

PROTECTION OF FOREIGN **TRADERS'** RIGHTS IN THEIR TRADE MARKS REGISTERED OUTSIDE SINGAPORE

*R.H. Macy & Co. Inc. v. Trade Accents*¹

IN the recent case of *R.H. Macy & Co. Inc. v. Trade Accents*, R.H. Macy & Co. Inc., the registered proprietor of the trade mark "**MACY'S**" in the United States of America and **elsewhere**,² obtained an order from the Singapore High Court to have the register of trade marks of Singapore rectified by removing therefrom the trade mark "MACY'S" registered in the name of Trade Accents, a local firm.

This decision has been described in an article appearing in the 17 July 1991 issue of *The Business Times* as "a ruling that expands the rights of international trade mark holders in Singapore." This case comment seeks to examine the extent to which the decision has expanded the scope of protection accorded by the trade mark law to foreign traders with trade marks registered outside Singapore.

R.H. Macy & Co. Inc. ("the applicants") are American retailers operating 97 departmental stores across the United States under the name "**MACY'S**". Since 1910, they had been marketing their goods which include wearing apparel under their trade mark "MACY'S". They had widely advertised this mark through radio, television and their merchandise catalogues and also in various journals and newspapers which were sold internationally. But such advertisement and promotion of their trade mark was conducted in the United States and in other countries, and not at all in Singapore. What they did have in Singapore was a representative office operating since 1982. Through this representative office, the applicants placed orders with Singapore companies for the manufacture of articles of clothing, which process appeared to include the application of the mark "MACY'S" on these **goods**.³ These goods were then exported from Singapore for sale by the applicants.

¹ [1992] 1 S.L.R. 581.

² Japan, Brazil, Cuba, Hong Kong, Korea, Mexico, Panama, Philippines, Spain and Taiwan.

³ This inference is drawn from counsel's submission that if the respondents' trade mark was not expunged, the applicants' manufacturers would not be in the position to manufacture

In 1986, when the Applicants applied to register their trade mark "MACY'S" in Singapore, it was brought to their attention that the mark "MACY'S" (together with a device of a winged bird) was already registered in the name of Trade Accents ("the respondents") sometime in June 1986 for articles of underclothing for ladies and night dresses. The respondents' earliest transaction under this mark appeared to be in April 1986. In 1989, the applicants commenced rectification proceedings in the High Court for the removal of the respondents' trade mark from the register. The hearing came before the Judicial Commissioner P.H. Rubin.

The respondents claimed that they started using the mark "MACY'S" in early 1986 without any knowledge of the applicants' use of this mark in the United States. This claim was rejected by Rubin J.C., who was satisfied that the respondents had copied the applicants' mark as the respondents' explanation as to how they came to adopt the mark "MACY'S" was "desultory and unsatisfactory".⁴ To his mind, the respondents were clearly "attempting to obtain and take advantage of the applicants' reputation."

The applicants' application for rectification was based on two grounds:

1. The respondents could not claim to be the proprietors of the trade mark "MACY'S" at the time of registration, and therefore did not satisfy a condition precedent to registration which is set out in section 11(1)⁵ of the Trade Marks Act.⁶
2. The registration of the trade mark "MACY'S" by the respondents contravened section 15(1)⁷ of the Act in that the registration, if allowed to remain on the register, was likely to deceive or cause confusion.

the goods bearing the name "MACY'S" in Singapore since any such manufacturing would constitute an infringement of the respondents' registered mark: see *supra*, note 1 at p. 589.

⁴ *Supra*, note 1 at p. 589.

⁵ S. 11(1) is the predecessor of the present section 12(1) which came into force on 1 March 1991 via Act No. 7 of 1991. The wording relating to the concept of "proprietorship" in a trade mark in the present s. 12(1) is identical to that which was in the old s. 11(1). Hence this decision on the old s. 11(1) applies equally to the present s. 12(1). This note will continue its discussion on this concept of "proprietorship" by reference to the old s. 11(1) which provided as follows: "Any person claiming to be the proprietor of a trade mark used or proposed to be used by him who is desirous of registering it in Part A shall apply in writing to the Registrar in the prescribed manner."

⁶ Cap. 332, 1985 Rev. Ed. (Herein referred to as "the Act".)

⁷ S. 15(1) provides as follows: "It shall not be lawful to register as a trade mark or part of a trade mark any matter the use of which would, by reason of its being likely to deceive or cause confusion or otherwise, be disentitled to protection in a court of justice, or would be contrary to law or morality, or any scandalous design."

The Claim to Proprietorship in a Trade Mark

Prior to this decision, it could be suggested that no person could claim to be the proprietor of a trade mark if he had copied it from a foreign trader's mark in order to benefit from the reputation of that foreign trader. Support for such a contention may be found in two earlier local cases. The first such case is *Karrimor International Ltd. v. Ho Fun t/a Ah Hwa Trading Co.*,⁸ where the English manufacturers of the well-known "Karrimor" schoolbags and knapsacks applied to expunge the trade mark "Karrinor" registered in the name of a local trader. The grounds of the application were founded on section 11(1) and section 15(1) of the Act. Chua J. granted the application. After finding that the English manufacturers had acquired a substantial and established reputation through widespread advertisement and substantial sales in Singapore, Chua J. said:

The respondent (the local trader) must have been aware of the well-known trade mark of the applicants. He has not explained at all his choice of the trade mark "Karrinor" which is very similar to "Karrimor".... This fact clearly indicates that the respondent did not independently devise his trade mark but in fact copied it from the applicants' trade mark. The respondent in truth is not the proprietor of the mark "Karrinor". There is no doubt that the respondent is trying to obtain the benefit of the worldwide reputation of the applicant.⁹ (parenthesis mine)

In the second case, *Davidoff Extension S.A. v. Davidoff Commercio E. Industria Ltda.*,¹⁰ the well-known Davidoff Group which sells cigars and smoking accessories succeeded in their application to expunge a local trader's trade mark "Davidoff" from the register. It was again Chua J. who heard the application. The learned judge found that the name Davidoff had gained an extensive reputation in Singapore through sales, advertising and promotions, and was convinced that the local trader "did not independently devise the trade mark but had in fact copied it or stolen it and cannot claim to be the proprietors thereof."

This approach suggested¹² by Chua J. to resolve conflicting claims to proprietorship in a trade mark requires proof of two facts if the foreign

⁸ [1989] 3 M.L.J. 467.

⁹ *Ibid.*, at p. 468.

¹⁰ [1988] 1 M.L.J. 234.

¹¹ *Ibid.*, at p. 236.

¹² The writer has used the word "suggested" because it is not clear in Chua J.'s judgments in these two local cases if he intended his statements cited above to formulate the criteria for establishing a proper claim to proprietorship in a trade mark.

trader were to be recognised as the proprietor of the trade mark in Singapore. First, that the local trader copied the foreign trader's trade mark; second, that the ulterior motive of the local trader in copying the trade mark is to benefit from the reputation built up by the foreign trader in the trade mark by extensive sales and advertisement activities in Singapore.

These two local cases were not referred to by either counsel in *R.H. Macy & Co. Inc v. Trade Accents*. Instead, both the counsel before Rubin J.C. relied on the following passage in the judgment of William J. in *The Seven Up Company v. O.T. Limited & Another*,¹³ a decision of the High Court of Australia:

... in the absence of **fraud**¹⁴ it is not unlawful for a trader to become the registered proprietor under the Trade Marks Act of a mark which has been used, however extensively, by another trader as a trade mark for similar goods in a foreign country, provided the foreign mark has not been used at all in Australia at the time of the application for registration. But the position is different if at that date the mark has become identified with the goods of the foreign trader in Australia because those goods have been brought in by the foreign trader himself or by some other importer or in some other manner. The Court frowns upon any attempt by one trader to appropriate the mark of any trader although that trader is a foreign trader and the mark has only been used by him in a foreign country. It therefore seizes upon a very small amount of use of the foreign mark in Australia to hold that it has become distinctive of the goods of the foreign trader in **Australia**.¹⁵

Counsel for the respondents emphasised the general principle set out in William J.'s judgment, *viz.*, the mere fact of copying is not fatal to the local trader's claim to proprietorship in the trade mark for the purposes of section 11(1); the issue before the court when resolving conflicting claims to proprietorship in a trade mark is who has first used the mark in Singapore - the foreign trader or the local trader. He contended that the respondents first started using the mark "**MACY'S**" in Singapore in early 1986. He

¹³ (1947) 75 C.L.R. 203. Australia has a section in their Trade Marks Act equivalent to our section 11(1). S. 40(1) of the Australian Trade Marks Act 1955 provides: "A person who claims to be the proprietor of a trade mark may make application to the Registrar for the registration of that trade mark in Part A or Part B of the Register." *The Seven Up* case is a decision on a predecessor to s. 40(1).

¹⁴ A breach of confidence will also defeat the local trader's claim to proprietorship: "User in Australia would suffice. So also would facts establishing a breach of confidential relations or any fraud." *per* Latham C.J. in the Court of Appeal in the *Seven Up* case, *ibid.*, note 13 at p. 215.

¹⁵ *Supra*, note 13 at p. 211.

urged the court to follow the English case, *Pelican Trade Mark*,¹⁶ where the Assistant Registrar of Trade Marks held that a trader in the United Kingdom who copied an American trader's trade mark was the proprietor of the trade mark in the United Kingdom for the purposes of section 17(1) of the U.K. Trade Marks Act 1938.¹⁷

Counsel for the applicants countered that the court should frown upon any attempt by a trader to appropriate the mark of another trader. He referred to the Australian case of *Thunderbird Products Corporation v. Thunderbird Marine Products Pty. Ltd.*¹⁸ as an illustration of how little use is sufficient in this context. In that case, the importation of one unit of the foreign trader's goods into Australia was held to be "use" in Australia by the foreign trader. He submitted that the applicants had "asserted their proprietorship"¹⁹ to the name "**MACY'S**" since 1982 by using it in the course of trade with the manufacturers of articles of clothing in Singapore.

Rubin J.C. held that the respondents could not "**lawfully**"²⁰ claim to be the proprietors of the trade mark "**MACY'S**". He was mindful of the "**caveat**"²¹ to seize upon a very small amount of use to entitle the applicants to relief. As for *The Pelican case*,²² he dismissed it as a "weak precedent" and also distinguished it on the facts:

[T]he distinguishing characteristics present in the case before me i.e. the existence of a representative office within the country and an extensive and ongoing commercial activity involving the Applicants **and** a number of local companies about four years before the **Respondents'** mark was registered, did not feature in *The Pelican case*.²³

Presumably, these circumstances constituted, in his view, prior "use" of the trade mark "MACY'S" by the applicants in **Singapore**.²⁴

¹⁶ [1974] R.P.C. 692.

¹⁷ S. 17(1) of the U.K. Trade Marks Act 1938 is identical to the present s. 12(1) of the Trade Marks Act of Singapore.

¹⁸ (1974) 131 C.L.R. 592.

¹⁹ It is interesting to note that counsel for the applicants had used this term. What is the relationship, if any, between "use" of a trade mark and an "assertion of proprietorship" therein? This is explored below.

²⁰ *Supra*, note 1 at p. 592.

²¹ *Supra*, note 1 at p. 588.

²² *Supra*, note 16.

²³ *Supra*, note 1 at p. 589.

²⁴ Indeed, such a conclusion is correct. The application of the mark "MACY'S" on the applicants' goods which are then exported from Singapore, is deemed to constitute "use" under s. 76(1) of the Act which provides: "The application in Singapore of a trade mark to goods to be exported from Singapore and any other act done in Singapore in relation to the goods to be so exported which, if done in relation to goods to be sold or otherwise traded in within Singapore, would constitute use of a trade mark therein, shall be deemed

The endorsement by Rubin J.C. of the "caveat" to "seize upon a very small amount of use" of the foreign mark in Singapore to entitle the foreign trader to relief confirms that a foreign trader who has first used his trade mark in Singapore, albeit in a very small way, can object to the local trader registering the foreign mark as his trade mark. In contrast, under the approach suggested in the *Karrimor* case²⁵ and the *Davidoff* case,²⁶ such a foreign trader may not be protected by section 11(1) of the Act, because such "very small amount of use" of the foreign mark in Singapore will probably not be sufficient to establish any reputation here. Seen in this light, one can appreciate how the decision in *R.H. Macy & Co. Inc. v. Trade Accents* has expanded the rights of international trade mark holders.

Yet, it is submitted that the rights of international trade mark holders in Singapore could be expanded just a little further. The rationale behind requiring prior "use" of a trade mark in the relevant territorial jurisdiction is really an extension of the policy underlying trade mark law of Singapore that the trader must have an intention to exploit his trade mark in that market, and have acted on such intention.²⁷ There may be certain acts which would not qualify as "use" of a trade mark but, nevertheless, evince an intention to assert the right to exploit the trade mark in a market. One example is when the foreign trader applies to register his trade mark but fails to obtain registration for reasons such as the trade mark lacking distinctiveness.²⁸ Such a scenario presented itself before the English courts in two cases.

The first case is *Vitamin's Ltd's Application*.²⁹ The English company

to constitute use of the trade mark in relation to those goods for any purpose for which such use is material under this Act or at common law."

Besides this form of "use" of the mark by the applicants in Singapore since 1982, the writer suggests that it would be interesting to examine the significance of the extensive advertisements placed by the applicants through television and radio or in journals and newspapers which were sold internationally. If any of these advertisements had circulated in Singapore, they would constitute "use" of the mark "MACY'S" by the applicants in Singapore if they can be taken to be inviting orders from Singapore. As pointed out by Dean J. in *Moorgate Tobacco Co. Ltd. v. Philips Morris Ltd. & Anor.* (No. 2) (1984) 56 A.L.R. 193 at p. 205, for there to be local use of the trade mark, it suffices if "it is possible to identify an actual trade or offer to trade in the goods or an existing intention to offer or supply goods bearing the mark in trade" (emphasis added.). See also *Riviera Lesiurewear Pty. Ltd. v. J.Hepworth & Son Plc.* [1987] A.I.P.C. para. 90-419 which considered Dean J.'s remark in the context of advertisements.

²⁵ *Supra*, note 8.

²⁶ *Supra*, note 10.

²⁷ This policy is seen in operation in s. 40 of the Act which provides that a registered trade mark can be expunged if there is no *bona fide* use or continued use of the trade mark by the proprietor after registration.

²⁸ For a trade mark to be **registrable**, it must satisfy the element of distinctiveness. See ss. 10 or 11 of the Act.

²⁹ [1956] R.P.C. 1.

who had copied an American **company's** trade mark applied to register it in the United Kingdom. The application was refused. **Lloyd-Jacob J.** recognised that "a **proprietary** right in a mark sought to be registered can be originated by a person or can be **acquired**",³⁰ but said that the English company could not claim to have proprietary rights in the trade mark when the American company had, prior to the English **company's** application, filed an application to register the same mark in the United Kingdom but had withdrawn the application when met with opposition proceedings. In a later case, *Brown Shoe Company's Application*,³¹ **Wymi-Parry J.** referred to such an application by the foreign trader as an earlier "assertion of **proprietorship**"³² in the trade mark in the United Kingdom, and held that the local trader who copied the foreign trader's trade mark could not claim to be the proprietor of a similar mark.

These two decisions were considered in *The Pelican case*,³³ the English case which **Rubin J.C.** refused to follow. In that case, the trader in the United Kingdom copied and registered an American trader's trade mark for the similar goods, after having made searches and enquiries which revealed that the mark had not been used in the United Kingdom. The Assistant Registrar of Trade Marks held that the trader could properly claim to be the proprietor of the trade mark at the time he applied to register it in the United Kingdom. He pointed out that there was no earlier application by the American company to register the mark in the United Kingdom. There was no evidence satisfactory to the Assistant Registrar of any "assertion of proprietorship" by the American **trader**.³⁴

This brief analysis of the English cases shows that the position taken by the courts in the United Kingdom on this issue is similar to that which is taken by the courts in **Australia**,³⁵ except that the English concept of an earlier "assertion of proprietorship" by the foreign trader of his trade mark in the relevant territorial area appears to be wider; what constitutes "use" of a trade mark is an "assertion of proprietorship" but not *vice versa*.

³⁰ *Ibid.* at p. 12.

³¹ [1959] R.P.C. 29.

³² *Ibid.* at p. 33.

³³ *Supra*, note 16.

³⁴ From this analysis of *The Pelican case*, it is apparent that **Rubin J.C.** was right to refuse to follow the case. The case was distinguishable on the facts in that there was no prior "assertion of proprietorship" in the "Pelican" mark by the American trader.

³⁵ It should be noted that in the *Vitamins case* as well as the *Brown Shoe case*, it was not clear if the court order to expunge the foreign trade mark registered in the name of the local trader was founded on the U.K. s. 17(1) or on the exercise of the Registrar's discretion to refuse registration given under s. 17(2). However, later cases have cited these two decisions as authorities on section 17(1): see "*Genette*" *T.M.* [1968] R.P.C. 148; *The Pelican case*, *supra*, note 16. For a contrary view, see **D.R. Shanahan**, *Australian Law of Trade Marks and Passing off* (2nd ed, 1990) pp. 160-163 who prefers to explain the *Vitamins case* as a refusal on discretionary grounds.

An application by the foreign trader to register a mark is an example of an "assertion of proprietorship" which is not "use".

It was sufficient for the applicants' purpose in this case to persuade the Court to adopt the concept of prior "use". The applicants' commercial activity in Singapore fell within the scope of "use". Therefore, it was not necessary for them to invoke the wider concept of an "assertion of proprietorship".³⁶ But what if the applicants did not have such commercial activity, and instead had, prior to the date of the respondents' application for registration, entered into negotiations with another party in Singapore to franchise the use of the mark "MACY'S" to such party? This would probably not constitute "use" of the mark in Singapore, but may well be an "assertion of proprietorship" in the mark. Would courts in Singapore be prepared to take a step further in such a case?

Section 15(1) and the Need for "Substantial Business" in Singapore

The applicants' second contention was that use of the mark "MACY'S" by the respondents was "likely to deceive or cause confusion".³⁷

The difficulty that the applicants faced in relying on section 15(1) of the Act to protect their worldwide reputation was that they did not have a retail business in Singapore, there having always been some uncertainty as to whether this would be fatal to an objection made under section 15(1). Counsel for the respondents sought to persuade the Court that it should be. He argued that if the applicants did not conduct business in Singapore and had no reputation or goodwill in relation to the business in Singapore, members of the public could not have knowledge of the applicants' mark and therefore there was no likelihood of there being any confusion or deception. He relied on a recent local decision *Tan Gek Neo Jessie v. Minister for Finance*.³⁸ In that case, the Registrar of Business directed a local trader to change her name of business - J. C. Penny Collections - to one that does not use the name "J.C. Penny" or "Penny". This direction arose from complaints made by an American chain retail store known as J.C. Penny Company Inc. The local trader applied for an order of *certiorari* to quash this direction. Thean J. in granting the application dismissed the allegation that the local trader in choosing J.C. Penny Collection as her business name was "riding on the reputation" of the American corporation because "the American corporation was not carrying on, and has not carried on, any

³⁶ The applicants' application to register the mark "MACY'S" in 1986 does not amount to a prior "assertion of proprietorship" in Singapore because the application was filed after the date of the respondents' application for registration.

³⁷ S. 15(1) of the Act. *Supra*, note 7.

³⁸ [1991] 2 M.L.J. 301.

business in Singapore... It therefore has no reputation here in relation to its **business**".³⁹

Rubin J.C. distinguished **this case on** the basis **that** "the American Corporation, J.C. Penny Co. Inc., which had two trademarks ("**Pennys**") in Singapore *did not use* any of these marks in Singapore" (emphasis added). He preferred to follow the reasoning of the Supreme Court of Hong Kong in *J.C. Penny Co. Inc. v. Punjabi Nick (otherwise Punjabi Narain)*.⁴⁰ The plaintiffs, J. C. Penny Company Inc., carried on a large retail business in the United States and elsewhere. Although it had no retail business in Hong Kong, **it had** a subsidiary purchasing company in Hong Kong which made substantial purchases of goods in Hong Kong for sale elsewhere. Leonard J. granted an interlocutory injunction to restrain the defendant from passing off his retail business under the name of "Pennys Fashion" for that of the plaintiffs because its subsidiary did carry on a "very substantial **business**"⁴¹ in Hong Kong. He noted that the fact that the plaintiff did not have any retail outlets in Hong Kong was not fatal to its claim.

The learned Judicial Commissioner concluded that the applicants did have the reputation and goodwill in Singapore and that there was a "tangible danger of confusion" if the respondents' trade mark was allowed to remain on the register.

This decision therefore clarifies that the existence of a retail business in Singapore is not necessary for the operation of section 15(1) in favour of the foreign **trader**.⁴² However, it appears that Rubin J.C. was concerned that the foreign trader must have in some way "used" his trade mark in Singapore. In this case, his earlier finding of "use" of the mark "**MACY'S**" by the applicants justified his conclusion.

Such an approach taken by Rubin J.C. is consistent with some English cases wherein it is suggested that the foreign trader must have some "user" of their trade mark in England, as well as reputation in England, before the objection under section 11(1) of the English Trade Marks Act 1958 (which corresponds to our section 15(1)) could **succeed**.⁴³

³⁹ *Ibid.*, at p. 306.

⁴⁰ [1979] F.S.R. 26.

⁴¹ *Ibid.*, at p. 27.

⁴² In Ng Siew Kuan's *Foreign Traders and the Law of Passing-Off: The Requirement of Goodwill within the Jurisdiction* [1991] S.J.L.S. 372 at p. 396, it is suggested that because the Applicants had a purchasing office in Singapore, they could be considered as having a "business" in Singapore.

⁴³ In *Smith Hayden & Co's Application* (1945) 63 R.P.C. 97 at p. 101, the following test was laid down in respect of the U.K. section 11(1): "Having regard to the reputation acquired by the name **HOVIS**, is the court satisfied that the mark applied for, if used in a normal and fair manner in connection with any goods covered by the registration proposed, will not be reasonably likely to cause deception and confusion amongst a substantial number of people?" In *Bali Trade Mark* [1969] R.P.C. 472 at p. 496, Lord Upjohn referring to this

In Australia, however, the courts have gone further in recognising the rights of foreign trade mark holders. There, foreign traders, who had no retail business and had not "used" their trade mark in Australia, have succeeded in expunging their trade mark registered in the name of another trader, on the ground that by virtue of the reputation that they enjoyed in Australia, the use of their mark in Australia by another trader would be likely to cause confusion or **deception**.⁴⁴ The courts in New Zealand have taken a similar position. In *Pioneer Hi-Bred Corn Co. v. Hy-Line Chicks Pty. Ltd.*,⁴⁵ Richardson J. was of the view that for the purposes of section 16⁴⁶ of the New Zealand Trade Marks Act 1953, the relevant consideration is not whether the trader **had** an established business goodwill in New Zealand or had used the trade mark concerned in New Zealand. The test is:

[H]aving regard to the *awareness* of the **opponent's** mark in the New Zealand market for goods covered by the registration opposed, would the use of the **applicant's** mark be likely to deceive or cause confusion to persons in that market? (emphasis **added**)⁴⁷

One is left to wonder if the result of this case would have been different if the applicants did not have any commercial activities in Singapore and could only prove reputation here.

Conclusion

The decision in *R. H. Macy & Co. Inc. v. Trade Accents* has indeed expanded the rights of international trade mark holders in Singapore. However, there is still scope for further "expansion" of the protection that these international trade mark holders can obtain under the Act. The question really is whether courts are prepared to take the step further. Perhaps so, if this "**observation**"⁴⁸ from Rubin J.C. is an echo of our courts' sentiment *vis-a-vis* an attempt by any trader to ride on the reputation of another:

Given the present day extensive travel and speedy communication facilities and the wide international circulation of media (some of them

test, said that it was wrong to use the words "reputation acquired by" and that it should have been "the user of. See also *Sidewinder Trade Mark* [1988] R.P.C. 261 where the objection under the U.K. s. 11(1) succeeded when the Registrar of Trade Marks found that there had been "user" of the mark concerned.

⁴⁴ *Re Remfry's Trade Mark* (1897) 23 V.L.R. 44; *First Tiffany Holdings Pty. Ltd. v. Tiffany and Company* (1989) A.I.P.C. para. 90-566. The provision in the Australian Trade Marks Act 1955 which corresponds to our s. 15(1) is s. 28(1).

⁴⁵ [1979] R.P.C. 410.

⁴⁶ It corresponds to our s. 15(1).

⁴⁷ *Supra*, note 41 at p. 424.

⁴⁸ *Supra*, note 1 at p. 593.

such as the ‘TIME’ magazine do publicise the activities of “MACY’S”: see ‘TIME’, June 10 1991 at page 37), there is increasing need for more vigorous commercial standards of honesty and in this respect, I share the views and sentiments expressed by Warrington L.J. in *Harrods Limited v. R. Harrod Limited*⁴⁹ when he said at page 85:

Now the question is whether the Defendant Company, which has been registered under the name of R Harrod Limited, is to be allowed to continue to carry on business under that name, or any other business containing the word ‘Harrod’ so as to be likely to deceive and to induce the belief in other people that its business is in some way connected with - whether by way of agency or branch, or otherwise - that of the well known Company, the Plaintiff, of Harrods Limited?

*/ should be very sorry indeed if the arm of this Court were too short to reach that which I consider in the result have been a deliberate attempt to obtain at least reputation and advantage from taking this particular name. [Emphasis added.]*⁵⁰

NG-LOY WEE LOON

⁴⁹ [1924] 41 R.P.C. 74.

⁵⁰ *Supra*, note 1 at p. 593.