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SRT
on demand

IN THE MATTER of the Trade Marks
Ordinance

and

IN THE MATTER of an Application for
Registration of the Trade Mark "CREST"
in Class 14 for "watches clocks and
other horological instruments and
parts thereof" by Arjan Ramchand
Daswani, Jetha Choithram Navani and
Gulab Duhilanomal Alwani trading as
Questime Watch Industry

and

IN THE MATTER of an Opposition thereto
by National Electronics and Watch Co.
Ltd.

D E C I S I O N

of

Miss A.C. Waters acting for the Registrar of Trade Marks in
respect of a Hearing held on the 7th September 1982.

Mr. Walter Chan of W.S. Lo & Co. appeared for the Applicants.
The Opponents elected not to be represented at the Hearing and
did not appear.

On the 21st January 1980 Arjan Ramchand Daswani, Jetha
Choithram Navani and Gulab Duhilanomal Alwani trading as
Questime Watch Industry of 75-77 Wyndham Street, 1st Floor,
Mohan's House, Hong Kong (hereinafter called "the Applicants")

applied to the Registrar of Trade Marks (hereinafter called "the Registrar") for the registration of the Trade Mark "CREST" in Class 14 in respect of "Watches clocks and other horological instruments and parts thereof" in Part A of the Register.

In their Statement in support of the Application on Trade Mark Form 4 dated 18th January 1980 the Applicants stated that the trade mark had been used in Spain in respect of the goods since November 1979.

Leave to advertise the mark in the Gazette was given by the Registrar on the 5th March 1980 and the mark was advertised on the 21st March 1980.

On the 15th September 1980 National Electronics and Watch Co. Ltd. of 14-18 Floors, Yally Industrial Building, 6 Yip Fat Street, Wong Chuk Hang, Aberdeen, Hong Kong (hereinafter called "the Opponents") lodged a Notice of Opposition through its agents Messrs. Johnson Stokes & Master, Solicitors. The Grounds of Opposition as set out in the Notice of Opposition are as follows :

"1. We are the proprietors of the Trade Mark "CRESTA" which is and has been used by us extensively for many years in Holland and Hong Kong.

2. We have applied for registration of the said Trade Mark in Hong Kong under Application No. 516 of 1980 in respect of "watches, clocks and parts thereof".

3. We have extensively used the said Trade Mark in Hong Kong since March 1979 in respect of watches manufactured and sold by us and the said Trade Mark denotes and has long denoted both to the trade and to the public goods manufactured and sold by us and distinguishes and has long distinguished such goods from the like goods of other manufacturers and traders.

4. The applicant is seeking to register the word "CREST" the subject of the application herein, in Class 14 in respect of "watches, clocks and other horological instruments and parts thereof".

5. The proposed mark which the applicant has applied to register so nearly resembles our said Trade Mark as to be calculated or likely to deceive or cause confusion.

6. The goods covered by the applicant's proposed mark are similar to or the same as those covered by our said Trade Mark, and owing to the manifest similarity both visually and phonetically between our said Trade Mark and the applicant's proposed mark, there is considerable likelihood of confusion in the minds of the public.

7. The proposed mark which the applicant has applied to register is calculated or likely to deceive or cause confusion and to lead to the applicant's goods being passed off as or mistaken for goods manufactured and sold by us.

8. By reason of the matters set forth herein the proposed mark "CREST" is not a registrable trade mark within the terms of the Trade Marks Ordinance.

9. The Registrar should exercise his discretion adversely to the applicant and we ask that Application No. 148 of 1980 be refused with costs against the applicant."

On 15th November 1980 the Applicants lodged through their agents Messrs. W.S. Lo & Co., Solicitors, a Counter Statement which set out the grounds as follows :

- "1. The Trade Mark "CREST" has been used by the Applicant since November 1979 in Spain and Hong Kong.
2. The Applicant applied for registration of the said Trade Mark long time prior to that of the opponent.
3. There is no conflict or competition in the markets of both parties (Spain and Holland).

I/We admit the following allegations in the notice of opposition :

Each and every allegation in the notice of opposition is denied and the opponent is put to strict proof thereof."

On 3rd November 1981 the Opponents through their Solicitors lodged by way of evidence a Statutory Declaration made by Lee Chi Hoo a Director of the Opponents (hereinafter called "Mr. Hoo's Declaration"). Mr. Hoo's Declaration contained, inter alia, the following statements :

"4. My Company has for many years carried on business as a manufacturer of "watches, clocks and parts thereof". My Company's mark was first adopted and used in Hong Kong in relation to the said goods in the year March 1979 and since then has been used extensively and continuously with the result that such mark has now become distinctive of my Company's goods, and only of my Company's goods.

5. Since April 1979, the said goods of my Company bearing my Company's said trade mark have been exported to Holland and the cash turnover of such goods were as follows :-

<u>Year</u>	<u>Turnover</u>
April 1979 - March 1980	US\$1,852,815
April 1980 - February 1981	US\$2,525,740

6. Annexed hereto marked "Exhibit A" are samples of packaging materials (and catalogues) showing use of my Company's mark in respect of the said goods.

7. Also Annexed hereto marked "Exhibit B" are copies of a selection of invoices showing shipments of the said goods bearing my Company's mark to Holland (and other countries).

8. By reason of such extensive use and superior quality of my Company's said goods, much reputation and valuable goodwill accrued and still accrues to my Company's mark (inter alia) in Hong Kong.

9. With reference to the Applicant's Counter-Statement, since the Applicant's mark is an imitation of my Company's mark simply deleting the last letter "A", the public is likely to be confused.

10. Since the Applicant's goods and my Company's goods have the same country of origin, confusion is likely to arise.

11. In view of the foregoing facts, my Company's customers may very well confuse the Applicant's mark with my Company's mark or otherwise assume that the Applicant's mark is a companion brand to my Company's mark, thus jeopardizing my Company's business and the reputation in my Company's mark."

Exhibited to Mr. Hoo's Declaration was an example of the use of the mark and copies of the invoices. These invoices related to shipments to Amsterdam, Holland and were dated from 22nd January 1981 to 31st January 1981 some 12 months after the

date of the Application. No invoices showing sales in Hong Kong or to countries other than Holland were included in the exhibits and nor were any catalogues exhibited.

The Applicants lodged through their Solicitors on the 11th February 1982 by way of evidence a Statutory Declaration made by Jetha Choithram Navani, one of the Applicants, being a partner of the firm Questime Watch Industry, (hereinafter called "Mr. Navani's Declaration"). Mr. Navani's Declaration contained, inter alia, the following statements :

"5. My Company has for many years carried on business as a manufacturer of "watches, clocks and parts thereof". The Applicant's mark was first adopted and used in Hong Kong and Spain in relation to the said goods in November 1979. Since November 1979, the said goods of my Company bearing my Company's said trade mark have been exported to Spain and the cash turnovers of such goods were US\$49,200.50.

6. Annexed hereto marked "Exhibit A" are copy invoices and advertisement showing use of my Company's mark in respect of the said goods only under shipment to Spain.

7. By numerical order of the Applications, one would realize that my Company applied for registration of the said Trade Mark long time prior to that of the

Opponent and in fact there is no conflict or competition in the markets of both parties (viz. Spain and Holland), thus no confusion is likely to arise nor is the Applicant's business jeopardized due to their increase of business volume in February 1981 as admitted by the Opponent in his said Statutory Declaration.

8. On the basis of the above mentioned facts, I pray that my Company's application for registration of "CREST" under Application No. 148 of 1980 in Class 14 which has been approved by the Registrar of Trade Marks should be allowed to proceed to registration."

Exhibited to Mr. Navani's Declaration was an example of the use of the mark and copies of Invoices and Certificates of Origin. These invoices show export of the goods to Melilla, Spain and were dated from 24th November 1979 to December 1979 and from January 1980 to 29th May 1980. The Certificates of Origin showed that the origin of the goods was Hong Kong.

The Opponents submitted no further evidence and also elected not to appear at the Hearing.

As stated in the Notice of Opposition the Opponents had applied for registration of the mark "CRESTA" on the 6th March 1980 in Part A of the Register in Class 14 in respect of "Watches clocks and parts thereof". S. 20 of the Trade Marks

Ordinance could only apply in the case where the Opponents' mark had been entered on the Register at the date of the Application by the Applicants i.e. the 21st January 1980. As this is not the position in this case the Opposition can only be considered under the provisions of S. 12(1) of the Trade Marks Ordinance.

S. 12(1) of the Trade Marks Ordinance is similar but not identical to Section 11 of the Trade Marks Act 1938 but for the purposes of this case I consider that the United Kingdom decisions on Section 11 of the Trade Marks Act 1938 can be relevant to the consideration of S. 12(1) of the Trade Marks Ordinance.

The question of Section 11 of the 1938 Act is considered in Kerly's Law of Trade Marks and Trade Names 10th Edition at para. 10.05 and in particular the following is stated :

"It should be noted that under section 11, consideration must be given to the extent and character of the reputation belonging to the earlier mark. Before the section can be applied at all, it must be established that the opponent's mark is known to a substantial number of persons in the United Kingdom. What is a substantial number depends upon the type of goods. Beyond that, there are degrees of reputation. On the one hand, where a trade mark has been long used by

a person who is applying to register it, it will not be refused on the ground of recent use of a similar mark by another trader. The mark does not by such recent use become calculated to deceive. On the other hand, as against an applicant for registration of a new mark, particular consideration is given to earlier marks which have enjoyed "long user and extensive reputation."

This principle was followed in the "Nova" Trade Mark case (1968 RPC 357) where it was submitted that the initial onus was on the opponent to establish that he had acquired a reputation in the use of the mark "Nova" and that if he succeeded in doing that the onus shifted to the applicant to establish that the registration proposed would not be reasonably likely to cause confusion among a substantial number of persons. It was held in that case that the volume of the applicant's sales had established a sizable reputation in the United Kingdom whereas the scale of the opponent's business was insufficient to establish that his mark was known to a substantial number of persons in the United Kingdom such as was necessary to shift the onus onto the applicant and that accordingly the opposition failed.

I have also considered the "Da Vinci" case ((1980) 9 RPC 237) where the same question was reviewed by Mr. Myall the Hearing Officer who stated on p. 241 :

"I do not think it can be disputed that there is some onus on the opponent whose use, or reputation, must be something more than de minimis."

and further on p. 241 :

"The considerations which obtain when it is a question of granting an injunction to restrain passing off pending trial of the action are not, I think, the same as when it is a question of opposition to a trade mark registration under Section 11."

On considering whether separate markets could be considered Mr. Myall on p. 242 considered the question should be :

"At the date of the application was a substantial proportion of the interested public aware of the opponent's mark?"

and further on p. 242 Mr. Myall stated :

"The question of how widespread a public impression would be material was considered by the Supreme Court of New Zealand in Pioneer Hi-Bred Corn Co. v. Hy-Line Chicks Pty. Ltd. (1976) RPC 294, where Cook J. reviewed the various expressions used in reported cases, including Jellinek and Bali, and concluded, at page 302 lines 9 - 12 :

"the varying terminology in the judgments is a reminder that it is not always necessary that large numbers of people should be, or should probably be, of the state of mind in question : rather it is a question of the significance of the numbers in relation to the market for the particular goods"."

It is well established that the likelihood of confusion must be considered at the date of the application to register and that accordingly for the purposes of S. 12(1) the relevant date for consideration should, in this case, be the 21st January 1980.

I have considered and summarise the Opponents' evidence of use of the mark "CRESTA" as follows :-

- (1) In the Statement supporting their application PA 516A/80 on Trade Mark Form 4 it was claimed that the mark had been used in Holland since March 1979.
- (2) In the Notice of Opposition the Opponents stated that they had extensively used the Trade Mark "CRESTA" in Hong Kong since March 1979 in respect of watches manufactured and sold by them.

- (3) In Mr. Hoo's Declaration it was stated that the mark "CRESTA" was first adopted and used in Hong Kong in March 1979 and that since April 1979 the said goods had been exported to Holland.
- (4) The sales figures as outlined in Mr. Hoo's Declaration show export sales to Holland for the period from April 1979 to March 1980 of US\$1,852,815. Assuming, for the purpose of this summary, average sales this would be a figure of approx. US\$1,544,012 for the period from April 1979 to January 1981 which is impressive. The sales figures relate only to sales to Holland and to no other countries.
- (5) The exhibit "A" of Mr. Hoo's Declaration shows a copy of three Quartz LC or chronograph watches with the mark "CRESTA" on the face.
- (6) The invoices, as already stated, relate only to sales to Holland in the month of January 1981 i.e. one year after the 21st January 1980. The invoices show sales of LCD Electronic Watches referred to as "CRESTA" brand ranging in price from US\$6.30 to US\$12.00 per watch. These invoices cannot in my opinion be used as evidence in establishing reputation or user prior to the date of the Application for the purposes of S. 12(1). I further note that the invoices do not in fact give any information as to the origin of the goods.

Although the evidence is not too clear it appears to me that the goods, on which the mark was used, were manufactured in Hong Kong and exported to Holland only. No evidence, by way of sales figures or otherwise, has been supplied to show that there have been any sales in Hong Kong or in any other country.

Thus, I note from the evidence that although the Opponents claim quite substantial export sales to Holland for the period from April 1979 to January 1981 of approx. US\$1.5m this is not supported by any documentary evidence by way of invoices, or promotional or advertising material. Although they had an opportunity to file further evidence under Rule 27 of the Trade Marks Rules the Opponents elected not to do so.

I turn now to the Applicants evidence. The Applicants claim that in or about November 1979 they started to use the mark "CREST" on watches originating and made in Hong Kong and exported to Spain. This claim is supported by the Statement made on Trade Mark Form 4 in support of the Application, by the Counter Statement and by Mr. Navani's Declaration and the invoices exhibited to it. In Mr. Navani's Declaration he states that the cash turnovers of goods bearing the mark exported to Spain was US\$49,200.50. Although it is not clear from Mr. Navani's Declaration whether this relates only to the period from November 1979 to January 1980 the invoices exhibited to his Declaration do show a total of sales of LCD Digital watches with the "CREST" mark of US\$35,240 for that period.

The invoices, together with the Certificates of Origin, show sales to Spain on 24th November 1979, 29th November 1979 and 15th December 1979, and also show further sales in January and May 1980. It appears from the invoices and the example of the mark that the trade mark "CREST" was used on "Gents 6 function LCD watches" and were sold at US\$6 - 6.09 per watch.

No evidence or information has been given by the Applicants to show how the name "CREST" was arrived at.

To sum up the Opponents' evidence claims that their goods with the mark "CRESTA" were manufactured in Hong Kong and exported to Holland from March 1979 with sales of US\$1.5m with no documentary evidence in support. The Applicants' evidence on the other hand shows first user in November 1979, some 6 months later, on goods made in Hong Kong and exported to Spain of US\$35,000 to US\$49,000 such sales supported by copy invoices.

It is clear from the evidence that the goods of both the Applicants and Opponents are of the same description being both LCD watches and, according to the evidence, in the same price range.

Mr. Chan argued at the Hearing that "CREST" had a dictionary meaning and "CRESTA" did not but in my opinion the two marks "CREST" and "CRESTA" are very similar both visually and phonetically.

The only difference between the two marks is the letter "a" and visually I believe this would be easily confused. It also appears to me that it is possible for words ending in the letter "t" to be pronounced in such a way as to place so much emphasis on the last letter for it to sound as if it is followed by an "e" or an "a". I therefore consider that although the two words "CREST" and "CRESTA" can be pronounced differently (the first with a long "e" and the second with a short "e") I consider there are possibilities of confusion phonetically as well as visually.

Mr. Chan directed my attention to Chapter 10 p. 180 of Kerly and the comments of Lord Loreburn and the points raised in the "Solibrisa" case. He submitted that the evidence showed that the markets were different and as the ultimate purchasers were in different countries he submitted that the chances of confusion among the public were very remote.

In addition Mr. Chan informed me at the Hearing that the Applicants offered to accept registration subject to a condition limiting the goods to export to Spain, I propose to consider this suggestion at this point.

I considered first the "Solibrisa" case (in the matter of Marcos Bale'y Hnos Application (1948) 65 RPC 17) where Mr. S.E. Chisholm the Assistant Comptroller reviewed at p. 23

the powers of the Registrar and stated as follows :

"He may, for example, allow the application to proceed subject to the same conditions and limitations as advertised, he may add to the same, or refuse the application altogether, but in no case do I consider that it would be proper for him to remove or to relax the conditions or limitations even if he concluded that they had been wrongly imposed originally, because by such an action he would be effecting a registration different from that which had been advertised without proper opportunity for opposition."

It was also stated by Morton J. in the "Black Magic" case (in the matter of an Application of Edward Hack (1941) 58 RPC 91) as follows :

"In the third place, the onus, which I have mentioned, must be discharged by the Applicant in respect of all the goods coming within the specification of goods for which the application is made and not only in respect of any particular article coming within such specification in respect of which the Applicant has in fact used or proposes to use the mark."

A similar request was also considered at some length in the "Oreal" case ((1980) RPC 107) where the applicants offered to limit their specification to goods for export only

and I refer to Mr. Myall's statement on p. 109 as follows :

"Mr. Watson informed me that the applicant's offer to limit his specification was conveyed to the opponents prior to the hearing so that they had been put on notice and could have supplied such evidence if they wished. I do not think that I can take this into account since the offer was no doubt made without prejudice. Nor do I know at what stage it was made, viz., whether before or after all the evidence in these proceedings had been filed. Evidently it was not acceptable to the opponents. In my view it would have been better if the limitation had been made explicitly and the opportunity given to the opponents to provide evidence specifically directed to the narrower question. Accordingly I intend to treat the application as standing or falling on the full specification applied for."

In this case the Applicants' offer was made at the Hearing and as the Opponents did not appear there was no opportunity for the Opponents to submit arguments or evidence on this point. It appears from the authorities cited above that I might have the power to consider such a limitation as this would be restricting and not relaxing the terms of the original advertisement but in view of the decision in the "Oreal" case and the fact that the Opponents are not aware of the proposed limitation I feel it would be unwise to do so. I propose,

therefore, for the purposes of S. 12(1) to consider the application without any limitation on the specification of goods.

On examining the "Solibrisa" case referred to by Mr. Chan I note that in that case both parties goods were exported to Argentina. The question of what evidence of confusion should be admitted in respect of export goods was considered in some depth and on p. 20 of that case Mr. S.E. Chisholm the Assistant Comptroller quotes an extract from the judgment of Lord Loreburn in the House of Lords case of Bagots Hutton & Coy. Ltd's. Application (33 RPC 357) as follows :

"Supporting the judgment in the Court of Appeal, the House of Lords found in favour of the Applicants for registration, and the following very relevant passage appears in the judgment of Loreburn :- "There

can be no ground for saying that a trade mark, otherwise appropriate for registration here; should be denied registration because it may be unfairly used somewhere else, or because other nations would be deceived by some local experience into identifying the goods of one firm with the goods of another when no one would be deceived here."

Mr. Chisholm then states :

"In my view this judgment lays it down clearly and decisively that the crucial test is deception or confusion in this country and the above extract dealing with the question of actual or potential confusion or deception abroad, I think, involves considerations both of the relevancy and the sufficiency of the evidence tendered."

In the case of Hassan El Madi's Application 1954
71 RPC No. 15 281 Lloyd-Jacob states on p. 294 :

"For these reasons I desire to make my own view plain and that is that in deciding whether under the provisions of Sections 11 and 12 deception is likely to ensue in my judgment consideration must be given to the market in this country; but in so far as the Registrar is endeavouring to discharge the obligation resting upon him in the exercise of his discretion to do only that which is just right, I can see no reason why the evidence should be restricted in any way whatever."

Further the decision of the Assistant Comptroller
Mr. S.E. Chisholm quoted on p. 285 states :

"My conclusions upon this aspect of the law which I am considering are these :- (i) that normally in deciding under the provisions of Secs. 11 and 12 of the Act

whether or not deception or confusion is likely to ensue among a substantial number of persons from the resemblance of two marks, it is only to those persons in the United Kingdom who are likely, as traders or members of the general public, to encounter the marks that the Registrar must have regard."

No evidence has been produced as to confusion or otherwise in the markets of the two countries involved and I consider therefore that in considering the evidence I should be concerned only with the export market in Hong Kong, or to put it more specifically the members of the export trade in Hong Kong i.e. "merchants, middlemen, transport officials, exporters and shipping agents" rather than the ordinary members of the public.

In view of the authorities already cited I take the view that I should first consider whether the Opponents have established by reputation or user that the mark "CRESTA" was known to a substantial number of persons involved in the export market in Hong Kong as a whole who, at the relevant date, are likely to encounter the mark, so as to shift the onus onto the Applicants to establish that such reputation would make it likely that use of the Applicants mark, in the manner that would be permitted by their registration of it, could lead to confusion or deception in the minds of those persons.

With this view in mind I considered further the evidence supplied by both parties and the following points arise :

- (1) The Opponents' evidence reveals substantial sales i.e. approx. US\$1.5m for a period of 9 months prior to the date of the Application, but is quite unsupported by documentary evidence by way of invoices or advertising material.
- (2) The Opponents' sales appear to be in respect of exports to Holland only and to no other country.
- (3) No breakdown of the sales figures are given by the Opponents to show either the pattern of sales i.e. whether there was a steady growth of sales or whether there were large orders in one month, or indeed the proportion of sales prior to November 1979 the date of the Applicants first user of the mark.
- (4) The Opponents' evidence does not show whether sales were made through a number of different merchants, exporters or shipping agents.
- (5) The Opponents did not claim that any sums of money had been spent on advertising.

- (6) The Applicants show sales of approx. US\$47,000, to Spain only, commencing some 6 months after the first user claimed by the Opponents, but supported by documentary evidence.
- (7) Neither party explains how they came to use the marks "CREST" and "CRESTA" and no evidence has been produced by the Opponents to show that there was any attempt by the Applicants to copy their mark.
- (8) No evidence of actual confusion arising out of the user by both parties of the two marks for the period from November 1979 to January 1980 has been produced by either party.
- (9) No evidence was given by either party to assist in considering whether those involved in the particular export market to Holland in Hong Kong would also be the same persons involved in the export market in Spain or other countries.

In considering the Opponents' evidence I find the total lack of supporting invoices and advertising material for the period prior to the relevant date i.e. 21st January 1980 a major drawback in establishing both the use of the mark and as an indication of the number of persons involved in the relevant Hongkong Export Market who could have become aware of the mark.

In view of the evidence I considered the answer to the question proposed by Mr. Myall namely "At the date of the application was a substantial proportion of the interested public i.e. those members of the export trade here, aware of the Opponents' mark "CRESTA" in respect of watches etc.?"

The authorities do not give me much assistance when considering the quality of the evidence. I note however that in the "Nova" case the sales evidence given by the Applicants was accepted despite the paucity of trade evidence but over 12 years user was shown. In the "Da Vinci" case however it is clear that the evidence was supported by trade evidence including details of advertising.

I agree that sales of US\$1.5m is more than "de minimis" and shows that some proportion of those members of the export trade involved in the export of such goods in Hong Kong were aware of the Opponents mark but with no information of promotional materials or advertising it is difficult to know with any degree of certainty the number of persons involved in the export market who would have been likely to encounter the mark.

I also take note of the fact that the Applicants' first user commenced a relatively short time after the Opponents' claimed first user and I do not believe I should ignore this. No instances of confusion have been produced as a result of the concurrent user of the marks.

I have noted the reference in the authorities and in Kerly to the earlier use of a mark by the applicants and the emphasis that has been laid on this when considering the opponents' reputation for the purposes of Section 11 of the United Kingdom Act of 1938 but I do not consider that earlier use by the applicants is a condition precedent in deciding on the question of the opponents' reputation so as to shift the onus onto the applicants particularly when the opponents' user or reputation is as in this case unsupported by documentary evidence.

In view of the lack of any supporting documentary evidence to establish the actual user and the number of persons in the export market involved in such sales I am not satisfied that the evidence actually produced by the Opponents does in fact establish that at the date of the Application a substantial proportion of those members involved in the whole of the export trade in watches and parts thereof in Hong Kong were aware of the Opponents' mark.

In arriving at this view I have taken into account not only the lack of any supporting documentary evidence but also the fact that as far as I am aware Hong Kong has for some years had a large export market in respect of watches manufactured here and exported and consequently I would consider there must be a large number of persons involved in the business of exporting such items. I note for example in the 1980 Yellow Pages of the

Telephone Directory some 12 pages are devoted to subscribers under the various heading of "Watch Case Makers" "Watch and Clock Makers Sundries" "Watch Makers and Importers" "Watch Strap Makers" and "Watches and Clocks" many of them advertising themselves as "manufacturers and exporters".

I find therefore that the Opponents have not established by reputation or user that their mark "CRESTA" was known to a sufficient number of persons in the export trade in Hong Kong so as to shift the onus onto the Applicants to require them to establish that the user of their mark would not cause confusion.

I find therefore that the Opposition fails under S. 12(1).

I have considered whether I should exercise my general discretion under S. 13(2) of the Trade Marks Ordinance to refuse the Application. In view of the evidence in this case, and in particular the fact that there is no evidence to show that the Applicants adopted or copied the Opponents' mark, and in all the circumstances of this case I do not consider I should exercise such discretion.

The Opposition having failed I therefore accept the mark "CREST" for registration in accordance with the Application.

I find that the Applicants are entitled to an award of costs, that any representation which either party may wish to make as to the amount of those costs will be considered if received within one month from the date of this Decision and that failing such representation or subject to any such representation calling for special treatment, costs will be calculated in the usual scale.

Aveil C. Waters.

A.C. Waters (Miss)
Ag. Deputy Principal Solicitor
30th September 1982