

**IN THE HEARINGS AND MEDIATION DEPARTMENT OF THE  
INTELLECTUAL PROPERTY OFFICE OF SINGAPORE**

**[2023] SGIPOS 1**

Trade Mark No. 40202027520W

**IN THE MATTER OF A TRADE MARK APPLICATION BY  
SCHWEIGER, MARTIN RAINER GABRIEL**

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**FOUNDATIONS OF DECISION**

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## **In the matter of a Trade Mark Application by**

**Schweiger, Martin Rainer Gabriel**

**[2023] SGIPOS 1**

Trade Mark No. 40202027520W

IP Adjudicator Vince Gui

14 October 2022

3 January 2023

**IP Adjudicator Vince Gui:**

### **Introduction**

1 The Applicant, Schweiger, Martin Rainer Gabriel, is seeking to register a word mark “STRONG BY CHOICE” in Class 25 of the Nice Classification in respect of “Shorts; T-shirts” (the “Application”). The word mark is represented graphically as follows:

**STRONG BY CHOICE**

(the “Mark”)

### **Procedural history**

2 The Application was refused by an Assistant Registrar at first instance (the “Examiner”). The Examiner was of the view that the Mark is devoid of any distinctive character. The Examiner reasoned as follows:

- (a) The phrase “STRONG BY CHOICE” is a “commercial tagline or an advertising phrase which simply serves to suggest that the

Applicant is committed to providing shorts and T-shirts which are able to withstand wear, i.e. durable and lasting”.<sup>1</sup> It was therefore merely a “promotional slogan which conveys a laudatory connotation”.<sup>2</sup> The Mark also did not bear “any form of stylisation or device to render it adequate distinctive character”.<sup>3</sup>

(b) While it would not be appropriate to apply to slogans a stricter test than that applicable to other types of marks, slogans are not readily accepted by the relevant public as an indication of trade source because of their inherent promotional and advertising quality, unlike traditional signs such as words, logos and figurative marks. In other words, the perception of the relevant public is not necessarily the same in relation to each of those categories of marks, and it may therefore prove more difficult to establish the distinctiveness of marks comprising slogans than traditional signs. In assessing whether a slogan qualifies as a badge of origin, the Registry may take account of the fact that average consumers are not in the habit of making assumptions about the origin of goods or services on the basis of slogans (see Case C-64/02 P, *OHIM v Erpo Möbelwerk*).<sup>4</sup>

(c) Consumers have “no issue in understanding the rather straightforward message conveyed, i.e. the Applicant is committed to providing shorts and T-shirts which are able to withstand wear”. There is no ambiguity in the way to interpret the message evoked by the Mark

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<sup>1</sup> Examination Report dated 5 April 2021, para 2.

<sup>2</sup> Examination Report dated 5 April 2021, para 2.

<sup>3</sup> Examination Report dated 5 April 2021, para 2.

<sup>4</sup> Examination Report dated 5 October 2021, para 2.

as it is a “direct way of telling consumers about the Applicant’s approach or commitment to offer durable and long-lasting goods”.<sup>5</sup>

(d) The mere fact that “no one else uses the mark or the mark is not one that other traders would typically wish to use, does not make the mark automatically distinctive”.<sup>6</sup>

(e) While there is no evidence in the Google search of the Mark which suggests that it is a common exaggeration of the goods claimed since most hits related to lifestyle, personality, or physical bodily strength, a mark shall not be registered if at least one of the possible meanings of the mark is capable of designating a characteristic of the relevant goods or services.<sup>7</sup>

3 The Examiner invited the Applicant to save the registrability of the Mark by tendering evidence that the Mark has through use acquired distinctive character in relation to the goods for which registration is sought.<sup>8</sup> No such evidence was tendered. Instead, the Applicant requested for a hearing to make submissions on the inherent distinctiveness of the Mark.<sup>9</sup> A hearing was convened on 14 October 2022 during which the Applicant made submissions before me.

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<sup>5</sup> Examination Report dated 5 October 2021, para 2.

<sup>6</sup> Examination Report dated 5 October 2021, para 2.

<sup>7</sup> Examination Report dated 28 April 2022, para 2.

<sup>8</sup> Examination Report dated 5 April 2021, para 3; Examination Report dated 5 October 2021, para 2; and Examination Report dated 28 April 2022, para 2.

<sup>9</sup> Form HC4 filed on 22 July 2022.

### **The Applicant's submissions**

4 The Applicant's submissions before me can be summarised as follows:

(a) The Mark is a word mark made up of three word elements. These words must be read together and not disjunctively.<sup>10</sup>

(b) The Examiner illegitimately focussed on only one word element – the word “STRONG” – in arriving at her conclusion.<sup>11</sup>

(c) The word “STRONG” is not an obvious and natural way of describing shorts and/or T-shirts that can withstand wear. One would not ordinarily refer to “strong shorts” and “strong T-shirts”.<sup>12</sup>

(d) Even by their own, “BY” and “CHOICE” make no reference to the quality or characteristics of shorts and/or T-shirts.<sup>13</sup>

(e) The message that the Examiner contends to be conveyed by the Mark, that the Applicant is committed to providing shorts and T-shirts that can withstand wear, is not clear, straightforward and unambiguous.<sup>14</sup> Some interpretation by the average consumer is required to arrive at this message. A natural reading of the Mark is insufficient.<sup>15</sup> There is a need for the average consumer to apply thought and exercise mental effort to figure out what the Mark might be referring to.<sup>16</sup>

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<sup>10</sup> Applicant's Written Submissions dated 29 September 2022, para 17.

<sup>11</sup> Applicant's Written Submissions dated 29 September 2022, para 18.

<sup>12</sup> Applicant's Written Submissions dated 29 September 2022, para 19.

<sup>13</sup> Applicant's Written Submissions dated 29 September 2022, para 20.

<sup>14</sup> Applicant's Written Submissions dated 29 September 2022, para 26.

<sup>15</sup> Applicant's Written Submissions dated 29 September 2022, para 28.

<sup>16</sup> Applicant's Written Submissions dated 29 September 2022, para 30.

## **Discussion**

5 The main purpose of a trade mark is to serve as a badge of origin of goods or services in the marketplace, by enabling a trader to distinguish his goods or services from those of his competitors (*Han's (F&B) Pte Ltd v Gusttimo World Pte Ltd* [2015] 2 SLR 825 (“*Han's*”) at [56]-[57]). For this reason, a trade mark must first be “capable of distinguishing goods or services in the course of trade by a person from goods or services so dealt with or provided by any other person” (s 2(1) of the Trade Marks Act 1998 (the “Act”). This has been described as a “threshold requirement”. It requires a determination on whether the mark has any ability to serve as an indicum of trade origin (*Han's* at [47]). A mark would not cross the threshold if it was so descriptive as to be *synonymous* with the product itself (*Love & Co Pte Ltd v The Carat Club Pte Ltd* [2009] 1 SLR(R) 561 (“*Love & Co*”). In other words, a mark cannot be a generic description of goods or services. In *Love & Co*, the court gave several examples of generic marks in relation to jewellery: “JEWELLERY”, “GOLD” and “DIAMONDS” (at [40]). In the present case, the Examiner’s objection is not that the Mark failed to meet this requirement. Likewise, I am of the view the Mark has crossed the “capacity to distinguish” threshold since it is not a generic description of T-shirts and shorts.

6 What the Examiner took issue with is the Mark not satisfying the second – and more onerous – requirement under s 7(1) of the Act, which is the requirement of distinctiveness. Section 7(1)(b) of the Act bars the registrability of a trade mark that is “devoid of any distinctive character”.

7 Marks that are devoid of distinctive character should not enter the register and enjoy trade mark protection because such marks would not enable consumers to meaningfully *distinguish* the proprietor’s goods or services from

other sources (*Société des Produits Nestlé SA v Petra Foods Ltd* [2017] 1 SLR 35 (“*Nestlé*”) at [21]). Distinctiveness can be inherent or acquired. Acquired distinctiveness is not in issue in the present case since the Applicant tendered no evidence that the Mark had acquired distinctiveness through use. The issue is whether the Mark is inherently distinctive.

8 The litmus test for inherent distinctiveness is whether the mark has *intrinsic or inherent features* that are sufficiently unique to enable the intended mark to immediately function as a readily obvious and reliable badge of origin in relation to the proprietor’s goods or services from other traders’ goods or services operating in the same marketplace (*Love & Co* at [53]). This is a question of degree and judgment (*Courts (Singapore) Pte Ltd v Big Box Corp Pte Ltd* [2018] 5 SLR 312 (“*Big Box*”) at [37]).

9 On one end of the spectrum, marks that have a high degree of inherent distinctiveness are those that have no bearing whatsoever on the characteristics of the goods or services for which registration is sought. Fanciful marks, namely, invented words that have no dictionary meaning (*Han’s* at [61]) are usually highly distinctive. Examples of fanciful marks are “GOOGLE” in relation to online search services and “XEROX” in relation to printers. Arbitrary marks, namely, word marks that have a meaning but such meaning has no bearing on the goods or services to which they are applied, are also considered to be highly distinctive (*Han’s* at [61]). “APPLE” in relation to computers is an example of an arbitrary mark.

10 Further down the spectrum are word marks that, while being capable of distinguishing goods or services, are nevertheless partially descriptive of the goods or services. These marks typically have a low level of inherent distinctiveness (*Han’s* at [63]).



11 Descriptive marks lie on the opposite end of the spectrum. Marks that describe the characteristics of the goods or services are not registrable. The rationale of guarding against the registration of descriptive marks is two-fold. First, descriptive marks do not readily lend themselves to being considered by consumers as badges of origin. Second, there is a public interest in keeping such marks free and available for the legitimate use of all traders and prevent any single trader from monopolising the use of such marks (Tan Tee Jim *SC*, *Law of Trade Marks In Singapore* (Sweet & Maxwell, 4<sup>th</sup> Edition, 2021) (“*Law of Trade Marks In Singapore*”) at para 7.030; *Nestlé* at [23]). The disdain for descriptive marks finds statutory expression in s 7(1)(c) of the Act, which expressly prohibits the registration of trade marks that consist exclusively of signs or indications:

... which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services.

12 Whether a particular mark is inherently distinctive (or inherently descriptive) should not be determined *in vacuo*. It is a *context specific* exercise that must be applied by reference to (1) the goods or services for which registration is sought; and (2) the perception of the average consumer of those goods or services, who is deemed to be reasonably well informed, observant and circumspect (*Nestlé* at [22(b)]).

13 Context is important particularly because not every characteristic possibly described by the mark is objectionable. It has been said that the characteristic must be “easily recognisable” by the average consumer. If the average consumer easily recognises the mark as a description of the goods or services, registration would be refused. If the recognition requires “some thought or explanation”, the mark would not be “easily recognisable” as

descriptive of the goods or services and could be registered (*Law of Trade Marks In Singapore* at para 7.035). As the Court of Appeal observed in *Nestlé*, the specific characteristics of the industry can “influence the notional expectations of the average consumer” (at [32]).

14 In the present case, the Examiner refused registration on the ground that the mark “STRONG BY CHOICE” simply serves to suggest that the Applicant is “committed to providing shorts and T-shirts which are able to withstand wear, i.e. durable and lasting”. I agree the dictionary definition of “strong” connotes “durable and lasting”, and dictionary definitions have been used in the assessment of distinctiveness. But the dictionary definition is not the be-all and end-all. Courts have occasionally eschewed the dictionary definition, focussing instead on the vernacular of the average Singaporean consumer in a specific industry. *Big Box* is a case in point. In that case, George Wei J found that dictionary definitions of “big box”, which amongst others referred to a very large store which sells goods at discount prices, did not render the phrase a descriptive mark, because that dictionary definition had not entered the vernacular in Singapore and there was no evidence that the average Singapore consumer would have been familiar with that dictionary meaning (at [70]-[71]). Ultimately, the assessment focusses on what the *average consumer in the marketplace* thinks the mark to mean, by reference to the *goods or services* for which registration is sought.

15 Further, the Mark comprises three separate words. The distinctive character of such a mark is to be assessed *as a whole* (*Law of Trade Marks In Singapore* at para 7.045). As the Court of Justice of the European Communities in *Eurohypo AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* [2008] EUECJ C-304/06 held at [41]:

As regards a compound trade mark, such as that at issue in the present case, the assessment of its distinctive character cannot be limited to an evaluation of each of its words or components, considered in isolation, but must, on any view, be based on the *overall perception of that mark* by the relevant public and not on the presumption that elements individually devoid of distinctive character cannot, on being combined, have a distinctive character... The mere fact that each of those elements, considered separately, is devoid of any distinctive character does not mean that their combination cannot present such character.

[emphasis added]

16 Bearing in mind these principles, I am respectfully unable to agree with the Examiner that the average consumer buying T-shirt and shorts, when viewing the mark “STRONG BY CHOICE” would easily recognise that phrase to mean that the T-shirt and shorts are “durable and lasting”. I agree with the Applicant that “strong” is not commonly used to describe T-shirt and shorts as being “durable”. The typical way an average consumer in Singapore describes T-shirt and shorts that can withstand wear would be to use words such as “durable”. It is not common to hear people describing a T-shirt or shorts as “strong”. Indeed, the Examiner stopped short of using the phrase “strong T-shirt and shorts” in her correspondence with the Applicant. But more importantly, undue emphasis should not be placed on the word “strong” because the Applicant is not seeking to register the word “strong” only. The word “strong” has to be viewed in the context of the entire phrase “STRONG BY CHOICE”. When viewed holistically, the average consumer would not easily recognise the phrase itself as describing the quality of T-shirts or shorts. The phrase is an interesting play of words. It is unusual in its meaning and syntax. It is also ambiguous in that it can interpreted to mean different things by different people. One can for instance interpret the phrase to refer to the mindset, personality or physique of the wearer. Another person can interpret the phrase to refer to the merchant’s corporate philosophy, much in the same way as “IMPOSSIBLE IS

NOTHING”<sup>17</sup> and “JUST DO IT”<sup>18</sup> have been used and registered by Adidas and Nike respectively as trade marks in relation to clothing, footwear and headwear under Class 25 of the Nice Classification. Indeed, the first-page result of a Google search of the phrase “strong by choice” exhibited by the Applicant in its correspondence to the Examiner shows hits relating to lifestyle, character, personality or bodily strength. None of them has any direct bearing or correlation to the durability of clothing apparel.

17 In these premises, even assuming the word “strong” is by itself descriptive of the durability of T-shirts and shorts, the phrase “STRONG BY CHOICE”, viewed as a whole, constitutes a fairly “unusual combination of words” in relation to T-shirts and shorts, thereby creating an impression which is sufficiently far removed from the impression created by the word “strong” *simpliciter*. Such compound word marks are not devoid of distinctive character (*Koninklijke KPN Nederland NV v Benelux-Merkenbureau* [2004] ETMR 57 at [98]-[100] and *Campina Melkunie BV v Benelux-Merkenbureau* [2004] ETMR 58 at [40]-[41]).

18 There is presently no evidence to show that the expression is commonly used in the apparel industry to describe the durability of clothing, or for that matter, any quality of T-shirts and shorts. In the absence of such evidence, I am inclined to agree with the Applicant that the average consumer would not readily associate the expression with the durability of T-shirts and shorts.

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<sup>17</sup> Application No. T0311402H. The slogan is described on Adidas’ website to capture the “concept” behind their brand positioning and to “achieve [its] mission to be the leading sports brand in the world” (<https://www.adidas-group.com/en/media/news-archive/press-releases/2004/impossible-nothing-adidas-launches-new-global-brand-advertising-/>)

<sup>18</sup> Application No. T0625348G

19 In response to the Google search result, the Examiner maintained her objection on the principle that “a mark shall not be registered if at least one of the possible meanings of the mark is capable of designating a characteristic of the relevant goods or services” (see also *Love & Co* at [70]). While this principle is undoubtedly correct, it must be understood in the context of two other equally important legal principles. First, that characteristic must be “easily recognisable” by the average consumer of that industry (see [13] above). Second, the focus is not on every conceivable consumer; the assessment is done by reference to a “significant proportion” of consumers in that industry (*Big Box* at [72] and [78]). Viewed in this light, the Examiner’s concerns are overstated. While I do not doubt that *some* consumers not well versed with the English language might associate the phrase “strong by choice” with the durability of the clothing apparel, such consumers are in my view likely few and far between. It bears emphasis that the average consumer in question is deemed to be “reasonably well informed and reasonably observant and circumspect” (*Love & Co* at [33]). Any such consumer is likely to do a double take and rethink whether the phrase does indeed refer to the durability of the clothing apparel or something else. It invokes some degree of imagination and thought on the consumer’s part. The average consumer is likely to explore various possibilities of what the phrase might entail and would not readily jump to the conclusion that it is associated with the durability of the T-shirts and shorts.

20 For the above reasons, I am unable to agree with the Examiner that the Mark conveys a “clear and straightforward message” that the Applicant is committed to providing durable and lasting T-shirts and shorts and that there is “no ambiguity in the way we can interpret the message”. The mark “STRONG BY CHOICE” is, by itself, ambiguous when used in the context of T-shirts and shorts.

21 I am fortified in my view that the Mark is not devoid of distinctiveness by the fact that there is no evidence of common usage of the expression in the clothing apparel industry in Singapore. The prohibition against descriptive marks is ultimately grounded in the policy of ensuring traders would have fair access to descriptive words for their goods and services and that no single trader could unfairly monopolise the use of such words. It has therefore been said that one approach of testing distinctiveness is to ask whether “other traders in the ordinary course of business might want to use the same or similar mark in relation to their own goods without any improper motive” (*Big Box* at [41]). The other way was to ask whether the registration would “impose an intolerable or undue burden on other traders” (*Big Box* [42]). On either count, I am satisfied that fellow traders would not be unduly prejudiced by the registration of this mark. There is no evidence that the expression has crept into the clothing apparel trade lexicon and become customary in the current language of clothing apparel trade (see *Big Box* at [74] and *Love & Co* at [87]). There is also no evidence of any trader professing a *bona fide* intention to use that expression in the clothing apparel trade. This is unlike the case in *Love & Co*, where Chan Seng Onn J found that the word “love” was prevalent in the advertising and promotional practices of jewellery traders (at [88]). Competitors are free to use the word “strong” or “durable” to describe their T-shirts and shorts.

22 Finally, while it has been observed that slogans are not normally used by traders and regarded by consumers as a badge of origin of goods or services because they share the characteristics of being more commonly deployed by traders for advertising and promotional purposes, slogans are nevertheless registrable and have been registered. The test for assessing distinctiveness is the same for all categories of marks (*Nestlé* at [22(c)]). While the Court of Appeal in *Nestlé* did also say that the perception of the relevant public may not always be the same for all categories of marks and it may therefore be more difficult to

establish distinctiveness in some categories such as *advertising* slogans, this does not detract from the fact that slogans *simpliciter* are, in principle, capable of exuding distinctive character (see *Law of Trade Marks In Singapore* at para 3.053-3.056, citing *Audi AG v OHIM* [2010] FSR 24 (“*Audi AG*”) and *Société des Produits Nestlé SA v Mars UK Pte Ltd* [2006] FSR 2).

23 The registrability of slogans was discussed in the case of *Lidl Stiftung & Co. KG v European Union Intellectual Property Office* (Case T-305/16) (“*Lidl Stiftung*”). In that case, the word mark “LOVE TO LOUNGE” was found to be sufficiently distinctive in relation to clothing, footwear and headgear. The EU General Court reasoned that the expression is a “vague and evocative message” alluding to a particular interest or pleasure in relaxing. It does not designate an “easily recognisable property” of clothing, footwear and headgear (at [54]). The court further explained the contested mark required the relevant public to exercise some cognitive effort and place the mark in a certain context. There was also a certain originality to the mark that will enable the consumers to identify the commercial origin of the goods (at [93]-[95]). The following passages from the judgment are worth reproducing in their entirety:

93 Next, it must be pointed out, as the Board of Appeal found, that the contested mark conveys an abstract message referring to the interest of potential consumers in relaxing. The Board of Appeal was likewise right in noting that the contested mark requires *some cognitive effort* on the part of the relevant public. It is a syntactically-correct combination of English words, which can be used in a *great number of contexts*. Consequently, when the contested mark is used in relation to the goods in question, namely clothing, footwear and items of headgear, *the relevant public will have to place that mark in a certain context, which requires an intellectual effort*.

94 Furthermore, even though that mark is not highly imaginative, *it has a certain originality which is likely to be remembered by consumers*. In that regard, the Board of Appeal was right in pointing out that the contested mark is not without a certain elegance, given the clever use of only two nouns and

a preposition and the repetition of the letter 'l', all of which combined lend a degree of euphony to the mark as a whole.

95 The meaning and the originality of the contested mark will be perceived as an incitement to purchase, but do not constitute a mere piece of information as the applicant claims. *On the contrary, the contested mark will enable consumers to identify the commercial origin of the goods at issue.* Consequently, that mark has inherent distinctive character.

[emphasis added]

24 In addition, the court also discussed the way to analyse slogans that have some promotional function. The key question, according to the court, remains whether the slogan would be perceived by the relevant public as having “distinctive character” (at [89]-[90]):

89 A trade mark consisting of an advertising slogan must be regarded as being devoid of any distinctive character if it is liable to be perceived by the relevant public as a mere promotional formula. By contrast, such a mark must be recognised as having distinctive character if, apart from its promotional function, it may be perceived immediately by the relevant public as an indication of the commercial origin of the goods and services concerned ...

90 For a finding that there is no distinctive character, it is sufficient that the semantic content of the word mark in question indicates to the consumer a characteristic of the product relating to its market value which, whilst not specific, comes from promotional or advertising information which the relevant public will perceive first and foremost as such, rather than as an indication of the commercial origin of the goods. In addition, the mere fact that the semantic content of the word sign applied for does not convey any information about the nature of the goods and services concerned is not sufficient to make that sign distinctive ...

25 *Lidl Stiftung* was cited with approval in the recent decision of *In the matter of a Trade Mark Application by Aranguru UG (Haftungsbeschränkt)* [2022] SGIPOS 8 (“*Aranguru*”). In that case, the IP Adjudicator distilled the



following principles from the Court of Justice of the European Union decision of *Audi AG* in relation to slogans (at [16]), reproduced as follows:

- (a) In so far as the public perceives the mark as an indication of the origin of goods or services, the fact that the mark is at the same time understood – perhaps even primarily understood – as a promotional formula has no bearing on its distinctive character (at [45]).
- (b) Where the expression can have a number of meanings, constitute a play on words or be perceived as imaginative, surprising and unexpected and, in that way, be easily remembered, the presence of such characteristics is *likely* to endow that mark with distinctive character, although the existence of such characteristics is not a necessary condition for establishing that a slogan has distinctive character (at [47]).
- (c) Slogans, which generally express objective messages, can still be capable of indicating to the consumer the commercial origin of the goods or services in question, if they are not descriptive for the purpose of the EU’s equivalent of Section 7(1)(c) of the Act and “*possess a certain originality or resonance, requiring at least some interpretation by the relevant public, or setting off a cognitive process in the minds of that public*” (at [57]).

26 Applying these principles, the IP Adjudicator went on to find that the mark in question “Party Like Gatsby” was “purely promotional puff or call to action”, as opposed to something that is “*both* a promotional statement and a badge of origin” (at [30]). He also considered that the mark would not be immediately perceived by the relevant public to be a badge of origin (at [31]). In this regard, he emphasised that it was not sufficient for the mark to simply set off a “cognitive process”; it had to possess “a certain originality or

resonance”. Registration of that mark was accordingly refused for Classes 41 and 43 in relation to the following services:

Class 41

Audio, video and multimedia production, and photography; providing publications from a global computer network or the Internet which may be browsed; education, entertainment and sports; entertainment booking services; entertainer services; cabarets and discotheques; night clubs; presentation of live performances; ticketing and event booking services for cultural, sports and entertainment events; providing information in the field of entertainment; radio and television entertainment; publication of texts and images, including in electronic form, except for advertising purposes; entertainment information; organisation of conferences, exhibitions and competitions; organisation of parties; organisation of cultural events; organisation of entertainment events; planning (party -) [entertainment]; presentation of variety shows; production of video and/or sound recordings; publishing services; ticket reservation for cultural events; entertainment booking services; entertainment services; arranging and conducting of concerts; rental of audio equipment, photographic and video cameras; rental of lighting apparatus for theatrical sets; rental of public address systems; rental of musical instruments; publication of books, magazines, almanacs and journals; digital video, audio and multimedia entertainment publishing services; presentation of circus performances.

Class 43

Food and drink catering; temporary accommodation; making reservations and bookings for restaurants and meals; rental of furniture, linens and table settings; providing conference, exhibition and meeting facilities; services for providing food and drink; temporary accommodation; temporary accommodation reservations; accommodation bureaux [hotels, boarding houses].

27 On the present facts, I am satisfied that the phrase “Strong by Choice” exudes a certain degree of originality in relation to T-shirts and shorts, which enables consumers to identify the commercial origin of the goods, for the reasons discussed at [16]-[20] above. Consumers would not immediately

perceive, without further thought, that the Applicant is committed to providing durable T-shirts and shorts. The phrase is ambiguous and calls for some interpretive and cognitive effort on the part of the relevant consumers in discerning its appropriate meaning. It is quite different from the case of *Aranguru* where the phrase was found to be nothing more than a promotional statement encouraging the reader to party in a certain way or be part of a certain type of party, in relation to the type of services for which registration was sought.

### **Conclusion**

28 For the above reasons stated, I waive the Examiner's objection and accept the Application. The Application will proceed to publication under s 13 of the Act for the purposes of opposition. Upon such publication, any person may within the prescribed time oppose the registration of the Mark, during which further evidence and submissions on the distinctiveness of the Mark may be led and considered.

Vince Gui  
IP Adjudicator

Ms Gladys Tan and Ms Estelle Moh (David Llewelyn & Co LLC) for the  
Applicant