

**IN THE MATTER OF TRADE MARK APPLICATION T0701616J  
BY TENCENT HOLDINGS LIMITED**

**AND**

**OPPOSITION THERETO BY  
CHERY AUTOMOBILE CO., LTD**

**Before Principal Assistant Registrar Ms Lee Li Choon**

**9 February 2010**

**Trade Marks** – *Opposition to registration – whether the application is made in bad faith - Section 7(6) of the Trade Marks Act (Cap 332, 2005 Revised Edition)*

**Trade Marks** – *Opposition to registration – whether the application should be refused registration as the Application Mark is identical with the Opponents' well known mark, "QQ", which is an earlier trade mark and is to be registered for goods similar to those for which the earlier trade mark is protected and there exists a likelihood of confusion on the part of the public - Section 8(2)(a) of the Trade Marks Act (Cap 332, 2005 Revised Edition)*

**Trade Marks** – *Opposition to registration – whether the application should be refused registration as the Application Mark is similar to the Opponents' well known mark, "QQ" which is an earlier trade mark and is to be registered for goods identical with or similar to those for which the earlier trade mark is protected and there exists a likelihood of confusion on the part of the public - Section 8(2)(b) of the Trade Marks Act (Cap 332, 2005 Revised Edition)*

**Trade Marks** – *Opposition to registration – whether the Application Mark is identical with or similar to the Opponents' earlier trade mark, "QQ" that is well known in Singapore and whether the use of the Application Mark in relation to the goods for which the Application Mark is sought to be registered would indicate a connection between those goods and the Opponents and is likely to damage the interests of the Opponents - (Section 8(4) of the Trade Marks Act (Cap 332, 2005 Revised Edition)*

**Trade Marks** – *Opposition to registration – whether use of the Application Mark in Singapore is liable to be prevented by virtue of an earlier right, in particular by virtue of the law of copyright- Section 8(7)(b) of the Trade Marks Act (Cap 332, 2005 Revised Edition)*

This is an opposition against the trade mark application T0701616J by Tencent Holdings Limited for the mark, "QQ" in class 12 for use on "Automobiles; bicycles; caravans; cars;

carriages; motor vehicles; public transport vehicles; transport vehicles of land, air and water". The date of application was 24 January 2007.

The Opponents were first founded in 1997 by five state-owned investment companies in Anhui Province, China. Over the decade, the Opponents have rapidly developed and have now become the fourth largest passenger vehicle manufacturer in China employing 23,000 people and having total assets of over RMB 22 billion. During the years 2001 to 2003, the Opponents developed a model of mini automobiles with a distinctive appearance of a small and smooth outline with round headlights and rear mirrors. They took on the name, "QQ" for this new model of cars. The first car bearing the "QQ" mark was manufactured in China in December 2002. In July 2003, the Opponents' "QQ" cars were officially launched in China. The Opponents launched their "QQ" cars in Singapore in July 2006, about 6 months before 24 January 2007. The Opponents filed their first application to register the "QQ" mark for cars in China in March 2003. Subsequently, there were three other applications to register the "QQ" mark in China (one in January 2006 and two in November 2006 respectively).

**Held, allowing registration:**

1. There is insufficient evidence to make a finding that the Applicants, in applying for registration of the "QQ" mark for automobiles have acted dishonestly or in a manner that falls short of acceptable commercial behaviour as judged by reasonable and experienced persons adopting proper standards. Therefore, it is not possible to conclude that the Applicants have acted in bad faith. The fact that the Applicants had knowledge of the Opponents' use of the "QQ" mark in respect of automobiles in China since 2003 is not enough to constitute bad faith. Therefore, the opposition under Section 7(6) of the Trade Marks Act (Cap 332) 2005 Revised Edition fails.
2. The Opponents failed to prove that their "QQ" mark is a mark that is well known to the relevant sector of the public and therefore, deemed well known in Singapore under Section 2(7)(a) read with Section 2(8). On the other guidelines listed in Section 2(7)(b) to (e) that are relevant for the determination as to whether the Opponents' "QQ" mark is well known in Singapore, there is also insufficient evidence to conclude that the Opponents' "QQ" mark is well known in Singapore. Thus, the Opponents failed to prove that they have an earlier trade mark. Therefore, the opposition under Section 8(2) of the Trade Marks Act (Cap 332) 2005 Revised Edition fails.
3. As the Opponents failed to prove that their "QQ" mark is a mark that is well known in Singapore, the opposition under Section 8(4) of the Trade Marks Act (Cap 332) 2005 Revised Edition fails.
4. The combination of the letters, "QQ", is not a literary work as it does not, and is not intended to afford any information, instruction or pleasure. The combination of the letters, "QQ" is thus not a subject matter protected under copyright. The Opponents have therefore failed to prove that they have an earlier right by virtue of the law of copyright to the letters "QQ". The opposition under Section 8(7)(b) of the Trade Marks Act, (Cap 332) 2005 Revised Edition fails.

**Provisions of legislation discussed:**

Trade Marks Act (Cap. 332) 2005 Rev. Ed. Sections 7(6), 8(2), 8(4), 8(7)(b).

**Cases referred to:**

*Wing Joo Loong Ginseng Hong (Singapore) Co Pte Ltd v Qinghai Xinyuan Foreign Trade Co Ltd and Another and Another Appeal* [2009] 2 SLR 814 (Court of Appeal)

*Harrison v Teton Valley Trading Co Ltd* [2004] 1 WLR 2577

*Marhani Bte Abd. Mutalib trading as SaudiPetrol v Esquire Associates and the Hearst Corporation* [1999] SGIPOS 4

*Proctor & Gamble Company v Tohtonku (S) Pte Ltd* [2002] SGIPOS 3

*PT Swakarya Indah Busana v Dhan International Exim Pte Ltd* [2009] SGHC 280 (High Court)

*McDonald's Corp v Future Enterprises Ltd* [2005] 1 SLR 177

*"Royal Enfield" Trade Marks* [2002] RPC 24

*Novelty Pte Ltd v Amanresorts Ltd and Another* [2009] SGCA 13 (Court of Appeal)

*Exxon Corp & Ors v Exxon Insurance Consultants International Ltd* [1982] RPC 69

**Representation:**

Mr Prithipal Singh and Ms Michelle Loi (M/s K.L. Tan & Associates) for the Applicants

Mr Patrick Chow (M/s Chow Ng Partnership) for the Opponents