

MARKS CONTRARY TO PUBLIC POLICY OR TO MORALITY

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1 INTRODUCTION

This chapter is concerned with marks which are contrary to public policy or morality.

2 RELEVANT LEGISLATION

The Trade Marks Act (Cap. 332, 2005 Rev. Ed.)

Absolute grounds for refusal of registration

7. —(4) A trade mark shall not be registered if it is —
(a) contrary to public policy or to morality;

...

3 CONTRARY TO PUBLIC POLICY

(a) Not concerned with economic grounds of objection

The public policy ground is not concerned with economic grounds of objection. In *Philips Electronics NV v Remington Consumer Products Ltd [1998] RPC 283*, it was argued at first instance that it would be contrary to public policy for the plaintiffs to gain ‘an automatic and indefinite extension to the monopoly conferred by a patent, design or copyright if their three-headed rotary shaver were to be registered as a three-dimensional trade mark. Jacob J disagreed, stating that this ground “...is not concerned with this sort of matter – it is ...confined to matters ...involving some sort of question of morality. It is not concerned with economic grounds of objection.”

(b) Concerned with matters involving morality

Jacob J stated that the public policy ground “...is ...confined to matters ...involving some sort of question of morality.” Examples of marks that would be objected to under this ground would be, those which have criminal connotations, those which exhibit racial, religious or discriminatory characteristics.

4 MARKS CONTRARY TO MORALITY

On a morality spectrum which classifies marks in order of their increasing offensiveness, marks contrary to morality would exceed those that are considered distasteful or unpleasant. They would be akin to marks that would cause scandal in that they offend a portion of the public, although they fall short of obscenity.

Below are some categories of marks which would be contrary to morality. These categories are however not exhaustive.

(a) Marks with religious connotations

(i) Names of Supreme Being

The Registrar will exercise care when examining marks which are likely to be perceived by the average member of a particular religious group (as opposed to the views of a single religious fanatic) as designating their Supreme Being. If the use of the trade mark will provoke greater offence than mere distaste, or even outrage, the mark will be denied registration **without regard to the goods or services claimed** for registration. It is not material that the average consumer does not recognize the mark as designating a Supreme Being. This is because a higher degree of outrage or censure amongst a small section of the community will suffice just as lesser outrage or censure amongst a more widespread section of the public will also suffice.

(ii) Words or symbols of religious significance

Whether marks consisting of or comprising words or symbols of great religious significance will face an objection **depend on the goods or services claimed** for registration. The Registrar will look at the context of the use of the mark and the identified goods or services from the perspective of the specific group that considers the word or symbol to be sacred. If the identified religious group is not offended by the trade mark usage, the mark is acceptable.

(iii) Names of religious groups or terms and symbols that identify their followers

Adopting and using a religious group's name to identify goods or services is **not per se offensive**. The context of the usage of the mark and the identified goods or services will be important in determining whether the commercial impression of the mark is one that raises offence.

Names of religious groups, sects or orders and terms or symbols that identify their followers will be refused registration if the use of the goods claimed in the application for registration are forbidden to the followers or adherents of such sect or order, as it is an affront to such persons and tend to disparage their beliefs.

(b) Marks involving racial, ethnic, religious or gender disparagement

Marks which disparage any race, ethnic, religious or gender group will be refused registration **without regard to the goods or services claimed** for registration, even if the identified racial, ethnic, religious or gender group does not represent a majority of the general public. The use of such matter perpetuates negative stereotypes and serves to arrest the promotion of a progressive multicultural society.

(c) Profane content

Marks containing or comprising profane matter are likely to be refused **without regard to the goods or services claimed**.

“Profane” means to violate or treat with abuse or contempt something which is sacred. “Sacred” means something which is entitled to reverence and respect. Words that defile sexual and excretory functions are regarded as profane.

(d) Vulgar content

Whether or not a vulgar word or symbol is found to be offensive **depends upon the context of the use of the mark and the goods or services claimed** for registration. Vulgarity exceeds what might be considered unpleasant but falls short of obscenity. It may be defined as matter that is lacking in taste, indelicate and morally crude.

(e) Sexual content

Marks imparting a sexual connotation may be regarded as offensive and refused registration, depending on whether or not the connotation is shocking. The more sexually explicit the message, the more likely the mark will be refused registration.

It is to be noted that the test here is not whether the sexual connotation is obscene but whether the connotation would cause offence. It is likely that a device mark depicting a nude man and a nude woman kissing and embracing is sufficient to render the mark offensive.

(f) Marks involving innuendo

Innuendo marks will be denied registration if their insinuated messages are offensive.

(g) Marks suggesting or promoting illegal activity

Marks advocating illegal activity are considered offensive and will be refused registration. For example, "FAMILY HEAT" for "adult entertainment magazines" will be refused as it is suggestive of family sex which is incest.

5 THE TEST TO BE APPLIED

(a) Look at the social, linguistic and cultural conditions in Singapore

A mark that is not likely to be seen as offensive in another country does not mean that it will not be seen as offensive in Singapore. This is because the social, linguistic and cultural conditions may differ.

(b) Is the mark likely to be perceived as containing offensive matter?

The Registrar will look at the primary meaning of the mark in the minds of the relevant public and the applicant's intended meaning for the mark in deciding whether the trade mark is likely to be perceived as containing matter which might be offensive to some.

For example, "JESUS" may be a popular forename in a number of countries, but it is not a common forename in Singapore and few would see JESUS as a forename. The majority would attribute only one meaning to JESUS and that would be JESUS CHRIST. Hence, JESUS has been refused registration for "clothing".

It is possible that with calculated concealment of the words through idiosyncratic spelling or clever disguising within a device element, potentially offensive matter may be registrable.

(c) The nature of the goods or services may be relevant

The Registrar will sometimes look at the nature of the goods or services to decide if the mark is likely to be perceived as containing offensive matter. For example, "HOOKER" in connection with "boat anchors" may be acceptable while the same mark may be refused in relation to "adult magazines".

(d) The Registrar may draw upon his own knowledge of words and his own perception of how they may be used

In deciding if the mark is likely to be perceived as containing offensive matter, the Registrar is entitled to draw upon his own knowledge of words and their own perception of how they may be used. The mere fact that Examiner is offended or not offended is irrelevant. The Examiner must have regard to the likelihood of an identifiable section of the public being offended.

In *Ghazilian's Trade Mark Application [2001] RPC 654*, the Hearing Officer said:

"... the ordinary dictionary words TINY PENIS, when used in a proper context, are not words that would, or should cause offence to

*the vast majority of persons in the UK. But the applicant seeks to use these words not in an ordinary descriptive context, but as a means of differentiating products in the course of trade. Consequently, these words could appear on signs in shop windows, on advertisement boards in public places and on labels on clothing and accessories. ... bearing in mind that the goods applied for are items which could be on display in public places for all members of the general public to view, I consider that the trade mark will cause offence to a substantial proportion of the purchasing public who will, without any choice, be exposed to the words **TINY PENIS** out of context.”*

In *Ghazilian’s Trade Mark Application [2001] RPC 654*, the Appointed Person said:

Section 3(3) is not concerned with political correctness; it is concerned with principles or morality, a different and less readily involved standard. The Registrar’s Hearing Officers cannot be expected in all cases to form a view without the assistance of evidence. They are entitled to draw upon their own knowledge of words and upon their own perception of the way in which those words can be used without offending against public morality. They must however be careful not to allow their personal views to deflect them from approaching the matter on the basis of the “right-thinking” person.

(e) Would the mark cause outrage or censure?

If the mark is likely to be perceived as being offensive, the Registrar will look at whether offence amounts only to distaste or will the offence justifiably cause outrage and censure. If the normal and fair use of the mark would justifiably cause outrage or censure, the mark is objectionable.

Ghazilian’s Trade Mark Application [2001] RPC 654. In upholding the Registrar’s decision to refuse registration of the mark “**TINY PENIS**”, in respect of clothing in class 25, Simon Thorley QC, acting as the Appointed Person said:

“Each case must be decided with on its own facts. The dividing line is to be drawn between offence which amounts only to distaste and offence which would justifiably cause outrage or would be the subject of justifiable censure as being likely significantly to undermine current religious, family or social values. The outrage or censure must be amongst an identifiable section of the public and a higher degree of outrage or censure amongst a small section of the community will no doubt suffice just as lesser outrage or censure amongst a more widespread section of the public will also suffice.”

(f) The Registrar should not be out of date nor be a trend setter of moral standard

The Registrar has to decide on the acceptable standards as of the date of application. This means being neither out of date nor a trend setter of moral standard.

Hallelujah Trade Mark [1976] RPC 605. *In refusing registration of the mark “HALLELUJAH” in respect of “articles of clothing for women”, the Hearing Officer said:*

“...it is well established that the registrability of a trade mark must be judged as at the date of its application.... When religious and moral standards are changing, sometimes quite rapidly, it seems to me that the Registrar should only follow where others have given a clear lead. While he must not remain isolated from the day-to-day world, frozen in outmoded moral principles, he must equally not presume to set the standard. He must certainly not act as a censor or arbiter of morals, nor yet as a trendsetter. He must not lag so far behind the climate of the time that he appears to be out of touch with reality, but he must at the same time not be so insensitive to public opinion that he accepts for registration a mark which many people would consider offensive.”