

TRADE MARKS ORDINANCE (CAP. 559)

OPPOSITION TO TRADE MARK APPLICATION NO. 301922283

MARKS :

萬里追風油
萬里追風油

CLASS :

5

APPLICANT :

MR. CHI WING LIMITED AND LAW OI YING LIMITED TRADING AS SINGAPORE HEADWAY MEDICINE COMPANY

OPPONENT :

Singapore Medicine Co. Limited and Singapore Medicine (HK) Co. Limited trading as Singapore Medicine Co.

STATEMENT OF REASONS FOR DECISION

Background

1. On 20 May 2011 (“**Application Date**”), MR. CHI WING LIMITED AND LAW OI YING LIMITED TRADING AS SINGAPORE HEADWAY MEDICINE COMPANY (“**Applicant**”) filed an application (Application No. 301922283) (“**subject application**”) under the Trade Marks Ordinance (Cap. 559) (“**Ordinance**”) for registration of the following series of two marks (collectively, the “**Subject Marks**”):

萬里追風油

(“**Subject Mark A**”)

萬里追風油

(“**Subject Mark B**”)

Registration of the Subject Marks is sought in respect of “*Medicated oils; all included in Class 5*” (“**Subject Goods**”).

2. Particulars of the subject application were published on 8 March 2013.
3. Singapore Medicine Co. Limited and Singapore Medicine (HK) Co. Limited trading as Singapore Medicine Co. (“**Opponent**”) filed a notice of opposition on 7 June 2013 with a statement of grounds of opposition. In response, the Applicant filed a counter-statement on 5 September 2013. With leave from the Registrar, the Opponent filed an amended statement of grounds of opposition on 9 February 2015 (“**Amended Statement of Grounds**”). The Applicant filed an amended counter-statement on 17 April 2015 (“**Amended Counter-statement**”).
4. The Opponent’s evidence consists of a statutory declaration of Kou Wai Peng (“**Madam Kou**”) made on 5 March 2015 (“**Kou’s SD**”). Madam Kou is the director of Singapore Medicine Co. Limited and the company secretary of Singapore Medicine (HK) Co. Limited.¹
5. The Applicant’s evidence consists of a statutory declaration of Law Oi Ying (“**Madam Law**”) made on 3 June 2016 (“**Law’s 2016 SD**”), with various exhibits including (but not limited to) the following:
 - (a) Exhibit LOY-4: a copy of a statutory declaration of Madam Law made on 19 October 2005 (“**Law’s 2005 SD**”);
 - (b) Exhibit LOY-5: a copy of a statutory declaration of Ling Chong Yiu (“**Mr. Ling**”) made on 4 November 2009 (“**Ling’s SD**”); and
 - (c) Exhibit LOY-13: a copy of a statutory declaration of Madam Law made on 29 November 2012 (“**Law’s 2012 SD**”).
6. The opposition hearing took place before me on 23 and 26 July 2019. The Applicant was represented by Mr. John M.Y. Yan S.C. and Ms Ma On Ki, Counsel, instructed by Messrs. Mayer Brown. The Opponent was represented by Mr. Douglas Clark, Counsel, instructed by Messrs. Benny Kong & Tsai. I reserved my decision at the conclusion of the hearing.

¹ Kou’s SD, para. 1.

Grounds of opposition

7. In the Amended Statement of Grounds, the Opponent claims that it is the proprietor of:

- (a) the mark “千里追風油” and other marks incorporating the Chinese characters “千里” or “千里追風”;
- (b) the mark “萬里追風油” and other marks incorporating the Chinese characters “萬里” or “萬里追風”;
- (c) various registered marks, including the following three marks registered in respect of goods in Class 5:
 - (i) Trade Mark No. 300023732: “萬里” (“**Mark 1**”);
 - (ii) Trade Mark No. 300023796: “萬里追” (“**Mark 2**”); and
 - (iii) Trade Mark No. 300111617: “萬里驅風油” (“**Mark 3**”).

8. Particulars of Mark 1, Mark 2 and Mark 3 (collectively, the “**Opponent’s Cited Marks**”) are set out in **Annex 1** hereto.

9. A number of grounds were pleaded in the Amended Statement of Grounds. At the hearing, the Opponent only relied on the grounds under the following sections of the Ordinance:

- (a) section 11(1)(d);
- (b) section 12(3); and
- (c) section 12(5).

Relevant date

10. The relevant date for considering this opposition is the Application Date, i.e. 20 May 2011.

The parties and previous proceedings

11. The Applicant is a partnership between Mr. Chi Wing Limited and Law Oi Ying Limited, both of which were incorporated on 12 March 2010. Prior to these companies being incorporated and becoming partners in the Applicant, the partners in the Applicant were (i) the current sole director of Mr. Chi Wing Limited, namely Mr. Chi Wing, and (ii) the current sole director of Law Oi Ying Limited, namely Madam Law.²

12. The Opponent is a partnership between Singapore Medicine Co. Limited and Singapore Medicine (HK) Co. Limited, and the successor in title to the business of Singapore Medicine Co. (the “**Opponent’s Predecessor**”) which was acquired by the Opponent on 1 April 2013.³

13. There had previously been opposition proceedings (“**Previous Proceedings**”) in which the Applicant opposed an application (Application No. 300287172) filed by the Opponent’s Predecessor on 16 September 2004 to register the following mark in respect of “*medicated oil; Chinese herb oil; medicinal oils; Chinese herbal medicine; topical pharmaceutical cream; ointment; herbal compounds and extracts; herbal preparations for medicinal purpose; all included in Class 5*”:

萬
里
追
風
油

(“**Previous Mark**”).

By a decision dated 12 April 2011 (“**2011 Decision**”), the Registrar upheld the opposition. Law’s 2005 SD was filed by the Applicant in support of its opposition in the Previous Proceedings.

14. In the 2011 Decision, the Hearing Officer accepted the Applicant’s evidence that the Applicant started selling medicated oils under the name “金波士萬里追風油” in 1998, and had been so using that name up until the date of application for registration of the Previous Mark (i.e. 16 September 2004) or when the Applicant discovered in

² Law’s 2016 SD, paras 5-6.

³ Kou’s SD, para.1.

August 2004 that the Opponent's Predecessor had commenced selling medicated oils called "萬里追風油".⁴ The Opponent in the present proceedings does not dispute the fact that (a) the Applicant started using "萬里追風油" in 1998, and (b) the Opponent did not start using "萬里追風油" until 2004.

15. Shortly after the 2011 Decision, the Applicant filed the subject application. During the examination stage, the Registrar raised an objection under section 12(3) of the Ordinance against the subject application based on the three Opponent's Cited Marks. In response thereto, the Applicant filed Law's 2012 SD to request the Registrar to waive the citation of the Opponent's Cited Marks and allow the subject application to proceed on the basis of honest concurrent use. Having considered Law's 2012 SD, the Registrar allowed the subject application to proceed to publication.⁵

16. With the Opponent having filed the subject opposition against the subject application, it is for me to consider whether any of the grounds of opposition have been made out in the light of the evidence filed in these proceedings.

The Applicant and "萬里追風油"

17. According to Law's 2016 SD, the Applicant has since 1994 carried on the business in the manufacture, promotion and marketing of medicated oils, ointments, pharmaceutical preparations and dressings.⁶

18. According to Madam Law, following introduction of "千里追風油" in the market, she was later inspired by her customers to create the brand "萬里追風油",⁷ and commissioned Mr. Ling of a design company to design the packaging of products bearing the Subject Marks.⁸ In Ling's SD, Mr. Ling stated that in late 1995 or early 1996, pursuant to instructions from Madam Law, he designed packaging for the "萬里追風油" medicated oil product. Exhibit "LCY-1" to Ling's SD includes copies of his design drawings and an invoice dated 23 February 1996 stated to be in respect of the packaging for "金波士萬里追風油". At Exhibit "LCY-2" to Ling's SD is a copy of the finalized packaging design, which is the same as that appearing in Exhibit "LOY-5" to Law's 2005 SD as well as that in Exhibit "LOY-4" to Law's 2012 SD. A coloured and

⁴ 2011 Decision, para. 20.

⁵ Law's 2016 SD, paras 23-25.

⁶ Law's 2016 SD, paras 5-6.

⁷ Law's 2016 SD, para. 8; Law's 2005 SD, paras 4 to 7.

⁸ Law's 2016 SD, para. 9; Law's 2005 SD, para. 6.

clearer version of the same packaging design also appears at Exhibit “LOY-6” to Law’s 2016 SD, and is reproduced at **Annex 2** hereto. Madam Law stated in Law’s 2016 SD that the Applicant’s medicated oils bearing the Subject Marks were released in the market in 1998 and the Applicant had since then continued to sell medicated oils bearing the Subject Marks.⁹ A copy of the packaging reproduced at **Annex 2** hereto is exhibited to Law’s 2016 SD in the context of those statements. It therefore appears that the Applicant has since 1998 used essentially the same design of packaging as that appearing in **Annex 2** hereto.

19. In Law’s 2016 SD, Madam Law states that the following are the approximate annual revenue generated from the Subject Goods sold under the Subject Marks from 1998 to 2011:¹⁰

| Year | Approximate annual revenue (HK\$) |
|-------------|------------------------------------------|
| 1998 | 5,000 |
| 1999 | 9,000 |
| 2000 | 18,000 |
| 2001 | 30,000 |
| 2002 | 40,000 |
| 2003 | 60,000 |
| 2004 | 80,000 |
| 2005 | 199,800 |
| 2006 | 300,000 |
| 2007 | 400,000 |
| 2008 | 520,000 |
| 2009 | 600,000 |
| 2010 | 750,000 |
| 2011 | 888,000 |

20. Madam Law produces at Exhibit “LOY-7” to Law’s 2016 SD copies of selected receipts/sales invoices evidencing sales of the Applicant’s “萬里追風油” medicated oils. They include copies of a few receipts/invoices per year from 1998 to 2012. The earlier receipts/invoices bear the following header:



星加坡鴻威藥業公司
SINGAPORE HEADWAY MEDICINE CO.
 金波士
 系列產品

⁹ Law’s 2016 SD, para. 10.

¹⁰ Law’s 2016 SD, para. 11.

I consider that the average consumer of the relevant medicated oils would perceive such receipt/invoice as indicating that it is issued by the undertaking “Singapore Headway Medicine Co.” in respect of its “金波士” series of products. Receipts/invoices issued since around 2000 bear the following header:



星加坡鴻威藥業公司
SINGAPORE HEADWAY MEDICINE CO.

The relevant product is referred to in the receipts/invoices as “萬里追風油”, “金波士萬里追風油”, “田七萬里追風油” or occasionally as “老鼠萬里追風油”.

21. The revenue figures set out in para. 19 above may be compared with the following sales figures for products sold under the Applicant’s “金波士萬里追風油” mark set out in para. 8 of Law’s 2005 SD filed in the Previous Proceedings:

| Year | Approximate annual revenue (HK\$) |
|------|-----------------------------------|
| 1998 | 5,000 |
| 1999 | 9,000 |
| 2000 | 18,000 |
| 2001 | 30,000 |
| 2002 | 40,000 |
| 2003 | 60,000 |
| 2004 | 80,000 |

22. The figures set out in the table in the preceding paragraph are the same figures for the years 1998 to 2004 set out in the table at para. 19 above. It would therefore appear that the Applicant’s products sold under its “金波士萬里追風油” mark are the

萬里追風油 / 萬里追風油

same products sold under the Subject Marks . This is consistent with the finding that it appears that the Applicant has since 1998 used essentially the same design of packaging as that appearing in Annex 2 hereto (see para. 18 above). On that packaging, the Chinese characters “萬里追風油” appear vertically, whilst the Chinese characters “金波士” appear at the top. The Applicant’s name in Chinese “星加坡鴻威藥業公司”¹¹ also appears both at the top and at the bottom part of the packaging.

¹¹ According to the business registration certificate of the Applicant appearing at Exhibit “LOY-1” to


23. According to the Applicant, throughout the years the Applicant has arranged different salespersons to conduct on-site promotion of the Subject Goods bearing the Subject Marks in various local drugstores in Kowloon, New Territories and Hong Kong. Madam Law has been personally responsible for the promotion of the Applicant's Subject Goods to pharmacies located in Kowloon.¹²

24. The Applicant also promotes its Subject Goods by means of giving away to customers complimentary calendars, each of which consists of a metal plate attached to the calendar. Exhibit LOY-9 to Law's 2016 SD includes, *inter alia*, images of such calendars for the years 2008 to 2011. The metal plates for the calendars for each of those years are of essentially the same design. An image of the calendar with metal plate for 2010 is reproduced at **Annex 3** hereto. The metal plate shows a range of products provided by the Applicant, including a product in packaging of the same design as that appearing at **Annex 2** hereto. The following mark appears at the top part of the metal plate:



This mark also appears at the top part of the copy of the packaging at **Annex 2** hereto.



The mark “” also appears with the Applicant's name in English and Chinese on the header of the more recent receipt/invoices reproduced at para. 20 above.

25. Madam Law has been responsible for the arrangement of salesperson's visits to local drugstores, and Madam Law has always reminded all salespersons to look out for the latest market trends, particularly the sale of medicated oils by other companies. Prior to August 2004, Madam Law had never seen the Opponent's goods branded with “萬里追風油”.¹³

Opposition under section 12(3) of the Ordinance

26. Section 12(3) of the Ordinance provides that:

Law's 2016 SD.
¹² Law's 2016 SD, paras 13-15.
¹³ Law's 2016 SD, para. 18.

- “(3) A trade mark shall not be registered if-*
- (a) the trade mark is similar to an earlier trade mark;*
 - (b) the goods or services for which the application for registration is made are identical or similar to those for which the earlier trade mark is protected;*
and
 - (c) the use of the trade mark in relation to those goods or services is likely to cause confusion on the part of the public.”*

27. The Opponent relies on the three Opponent’s Cited Marks as earlier marks in relation to the Subject Marks in support of its opposition under section 12(3) of the Ordinance. The Opponent claims that the Subject Marks are similar to the Opponent’s Cited Marks, the Subject Goods are identical or similar to those for which the Opponent’s Cited Marks are protected, and the use of the Subject Marks in relation to the Subject Goods is likely to cause confusion on the part of the public.¹⁴

28. Section 12(3) of the Ordinance essentially prohibits the registration of a trade mark which would be likely to cause confusion on the part of the public as a result of its being similar to an earlier trade mark and because it is to be registered in respect of goods or services the same as or similar to those the subject of the earlier trade mark.

29. According to section 7(1) of the Ordinance, in determining whether the use of a trade mark is likely to cause confusion on the part of the public, the Registrar may take into account all factors relevant in the circumstances.

30. It is not in dispute that in assessing likelihood of confusion, the following propositions have been held to be useful guidelines:

- (a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and

¹⁴ Amended Statement of Grounds, para. 8(6).

whose attention varies according to the category of goods or services in question;

- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may, in certain circumstances, be dominated by one or more of its components;
- (f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either *per se* or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; and

- (k) if the association between the marks causes the public to wrongly believe that the respective goods [or services] come from the same or economically-linked undertakings, there is a likelihood of confusion.

(Tsit Wing (Hong Kong) Co Ltd v TWG Tea Co Pte Ltd (No 2) (2016) 19 HKCFAR 20 (para. 47).)

Earlier trade mark

31. Section 5(1) of the Ordinance provides, *inter alia*, that:

“In this Ordinance, “earlier trade mark” (在先商標), in relation to another trade mark, means-

- (a) a registered trade mark which has a date of the application for registration earlier than that of the other trade mark, taking into account the priorities claimed in respect of each trade mark, if any;”.*

32. Each of the Opponent’s Cited Marks is a registered trade mark which has a date of application for registration earlier than that of the Subject Marks. According to section 5(1)(a) of the Ordinance, each of the Opponent’s Cited Marks is an earlier trade mark in relation to the Subject Marks. Each of them must be considered in turn for the purpose of determining whether it prevents acceptance of the subject application under section 12(3) of the Ordinance.¹⁵

Comparison of goods

33. Each of the Opponent’s Cited Marks is registered in respect of, *inter alia*, “藥油” (medicinal oils),¹⁶ and the Applicant does not dispute that this is identical to the Subject Goods.

Relevant public

34. The average consumer of the category of goods concerned is deemed to be reasonably well informed and reasonably observant and circumspect. The average consumer’s level of attention is likely to vary according to the category of goods in question.

¹⁵ *Torremar Trade Mark* [2003] RPC 4 (para. 18).

¹⁶ See **Annex 1** hereto.

35. The Subject Goods are directed at the public at large as well as at medical professionals. As the Subject Goods may affect the user's health, the average consumer would likely pay an above average to high level of attention when purchasing these goods.

Comparison of marks

36. I will consider Mark 3 first.

37. Each of the Subject Marks consists of the five Chinese characters “萬里追風油” presented vertically. They differ only in the particular plain font used.

38. Mark 3 consists the five Chinese characters “萬里驅風油” presented horizontally.

39. Visually, although the Chinese characters in the Subject Marks are presented vertically whilst those in Mark 3 are presented horizontally, both presentations are common ways of presenting Chinese characters. The Subject Marks and Mark 3 have the first two and the last two Chinese characters in common, and differ only by the Chinese character (“驅” versus “追”) in the middle part of the mark. They are visually similar to a high degree.

40. Aurally, the Subject Marks would be pronounced “萬里追風油” whilst Mark 3 would be pronounced “萬里驅風油”. They differ only in the third of the five Chinese characters pronounced. The pronunciation of “追” and “驅” are also close. Overall, the Subject Marks and Mark 3 are aurally similar to a high degree.

41. Conceptually, both the Subject Marks and Mark 3 start with the Chinese characters “萬里” which have no meaning in relation to the relevant goods and are distinctive in respect thereof. “油” means oil, and is descriptive and indistinctive of the Subject Goods consisting of medicated oils. Mr. Yan for the Applicant submits that “驅風油” conveys the meaning that the products have a specific function, namely, to remove the unwellness (“風”) from the body, whereas “追風油” is a fanciful term only. On the other hand, Mr. Clark refers to several different packaging of the Applicant's “千里追風油” products¹⁷ and submits that the following text appearing thereon are examples of descriptive use of the term “追風”:

¹⁷ Exhibit “LOY-7” to Law's 2005 SD.

“追風透骨 通關止痛”

“追風透骨 止痛良藥”

42. I consider that when the average consumer comes across the Subject Marks used in relation to the Subject Goods, s/he would understand the Chinese characters “追風油” to mean medicated oil that deals with the adverse element “風” which is associated with various ailments, although s/he may not know how precisely the medicated oil product achieves that. Overall, I consider that the Subject Marks and Mark 3 are conceptually similar to a high degree.

43. Having regard to the visual, aural and conceptual similarities and differences between the Subject Marks and Mark 3 and the overall impression created by each of them, I find that each of the Subject Marks is highly similar to Mark 3.

Distinctiveness of Mark 3

44. The distinctive character of the earlier trade mark is a factor to be taken into account in the assessment of the likelihood of confusion. It is well established that there is a greater likelihood of confusion where the earlier mark has a highly distinctive character either because of its inherent qualities or because of the use that has been made of it.¹⁸

45. In determining the distinctive character of an earlier trade mark, I must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations.¹⁹

¹⁸ *Sabel v Puma* [1998] RPC 199.

¹⁹ *Windsurfing Chiemsee v Huber and Attenberger* [1999] ETMR 585; *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel B.V.* [2000] FSR 77.

46. The Chinese characters “萬里” in Mark 3 has no meaning in relation to the relevant goods, namely medicinal oils. Overall, “萬里驅風油” (i.e. Mark 3) is inherently distinctive in respect of such goods.

47. Although an image of the Opponent’s product bearing Mark 3 appears with other products of the Opponent on some of the promotional materials at Exhibit “KWP-4” to Kou’s Declaration, such materials are undated. There is no information as to the extent and how long-standing use of Mark 3 has been or as to the amount invested by the Opponent in promoting Mark 3. I do not consider that the distinctiveness of Mark 3 has been enhanced through use.

48. Overall, I find that the distinctiveness of Mark 3 is above average.

Likelihood of confusion

49. The likelihood of confusion must be appreciated globally, taking account of all relevant factors. The matter must be judged through the eyes of the average consumer of the goods and services in issue who is deemed to be reasonably well-informed and reasonably observant and circumspect. A lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods or services, and vice versa (*Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] RPC 117).

50. In the present case, the Subject Goods are identical to *medicinal oils* covered by the registration of Mark 3. The level of attention which the average consumer would pay in the selection of the Subject Goods would be above average to high. Each of the Subject Marks is highly similar to Mark 3. The distinctiveness of Mark 3 is above average.

51. Taking into account the combined effect of all of the above considerations, I consider that when any of the Subject Marks is used in relation to the Subject Goods, the average consumer would be confused into thinking that those goods offered under the Subject Marks and medicinal oils offered under Mark 3 come from the same or economically-linked undertakings.

52. The ground of opposition under section 12(3) of the Ordinance based on Mark 3 is made out.

53. As the Opponent has made out its opposition under section 12(3) of the Ordinance on the basis of Mark 3, it is not necessary for me to consider whether the opposition succeeds on the basis of the other Opponent's Cited Marks.

Honest concurrent use

54. Section 13(1)(a) of the Ordinance provides as follows:

13. Honest concurrent use, etc.

(1) Nothing in section 12 (relative grounds for refusal of registration) prevents the registration of a trade mark where the Registrar or the court is satisfied—

(a) that there has been an honest concurrent use of the trade mark and the earlier trade mark or other earlier right;

... ”.

55. The Applicant invites the Registrar to exercise his discretion to permit the registration of the Subject Marks on the ground of honest concurrent use.

56. The Opponent submits that the Applicant has not pleaded honest concurrent use and should not be allowed to rely on it. I will consider this point here.

The pleadings point

57. In para. 8(6) of the Amended Statement of Grounds, the Opponent stated as follows:

“8. By reasons of all the foregoing:-

...

(6) Further or in the alternative, the Opposed Mark should be refused registration under Section 12(3) of the Ordinance. The Opposed Mark is similar to the Opponent's Trade Marks being earlier marks. The Applicant's Goods are identical or similar to those for which the Opponent's Trade Marks are protected. The use of the Opposed Mark in relation to the Applicant's Goods is likely to cause confusion on the part of the public.”

58. In the Amended Counter-statement, the Applicant stated as follows:

“14. Paragraph 8(6) is denied and the Opponent is put to strict proof thereof. The Applicant expressly avers that it is lawfully entitled to use or register the Opposed Mark in respect of the goods applied for and would not contravene Section 12(3) of the Trade Marks Ordinance.”

59. The Applicant’s position is that whilst honest concurrent use has not been pleaded, the issue has been clearly raised in the evidence, and there is no reason why the Applicant should be debarred from relying on it. The Applicant relies on the case of *In re Hunters Leatherwares Ltd.* [1994] HKDLR 55 (the “**Hunters case**”) in support.

60. The *Hunters* case is a decision of Mr. Fox for the Registrar of Trade Marks in respect of an opposition to an application for registration of a trade mark under the repealed Trade Mark Ordinance (Cap. 43). The applicant for registration in that case sought to rely on section 22 of Cap. 43, which provided as follows:

“22. Concurrent use

In case of honest concurrent use, or of other special circumstances which in the opinion of the Court or of the Registrar make it proper to do so, the Court or the Registrar may permit the registration by more than one proprietor, in respect of—

- (a) the same goods or services;*
 - (b) the same description of goods or services; or*
 - (c) goods and services or descriptions of goods and services which are associated with each other,*
- of trade marks that are identical or nearly resemble each other, subject to such conditions and limitations, if any, as the Court or the Registrar, as the case may be, may think it right to impose.”*

61. The opponent in that case submitted that the Registrar was not entitled to exercise a discretion under section 22 of Cap. 43 in favour of the applicant in that case because the issue had not been put before the Registrar either in the applicant’s pleadings or its evidence.²⁰

62. At paras 33 to 34 of his decision, Mr. Fox (acting for the Registrar of Trade Marks) stated, *inter alia*, as follows:

²⁰ *Hunters* case, para. 29.

“33. ... As Mr Chan said the Applicant's counter-statement and its evidence (to a quite considerable extent) indicate use of the suit mark. The leave to advertise (see paragraph 2 hereof) indicates the Registrar deemed the suit mark to be distinctive of the specified goods pursuant to s. 9(1)(e) of the Ordinance. There is no specific reference in the Applicant's pleadings or its evidence to s. 22, concurrent use, honest use or awareness of the Opponent's use of his mark. I consider however the Opponent could have addressed the issue of honest concurrent use in his evidence. The Applicant's evidence clearly demonstrates use of the suit mark concurrent with use of the Opponent's mark. Mr Liao indicated the Opponent is also basing his opposition on the Applicant not being the proprietor of the suit mark. The honesty or otherwise of the choice of the suit mark by or for the Applicant is crucial to such an opposition as it is to an opposition against s. 22. Whenever pleadings or evidence indicate or suggest, specifically or impliedly, an Applicant may seek to rely on s.22, an Opponent, if it can and wishes to do so, would do well to address the issue in its evidence. I consider the Applicant's pleadings and particularly its evidence show the Applicant is likely to seek to rely on s. 22. In **Bali TM** honest concurrent use was not raised at all either in pleadings, evidence or argument. Strict rules of evidence do not apply in proceedings before the Registrar, whose prime concern is for the public interest. A party's evidence is not tied to his pleadings. The Registrar is master of his own procedure subject to the application of the rules of natural justice for both parties. I consider I am entitled to act on any logically probative matter, even if not evidence in a court of law (R. v. Deputy Industrial Injuries Commissioner, ex parte Moore [1965] 1 All ER 81).

34. The Applicant can rely on s. 22 of the Ordinance.” (emphasis added)

63. Mr. Yan submits that the case for the Applicant in the present case is even stronger than that of the applicant in the *Hunters* case. In particular, whereas according to para. 33 of the *Hunters* case quoted above, there was no specific reference in the pleadings or evidence of the applicant in that case to section 22 of Cap. 43, concurrent use or honest use, in the present case, after stating the matters referred to in paras 17 to 25 above, Madam Law had in Law's 2016 SD drawn attention to the fact that at the examination stage for the subject application, the Registrar raised an objection under section 12(3) of the Ordinance based on the three Opponent's Cited Marks, and that she filed Law's 2012 SD to substantiate the pre-application use of the Subject Marks so that the Subject Marks could be accepted for registration on the basis that there had been

honest concurrent use thereof with the three Opponent's Cited Marks. Having considered Law's 2012 SD, the Registrar allowed the subject application to proceed. Madam Law then stated that she verily believed that the pre-application evidence of use presented in Law's 2012 SD would be sufficient to prove that no confusion would be caused to the consumers notwithstanding the co-existence of the Subject Marks and the Opponent's trade marks.²¹ Mr. Yan submits that the issue of honest concurrent use has clearly been raised in the Applicant's evidence.

64. Mr. Clark submits, however, that our system of civil justice has moved on since the *Hunters* case in 1993. He referred to the following passages in the Court of Appeal judgment in *Au Kai To Karel v End User Technology Ltd* [2019] HKCA 72 (the "*Au Kai To case*"):

'35. Time and again, the Court of Final Appeal has stressed the fundamental importance of pleadings to enable every procedural facet of the adversarial system to operate fairly.

36. In *Sinoearn International Ltd v Hyundai-CCECC Joint Venture* (2013) 16 HKCFAR 632, Ribeiro PJ observed at [30]-[31] and [34] as follows:

" 30. ...A party must raise all the issues he wishes to raise to be dealt with at the trial. Parties are not entitled to have issues recently thought up dealt with separately and piecemeal. The other party is entitled to know from a clear pleading what is the entire case he has to meet so that he can decide whether particulars should be sought; how he should plead in response; what discovery he is entitled to; what evidence he should adduce to meet it; and what points of law should be taken. ...

31. Where a late attempt is made to introduce a new case, it is doubly important that the other side should have a clearly pleaded draft amendment so that proper consideration can be given as to whether objections should properly be made to such amendment and whether an adjournment should be sought.

...

34. Pleadings are not mere formalities. They impose a necessary discipline and are fundamental to enabling every procedural facet of the adversarial system to operate fairly." (emphasis added)

²¹ Law's 2016 SD, paras 23-25, 27.

37. Again, in *Kwok Chin Wing v 21 Holdings Limited* (2013) 16 HKCFAR 663, Ma CJ stressed the unacceptability of allowing unpleaded issues to be raised out of evidence. At [21]-[23], Ma CJ observed:

“ 21. ...The basic objective is fairly and precisely to inform the other party or parties in the litigation of the stance of the pleading party (in other words, that party’s case) so that proper preparation is made possible, and to ensure that time and effort are not expended unnecessarily on other issues: *Wing Hang Bank Limited v Crystal Jet International Limited*. It is the pleadings that will define the issues in a trial and dictate the course of proceedings both before and at trial. Where witnesses are involved, it will be the pleaded issues that define the scope of the evidence, and not the other way round. In other words, it will not be acceptable for unpleaded issues to be raised out of the evidence which is to be or has been adduced.

...

23. The purpose of pleadings, in clearly and unambiguously setting out the true extent and nature of a dispute not just for the benefit of the parties but also for the Court in managing and trying cases, remains important under our system of civil justice. The retention of the old rules as to pleading as well as the introduction of new provisions over four years ago under the Civil Justice Reform, reinforce this.” (emphasis added)’

65. Mr. Clark refers to para. 35 of the *Au Kai To* case quoted above, and submits that the principles set out in that case applies to the adversarial system, and not just to the Courts. He submits that the modern practice in our Courts, and it should be in the Registry, is to require parties to plead their cases with particularity, and that in the present case, honest concurrent has not been pleaded by the Applicant and it cannot be relied upon.

66. Mr. Yan submits that there is a major distinction between civil proceedings before the Courts and opposition proceedings before the Registrar: proceedings before the Court are strictly adversarial, whereas in proceedings before the Registrar including opposition proceedings, the Registrar has a role to play in maintaining the sanctity of the register in the public interest. He referred to the following passages in the *Au Kai To* case:

‘45. In *Mak Kang Hoi v Ho Yuk Wah*, Mortimer NPJ observed that:

“The General Approach to the Pleading Issue

[101] *[Poon Hau Kei]* in the Court of Appeal sets out the practical tests and the principle that the trial must be fair. A party must not be ambushed at trial by a case he has not been called upon to prepare and meet. As was said by Bokhary PJ in the same case in this court at p.160J:

‘Was there any unfairness in the process by which the trial judge reached his findings? In *Bank of America National Trusts and Savings Association v Chai Yen* [1980] 1 WLR 350 at p.353D, Lord Lane, delivering the advice of the Privy Council, said that ‘the essence of any rule of procedure must be fairness’. The same is true of any rule of practice.’ ” (emphasis added.)

46. In *Wing Hang Bank Ltd v Crystal Jet International Ltd*, Ma CJHC (as he then was), after reiterating some basic principles of pleadings at [6], observed as follows:

“7. What has just been set out is not to be construed as an encouragement to take ‘pleading points’ by which I mean pedantic, small or quite insignificant points of pleadings. Nor will objections as to pleadings have much force where the parties have chosen to disregard the pleadings and conduct the hearing on some unpleaded basis. As Isaacs and Rich JJ said in *Gould v Mount Oxide Mines Ltd* (1916) 22 CLR 490, at p.517:

‘But pleadings are only a means to an end, and if the parties in fighting their legal battles choose to restrict them, or to enlarge them, or to disregard them and meet each other on issues fairly thought out, it is impossible for them to hark back to the pleadings and treat them as governing the area of contest.’

Ultimately, a court is to be guided by what is fair and just in the circumstances, not just to the party seeking to rely on the unpleaded case but to all the parties before it. The Court ought also to bear in mind the following passage at p.297 para.18/12/1 of *Hong Kong Civil Procedure 2004* Vol.1:

‘The purpose of pleadings is not to play a game at the expense of the litigants but to enable the opposing party to know the case against him.’

8. What is set out above as representing acceptable practice will be all the more emphasized when the civil justice reforms in Hong Kong take shape. The object is not to invite prolixity in pleadings but to achieve what has always been the position: to fairly inform the other side and the Court of a party's case, identifying the issues and the true extent of the dispute between the parties.” (emphasis added.)’

67. On the basis of the above, Mr. Yan submits that the test is what is fair and just in the circumstances. He submits that that is exactly the approach taken by Mr. Fox in the *Hunters* case. After noting that there was no specific reference in the pleadings or evidence of the applicant in that case to section 22 of Cap. 43, concurrent use, honest use or awareness of the opponent’s use of his mark, Mr. Fox went on to state that:

“Strict rules of evidence do not apply in proceedings before the Registrar, whose prime concern is for the public interest.... The Registrar is master of his own procedure subject to the application of the rules of natural justice for both parties.”

68. Mr. Yan refers to the contents of Law’s 2016 SD (see para. 63 above) and submits that the Applicant has in that evidence given clear notice that it would be relying on honest concurrent use in these opposition proceedings, and there is no injustice or unfairness in the Applicant being allowed to rely on honest concurrent use.

69. Mr. Clark submits that our system of civil justice has moved on, and the *Hunters* case should be read in the light of the *Au Kai To* case. He also submits that the Registrar in order to protect the sanctity of the register should require any party who wants to rely on honest concurrent use to meet a very high standard of pleading and proof.

70. Given what has been stated in Law’s 2016 SD (as outlined in para. 63 above), I was not too surprised to see in the Applicant’s skeleton submissions for the hearing reliance on honest concurrent use. On the other hand, I do not consider that the authorities referred to by Mr. Clark should simply be ignored.

71. In the circumstances of the present case, I would take the approach of considering *if* honest concurrent use had been properly pleaded, whether section 13(1)(a) of the Ordinance would have assisted the Applicant.

The test for honest concurrent use

72. Section 13(1)(a) of the Ordinance (set out in para. 54 above) entails a two-stage determination:

- (1) whether there has been an honest concurrent use of the subject mark and the earlier trade mark;
- (2) if the answer is in the affirmative, whether after considering all relevant circumstances, including public interest, the Registrar's discretion should be exercised to accept the application for registration of the mark, despite the fact that the use of the mark in relation to the goods or services in question "is likely to cause confusion on the part of the public" (section 12(3)(c)).

(*Re CSS Jewellery Co Ltd* [2010] 2 HKLRD 890 (“*CSS Jewellery*”) (para. 35); *Lin Heung Tea House & Bakery v Guangzhou Catering Services Enterprises Group Co Ltd* [2015] 4 HKC 333 (“*Lin Heung*”) (para. 5.7).)

73. Stage (1) is essentially a factual question, focusing on (i) use, (ii) concurrent use, and (iii) honesty of the concurrent use. Moreover, the use must be use of the subject mark as a trade mark. Thus, for instance, if the use of the subject mark is not as a trade mark, but simply as an element in a composite mark comprising other distinctive elements as well, the use of the subject mark will not be considered as a relevant use under section 13(1)(a). Discretionary considerations, such as, public interest and likelihood of confusion, do not come into the equation at this stage.

74. In Stage (2), the Registrar's focus of attention is on all relevant considerations that may bear on the exercise of his discretion to register or to refuse registration. Public interest is an important matter to bear in mind. The following discretionary considerations set out in *Pirie's Application* (1933) 50 RPC 147 are highly relevant:

- (1) the extent of use in time and quantity and the area of the trade;
- (2) the degree of confusion likely to ensue from the resemblance of the marks which is to a large extent indicative of the measure of public inconvenience;

- (3) the honesty of the concurrent use;
- (4) whether any incidents of confusion have in fact been proved;
- (5) the relative inconvenience which would be caused if the mark were registered.

The above considerations are not exhaustive and all relevant circumstances ought to be considered. The discretion of the Registrar and the Court is unfettered (*Budweiser Trade Marks* [2000] RPC 906). Depending on the facts of an individual case, a particular consideration may assume greater significance than others. (*CSS Jewellery*, paras 36-40; *Lin Heung*, paras 5.8 & 7.2.)

Stage (1)

75. I have in paras 18 to 24 above considered the Applicant's evidence of use. Madam Law stated in Law's 2016 SD that following introduction of "千里追風油" in the market, she was later inspired by her customers to create the brand "萬里追風油",²² and commissioned Mr. Ling of a design company to design the packaging of products bearing the Subject Marks. She stated that the Applicant's medicated oils bearing the Subject Marks were released in the market in 1998 and the Applicant had since then continued to sell medicated oils bearing the Subject Marks.²³ These statements echo what was stated in the Applicant's evidence in the Previous Proceedings.²⁴ Madam Law has produced in these proceedings a copy of the packaging reproduced at **Annex 2** hereto, the approximate annual revenue figures and copies of selected receipts/invoices referred to in paras 19 to 20 above, and promotional materials referred to para. 24 above. I also note that in the 2011 Decision, the Hearing Officer accepted the Applicant's evidence filed in that case that the Applicant started selling medicated oils under the name "金波士萬里追風油" in 1998, and had been so using that name up until the date of application for registration of the Previous Mark (i.e. 16 September 2004) or when the Applicant discovered in August 2004 that the Opponent's Predecessor had commenced selling medicated oils called "萬里追風油".²⁵

²² Law's 2016 SD, para. 8.

²³ Law's 2016 SD, para. 10.

²⁴ Law's 2005 SD, paras 4 to 7.

²⁵ 2011 Decision, para. 20.


76. Mark 3 was registered on 15 November 2003. As noted in para. 47 above, the Opponent's "萬里驅風油" product appears with other products of the Opponent on some of the promotional materials at Exhibit "KWP-4" to Kou's Declaration. There is no information as to the extent and how long-standing use of Mark 3 has been.

77. Overall, I consider that the Applicant has shown use of the Subject Marks in relation to the Subject Goods concurrent with the registration and use of the Opponent's Mark 3. I accept the Applicant's evidence on how it came up with the mark "萬里追風油" as referred to in para. 18 above, and can find nothing in the evidence filed in these proceedings which could cast doubt on the honesty of the Applicant in adopting the mark. I am satisfied that the Applicant has continuously used the mark "萬里追風油" since 1998 up till the Application Date in the manner described in paras 18 to 24 above. I find that the Applicant has passed Stage (1) of the test referred to in para. 72 above.

Stage 2

78. The focus of attention at this stage is on all relevant considerations that may bear on the exercise of the Registrar's discretion to register or to refuse registration. Public interest is an important matter to bear in mind. Whilst the factors listed in para. 74 above are highly relevant, they are not exhaustive. All relevant circumstances ought to be considered, and the discretion of the Registrar is unfettered.

79. I have already found that the Applicant has since 1998 up till the Application

Date used the Subject Marks together with "金波士" or  "星加坡海味" in Hong Kong in respect of medicated oils. Although the volume of sales over the years as indicated by the approximate annual revenue figures in para. 19 above are not very substantial, they are not negligible either. The Opponent has not provided any invoices or revenue figures in respect of sales of products under Mark 3. This may be relevant to the consideration of relative convenience of the parties if the Subject Marks were registered. I can find nothing in the evidence filed in these proceedings which could cast doubt on the honesty of the Applicant in adopting and using the mark "萬里追風油" in Hong Kong since 1998. In view of the fact that the Subject Marks are highly similar to Mark 3 and identical goods are involved, the degree of confusion between the marks would likely be high, although there is no evidence of actual incidents of confusion.

80. The Opponent submits that the Registrar should exercise his discretion not to allow the Subject Marks to be registered, and relies, in particular, on the following passage in para. 10 of Law's 2005 SD:

“10. ... 其三，市面上有許多商戶採納「千里追風油」作為藥品產品名稱，而他們的產品千里追風油，都冠以各自的商號或商標。我因此有理由相信「千里追風油」已經變成業內一種產品的名稱。現附上各商號的「千里追風油」副本為證物“LOY-7”。「千里追風油」和「萬里追風油」只差一字。申請人若取得「萬里追風油」的註冊，其註冊將嚴重干涉市面上各商戶真誠地使用「千里追風油」標誌於各自的產品上。”

(10. ... Third, many merchants in the market adopt '千里追風油' as the name of their pharmaceutical products, and their 千里追風油 products are all marked with their respective trade names or trademarks. I therefore have reason to believe that '千里追風油' has become the name of a type of product in the industry. A copy of the '千里追風油' of various business establishments is attached as Exhibit "LOY-7". '千里追風油' and '萬里追風油' only differ by one Chinese character. If the applicant obtains the registration of "萬里追風油", its registration will seriously interfere with use by merchants in the market of the '千里追風油' sign in good faith on their respective products.)

81. I also set out below the statements made by Madam Law in Law's 2005 SD immediately after the above quoted passage:

“10. ...綜合上述各點，反對人認為申請人就「萬里追風油」標誌跟本沒有任何權益。反之，反對人因長期生產及銷售冠以「金波士萬里追風油」標誌的藥油產品以建立的聲譽及商譽應受法律保護。

11. 鑒于本聲明所述的事實及總括上述各點，我誠實地相信：—

- (i) 反對人誠實地採納自己的品牌冠于反對人的貨品上真誠地使用「金波士千里追風油」及「金波士萬里追風油」標誌的合法權益應予以保護；
- (ii) 反對人因長期生產及銷售冠以「金波士萬里追風油」標誌的藥油產品以建立的聲譽及商譽應受法律保護；

(iii) 被反對商標的申請如獲批准註冊將嚴重干涉和限制反對人真誠地使用反對人的「金波士萬里追風油」、「金波士千里追風油」及其他商戶之用「千里追風油」的合法權益。”

(10. ...To sum up the above points, the opponent considers that the applicant has no rights in the "萬里追風油" sign. On the contrary, the opponent's reputation and goodwill established by the long-term production and sale of medicated oil products bearing the "金波士萬里追風油" sign should be protected by law.

11. In the light of the facts described in this statement and summing up the above, I honestly believe:-

(i) the legitimate rights of the opponent to honestly adopt its brands and use the “金波士千里追風油” and “金波士萬里追風油” signs on the opponent's products in good faith should be protected;

(ii) the reputation and goodwill established through the opponent's long-term production and sale of medicated oil products bearing the “金波士萬里追風油” sign should be protected by law;

(iii) if the opposed mark is approved for registration, it would seriously interfere with and restrict the opponent's use of the opponent's "金波士萬里追風油" and "金波士千里追風油" in good faith and other merchants' legitimate rights to use "千里追風油".)

82. The above statements were made in the context of the Previous Proceedings in which the Opponent's Predecessor was the applicant for registration and the Applicant was the opponent.

83. The Opponent referred to the passage in Law's 2005 SD set out in para. 80 above and submitted that the Applicant had never explained why it was inappropriate for the Opponent to register the mark "萬里追風油", yet now it would be appropriate for the Applicant to register the mark and block the very same merchants the Applicant was so concerned about.

84. The Applicant submitted that the point made in that passage was made in Law's 2005 SD filed under the Previous Proceedings in support of an argument which

was erroneous and was abandoned; and that in Law's 2016 SD (at para. 8), Madam Law was putting forward Law's 2005 SD for the purpose of relying only on paras 4 to 7 thereof (which set out full details of the creation of the Subject Marks). The Opponent, however, pointed out that the whole of Law's 2005 SD including the passage quoted in para. 80 above had been included in the evidence filed by the Applicant in these proceedings.

85. It is stated in the opening paragraph of Law's 2005 SD that Madam Law sincerely declared (謹以至誠鄭重聲明) what is stated in that declaration. According to para. 2 of that declaration, Madam Law started working in the field of medicated oils in Hong Kong since the 1980's, and had more than 20 years' experience in the field at the time she made that declaration in October 2005. She has been personally involved in on-site promotion of the Applicant's goods to pharmacies,²⁶ and I accept her assessment that she knows very well the products and trends on the market (對市場上的貨品和動向瞭如指掌).²⁷ The remarks quoted at para. 80 above from her as a person experienced in the particular trade of medicated oils in Hong Kong are telling. It is difficult to see how the inconvenience that would be caused to traders in the field if the Opponent's Predecessor obtained registration of "萬里追風油" in the Previous Proceedings would not similarly be caused to traders if the Applicant obtains registration of the Subject Marks in these proceedings.

86. Taking into account all relevant considerations in the present case, I come to the conclusion that the Registrar's discretion should not be exercised to accept the subject application.

87. I refer to para. 71 above. Given my conclusion in the preceding paragraph, even if honest concurrent use had been properly pleaded, section 13(1)(a) of the Ordinance would not have assisted the Applicant.

Special circumstances

88. Section 13(1)(b) of the Ordinance provides as follows:

(1) Nothing in section 12 (relative grounds for refusal of registration) prevents the registration of a trade mark where the Registrar or the court is satisfied—

²⁶ Law's 2005 SD, para. 9; Law's 2016 SD, para. 15.

²⁷ Law's 2005 SD, para. 2.

...
(b) *that by reason of other special circumstances it is proper for the trade mark to be registered.*”

89. The Applicant submits that it is the first user of the “萬里追風油” mark, which use had commenced in 1998 and preceded and predated any use by the Opponent’s Predecessor of such mark which only began in 2004; such use also preceded and predated the dates of application for registration of all of the Opponent’s Cited Marks. The Applicant submits that this is clearly a “special circumstance” by reason of which it is proper for the Subject Marks to be registered within the meaning of section 13(1)(b) and the Registrar should exercise his discretion to permit the registration of the Subject Marks.

90. The Opponent submits that the Applicant has not pleaded special circumstances under section 13(1)(b), and there is no mention of it even in the Applicant’s evidence. Moreover, the Opponent submits that for the same reasons referred to in paras 80 and 83 above, the Registrar should exercise his discretion not to allow registration of the Subject Marks.

91. In *Holt & Co. (Leeds) Application* [1957] RPC 289, it was observed that “special circumstances” in section 12(2) of the UK Trade Marks Act 1938²⁸ includes any circumstance peculiar to the applicant in relation to the subject matter of the application, and so includes use by an applicant of his mark before the conflicting mark was registered or used.

92. The question of whether “the Registrar is satisfied that by reason of other special circumstances it is proper for the trade mark to be registered” under section 13(1)(b) of the Ordinance involves an exercise of discretion on the part of the Registrar. All relevant circumstances should be taken into account.

²⁸ That section 12(2) reads:

“(2) In case of honest concurrent use, or of other special circumstances which in the opinion of the Court or the Registrar make it proper so to do, the Court or the Registrar may permit the registration of trade marks that are identical or nearly resemble each other in respect of the same goods or descriptions of goods by more than one proprietor in respect of ---

(a) the same goods,

(b) the same description of goods or

(c) goods and services or descriptions of goods and services which are associated with each other,

of marks that are identical or nearly resemble each other,

subject to such conditions and limitations, if any, as the Court or Registrar, as the case may be, may think it right to impose.”

93. I refer to paras 80 to 86 above. For the same reasons stated therein, it would not be appropriate to exercise the Registrar's discretion under section 13(1)(b) of the Ordinance to accept the subject application.

94. In the circumstances, even if special circumstances had been properly pleaded, section 13(1)(b) of the Ordinance would not have assisted the Applicant.

Conclusion and costs

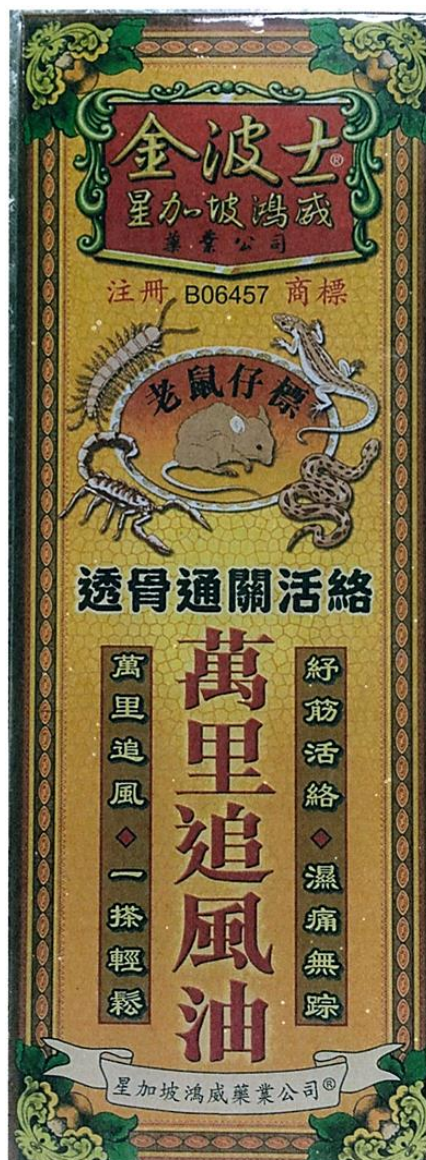
95. As I have found in favour of the Opponent on the ground of opposition under section 12(3) of the Ordinance, and section 13 does not assist the Applicant, it is not necessary for me to consider the grounds under the other sections of the Ordinance referred to in para. 9 above. The subject application is refused under section 12(3) of the Ordinance.

96. I hereby make an order *nisi* that the Opponent is to have the costs of the opposition, to be taxed if not agreed. (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.) Should any party wish to have a different order for costs, written submissions should be served on the other party and lodged with the Registrar within 14 days of the date hereof, with liberty on the other party to serve and lodge written submissions within 14 days thereafter (in which event I shall dispose of the issue of costs on the papers). In the absence of such submissions, the order *nisi* will stand absolute at the expiry of the time limited for these submissions.

(Finnie Quek)
for Registrar of Trade Marks
14 January 2020

Opponent's Cited Marks

| Trade Mark No. | Trade Mark | Owner | Date of Registration | Specification | Specification (English translation) |
|----------------|------------|-------------------------------------------|----------------------|----------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 300023732 | 萬里 | 羅仁槐 | 23-05-2003 | 醫用制劑，醫用衛生制劑，醫用營養品，嬰兒食用，藥膏，藥油，繃敷藥品，消毒劑，消滅有害動物制劑，殺真菌劇，除莠劑。 | Pharmaceutical preparations, sanitary preparations for medical purposes, dietetic substances adapted for medical use, food for babies, ointments, medicinal oils , materials for dressings, disinfectants, preparations for destroying vermin, fungicides, herbicides. |
| 300023796 | 萬里追 | 星洲藥業有限公司 (Singapore Medicine Co. Limited) | 23-05-2003 | 醫用制劑，醫用衛生制劑，醫用營養品，嬰兒食用，藥膏，藥油，繃敷藥品，消毒劑，消滅有害動物制劑，殺真菌劑，除莠劑。 | Pharmaceutical preparations, sanitary preparations for medical purposes, dietetic substances adapted for medical use, food for babies, ointments, medicinal oils , materials for dressings, disinfectants, preparations for destroying vermin, fungicides, herbicides. |
| 300111617 | 萬里驅風油 | 羅仁槐以星洲藥業之名營業 | 15-11-2003 | 醫用製劑，醫用衛生製劑，醫用營養品，嬰兒食品，藥膏，藥油，繃敷藥品，消毒劑，消滅有害動物製劑，殺真菌劑，除莠劑。 | Pharmaceutical preparations, sanitary preparations for medical purposes, dietetic substances adapted for medical use, food for babies, ointments, medicinal oils , materials for dressings, disinfectants, preparations for destroying vermin, fungicides, herbicides. |



金波士
星加坡總代理

原庄正貨 居家必備 **如假包換 永保平安**

金波士藥油

總代理：星加坡鴻威藥業公司 電話：2407 1226

2010 JANUARY 一月

恭賀祝廣州2010年亞運會開幕

1

招財進寶

距第二屆亞運會開幕還有315天

己酉年十一月運程：1969年生人，有貴人來訪而得橫財
辛酉年十一月運程：1981年生人，有出外觀光之喜，出外遇貴人

FRIDAY 星期五 十七日

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|--------|-------|------|------|-----|-----|-----|------|-----|-----|------|-----|------|
| 辛亥金九閉日 | 宜沐浴裁衣 | 補遺塞穴 | 歲沖蛇西 | 廚竈西 | 外竈北 | 主助竈 | 吉神西南 | 神正南 | 財正東 | 三合未卯 | 六合酉 | 本日吉時 |
| 02 | 11 | 20 | 36 | | | | | | | | | |

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