

## Smiles all round for Colgate in toothpaste trademark challenge

Contributed by [Samuel Seow Law Corporation](#)

June 01 2010

How far can trademarks be used to protect the signs associated with a product? It is no surprise to find that COLGATE is a trademark, or that the toothpaste manufacturer has also registered the rainbow-hued ellipse round the word 'total', part of the logo on Colgate's Total brand products. However, the registrability of a two-dimensional device representing a 'slug' of toothpaste with blue, green and white stripes is less clear.

Such a mark was the subject of a challenge before the Intellectual Property Office of Singapore (IPOS), in which a Colgate mark was opposed by competing manufacturer Procter & Gamble, whose products include Oral-B and Crest toothpastes. Procter & Gamble was concerned by Colgate's application to register a seemingly commonplace drawing of a slug of toothpaste. It supplied evidence that the use of such striped slug devices is common trade practice among toothpaste manufacturers, and argued that Colgate's mark was not registrable.

Colgate argued that devices representing slugs of toothpaste on toothbrushes (with specific colour limitations, as in the case of its mark) have previously been registered in Singapore. It argued that use of these commonplace devices with distinctive colours is accepted trade practice, and that the average consumer, being exposed to this practice, would likely know that traders use such marks to differentiate their goods from those of their competitors.

IPOS allowed the registration. It held that the mark could function as a trademark to distinguish Colgate's products from those of competitors. The mark at issue was more stylized than the toothpaste slugs already registered as trademarks. The style of the mark and the limitation to specific colours meant that the mark would not immediately create the mental impression of toothpaste or convey any specific meaning on first sight.

IPOS noted that Colgate's application for registration was not for striped toothpaste *per se*, but specifically for a two-dimensional stylized device limited to a tricolour combination of stripes. This is a significant development for Colgate and other toothpaste manufacturers that wish to use and register creative and allusive visual marks to develop their brands.