

~~G.M.C. 2~~

Judgment  
21, 1966

IN THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL

No. 26 of 1965

ON APPEAL

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :-

LEE KAR CHOO trading as  
YEEN THYE COMPANY (Respondent) Appellant

- and -

LEE LIAN CHOON trading as  
CHUAN LEE COMPANY (Appellant) Respondent

\_\_\_\_\_

RECORD OF PROCEEDINGS

\_\_\_\_\_

Lawrance Messer & Co.,  
16, Coleman Street,  
London, E.C.2.  
Solicitors for the Appellant.

McKenna & Co.,  
12, Whitehall,  
London, S.W.1.  
Solicitors for the Respondent.

ON APPEAL

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N

LEE KAR CHOO trading as  
YEEN THYE COMPANY

(Respondent) Appellant

- and -

LEE LIAN CHOON trading as  
CHUAN LEE COMPANY

(Appellant) Respondent

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RECORD OF PROCEEDINGS

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UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

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P.5C	Packet of Fishing Nets Brand Tea
P.5D	Packet of Fishing Nets Brand Tea
P.5E	Packet of Fishing Nets Brand Tea

Exhibit Mark	Description
P.6A	Packet of Fishing Nets Brand Tea
P.6B	Packet of Fishing Nets Brand Tea
P.6C	Packet of Fishing Nets Brand Tea
P.6D	Packet of Fishing Nets Brand Tea
P.6E	Packet of Fishing Nets Brand Tea

1.

IN THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL

No. 26 of 1965

ON APPEAL  
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N

LEE KAR CHOO trading as  
YEEN THYE COMPANY (Respondent) Appellant

- and -

10 LEE LIAN CHOON trading as  
CHUAN LEE COMPANY (Appellant) Respondent

RECORD OF PROCEEDINGS

No. 1

GENERAL FORM OF WRIT OF SUMMONS

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT IPOH  
Civil Suit No. 311 of 1961

Between

20 LEE KAR CHOO (otherwise known as  
LEE KAH CHOO) trading as YEEN THYE CO.  
at 49 Market Street,  
Ipoh, Perak Plaintiff

and

LEE LIAN CHOON trading as  
CHUAN LEE CO., at  
9 Jalan Datoh  
Ipoh, Perak Defendant

DATO SIR JAMES THOMSON, J.M.N. P.J.K.,  
Chief Justice of the Federation of Malaya for and  
on behalf of His Majesty the Yang di-Pertuan Agong.

30 To Lee Lian Choon, trading as  
Chuan Lee Co., at 9 Jalan Datoh,  
Ipoh, Perak.

In the Supreme  
Court of the  
Federation of  
Malaya

No. 1

General Form  
of Writ of  
Summons

29th December  
1961.



In the Supreme Court of the Federation of Malaya

No. 1

General Form of Writ of Summons (continued)

29th December 1961.

WE COMMAND you, that within eight (8) days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of Lee Kar Choo.

AND TAKE NOTICE that in default of your so doing the Plaintiff may proceed therein and judgment may be given in your absence.

WITNESS Sarwan Singh Gill, Registrar of the Supreme Court of the Federation of Malaya this 29th day of December, 1961.

Sd. S.M. Yong & Co. Plaintiff's Solicitors

Sd. E.E. Sim Senior Assistant Registrar, High Court, Ipoh.

10

N.B. This Writ is to be served within twelve months from the date thereof, or, if renewed, within six months from the date of last renewal, including the day of such date, and not afterwards.

20

The Defendant may appear hereto by entering an appearance either personally or by solicitor at the Registry of the Supreme Court at Ipoh.

A defendant appearing personally, may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order for \$3.00 with an addressed envelope to the Registrar of the Supreme Court, at Ipoh.

INDORSEMENT OF CLAIM

The Plaintiff claims:-

30

- (1) An injunction to restrain the Defendant, his trustees, servants and agents or any of them from infringing the Plaintiff's registered trade marks Nos. M.21085 dated the 14th day of March, 1952 and M.31338 dated the 23rd day of March, 1959.
(2) An injunction to restrain the Defendant, his trustees, servants and agents or any of them from passing off goods not of the Plaintiff's manufacture as and for the goods of the Plaintiff.

40

3.

(3) An account and damages.

(4) That the Defendant doth deliver up to the Plaintiff for destruction the offending labels and blocks.

(5) Costs of this suit.

(6) Further or other relief.

(Sd.) in Chinese  
Chop Yeen Thye Tea Merchant  
Plaintiff's Signature.

Sd. S.M.Yong & Co.  
Plaintiff's  
Solicitors.

In the Supreme  
Court of the  
Federation of  
Malaya

No. 1.

General Form  
of Writ of  
Summons  
(continued)

29th December  
1961.

10 This Writ was issued by Messrs. S.M. Yong & Co., of and whose address for service is No. 52 (1st floor) Klyne Street, Kuala Lumpur, Solicitors for the Plaintiff who reside at No. 49 Market Street, Ipoh.

This Writ was served by me at  
on the Defendant Lee Lian Choon on the  
day

Indorsed this day of 1961

(Signed)

20 (Address)

No. 2

No. 2

STATEMENT OF CLAIM

Statement  
of Claim

(1) The Plaintiff is a Federal Citizen carrying on business as manufacturers and dealers in tea and tea dust under the name and style of Yeen Thye Co., at No. 49, Market Street, Ipoh in the State of Perak. The Plaintiff has been carrying on the said business for upwards of 19 years.

20th December  
1961.

30 (2) The Plaintiff is the registered proprietor of the following trade marks, namely, Trade Mark No. M.21085 registered as from the 14th day of March, 1952 in class 30 in respect of tea and tea dust and Trade Mark No. M/31338 registered

In the Supreme Court of the Federation of Malaya

No. 2

Statement of Claim (continued)

20th December 1961.

as from the 23rd day of March 1959 in class 30 in respect of tea leaves and tea dust. The said registration are valid and still subsisting on the register.

(3) For upwards of 19 years tea leaves and tea dust manufactured or sold by the Plaintiff have been sold in packages bearing a distinctive label in substantially the form of the said trade marks, the said label being printed in red on a yellow background. The said label has always comprised as a prominent feature of the distinctive get-up and general layout thereof a red coloured fish contained in a scroll and swimming in water. The Plaintiff has sold within the Federation of Malaya large quantities of tea in packages bearing the said label and by reason of the said use of the said label has become very well known and has for many years been distinctive of the tea leaves and tea dust of the Plaintiff and none other. 10

(4) The Defendant carries on business under the name and style of Chuan Lee Co., at No. 9, Jalan Datch, Ipoh. 20

(5) In and around May, 1961, the Plaintiff ascertained (as is the fact) that the Defendant had put upon the market and sold tea not of the Plaintiff's manufacture or merchandise in packages bearing a label which is a colourable and deceptive imitation of the said well known label of the Plaintiff. The said packages of the Defendant are identical in size to the Plaintiff's packages and the said label of the Defendant is also printed in red on a yellow background and also comprises as a prominent feature of the get-up and general layout thereof a red coloured fish contained in a scroll and swimming in water. 30

(6) On the 20th day of June, 1961 the Plaintiff filed an Action against the Defendant in this Court (Ipoh High Court Civil Suit No. 136 of 1961) for infringement of the Plaintiff's said trade marks and for passing off goods not of the Plaintiff's manufacture as and for the goods of the Plaintiff. 40

(7) On the 26th day of July, 1961 this Court made an Order in the said action whereby the Defendant by his Counsel undertook that neither

he nor his trustees servants nor agents or any of them or otherwise would at any time thereafter infringe the Plaintiff's said registered Trade Marks nor pass off goods not of the Plaintiff's manufacture as and for the goods of the Plaintiff.

In the Supreme  
Court of the  
Federation of  
Malaya

---

No. 2

Statement  
of Claim  
(continued)

20th December  
1961.

10 (8) Notwithstanding the said Court Order the Defendant is still continuing to put upon the market and to sell tea not of the Plaintiff's manufacture or merchandise in packets bearing a label which is a colourable and deceptive imitation of the said well-known label of the Plaintiff. The said packages are identical in size to the Plaintiff's packages and the said label of the Defendant is also printed in red on a yellow background and also comprises as a prominent feature of the get-up and general layout thereof a red coloured fish contained in a scroll and swimming in water.

20 (9) The use by the Defendant of the said label in connection with tea not of the Plaintiff's manufacture or merchandise is an infringement of the Plaintiff's said registered trade marks and is calculated to lead and has in fact led to deception and to the belief that the Defendants tea is the tea of the Plaintiff and is further calculated to cause and must have caused tea not of the Plaintiff's manufacture or merchandise to be passed off as and for tea of the Plaintiff and the Plaintiff has thereby suffered and will  
30 suffer damage.

(10) The Plaintiff will contend that the Defendant's said label was designed and adopted with the object of enabling the Defendant's said label to be mistaken for the said well-known label of the Plaintiff.

(11) The Plaintiff is unable to give particulars of all the Defendant's acts of infringement or passing off but will claim to recover in respect of all such acts.

40 (12) The Plaintiff claims:-

- (a) An injunction to restrain the Defendant his trustees, servants and agents or any of them or otherwise from infringing the Plaintiff's registered trade marks Nos. M.21085 dated the 14th day of March,

In the Supreme Court of the Federation of Malaya

No. 2

Statement of Claim (continued)

20th December 1961.

1952 and M.31338 dated the 23rd day of March 1959.

- (b) An injunction to restrain the Defendant his trustees, servants, and agents or any of them or otherwise from passing off goods not of the Plaintiff's manufacture as and for the goods of the Plaintiff.
- (c) An account and damages.
- (d) Delivery up to the Plaintiff for destruction all the Defendant's offending labels and blocks. 10
- (e) Costs of this suit.
- (f) Further or other relief.

Dated the 20th day of December, 1961.

sgd. In Chinese

sgd. S.M. Yong & Co.

Signature of Plaintiff Solicitors for the Plaintiff

No. 3

Statement of Defence

17th January 1962.

No. 3

STATEMENT OF DEFENCE

The Defendant abovenamed states as follows:-

- 1. Paragraph 1, 2 and 4 of the Statement of Claim are admitted. 20
- 2. Paragraph 3 of the Statement of Claim is admitted only insofar as the Plaintiff blends and sells tea and tea dust under the mark "Gold Fish" brand and the said mark is a registered trade mark.
- 3. Regarding paragraph 5 of the Statement of Claim the Defendant:

- (a) says that he is the registered proprietor of the mark "Fishing Nets Brand" in

respect of tea and/or tea dust manufactured, packed and sold by him, being Trade Mark No. M/33682 registered on the 22nd day of June 1960 and as such he has an independent right to use this mark for the purpose of distinguishing goods with which the Plaintiff is connected in the course of his trade.

In the Supreme  
Court of the  
Federation of  
Malaya

            
No. 3

Statement  
of Defence  
(continued)

17th January  
1962.

- 10 (b) denies that the mark on the labels used by the Defendant is a colourable and deceptive imitation of the Plaintiff's mark and labels.
- 20 (c) says that the idea conveyed and the leading characteristics of the Defendant's mark are clearly and visibly distinct and separate from the Plaintiff's mark and that the size of packages of tea and tea dust used by manufacturers are the same throughout the country as far as the knowledge of the Defendant goes and the size of a package cannot mislead any reasonable person in the choice of the article of purchase and the quality thereof.

30 4. Regarding paragraphs 6, 7, 8, 9 and 10 of the Statement of Claim the Defendant admits that the Plaintiff did file an action against him in the High Court at Ipoh, being Ipoh High Court Civil Suit No. 136 of 1961, and that an Order was made therein on the 26th day of July, 1961. The Defendant, however, denies that he is passing off his own goods as that of the Plaintiff or has infringed the trade mark of the Plaintiff. The Defendant will contend at the trial if there was or has been any infringement (which is denied) of the Plaintiff's trade mark or if the Defendant has in any way committed a breach of the undertaking (which is denied) the present suit is not maintainable and the proper course for the Plaintiff is to restore the proceedings in Civil

40 Suit No. 136 of 1961.

5. Regarding paragraph 11 of the Statement of Claim the Defendant denies infringement and passing off and contends that in the absence of particulars the Plaintiff is not entitled to recover.

8.

In the Supreme Court of the Federation of Malaya

No. 3

Statement of Defence (continued)

17th January 1962.

6. Each and every allegation of the Plaintiff unless specifically admitted hereinabove is denied as if the same were specifically traversed and set out in seriatim.

7. The Defendant prays that the Plaintiff's suit be dismissed with costs.

Dated the 17th day of January, 1962.

Sd. N. Sharma

Solicitor for the Defendant

Sd. (IN CHINESE)

Defendant.

10

Plaintiff's Evidence

No. 4

Lee Kar Choo P.W.L.

Examination

26th November 1963.

No. 4

EVIDENCE OF LEE KAR CHOO

Plaintiff's Witness 1 affirmed states in Hokkien:

Market Street Ipoh. Manufacturer. Deals in tea and tea dust under name Chop Yeen Thye. Dealing in tea 22 years. Formerly 172 Hugh Low Street. Since 1952 to present site No. 49. Registered proprietor Trade Mark M. 21085. P.1. was issued to me (undertaken to use only in specified form). I am also registered proprietor of Trade Mark M.31338 - P.2. - 23.3.1959. Also for tea and tea dust - sold in packets - with labels similar to T.M.S.; all labels printed in colour as shown in P.1 - 5 sizes. P.3 (A. - E). I have been selling such get-up for last 22 years. Commonly known as "red fish" Brand. I know defendant. No trades under name of Chop Chuan Lee & Co. 9 Jalan Datoh Ipoh. He is a newcomer.

20

I produce copy defendant's trade mark - P.4. (22/1/1960) in May 1961 I found that he had imitated and selling tea under name of Red Fish. He had imitated my trade mark. I produce 5 packets of defendant's tea. (I ask how he know defendant's tea). I bought them in shops

30

around Ipoh - P.5. (for id.) (A - E) - bears name of defendant's firm. On 20.6.1961. I sued in June 1961. On 26.7.1961 consent order. After that case defendant created a new label - P6 (A - E) for identification. I bought them in Ipoh but not from Defendant's shop. (Defendant's counsel admit sold after last case by defendant). People have complained they have been confused. General get-up is similar. Size and pattern are similar. Since defendant brought on his tea my business greatly affected in volume. (Mr. Sharma objects in view of para. 11 statement of claim).

10

Refers Humphries & Co. 39 Ch.D. 693. I point out only dealing with his loss. Since P6 came on the market it has affected my business - sales decreased considerably. I pray for remedies asked for.

CROSS-EXAMINATION: I see D.7. (A & B). I say overall imitation; they look the same. I say same size - and is same.

20

As to front borders are similar on both packets - fish in red in both cases. This fish when sold as in a pet shop is red fish or gold fish. What appeals at first sight is big fish. Because fishes are in red they are similar. I do not see nets. I cannot make out if they are nets or anything else. Last time I objected to floral design and I agree it has been changed. I do agree throughout Malaya tea is sold same sizes. Red and yellow colours very popular - D.8 and D9 are in red and yellow but mine are registered. D.10 also but it is not similar to mine and I think it is not registered.

30

In every packet of tea tin foil used to keep moisture away. I see P.6. - Chinese characters on front means Chuan Lee Tea Stall and they are prominent but when viewed at arms length not so prominent.

40

I cannot read the Jawi on front. P.3. - mine has no Chinese on front. I agree the water weed is prominent on mine none on his P.6. but at arms length little fish look like weeds. First thing I notice at distance on P.6. is one large red fish and a red dot. My sight is good. I cannot see words fishing nets. On end P.3. in Chinese words gold fish appear; on P.6. fishing nets is written

In the Supreme  
Court of the  
Federation of  
Malaya

Plaintiff's  
Evidence

No. 4

Lee Kar Choo  
P.W.1

Examination  
(Continued)  
26th November  
1963.

Cross-  
Examination



In the Supreme Court of the Federation of Malaya

Plaintiff's Evidence

No. 4

Lee Kar Choo P.V.1

Cross-Examination (continued)

26th November 1963.

Majority my customers Malay and Indian (consumers) but retailers are Chinese.

On P.3. letters are in Jawi Chop Ikan Mas (Emas) gold fish and similar words in Tamil. Gold fish brand best quality Ceylon tea dust. I cannot say if customers who could read would be mistaken. I said people had told me confused. They are here. My counsel can supply names. One is Malay named Hitam; he is only one present. He is only man who told me - 5 - 6 months ago at Tikar near T. Anson. 10  
He is a consumer. I did not know him before. On one of my trips he came up to me. He said quality not same as before. Many others have complained but I cannot give names. Defendant did register his trade mark as fish nets. I do not know procedure as regards objection to registration. I have other brands registered - Horsehead is one. - Only two before this action. Defendant did not register P.6 or I would have objected. I did object to P.4 P.5. I got in previous suit - no longer in market. 20

I do not agree that a reasonable person could not mistake P.3 and P.6. Appear same in colour, general design, size and fish.

Also name of Chop is same. Major portion of defendant's label is water.  $\frac{1}{2}$  mine is fish - less than half.

Re-Examination

RE-EXAMINATION: I see P.4. - no arch for firm name - my T.M. has that arch. The arch on P.6. is same as arch on P.3. On my T.M. I have address on bottom of design. Defendant's has not address on bottom of design. He has used same methon as on packet P.6. 30

As to defendant's T.M. no reference to colours. (Note by Enact. he then has all colours).

Q. Do you know why he should use arches.  
A. He did this to confuse customers.

Defendant has not put fish net brand prominently on his packets.

I see P.6. Fishing Net Brand; it is not legible to me. I cannot read English. 40

P.4. has no flowery decorations on the side of trade mark. I had flowery design

on side of my trade mark. The prominent part of P.4. is the net. The prominent part of mine is red fish. Defendant has painted fish red to mislead public. (I ask on what he bases this statement). I have two witnesses who will come forward to say they were misled.

In the Supreme Court of the Federation of Malaya

Plaintiff's Evidence

No. 4

Lee Kar Choo P.W.1.

Re-Examination (continued)

26th November 1963.

10

As to P.3. it has yellow border all around next is red frame and then black. I look at P.4 defendant's trade mark - P.4. has not 3 frames on border.

Prominent part my design is red fish. On P.6. prominent part is the red fish.

As to P.4. lettering is large in size.

Q. Do you know why it has been reduced.  
A. So that it would not appear legible  
As to D.8, 9 and 10.

20

To me: I see these 2 labels. - CC.11 and C.12. These were two labels of which I was making complaint when last before Court. I complained of flowers on side and the words fishing net brand. It was settled on the basis that these two matters were to be remedied by Defendant.

Q. Was there anything else in the settlement which has not been complied with by defendant.

A. According to settlement defendant was not to infringe on my trade mark.

So far as I remember there was no discussion on form to be used.

30

No. 5.

No. 5

EVIDENCE OF WEE BEE LEE

Wee Bee Lee P.W.2

Examination

Plaintiff's Witness 2 affirmed states in English.

26th November 1963

Deputy Registrar Trade Marks Singapore and Borneo. Prior to December 1962 Deputy Registrar inclusive of Malaya. On 14.3.1953 plaintiff

In the Supreme Court of the Federation of Malaya

Plaintiff's Evidence

No. 5

Wee Bee Lee P.W.2.

Examination (continued)

26th November 1963

Cross-Examination

registered M. 21085. P.1. is issued under section 66 - registered in colours as shown in C/T P.3; so far as front is concerned is according to Trade Mark. On 23.3.1959 plaintiff registered trade mark 31338. P.2. is C/T. issued under section 66 - not in colours. Both still valid. On 22.6.60 defendant registered trade mark 33682 - P.4. is C/T issued under section 66 - exact copy defendant's trade mark. He may use any colour. Fishing nets brand. Shown P.6. I would say not exactly same there are conditions. If P.6 shown to me in present form and colour I would have taken preliminary objection. I would have to take into account section 22 now. (it should have been objected to at time.) I see P.6. particulars as colours omitted also; arches and oak leaves not on P.4. I would object to P.6. as it stands. The prominent part is a fish not a net. (Why register the defendant's mark without limits). 10 20

CROSS-EXAMINATION

Application of defendant was not restricted to any colour. I was Deputy Registrar at time. D.13 issued by me. I accepted the application. I am aware of rules. In terms r. 28 it was an absolute acceptance of his application. Search would be made under r. 27 - it was done. I found no resemblance between P.4. The fish is the more prominent on P.6. Whereas on P.4. net is. The fishing net was prominent in my mind when deciding on P.4. 30

D.14 is photostatic of original C/T. We do not keep a copy. There is no colour. Restriction mentioned on this but it is not practice to mention colour.

It was not limited but it bears a coloured specimen. D.15 also not restricted as to colours. There was no objection from any source to P.4. On P.6. the fish is made prominent because of red colour. 40

If I asked for gold fish tea I would not buy P.6. I am educated.

If two packets before me I would not be confused.

ReIn: Defendant's mark is fishing net brand. Defendant has added to his trade mark on label. Features added to label. No arch for name. P.4. no concave at bottom for address. P.1 has these. P.1. has yellow border plus red frame and flowers. Defendant in his application P.16 attached drawing - prominent feature words fishing net brand and a fishing net.

In the Supreme Court of the Federation of Malaya

Plaintiff's Evidence

10 (Mr. Yong wishes to put question. If P.16 had been called fish brand would you have registered it. Mr. Sharma objects not arising out of XXN and irrelevant.

No. 5  
Wee Bee Lee  
P.W.2.

I rule it does not arise out of XXN but following the usual rule it will be permitted subject to right to Xxe. As regards its relevance I cannot see it at present but it may become so.

Cross-Examination (continued)

26th November 1963

20 If P.4. had been presented with additional features on P.6. on face I would take objection because of the similarity of colours and the fish being prominent. Name is not very prominent on P.6. I would say P.4. and P.6. are different.

I found on end of P.3 similar colours to P.6. and red fish prominent. Little net. As to P.6. Label on back of P.6 is different when taken as a whole. I see D.14; coloured specimen should resemble P.1. (Mr. Sharman does not wish to further Xxe).

30 To Me: Pl. refers to an undertaking as regards colour. D.17 contains it. After settlement I was not approached as regards amendment.

(Released by consent).

No. 6

No. 6

EVIDENCE OF TEOH ENG SOON

Teoh Eng Soon  
P.W.3.

Plaintiff's Witness 3 affirmed states in Hokkien.

Examination

Sundry goods shop. Chop Teck Yuan Hong Lang-Kep - business 30 years old. I have had

26th November 1963

In the Supreme Court of the Federation of Malaya

Plaintiff's Evidence

No. 6

Tech Eng Soon P.W.3.

Examination (continued)

26th November 1963

business since 1947. Shop sells plaintiff's tea for more than 10 years - mostly to Malay customers. It is called red fish brand.

About 2 years ago a salesman came and sold me red fish brand tea. Price was lower than plaintiff's tea. I took 3 - 4 dozen packets at that time. Slight similarity to plaintiff's packets. (Asked if they look alike to him). When I got bill I know tea had been sold to me by Chop Chua Lee - not before. Without careful examination one could not see the difference.

10

After selling defendant's brand to customers I remember I received complaints about the tea from customer or customers - asked how many I say more than one - 4 or 5. Complained that tea was difference to one I sold to them earlier. Tea less tasty. I did not tell them the reason but I told them I would tell tea seller.

20

When new customers asked me for red fish tea I would take defendant's tea and sell it because I made a better profit. When regular customer asked for it I would sell him the plaintiff's tea. I have drawn attention to difference to my regular customers. After I had drawn their attention to fact they chose plaintiff's tea. I sell 4 oz. packets mostly. Plaintiff's price \$4 per dozen. I sell at 35 cents per packet (\$4.20) As to defendant's tea I pay \$3.50 per dozen. I retail at 35 cents. I have account both Plaintiff and Defendant. I still owe defendant firm.

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Cross-Examination

CROSS-EXAMINATION

I still sell defendant's tea. I can read Chinese but not well - P.3. appears to be gold fish. P.6. Fishing Net Brand.

I was shown packets belonging to defendant - I agree defendant's name is prominent.

When I bought that tea I knew I was buying defendant's fishing net tea.

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I made distinction between old and new customers for my own sake. If customer came and asked me for fishing net brand I would give him defendant's. If asked for gold fish I give plaintiff's. When salesman came to me I knew the difference in brands because he showed them to me. I saw when delivery made - made almost immediately. I had in stock plaintiff's tea. From label I could see the difference. On casual examination they appear the same. The striking feature is the fish. I agree the fish is a different fish in each case. Quite a marked difference. I have looked carefully. I know them as gold fish and fishing net brands, but they are referred to by Malays as gold fish. When a customer asks for fish brand tea if regular I sell plaintiff's if not defendant's on which I make a bigger profit. If regular customer I show both brands and sell what he choose. I do not show both brands to my new customers. I am not deceived by labels.

Complaints I had were from new customers.

RE-EXAMINATION

Tea delivered - bill written and few minutes (5) bill delivered. Before I got the bill I knew it was tea different from Plaintiff's (Counsel has question repeated twice). When tea delivered I did not accept it physically. I attended other work but I knew when I got the bill. Salesman often change. (No reference to actual question). I cannot remember exactly what took place when defendant's salesman came to sell me defendant's tea. If I do not carefully examine teas I cannot say the difference.

To me: I bought the first lot approximately 2 years. I purchased from him after that. I cannot say when was last occasion. I do not know how many shops selling tea in Langkap village. Almost all sundry goods shops. I cannot say if Malay population changing. It is difficult to say how many new customers I get in a year. I cannot express an opinion. I am not able to say how many customers I have.

In the Supreme Court of the Federation of Malaya

Plaintiff's Evidence

No. 6

Teoh Eng Soon P.W.3.

Cross-Examination (continued)

26th November 1963

Re-Examination

In the Supreme  
Court of the  
Federation of  
Malaya

No. 7.

EVIDENCE OF TEOH AW KENG

Plaintiff's Witness 4 affirmed states  
in Hokkien.

Plaintiff's  
Evidence

No. 7

Teoh Aw Keng  
P.W.4.

Examination

26th November  
1963

Sundry goods shopkeeper 45 Malim Nawar.  
Chop Koon Seng. Carried on last 16 years. I  
know plaintiff. I have sold his tea for 12  
years. I buy wholesale. I have bought tea for  
6 years. Plaintiff's tea is fish brand tea. 10  
Sold in packets - I buy four types 1 lb.,  $\frac{1}{2}$  lb.,  
 $\frac{1}{4}$  lb., and 2 oz. I know defendant - his  
salesman have sold tea to me. I first bought  
tea from defendant in January 1962 (Writ 29.12.61).  
When I first bought the tea the salesman told me  
he also selling fish brand tea. After buying  
tea I found brand was different. After this I  
began selling defendant's tea a little cheaper  
than Plaintiff's tea. Without comparing  
carefully at first sight brand no so clear but  
on a more careful look one can see the  
difference. 20

If customers ask for fish brand I would sell  
defendant's tea. I had no complaints when I sold.  
Defendant's tea is fish brand tea. Later I  
received several complaints about the quality of  
the tea. I have had no order for fishing net  
brand tea. Generally asked for red fish tea.  
I sold defendant's tea because (1) my stock of  
plaintiff's tea exhausted (2) more profit. I  
have had complaints after I had sold defendant's  
tea that quality not so good. After a customer  
complained I sold him defendant's tea no longer  
but plaintiff's. 30

My customers majority Tamils and Malays.  
When I handed over defendant's tea I had no  
complaints on the spot. I still have account  
with defendant and with Plaintiff.

Cross-  
Examination

CROSS-EXAMINATION

Besides these two brands I stock many  
others. I do not deal in other brands of  
plaintiff or defendant. When salesman comes with  
new brand I would request him to leave his tea 40

for sale and I would see if it could easily be sold. Sometimes I looked at tea; if busy I just put it on table. When defendant's salesman came for first time he left some and I put them on shelf. I did not look at packets when delivered but I did at time I put them on shelf. (Witness evasive). When I placed tea on shelf it bore red fish brand which looks similar to plaintiff's tea. I bought it as defendant's tea since he left it. As to P.6. it bears name of defendant's firm in Chinese and on one side it says fishing net brand. I can read that. The plaintiff's tea is marked as gold fish tea but is commonly called fish brand tea. If they ask for fish brand tea I would decide which to offer them. I do not show both the brands. The customer leaves it to my discretion. So far as fish brand is concerned I decide which one to give customer. In my mind the first time I received tea of defendant I know it was of different brand. When customers complained of tea I advised that customer to buy another brand such as Tiger tea or Gold Dollar tea. Although he wanted fish brand I would sell plaintiff's tea. I have not known all through plaintiff is gold fish brand and defendant's fishing net tea. Salesman on both sides call their products fish brand tea. When I received first complaint I look and found it to be fishing net tea. Personally I would not confuse the teas. They are clearly different firms. Difference is apparent to me. I can distinguish brand as well as firm name.

RE-EXAMINATION

I cannot say if most of customers are illiterate.

- Q. Has any Malay complained you gave him wrong brand when he asked for fish brand.  
A. After consuming tea yes.

No complaint made by anyone then and there.

To Me: Customers always ask for tea by brand not by colour nor do they point to it. They would ask for fish brand tea, tiger or gold dollar.

In the Supreme  
Court of the  
Federation of  
Malaya

Plaintiff's  
Evidence

No. 7

Teoh Aw Keng  
P.W.4.

Cross-  
Examination  
(continued)  
26th November  
1963

Re-  
Examination



In the Supreme Court of the Federation of Malaya

No. 8.

EVIDENCE OF ARIFF BIN TALIB ALI

Plaintiff's Witness 5 affirmed states in Malay.

Plaintiff's Evidence

No. 8

Ariff Bin Talib Ali P.W.5.

Examination

26th November 1963

Barber 8 Degong. I know red fish brand (ikan merah). I have bought it for 4 - 5 years. I have continued to use the same brand up to 6 months ago when I tasted tea which seemed different to what I used to buy. Inferior tea. Bought from shop in kampong. I spoke to a Chinese driving a van selling tea - it was plaintiff. He was delivering tea to shops - it was 6 months ago. I complained as to why tea now of inferior quality. He asked me to show him tea I had consumed. I showed him package. I showed it to him. He said it was not his tea. When I bought tea I asked for red fish brand. I did not know there were two brands of red fish tea. I thought only one brand. I know now it is plaintiff's tea. I have never heard of fishing net brand.

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Cross-Examination

CROSS-EXAMINATION

Lived Degong 8 years. Educated at Chikus up to Std. II. I can read Jawi a bit. When I got to shop I ask for packet red fish tea. I did not look at it. Whatever he gives I take. I did not look at packet when it was sold to me. On that occasion when I complained I did not bring it home. (corrects). I bought it (then) sometimes wife bought sometimes I. (Clarified by me). I bought the packet that was inferior and about which I complained. I depended on shopkeeper to give me the right one. I did not examine it at time I bought it. I did not even glance at it. I do not know Ikan mas nor did I know ikan merah. Even if shown packets I cannot identify one I bought.

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Re-Examination

RE-EXAMINATION

I do not remember what happened to packet. I think I threw it away.

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No. 9

EVIDENCE OF LEE LIAN CHOON

Defendants Witness I affirmed states in Hokkien.

10 Tea dealer Chop Chua Lee at No. 9 Jalan Datoh. I had my brand registered as trade mark. D.13 is the original. There are five packages P.6. A-B are sizes. I remembered plaintiff filed another case against me. There was a consent order whereby I was required to vary or modify my label. P.5. was one I used then. I ceased using these. P.6. and P.3. cause no confusion in my mind. Main characteristic of mine is fishing net. Plaintiff's is a gold fish.

CROSS-EXAMINATION

20 This is photostat of order P.18. Prior to that date I used labels as in P.5. After that I used labels as in P.6. I see P.3. - it has an arch on top and address on bottom. P.4. did not have these features. P.6. did; also P.5. My P.4. has no flowers or oak leaves. P.3. has flowers on both sides. I have put oak leaves on both sides of P.6. I do claim fish is prominent part of P.4. as well as net as well as boats. I chose fishing net. I did not know if I chose fish it would not be registered. I do not want confusion with plaintiff's goods. I included fish to show it was a fishing net. I painted two red. The fish are no way the same fish. I have not made the words fishing net illegible on P.6. - they are quite legible. I say the words are as prominent as in P.4. - there is a slight degree of difference. I did not do it this way to confuse with plaintiff's brand. I see P.3. I see it has yellow rectangle than a red. P.4. does not have two rectangles. P.6. has these two rectangles. I am at liberty to use them. I did not do this to make it look like plaintiff's one. They do not look alike. As to ends of P.3. I did not put same markings on P.6. to confuse with P.3. Gold fish prominent ends of P.3. - it is the colour of a gold fish - reddish colour. I have a red fish and a net. The fish are about the same size on ends of P.6. - slight difference only. The fish is the bigger.

In the Supreme Court of the Federation of Malaya

Defendant's Evidence

No. 9

Lee Lian Choon  
D.W.1

Examination

26th November  
1963

Cross-  
Examination

In the Supreme Court of the Federation of Malaya

Defendant's Evidence

No. 9

Lee Lian Choon D.W.1.

Cross-Examination (continued)

26th November 1963

Re-Examination

I merely used both on ends. The fish are different shapes. I did not intentionally put features to copy plaintiff's. Features not copied from labels on P.3. I am not trying to pass off. Anyone can differentiate; no similarity. I did not copy plaintiff's get up. This is my own.

RE-EXAMINATION

When last suit settled there was no complaint by plaintiff making me to change colour scheme or borders.

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No. 10

Lee Koh Lay D.W.2.

Examination

26th November 1963

No.10

EVIDENCE OF LEE KOH LAY

Defendant's Witness 2 affirmed states in Hokkien.

Sundry goods shopkeeper Chop Chua Ho at No. 2 Lyon Road Parit. I stock tea - my brands. I stock gold fish brand before but not now. I stopped because plaintiff ceased supplying me after last suit. When people came they ask for a particular brand. I see P.6. When people want it - if Malay - he would ask for ikan Jala. As to P.3. and P.6. in my view they are not similar. I could not confuse them.

20

Malay asking for plaintiff's tea as Ikan Mas (Emas). No one has called it Ikan Merah. I have not had a customer ask for defendant's tea as Ikan Merah.

CROSS-EXAMINATION

I have not stocked plaintiff's tea since June 1961 but only till November, 1961. For last two years I have not sold plaintiff's tea. Defendant asked me to give evidence today. We are same clan. I call him nephew but not related. Previously he was a partner in my firm up to end of 1957 - 7 years my partner.

In the Supreme  
Court of the  
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Defendant's  
Evidence

No. 10

Lee Koh Lay  
D.W.2.

Cross-  
Examination  
(Continued)  
26th November  
1963

Re-  
Examination

RE-EXAMINATION

Nil.

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No.11

No. 11

EVIDENCE OF CHONG LIM CHONG

Defendant's Witness 3 affirmed states in Hakka.

Sundry goods shopkeeper Chop Thian Wah 26 Simpang Pulai. I stock tea. I stock P.3. and P.6. Customers majority Chinese and Malays. I know P.6. is manufactured by Chuan Lee and P.3. is sold by Yeen Thye. When customers want tea he asks for it by brand. If he wanted P.6. If Chinese he would ask for fishing net; if Malay (I do not know word properly) like Ikan Layang but not Ikan Merah. If he Chinese wants P.3. he asks for gold fish and a Malay Ikan Mas (Emas). He would not ask for Ikan Merah if he wanted P.3. I would not confuse one with the other.

Chong Lim Chong  
D.W.3

Examination

26th November  
1963.

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CROSS-EXAMINATION

I agree similar in colour. I agree ends similar in design. I can tell the difference. I know of no case of customer mistaking one for

Cross-  
Examination

In the Supreme Court of the Federation of Malaya

other. Defendant have only business transaction - not friend of his son - known son since New Village formed. I received a subpoena.

Defendant's Evidence

No. 11

Chong Lim Chong D.W.3.

Cross-Examination (continued)

26th November 1963.

Re-Examination

RE-EXAMINATION

Nil.

CASE FOR DEFENDANT

No. 12

No.12

Closing Speech for the Defendant

CLOSING SPEECH FOR THE DEFENDANT

27th November 1963

SHARMA:

Objective test.  
Payton v. Snelling (1901) A.C. 308  
Kerly P.329, 420 421.  
? Label misleading or likely to mislead.  
(1912) 1 Ch. 10.  
As to inadmissibility of evidence.  
Kerly P. 329 and P. 399.  
Defendant's mark duly registered.  
Section 52 (4) Trade Marks Ordinance protects  
him.  
As to colour - no restriction. Section 22.  
Previous settlement only claim floral design  
and lack of brand name.

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23.

No. 13.

CLOSING SPEECH FOR PLAINTIFF

DATO YONG:

Section 52 (4)  
Refers P.4 - additions make it resemble.  
Plaintiff's mark P.1.  
Section 22 (? is certificate limited).  
Certificate under section 66.  
Kerly P. 378.  
Infringement - Passing off.

In the Supreme  
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No. 13

Closing Speech  
for the  
Plaintiff

27th November  
1963

c. A. V.

Sgd: M.G. Neal

Judge

High Court, at Ipoh.

TRUE COPY

Sd. Ng Yeow Hean

Secretary Judge.

No. 14

J U D G M E N T

In the Supreme  
Court of the  
Federation of  
Malaya

No. 14

Judgment

18th December,  
1963.

10 The Plaintiff who trades as Yeen Thye & Co. of Ipoh is the registered holder of two trade marks, details of which I shall refer to later, and sues the defendant who is the holder of another registered trade mark in respect of as alleged infringement of the Plaintiff's trade marks and a passing-off the goods of the defendant as those of the plaintiff. The plaintiff claims an injunction restraining infringement and an injunction restraining passing-off. He also claims subsidiary relief in the form of account and damages and a delivery up to the Plaintiff for destruction of the offending labels and blocks.

20 Before referring to the evidence it is pertinent, in my opinion, to state that these proceedings were the second between the parties. By Civil Suit No.136 of 1961 the Plaintiff sued the defendant claiming the same relief and making the same allegations but in respect of labels which differ from those now the cause of the dispute. On the original hearing, i.e. on the hearing of the first writ and statement of claim, towards the end of the opening address of counsel for the Plaintiff in which he had referred to the conflicting registered trade marks and after hearing the statement by counsel for the Defendant that his client had no desire to infringe Plaintiff's trade marks or to pass-off his goods, I suggested to counsel that the proceedings appeared to me a proper one for settlement; counsel having agreed I granted a short adjournment to enable the parties to discuss the matter. As a result of this counsel saw me in Chambers and reported the matter had been settled and there was to be a consent order in the form of an undertaking by the defendant not to infringe and not to pass-off. I pointed out to counsel the desirability of getting together and arrange such modification or modifications of one or other of both of their registered marks to prevent possible confusion in the future. Counsel having agreed with me I sent for the Deputy Registrar of Trade Marks who had been summoned to give evidence and asked him to use his good offices now that the parties

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In the Supreme  
Court of the  
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No. 14

Judgment  
(continued)

18th December,  
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were prepared to discuss their differences to ensure that the register did not contain two trade marks likely to cause confusion if used in any particular form. Those facts and the actual assertions made by the plaintiff in his first proceedings and in particular in the affidavits in which he sought to obtain an interim injunction are to my mind particularly relevant to the proceedings before me and the matters which I have to decide. It was therefore with considerable surprise and, I might say, annoyance, I found the second proceedings before me and in the course of the evidence learned that the situation which had been created in the first proceedings had been allowed to pass without any real attempt to settle the matter amicably. During the course of the hearing before me on the second occasion I did seek through my remarks in the course of the evidence and in my questions to the Deputy Registrar to obtain some evidence as to whether one or both of the parties had been responsible for the matter not having been concluded to the satisfaction of both parties at the time of the first writ. 10 20

Such evidence would, in my opinion, have been extremely relevant on the question of the motives of the defendant. Having drawn the attention of counsel to this I was of the opinion that I was not justified in questioning the parties since those parties were not present in person before me. I am bound, however, to point out that when one considers the long line of English cases where the Court of Appeal have upheld the refusal to register a trade mark because of possible confusion and, in particular, the Bass Beer case where the refusal of the Registrar to register as a trade mark a church inside a triangle on the ground that if it were coloured red it might lead to confusion with the well known trade mark of Bass Beer, the Registrar of Trade Marks should have foreseen the confusion which would have been likely to have arisen by the defendant emphasising and colouring a fish contained in his trade mark. As I have said the Plaintiff's claim is for an infringement and passing-off. 30 40

The defendant's defence is on the basis that he is the registered proprietor of a trade mark which forms a prominent part of his get-up



and further asserts that he has not passed-off his goods as those of the plaintiff and the get-up is so dissimilar that it could not give rise to any possible confusion.

It is common ground between the parties that the plaintiff is the registered proprietor of trade mark M21085 which is respect of the front panel of the label used by the plaintiff.

10 During the course of the hearing plaintiff's counsel relied upon section 22 of the Trade Marks Ordinance and asserted that since his trade mark was limited in colours his client was entitled to the advantages given to him in any suit by that section. It is true that the plaintiff in his application for trade mark which was produced at my request had undertaken to use the trade mark in certain specific colours. It is equally true that the representation of the trade mark is in those same colours but that in my opinion is not  
20 conclusive. Section 22 gives the protection in the following terms: "A trade mark may be limited in whole or in part to one or more specific colours." The plaintiff produced a certificate from the Registrar as evidence of his trade mark and not either the issued certificate or a photostatic copy although in the previous hearings photostatic copies of the original had been exhibited. It is to be noted that even on the evidence produced by the plaintiff the Registrar has not stated that it is  
30 limited but merely that the applicant has undertaken to use only certain colours. The registration is in my opinion not limited. In view of my doubts on this matter I put the photostatic copies of the original trade mark certificate to the plaintiff to form part of the record. I considered the provisions of the Ordinance and in particular the fact that the validity of a trade mark is not dependent on the undertaking of the applicant but on the registra-  
40 tion for a period of years. I also gave consideration to the fact that the certificate of registration attaches and identifies a colour copy of the mark. Having regard to the actual registration certificate I do not consider this in itself without any words from the Registrar that he has limited the trade mark is sufficient to give to the Plaintiff the additional protection accorded by

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section 22. It was also common ground in the pleadings of both parties that the plaintiff was also the registered proprietor of trade mark M31338 as from 23rd March 1959 in respect of an entire label in the form used by him i.e. the front panel plus the two ends. This, however, was registered in black and white and its use, so far as the plaintiff is concerned, confers no benefit under section 22. It merely entitles him to use any colour. Again, it is not denied in the pleadings that the defendant is the registered proprietor of trade mark M.33682 as from the 22nd day of June 1960 in respect of the panel used by him; such registration being in black and white he is entitled to use it in any colour or combination of colours. In addition, the defendant has used his name in a scrole at the top of his trade mark plus his address at the bottom. He has also surrounded his trade mark with a scroll of oak leaves and on both sides of his trade mark, in prominent Chinese characters, the name of his firm.

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After consideration of the well-established principles of law governing the question of infringement and after considering the respective packets and bearing in mind the facts which are not in dispute I am of the opinion there has been no infringement of either of the plaintiff's trade marks by the defendant.

There is an alternative claim for passing-off of defendant's goods as those of the plaintiff. On this aspect there was considerable evidence, a large portion of which is irrelevant. Having regard to the words of Lord Evershed in *Electrolux Ltd. v. Electrix Ltd.* (1954) 71 R.P.C.31 and the authorities summarised in *Kerly on Trade Marks* 8th Edition at pages 420 - 421 I raised the hearing but as counsel for the plaintiff wished the evidence at the hearing but as counsel for the plaintiff wished the evidence to be recorded I recorded it but in my opinion I am bound by the authorities to reject it as irrelevant.

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(sic)

I have considered the numerous authorities on the question of passing-off and the interpretation to be given to the words, "calculated to lead to confusion"; and I have considered

carefully the various exhibits produced before me; and I have come to the conclusion that despite the similarity of colouring the get-up of the defendant's goods would not lead to confusion especially when one considers the evidence as to the manner of purchase by the public. It is true the packets are of almost identical shape and size. This in my opinion is a factor common to the retailing of tea or tea dust and does not in my opinion assist the plaintiff.

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I also took into account the evidence before me as to the type of person who bought tea or tea dust of this description and I also in accordance with the authorities considered the trade usage in this country so as it concerns retail buying and selling of tea dust and, in particular, the goods of the plaintiff and the defendant. The evidence was clear and it was in fact not substantially challenged that members of the public wanting the plaintiff's tea asked for either fish brand or red fish brand in the Malay language. They are all illiterate class of people. There was also the evidence of two retailers who both sold the tea of the plaintiff and that of the defendant. They were, in my opinion, honest witnesses and disposed of the contention made on behalf of the plaintiff that there was actual confusion by the respective labels in the minds of the public. It is true that there were discrepancies in their evidence as between the examination-in-chief and cross examination but read as a whole they failed to support the Plaintiff's contention of the possibility of confusion. However, they both stated that they themselves had been guilty of practising a deceit on customers by supplying the customers least likely to cause trouble to them with defendant's tea knowing that what they really wanted was that of the Plaintiff. This left me to consider whether or not, having regard to the fact that the defendant has emphasised in his trade mark an essential part of the plaintiff's trade mark and that there was no possibility of public confusion, the defendant ought to be restrained. I have considered the large number of authorities setting out the general principles upon which one has to approach the problem, and I find it unnecessary to repeat them since they are so well-established. Bearing in mind the general principles, enunciated by

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Lord Halsbury in *Reddaway v. Banham* (1896) A.C. 204 when he said, "The principles of law may be very plainly stated that nobody has any right to represent his goods as goods of somebody else", and the principles enunciated in many authorities but aptly summarised in *Kerly on Trade Marks* 8th Edition at page 208 wherein it is stated: "It has frequently been stated, as a general rule, that any man may, so long as he acts honestly, trade under or describe his goods by his own name, or the names of himself and his partners, even though the similarity of such name or names to the name under which another person has previously been trading, or to the trade name of that other's goods, may occasionally lead to confusion or lead to the business or goods of the newcomer being mistaken for the business or goods of the earlier trader", and the principle that a person had the right to describe honestly the place of origin of his goods; and section 60 of the Trade Marks Ordinance which excludes in the same way as section 2 of the United Kingdom Act the defence of having a registered trade mark in a passing-off action - bearing all that in mind I pass to consider the question of law involved in the specific findings to which I have referred. The first authority in point of time is *Schweppes Ltd. v. Gibbens* reported initially in 1905 R.P.C. Vol. 22. at page 113 and by way of appeal to the House of Lords at page 601.

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I would refer in the first place to the judgment of Warrington, J. when after concluding that he found nothing in the respective marks used which would lead to confusion, at page 118 in dealing with the submission that a dishonest barman could pass-off the defendant's soda water for that of plaintiff he said: "In my view the defendant's label is not as it stands, if fairly used, calculated to enable a barman to deceive the customer. He may deceive the customer, because he may himself fraudulently use it in such a way as to effect the deception. As was pointed out by Lord Macnaghten in the *Coffee-tin* case, *Payton v. Snelling* he may cover up everything that is material but if he fairly uses the label - fairly shows the label to the customer - in my opinion there is no reasonable probability of a customer being deceived. Coming as I do to that

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conclusion, the result is inevitable. There are no authorities to which I think it necessary to refer, because the principles on which these cases are decided is now perfectly well understood. The only cases that have been cited to me are Reddaway v. Banham, the well-know "camel-hair " Belting" case - which, by the way, was one of some peculiarity, as I think has been recognised in more recent cases, where that decision has been used in a manner not quite contemplated by the noble Lords who were parties to it - and Payton v. Snelling (which was in some respect a case not unlike the present), the case to which I have already alluded in mentioning Lord Macnaghten's judgment. The only other two cases were Singer v. Loog and Lever v. Goodwin, and I can only find, so far as Singer v. Loog is concerned, what is really pointed out in the judgment there is that it is sufficient to enable the plaintiff to succeed if he shows that the get-up, the label, or whatever it may be, is of such a nature as is calculated to enable the retail vendor to deceive the ultimate customer, a principle which nobody doubts. Lever v. Goodwin was referred to for another purpose, namely, to induce me to hold that because the get-up in Lever v. Goodwin was held calculated to deceive, therefore the get-up in this case ought to be held calculated to deceive. It seems to me that each of these cases must be looked at by itself, and the Judge, looking at the label or the get-up or device, whatever it may be that is complained of, with such assistance as to the practice in the trade as he can get from the witnesses, must decide for himself whether the article complained of is calculated to deceive or not. In this case, having very carefully considered these labels, and looked at them in many ways, and have everything material called to my attention, I have come to the conclusion that the defendant's labels are not calculated to deceive, and there must be, therefore, judgment for the defendant with costs".

I would emphasise the words, "...so far as Singer v. Loog is concerned, what is really pointed out in the judgment there is that it is sufficient to enable the plaintiff to succeed if he can show that the get-up, the label, or whatever, it may be, is of such a nature as is calculated to enable the retail vendor to deceive the ultimate

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18th December,  
1963.

customer, a principle which nobody doubts." The words of Warrington, J., were approved both by a majority of the Court of Appeal and unanimously in the opinions expressed in the House of Lords in the report at pages 606 and 607. It is true that in his judgment Lord Halsbury said at page. 606: "The question that we have to determine is whether in selling the bottle a person is likely to be deceived by the resemblance of the one thing to the other; and if a person is so careless that he does not look, and does not, as I think Lord Macnaghten described it in another case, "treat the "label fairly", but takes the bottle without sufficient consideration and without reading what is written very plainly indeed upon the face of the label on which the trader has placed his own name, then you certainly cannot say he is deceived - if in fact he does not care which it is"., and read on its own it might be thought to be a detraction from the words by Warrington, J., upon which I have relied. It, however, has to be remembered that the Lord Chancellor was then dealing with a particular argument which had been put forward. Again, he was dealing with the cases as applicable to a purchasing public which contrary to the position in this case, if not in this country, buys on inspection. However had the matter been dependent solely upon the authority in Schwepes Ltd. v. Gibbens Ltd. (supra) I might as I have said have had some doubts as to whether or not the House of Lords had detracted from the generality of the statement of the law by Warrington J. However, the question of innocent, at least innocent so far as the defendant is concerned, deceiving of the public was referred to by the House of Lords in office Cleaning Services; Ld. v. Westminster Window and General Cleaners, Ld. (1945) R.P.C. 39 at page 42 where Lord Simonds in his opinion said: "The learned judge found that they did not intend to cause confusion between their business and that of the appellants by dropping the word Westminster. This is not a matter of conclusive importance. Confusion innocently caused will yet be restrained". I have considered the words of Luxmoore, L.J., as approved by Lord Wright in his opinion in the same case and would point out that their Lordships were then dealing with descriptive words in a trade mark as opposed to

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fancy words: and, in this connection, it is pertinent to note the words of Lord Simonds at page 42 "So it is that, just as in the case of a trade mark the use of descriptive words is jealously safeguarded, so in the case of trade names the courts will not readily assume that the use by a trader as part of his trade name of descriptive words already used by another trader as part of his trade name is likely to cause confusion and will easily accept small differences as adequate to avoid. It is otherwise where a fancy word has been chosen as part of the name. Then it is that fancy word which is discriminatory, and upon which the attention is fixed, and if another trader takes that word as part of his trade name with only a slight variation or addition, he may well be said to invite confusion. For which else did he adopt it?".

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Earlier I placed some stress on the practice as regards trading in the type of goods with which I am dealing. If authority is required for that it is to be found in the words of Warrington, J., in Schwepnes Ld v. Gibbens Ld. (supra) when he said at page 118: It is suggested that a person who serves a customer might, if he were so disposed, serve the defendant's water in place of the plaintiff's water. In order to properly appreciate that question one must consider in what way the soda water is served".

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Having come to the conclusion therefore that the defendant has used his trade mark in a manner which has enabled retailers to practice a deceit on the public obviously asking for the plaintiff's brand as opposed to the Defendant's brand and although I am not prepared to make a finding of anything in the nature of fraudulent intent or deliberate intent to deceive, I feel bound on the authorities to which I have referred to make an order restraining the defendant from using the labels complained of.

The plaintiff also asks for an account and damages. On the facts as I have found them, and having regard to the additional facts that there are isolated instances only of this deception on the part of the retailers and the practical impossibility of assessing damages, I make no order as to accounts or damages.

In the Supreme  
Court of the  
Federation of  
Malaya

                      
No.14

Judgment  
(continued)

18th December,  
1963.

In the Supreme  
Court of the  
Federation of  
Malaya

No. 14

Judgment  
(continued)

18th December,  
1963.

As regards the destruction of the existing labels, and the blocks from which they have been printed, I consider under all the circumstances it is proper to make an order and there will be an order that they be delivered to or destroyed in the presence of the plaintiff within ten days of the expiry of the appeal period.

As regards the question of costs, under all the circumstances of this case, I would have preferred to follow the course adopted by Stirling, J., in Valentine's case 83 L.T. 265 but whilst that course was not disapproved of in express terms it was set aside on appeal. As I can find no case of depriving a successful litigant of his costs on the grounds of the apparent innocence of the defendant I feel compelled to order costs of the plaintiff as taxed.

sgd. M.G. Neal

J U D G E  
High Court at Ipoh  
(M.G. NEAL)

18th December, 1963.

For Plaintiff ... Dato' S.M. Yong,  
S.M. Yong & Co. Kuala  
Lumpur.

For Defendant ... Inche N. Sharma, Ipoh.

No. 15

Order

18th December,  
1963.

No. 15

Order

BEFORE THE HON'BLE MR. JUSTICE NEAL

IN OPEN COURT

O R D E R

THIS SUIT coming on for trial on the 26th and 27th days of November, 1963 before this Court and adjourned to this 18th day of December 1963 for judgment, in the presence of Mr. Lim Kean Chye

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who appeared on behalf of both Dato S.M. Yong of Counsel for the Plaintiff and N. Sharma of Counsel for the Defendant, AND UPON READING the evidence and what was alleged by Counsel for the Plaintiff and for the Defendant, THIS COURT DOTH ORDER that the Defendant be and is hereby restrained from using whether by himself, his servants, workmen, agents or otherwise however, the labels complained of. AND IT IS FURTHER ORDERED that the Defendant doth deliver to the Registrar of the High Court, Ipoh, within 10 days from the date of expiry of the appeal period, all such existing labels and blocks from which they have been printed for destruction in the presence of the Plaintiff AND IT IS FINALLY ORDERED that the Defendant do pay to the Plaintiff, his costs of this suit to be taxed by the proper officer of this Court AND UPON the application of the Defendant for stay of execution IT IS ORDERED that execution of the Order herein be and is hereby stayed pending the disposal of the Appeal by the Federal Court.

GIVEN under my hand and the seal of the Court this 18th day of December 1963.

sgd. L.C. VOHRAH

Senior Assistant Registrar,  
High Court, Ipoh.

In the Supreme  
Court of the  
Federation of  
Malaya

                      
No. 15

Order  
(continued)

18th December,  
1963.

In the Federal Court of Malaysia

No. 16

NOTICE OF APPEAL

(Appellate Jurisdiction)

IN THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

No.16

FEDERAL COURT CIVIL APPEAL NO: of 1964.

Notice of Appeal

Between

10th January, 1964.

LEE LIAN CHOON trading as CHUAN LEE COMPANY ... APPELLANT

and

LEE KAR CHOO trading as YEEN THYE COMPANY ... RESPONDENT

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IN THE MATTER OF SUIT NO: 311 of 1961 IN THE HIGH COURT IN IPOH AT IPOH

Between

LEE KAR CHOO trading as YEEN THYE COMPANY ... PLAINTIFF

and

LEE LIAN CHOON trading as CHUAN LEE COMPANY ... DEFENDANT

NOTICE OF APPEAL

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TAKE NOTICE that the abovenamed Defendant/Appellant being dissatisfied with the decision of the Honourable Mr. Justice M.G. Neal given at Ipoh on the 18th day of December, 1963 appeals to the Federal Court against the whole of the said decision.

Dated this 10th day of January, 1964.

Sgd. L.A.J. Smith c/o Messrs. Cheang Lee & Ong, 13, Hale Street, Ipoh.

To

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The Registrar,  
Federal Court Kuala Lumpur.

To

The Registrar,  
High Court in Ipoh at Ipoh.

and to the abovenamed Plaintiff/Respondent  
and to his Solicitors,  
Messrs. S.M. Yong & Co.  
Kuala Lumpur.

10 The address for service for the appellant  
is L.A.J. SMITH c/o Messrs. Cheang Lee & Ong,  
13 Hale Street, Ipoh.

In the Federal  
Court of  
Malaysia

(Appellate  
Jurisdiction)

No.16

Notice of  
Appeal  
(Continued)  
10th January,  
1964.

No.17

No.17

MEMORANDUM OF APPEAL  
IN THE FEDERAL COURT OF MALAYSIA  
(APPELLATE JURISDICTION)  
FEDERAL COURT CIVIL APPEAL NO.7 of 1964

Memorandum  
of Appeal

11th February  
1964.

Between

LEE LIAN CHOON trading as  
CHUAN LEE COMPANY Appellant

and

20 LEE KAR CHOO trading as  
YEEN THYE COMPANY Respondent

IN THE MATTER OF SUIT NO.311 of 1961  
IN THE HIGH COURT IN IPOH AT IPOH

Between

LEE KAR CHOO trading as  
YEEN THYE COMPANY Plaintiff

and

30 LEE LIAN CHOON trading as  
CHUAN LEE COMPANY Defendant

MEMORANDUM OF APPEAL

LEE LIAN CHOON trading as Chuan Lee Company,  
the abovenamed Defendant/Appellant appeals to the

In the Federal  
Court of  
Malaysia

(Appellate  
Jurisdiction)

No. 17

Memorandum  
of Appeal  
(continued)

11th February,  
1964.

Court of Appeal against the decision of the Honourable Mr. Justice M.G. Neal given at the High Court, Ipoh, on the 18th December, 1963, on the following grounds:-

1. The Learned Trial Judge having found as a fact that there was no infringement, no passing-off, no intent to deceive, and nothing in the goods themselves which were likely to cause confusion was wrong in law and in fact in considering the Defendant has used this trademark in a manner which enabled retailers to practise a deceit on members of the public and was wrong in law and in fact in making an injunction against the firm from using the trademark and ordering the delivery up and destruction of the labels.

10

Dated this 11th day of February, 1964.

(Sgd) illegible

Solicitor for the Appellant.

No.18

Notes of  
Argument

Thomson, Lord  
President,  
Malaysia.

24th September,  
1964.

No. 19

NOTES OF ARGUMENT Thomson, Lord President,  
Malaysia.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT IPOH.  
(APPELLATE JURISDICTION.)

Federal Court Civil Appeal No.7 of 1964.

Between

Lee Lian Choon ... Appellant

and

Lee Kar Choo ... Respondent

(In the matter of Ipoh High Court Civil  
Suit No.311 of 1961

30

Between

Lee Kar Choo ... Plaintiff

and

Lee Lian Choon ... Defendant.

Cor: Thomson, Lord President, Malaysia.  
Syed Sheh Barakbah, Chief Justice, Malaya  
Tan Ah Tah, Judge, Federal Court.

In the Federal  
Court of  
Malaysia

NOTES OF ARGUMENT RECORDED BY THOMSON,  
LORD PRESIDENT.

(Appellate  
Jurisdiction)

24th September, 1964.

No.18

For Appt : L.A.J.Smith

Notes of  
Argument  
(continued)

For Respt . Dato S.M.Yong

10 Smith:

Thomson, Lord  
President,  
Malaysia.

S/C alleged infringement.

That claim had to fail in limine  
because Deft's mark registered 22-6-60.

24th September,  
1964.

Kerly (8 Ed.) pp.286-7.

Rectification not asked for. Deft's registration  
was for all colours.

J.examined marks and found there was no  
possibility of confusion.

20 But J.extended principle of Schweppes v.  
Gibbens (1905 R.P.C. Vol.22, 601) and Lever v.  
Goodwin to an innocent party.

The effect of J's conclusions was to  
restrain appt. from using his registered trade  
mark.

Wholesaler not responsible for deceits of  
retailer.

In the case:

Lever v. Goodwin (1887) IV R.P.C. 492, 498.

30 Always provided there has been no fraud on the  
part of the wholesaler.

J.found (1) no likelihood of confusion;  
(2) no intention to deceive.

In the Federal  
Court of  
Malaysia

Red and yellow are common to the tea  
trade.

(Appellate  
Jurisdiction)

Fraudulent intention shd. not be assumed.

Schweppes v. Gibbens (1905) 22 R.P.C. 113,  
118, 120.

No.18

No question of registration in this case.

Notes of  
Argument  
(continued)

In the present case ptff. had to make out  
a fraudulent intent on the part of deft. if they  
were to succeed, but J. held they failed to do so.

Thomson, Lord  
President,  
Malaysia.

Case for appt.

10

Yong:

24th September,  
1964.

Respt. is a tea manufacturer and has been  
selling tea for 24 years. Sold in packets of 5  
different sizes. All bear his trade mark with-  
out any addition (47, 48 - both registered).  
Appt's registered trade marks are at pp.55 and 60.

But when appt. came to sell his tea his  
trade mark looked like that of respt's.

14.3.52 respt. registered his trade mark  
M/21085 (p.47). 23.3.59 he registered trade mark  
M/31338 (p. 48). Tea known as "Red Fish Brand."

20

Appt. is a newcomer to the tea trade.  
Started business 1961. May 61 found imitation of  
his tea in circulation. It was sold by appt. and  
his mark was very similar.

Resp. sued appt. in C.S. 126/61 for  
passing off and infringement. Appt. agreed to  
change his label and that he would not infringe  
respt's trade mark in future. On that case  
settled - dd. 26.7.61.

30

But produced a new label which was even  
worse (P.6.).

On 20.6.60 appt. had applied for  
registration of his own trade mark. Certificate  
granted 22.6.60.

When he came out with his new label we  
sued again.

The "get up" was an imitation of ours though it embodied his own trade mark of 22.6.60. As to similarity:

In the Federal Court of Malaysia

M.I. & M. Corpn. & anor. v. A. Mohd. Ibrahim -  
F.C. Civil Appeal 38/63.

(Appellate Jurisdiction)

Particularly see: (1) position of name and address (2) floral borders. Our trade mark embodies name and address and floral border. Appt. did not: his was registered incolours.

No.18

Notes of Argument (continued)

10 Appt. copies our colour scheme. The ends of the packets are similar.

Thomson, Lord President, Malaysia.

Worthington's Trade Mark (1880) 14 Ch.D. 8.

An owner of goods uses a trade mark resembling that of others at his peril -

24th September, 1964.

Johnston v. Orr-Ewing 7 A.C. 219, 232.

Reddaway v. Banham (1896) A.C. 199, 215.

Cellular Clothing Co. v. Maxton & Murray (1899) A.C. 326, 334.

20 Hodgson & Simpson v. Kynoch (1898) 15 R.P.C. 465, 474, 475.

Lever v. Goodwin (1887) 36 Ch. D. 1.

A distinction must be drawn between where (as in the Soda water case) the retailer must actually conceal something to deceive a customer and the case where the label alone can deceive without assistance from the retailer.

There is infringement if one or more essential features is copied -

30 De Cordova v. Vick Chemical Co. (1951) 68 R.P.C. 103, 105.

Registration only covers what is registered.

Registration does not cover any right which owner did not possess irrespective of trade mark.

In the Federal Court of Malaysia

(Appellate Jurisdiction)

No. 18

Notes of Argument (continued)

Thomson, Lord President, Malaysia.

24th September, 1964.

25th September, 1964.

Ronuk Ltd. v. Sin Thye Hin & Co. (1962) M.L.J. 383.

Passing off when trade mark registered is governed by Trade Marks Ordinance s. 60.

Case for respt.

Smith:

Fraud was not particularised nor was it proved.

Deft. obtained registration of his label but it is not all of a label that is registrable.

Kerly p. 132.

As to use of mark -

Kerly p. 276 et seq.

Yong did not deal with judgment as it stood and the contention that it cannot produce the results it did produce.

25th September, 1964.

Smith:

Omitted 2 points yesterday.

As to the added matter - big leaves, scroll and Chinese letters - these are not being used by us as a trade mark though it is part of the "get up". The manner of use would not be sufficient to constitute an infringement - Kerly (8 Ed.) p. 277 "Features of the design of the article"

As to colour - Kerly p.137. This mark is limited as to colour. Even an identical mark in other colours would not constitute an infringement - Kerly p. 134 - essential particulars as applied to initials - S 2 on p. 134.

Yongs:

All this is irrelevant to passing off as distinct from infringement (Kerly p. 322).

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J. found (p.42) that appt. used his trade mark in a manner which enabled retailers to practise deceit. This has not been attacked.

In the Federal Court of Malaysia

As to position of owner of registered trade mark - Lyle & Kinahan's Appln. (1907) 24 R.P.C. 249.

(Appellate Jurisdiction)

C.A.V.

Intld.J.B.T.  
25/9/64.

No. 18

TRUE COPY

Notes of Argument (continued)

10

(Sgd) Teh Liang Peng  
Secretary to the Lord President  
Federal Court of Malaysia  
16.5.65.

Thomson, Lord President, Malaysia.

25th September, 1964.

No. 19

No. 19

NOTES OF ARGUMENT - Barakbah, Chief Justice

Notes of Argument

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT IPOH  
( APPELLATE JURISDICTION )

Barakbah Chief Justice.

FEDERAL COURT CIVIL APPEAL NO. 7 of 1964  
(Ipoh High Court Civil Suit No. 311 of 1964)

24th September, 1964.

20

Lee Lian Choon trading as  
Chuan Lee Co.

... Appellant

and

Lee Kar Choo trading as  
Yeen Thye Co.

... Respondent.

Goram: Thomson, Lord President, Malaysia,  
Barakbah, Chief Justice, Malaya,  
Tan Ah Tah, Judge, Federal Court.

NOTES OF ARGUMENT RECORDED BY BARAKBAH C.J.

L. A. J. Smith for Appellant. 24th September, 1965. (sic)

30

Dato' S.M. Yong for Respondent.

<p>In the Federal Court of Malaysia</p> <p>(Appellate Jurisdiction)</p> <p><u>                    </u></p> <p>No. 19</p> <p>Notes of Argument (continued)</p> <p>Barakbah Chief Justice.</p> <p>24th September, 1964.</p>	<p>Smith: Pages 286, 287 - Kerly on Trade Marks 8th Ed. Page 9 Record. Registered for all colours. Certificate p. 55.</p> <p>P. 36F.</p> <p>P. 37B.</p> <p>P. 41D.</p> <p>Lever v. Goodwin - 1887; 4 R.P.C. 492, 498 1887, 1 Ch. D.</p> <p>P. 16 - P.W.2.</p> <p>No likelihood of confusion, no intention to deceive - red and yellow colour for tea. 10</p> <p>Schweppes Ltd. v. Gibbens - 1905 22 R.P.C. 113, 118, 120, 121.</p> <p>No fraudulent intention on part of the Appellant.</p>	<p>Dato' Yong: P. 47 - on front and back.</p> <p>P. 48 - on the sides.</p> <p>PP. 55 and 60 - Appellant's trade mark. 20</p> <p>Respondent selling tea since 1940 with same trade mark. Registered on 13.3.52.</p> <p>P.47 - M/21085.</p> <p>P.48 - registered on 23.3.59 M/31338.</p> <p>Appellant newcomer - registered 22.6.1960.</p> <p>Civil Suit 136/61 - for passing off and for infringement of trade mark (p.54). 30</p> <p>Case settled out of Court as Defendant agreed not to pass off or infringe (26.7.61 p.62).</p>
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Then Defendant created new label (p. 53).

Objection is regarding label, not trade mark.

M.I. & M. Corporation v. Md. Ibrahim -  
Federal Court Civil Appeal No. 38/63.

P. 55 - no name and address.

1. Position of name and address of  
Respondent having been copied to  
Appellant's label.

2. No flower borders. Respondent's  
trade mark has. (pages 55 and 57).

Appellant's registered trade mark p.  
55. Labels used different - see  
Exhibit ("Fishing Nets Brand" printed  
in yellow).

p. 16.

3. Suppressing of words "F.N.B."

Exhibit D. 8 - different - belongs to  
another firm.

4. Colour scheme.

5. Sides of label same, also colour on  
the edges.

Appellant new trader.

Worthington & Co's Trade Mark - 1880, 14  
Ch.D.8,10.

p. 42F.

Johnston's Case - 1881, 7 A.C. 219, 232.

Frank Reddaway and Frank Reddway & Co. Ltd.  
- 1896, A.C. 199, 215.

The Cellular Clothing Co. Ltd. & Maston  
& Murray - 1899 A.C. 326, 334.

In the Federal  
Court of  
Malaysia

(Appellate  
Jurisdiction)

No. 19

Notes of  
Argument  
(continued)

Barakbah  
Chief Justice,

24th September,  
1964.

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In the Federal  
Court of  
Malaysia

(Appellate  
Jurisdiction)

No. 19

Notes of  
Argument  
(continued)

Barakbah  
Chief Justice,

24th September,  
1964.

25th September  
1964.

Hodgson's case - 1898, 15 R.P.C. p. 465,  
474B.

Lever's case - 1886, 36 Ch. D.1.

p. 37D.

De Cordova v. Vick Chemical Co. 1951 68  
R.P.C.103, 105.

Ronuk Ltd. v. Sin Thye Hin & Co. - 1962  
M.L.J. 383. Sec. 60 Trade Marks  
Ordinance 1950.

C.A.V.

10

Sd. S.S. Barakbah  
24.9.64

25th September 1964

Smith addresses Court further.

- 1. Added matters on the side, not being used as a trade mark, though used as part of their make-up.

If they were thought to be an infringement from their features the manner of use would not be sufficient to constitute an infringement - p. 277 8th Ed. Kerly on Trade Marks "Features of the design of the article".

20

- 2. Colour - p. 137, Kerly's

Even an identical mark e.g. arrangement of flowers, not in the colours registered would not constitute an infringement p. 134 Kerly. When dealing with essential particulars as applied to initials and under the paragraph 2, p. 134 in 1st sentence.

30

Dato' Yong: Comes under passing of, not under infringement. P. 332 Kerly.

P. 42F (bottom) Record.

Intent not necessary.

Lyle's case - 1907, 24 R.P.C. 249, 262.

Appellant has been addressing Court all the time on infringement, nothing said about passing off.

Sd. S.S. Barakbah  
25.9.64.

In the Federal Court of Malaysia

(Appellate Jurisdiction)

No. 19

Notes of Argument (continued)

Barakbah Chief Justice.

25th September, 1964.

TRUE COPY

Sd. G.E. Tan  
Secretary to Chief Justice  
High Court  
Malaya

7.4.65.

No. 20

NOTES OF ARGUMENT - Tan Ah Tah, Judge

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT IPOH  
(APPELLATE JURISDICTION)

Federal Court Civil Appeal No. 7 of 1964

Between

Lee Lian Choon ... Appellant  
and

Lee Kar Choo ... Respondent

(In the matter of Ipoh High Court Civil Suit  
No. 311 of 1961

Between

Lee Kar Choo ... Plaintiff  
and

Lee Lian Choon ... Defendant).

Cor: Thomson, Lord President, Malaysia.  
Syed Sheh Barakbah, Chief Justice, Malaya.  
Tan Ah Tah, Judge, Federal Court.

No. 20

Notes of Argument

Tan Ah Tah Judge

24th September, 1964.

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In the Federal  
Court of  
Malaysia

NOTES OF ARGUMENT

24th September, 1964.

(Appellate  
Jurisdiction)

L.A.J. Smith for Appellant

S.M. Yong for Respondent

No. 20

Smith: It was said the trade mark had been  
infringed.

Notes of  
Argument  
(continued)

This claim must fail in limine.

Tan Ah Tah  
Judge.

Kerly on Trade Marks 8th ed. p.286, 287

Para.12(a) of Statement of claim at p.7

24th September,  
1964.

Para.9 The use by Defendant ...is an  
infringement of Plaintiff's registered  
trade mark.

10

Defence.Para.3(a) at p.9. Defendant said  
he is registered proprietor of the mark  
Fishing Nets Brand in respect of tea -  
registered on 22/6/60.

J. at p.33E2 refers to Defendant's  
registered trade mark.

No proceedings have been taken for  
rectification.

20

Defendant's mark was registered for all  
colours.

Page 60, 55 contain Defendant's mark.

J. at p.36F, 37B1, 41D - J. extended Schweppes  
Ltd. v Gibbens & Lever v. Goodwin to the case of  
a party who is innocent.

J. at p.41, 42, 43 gave reasons for granting  
the injunction.

The deceit is practised by the dealer not by  
my client.

30

Lever v. Goodwin (1887) 4 R.P.C.492; (1887)  
36 Ch.D.1. is in my favour. See p.498 "Have the  
Defendants ....knowingly put into the hands of the

shopman .... the means of deceiving the ultimate purchaser?"

J. wrongly applied Office Cleaning Services Ltd. v Westminster Window & General Cleaners Ltd. (1946) R.P.C.39.

Wee Bee Lee, Dy. Registrar Trade Marks at p.16. his evidence is irrelevant. He cannot be called as an expert.

10 J. found no likelihood of confusion, no intention to deceive.

Red and yellow are common to the trade. Plaintiff said p.13E2 red and yellow are very popular.

Schweppes Ltd v. Gibbens (1904) 22 R.P.C.113 - mark not registered - it was a passing off action.

Not calculated to deceive.

20 Yong: Respondent has sold tea for 24 years - sold tea in packets of 5 different sizes - all bear his mark with nothing added and nothing subtracted - see p.47, 48 - these are Respondent's registered trade marks.

Appellant's registered trade marks are at p.55 & 60. There is no resemblance between these 2 sets of trade marks. But Appellant added certain features to his goods.

In 1940 Respondent sold his tea in 5 sizes.

On 14/3/52 Respondent registered his mark - p47 - front and back of packet. Nothing added and nothing subtracted from trade mark.

30 On 23/3/59 another trade mark was registered by Respondent - see p. 48

In 1961 Appellant started his tea business. Respondent's brand - Red Fish brand - was well known.

In May 1961 Respondent found that imitation tea was being sold by Appellant.

In the Federal Court of Malaysia

(Appellate Jurisdiction)

No. 20

Notes of Argument (continued)

Tan Ah Tah Judge.

24th September, 1964.

In the Federal  
Court of  
Malaysia

Adjourned to 2.30 p.m.

(Appellate  
Jurisdiction)

Yong (continuing): Respondent sued Appellant in  
Suit 136/61.

No. 20

This action was settled. See p. 62 for the Order  
of Court 26/7/61. But Appellant then had a new  
label made. This new label was worse.

Notes of  
Argument  
(continued)

Appellant's original mark appears at p.55.  
However he used the label at p.54.

Tan Ah Tah  
Judge.

After the settlement appellant created a new  
label P6. M.I. & M. Corporation v. Mohamed Ibrahim 10  
Federal Court Civil Appeal 38/63 p.6 of typewritten  
judgement (tendered by Yong).

24th September,  
1964.

Before Suit 136/61 was commenced Appellant  
added his name at top and address at bottom of his  
trade mark.

Appellant also added a flower border - see  
Respondent's trade mark at p.57 which was re-  
gistered in colour.

Appellant was imitating Respondent's label  
i.e. his mark. 20

Appellant suppressed or subdued the words  
"Fishing Nets Brand."

Appellant copied the colour scheme.

One side of the Respondent's label was copied  
by Appellant.

The other side was also copied by Appellant.

All this was done before Suit 136/61 was  
commenced.

After the settlement of Suit 136/61  
Appellant made a new label - colour scheme closer 30  
to Respondent's. Words "Fishing Nets Brand" made  
small and illegible.

Respondent's trade mark is everything that  
appears at p. 57 and 59.

Appellant's trade mark only comprises p.55.



When Appellant surrounds his mark or inserts his mark in a label that surrounds his mark there was infringement.

In the Federal  
Court of  
Malaysia

Appellant suppressed the features of his mark and added our features.

(Appellate  
Jurisdiction)

Appellant was a new trader.

No. 20

Worthington & Co's Trade Mark (1880) 14 Ch.D.8  
at p.10 - ten lines from bottom.

Notes of  
Argument  
(continued)

10

Johnston v. Orr Ewing (1881) 7 App.Cas.219 at  
p.232 5th Line.

Tan Ah Tah  
Judge.

Reddaway v. Banham (1896) A.C.199 at p.215 bottom.

Cellular Clothing Co.Ltd. v. Maxton (1899) A.C.  
326 at p.334

24th September,  
1964.

Hodgson & Simpson v. Kynoch Ltd. (1898) 15 R.P.C.  
465 bottom & P.474

Lever v. Goodwin (1887) 36 Ch.D.1. -- an instrument  
of fraud is placed in the hands of the retailer.

20

It is said there is no infringement if Appellant  
has emphasized an essential part of Respondent's  
mark. Smith said J. was wrong at p.37D2.

Because this is a registered trade mark if  
Appellant has used one or more of Respondent's  
trade marks an injunction should be granted  
irrespective of whether there was confusion.

De Cordova v. Vick Chemical Co. 68 R.P.C.103 P.C.  
at p.105.

30

Appellant should not have added anything to  
his trade mark which would confuse. Registration  
of a trade mark does not confer any right to do  
anything which the registered owner could not  
have done before registration.

Ronuk Ltd. v. Sin Thye Hin (1962) M.L.J. 383

I could not apply for rectification of the  
register because Appellant was using his trade  
mark -- my complaint is he added other things to

In the Federal Court of Malaysia

(Appellate Jurisdiction)

No. 20

Notes of Argument (continued)

Tan Ah Tah Judge.

24th September, 1964.

his mark.

s.60 Trade Marks Ordinance. A registered owner of a trade mark can still be sued on a passing off action.

Smith: As to fraud, no particulars were given of fraud.

Respondent registered their label in 2 stages (1) front and (2) sides.

Kerly p. 132 " Wrappers ".

A panel must contain distinctive matter to be protected. The name of a firm is not distinctive matter.

10

Respondent's mark is not a mark but a label - it is a registered label -- p.57 shows one of the labels.

At p. 57 the scroll, name of Respondent's firm are not protected - I submit.

Respondent could have applied for rectification - limiting use of fish in a particular manner.

The Chinese characters on our label are common.

20

Kerly p.376 - the leading features are common to the trade - scrolls and flowers. p.377.

Payton v. Snelling, Lampard & Co.

See other cases in note 38 at p.377 of Kerly.

J. found as to the whole panel that it was not calculated to deceive.

C.A.V.

sd. Tan Ah Tah

30

Friday, 25th September 1964

Civil Appeal No.7/64 (contd.)

Cor: Thomson, Lord President,  
Malaysia Syed Sheh Barakbah,  
C.J. Malaya Tan Ah Tah, F.J.

Counsel as before

Further argument.

Smith: Added matter: bay leaves  
scrolls  
Chinese characters

10

These are not being used by Appellant as a trade mark. They are used as part of the get-up As such the manner of use would not be sufficient to constitute an infringement. Kerly 8th ed. p.277 "Features of the design of the article" in the chapter "What constitutes infringement".

Colour. Kerly p.137. Respondent's mark is limited as to colour. I submit that even an arrangement of flowers not in those colours, i.e. the colours registered, would not constitute an infringement.

20

Non-distinctive borders. Kerly p.134 dealing with essential particulars as applied to initials. Under para.2 on p.134 in 1st sentence - I rely on 1st sentence "If to a letter or letters ..."

Yong: The additions amount to passing off Appellant's goods as ours.

Kerly p.332

In the Federal  
Court of  
Malaysia

(Appellate  
Jurisdiction)

No. 20

Notes of  
Argument  
(continued)

Tan Ah Tah  
Judge.

24th September,  
1964.

In the Federal  
Court of  
Malaysia

(Appellate  
Jurisdiction)

No 20

Notes of  
Argument  
(continued)

Tan Ah Tah  
Judge.

24th September,  
1964.

Judge's finding is at p.42F1. Intent is not necessary. Re Lyle and Kinahan Ltd. (1907) 24 R.P.C.249 at p.262 "The registered trade mark ... confers the right to prevent others from using the trade mark -- but it does not enable the owner ...."

C.A.V.

Sd. Tan Ah Tah

Certified true copy

Sgd. Eng Seong Hooi  
Private Secretary to the  
Federal Judge Malaysia  
31.3.65

NO. 21.

JUDGMENT of THOMSON, Lord President, Malaysia

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT IPOH  
(APPELLATE JURISDICTION)

Federal Court Civil Appeal No: 7 of 1964

Between

Lee Lian Choon ... Appellant

and

Lee Kar Choo ... Respondent

10 (In the matter of Ipoh High Court Civil Suit  
No: 311 of 1961

Between

Lee Kar Choo ... Plaintiff

and

Lee Lian Choon ... Defendant).

Cor: Thomson, Lord President, Malaysia,  
Syed Sheh Barakbah, Chief Justice, Malaya.  
Tan Ah Tah, Judge, Federal Court.

JUDGMENT OF THOMSON, LORD PRESIDENT, MALAYSIA

20 The parties to this appeal are wholesale  
dealers in tea dust carrying on business in Ipoh.  
The plaintiff in the original proceedings (now  
the respondent) is the owner of a registered  
trade mark in respect of tea dust which was first  
registered on 14th March, 1952, and the  
registration of which was renewed for 14 years from  
23rd March, 1959. The defendant (now the  
appellant) is the registered owner of a different  
trade mark in respect of tea dust which was  
30 registered on 22nd June, 1960.

In the Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

No. 21

Judgment of  
Thomson,  
Lord President,  
Malaysia  
15th December  
1964

In the Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

No. 21

Judgment of  
Thomson,  
Lord President,  
Malaysia  
15th December  
1964  
(Continued)

On 20th June, 1961, the plaintiff commenced proceedings against the defendant (Ipoh Civil Suit No: 136 of 1961) in which he alleged infringement of his trade mark and passing off of goods and asked for appropriate remedies. This case was never tried out. When it came on for trial the Judge suggested that the proceedings should be settled and in the event an order was made by the consent embodying an undertaking by the defendant not to infringe the plaintiff's trade mark and not to pass off his goods as those of the plaintiff. As no question of res judicata has been raised in the present proceedings it is not necessary to consider the terms of that order.

10

In spite of some no doubt well-meant exhortations by the trial Judge to come to some agreement as to the modification of their respective trade marks that might avoid misunderstanding in the future the parties would appear to have remained at arm's length and, although the defendant altered the "get-up" of his packets of tea, the present proceedings were commenced by the plaintiff on 29th December, 1961.

20

These were based on the defendant's use of his new "get-up" which was said to be an infringement of the plaintiff's trade mark and the use of which was said to have made out the passing off of the defendant's goods as those of the plaintiff. An injunction, an account and damages and other remedies were asked for.

30

In the event the trial Judge (who was the same Judge as had suggested the settlement of the earlier action) found that there had been no infringement of the plaintiff's trade mark by the defendant and that "the get-up of the defendant's goods would not lead to confusion" with those of the plaintiff. He concluded, however, :-

"that the defendant has used his trade mark in a manner which has enabled retailers to practise a deceit on the public obviously asking for the plaintiff's brand as opposed to the defendant's brand and although I am not prepared to make a finding of anything in the nature of fraudulent intent or

40

deliberate intent to deceive, I feel bound on the authorities to which I have referred to make an order restraining the defendant from using the labels complained of."

In the Federal Court of Malaysia (Appellate Jurisdiction)

He did not consider it a case for damages but he granted an injunction as prayed and made orders for the destruction of labels and blocks and so forth.

No. 21

Judgment of Thomson, Lord President, Malaysia 15th December 1964 (Continued)

10 Against that decision the defendant has now appealed and although there is no cross-appeal the plaintiff, the respondent, has urged upon us very vigorously that the Judge was wrong in finding that the get-up of the defendant's goods would not lead to confusion between the goods of the two parties.

20 The principal ground of appeal, indeed it is the only ground, is that the trial Judge having found that there was no infringement of the respondent's trade mark, that the get-up of the appellant's goods would not lead to confusion with those of the respondent and that there was nothing in the appellant's conduct in the nature of fraudulent intent or "deliberate intent" to deceive should have found not only as he did find that there was no infringement but also that there was no passing off and should accordingly have dismissed the action.

30 To that argument as thus stated the respondent has no convincing answer, and indeed there is none.

Authority for that observation is to be found in the case of Schweppes Ld. v. Gibbens. (1)

40 The facts of that case were very similar to those of the present one and the trial Judge (Warrington, J.) had dismissed the plaintiffs' claim on the ground that the defendant's labels were not calculated to deceive. "In my view", he said (at p. 118), "the defendant's label is not as it stands, if fairly used, calculated to enable a barman to deceive the customer". In the Court of Appeal Romer, L.J., discussed the evidence and said that on it the Court should not assume a fraudulent intent. He continued (at

.....  
(1) (1905) 22 R.P.C.113, 601.

In the Federal p. 120):-  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

\_\_\_\_\_  
No. 21  
\_\_\_\_\_

Judgment of  
Thomson,  
Lord President,  
Malaysia  
15th December  
1964  
(Continued)

"But even if I could assume as against the Defendant in this case a fraudulent intent in the design which she may have put on her label, that would not carry me the full length. In order to make the Defendant liable I should be obliged to come to the conclusion, as a matter of fact, that the label she has designed is calculated to mislead."

10

That, however, is not the end of the matter, for the respondent says that the appellant's argument should not be accepted at its face value and that although as a matter of law and logic the result of the Judge's reasoning may be inescapable yet the premisses on which it is based are wrong.

The technical question of infringement of the respondent's trade mark by that of the appellant has not been very strenuously argued, and indeed could not be taken very far in view of the fact that the appellant's mark was registered before the commencement of litigation. It was, however, urged with considerable force that the Judge's findings that the get-up of the appellant's goods would not lead to confusion with those of the respondent and that there was nothing in the nature of fraudulent intent or "deliberate intent" to deceive were against the weight of the evidence.

20

30

That argument calls for careful consideration, particularly as it is difficult to resist the impression that the Judge may have prepared his judgment in some haste and may not have expressed very happily just what he had in mind.

What particularly is important here is not so much the general get-up of the packages in which the parties sold their tea but the labels used on these packages. The packages themselves are in both cases the hexahedral tinfoil packets of various sizes which are commonly used in the retail sale of tea.

40

In each case, however, the packages are



encircled by coloured labels embodying four panels. The basic colours of these labels are, in each case, red and yellow but nothing turns on this for it is in evidence, that it is a general practice in the tea trade to use red and yellow labels.

In the Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

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No. 21

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10 On the respondent's labels the two larger panels are identical. In the centre of each is a single large reddish-yellow fish with protuberant eyes submerged in water of a yellowish colour and surrounded with bunches of seaweed or coral. This is the distinctive part of the respondent's registered trade mark, which was limited as to colour. Above  
20 the fish is printed the respondent's name "Yeen Thye Co.", below it is printed the respondent's address and the whole is surrounded by flowers of different colours which may be intended to be hibiscus and myosotis. On one of the smaller panels there is a representation of the reddish-yellow fish that occupies the centre of the larger panels and the words in English, Malay and Tamil "'Gold Fish' best quality Ceylon tea dust". This is repeated on the other smaller panel except that the words are in Chinese.

Judgment of  
Thomson,  
Lord President,  
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15th December  
1964  
(Continued)

30 On the appellant's labels each of the larger panels bears the appellant's registered trade mark which, as registered, was not limited as to colour. It is contained in a rectangular space with the words across the top "FISHING NETS BRAND". On this there is a reddish gold fish of different type and smaller than the respondent's fish. It is accompanied by a similar fish of similar shape and colour but smaller size and both appear, like Leviathan, to be contemplating with an air of superiority and disdain the activities of a large number of smaller black and white fish which either have been or are about to be caught in three large nets of yellow material towed by three steam trawlers. Above the trade mark is  
40 printed in Roman characters the appellant's name "Chuan Lee & Co." and below it is printed his address. On both sides the name and address are repeated at the sides in Chinese characters and there are representations in yellow of what are probably meant to be heads of rice. On the smaller panels there is a reproduction of the

In the Federal Court of Malaysia (Appellate Jurisdiction)

No. 21

Judgment of Thomson, Lord President, Malaysia 15th December 1964 (Continued)

larger fish in the centre panels and the words in English, Malay, Tamil and Chinese stating "Fishing Nets brand - best quality Ceylon tea dust."

In the case of M.I. & M. Corporation & anor. v. A. Mohamed Ibrahim & anor. (2) this Court applied to a question of this nature a test propounded by Sargant, J., in the case of Sandow Ltd's Application:- (3)

"The question is not whether if a person is looking at two Trade Marks side by side there would be a possibility of confusion; the question is whether the person who sees the proposed Trade Mark in the absence of the other Trade Mark, and in view only of his general recollection of what the nature of the other Trade Mark was, would be liable to be deceived and to think that the Trade Mark before him is the same as the other, of which he has a general recollection."

10

20

The same test may suitably be applied in relation to questions of get-up. And, applying that test to what we have here, that is to say the two labels, but not overlooking that, as I said in the case of M.I. & M. Corporation & anor. v. A. Mohamed Ibrahim & anor. (Supra), that "test is to be applied in relation to people who are generally illiterate and who do their shopping in small dark grocers' shops where large quantities of goods are crowded in a disorderly manner into a very small space", there is, in my view, no reason to dissent from the trial Judge's finding that the get-up of the appellant's goods would not lead to confusion with those of the respondent.

30

Nor is there anything in the evidence which would lead me to doubt the validity of that conclusion.

The only witness who purported to say he had been misled in any way was a Malay barber from

40

(2) (1964) M.L.J. 392.  
(3) (1914) 31 R.P.C. 196, 205.

10 Degong. He said that for four or five years he had bought from a shop in his village what he called "red fish" tea which he now knows to be the respondent's tea but that after a while the tea which he bought from the same shop seemed to be of poorer quality. He made no complaint to the shop from which he bought the tea but he did mention it to a Chinese whom he saw driving a van and selling tea who by a curious coincidence turned out to be the respondent and he showed him a packet of what he had been buying which was the appellant's tea. He admitted that he had never even glanced at the packets of tea he got from the local shop and that even if he were shown it he would be unable to identify a packet of the tea he had bought.

20 Then there was the evidence of the two grocers, called as witnesses by the respondent, which made a very powerful impression on the trial Judge. Their evidence had to be read in the light of the fact that they both admitted that the wholesale price of the appellant's tea was cheaper than that of the respondent's tea and that therefore it was more profitable article to sell. Neither of them was deceived in any way or was in any doubt as to which tea was which. What their evidence reduced itself to was this  
30 that when regular customers knew of the existence of several brands of tea and asked for a particular brand they gave them the brand for which they asked but if a customer who was not a regular customer only asked for "red fish tea" they gave him the appellant's tea without informing him that there was another sort of tea which could be described as red fish brand.

40 Now it is of course true that these wicked grocers were practising a deceit upon their more gullible or less discriminating customers. There is, however, nothing to show this was in any way facilitated by the get-up of the appellant's tea. There is no evidence that the customers upon whom the deceit was practised being given any opportunity of seeing the two brands of tea side by side or even that the shopkeepers had any other brand in stock. The evidence simply was that these unscrupulous grocers concealed the

In the Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

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No. 21

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Judgment of  
Thomson,  
Lord President,  
Malaysia  
15th December  
1964  
(Continued)

In the Federal Court of Malaysia (Appellate Jurisdiction)

No. 21

Judgment of Thomson, Lord President, Malaysia 15th December 1964 (Continued)

existence of tea of what they thought was better quality so that they could sell at a greater profit to themselves. It is difficult to see any distinction between them and the hypothetical wicked barmen who sought to dilute their customers' whisky with the soda water of Mrs. Gibbens rather than that of Messrs. Schweppes. Their conduct may have been reprehensible; it may have been fraudulent; but as was said by Lord Macnaghten in the case of Payton & Co. Ltd. v. Snelling, Lampard & Co. Ltd., (4) another case where the facts were similar to those of the present case except that what was involved was tins of coffee and not packets of tea:-

10

"for fraud of that kind the defendants are not responsible."

I would allow the appeal and set aside the order made in the Court below.

Sgd. J.B. Thomson

20

Kuala Lumpur, 15th December, 1964.

LORD PRESIDENT, FEDERAL COURT OF MALAYSIA.

===

L.A.J. Smith Esq. for appellant. Dato S.M. Yong for respondent.

TRUE COPY.

===

Sgd. Illegible

Secretary to the Lord President Federal Court of Malaysia. 11/1/64

.....  
(4) (1901) A.C. 308, 311.

NO. 22

FORMAL ORDER

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT IPOH  
(APPELLATE JURISDICTION)

Federal Court Civil Appeal No: 7 of 1964

In the Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

-----  
No. 22  
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Formal Order:  
15th December  
1964

Between

;LEE LIAN CHOON trading as  
CHUAN LEE COMPANY ... Appellant

And

10 LEE KAR CHOO trading as  
YEEN THYE COMPANY ... Respondent

(In the Matter of Civil Suit No. 311 of 1961 in  
the High Court in Malaya at Ipoh)

Between

LEE KAR CHOO trading as  
YEEN THYE COMPANY ... Plaintiff

And

LEE LIAN CHOON trading as  
CHUAN LEE COMPANY ... Defendant

20 CORAM:- THOMSON, LORD PRESIDENT, FEDERAL COURT OF  
MALAYSIA

SYED SHEH BARAKBAH, CHIEF JUSTICE, HIGH  
COURT IN MALAY:

and

TAN AH TAH JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT  
THIS 15TH DAY OF DECEMBER, 1964

O R D E R

THIS APPEAL coming on for hearing on the

In the Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

\_\_\_\_\_  
No. 22  
\_\_\_\_\_

Formal Order  
15th December  
1964  
(Continued)

24th and 25th days of September 1964 in the presence of Mr. L.A.J. Smith of Counsel for the Appellant and Dato S.M. Yong of Counsel for the Respondent AND UPON READING the Record of Appeal herein AND UPON HEARING Counsel as aforesaid for the parties IT WAS ORDERED that this Appeal do stand adjourned for Judgment and the same coming on for Judgment at Kuala Lumpur this day in the presence of Mr. G. Tara Singh for and on behalf of Mr. L.A.J. Smith of Counsel for the Appellant and Dato S.M. Yong of Counsel for the Respondent IT IS ORDERED that this Appeal be and is hereby allowed and that the Judgment of the Court below be set aside AND IT IS ORDERED that the Respondent do pay to the Appellant the costs of this Appeal and the Court below AND IT IS LASTLY ORDERED that the sum of ₹500/- (Dollars Five hundred only) paid into Court by the Appellant as security for the costs of this Appeal be paid out to the Appellant or his Solicitor Mr. L.A.J. Smith.

10

20

GIVEN under my hand and the seal of the Court this 15th day of December, 1964.

Sd. RAJA AZLAN SHAH,

CHIEF REGISTRAR  
FEDERAL COURT MALAYSIA,  
KUALA LUMPUR

TRUE COPY

Sd. RAJA AZLAN SHAH  
Chief Registrar  
Federal Court, Malaysia  
Kuala Lumpur 29.3.65

30

NO. 23

NOTICE OF MOTION

IN THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

Federal Court Civil Appeal No: 7 of 1964

Between

Lee Lian Choon T/A Chuan Lee Co. ... Appellant

And

Lee Kar Choo T/A Yeen Thye Co. ... Respondent

10 (In the matter of Civil Suit No. 311 of 1961  
in the High Court in Malaya at Ipoh

Between

Lee Kar Choo T/A Yeen Thye Co.... Plaintiff

And

Lee Lian Choon T/A Chuan Lee Co.. Defendant).

NOTICE OF MOTION

20 TAKE NOTICE that the Court will be moved  
on Monday the 1st day of March 1965 at 10.00  
o'clock in the forenoon, or as soon thereafter as  
counsel can be heard, by counsel for the above-  
named Respondent for an Order (a) that conditional  
leave be granted to the Respondent to appeal to  
His Majesty the Yang di-Pertuan Agong against  
the decision of this Honourable Court given on  
the 15th day of December 1964, allowing the above  
appeal, and (b) that the costs of and incidental  
to this application be costs in the cause.

Dated this 23rd day of December, 1964.

Sd. S.M. Yong & Co.

Sd. Raja Azlan Shah.

30 Solicitors for  
Respondent.

Chief Registrar,  
Federal Court of Malaysia,  
Kuala Lumpur.

In the Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

\_\_\_\_\_  
No. 23  
\_\_\_\_\_

Notice of  
Motion.  
23rd December  
1964.

In the Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

No. 23

Notice of  
Motion.  
23rd December  
1964  
(Continued)

This Notice of Motion is taken out by  
Dato S.M. Yong & Co., the Respondent's  
Solicitors whose address for service is No.52  
(1st floor) Klyne Street, Kuala Lumpur.

The application in the Notice of Motion  
will be supported by the affidavit of Lee Kar  
Choo affirmed on the 23rd day of December 1964.

To:  
Lee Lian Choon the Appellant abovenamed or  
his Solicitor Mr. L.A.J. Smith  
of 18H, Battery Road,  
Singapore-1.

10

No. 24

Affidavit of  
Lee Kar Choo.  
23rd December  
1964.

NO. 24

AFFIDAVIT OF LEE KAR CHOO

IN THE FEDERAL COURT OF MALAYSIA.

(APPELLATE JURISDICTION)

Federal Court Civil Appeal No: 7 of 1964.

Between

Lee Lian Choon T/A Chuan Lee Co. ... Appellant

And

Lee Kar Choo T/A Yeen Thye Co. ... Respondent

20

(In the matter of Civil Suit No. 311 of 1961  
in the High Court in Malaya at Ipoh

Between

Lee Kar Choo T/A Yeen Thye Co. ... Plaintiff

And

Lee Lian Choon T/A Chuan Lee Co... Defendant).



A F F I D A V I T.

In the Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

I, Lee Kar Choo, the Respondent abovenamed,  
of Chinese Race and of full age solemnly and  
sincerely affirm and say as follows:-

(1) I am the Respondent abovenamed.

\_\_\_\_\_  
No. 24  
\_\_\_\_\_

(2) On the 15th day of December 1964, this  
Honourable Court delivered judgment allowing with  
costs the Appellant's appeal against the judgment  
of the High Court at Ipoh in Ipoh High Court Civil  
Suit No. 311 of 1961.

Affidavit of  
Lee Kar Choo  
23rd December  
1964

(Continued)

(3) I am desirous of appealing to his Majesty the  
Yang di-Pertuan Agong against the allowance by  
this Court of the above appeal.

(4) The said judgment is a final judgment or  
order in a civil matter where :-

(a) the matter in dispute in the appeal is of  
the value of over five thousand dollars:

(b) the appeal involves a claim or question  
to or respecting property or civil right  
of the value of over dollars five thousand;  
and

(c) the case is from its nature a fit one for  
appeal.

(5) I am willing to undertake as a condition for  
leave to appeal, to enter into good and sufficient  
security to the satisfaction of this Court in such  
sum as this Court may duly prescribe and to conform  
to any other conditions that may be duly imposed.

(6) I pray that this Honourable Court will be  
pleased to grant me leave to appeal to His Majesty  
the Yang di-Pertuan Agong.

Affirmed by the abovenamed Lee )  
Kar Choo at Kuala Lumpur this ) Sd. Lee Kar Choo  
23rd day of December 1964 at ) (in Chinese).  
12.30 p.m. )

Before me,

Sd. Ho Wai Kong.

Commissioner for Oaths,  
High Court, Kuala Lumpur.

In the Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

\_\_\_\_\_  
No. 24  
\_\_\_\_\_

Affidavit of  
Lee Kar Choo  
23rd December  
1964  
(Continued)

I hereby certify that this affidavit was read over, translated and explained by me to the deponent who seemed to have perfectly understood the contents of this affidavit and declared to me that he did understand perfectly and written his signature in my presence.

Sd. Ho Wai Kong.

Commissioner for Oaths,  
High Court, Kuala Lumpur.

This Affidavit is filed on behalf of the Respondent Lee Kar Choo whose address for service is c/o Dato S.M. Yong & Co., Advocates and Solicitors, of No. 52 (1st floor) Klyne Street, Kuala Lumpur.

10

\_\_\_\_\_  
No. 25

NO. 25

Affidavit of  
Lee Kar Choo.  
13th March  
1965

\_\_\_\_\_  
AFFIDAVIT OF LEE KAR CHOO

IN THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

Federal Court Civil Appeal No: 7 of 1964.

Between

20

Lee Lian Choon T/A Chuan Lee Co. ... Appellant

And

Lee Kar Choo T/A Yeen Thy Co. ... Respondent

(In the matter of Civil Suit No. 311 of 1961  
in the High Court in Malaya at Ipoh

Between

Lee Kar Choo T/A Yeen Thy Co. ... Plaintiff

And

Lee Lian Choon T/A Chuan Lee Co... Defendant).



In the Federal Court of Malaysia (Appellate Jurisdiction)

No. 25

Affidavit of Lee Kar Choo 13th March 1965 (Continued)

(7) The average profit on my Gold Fish Brand trade mark tea is about 20%. The total loss suffered by me from 1961 to the end of 1964 was about \$40,229.50.

Affirmed by the abovenamed Lee Kar Choo at Kuala Lumpur this 13th day of March, 1965 at 11.30 a.m. Sd. Lee Kar Choo (in Chinese).

Before me,

Sd. San Chow Lim. Commissioner for Oaths, High Court, Kuala Lumpur.

10

I hereby certify that this affidavit was read over, translated and explained by me to the deponent who seemed to have perfectly understood the contents of this affidavit and declared to me that he did understand perfectly and written his signature in my presence.

Sd. San Chow Lim. Commissioner for Oaths, High Court, Kuala Lumpur.

20

This Affidavit is filed on behalf of the Respondent Lee Kar Choo whose address for service is c/o Dato S.M. Yong & Co., Advocates and Solicitors, of No. 52 (1st floor) Klyne Street, Kuala Lumpur.

No. 26

NO. 26

Order granting Conditional Leave to Appeal to His Majesty the Yang di-Pertuan Agong. 22nd March 1965

ORDER GRANTING CONDITIONAL LEAVE TO APPEAL TO HIS MAJESTY THE YANG DI-PERTUAN AGONG IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR.

30

(APPELLATE JURISDICTION)

Federal Court Civil Appeal No: 7 of 1964.



In the Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

\_\_\_\_\_  
No. 26  
\_\_\_\_\_

Order granting  
Conditional  
Leave to  
Appeal to His  
Majesty the  
Yang di-  
Pertuan Agong  
22nd March  
1965  
(Continued)

IT IS ORDERED that leave be and is hereby granted to the Respondent abovenamed to appeal to His Majesty the Yang di-Pertuan Agong from the judgment of the Federal Court given on the 15th day of December 1964 upon the following conditions:-

- (a) that the Respondent abovenamed do within three (3) months from the date hereof enter into good and sufficient security to the satisfaction of the Chief Registrar, Federal Court, Malaysia, in the sum of \$5,000/- (Dollars five thousand only) for the due prosecution of the Appeal, and the payment of all such costs as may become payable to the Appellant abovenamed in the event of the Respondent abovenamed not obtaining an order granting him final leave to appeal or of the appeal being dismissed for non-prosecution, or of His Majesty the Yang di-Pertuan Agong ordering the Respondent abovenamed to pay the Appellant's costs of the appeal as the case may be; and 10
- (b) that the Respondent do within the said period of three (3) months from the date hereof take the necessary steps for the purpose of procuring the preparation of the Record and for the despatch thereof to England. 20

AND IT IS FURTHER ORDERED that the costs of this Application be costs in the cause.

Given under my hand and the Seal of the Court this 22nd day of March 1965. 30

Sd. Raja Azlan Shah,  
Chief Registrar,  
Federal Court, Malaysia,  
Kuala Lumpur.

NO. 27

ORDER GRANTING FINAL LEAVE TO APPEAL TO HIS MAJESTY THE YANG DI-PERTUAN AGONG

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR.

(APPELLATE JURISDICTION)

Federal Court Civil Appeal No: 7 of 1964.

Between

10 Lee Lian Choon trading as Chuan Lee Company

... Appellant

And

Lee Kar Choo trading as Yeen Thye Company

... Respondent

(In the matter of the Ipoh High Court Civil Suit No.311 of 1961.

Between

Lee Kar Choo trading as Yeen Thye Company

... Plaintiff

And

20 Lee Lian Choon trading as Chuan Lee Company

.... Defendant).

Before:

Syed Sheh Barakbah, Chief Justice, Malaya;  
Wylie, Chief Justice, Borneo;

and

Tan Ah Tah, Judge, Federal Court, Malaysia.

IN OPEN COURT.

THIS 15th DAY OF JULY 1965.

O R D E R.

UPON MOTION preferred unto the Court this day

In the Federal Court of Malaysia (Appellate Jurisdiction)

No. 27

Order Granting Final Leave to Appeal to His Majesty the Yang di-Pertuan Agong 15th July 1965

In the Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

\_\_\_\_\_  
No. 27  
\_\_\_\_\_

Order Granting  
Final Leave to  
Appeal to His  
Majesty the  
Yang di-  
Pertuan Agong  
15th July  
1965  
(Continued)

by Mr. Joon Hong Yong of Counsel for the  
Respondent abovenamed and mentioning on behalf  
of Mr. L.A.J. Smith of Counsel for the Appellant  
abovenamed. AND UPON READING the Notice of  
Motion dated the 4th day of June, 1965 and the  
Affidavit of Lee Kar Choo affirmed on the 4th  
day of June, 1965 both filed herein IT IS  
ORDERED that final leave be and is hereby  
granted to the Respondent abovenamed to appeal  
to His Majesty the Yang di-Pertuan Agong  
against the decision and order of this Court  
given on the 15th day of December, 1964  
allowing the appeal AND IT IS FURTHER ORDERED  
that the costs of and incidental to this  
Application be costs in the cause.

10

Given under my hand and the Seal of the  
Court this 15th day of July, 1965.

Sd. Siti Norma Yaakob.

ASSISTANT REGISTRAR,  
FEDERAL COURT, MALAYSIA.

20

27/7



E X H I B I T S

Exhibits

EXHIBIT P.1. CERTIFIED TRUE COPY OF TRADE MARK  
M/21085

P.1.

THE TRADE MARKS ORDINANCE, 1950  
(No.26 of 1950)Certified  
true copy of  
Trade Mark  
No. M/21085"This Certificate is issued under the provisions of  
Section 66 of the Ordinance6th June,  
1962.No. M/21085 IN THE MATTER OF THE REGISTERED  
TRADE MARK No.M/21085

10 I, the undersigned, being the duly appointed Registrar of Trade Marks, under Section 3 (1) of the Trade Marks Ordinance, 1950, hereby CERTIFY that as from the 14th day of March, 1952, the Trade Mark, a copy of which is affixed hereto, is registered in the name of LEE KAR CHOO trading as CHOP YEEN THYE, of 137, Hugh Low Street, Ipoh, Federation of Malaya; Tea Merchant, in Class 30, in respect of "Tea and tea dust".

20 The Proprietors undertake to use the mark only in the colours "Yellow, Red, Blue, Grey, Green and White" exactly as shown on the form of Application.

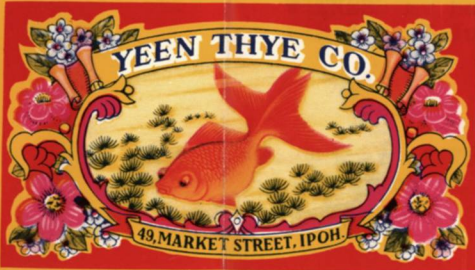
In pursuance of an application received on the 9th day of November, 1956, address of Proprietor altered to:- 49 Market Street, Ipoh, Perak, Federation of Malaya.

30 The Registration has been renewed for a period of fourteen years from the 14th day of March, 1959, and may be renewed at the expiration of that period and on the expiration of each succeeding period of fourteen years.

WITNESS my hand this  
6th day of June, 1962.sd. ?  
(Seal)Registrar of Trade Marks  
Federation of Malaya

"GOLD FISH"  
BEST QUALITY  
CEYLON TEA DUST.  
TEL: 3803

"چف اکی مسی"  
بہترین سیلون  
تھا ایک نسل  
"ہیہ کھنوں کھنوں"  
ہیہ کھنوں کھنوں  
ہیہ کھنوں کھنوں  
ہیہ کھنوں کھنوں



苑泰茶莊發行  
怡保馬結街門牌四  
十九號電話三八〇三  
榮譽出品馳名金魚  
標正庄西啣茶粉



Exhibits

EXHIBIT P.2. CERTIFIED TRUE COPY OF TRADE MARK  
NO. 31338

P.2.

THE TRADE MARKS ORDINANCE, 1950  
(No. 26 of 1950)

Certified  
true copy of  
Trade Mark  
No. 31338

"This Certificate is issued under the provisions of  
Section 66 of the Ordinance

6th June,  
1962.

No.M/31338

IN THE MATTER OF THE  
REGISTERED TRADE MARK NO.  
M/31338

I, the undersigned, being the duly  
appointed Registrar of Trade Marks, under section  
3 (1) of the Trade Marks Ordinance 1950, hereby  
CERTIFY that as from the 23rd day of March, 1959,  
the trade Mark, a copy of which is affixed hereto,  
in registered in the name of LEE KAR CHOO trading  
as YEEN THYE CO., of 49 Market Street, Ipoh,  
Federation of Malaya; Manufacturer and Merchant,  
in Class 30, in respect of "Tea leaves and tea  
dust."

10

The Trade Mark is registered for a period  
seven years from the above date and may be  
renewed at the expiration of that period and on  
the expiration of each succeeding period of  
fourteen years.

20



WITNESS my hand this  
6th day of June, 1962.

THE TRADE MARKS REGISTRY,  
FEDERATION OF MALAYA

sd. ?

REGISTRAR OF TRADE MARKS  
FEDERATION OF MALAYA

EXHIBIT P.4. DEFENDANT'S TRADE MARK NO.M/33682

Exhibits

THE TRADE MARKS ORDINANCE  
No. 26 of 1950

P.4.

(This Certificate is issued for use in Legal Proceedings)

Defendants  
Trade Mark  
No.M/33682

No. M/33682

IN THE MATTER OF THE  
REGISTERED TRADE MARK NO.M/33682

17th August,  
1962.

10 I, the undersigned, being the duly appointed Registrar of Trade Marks unde Section 3 (1) of the Trade Marks Ordinance, 1950, hereby CERTIFY that as from the 22nd day of June, 1960, the Trade Mark, a copy of which is registered in the name of Lee Lian Choon (Federal Citizen) trading as CHUAN LEE TEA & CO., of 9 Jalan Datch, Ipoh, Perak, Federation of Malaya, Merchant, in Class 30, in respect of "Tea and tea dust".

20 The Trade Mark is registered for a period of seven years from the above date and may be renewed at the expiration of that period and on the expiration of each succeeding period of fourteen years.



WITNESS my hand  
this 17th day of  
August, 1962.

sd.?

REGISTRAR OF TRADE MARKS  
FEDERATION OF MALAYA

THE TRADE MARKS REGISTRY  
FEDERATION OF MALAYA

Affidavit of  
Lee Yoke Khoon  
attached to  
Exhibit  
C.11 and C.12.

AFFIDAVIT OF LEE YOKE KHOON ATTACHED TO EXHIBIT  
C.11 and C.12.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT IPOH  
Civil Suit 1961 No. 136

11th July,  
1961.

Between

Lee Kah Choo trading as  
Yean Thye Co.  
at 49 Market Street,  
Ipoh, Perak.

... Plaintiff

10

And

Lee Lian Choon trading as  
Chuan Lee Co.  
9 Jalan Datoh,  
Ipoh, Perak.

... Defendant

A F F I D A V I T

I, Lee Yoke Khoon, a ship-assistant of  
full age and a Federal Citizen residing at No. 9,  
Jalan Datoh, Ipoh do hereby make oath and say as  
follows:-

20

1. I am the son of Lee Lian Choon the  
defendant abovenamed.

2. I have had read and explained to me the  
contents of the affidavit of Lim Chong Lai and  
Foo Khoon Yow sworn to on the 6th day of July,  
1961.

3. I have seen the photostat of the cash sale  
voucher No. 3566 marked as exhibit "L.C.L. 4"  
annexed to the affidavit of Lim Chong Lai and Foo  
Khoon Yow. I admit that two tea packets of  
quarter size bearing the label, a copy of which  
is attached herewith and marked "L.Y.K.1" were  
sold to two Chinese gentlemen who came into my  
father's shop on the 30th day of June 1961. I  
and my brother Lee Kheng Lam were then in the shop.  
One of these Chinese whom I can identify but  
whose name I do not know asked me if I had

30

"Fish Brand" tea dust. I told him that we did not stock the "Fish Brand" tea dust but had our own brand known as "Fishing Nets Brand" tea dust and I showed him a packet of the same, a copy of the label covering the said packet shown to that Chinese is attached herewith and marked exhibit "L.Y.K.2". After having a look at the packet shown to him by me the said Chinese told me that he knew and had used another brand of tea dust manufactured by Chuan Lee Co. and which he found to be very good and which also had had a label depicting fish and fishing nets. I thereupon told him that there was a court case pending and we had stopped selling the brand bearing the label he had in mind. He, however, insisted that I should show him the brand he wanted. It was only then that I got out from the table drawer a packet of the tea dust bearing the label, copy of which is exhibit "L.Y.K.1". referred to above.

The said gentleman insisted on getting two packets of the tea dust bearing label referred to as "L.Y.K.1". I specifically told him that I had been instructed by my father not to sell that brand and it was for that reason that it was not displayed in the shop. I did not know that it was a trap set by the Plaintiff and seeing the insistence of the customer and my desire as a business not to displease the customer I ultimately yielded to his request and did sell the two packets.

Affidavit of  
Lee Yoke Khoon  
attached to  
Exhibit  
C.11 and C.12  
(Continued)  
11th July,  
1961.

4. I say that these packets were sold on the 30th day of June 1961 and not on the 29th day of June 1961. I was in Kroh on the 29th day of June, 1961.

5. I further say that my father has prohibited me and my two brothers who attend the ship at No.9 Jalan Datch, Ipoh from selling any tea dust bearing the label "L.Y.K.1" referred to above and I further say that but for these two packets no tea dust bearing the said label has ever been sold by the Defendant after the 22nd day of June 1961.

Sworn at Ipoh this 11th) sd.?  
day of July, 1961 ) (In Chinese)

Before me,

sd. M. S. MAHENDRAN

Commissioner for Oaths.

Affidavit of  
Lee Yole Khoon  
attached to  
Exhibit  
C.11 and C.12  
(Continued)  
11th July,  
1961.

I hereby certify that the above affidavit was read, translated and explained in my presence to the deponent who seemed perfectly to understand it, declared to me that he did understand it and made his signature in my presence.

Sd. M.S. Mahendran

Commissioner for Oaths

This Affidavit was filed by Mr. N Sharma,  
Advocate and Solicitor of No. 1 Brewster Road,  
Ipoh on behalf of the Defendant abovenamed.

EXHIBIT C.11 TRADE MARK LABEL

Exhibits

C.11.

Trade Mark  
Label

11th July,  
1961.



Ipoh High Court C.S.No.136/61

This is a copy of the exhibit marked "L.Y.K.1" referred to in the affidavit of Lee Yoke Khoon sworn to on the 11th day of July, 1961.

sd. M.S. Mahendran.  
Commissioner for Oaths.



Exhibits

EXHIBIT C.12 TRADE MARK LABEL (FISH NETS BRAND)

C.12

Trade Mark Label (Fish Nets Brand)

11th July, 1961.



Ipoh High Court C. S. No. 136/61

This is a copy of the exhibit marked "L.Y.K.2" referred to in the affidavit of Lee Yoke Khoon sworn to on the 11th day of July 1961.

SD. M.S.Mahendran

Commissioner for Oaths.

EXHIBIT D.13 ORIGINAL TRADE MARKS CERTIFICATE  
M/33682

Exhibits

D.13

Original  
Trade Marks  
Certificate  
M/33682

(OFFICIAL ISSUE)

FEDERATION OF MALAYA

CERTIFICATE ISSUED UNDER SECTION 39 AND RULE  
58 OF THE TRADE MARKS ORDINANCE, 1950



No. M/33682

To

Mr. Lee Lian Choon trading as Chuan Lee Tea Co.

10

I HEREBY CERTIFY that under the provisions of the Trade Marks Ordinance, 1950, your name has been entered in Part A of the Register as proprietor of the above numbered Trade Mark as from the 22nd day of June, 1960, in Class 30 in respect of the following goods:

-----Tea and tea dust-----

A representation of the Mark is affixed hereto.

TRADE MARKS REGISTRY  
FEDERATION OF MALAYA  
KUALA LUMPUR

Sd. ?  
Dy. Registrar.

20

Registration is for a period of 7 years and may be renewed at the expiration of this period and upon the expiration of each succeeding period of 14 years.

Exhibits

EXHIBIT D.14 PHOTOSTAT COPY OF TRADE MARK M/21085

D.14

Photostat  
Copy of  
Trade Mark  
M/21085

(OFFICIAL ISSUE)

FEDERATION OF MALAYA

CERTIFICATE ISSUED UNDER SECTION 39 AND RULE  
58 OF THE TRADE MARKS ORDINANCE 1950

No. M/21085

To

Mr Lee Kar Choo trading as Chop Yean Thye

I HEREBY CERTIFY that under the provisions  
of the Trade Marks Ordinance, 1950, your name has  
been entered in Part A of the Register as  
proprietor of the above numbered Trade Mark as  
from the 14th day of March, 1952, in Class 30 in  
respect of the following goods:-

10

----- Tea and tea dust -----

A representations of the Mark is affixed  
hereto.

H.C.C.S. No. of 1961  
This is the exhibit marked LKC 1 referred  
to in the Affidavit of Lee Kah Choo dated  
the 19th day of June, 1961.

20

sd. R.G. Suppiah  
Commissioner for Oaths

TRADE MARKS REGISTRY,  
FEDERATION OF MALAYA,  
KUALA LUMPUR.

Sd. ?  
Ag. Registrar.

Registration is for a period of 7 years and  
may be renewed at the expiration of this period and  
upon the expiration of each succeeding period of  
14 years.

EXHIBIT D.14 PHOTOSTAT COPY OF TRADE MARK M/21085

Exhibits

D.14

Photostat  
Copy of  
Trade Mark

M/21085

Representation of Trade Mark.

(Original in lithograph)



Exhibits

EXHIBIT D.15 PHOTOSTAT COPY OF TRADE MARK M/31338

D.15

(Official Issue)

Photostat  
Copy of  
Trade Mark  
M/31338

FEDERATION OF MALAYA

CERTIFICATE ISSUED UNDER SECTION 39 AND RULE 58  
OF THE TRADE MARKS ORDINANCE, 1950

No. M/31338

To

Mr. Lee Kar Choo trading as Yean Thye Co.

I HEREBY CERTIFY that under the provisions of the Trade Marks Ordinance, 1950, your name has been entered in Part A of the Register as proprietor of the above numbered Trade Mark as from the 23rd day of March, 1959, in Class 30 in respect of the following goods:-

----- Tea leaves and tea dust -----

A representation of the Mark is affixed hereto

H.C.C. S. No.                      of 1961  
This is the Exhibit marked LKC 2 referred to in the affidavit of Lee Kah Choo, dated the 19th day of June, 1961.

Sd. R.G. Suppiah

Commissioner for Oaths

TRADE MARKS REGISTRY  
FEDERATION OF MALAYA  
KUALA LUMPUR

Sd. ?  
Registrar.

Registration is for a period of 7 years and may be renewed at the expiration of this period and upon the expiration of each succeeding period of 14 years.

EXHIBIT D.15 PHOTOSTAT COPY OF TRADE MARK M/31338

Exhibits

D.15

Photostat  
copy of  
Trade Mark  
M/31338

Representation of Trade Mark

(Original in lithograph)



Exhibits

EXHIBIT P.16 ORIGINAL APPLICATION OF DEFENDANT

P.16

M/33682

Original  
Application  
of Defendant

THE TRADE MARKS ORDINANCE

20th June  
1960

APPLICATION FOR REGISTRATION OF TRADE MARK  
IN PART 'A' OF THE REGISTER

REPRESENTATION OF MARK



One representation to be fixed within the space and four others to be sent on separate Form T.M.7. Representation of a large size may be folded, but must be mounted upon linen or other suitable material and affixed in the space.

10

Application is hereby made for Registration in Part A of the Register of the accompanying Trade Mark in Class 30 in respect of Tea and Tea Dust in the name of LEE LIAN CHOON Federal Citizen whose trade or business address is 9 Jalan Datch, Ipoh, Perak, Federation of Malaya. trading as CHUAN LEE TEA CO., MERCHANT by whom it is proposed to be used and who claim (s) to be the proprietor (s) thereof.

20

Dated the 20th day of June, 1960.

Sd. ?

(In Chinese)

TO

The Registrar of Trade Marks,  
Kuala Lumpur.

EXHIBIT P.17 UNDERTAKING UNDER TRADE MARK BY THE  
PLAINTIFF

M/ 21085

THE TRADE MARKS ORDINANCE

APPLICATION FOR REGISTRATION OF TRADE MARK

Exhibits

P.17

Undertaking  
Under Trade  
Mark by the  
Plaintiff.

7th March,  
1952



10 One representation to be fixed within the space  
and four others to be sent on separate Form T.M. 7.  
Representation of a large size may be folded, but  
must then be mounted upon linen or other suitable  
material and affixed in the space.

20 Application is hereby made for Registration  
in Part "A" of the Register of the accompanying  
Trade Mark in Class 30 in respect of Tea and Tea  
Dust.  
in the name of LEE KAR CHOO, Tea Merchant, Chinese  
whose trade or business is 173 Hugh Low Street, Ipoh,  
Federation of Malaya  
trading as Chop Yee Thye  
by whom it is used and who claim(s) to be the  
proprietor(s) thereof.

We undertake to use the mark only in  
the colours "yellow, red, blue, grey,  
green and white" exactly as shown on  
the form of application. Dated the  
7th day of March, 1952.

Sd. ? (In Chinese)

To THE REGISTRAR OF TRADE MARKS  
KUALA LUMPUR.



Exhibits

EXHIBIT P.18      PHOTOSTAT COPY OF ORDER

P.18

IN THE SUPREME COURT OF THE FEDERATION OF  
MALAYA

Photostat  
copy of  
Order

IN THE HIGH COURT AT IPOH

CIVIL SUIT 1961 No. 136

26th July,  
1961.

Between

LEE KAR CHOO trading as  
YEAN THYE CO.  
at 49 Market Street,  
Ipoh, Perak.

... PLAINTIFF

10

And

LEE LIAN CHOON trading as  
CHUAN LEE CO.  
9 Jalan Datoh,  
Ipoh, Perak.

... DEFENDANT

BEFORE THE HONOURABLE MR. JUSTICE NEAL

JUDGE FEDERATION OF MALAYA

THIS 26th DAY OF JULY, 1961

IN OPEN COURT

O R D E R

THIS ACTION coming on this day for trial  
before this Court in the presence of Counsel for  
the Plaintiff and Counsel for the Defendant AND  
upon reading the Pleadings AND the Defendant by  
his Counsel undertaking that neither he nor his  
trustees servants nor agents or any of them or  
otherwise will at any time hereafter infringe the  
Plaintiff's registered Trade Marks namely Number  
M/21085 dated the 14th day of March, 1952 and  
Number M/31338 dated the 23rd day of March, 1950  
AND upon the Defendant by his Counsel undertaking  
that neither he nor his trustees servants nor  
agents or any of them or otherwise will at any  
time hereafter pass off goods not of the  
Plaintiff's manufacture as and for the goods of  
the Plaintiff.

20

30

IT IS ORDERED that these proceedings do stand  
dismissed.

90.

AND IT IS FURTHER ORDERED that each party do pay his own costs.

AND IT IS FURTHER ORDERED that there be liberty to apply to restore.

GIVEN under my hand and the Seal of the Court this 26th day of July, 1961.

Sd. E.E. Sim.

Senior Assistant Registrar,  
Supreme Court,  
Ipoh, 27/7/61.

Exhibits

P.18

Photostat  
Copy of  
Order

26th July,  
1961.

ON APPEAL

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :-

LEE KAR CHOO trading as  
YEEN THYE COMPANY

(Respondent) Appellant

- and -

LEE LIAN CHOON trading as  
CHUAN LEE COMPANY

(Appellant) Respondent

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RECORD OF PROCEEDINGS

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Lawrance Messer & Co.,  
16, Coleman Street,  
London, E.C.2.  
Solicitors for the Appellant.

McKenna & Co.,  
12, Whitehall,  
London, S.W.1.  
Solicitors for the Respondent