

Intellectual Property Office of Singapore Case Summary: CONSOLIDATED ARTISTS B.V. v THEFACESHOP CO., LTD. [2017] SGIPOS 7

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The Opponents, Consolidated Artists B.V., opposed the registration of the mark T1300669D (**Application Mark**) on the basis of their earlier marks (**Opponents' Earlier Marks**) as follows:

Application Mark	Goods
MANGO SEED THEFACESHOP T1306610G	Cosmetics; skin lotions (cosmetics); moisturizing skin lotions; non-medicated skin astringents for cosmetic purposes; facial creams (cosmetic); facial moisturizers (cosmetic); facial preparations (cosmetic); cleansing emulsions; soap free washing emulsions for the body; after shave lotions; skin conditioners; blusher; perfumes; colognes; skin cleansing creams; make-up foundation in the form of powder; concealers; lipsticks; toilet water; eye shadow; eyebrow pencils; eye liners; nail polish; nail polish remover; beauty mask; sunblock skin creams (cosmetics); hair shampoo; hair rinse; hair spray; toilet soaps; bath soaps; body cleansers; fragrance mist for personal use; tonic mist for personal use (cosmetics); body gel; bath gel; body cream scrub; shampoos, soap; toothpaste.
Opponents' Earlier Marks	Goods
Opponents' Earlier Mark 1 MANGO T0215724F	Class 3 Bleaching preparations and other substances for laundry use; cleaning, polishing, grease removing and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.
Opponents' Earlier Mark 2 MANGO adorably T0509355I	Class 3 Soaps, perfumery, essential oils, cosmetics, hair lotions; dentifrices.

The Opponents objected based on Section 8(2)(b), Section 8(4) and Section 8(7)(a) of the Trade Marks Act (Cap 332, 2005 Rev Ed).

In relation to Section 8(2)(b), the Registrar was of the view that the marks are visually and aurally dissimilar and conceptually different such that on the whole, the marks are more dissimilar than similar in totality.

The Registrar was of the view that the **Opponents' Earlier Mark 1** has some level of distinctiveness especially in light of its particular font but he is of the view that the level of distinctiveness is not high insofar as the relevant goods in Class 3 are concerned. The **Opponents' Earlier Mark 1** is not highly distinctive for the simple reason that, apart from its particular font, it can be considered to be descriptive of the products, in that, for example, they are 'mango' flavoured or scented products.

The same considerations apply to the Application Mark in relation to the words "Mango" and "Seed". However, for the Application Mark, there is the word THEFACESHOP at the bottom of the Application Mark. In particular, the Registrar was of the view that the particularly long word "THEFACESHOP", with no spaces in between the words "THE", "FACE" and "SHOP", is allusive and can be regarded as distinctive of the relevant goods. This conclusion is drawn without regard to any acquired distinctiveness of Trade Mark Reg. No. T0517082J for "THEFACESHOP" in Class 3 which is the Applicants' house mark.

In relation to the likelihood of confusion, there is no risk of misperception of co-branding or any likelihood of confusion in the sense of an economic link between the parties. This is because the Opponents have *consistently* used their mark as depicted above. Specifically, the **Opponents' Earlier Marks** both reflect the word "Mango" (and "Mango" only) in a particular font. With the presence of the word "Seed" in the Application Mark, there can be no confusion even though it is accepted that the word "Seed" is related to the word "Mango".

Further, the products involved are cosmetics and self-care products in Class 3, which are highly personal products, applied onto the face / body and pertain to the appearance of a consumer. These products would entail a relentless scrutiny as to their suitability and quality as a wrong purchase can have detrimental results. Another aspect of the personal nature of such products is that consumers will be more particular about the origin or marks of such goods, as they are likely to trust certain brands more than others.

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>.