confusion by virtue of the similarity of the marks and the goods.

24 Ms Girvin for the Opponent, in her submissions argued that one of the tests for determining whether confusion is likely to arise is to consider whether the marks convey the same impression or effect to the relevant public. **Australian Woollen Mills Ltd v F.S. Walton & Co. Ltd 1937 58 CLR 641** She submitted that the marks “HUSHHUSH” and “HUSH PUPPIES” share the identical first word “HUSH” which means “silence or calm”; and although the additional elements of both marks are not the same or similar, what is important is that the central theme running through the 2 marks is that conveyed by the meaning of the first important word “HUSH” in both marks, that is, one of silence or calm. She added that the combination “HUSH PUPPIES” is a highly distinctive mark as the leading characteristic of the “HUSH PUPPIES” mark is the association of feelings of calm and silence, and the words “HUSH” and “PUPPIES” are known English words but are meaningless when viewed in connection with the Opponent’s registered goods. The Applicant’s choice of the same highly distinctive element “HUSH” in the Applicant’s trade increases the similarities between the marks and the likelihood of confusion. **N.V. Sumatra Tobacco Trading Company v Reetsma Cigarettenfabriken GmbH [2006] SGIPOS**

25 In respect of the similarity of goods, Ms Girvin relied on principles in the **British Sugar** case and submitted that for the Classes 24 and 25 goods, the goods covered by the Opponent's "HUSH PUPPIES" mark are identical to the goods covered by the Applicant's mark. With respect to the Class 14 goods, the goods may also be said to be goods of similar description. These goods move through the same trade channels - the Applicant's goods are sold in designated areas in departmental stores, and the Opponent's goods are similarly sold at its own stores as well as within designated areas such as the clothing, shoes and luggage department stores like Robinsons, Takashimaya and the OG Store.

26 Ms Girvin submitted that in assessing the likelihood of confusion, the **Polo** case states that the "...court is entitled to look outside the mark and the sign, as well as the articles to assess whether there exists a likelihood of confusion". She also cites from the **Pianotist Co's Application [1906] 23 RPC 774** where the nature and kind of customer buying the goods must be considered as well as all surrounding circumstances. The likelihood of confusion has to be considered through the eyes of the average consumer of the goods in question. The average consumer will not have the opportunity to compare the marks side by side hence it will be his general recollection of the mark which is important. Visual or aural differences in the marks are of less significance, bearing in mind the marks are not compared side by side.

27 Ms Girvin submitted that the reputation of the mark as well as imperfect recollection of the mark will contribute to a likelihood of confusion. Where the earlier mark is highly distinctive, there is greater likelihood of confusion. (**Sabel v Puma**) The Opponent's use of "HUSH" in relation to the claimed goods is inherently very distinctive (unlike the use of the word "polo" in the POLO case) and the distinctive characteristic has been further entrenched by the extensive use and advertisement of the "HUSH PUPPIES" mark. Consideration should also be given to the use of the "HUSH PUPPIES" mark by the Opponent since 1957 in the United States of America and the availability of the Opponent's products internationally through its online store. Finally, Ms Girvin submitted that the absence of evidence of actual confusion is not fatal to the case because firstly, it is well-established that evidence as to confusion is not always necessary or critical to every case and likelihood of confusion is a factor to be determined by the judge's own assessment of the case. *Kerly's*

Law of Trade Marks and Trade Names, 13th Edition The likelihood of confusion is to be assessed at the date of application of the mark in issue and at such date - the 13th of June 2003 - use of the Applicant's "HUSHUSH" mark had not commenced since the Applicant's use in Singapore only began in 2004.

28 Ms Heng, Counsel for the Applicant submitted that when comparing trade marks, one must consider their visual, aural and conceptual similarity. Lloyd **Schuhfabrik Meyer & Co GmbH v. Klijsen Handel BV [2000] FSR 77** She also cited Parker J. in **In the Matter of an Application by the Pianotist Company Ld for the Registration of a Trade Mark (1906) 23 RPC 774**, **Richemont International SA v. Goldlion Enterprise (Singapore) Pte Ltd [2006] 1 SLR 401** and **The Polo/Lauren Co., LP v. Shop-In Department Store Pte Ltd**, stating that the weight of decided cases have shown that "*there are three aspects to similarity : visual, aural or phonetic, and conceptual*".

29 Ms Heng submitted that it is an established rule of comparison that where an element is common to the marks, the Registrar is required to pay closer attention to the differentiating elements (**In the Matter of Broadhead's Application for Registration of a Trade Mark (1950) 67 RPC 209**) and further, marks must be compared as wholes. **In the Matter of An Application by William Bailey (Birmingham) Ld to Register a Trade Mark (1935) 52 RPC 136** She pointed out that the visual impact of the Applicant's mark "HUSHUSH" is different from that of the Opponent's "HUSH PUPPIES" mark, "HUSH PUPPIES" is seen as two English words, each with a known meaning, unlike "HUSHUSH" which is an invented word with no known meaning. The enunciation of the two marks is different. Aurally, the Applicant's mark is pronounced "HUSH-SHUSH" without any pause between the syllables, whereas the Opponent's mark is pronounced "HUSH PUP-PEES", with a discernable pause between the two words. Looking at each mark as a whole, there is no conceptual similarity between the Applicant's mark and the Opponent's mark. The Applicant's mark "HUSHUSH" is an invented word and therefore does not bring to mind any visual images when spoken or read. On the other hand, the Opponent's mark comprises of two common English words. When spoken or read, the Opponent's mark conjures up an image of a young dog sitting quietly.

30 Counsel for the Applicant disputes that there is any special prominence accorded to the word “HUSH” in either the Applicant’s mark or the Opponent’s mark to leave an impression that the distinct portion of the mark is “HUSH” or to lead to an imperfect recollection that the marks are “HUSH” marks. Despite the fact that the Applicant’s mark and the Opponent’s mark share the word “HUSH” in common, the differing elements (“USH” and “PUPPIES” respectively) cannot be ignored, and as these differing elements are neither similar visually, aurally or conceptually, they serve to further highlight the disparity between the marks. The Opponent also does not have any registration where the word “HUSH” is the sole feature of the mark and therefore, the Opponent cannot claim a monopoly over the word “HUSH” and seek to prevent all other marks containing the word “HUSH” from being registered.

31 With respect to the similarity of goods, counsel for the Applicant stated that the nature and composition of the goods; the respective users of the articles and the trade channels through which the commodities would respectively be bought and sold must be considered **In Re Jellinek’s Application (1946) 63 RPC 59** are. The Applicant also cited the case of **British Sugar v. James Robertson [1996] RPC 281** She pointed out that the Opponent does not have an earlier registration or application in Class 14 in Singapore. In comparing the Applicant’s Class 14 goods with those covered by the Opponent’s marks in Class 18, 24 and 25, there is no similarity of goods. Whilst she concedes that there is an overlap between the Applicant’s and the Opponent’s Class 24 goods, it is only to a very limited extent. With respect to Class 18, she submits that the Applicant’s goods are not at all similar to the Opponent’s goods. As for the Applicant’s Class 25 application, there is only a limited overlap in the respective parties’ goods as the Applicant’s scope of goods is far wider than the Opponent’s goods.

32 Ms Heng argued that applying the **Polo** case and **Richemont International SA v. Goldlion Enterprise (Singapore) Pte Ltd**, the marks and the goods are not similar and as the threshold requirements have not been met, there is consequently no need to determine whether there exists a likelihood of confusion on the part of the relevant section of the public.

However, in the event the marks and/or goods are considered similar, and it becomes necessary to consider whether there is a resultant likelihood of confusion, she submitted that there is no likelihood of confusion between the Applicant's mark and the Opponent's marks as the average consumer in Singapore described by Lai J in the High Court decision of the **Polo** case as "literate, educated, exposed to the world and unlikely to be hoodwinked" would not be confused into thinking that the Opponent's "HUSH PUPPIES" mark and the Applicant's "HUSHUSH" mark originate from the same source even though they share the word "HUSH" in common.

33 Both counsel for the Opponent and the Applicant have cited the principles of comparison of marks which were clearly enunciated by Parker J in *Pianotist Co's Application* at page 777:

"You must take two words. You must judge of them, both by their look and by their sound. You must consider the goods to which they are to be applied. You must consider the nature and kind of customer who would be likely to buy those goods. In fact, you must consider all the surrounding circumstances; and you must further consider what is likely to happen if each of those trademarks is used in a normal way as a trade mark for the goods of the respective owners of the marks. If, considering all those circumstances, you come to a conclusion that there will be a confusion – that is to say, not necessarily that one man will be injured and the other will gain illicit benefit, but that there will be a confusion in the mind of the public which will lead to confusion in the goods – then you may refuse the registration, or rather you must refuse the registration in that case."

34 In so far as aural and visual similarity is concerned, I note that counsel for the Opponent has argued strongly that the fact that there is a common beginning in both marks (the word "HUSH") and that it is the first syllable of the marks which is important in the consideration of aural similarity. In *London Lubricants (1925) 42 RPC 264*, at 269, it was said that there is "a tendency of persons using the English language to slur the termination of

words”. I would also have to consider that consumers who may be faced with the marks may not have the luxury of looking at both side by side or be able to compare the details of each against the other. The case of *Aristoc Ltd v Rysta Ltd (1945) 62 RPC 72* mentions the “first impressions” which consumers will have about the marks and how this is a factor which can influence the consumer who is not familiar with the marks. A person unfamiliar with the marks will normally have only an imperfect recollection of the mark and his initial impression of it will be a strong contributing factor to any confusion that arises when he is faced with a similar looking or sounding mark.

35 The Opponent has reiterated strongly that the concept that the Opponent’s mark has a leading characteristic or a central theme revolving around the use of the word “HUSH”, the net effect of which evokes the idea of “silence or calm” and this effect is similarly evoked by the Applicant’s “HUSHUSH” mark which also begins with the word “HUSH”. This impression given by the use of the word “HUSH” in the marks might lead to the public to be confused or deceived into thinking that the Opponents are launching a new line of products with the common element “HUSH”.

36 I find it firstly difficult to conclude however that there is aural similarity in the two marks. The mark “HUSHUSH” is a single 2-syllable word which because of the presence of the double consonant “SH” produces a softer sound, similar to the sound a person makes to tell another to quiet down. The consonant “P” which phonically produces a “hard” sound, appears in the 3-syllable word mark “HUSH PUPPIES” which when enunciated is clearly different from the mark “HUSHUSH”. It would be a stretch to conclude that there is aural similarity owing to the slurring of endings of marks “HUSHUSH” and “HUSH PUPPIES”.

37 Taking into account the principle of imperfect recollection, I believe that a person who has an imperfect recollection of the Opponent’s mark “HUSH PUPPIES” will not be confused when he sees the mark “HUSHUSH”. The person is more likely to remember that the mark to be “HUSH” followed by the name of an animal. This impression is reinforced by the manner in which the Opponent has used its mark on the goods and in the advertisements. In this respect, I have carefully considered the evidence filed by Opponents in their statutory

declaration and note that the evidence is not consistent where use of the Opponent's mark in the advertisement and on the goods is concerned. The evidence shows that on the product literature and the advertisements, the wordmark "HUSH PUPPIES" is almost always used with the devise of the Basset Hound (a breed of dog) prominently featured next to the words. At times, the evidence shows just the word mark "HUSH PUPPIES" used without the devise of the dog, and vice versa – for example, the advertisement on page 236 of James D. Zwiers' statutory declaration shows only the devise of the Basset Hound (without the words "HUSH PUPPIES" appearing anywhere) next to the words "Favourite shoes". The advertisement at page 249 shows an array of different shoes and prominently shown at the end of the advertisement are the words "Favourite shoes" and the devise of the Basset Hound, with the statement in small print stating "See the complete Hush Puppies range when you visit our new store at Times Square, Asia's biggest mall". The Opponent has also exhibited an article from Payload Asia January 1991 which begins by saying "The familiar Basset Hound logo which identifies Hush Puppies shoes the world over is easily recognisable."

38 Apart from the fact that the marks have in common the first 4 alphabets which spell the word "HUSH", the visual differences are clear. In deciding whether or not these 2 marks are similar, I have considered the marks as wholes although they both contain a common element. I am guided by the case of **McDonald's Corp v. Future Enterprises Pte Ltd [2005] 1 SLR**, where there was a common prefix "Mc" used, and where the Court of Appeal at page 186 said:

"A mark may very well consist of some common word(s) or device but it does not necessarily follow that it is thereby incapable of being distinctive or will be confused with an existing mark with the same word or words. One must look at the mark as wholes."

I would distinguish this matter from the case of **In the Matter of Broadhead's Application for Registration of a Trade Mark**, where Evershed MR had said that "[w]here you get a common denominator, you must, in looking at the competing formulae, pay much more regard to the parts of the formulae that are not common — although it does not flow from that ... that you must treat the words as though the common part was not there at all". The

marks in that case were “Alka-vescent” and “Alka-Seltzer,” both marks beginning with “Alka” and which had a hyphen clearly separating the non-common element from the common word “Alka”. Here, the mark “HUSHUSH” is formed from the repetition of the word “HUSH” where the 2 words are merged such that the appearance is that of a single word. The mark “HUSH PUPPIES” on the other hand appears as 2 known English words. I do not think that the principle in *Broadhead’s Application* can be applied here as it would subject the mark “HUSHUSH” to an unnecessary dissection of the word. Marks ought not to be dissected and each segment subjected to minute comparison. I find therefore that visually, “HUSH PUPPIES” and “HUSHUSH” are not similar.

39 It would be difficult not to agree that the presence of the word “HUSH” in the beginning of both marks denotes the idea of “quiet”. However, that is where the similarity of the marks ends. I would agree with the Applicant that the mark “HUSH PUPPIES” gives rise to the image of keeping the dogs quiet. “HUSHUSH” on the other hand is similar to a sound made to request that silence be observed. I find that conceptually, the marks “HUSH PUPPIES” and “HUSHUSH” differ. Considering the marks “HUSHUSH” and “HUSH PUPPIES” as wholes therefore, I do not find that there is any similarity in the marks whether aural, visual or conceptual.

Similarity of Goods

40 With respect to the goods of the applicant mark and the registered marks, I note that this opposition has been lodged against 3 classes of goods - Classes 14, 24 and 25. The Opponent seeks to rely on their registered marks in classes 18, 24 and 25. The specification of goods of the application marks in Classes 24 and 25 overlap with the specification of goods in the Opponent’s registered marks. The goods in these 2 classes are to a large extent identical goods and those which are not identical are clearly goods of similar description - the nature of the goods and the end users of the goods are the same, they would move in the same trade channels and would be sold at similar establishments. In coming to this decision, I rely on the case of *British Sugar Plc v James Robertson & Sons Ltd [1996] RPC 281* (“*British Sugar*”) in which Jacob J said that the facts relevant for the assessment of similarity of goods and services include:

- (a) the nature of the goods or services;
- (b) the end users of the goods or services;
- (c) the way in which the services are used;
- (d) whether the respective goods or services are competitive or complementary, how those in the trade classify the goods and the trade channels through which the goods or services reach the market; and
- (e) in the case of self-serve consumer items, whether in practice they are respectively found or likely to be found on the same or different shelves.

41 With respect to the Applicant's Class 14 goods however, the specification covers a wide array of goods which I have attempted to group into the following categories:

- (i) horological and chronometric devices (such as alarm clocks, watches; wristwatches, chronographs; chronometers, clocks),
- (ii) ornamental goods made of precious metal (such as watch bands, watch chains, amulets, ashtrays, badges, boxes, cigar boxes, cigarette cases, copper tokens, cups, figurines, flasks, hat ornaments, ingots, jewel cases, key rings (trinkets or fobs), medals, plated articles of precious metal plating, powder compacts, purses, shoe ornaments, silver ornaments, chain mesh purses, buckles) and
- (iii) jewellery and costume jewellery (bracelets, brooches, chains; charms, cuff links, earrings, necklaces, ornamental pins, pins, rings, tie clips, tie pins, trinkets).

42 The Opponent cited the case of *QS by Oliver Trade Mark [1999] R.P.C. 520* to show that Class 18 and class 25 goods were considered goods of the same description as leather goods (in class 18) may be said to be accessories for clothing (in class 25). In that case, the Registrar who heard the matter came to the decision because he made a distinction between the different sorts of goods in the Class 18 specification - those which were essentially receptacles made for the things they contain (for example a leather toilet bags, shopping bags) and those which were clothing accessories. In this matter, a parallel may be drawn in

deciding whether the Class 14 and class 25 goods were considered goods of the same description. A large number of the items in the class 14 specification may be regarded as clothing and shoe accessories as they satisfy the requirements laid down in *British Sugar* for the assessment of similarity of goods. These include items such as ornaments that are worn to adorn the clothing and shoes, articles that are used together with clothing (such as fashion watches) and jewellery which are goods of similar nature, used by the same end users, move through the same trade channels and are sold in the same places such as departmental stores in close proximity to each other. The articles in the class 14 specification which clearly do not satisfy the requirements in the *British Sugar* case to qualify as goods of similar description are: alarm clocks, chronographs, chronometers, clocks, ashtrays, boxes, cigar boxes, cigarette cases, copper tokens, cups, figurines, flasks, ingots, jewel cases, key rings (trinkets or fobs), medals, plated articles of precious metal plating and powder compacts.

Whether there is likelihood of confusion

43 Given that the goods are similar and that the trade channels overlap, there will clearly be an overlap in the nature of the customers of the Opponent's and the Applicant's goods. The Opponent has argued that as the goods are not particularly expensive high-fashion items where the standard of care than in purchasing the goods would be especially high, there will be confusion if the Applicant's mark were allowed registration. I do not agree that there will be a likelihood of confusion with respect to the "HUSH PUPPIES" and "HUSHUSH" marks for the following reasons. Firstly, I have already held that both marks are clearly not similar, whether visually, aurally or conceptually. Further, in determining whether there will be likelihood of confusion, it is the average consumer of the goods who we are referring to and it has been held that the "average consumer of the goods or services in question ... is reasonably well-informed and reasonably observant and circumspect." *Lloyd Schuhfabrik Meyer & Co GmbH v. Klijsen Handel BV*. Although the goods are not expensive or high-end goods, the average customer will exercise a reasonable level of care in the examination of the goods and are generally discerning when making their purchases. Coupled with the fact the marks are not similar, there will be no likelihood of confusion.

44 I have not taken into consideration the co-existence of the marks in Japan and the Applicant's success in opposition proceedings in Korea, in coming to a decision that there is no likelihood of confusion. As the co-existence and litigation occur in different jurisdictions and the full facts for the co-existence and litigation were not made known in this hearing, it will bear no weight in the assessment of the likelihood of confusion in our context.

45 The opposition under this ground therefore fails.

Ground of opposition under section 8(3)

46 Section 8(3) of the Act provides as follows:

Where an application for registration of a trade mark is made before 1st July 2004, if the trade mark —

- (a) is identical with or similar to an earlier trade mark; and
- (b) is to be registered for goods or services which are not similar to those for which the earlier trade mark is protected,

the later trade mark shall not be registered if —

- (i) the earlier trade mark is well known in Singapore;
- (ii) use of the later trade mark in relation to the goods or services for which the later trade mark is sought to be registered would indicate a connection between those goods or services and the proprietor of the earlier trade mark;
- (iii) there exists a likelihood of confusion on the part of the public because of such use; and
- (iv) the interests of the proprietor of the earlier trade mark are likely to be damaged by such use.

47 I have decided under the section 8(2)(b) ground of opposition that the marks are not identical or similar so as to cause confusion or deception in the market. Although I found that the Class 14 goods are not goods which are similar to the goods of the Opponent's registered marks, the wording of section 8(3)(a) and (b) requires first that the marks must be

identical or similar and then only that it is to be registered for goods or services which are not similar to those for which the earlier trade mark is protected. As the essential requirement of similarity of marks is not met, I do not find it necessary to make a finding whether the Opponent's marks are well-known under section 8(3) of the Act.

48 The Opponent therefore does not succeed under this ground of opposition.

Ground of opposition under section 8(7)(a)

49 Section 8(7)(a) states that a trade mark shall not be registered if its use in Singapore is liable to be prevented by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trademark or other sign used in the course of trade.

50 The elements of passing off have been established by the cases of *Reckitt & Colman Products Ltd v Borden Inc & Ors [1990] 1 All ER 873* and *Erven Warnink BV v J Townsend & Sons (Hull) Ltd [1979] AC 731*. In the case of *WILD CHILD TM [1998] RPC 455*, Mr Geoffrey Hobbs Q.C. at page 460 states:

“The necessary elements of an action for passing off have been restated by the House of Lords as being three in number:

- (1) that the plaintiff's goods and services have acquired a goodwill or reputation in the market and are known by some distinguishing feature;
- (2) that there is a misrepresentation by the defendant (whether or not intentional) leading or likely to lead the public to believe that goods or services offered by the defendant are goods or services of the plaintiff; and
- (3) the plaintiff has suffered or is likely to suffer damage as a result of the erroneous belief engendered by the defendant's misrepresentation.”

The Opponent must therefore establish that it has goodwill in their business; there must be a misrepresentation by the Applicant that his goods/services are connected/associated with the Opponent's; and that there is damage arising as a result of the goodwill and misrepresentation in order to succeed under passing off.

Goodwill

51 Counsel for the Opponent states that the Opponent has acquired goodwill and reputation in the “HUSH PUPPIES” marks through:

- (a) long use for past 16 years in Singapore,
- (b) extensive use by Opponent in the USA since 1957,
- (c) extensive use worldwide as evidenced by the sale and distribution of “HUSH PUPPIES” products in over 115 countries worldwide,
- (d) extensive advertising of the “HUSH PUPPIES” mark through established channels of print and online media,
- (e) availability of the “HUSH PUPPIES” goods to the public via its online store,
- (f) extensive use and advertisement on the “HUSH PUPPIES” mark in Singapore since use commenced in 1990.

52 Counsel further states that in Singapore, the mark continues to be used well into the present and products bearing the “HUSH PUPPIES” mark are sold in major departmental stores such as Seiyu, Metro, Robinsons and Isetan and at their various outlets. “HUSH PUPPIES” products are also available both downtown and at the neighbourhood shopping centres. Advertisement expenditure was close to \$400,000 in 2002. There is high sales turnover for 9 years between 1995 to June 2003 averaging about SGD7million per annum.

53 Counsel for the Applicant argues that from the evidence filed by the Opponent of use of its mark in Singapore, it is difficult to conclude that goodwill and reputation reside in the Opponent’s goods apart from ladies’ and men’s footwear, if at all. The Applicant submitted that the invoices adduced are insufficient to show goodwill / reputation to sustain the ground of opposition under Section 8(7)(a).

54 I find no reason to dispute the evidence of sales figures lodged by the Opponent in its statutory declaration dated 12 October 2004 showing that there is substantial use of their mark. The invoices lodged to support the sales figures however mostly relate to shoes and apparel. The advertisements lodged support the use on shoes and apparel as they show that the “HUSH PUPPIES” mark and/or use of the Opponent’s composite mark of the words “HUSH PUPPIES” and the devise of the Basset hound are used mainly on shoes and to some

extent on apparel. As the Opponent has submitted, an average of SGD7million per annum is a substantial amount of sales. Based on the evidence, I am therefore able to state that the Opponent has goodwill in their shoes and apparel.

Misrepresentation

55 Counsel for the Opponent states that if the Applicant's mark is allowed registration, it is likely to cause the relevant public to be deceived into thinking that the Applicant's goods are those of the Opponent or misconstrue that "HUSHUSH" is a sub-brand or a second line of "HUSH PUPPIES" because "HUSH PUPPIES" is very distinctive of the Opponent's claimed goods and "HUSH PUPPIES" and "HUSHUSH" are confusingly similar. Further, the goods that both the marks cover overlap or are very similar and the level of attention that is paid by an average consumer of these goods is not likely to be high. Counsel also quoted from Wadlow on Passing off, 3rd Edition, Sweet and Maxwell 2004 where it states that "[a] misrepresentation that the defendant's goods or business are those of the claimant is intrinsically likely to damage the claimants if the fields of business are reasonably close", hence even in the absence of any proof of actual damage, damage can be presumed by virtue of the close similarities between the marks and goods traded by both the Applicant and the Opponent. The Opponent has also submitted that the Applicant has also not given any satisfactory or credible explanation of the derivation of their "HUSHUSH" mark.

56 Counsel for the Applicant submits that the Applicant has not, by using the mark "HUSHUSH", misrepresented that their goods are connected/associated to the Opponent when in fact they are not. The Opponent has also not adduced any evidence that the use of the Applicant's "HUSHUSH" mark in connection with the Applicant's goods whether in Class 14, 24 or 25, has either expressly or impliedly represented that the said goods are produced by the Opponent. **Nation Fittings (M) Sdn Bhd v Oystertec Plc and Another Suit [2006] 1 SLR 712, A G Spalding Bros v A W Gamage (1915) 32 RPC 273**

57 I find that the Opponent has not shown that there was a calculated move on the part of the Applicant to misrepresent that the goods sold under the “HUSHUSH” mark emanated from the Opponents. *Kerly’s 14th edition* at paragraphs 15-192 states:

“In the common case the court must be satisfied that the defendant’s conduct is calculated to pass off other goods as those of the claimant, or, at least, to produce such confusion in the minds of probable customers or purchasers or other persons with whom the claimant has business relations as would be likely to lead to the other goods being bought and sold for his”.

Kerly’s goes on to state at paragraph 15-193 that:

“ ... Mere confusion is not enough.”

58 The Opponent has only reiterated that because the marks are so confusingly similar, the public will be deceived into thinking or making the inference that the Applicant’s goods emanate from the Opponent. Besides this submission, the Opponent has not proffered any other evidence of misrepresentation by the Applicant. Their submission that the Applicant has failed to give credible evidence as to the derivation of the “HUSHUSH” mark cannot be said to be a calculated move to misrepresent the Applicant’s goods as that of the Opponent’s. In any event, with respect to the issue of similarity of marks, this has been resolved as I have found in section 8(2)(b) that the Opponent’s and the Applicant’s marks are not similar and there does not exist a likelihood of confusion.

59 As there is no misrepresentation on the part of the Applicant, there will not be a need to deal with the issue of damage, the last limb under section 8(7)(a). The Opponent has not discharged the burden under the section 8(7)(a) ground of opposition and as such opposition under this ground also fails.

Ground of opposition under section 7(6) - Bad faith

60 Section 7(6) states that a trade mark shall not be registered if or to the extent that the application is made in bad faith.

61 The Opponent states that it is clear from the evidence that the Opponent enjoys tremendous goodwill and reputation in their products sold under the “HUSH PUPPIES” marks since the launch in 1990, as a result of considerable effort put into the promotion of the brand. The Opponent states that the Applicant’s mark was first coined in 2003, almost 60 years after the first use of the “HUSH PUPPIES” trade mark and that the Applicant must have been fully aware of the Opponent’s goodwill and reputation in the “HUSH PUPPIES” mark in 2003. Despite that, the Applicant has chosen to use a closely similar mark on identical/similar goods without any attempt to distinguish itself and the Applicant’s explanations for the derivation of the “HUSHUSH” mark cannot hold water. Applicant’s choice of “HUSHUSH” falls short of the standards of acceptable commercial standard by reasonable and experienced persons in the retail and fashion industry.

62 The Applicant states that the onus is on the Opponent to make out any grounds on which it relies and further states that other than the bare claims in paragraphs 31 and 37 of its first Statutory Declaration that the choice of the Applicant’s mark is an attempt by the Applicant to ride on the goodwill and reputation of the Opponent. The Opponent has not put forward any evidence to show “bad faith” on the part of the Applicant at all nor has the Opponent entirely not discharged the onus of proving misappropriation or bad faith.

63 Lindsay J in the case of *Gromax Plasticulture Ltd v Low Nonwovens Ltd [1999] RPC 367* at page 379 of the case discusses “bad faith” and states that:

“[p]lainly it includes dishonesty... and includes also some dealings which fall short of the standards of acceptable commercial behaviour observed by reasonable and experience men in the particular area being examined.”

64 I find that the Opponent in asserting that there is bad faith by the Applicants when making the application for the “HUSHUSH” mark has not shown any evidence of direct copying by the Applicants or evidence of fraudulent or dishonest dealings. An allegation of bad faith should not be freely bandied about without the realisation that it has serious implications. The person making the allegation must be prepared to prove the allegation with

credible and strong evidence. The sort of evidence has been described in *Kerly's Law of Trade Marks and Trade Names 14th Edition* at paragraph 8-280 as “*prima facie* evidence justifying the allegation.”

65 The seriousness of making an allegation of bad faith against another party has been reiterated in numerous cases in different jurisdictions as well as in our own Court of Appeal in the case of *McDonald's Corp v Future Enterprises Pte Ltd [2005] 1 SLR 177* . At page 199 of *McDonald's*, it is said that.:

“[a]n allegation of bad faith is a serious matter and should not be lightly inferred. In “*Royal Enfield*” *Trade Marks* [2002] RPC 24 it was held (at [31]) that:

An allegation that a trade mark has been applied for in bad faith is a serious allegation. ... A plea of fraud should not lightly be made ... and if made should be distinctly alleged and distinctly proved. It is not permissible to leave fraud to be inferred from the facts (see *Davy v Garrett* (1877-78) L.R. 7 Ch.D. 473 at 489). In my judgment precisely the same considerations apply to an allegation of ... bad faith made under section 3(6). It should not be made unless it can be fully and properly pleaded and should not be upheld unless it is distinctly proved and this will rarely be possible by a process of inference.”

66 The only “evidence” that the Opponent has sought to rely on in support of their allegation of bad faith against the Applicant is that the Applicant, being fully aware of the Opponent’s goodwill and reputation in the “HUSH PUPPIES” mark, had intentionally chosen to coin a mark which is similar to the Opponent’s mark in order to ride on that goodwill and reputation. The Opponent states that the Applicant’s choice of the “HUSHUSH” mark “falls short of the standards of acceptable commercial standard by reasonable and experienced persons in the retail and fashion industry”.

67 Two recent trade mark decisions of the Singapore High Court have shown that there must be extenuating factors and clear evidence before the conclusion that there is bad faith may be drawn. In the case of *Rothmans of Pall Mall Limited v Maycolson International Ltd [2006] 2 SLR 551*, Lai Siu Chiu J held that there was bad faith in that the respondent's (the applicant for registration) conduct had fallen short of the standards of acceptable commercial behaviour observed by reasonable and experienced men. In that matter, there were numerous circumstances which would have aroused a reasonable person's suspicions such as the applicant's licensors' attempt to ride on the goodwill and reputation of the registered proprietor's Rothman trade marks by dubious and dishonest advertising; and the fact that the licensors were parties to various infringement suits overseas and had had a Europe-wide injunction forbidding them from using the "Fairlight" mark and packaging. The judge also found that the circumstances surrounding the manner in which the respondent company was incorporated as highly suspicious.

68 Similarly, in the very recent decision of *Nautical Concept Pte Ltd v Mark Richard Jeffery and Another [2006] SGHC 239*, Tan Lee Meng J. held that the applicant for registration clearly acted in bad faith in trying to register the mark "JWEST" in class 25. In this case, the applicant had had knowledge of the respondent and had a long history of business dealings with the respondent. The applicant had also introduced the respondents' goods bearing the marks "JEFFREY-WEST" and "JW" into Singapore, and subsequently became the respondent's agents in Singapore for ladies' footwear which were sold under the brands "JEFFERY-WEST" and/or "JW". In 1997, the applicant attempted to file an application to register those marks as its own trade marks in Singapore without the respondent's consent. The applicant's explanation that it thought that the respondent was no longer in business could not hold water as the respondent's goods were still being sold in Singapore at the time of the applicant's application for registration. The applicant was not able to furnish any other credible or legitimate explanation for trying to take over the respondent's trade marks.

69 In contrast to the two cases which I have mentioned, I can find no evidence in this matter to support the Opponent's allegation that the Applicant has fallen short of the standards of acceptable commercial standard by reasonable and experienced persons in the

retail and fashion industry. The Opponent's submission that the Applicants had known of their mark and were seeking to take advantage of the Opponent's reputation is but an inference that there is bad faith but which is unsupported by any evidence.

70 The Opponent has once again not discharged the burden of showing that there is bad faith on the Applicant's part and the opposition fails under this ground.

Conclusion

71 Having considered all the pleadings and evidence filed and the submissions made in writing and orally, I find that the opposition fails under sections 8(2)(b), 8(3), 8(7)(a) and 7(6) of the Act. Trade Mark application numbers T03/01036B, T03/08893J and T03/08894I in Classes 14, 24 and 25 respectively may proceed to registration. The taxed costs of this opposition are to be paid by the Opponent to the Applicant.

Dated this 26th day of January 2007

Anne Loo

Principal Assistant Registrar

Registry of Trade Marks

For Registrar of Trade Marks

Intellectual Property Office of Singapore