

Intellectual Property Office of Singapore Case Summary: G3 ENTERPRISES, INC

v BARCARDI & COMPANY LIMITED [2014] SGIPOS 6

Source: <http://www.ipos.gov.sg/Services/HearingsandMediation/LegalDecisions/2014.aspx>

Published: 15 May 2014

The Registered Mark



was registered in relation to class 33 goods namely "*Alcoholic beverages (except beer), including wines, spirits and liqueurs*" with effect from 18 May 2005 and it is in the name of Bacardi & Company Limited ("the Registered Proprietors"). G3 Enterprises, Inc ("the Applicants") filed their application for revocation and for declaration of invalidity on 6 March 2012.

Broadly speaking, the bases for the application are that the Registered Mark: (a) is not distinctive, (b) is descriptive, or (c) has become generic. In these circumstances, the Registered Proprietor should not be given a monopoly over the use of the Registered Mark, which should be free for other traders to use.

The grounds of objection under Section 23 read with Section 7(1)(b) and (c) (i.e. that the Registered Mark is not distinctive and/or is descriptive) have been made out. The marketplace and environment have been shown to understand "martini" to refer to a generic alcoholic cocktail drink, and the Registered Mark is therefore not distinctive and is descriptive of "alcoholic beverages (except beer)".

The ground of objection under Section 23 read with Section 7(1)(d) (i.e. that the Registered Mark is generic) has been made out partially, in that the Registered Mark has been found to be generic of "alcoholic cocktails served in 'martini' glass". However, while there is an overlap in relation to this requirement for genericism for an application for revocation under Section 22(1)(c) as well, the revocation objection has not been made out as it has not been shown that such genericism is the result of inactivity on the part of the Registered Proprietors.

However, the defence under Section 23(2) has been partially made out to the extent that the Registered Mark has acquired distinctiveness in relation to vermouth (a fortified wine flavoured with aromatic herbs and spices) and sparkling wine. The evidence shows that different food and beverage establishments serve vermouth products bearing the Registered Mark alongside "martini" cocktails, and that sparkling wine bearing the Registered Mark is retailed in, amongst others, the different supermarket chains.

Accordingly, the goods for which the Registered Mark is registered shall be restricted to vermouth and sparkling wine.

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>.

