

## Calvin Klein and Gioven Kelvin – Separated at Birth?

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In today's increasingly competitive world of business, one method that companies have found advantageous in terms of distinguishing themselves and their products from their competitors is through the establishment and building of their brands via trademarks. How else would consumers recognize and identify a particular product or service and make their preferred choice? An established trademark can be a valuable economic asset to a business when it becomes well-known for its quality and reputation. As such, big companies usually do all they can to protect this asset from being infringed in the course of commercialization.

It should come as no surprise then that when IDM Apparel Pte Ltd ("IDM") filed an application to



protect the trademark "Gioven Kelvin" under Class 24 (for goods ranging from bed linen to textiles) in Singapore, the Calvin Klein Trademark Trust, proprietor of the world famous brand and mark "Calvin Klein", also known as "CK", strongly opposed it, on the basis of several grounds from the Trademarks Act.

Among their arguments was that IDM's mark shared many similarities with four of their own registered marks, which would cause a likelihood of confusion between the brands and damage their interests if consumers were misled into thinking that goods or services bearing this mark originated from them. They also argued that there would be a dilution in an unfair manner of the distinctiveness of their CK marks and that IDM could take advantage of both this and the goodwill that they have established through these marks. They even went so far as to accuse IDM of applying for the mark in bad faith by bringing up past conflicts they have had concerning other applications for "Gioven Kelvin" marks in other classes through another company called Impressions Int'l Import and Export Pte Ltd, where the sole proprietor was alleged to be connected to one of the directors and shareholders of IDM. IDM however denied all the claims raised by CK and insisted on their right to continue with the registration of their mark.

The CK marks were first used in Singapore with four separate marks registered under Class 24 and 25, which they submitted as evidence to prove the similarities between their marks and the application mark. Goods bearing the "CK" mark are said to bring a worldwide sales turnover amounting to billions of dollars, with the company spending up to SGD300million or more annually in global advertising expenditure, Singapore included. IDM, on the other hand, own of a number of marks bearing the brand "Gioven Kelvin" in several classes of goods, and had already used the mark to represent their business and distinguish themselves in the public eye, prior to filing their application. As both parties refused to back down, an opposition hearing was held on 5 July 2011 to settle the matter.

The Registrar, after evaluating all the pleadings, evidence and submissions by both parties, decided in favour of IDM.

One key point that can be taken from this case is the relevance of Trademark Laws in evaluating and protecting trademark rights. In deciding whether the marks submitted by CK were really identical or shared any similarities with the application mark that would cause the likelihood of confusion between the two, the court evaluated both parties' marks and found that overall, there were little to no visual, aural and conceptual similarities between them. Although they found similarities in individual parts of



Gioven Kelvin  
PARIS

the marks, they concluded that IDM's mark should be taken as a composite mark (comprising of two letters in an abstract form, with two words below it) and as such, was distinctive from all the "CK" marks submitted and would not likely cause confusion among relevant consumers in the market. As such, IDM's mark would not damage the interests of CK; neither would the distinctive character of CK be diluted or taken unfair advantage of despite being well-known in Singapore, as both parties were found to have different market-positioning and had already established their own goodwill and brands. It was also determined that CK lacked evidence in opposing IDM's mark on the grounds of passing off as well as in their allegation of the application being made in bad faith.

As clearly demonstrated by this case, it is evident how much value trademarks are to companies and in building businesses. The one lesson that can definitely be learnt from this is the importance of knowing and recognizing the rights one has to the usage and protection of a trademark in relation to the Trademark Laws provided by a country.

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