

**In The Matter Of An Application For Invalidation Of Registered Trade Mark No. T04/03999B
In The Name Of Guangying Clothing Co. Ltd**

By

Bulur Giyim Sanayi Ve Ticaret Limited Sirketi

*Before Principal Assistant Registrar P Arul Selvamalar
23 January 2007*

Trade Mark Registration – Application for Invalidation – Whether registered mark is confusingly similar to an earlier mark - section 8(2)(b) read with section 23(3) of the Trade Marks Act (Cap. 332, 2006 Rev. Ed.)

The Applicant for invalidation is Bulur Giyim Sanayi Ve Ticaret Limited Sirketi, a Turkish company, which owns a registered trade mark, No. T03/15471B for the mark VIGOSS in class 25 for the goods “Clothing, footwear, headgear”, since 10 June 2003. The Respondent is Guangying Clothing Co Ltd, a Chinese company, which registered a mark T04/3999B comprising the words “MEN VIGOSS”, in class 25 for the goods, “Clothing, layettes, raincoats, bathing suits, football shoes, shoes, hosiery, gloves, neckties, strap (clothing)”, since 24 February 2004. The Applicant filed an invalidation against the Respondent’s mark arguing that the mark was confusingly similar to their mark under section 8(2)b read with section 23(3) of the Trade Marks Act 1998. The Respondent did not file a Counter Statement in response to the application for invalidation nor file a Statutory Declaration in support of their registration. The Applicant filed a Statutory Declaration in support of their application and Submissions. The Respondent did not file Submissions or appear at the hearing to argue their case.

The Applicant argued that the marks VIGOSS and MEN VIGOSS were visually and aurally similar and that the goods were identical or similar and that therefore there would be confusion if the Respondent’s mark remained on the register. They argued that the additional word MEN in the Respondent’s mark did not add any distinctiveness to the Respondent’s mark, as the word MEN is highly descriptive. They also argued that the dominant and distinctive feature of the marks is the word VIGOSS. They also argued that the public would think that the Respondent’s line of clothing is the male line of the Applicant’s clothing in submitting that the marks are conceptually similar.

Held, allowing the application for invalidation,

1. The marks MEN VIGOSS and VIGOSS are visually similar as the prominent feature of the marks is the word VIGOSS. They are also aurally similar, as the word VIGOSS is likely to play a dominant part in the aural perception of the mark and the word MEN is a descriptive prefix, which plays a secondary role. The marks are also conceptually similar, as the word VIGOSS is invented and the idea brought to the mind is of the same mark. The addition of the word MEN is likely to give the impression that the Respondent’s line of clothing is the male line of the Applicant’s line of clothing. The goods are similar, if not identical, as both marks are registered for clothing essentially.
2. I have taken into account that the Applicant has not used the mark in Singapore since it was registered in 2003. I also have no evidence before me which shows whether the Respondent’s mark has been used. When the marks have not been used, I must assume that the marks will be used in a normal and fair manner in relation to the goods for which they are registered, and I am to assess the likelihood of confusion. I am of the view that there is a likelihood of confusion among a substantial number of average consumers, if the Respondent’s registered mark remains on the register. The application for invalidation under section 8(2)b, read with section 23(3) of the Act, therefore succeeds. The registered mark T04/3999B will be expunged from the register.
3. The Applicants are awarded the costs of this application for invalidation.

Provisions of Legislation discussed:

- Trade Marks Act 1998 (Cap. 332, 2006 Rev. Ed.), Sections 8(2)(b), 23(3).

Case referred to:

- The Polo/Lauren Co, LP v Shop In Department Store Pte Ltd [2006] SGCA 14
- Spa Esprit Pte Ltd v Esprit International [2005] SGIPOS 2

- Jose Alejandro SL v OHIM (Budmen) [2004] ETMR 15
- MISS SMITH v SMITH, OHIM Decision No 1118/2003
- Pianotist Co's Application (1906) 23 RPC 774
- Origins Natural Resources Inc v Origin Clothing Limited [1995] FSR 280
- NIGHT NURSE v NIT NURSE (O/085/03)
- Future Enterprises Pte Ltd v McDonald's Corp [2006] SGHC 175
- Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc [1999] RPC 117

Representation:

- Mr Paul Teo (Drew & Napier) for the Applicant
- Respondents were absent

Date of Decision: 23 April 2007