

Intellectual Property Office of Singapore Case Summary: Rovio Entertainment Ltd v Kimanis Food Industries Sdn Bhd [2014] SGIPOS 10

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Kimanis Food Industries Sdn Bhd ("the Applicants") applied to register the following trade mark



in relation to class 30 goods as follows:

Flour based savoury snacks; food products containing (principally) flour; cereal based snack food; snack food products made from maize flour; snack food products made from potato flour; snack food products made from rice flour; snack food products made from soya flour; rice based snack foods; flour confectionery; sesame snacks ("the Application Mark").

Rovio Entertainment Ltd ("the Opponents") opposed the application on the basis of their earlier registered marks (collectively "Opponents' Earlier Marks") as follows:

S/N	Mark	Classes
1	 T1111886Z ("the Opponents' Earlier Mark T1111886Z")	Classes: 3, 9, 14, 16, 18, 20, 21, 24, 25, 27, 28, 29, 30, 32, 33, 34, 35, 36, 38, 41 and 43.
2	ANGRY BIRDS T1113897F ("the Opponents' Earlier Mark T1113897F")	Classes 3, 9, 14, 16, 18, 20, 21, 24, 25, 27, 28, 29, 30, 32, 33, 34, 35, 36, 38, 41 and 43.

The Opponents claimed, in essence, that the Application Mark is similar to the Opponents' Earlier Marks such that there is a likelihood of confusion and that the Opponents' Earlier Marks are also well known in Singapore and well known to the public at large (ie Section 8(2)(b) and Section 8(4)). The Opponents also claimed that there is passing off and copyright infringement (ie Section 8(7)(a) and (b)).

The grounds of objection under Section 8(2)(b) and Section 8(4) were not made out as the comparison methodology under Section 8 grounds is mark for mark. The Registrar is of the view that there is no similarity when the Application Mark, being a composite mark, is compared to the Opponents' Earlier Mark T1111886Z (a device only mark) and the Opponents' Earlier Mark T1113897F (a word only mark) separately. A table will aid in this regard:

TABLE 1		
S/N	Application Mark	Opponent's Earlier Mark T1111886Z
1.		
2.		Opponent's Earlier Mark T1113897F 

Following the table above, there is no visual or conceptual similarity between the Application Mark and the Opponents' Earlier Mark T1111886Z (a device only mark). There is no aural component involved as the Opponents' Earlier Mark T1111886Z is a device only mark.

Similarly, there is no visual or conceptual similarity between the Application Mark and the Opponents' Earlier Mark T1113897F (a word only mark), and any aural similarity is traded off against the dissimilarities such that on the whole, the marks are more dissimilar than similar.

Further, even if the respective marks could be said to be similar, the Opponents still could not establish a reasonable likelihood of confusion. This was partly because the goods in common, which are mainly snack foods, are self serve items, which the purchasing public will have the opportunity to select at close proximity and there is no need articulate the marks and have the goods handed to them by sales assistants. Thus, the visual and conceptual aspects of the Application Mark and the Opponents' Earlier Marks are more dominant than the aural aspects in the marketplace. Importantly, these are food products such that the purchasing public will exercise more care for safety reasons, since they are items which will be ingested.

The Registrar is also of the view that while it can be said that the Opponents' Earlier Marks are well known in Singapore, they are not well known to the public at large in light of the evidence tendered.

For the ground of objection under Section 8(7)(a), in relation to the common field of activity which is the snack food market, most of the evidence cannot be taken into account as they are mostly dated after the relevant date of 5 April 2012, which is the date of the application of the Application Mark. Critically, the Registrar is of the view that there is no misrepresentation for largely the same reasons from which the Registrar concluded that there is no "likelihood of confusion" under Section 8(2)(b).

In relation to the ground of objection under Section 8(7)(b), the issue of the subsistence of copyright has not been made out as the Opponents have not made any submissions nor was there any evidence tendered as to the element of originality required under Section 27(2) of the Copyright Act (Cap 63, 2006 Rev Ed). Further, and importantly, the Registrar is also of the view that copying has not been made out, on the basis that there is no substantial similarity between the Opponents' earlier rights respectively and the Application Mark.

Disclaimer: The above is provided to assist in the understanding of the Registrar's grounds of decision. It is not intended to be a substitute for the reasons of the Registrar. The full grounds of decision can be found at <http://www.ipos.gov.sg/Services/HearingsandMediation/LegalDecisions/2014.aspx>.