




Intellectual Property Office of Singapore Case Summary: Adidas International Marketing BV v Lutong Enterprise Corp [2018] SGIPOS 12


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Adidas International Marketing BV (“Adidas”) and Lutong Enterprise Corp (“Lutong”) are sportswear manufacturers. In this dispute, Adidas opposes the registration of Lutong’s trade mark on several grounds, some of which are based on confusing similarity to its own trade mark (both marks as set out below) in relation to clothing, footwear and headgear.


Lutong’s Mark	Adidas’ Mark
	

Lutong’s Mark, , was designed around 1981-1982 and conveys the idea of a person crouching and poised to make a leaping movement, reminiscent of the posture adopted by an athlete about to perform a “long jump”. The circle device in the Application Mark represents the human head, while the downward pointing triangular device of three sloping stripes represents the crouched human body.

Adidas’ Mark, , was designed in 1990 and conveys the idea of a mountain, indicating the challenge to be faced and the goals to be achieved. It is inspired by the three stripes that appear on the sides of Adidas shoes.

A large part of Adidas’ argument focused on its point that both marks are essentially triangles formed by three sloping stripes. It claimed that the inversion of the triangle, and the additional circle in Lutong’s Mark did not matter much as the average consumer would still think that the marks are similar. Furthermore, its customers are the general public with no specialist knowledge, including schoolchildren, and inversion was argued to be the fashion trend in recent times. The goods involved are routinely purchased and relatively inexpensive. Adidas argued that there was therefore a reasonable likelihood of confusion between the two marks.

The Principal Assistant Registrar thought otherwise. The presence of the circle, though smaller in size than the triangle, was nonetheless significant in impact on the overall impression of Lutong’s Mark. Also, both marks are formed by basic geometric shapes. It is possible that an inversion, or change in orientation or direction could result in a considerable modification to the impression conveyed visually by the shapes. Shapes themselves are defined by a combination of lines, angles, and dimensions. Therefore, where a variation is incorporated in the combination, how the shape comes across visually is also altered. A triangle whose right angle points upwards may give the visual impression of a mountain, or at least of something grounded. A triangle whose right angle points downwards gives a significantly different visual impression, that of something *en pointe*, perched or being balanced. Added to that the circle device, which cannot be hived off the consumer’s impression, and the visual impression is even more different from Adidas’ Mark. For example, an average consumer could

plausibly see Lutong’s Mark, , as a shuttlecock, which is dissimilar to Adidas’ Mark.

Comparing the two marks in their entireties, she found that the marks are more dissimilar than similar. The ground of opposition under Section 8(2)(b) of the Trade Marks Act therefore failed. Two other grounds, Sections 8(4) and 8(7)(a), which relied on the marks being similar in the first place, also failed. Adidas also did not establish a case of bad faith under Section 7(6).

Adidas therefore could not prevent the registration of Lutong’s 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 <https://www.ipos.gov.sg/docs/default-source/resources-library/hearings-and-mediation/legal-decisions/2018/adidas-international-marketing-v-lutong-enterprise-2018-sgipos-12.pdf?sfvrsn=0>.