

## Spotting Seiko in Seiki

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While SEIKO may be the pioneer in “exquisite workmanship” when it comes to timepieces, living up to its name and establishing itself as a famous brand to half the world, it certainly did not enjoy much success in its battle in opposing the trademark “SEIKI” from securing a place in the trademark registry of Singapore.

“SEIKI”, a trademark owned by Choice Fortune Holdings Limited (“the Applicant”) represents electronic goods such as television sets and disc players. In a natural course of events, Seiko Holdings Corporation (“the Opponent”), being a pioneer in timepieces with its trademark also claiming goods such as gramophones and metronomes in the same class brought an opposition against the registration of the mark “SEIKI” at the Intellectual Property Office of Singapore (IPOS). The Opponent claimed that the Applicant’s mark is confusingly similar to its own and that the use of the mark “SEIKI” would dilute the goodwill of the “SEIKO” mark.

In relation to the claims of confusion, the Opponent had to satisfy a “step-by-step” approach, namely that (i) the marks are similar; (ii) the goods are identical or similar; and, as such, (iii) part of the public is likely to be confused.

The Registrar took the view that there are no strict formulae to adhere to when comparing the marks. It is the “*first impression*” alluded by a mark that matters. As put forward by the Registrar, “the assessment of mark-similarity is more an art than a science, more of feel than of formula, though guided by principles.” In this instance, the Registrar found that “SEIKI” is visually and aurally similar to “SEIKO”, albeit to a low degree. In terms of conceptual similarity, the Registrar is of the view that as Japanese is not a common language in Singapore, “SEIKO” and “SEIKI” would simply be viewed as invented words with “Japanese-like characteristics” by the Singaporean public. Although the Registrar did not rule out the possibility of finding conceptual similarities between two marks that share the same national characteristic, in this case, the words “SEIKO” and “SEIKI” being Japanese sounding is too vague a concept for the Registrar to find that there is a conceptual similarity between the marks. Further, the Registrar also found that there was similarity in the goods represented, in that the goods covered by the Opponent’s earlier mark overlapped with that of the Applicant’s mark.

Despite these findings of similarity, the Registrar opined that the likelihood of confusion was minimal. Although visual, aural and conceptual similarities are to be taken into consideration when deciding whether the marks are similar, these aspects are not to be taken as a pre-definitive yardstick to make a finding of confusion. There are other factors to be taken into account and the finding of confusion should always be based on the facts in the case. In this case, the Registrar is of the view that the likelihood of confusion is low as the products represented by the marks are relatively expensive, and the consumers are unlikely to purchase them on a whim. On the contrary, the consumers would have made the necessary enquiries prior to purchasing the products, and even at the point of purchase the consumers would pay more attention.

As for the claims of dilution, the mark “SEIKO” is recognised for timepieces by the majority of the Singaporean public, and the Registrar was not convinced that consumers would draw a mental connection between “SEIKO” and “SEIKI” as it is unlikely that any rational consumer would assume that the Applicant’s electronic goods such as television sets and disc players emanate from “SEIKO”. Consequently, it was deemed implausible that the “SEIKI” mark would cause dilution in an unfair manner towards the goodwill of the Opponent’s “SEIKO” mark. The Registrar came to a verdict that the Opponent failed to conciliate the elements under all the grounds raised and allowed the Applicant’s Mark “SEIKI” to proceed to registration.

It is interesting to note that a long and established reputation could in fact pose the contrary effect in proving likelihood of confusion. The more strongly a trademark is ingrained in the mind of consumers, the less likely confusion would arise. What is most likely at this juncture is that owners of famous brands may not find this particular decision favourable to them.

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