IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1995] SGHC 298

Suit 1195/1994

Between

Fuyawa Enterprise Pte Ltd

… *Plaintiff*

And

Lim Han Tee trading as Wifu Marketing

… *Defendant*

GROUNDS OF DECISION

Version No 1: 29 Oct 2026 (23:45 hrs)

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Fuyawa Enterprise Pte Ltd v Lim Han Tee trading as Wifu Marketing

[1995] SGHC 298

Suit 1195/1994
Warren Khoo L H J
30 March 1995

1 30 March 1995

2 Warren L H Khoo J

3 There were two summonses before me. One was an application by the plaintiffs for certain interim injunctions and the other was by the defendant to discharge an interim injunction which had been made ex parte by Lai Kew Chai J on 27 July 1994. At the conclusion of the hearing, I acceded to the plaintiffs' application and dismissed the defendant's. I now give the reasons.

4 The plaintiffs are a company carrying on the business of selling what might best be described as Chinese folk quasi-medicinal products (lingzhi and chlorella) bearing the Chinese characters "Yong Fu" (in Pinyin rendition). They started marketing these products in 1990, and carried on through a succession of distributors, the last of whom was the defendant, who started the distribution in or about November 1992. The defendant was then working for Rediffusion. He registered a firm by the name Wifu Marketing and carried on the distribution of the plaintiffs' products as a sole distributor, at first with a partner but later on

his own. However, the defendant and the plaintiffs shared business premises, first at the PSA Tower from August 1992 to April 1993, and then from May 1993 at the Singapore Finance House in North Bridge Road. They also shared telephone lines. All the plaintiffs' products distributed through the defendant bore the name "Yong Fu".

5 The name of the defendant's firm as registered did not carry any version of the name in Chinese. However, it would appear that the Chinese name "Yong Fu Shang Hang" (a la Pinyin) was used by the defendant, with the knowledge or the plaintiffs. Thus, in the very first cash sale receipt issued by the plaintiffs to the defendant, the Chinese name "Yong Fu Shang Hang" was used. The Chinese name also appeared on the door panel of the premises in North Bridge Road which the two parties shared. In April 1994, the defendant organised a seminar on one of the Yong Fu products. The managing director of the plaintiffs, Mr Fu Nan Hao, attended and gave away free samples. The banner bore the organisers' name in Chinese "Yong Fu Shang Hang". The defendant also used that name in promotional material in relation to the plaintiffs' products.

6 Mr Fu says that he knew about these uses of the Chinese name for the defendant's firm but he did not object because at that time the defendant was marketing the plaintiffs' products, and only the plaintiffs' products.

7 Things then took a turn. In April 1994, the defendant pressed him to enter into a written distribution agreement. In the draft, the defendant inserted the Chinese words "Yong Fu Shang Hang" along side the English name "Wifu marketing" as the name of his firm. Mr Fu says he then realised that the defendant was trying to use the Chinese words "Yong Fu Shang Hang" independently as the name of his firm. Mr Fu objected to it, and had those

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Chinese words deleted. The final agreement, in Chinese, had only the English words "Wifu Marketing" as the defendants' firm without the Chinese words "Yong Fu Shang Hang".

8 In June 1994, the defendant put on display a product (it was a tea product) which was not the plaintiffs' and bearing the Red Sun trademark. The defendant used the Chinese words "Yong Fu Shang Hang" prominently and in red on the packaging, in addition to the Red Sun trademark. Mr Fu objected to this through solicitors. His fear of confusion in the trade and in the minds of consumers was confirmed when he bought the same tea product from retailers, and the receipts issued by them described it as a "Yong Fu" product.

9 On 14 July 1994, Mr Fu had the distribution agreement terminated, and supplies of the plaintiffs' products to the defendant were stopped.

10 On or about 18 July 1994, Mr Fu heard over the Rediffusion an announcement placed by the defendant to the effect that the "Yong Fu Shang Hang" product would soon be changed to the "Red Sun" mark. On 19 July, there was another announcement, to the effect that the defendant was the agent for the "Yong Fu" products and that the defendant would soon be selling only "Red Sun" products. Mr Fu says that this would give the impression to consumers that the "Yong Fu" products would soon be sold under the "Red Sun" mark or that the Red Sun products were related to the "Yong Fu" products. Mr Fu also gave an instance of a lady Madam Choo Siew Eng who had been sold by Wifu Marketing two bottles of lingzhi as "Yong Fu" lingzhi which in fact was not the plaintiffs' lingzhi.

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11 The plaintiffs' case, in gist, is that the defendant attempts by the use of the Chinese words "Yong Fu Shang Hang" to appropriate the goodwill of the plaintiffs' "Yong Fu" brand of the products. The defendant admits that the plaintiffs are the owners of the "Yong Fu" mark. He admits that for a good part of the period from November 1992 to May or June 1994, he sold nothing but the plaintiff's products. However, the defendant says that he has used the words "Yong Fu Shang Hang" as the name of his business since November 1992, when "Wifu Marketing" was registered, and cites the instances of the use of the name "Yong Fu Shang Hang", as I have set out above. He contends rather unconvincingly, that "Yong Fu Shang Hang" is a Chinese version of the name "Wifu Marketing". He also points out that he has not described the products that he sells as "Yong Fu" products. All that he has done is to use "Yong Fu" as part of his business name. A further point he makes is that customers would know that "Yong Fu Shang Hang" is his business name and "Red Sun" is his trademark. They would not confuse the two.

12 After hearing counsel for the parties, I dismissed the defendant's application to discharge the order which had been made by Lai J and made further orders to restrain the defendant from using the Chinese words "Yong Fu" on products marketed by the defendant and also as part of the Chinese version of the firm name "Wifu Marketing". I was aware that in doing so, I was giving the plaintiffs substantially all that they claimed in the main suit without trial. However. I was persuaded that the justice of the case was in favour of such a course. I bore in mind the factors already referred to, particularly the fact that the plaintiffs have undoubted goodwill in the name "Yong Fu" in relation to their products, the fact that the defendant had until he ventured into marketing other products (than the plaintiffs) in May or June 1994 dealt in only the plaintiffs' products and the name "Yong Fu Shang Hang" had been used only in

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connection with this trading activity. In these circumstances, the plaintiffs, I think, have a good case for saying that in continuing to use the name "Yong Fu" on their products or to use the words "Yong Fu" as part of the defendant's business name after the termination of the distributorship agreement, the defendant would be appropriating the plaintiffs' goodwill in the name, and would cause confusion in the minds of the trade and the consumers, particularly the latter. I did not think much of the defendant's contention that consumers would realise that the words "Yong Fu Shang Hang" used together with the Red Sun trademark on the defendant's products merely refer to the name of the defendant's firm and that the Red Sun trademark, although used together with the words "Yong Fu Shang Hang", would be sufficient to show that the defendant's products have no connection with the plaintiffs.

13 The fact that the plaintiffs acquiesced in or even encouraged the use of "Yong Fu Shang Hang" as the defendant's firm name during the period of the distributorship, in my view, does not assist the defendant's case to any extent. At that time, as the defendant dealt solely with the plaintiffs' products and nobody else's, there was no risk of confusion. The plaintiffs' acquiescence or encouragement cannot be the basis of any kind of estoppel after the cessation of the relationship.

14 I was of the view that the balance of convenience was in favour of granting the injunctions than of refusing them. The plaintiffs' products have only been on the Singapore market since 1990. The effect of a passing off would probably do relatively more harm to such a young name than perhaps to an older, more established and more resilient one. The interim injunctions would not stop the defendant from continuing to market products under the Red Sun trademark or under Wifu Marketing with another Chinese equivalent than

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"Yong Fu Shang Hang". All that the interim injunctions would do would be to prevent him from unjustly profiting from making use of the name “Yong Fu" which had been associated exclusively with the plaintiffs' products or the distribution of them. I was also of the view that damages sustained by the plaintiffs from the defendant's use of the words complained of would be difficult to quantify, particularly in the case of customers buying the defendant s product thinking that they are the plaintiffs .

15 I rejected the defendant's submission that the status quo should be maintained by allowing the defendant to continue to use the words "Yong Fu Shang Hang" as he had been doing since 1992. It is clear that the status quo ante bellum was the use of the four words only in connection with the distribution of the plaintiffs’ products and not independently of it.

16 I therefore ordered the interim injunctions as I did.

17 In relation to the application to discharge the order made by Lai J, to the effect that the defendant should not sell Lingzhi products similarly bottled as the plaintiffs', the main point made by the defendant was that the plaintiffs had failed to make a full and frank disclosure of the fact that the defendant had used the Chinese words "Yong Fu Shang Hang" as instanced above. Although the defendant's solicitors were notified of the application, it had in essence been an ex parte application since the defendant’s counsel, not having been properly instructed, was not able to take any meaningful part in the hearing.

18 Without going into the question whether in such ex parte applications the duty of disclosure was as high as that in applications of the pure ex parte kind, I noted that the affidavit in support of the application before Lai J had

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made references to uses by the defendant of the "Yong Fu Shang Hang" name in the promotional material used by the defendant at the time when he was marketing the plaintiffs products. Mr Fu in that affidavit said that he did not mind that because the defendant was then distributing the plaintiffs' products, and the coincidence of names was of no consequence to him. What he did object to was that towards the end of the distributorship the defendant began to use the "Yong Fu" name for the defendant's own purposes of marketing other products than the plaintiffs'. In these circumstances, the fact that the plaintiffs did not detail all the instances in which the defendant had used the name "Yong Fu Shang Hang", it seems to me, could not be considered to be a material omission. I therefore refused to discharge Lai J's order on that ground.

Warren Khoo L H J

Chew Kherk Ying and Stephen Loke for the plaintiffs
Brandon Chua for the defendant

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