

Intellectual Property Office of Singapore Case Summary: Bacardi & Company Limited v G3 Enterprises, Inc [2015] SGIPOS 17

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The Opponents, Bacardi & Company Limited, opposed the registration of the following mark:

Application Mark	Goods
 T1002552C	Alcoholic beverages (except beers)

on the basis of several of their earlier marks. However, the Registrar is of the view that, principally, only the following mark

Opponents' Earlier Mark	Class 33
 Opponents' Earlier Mark T0508163A	Vermouth and sparkling wine.

can be taken into consideration as the Opponents sought to rely extensively on one of the holdings of an earlier related decision **G3 Enterprises, Inc v Bacardi & Company Limited** [2014] SGIPOS 7 that the said mark has acquired distinctiveness in relation to vermouth and sparkling wine. The Registrar reached this conclusion having regard to the fact that, even though it is the word MARTINI which is the dominant element of the **Opponents' Earlier Mark T0508163A**, the device cannot be ignored since an assessment of a mark entails an analysis of the mark as a whole, bearing in mind, in particular, its distinctive and dominant components.

The Opponents raised several grounds of objection. However, it was clear that the main ground which the Opponents were relying on was Section 8(2)(b) of the Act.

In relation to Section 8(2)(b), the Registrar was of the view that the marks are similar visually, aurally and conceptually to a low extent such that on the whole, the marks are similar in totality only to a low extent. In coming to this conclusion, the Registrar was of the view that based on the evidence tendered, while the **Opponents' Earlier Mark T0508163A** has acquired distinctiveness, it has not acquired a high level of technical distinctiveness.

In relation to similarity of goods, the goods for the marks are as follows:

S/N	Opponents' Earlier Mark T0508163A	Application Mark
3	Class 33	Class 33
	Vermouth and sparkling wine.	Alcoholic beverages (except beers).

As vermouth and sparkling wine are subsets of the term "alcoholic beverages (except beers)", there is identity with respect to the goods. Further, the term "alcoholic beverages (except beer)" is broad, such that applying the factors as elucidated in **British Sugar Plc v James Robertson & Sons Ltd** [1996] RPC 281, the other goods in the specification (i.e. excluding vermouth and sparkling wine) can also be said to be similar to vermouth and sparkling wine. In light of the Registrar's conclusion with regard to similarity of the goods above, it is not necessary to resolve the issue of whether the Registrar is empowered to allow an opposition in relation only to *part* of the specification of the goods.

For the factors relating to the impact of marks-similarity on consumer perception, as concluded above, the marks are visually, aurally and conceptually similar only to a low extent. In relation to the reputation of the marks, both marks do not have much reputation to speak of, having regard to the evidence tendered. In relation to the impression of the marks and the possibility of imperfect recollection, a similar mark search shows that while there is no other use of

MARTINI *per se* in Class 33, there are, however, several variants of “MART-” marks in Class 33, whether it be MARTIN (see T0409801H) or MARTINO (see T0906680G) or MARTINA (T0721995I). The significance of the above is that, as a result of the common use of “MART-”, it would not be unreasonable to project that consumers, being accustomed to seeing “MART-” for marks on Class 33 goods, would naturally focus on other elements of the marks. In the current case, these elements would be the words “LOUIS.M.” in the **Application Mark**.

In relation to the impact of goods-similarity on consumer perception, the very nature of “alcoholic beverages (except beers)” is such that they would tend to command a greater degree of fastidiousness and attention on the part of prospective purchasers for various reasons including the fact that there are many factors which determine the quality of alcoholic products and the fact that they are rather expensive.

In addition, with regard to the likely characteristics of the relevant consumers, consumers of “alcoholic beverages (except beer)” are generally well-informed and knowledgeable about the prices, quality and value of such beverages. The consumers in general tend to be more discerning.

In relation to the normal way in, or the circumstances under, which consumers would purchase alcoholic products, two common routes through which these products reach the consumer are (i) via the retail channel; and (ii) via food and beverage establishments. For both avenues, it is the visual and the aural aspects of the marks (and in that order) which are important. In light of the above, the nature of the goods and the nature of the consumers, the Registrar was of the view that there would not be any likelihood of confusion.

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 <https://www.ipos.gov.sg/resources/hearing-mediation>.