

OTO Bodycare Pte Ltd v Hiew Keat Foong
[2005] SGHC 133

Case Number : Suit 104/2004
Decision Date : 27 July 2005
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Wong Siew Hong (Infinitus Law Corporation) and Nandakumar Renganathan (T M Hoon and Co) for the plaintiff; Wong Seow Pin (S P Wong and Co) for the defendant
Parties : OTO Bodycare Pte Ltd — Hiew Keat Foong

Civil Procedure – Injunctions – Defendant allegedly infringing plaintiff's trade mark and passing off product as plaintiff's – Whether injunction should be granted against defendant

Trade Marks and Trade Names – Infringement – Whether allegedly infringing trade mark similar to plaintiff's trade mark – Whether any likelihood of confusion – Section 27(2) Trade Marks Act (Cap 332, 1999 Rev Ed)

Trade Marks and Trade Names – Passing off – Elements of passing-off claim – Whether goodwill in plaintiff's name and mark – Whether goodwill in plaintiff's product

1 This action is in respect of infringement of the “OTO” trademark and of passing off with regard to the defendant’s use of the words “OTC Bodycare” and “Electro-Relaxologist” in connection with an electrical reflexology apparatus which the plaintiff distributes using the name “OTO Electro-Reflexologist”.

The plaintiff’s case

2 According to Yep Gee Kuarn (“Yep”), a director and shareholder of the plaintiff, the plaintiff has been in the business of importing, distributing and marketing fitness, health and body care products since 1993. It is the proprietor of the registered trademark “OTO” which covers, among other things, massage apparatus in Class 10, a category designated for medical and surgical equipment. The word “OTO” (“the plaintiff’s trademark”) is represented in italicised form and set in horizontally striped block letters in a rectangular background (see Annex A). Since 1999, the plaintiff adopted a slightly modified representation of the trademark (see Annex B) in that the word OTO is now

