

**TRADE MARKS ORDINANCE (Cap. 559)**  
**OPPOSITION TO TRADE MARK APPLICATION NO. 300386631**

MARK:



CLASS: 14

APPLICANT: CHEN QINGDONG

OPPONENT: CHOW TAI FOOK JEWELLERY COMPANY LIMITED

**STATEMENT OF REASONS FOR DECISION**

**Background**

1. On 16 March 2005, Chen Qingdong (the “applicant”) filed an application (the “subject application”) under the Trade Marks Ordinance, Cap. 559 (the “Ordinance”) for registration of the mark, which is represented above (the “suit mark”), in Class 14 in respect of “alloys of precious metal; objects of imitation gold; sacred vessels of precious metal; precious stones; works of art of precious metal; ornaments of jewellery; trinkets of jewellery; pearls of jewellery; jade” (the “specified goods”).

2. Particulars of the subject application were published on 10 June 2005. Chow Tai Fook Jewellery Company Limited (the “opponent”) filed a notice of opposition which includes the grounds of opposition on 24 August 2005.

3. The opposition hearing took place before me on 28 April 2009. Mr. Philips B.F. Wong, counsel, instructed by Li & Partners, Solicitors, appeared for the opponent. The applicant did not appear at the hearing.

## **Grounds of opposition**

4. In the grounds of opposition, the opponent opposes registration of the suit mark under sections 11(5)(b), 12(3) and 12(5) of the Ordinance.

## **Counter-statement**

5. The applicant filed a counter-statement on 24 November 2005. This is replaced by an amended counter-statement filed on 16 March 2006. The latter is of the same contents as the former except for the application number of the subject application appearing in paragraph 2 thereof, restated to replace the previous incorrect one which was obviously due to a clerical mistake. The main argument in the counter-statement is that the suit mark is not similar to the opponent's earlier marks as specified in the grounds of opposition in meaning, pronunciation and shape, so use of the suit mark would not cause any confusion or inconvenience to the public.

## **The opponent's evidence**

6. The opponent's evidence is the only evidence in the proceedings. This comprises a statutory declaration of Koo Tong Fat dated 24 October 2006 ("Mr. Koo's statutory declaration"). Mr. Koo is the Executive Director of the opponent. He has been employed by the opponent since 1985 and deposes to be fully acquainted with its business and history.

7. The opponent was incorporated in Hong Kong on 6 March 1961 and maintains a registered office in Hong Kong. According to Mr. Koo, the opponent was incorporated to take up the business and goodwill formerly generated and carried on under the trading name "Chow Tai Fook 周大福". "Chow Tai Fook 周大福" was founded by one Mr. Chow Chi Yuen (周至元) in Guangzhou in 1929. The first office in Hong Kong was established in 1939. It is claimed that at all material times, both the opponent and its predecessor carried on and the opponent still carries on

business in the design, production, development, marketing and trading of jewellery products, products or alloys made of gold or precious stones, jade and other related products (hereinafter referred to generally as “jewellery and related products and services”) under or by reference to the English marks “CTF” and “Chow Tai Fook” and the Chinese mark “周大福”, “CTF” being the abbreviation of “Chow Tai Fook”. Since about March 2004, the opponent has started to use a device mark (hereinafter referred to as “the opponent’s device mark”) which is represented below:-



in addition to the word marks “CTF”, “Chow Tai Fook” and “周大福”. The opponent’s device mark is said to be designed by the in-house design team of the opponent in or about 2004.

8. The opponent has registered its marks “CTF”, “Chow Tai Fook” and “周大福” as well as the opponent’s device mark in Hong Kong under a number of classes of goods and services, all in relation to jewellery and related products and services. It has also registered these marks in the People’s Republic of China (the “PRC”) and Taiwan in relation to jewellery and related products and services.

9. It is claimed that throughout the years, the opponent’s marks “周大福”, “Chow Tai Fook” and “CTF” have been extensively promoted, advertised and used in respect of jewellery and related products in Hong Kong and in Guangzhou of the PRC. The opponent’s device mark was first used in Hong Kong and in the PRC in or about March 2004. Mr. Koo deposes that the opponent currently operates 39 retail shops in Hong Kong and 4 retail shops in Macau, selling, offering for sale and/or promoting jewellery and related products under or by reference to these marks. The names, addresses and opening dates of these totally 43 shops are set out in paragraph 10 of Mr. Koo’s statutory declaration; the majority of them were opened well before 2005. The amount of sales through the shops in Hong Kong is said to have exceeded HK\$3,000,000,000 in each of the fiscal years 2002-2003, 2003-2004 and 2004-2005, and the expenditure on advertising and/or marketing ranges from HK\$14,000,000 to HK\$24,000,000 annually during those years.

10. Mr. Koo further deposes that the opponent currently operates 290 retail shops in the mainland, selling, offering for sale and/or promoting jewellery and related products under or by reference to these marks. The majority are said to be opened before 16 March 2005 (i.e., the application date for the subject application).

11. The opponent's marks are alleged to have been used on the packaging boxes and bags of the opponent and in the letterheads, invoices, guarantee certificates and other documents and materials in the ordinary course of business of the opponent. The opponent advertised its products under or by reference to its marks through advertisements placed in various magazines and newspapers, and on buses, MTR, KCR, bus-stops, etc. The opponent has also promoted and advertised its marks on its website since July 1997.

12. Exhibits to Mr. Koo's statutory declaration are listed and described below:-

KTF-1 – Certificate of Incorporation and an Annual Return (filed in 2005) of the opponent.

KTF-2 – a booklet setting out the brief history and background information of the opponent and its business.

KTF-2B – a document detailing the history and business of the opponent and the meaning behind the design of the opponent's device mark.

KTF-3 to

KTF-10 – Certificates of Registration issued by the Registrar in respect of the marks "CTF", "周大福" and the opponent's device mark.

KTF-11 – Certificates of Registration issued by the Registrar in respect of other marks owned by the opponent. I do not consider these marks to be relevant to the present proceedings.

- KTF-12 – Certificates of Registration issued by PRC authorities in respect of the marks “CTF”, “Chow Tai Fook”, “周大福” and the opponent’s device mark.
- KTF-13 – photographs showing use of the opponent’s marks inside and outside some of the opponent’s retail shops in Hong Kong and Macau.
- KTF-14 – printout from the opponent’s website of particulars of the opponent’s retail shops in the PRC.
- KTF-15 – photographs showing use of the opponent’s marks inside and outside some of the opponent’s retail shops in the PRC.
- KTF-16 – photographs showing use of the opponent’s marks on packaging boxes and bags of the opponent.
- KTF-17 – advertising materials of the opponent, such as brochures and magazines, on which the opponent’s marks appear.
- KTF-18 – advertisements showing the opponent’s marks placed in magazines and newspapers in Hong Kong and Macau over the years from 1999 to 2003.
- KTF-19 – photographs showing use of the opponent’s marks in advertisements that were displayed on buses and at public places such as MTR or KCR stations.
- KTF-20 – photographs showing the opponent’s sponsorship of some public events.
- KTF-21 – printout showing use of the opponent’s marks on its website.
- KTF-22 – documents showing some awards the opponent received.

13. The rest of Mr. Koo's statutory declaration contains comments about the applicant and the suit mark, and its comparison with the opponent's trade marks, which in the main consists of Mr. Koo's own observation and submissions. I do not propose to summarize them but would refer to the relevant parts as and when appropriate.

## **Decision**

14. There are three grounds of opposition (see paragraph 4 above) pleaded by the opponent against the subject application. At the hearing, Mr. Wong, counsel for the opponent, focused much of the opponent's case on the ground based on section 11(5)(b) of the Ordinance. I shall therefore deal with this ground first.

### **Section 11(5)(b)**

15. Section 11(5)(b) of the Ordinance provides that a trade mark shall not be registered if the application for registration of the trade mark is made in bad faith. The term "bad faith" is not defined in the Ordinance.

16. In *Gromax Plasticulture Ltd v Don & Low Nonwovens Ltd* [1999] R.P.C. 367 at 379, Lindsay J. said in relation to section 3(6) of the U.K. Trade Marks Act 1994 (equivalent to section 11(5)(b) of the Ordinance):

"I shall not attempt to define bad faith in this context. Plainly it includes dishonesty and, as I would hold, includes also some dealings which fall short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the particular area being examined. Parliament has wisely not attempted to explain in detail what is or is not bad faith in this context: how far a dealing must so fall-short in order to amount to bad faith is a matter best left to be adjudged not by some paraphrase by the courts (which leads to the danger of the courts then construing not the Act but the paraphrase) but by reference to the words of the Act and upon a regard to all material surrounding circumstances."

17. In *Harrison v Teton Valley Trading Co (CHINAWHITE)* [2005] F.S.R. 10, the Court of Appeal in the United Kingdom said (at paragraph 26):

“The words “bad faith” suggest a mental state. Clearly when considering the question of whether an application to register is made in bad faith all the circumstances will be relevant. *However the court must decide whether the knowledge of the applicant was such that his decision to apply for registration would be regarded as in bad faith by persons adopting proper standards.*” (Emphasis added)

18. Further, in *Ajit Weekly Trade Mark* [2006] RPC 25, the Appointed Person said,

“The subjective element of the test means that the tribunal must ascertain what the defendant knew about the transaction or other matters in question. It must then be decided whether in the light of that knowledge, the defendant’s conduct is dishonest judged by ordinary standards of honest people, the defendant’s own standards of honesty being irrelevant to the determination of the objective element.”

19. The position is best summarised more recently in the following passage in *Melly’s Trade Mark Application (Oppositions of Fianna Fail and Fine Gael)* [2008] E.T.M.R. 41, where the same Appointed Person who presided in *Ajit Weekly Trade Mark* said:

“**53** The mental element required for a finding of bad faith has been much discussed. The discussion has centred on the test for determining dishonesty in English law, that is to say the “combined test” as explained by the House of Lords in *Twinsectra Ltd v Yardley* and clarified by the Privy Council in *Barlow Clowes International Ltd (In Liquidation) v Eurotrust International Ltd*. In her decision in *Ajit Newspaper Advertising Marketing & Communications Inc’s Trade Mark* (No.2283796) Professor Annand considered whether the “combined test” makes it necessary to give effect to the applicant’s belief in the propriety of his own behaviour when deciding whether he applied for registration in bad faith. She said not, on the basis that his own perception of propriety could not provide a conclusive answer to the question whether he actually had applied for registration in bad faith. I agree with her analysis. It supports the view that the relevant determination must ultimately be made “on the basis of objective evidence” rather than upon the basis of

evidence as to the beliefs and opinions of the applicant with regard to the propriety of his disputed application for registration. I note in this connection that in the *Harrison v Teton Valley Trading Co Ltd--CHINA WHITE* the Court of Appeal upheld the Hearing Officer's finding of bad faith: (1) notwithstanding that the applicant for registration had deposed to the fact that he "recognised no bad faith in my decision to develop and market the drink CHINA WHITE" and was not cross-examined on the evidence he had given; and (2) notwithstanding that the Registrar's Hearing Officer had accepted the applicant's evidence and concluded that at the date of the disputed application for registration the applicant "saw nothing wrong in his own behaviour". (footnotes omitted)

20. The opponent pleads, in relation to the ground of opposition founded on bad faith, the following:

- (a) The opponent enjoys substantial reputation and goodwill in respect of the opponent's marks, hence the applicant must have knowledge of the opponent's marks.
- (b) The suit mark is made up of the following three elements, each of which is alleged to be specifically tailor-designed to copy one of the opponent's marks:-
  - (i) a device referred to by the opponent in the grounds of opposition as a "C" device – which is allegedly similar to the opponent's device mark;
  - (ii) the letters "CFF" – which are allegedly similar to the opponent's mark "CTF"; and
  - (iii) the Chinese characters "周六福" – which are allegedly similar to the opponent's mark "周大福".
- (c) The goods in respect of which the suit mark is sought to be registered are identical or similar to those under which the

opponent's marks are registered. I do not see there is any dispute to that and I find the specified goods to be covered by the previously defined term "jewellery and related products and services".

21. I have outlined the unchallenged evidence of the opponent at paragraphs 6 to 13 above. The Chinese mark "周大福" as well as its English counterpart "Chow Tai Fook" had been taken from the company and trading name of the opponent, namely, "周大福珠寶金行有限公司 Chow Tai Fook Jewellery Company Limited". In view of their long history and the fact that they had been extensively used and advertised in relation to jewellery and related products and services, to say the least, the "周大福" and "Chow Tai Fook" marks had been conspicuously displayed outside and inside the opponent's many retail shops scattered over various regions in Hong Kong, the marks had over the years established themselves as a leading jewellery brand in Hong Kong well before the applicant filed the subject application in 2005. By expansion of its retail networks in the Greater China Region since the 1990s, the opponent had also built up there substantive reputation and goodwill in the marks. All these were borne out by the materials contained in the exhibits to Mr. Koo's statutory declaration. I don't think I need to go into the details of those.

22. Mr. Koo in his statutory declaration deposes that the opponent's device mark had been in use since 2004. Materials in the exhibits to Mr. Koo's statutory declaration show that the device mark had been used alongside the "周大福" and "Chow Tai Fook" marks. Amongst the various forms of combined use of these three marks, the following combination mark, which was designed to commemorate the 75th anniversary of the opponent in 2004, appears to have been widely used by the opponent in or around 2005 in Hong Kong and in the PRC in its advertising materials and as a corporate logo displayed in its retail shops:-



(hereinafter referred to as the "75th anniversary mark"). The above mark clearly demonstrates that in so far as the opponent's device mark is concerned, even if it had not been used alone on its own, its use as part of a combination comprising the well established "周大福" and "Chow Tai Fook" marks means that it will get instant cognizance or reputation as one of the opponent's marks.

23. As regards the “CTF” mark, insofar as the evidence can show, it was said that it has been used since 2001 in the form of “ctf2” or “ctf.2” to designate a new line of jewellery products of the opponent’s targeting the younger generation of customers, or the second generation as the opponent would call them. On the evidence, the earliest use I could find is in a newspaper advertisement in 2002 where “ctf.2” appears in proximity to but is otherwise independent of the “周大福” and “Chow Tai Fook” marks. Again due to the overwhelming impact and influence of the “周大福” and “Chow Tai Fook” marks, I accept that people would have come to instant cognizance of this being another mark used by the opponent to designate its jewellery business. Such kind of lineage bestowed upon the “CTF” mark means that reputation and goodwill in the mark could quickly build up. Indeed I find sufficient use of this mark in or around 2005 to conclude that reputation and goodwill had been established by the time the applicant filed the subject application.

24. I have no doubt that as of the day the subject application was filed, the opponent had been enjoying substantial reputation and goodwill in the opponent’s marks, in Hong Kong as well as in the PRC. Though the respective reputation and goodwill of the different marks comprising the opponent’s marks vary in extent with respect to one another, of which no doubt the Chinese mark “周大福” and the English mark “Chow Tai Fook” have the most prominence, I am of the view that any combination of these marks, as long as either “周大福” or “Chow Tai Fook” forms part thereof, will have the opponent’s reputation and/or goodwill in it.

25. Such reputation and/or goodwill of the opponent would naturally mean that the applicant, admittedly having been in the same field of business as the opponent’s since 2004 when it filed its first trade mark application to register in Hong Kong one of its many marks in relation to jewellery and related products and services (as so alleged in paragraph 3 of the counter-statement), must have known of the opponent’s marks when it made the subject application. This is indeed the basis on which the opponent grounded its assertion of knowledge on the part of the applicant, and I agree that the overwhelming evidence of reputation and goodwill of the opponent’s marks is sufficient on its own to give rise to a strong inference of such knowledge.

26. Having said that, in my view, in addition, a reasonable inference can be drawn from the surrounding circumstances taken as a whole that the applicant was

aware of the opponent's marks at the time he filed the subject application. In the counter-statement, which is the only document the applicant had filed in these proceedings, Mr. Chen Qingdong, the applicant himself who has an address in Putian City Fujian, China, gives it away in the following manner hints of his knowledge.

27. Firstly, he does not deny any such awareness. It would have been a simple matter to do so, and odd that he did not if in fact he really had had no such awareness.

28. Secondly, he has offered no explanation as to how he came to adopt the suit mark. If the mark had been independently coined that would have been a powerful indication that there was no bad faith involved in making the subject application.

29. Thirdly, the collective force of the applicant's own statements points to his awareness of the opponent's marks. I say this because the applicant is clearly not unaware of matters to do with intellectual property rights. He argues that each of the constituent elements of the suit mark is not similar to the allegedly similar corresponding opponent's mark in terms of meaning, pronunciation or shape. Then, having made the argument, the applicant, perhaps inadvertently, added that:- "In addition, "CFF 周六福 & DEVICE", as a whole, is applied for trademark registration. It is not [*applied*] for registration separately." This, in my view, bespeaks his awareness right at the very beginning that each constituent element of the suit mark resembles one way or the other one of the opponent's marks, and he just took his chance, or being firmly in his belief, that the combination of those elements would surpass objection.

30. The surrounding circumstances I have described above, I accept, are collateral indications only as strictly speaking they are not evidence. But, taken as a whole against the backdrop of overwhelming evidence of reputation and goodwill of the opponent's marks, I have no doubt that there is awareness on the applicant's part of the opponent's marks.

31. I must next examine the claims that each of the three constituent elements making up the suit mark resembles one of the opponent's marks.

32. The “C” device in the suit mark is alleged to be similar to the opponent’s device mark. As I perceive it, the so called “C” device is actually an irregular geometrical design in the shape of the letter C which has a thick middle section, with the upper and lower curves prolonging towards their respective edges by gradually getting thinner and finishing by a point, the upper curve being much elongated than the lower curve. On the other hand, the opponent’s device mark consists of two shapes, each of which I would liken it also to a C-shaped design, the smaller one being encapsulated inside the larger one. The inner and smaller C-shaped design is just similar in all respects to the “C” device I have described. As regards the larger C-shaped design, it is like a flattened out letter C in the form of an ellipse, being thickest at the middle with the curves gradually getting thinner, but unlike the smaller design its upper and lower halves are perfectly symmetrical. As a whole the only difference between the “C” device in the suit mark and the opponent’s device mark is therefore that the former comprises one whereas the latter comprises two C-shaped design(s). I do not find the difference a matter of significance — irrespective of which device one is talking about, the overall idea and impression left in the minds of the average consumers would be something taking the shape of the letter “C” nevertheless. The “C” device in the suit mark is therefore more similar than it is different to the opponent’s device mark.

33. I next consider the three-letter combination “CFF” in the suit mark, which is alleged to be similar to the opponent’s mark “CTF”. Obviously between them they share the same first and third letters in the respective combinations. The only difference is in the second letter, an “F” in the suit mark, and a “T” in the opponent’s mark. Visually, “F” is easily confused with “T”. Although phonetically, “F” is distinguishable from “T”, reading either combination as a whole by its constituent alphabets (as the combinations are not pronounceable), people would tend to pay more attention to the first as well as the last alphabets than the middle one. I find “CFF” and “CTF” visually and phonetically similar.

34. I finally turn to the Chinese characters “周六福” in the suit mark, which are allegedly similar to the opponent’s mark “周大福”. Just like the case of letter combinations discussed above, the two terms each comprises three Chinese characters sharing between them the same first and third characters. The only difference is in the second character, viz., “六” in the suit mark, and “大” in the opponent’s mark.

Visually, “六” is easily confused with “大”. Phonetically, although “六” is distinguishable from “大”, reading “周六福” and “周大福” as whole terms, people would pay more attention to the first as well as the last sounds, and, I suspect, there is a tendency for the sound of the second character to be slurred. I find “周六福” and “周大福” visually and phonetically similar.

35. Summarizing from the above, the suit mark is comprised entirely of elements each of which is shown to be similar to one of the opponent’s marks.

36. As stated above, when considering the question of whether an application to register is made in bad faith, all the circumstances will be relevant, and the court must decide whether the knowledge of the applicant was such that his decision to apply for registration would be regarded as in bad faith by persons adopting proper standards (*Harrison v Teton Valley Trading Co (CHINAWHITE)*). I have already discussed and assessed the possible knowledge of the applicant, but this is not the end of the matter. What must be further decided is whether in the light of the applicant’s knowledge, the applicant’s conduct is dishonest judged by ordinary standards of honest people, the applicant’s own standards of honesty being irrelevant to the determination of the objective element (see paragraph 18 above).

37. By the time the applicant brought the subject application to register the suit mark in relation to the specified goods the opponent’s marks were well-established and had reputation both in Hong Kong and in the PRC where the applicant has a residence. As I found, the applicant would have known of the opponent’s marks. Objectively speaking, one could have thought that the “C” device is not an extraordinary device, or “CFF” is comprised of letters that are of simple style and design, the applicant, even with knowledge of the opponent’s marks, could well by chance or unintentionally have come upon the similar device, or the similar letter combinations, when coming upon the design of the suit mark. But one could hardly believe that the applicant had come upon both coincidences at the same time merely by chance. Moreover, “周六福” is certainly not in this category of coincidence as it is not something one can randomly or unintentionally conjure up. It must be that the suit mark was coined consciously and deliberately by adopting the opponent’s marks.

38. I may as well add here an observation submitted by Mr. Wong as further indication of the applicant's attempt to mimic the opponent's marks. On the one hand, the opponent's mark had been chosen at a time when the opponent was using "周大福" and its English transliteration "Chow Tai Fook" as its trade names and trade marks. The letters "CTF" were genuinely derivable from the opponent's trade names and trade marks "Chow Tai Fook 周大福". On the other hand, there is no first hand or definitive explanation from the applicant as to how he came upon "CFF", and why he adopt it instead of the more logical "CLF" deriving from the English transliteration of "周六福" which is a prominent element of the suit mark. As I see it, in visual and phonetic terms, "CFF" is closer to "CTF" than "CLF" is.

39. I am of the view that the suit mark had been copied in whole from the opponent's marks. It is not a simple incident of one mark which happens to be similar to another mark, but a strange coincidence of one mark entirely made up of attributes of three individual marks all come from a single unrelated third party. This could not have happened as an accident. Given the reputation and goodwill of the opponent's marks in jewellery and related products and services, it is very likely that deception or confusion will be caused with the opponent's marks, or that purchasers or potential purchasers of the specified goods might believe they were products of the opponent.

40. Looking at matters in the round, the applicant has put down in the counter-statement that the reason for applying to register the suit mark is, in his own words, "making his own jewellery brand culture". In furtherance of his objective, however, the applicant targeted the opponent company and took the essence of the opponent's marks for the purpose of registering them as a single mark, viz., the suit mark. The only conclusion I could draw is that the applicant must have copied the opponent's marks with the intent of implementing a design to mislead or deceive another into believing that the goods supplied under the suit mark come from the opponent, so as to get advantages of the distinctive character and repute of the opponent's marks, or some other sinister motives may have been involved.

41. What follows on from the above should be a conclusion of bad faith. However, in case I am wrong on the deceitful intent of the applicant, as the case might be, the applicant might have truly believed that the suit mark coined in his way is

open and available for registration in Hong Kong on a first-come, first-served basis, given that the opponent does not seem to have registered a combined mark like the 75th anniversary mark that they have used. But even so, I still do not think the Ordinance could be used in this way by the applicant to claim protection in relation to the suit mark and the specified goods, in the circumstances existing at the date of application for registration. As the Appointed Person of the UK Registry said in *Daawat Trade Mark* [2003] RPC 11 in relation to section 3(6) of the Trade Marks Act 1994 of UK (which is similar to section 11(5)(b) of the Ordinance):-

“**88** The second respondent is entitled on the basis of these findings to say that the respondent’s conduct in applying for registration of the trade mark DAAWAT under the 1994 Act was not consciously dishonest. However, that does not appear to me to be an answer to the objection raised against the relevant application under s.3(6).

**89** I say that, because I do not consider that Art.3(2)(d) of the Directive and its counterpart, Art.51(1)(b) of the Community Trade Mark Regulation, exist for the purpose of rendering applications for registration acceptable if they are not consciously dishonest. In my view, they exist for the purpose of ensuring that the opportunity to apply for registration is not abused by applicants claiming protection which they could not in good faith request or invoke, in relation to the relevant mark and specification of goods or services, in the circumstances existing at the date of application for registration. I do not believe that the “combined test” of dishonesty must necessarily be satisfied before an objection under s.3(6) can be taken to have been made out.”

42. The above means that the applicant’s subjective perceptions cannot excuse or justify his conduct in connection with the subject application. In any event, the question I need to ask is: - in the light of the knowledge the applicant had in 2005 in respect of the opponent’s marks, did the applicant’s conduct in filing the application for registration of the suit mark fall short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the jewellery industry in Hong Kong?

43. I have no doubt that his conduct did. I conclude that the application for registration was made in bad faith and should be rejected.

### **Other grounds of opposition**

44. As I have found in favour of the opponent on the ground of opposition under section 11(5)(b) of the Ordinance, it is not necessary for me to consider the other grounds of opposition.

### **Conclusion**

45. For the reasons stated above, the subject application is refused under section 11(5)(b) of the Ordinance. Section 87(1) of the Ordinance provides that the Registrar may, in proceedings before him under the Ordinance, by order award to any party such costs as he may consider reasonable.

46. As the opposition has succeeded, I award the opponent costs. Subject to any representations, as to the amount of costs or calling for special treatment, which either the opponent or the applicant may make within one month from the date of this decision, costs will be calculated with reference to the usual scale in Part I of the First Schedule to Order 62 of the Rules of the High Court (Cap. 4A) as applied to trade mark matters, unless otherwise agreed.

(Frederick Wong)  
for Registrar of Trade Marks  
22 October 2009