

TRADE MARKS ORDINANCE (Cap. 559)

APPLICATION NO.: 300254187
MARK: **NATURAL DISPLAY**
CLASS: 9
APPLICANT: CASIO KEISANKI KABUSHIKI KAISHA (CASIO
COMPUTER CO., LTD.)

STATEMENT OF REASONS FOR DECISION

Background

1. On 22 July 2004, Casio Keisani Kabushiki Kaisha (Casio Computer Co., Ltd.) ("the Applicant") applied to register the mark "**NATURAL DISPLAY**" ("the subject mark") in Class 9.
2. After amendment of the specification, the goods for which registration is sought are electronic calculators.
3. At the examination stage, objections were raised against the application under section 11(1)(b) and (c) of the Trade Marks Ordinance (Cap.559) ("the Ordinance").
4. The applicant requested a registrability hearing which took place before me on 30 September 2005. The applicant was represented by Mr. Rodney Goh of Deacons. I reserved my decision at the end of the hearing.
5. The applicant did not file any evidence of use of the mark. I therefore only have the *prima facie* case to consider.

The relevant provisions

6. Section 11 of the Ordinance provides that :
 - "(1) Subject to subsection (2), the following shall not be registered-
 - (a) signs which do not satisfy the requirements of section 3(1) (meaning of "trade mark");
 - (b) trade marks which are devoid of any distinctive character;
 - (c) trade marks which consist exclusively of signs which may serve, in

- trade or business, to designate the kind, quality, quantity, intended purpose, value, geographical origin, time of production of goods or rendering of services, or other characteristics of goods or services; and
- (d) trade marks which consist exclusively of signs which become customary in the current language or in the honest and established practices of the trade."

Decision

7. The subject mark comprises the words "NATURAL DISPLAY" in plain block capital letters. The words "NATURAL" and "DISPLAY" are ordinary words with dictionary meanings. According to Collins English Dictionary (Third Edition Updated 1995), the meanings of the word "NATURAL" include, inter alia, "*not constrained or affected; genuine or spontaneous; following or resembling nature or life; lifelike*". According to the same dictionary, the word "DISPLAY" means "*Electronics. a. a device capable of representing information visually, as on a cathode-ray tube screen. b. the information so presented*".
8. The term "NATURAL DISPLAY" as a whole means a visual representation of something real or lifelike or a device capable of presenting and showing information in a normal or real manner.

Section 11(1)(c) of the Ordinance

9. At the hearing, Mr. Goh submitted that the term "NATURAL DISPLAY" may be objectionable for goods that display pictures and images but after restriction of the specification to "electronic calculators", the term is not so descriptive of the said goods. He further submitted that the word "natural" is not ordinarily used to describe numbers and one would not describe a number as "true to life". In support of his submissions, Mr. Goh claimed that a search on the term "NATURAL DISPLAY" and "calculator" indicate that all the search results refer to the Applicant. Copies of the Internet searches were produced to me at the hearing.
10. When the term "NATURAL DISPLAY" is considered as a whole, it directly refers to goods that can show images or information in a natural or normal way. Mr. Goh's submission that the word "natural" is not the usual way of describing numbers does not assist. In *Wm. Wrigley Jr. Company v OHIM* (Case-191/01P)

(the '*DOUBLEMINT*' case), the European Court of Justice, on clarifying the interpretation of Article 7(1)(c) of Council Regulation (EC) No.40/94 (which is broadly similar to section 11(1)(c) of the Ordinance) stated the following at paragraph 32 of the decision:

"In order for OHIM to refuse to register a trade mark under Article 7(1)(c) of Regulation No 40/94, it is not necessary that the signs and indications composing the mark that are referred to in that article actually be in use at the time of the application for registration in a way that is descriptive of goods or services such as those in relation to which the application is filed, or of characteristics of those goods or services. It is sufficient, as the wording of that provisions itself indicates, that such signs and indications *could be used* for such purposes. A sign must therefore be refused registration under that provision if at least one of its possible meanings designates a characteristic of the goods or services concerned."

11. Based on the above statement, marks that are objectionable under Article 7(1)(c) of the Council Regulation do not have to be the 'normal way' of describing the goods and services sought for registration. The fact that the mark *could be used* or "*may serve*" to designate the characteristics of goods or services is sufficient.
12. Electronic calculators are devices for mathematical calculations with a display screen. Nowadays some electronic calculators have bigger screens and additional functions that can enable the user to input and display graphs, fractions, mathematical symbols, integrals, differentials, equations and other mathematical expressions etc.
13. I note from the internet searches submitted by Mr. Goh that the Applicant itself uses the term "NATURAL DISPLAY" in a descriptive sense for example:

[Casio Calculators product section. List of Casio Calculators](#)

Casio Calculators full product details. List out all Calculators from Casio UK.

...simplifying mathematics with our latest **Natural Display** technology...

www.casio.co.uk/prod/product_landing.asp?LinkID=33

[CASIO \[Casio - The Unexpected Extra\] - USA](#)

Includes a large, 21-character x 8-line graphing **calculator** with on-screen, ...

1.5MB flash memory, **natural display** capability and a PC Emulator. \$79.99 ...

[http://www.casio.com/index.cfm?fuseaction=products.section&catalog=Calculators
§ion=Graphing](http://www.casio.com/index.cfm?fuseaction=products.section&catalog=Calculators§ion=Graphing)

14. When the term "NATURAL DISPLAY" is used in relation to electronic calculators, it immediately conveys the message that the calculators can display figures, graphs, fractions, mathematical symbols, integrals, differentials, equations and other mathematical expressions etc in the normal or natural way as one would expect to see in writing or in mathematical texts.
15. To my mind, being a descriptive term, "NATURAL DISPLAY" is an apt and appropriate term that other traders of electronic calculators or devices may wish to use to describe their calculators or devices that can display information in a normal or natural way.
16. Although the internet searches on the term "NATURAL DISPLAY" and "calculators" submitted by Mr. Goh all refer to the applicant, this does not mean that other traders may not wish to use the term in future. Mr. Geoffrey Hobbs Q.C., as the Appointed Person, stated in *Cycling Is...* [2002] R.P.C. 37 at paragraph 31, that the words "*may* serve in trade to designate... the characteristics of goods or services" in Article 3(1)(c) of Council Directive 89/104 and in section 3(1)(c) of the Trade Marks Act 1994 (which is very similar to section 11(1)(c) of the Ordinance) allowed for a degree of foreseeability in the application of the exclusion from registration contained in Article 3(1)(c)/section 3(1)(c)". At paragraph 32 of the decision, he stated, "I see no reason why the exclusion from registration contained in Article 3(1)(c)/section 3(1)(c) should make no allowance for the advent of new forms of descriptive expression."
17. Apart from the term "NATURAL DISPLAY", there is no stylization or other elements in the subject mark to bestow it with distinctiveness.
18. For the above reasons, I am of the view that the subject mark consists exclusively of signs which may serve, in trade or business, to designate a characteristic of goods and the subject mark is therefore precluded from registration by section 11(1)(c) of the Ordinance.
19. As section 11(1)(b) of the Ordinance operates as a separate and independent ground of objection, I turn to consider whether the subject mark is also objectionable under this section.

Section 11(1)(b) of the Ordinance

20. This section precludes from registration marks which are devoid of any distinctive character.

21. In *British Sugar Plc v James Robertson and Sons Ltd* [1996] R.P.C. 281 at page 306, Jacob J said:

"What does devoid of distinctive character mean? I think the phrase requires consideration of the mark on its own, assuming no use. Is it the sort of word (or other sign) which cannot do the job of distinguishing without first educating the public that it is a trade mark?"

22. The approach to assessing distinctiveness was further discussed in *Nestle SA's Trade Mark Application (Have a Break)* [2004] F.S.R. 2 (at paragraph 23):

"The distinctiveness to be considered is that which identifies a product as originating from a particular undertaking. Such distinctiveness is to be considered by reference to goods of the class for which registration is sought and consumers of those goods. In relation to the consumers of those goods the court is required to consider the presumed expectations of reasonably well informed, and circumspect consumers."

23. Based on the above legal principles, I must assess the subject mark's distinctiveness by reference to electronic calculators and from the perspective of the relevant consumer, which in my view, is the general public.

24. To my mind, when the general public encounter the term "NATURAL DISPLAY" in relation to electronic calculators they will merely perceive the term as indicating the capability of the calculators to display data or information in a natural or normal way or as a description of the special feature/characteristic of the calculator and not as an indication of the trade origin.

25. As I stated in paragraph 15, the term "NATURAL DISPLAY" is an apt and appropriate term that is equally applicable as a description for goods with similar characteristics of other undertakings. Accordingly, the subject mark would not enable the relevant consumers to distinguish the applicant's goods from similar goods provided by other undertakings, unless and until the consumers are educated of the trade mark function of the term.

26. My conclusion is that the subject mark is unlikely to be perceived by the relevant consumer as an indication of trade origin and it is thus devoid of any distinctive

character. The subject mark is therefore precluded from registration under section 11(1)(b) of the Ordinance.

Foreign registrations of the subject mark

27. Mr. Goh informed me at the hearing that the subject mark has been accepted for registration in respect of the original specification in the U.K., Germany, France and Taiwan. Copies of the relevant registration certificates were submitted at the hearing.
28. I have considered the foreign registrations of the subject mark. National trade mark rights are territorially limited and granted independently of each other. The bare fact of registration in other jurisdictions is not sufficient to establish that a sign is eligible for registration here (*Automotive Network Exchange Trade Mark* [1998] R.P.C. 885). In view of the aforesaid reasons for objection, I am not prepared to accept the subject mark based on the foreign registrations.

Conclusion

29. In this decision I have considered all the documents filed by the applicant and all the arguments submitted in relation to this application. For the reasons given, I refuse the application under section 42(4)(b) of the Ordinance as the subject mark is debarred from registration under section 11(1)(b) and (c) of the Ordinance.

Theresa S.Y. Mak
for Registrar of Trade Marks
15 November 2005