IN THE HEARINGS AND MEDIATION DEPARTMENT OF THE INTELLECTUAL PROPERTY OFFICE OF SINGAPORE

[2023] SGIPOS 4

Trade Mark No. 40202001309U

IN THE MATTER OF A TRADE MARK APPLICATION BY

CHUAN HONG SENG PTE. LTD.

… *Applicant*

AND OPPOSITION THERETO BY

YAP FEI FEI

… *Opponent*

GROUNDS OF DECISION

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Yap Fei Fei
v
Chuan Hong Seng Pte. Ltd.

[2023] SGIPOS 4

Trade Mark No. 40202001309U
IP Adjudicator Lee Ai Ming
23 September 2022

12 January 2023

IP Adjudicator Lee Ai Ming:

Introduction

1 This is an opposition to the following trade mark application:

Trade Mark No.	**Mark**	**Class**	**Specification**
40202001309U		30	Carbohydrate based preparations for foods; Coffee; Tea; Vinegar, sauces and other condiments; Confectionery; Bakery products; Snack foods prepared from grains; Noodle-based prepared meals; Rice-based prepared meals.

2 The Opponent is Yap Fei Fei, a citizen of Singapore and a businesswoman.

3 The Applicant, Chuan Hong Seng Pte. Ltd., applied to register the trade

mark ("Application Mark") under Trade Mark No. 40202001309U on 18 January 2020 in Class 30.

4 The application was accepted and published on 13 March 2020 for opposition purposes. The Opponent filed her Notice of Opposition to oppose the application on 13 July 2020. The Applicant filed its Counter-Statement on 13 November 2020.

5 The Opponent filed her evidence in support of the opposition on 5 July 2021. The Applicant filed its evidence in support of the application on 5 January 2022. Further to that, the Applicant filed supplementary evidence in support of the application on 3 February 2022. The Opponent filed her evidence in reply on 8 June 2022. Following the close of evidence, a Pre-Hearing Review was held on 29 June 2022. The matter was set down for a full hearing on 23 September 2022. At the hearing, the parties were given three weeks until 14 October 2022 to file further written submissions and they did so.

Ground of opposition

6 The Opponent relies on Section 7(6) of the Trade Marks Act 1998 ("the Act") in this opposition. The Opponent also repeatedly asserted in her Statement of Grounds[1] and Statutory Declaration[2] that she owns the copyright in the artwork and designs of two registered trade marks in Singapore[3] which bear similar elements to the Application Mark and did not assign or intend to assign

[1] Opponent's Statement of Grounds at [3], [13] at [18(c)].

[2] Yap Fei Fei's Statutory Declaration at [5], [12], [14] and [20].

[3] See paragraph [11] for details of each of these registered marks.

such copyright to the Applicant. However, the Opponent confirmed at the Pre-Hearing Review that the sole ground of opposition was based on Section 7(6) In any case, I note also that reliance on Section 8(7)(b) of the Act, which provides that a trade mark must not be registered if its use is liable to be prevented by virtue of the law of copyright, was not pleaded by the Opponent. Counsel for the Opponent also clarified at the hearing that the Opponent was not pursuing the opposition based on copyright principles.

Opponent's evidence

7 The Opponent's evidence comprises the following:

(a) a Statutory Declaration made by Yap Fei Fei, the Opponent in person, on 2 July 2021 in Singapore; and

(b) a Statutory Declaration in Reply made by the same Yap Fei Fei on 3 June 2022 in Singapore.

Applicant's evidence

8 The Applicant's evidence comprises the following:

(a) a Statutory Declaration made by Chia Beng Yeow, Edwin, Director of the Applicant, on 4 January 2022 in Singapore; and

(b) a Supplementary Statutory Declaration made by the same Chia Beng Yeow, Edwin, on 26 January 2022 in Singapore.

Applicable law and burden of proof

9 There is no overall onus on the Applicant before the Registrar during examination or in opposition proceedings. The undisputed burden of proof in

the present case falls on the Opponent.

Background facts

10 The Applicant is a company that is part of the Chuan Group. The Chuan Group is a family-owned business that has been involved in the importation, distribution and wholesale of food products since 1976. The Applicant was incorporated in Singapore in 2017 to take on the specific function of distributing food products in Singapore.

11 At the time of the application, the Applicant was the registered proprietor of two trade marks that contain similar elements to the Application Mark. Details of each of these two registered marks (collectively referred to as the "Registered SOFEI Marks") are set out below:

Trade Mark No.	**Mark**	**Class**	**Specification**
40201604311U	 (the "SOFEI Goods Mark")	30	Korean Citron Tea.
T1408938J	 (the "SOFEI Services Mark")	35	Retail services, wholesale services, import and export services.

12 As the ownership of the Registered SOFEI Marks forms the crux of the present opposition proceedings, I set out in detail below how the Applicant came to become the registered proprietor of each of the Registered SOFEI Marks.

Background of the Opponent's business and the Registered SOFEI Marks

13 The Opponent was a shareholder and director of So Fei Pte. Ltd. ("SFPL"), a company which was incorporated in Singapore on 29 August 2008. SFPL was incorporated to carry out the business of importing and distributing various products from South Korea. One of these products was a popular Korean citron tea product. SFPL began selling this citron tea product in Singapore some time in 2014 under the brand name "SOFEI Gold Citron Tea". The trade mark "SOFEI" was created by the Opponent by conjoining her husband's surname "So" with part of her own name "Fei". The success of the launch of the SOFEI citron tea product in Singapore inspired the Opponent to apply for the registrations of the SOFEI Services Mark and the SOFEI Goods Mark in the name of SFPL on 9 June 2014 and 8 March 2016 respectively.

14 In or around June 2018, the Opponent realised that SFPL was about to be wound up for reasons unconnected to her citron tea business which was a profitable venture then.[4] The Opponent thus decided to look for other parties who would be interested to continue the distribution of the SOFEI citron tea product through the website www.businessforsale.sg.

Discussions between the parties

15 The Applicant was one such party which was interested in the importation and distribution of Korean products and contacted the Opponent. At the initial meeting between the parties, the Opponent offered to sell her entire business including SFPL's stocks, products, customer lists and intellectual property assets (which included the Registered SOFEI Marks), to the Applicant

[4] On 29 March 2019, the High Court ordered that SFPL be wound up on the ground that SFPL was insolvent.

for S$1 million.[5] The Applicant turned down this offer as it found the Opponent's asking price too high.[6]

16 Thereafter, the Opponent engaged in discussions with one other interested party who did not want to buy the entire business, but was only interested in the transfer of the distribution business for the citron tea product. This other party offered to pay S$20,000 for the distribution business, together with a 3% commission to the Opponent for every order of the citron tea product made by this other party through the Opponent.[7] The Opponent felt that this other party was taking advantage of her and declined the offer.[8]

17 The Opponent then approached the Applicant again. The Opponent claimed that this time, she offered the Applicant a transfer of the distribution business for a period of 3 years only rather than an outright sale.[9] The Opponent also asked to be appointed as an agent of the Applicant who would earn 3% commission on every order of the citron tea product made by the Applicant through the Opponent.[10]

18 According to the Opponent, the value of the transfer of SFPL's distribution business was set at $20,000.[11] As the Applicant also wanted the Registered SOFEI Marks to be assigned to it, the Opponent proposed that the Applicant pay an additional S$10,000 for the temporary transfer of the SOFEI

[5] Yap Fei Fei's Statutory Declaration in Reply at [4].

[6] Edwin Chia's Statutory Declaration at [11].

[7] Yap Fei Fei's Statutory Declaration in Reply at [5].

[8] Yap Fei Fei's Statutory Declaration in Reply at [5].

[9] Yap Fei Fei's Statutory Declaration in Reply at [9].

[10] Yap Fei Fei's Statutory Declaration in Reply at [9].

[11] Yap Fei Fei's Statutory Declaration at [10].

Goods Mark for the three-year period of the distribution arrangement.[12] The Applicant, however, asserted that it had only been prepared to pay a sum of S$30,000 for the purchase of SFPL's *entire* business which would include *both* SFPL's distribution business as well as the Registered SOFEI Marks, and this position was made clear to the Opponent.[13] To this end, the Applicant claimed also that Mr Edwin Chia, a director of the Applicant, had emphasized to the Opponent that the Applicant would not proceed if the sale of the Registered SOFEI Marks was not part of the deal.[14] According to the Applicant, while the Opponent was initially reluctant to accede to the Applicant's demand for the sale of the Registered SOFEI Marks, the Opponent eventually agreed to do so on the understanding that the SOFEI Services Mark would be retained by the Opponent for a few months for accounting purposes and would be transferred to the Applicant thereafter.[15]

Sale and purchase agreement

19 Following discussions between the parties, the Applicant prepared and sent the Opponent a draft Sale and Purchase Agreement ("SPA") on 14 December 2018 for the sale of both SFPL's distribution business and the Registered SOFEI Marks. The draft SPA was amended twice on the following day at the Opponent's request to remove her as a party to the agreement and to include only the sale of SFPL's distribution business and the SOFEI Goods Mark. The Applicant averred that this amendment was made because it had been agreed between the parties that the SOFEI Services Mark will only be

[12] Yap Fei Fei's Statutory Declaration in Reply at [9].

[13] Edwin Chia's Statutory Declaration at [16].

[14] Edwin Chia's Statutory Declaration at [16].

[15] Edwin Chia's Statutory Declaration at [17].

transferred to the Applicant after a few months.[16] The draft SPA was further amended a third time on 17 December 2018 at the Opponent's insistence to change the payment terms and remove the transfer of NTUC FairPrice as one of the customers to be transferred from SFPL to the Applicant. The Applicant did not object to these changes and the parties signed the SPA on the evening of 17 December 2018.

20 In summary, the key terms of the final executed SPA are summarised below:

(a) **Clause 1.3:** The "distribution business" means the sourcing and importing of SOFEI Gold Tea products (including SOFEI Gold Citron Tea) from E.N Star Co., Ltd ("E.N Star"), an OEM factory in Korea, followed by the on-selling of these products to local customers in Singapore including those listed in Annex 1 of the SPA.

(b) **Clause 2.1:** SFPL agrees to sell and transfer the SOFEI Goods Mark for a consideration of S$10,000, payable in two equal payments.

(c) **Clause 3.1:** SFPL agrees to sell and transfer the distribution business for SOFEI Gold Tea products for a consideration of S$20,000.

(d) **Clause 4.2**: The Opponent shall be appointed as an agent to assist the Applicant in the sourcing, importing and on-selling of the SOFEI Gold Tea products from E.N Star, for which the Applicant shall pay the Opponent a commission of 3% of the value of each shipment ordered by the Applicant from E.N Star through the Opponent. The appointment of the Opponent as an agent shall be for a period of 3 years

[16] Edwin Chia's Statutory Declaration at [18].

from the signing of the SPA, and the renewal of the appointment shall be subject to re-negotiation of the terms and conditions.

(e) **Clause 5.3:** SFPL and its related parties undertake to cease any form of trading or activity that is the same, similar, related to, or in competition with the SOFEI Goods Mark, the SOFEI Gold Tea Products and SFPL's distribution business.

21 Following the signing of the SPA by both parties on 17 December 2018, the Opponent undertook the recordal of the transfer of ownership of the SOFEI Goods Mark with the Intellectual Property Office of Singapore ("IPOS") on 11 January 2019. The date of the transfer of ownership is recorded on the trade marks register as 10 January 2019.

22 The transfer of ownership of the SOFEI Services Mark was thereafter also recorded by the Opponent with IPOS on 28 February 2019. The date of the transfer of ownership is recorded on the trade marks register as 28 February 2019.

Letter of agreement

23 On 11 March 2019, the Opponent approached Mr Edwin Chia to request that he sign a Letter of Agreement ("**LOA**") that she had prepared. The LOA reads:

We, SO FEI PTE LTD, Reg. No 2008172122C as the trade mark owner of Trade Mark No: T1408938J hereby agreed to transfer the ownership at NO COST to CHUAN HONG SENG PTE LTD, Reg. No: 201712397N on 28 Feb 2019.

> After the ownership transfer, both SO FEI PTE LTD or Mdm. YAP FEI FEI have the rights to use, print and assign the trade mark logo for all purposes effective from 28 Feb 2019 thru the trade mark expire (*sic*) on 09 June 2024.

24 As the Opponent had already lodged the transfer of the SOFEI Services Mark on 28 February 2019 and the LOA provided that SFPL was transferring the said mark to the Applicant at no cost, which the Applicant asserted was what the parties had agreed previously, Mr Edwin Chia signed the LOA on the spot at the Opponent's insistence.[17] The Opponent explained that she had requested the Applicant to sign the simple LOA to evidence that she still retained ownership in the SOFEI Services Mark which she had never intended to permanently sell and had only agreed to transfer to the Applicant for the duration of the three-year distribution arrangement without any cost, so as to facilitate the Applicant's distribution of the SOFEI products.[18]

Breakdown of the parties' relationship

25 According to the Opponent, for a few months (after the SPA was signed), the Applicant ordered the SOFEI Gold Tea products through the Opponent and paid her the 3% commission as agreed.[19] A total of five shipments were processed through her. The relationship between the parties soured when the Opponent discovered that from June 2019, the Applicant had in her view bypassed the contractual arrangement in the SPA by attempting to order the SOFEI Gold Tea products directly from the manufacturer in Korea instead of

[17] Edwin Chia's Statutory Declaration at [27].

[18] Yap Fei Fei's Statutory Declaration at [14].

[19] Yap Fei Fei's Statutory Declaration at [15].

through her as the Applicant's agent.[20] The Opponent also claimed that the Applicant had tried to appoint a different agent in Korea to export the products to it.[21]

26 The Opponent's version of events in the preceding paragraph is disputed by the Applicant. According to the Applicant, the Applicant had requested to visit the factory of the manufacturer in Korea which the Opponent had purportedly agreed to during the pre-SPA discussions.[22] When the Opponent became evasive when pressed by the Applicant to arrange for this visit, the Applicant became suspicious and started to investigate the matter.[23] The Applicant's investigations revealed that contrary to the Opponent's assertions, E.N Star was not the manufacturer of the SOFEI Gold Tea products but an export company that was selling the products to the Applicant at a 20% mark up on the actual manufacturer's (which was a company called Duwon Agricultural Cooperative) price.[24] These revelations prompted the Applicant to seek changes in the payment terms with E.N Star which eventually culminated in the termination of the distribution of the products from E.N Star to the Applicant.[25] Shortly after, the Applicant noticed that the SOFEI Gold Tea products previously sold by the Applicant under the SOFEI Goods Mark were being sold in NTUC FairPrice under the "GUM" brand and distributed in Singapore by another company, Honey-Land International Pte. Ltd.[26]

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[20] Yap Fei Fei's Statutory Declaration at [16].

[21] Yap Fei Fei's Statutory Declaration at [16].

[22] Edwin Chia's Statutory Declaration at [28].

[23] Edwin Chia's Statutory Declaration at [28]-[29].

[24] Edwin Chia's Statutory Declaration at [30].

[25] Edwin Chia's Statutory Declaration at [31]-[32].

[26] Edwin Chia's Statutory Declaration at [33].

27 The Applicant then instructed a Korean law firm to conduct investigations on E.N Star and learnt that:[27]

(a) E.N Star was only incorporated on 12 October 2018 shortly before the SPA was entered into;

(b) Mr David So, the Opponent's husband, was appointed a director of E.N Star on 17 May 2019; and

(c) E.N Star filed various trade mark applications in Korea on 26 June 2019 including an application for 

. This application was opposed by the Applicant.

Ground of opposition under Section 7(6)

28 Section 7(6) of the Act reads:

> (6) A trade mark shall not be registered if or to the extent that the application is made in bad faith.

Legal principles

29 The fundamental legal principles underlying the law on bad faith were not in dispute and are set out in the Court of Appeal's decision in *Valentino Globe BV v Pacific Rim Industries Inc* [2010] 2 SLR 1203 ("*Valentino*"):

(a) The term 'bad faith' embraces not only actual dishonesty but also dealings which would be considered as commercially unacceptable by reasonable and experienced persons in a particular trade, even though

[27] Edwin Chia's Statutory Declaration at [35]-[36].

such dealings may otherwise involve no breach of any duty, obligation, prohibition or requirement that is legally binding upon the registrant of the trade mark (*Valentino* at [28]).

(b) The test for determining bad faith contains both a subjective element (viz, what the particular applicant knows) and an objective element (viz, what ordinary persons adopting proper standards would think). Bad faith as a concept is context dependent. In the final analysis, whether bad faith exists or not hinges on the specific factual matrix of each case: (*Valentino* at [29]).

(c) Once a prima facie case of bad faith is made out by the opponent, the burden of disproving any element of bad faith on the part of the applicant would arise (*Valentino* at [36]).

(d) An allegation of bad faith is a serious claim to make and must be sufficiently supported by evidence. It must be fully and properly pleaded and should not be upheld unless it is distinctly proved, and this will rarely be possible by a process of inference (*Valentino* at [30]).

(e) Once bad faith is established, the application for registration of a mark must be refused even though the mark would not cause any confusion (*Valentino* at [20]).

30 Bad faith is to be determined as at the date of the application in question, though matters which occurred after the date of application which may assist in determining the applicant's state of mind as at the date of application can be taken into consideration (*Festina Lotus SA v Romanson Co Ltd* [2010] 4 SLR 552 at [100]). In the present opposition proceedings, the relevant date is the date of application for the registration of the Application Mark which is 18 January

2020.

Opponent's case

31 Broadly, the Opponent's case is that:

(a) the Opponent could not have intended to permanently transfer the SOFEI Goods Mark to the Applicant for such a small sum of S$10,000;

(b) the SPA should be interpreted as a three-year distribution arrangement, providing the Applicant only with the right to use and be seen as the owner of the SOFEI Goods Mark during the period of three years; and

(c) the SOFEI Services Mark was only to be temporarily transferred to the Applicant as the LOA provides that the Opponent and SFPL retain the right "to use, print and assign" the SOFEI Services Mark.

32 Applying the legal test for bad faith, the Opponent contended that, at the time of filing the Application Mark, the Applicant subjectively knew that:[28]

(a) the Opponent had originally offered to sell the Applicant the entirety of SFPL's business for more than S$1 million, a price the Applicant did not dispute but could not afford;

(b) the Opponent had received an offer from another party for S$20,000 for SFPL's distribution business only, an amount she felt was an insult;

[28] Opponent's Written Submissions at [11].

(c) the Opponent was prepared to accept S$30,000 from the Applicant for a transfer of the distribution business only and was reluctant to sell the Registered SOFEI Marks;

(d) the Opponent only agreed to transfer the "ownership" of the SOFEI Goods Mark on the basis of the Applicant's representations that it needed the ownership of said mark reflected in its name to assist them in marketing and distributing the SOFEI Gold Tea products;

(e) the Applicant earned a 100% profit of S$45,000 for their first order of the SOFEI Gold Tea products;

(f) the labelling of the SOFEI Gold Tea products incorporated trade marks which were either owned or co-owned by other parties in Korea;

(g) the Opponent later agreed to transfer the "ownership" of the SOFEI Services Mark in the LOA but clearly stipulated that she was retaining the right to use and assign the said logo;

(h) the Opponent expected the Applicant to exclusively order the SOFEI Gold Tea products through her for a period of 3 years at a commission of 3% for each order;

(i) the Applicant was clearly wrong in trying to bypass the parties' agreement that the Opponent was the exclusive agent of the Applicant; and

(j) SFPL had been declared to be wound up on 29 March 2019 and the liquidator had written to the Applicant on 14 October 2019 to question the background of the transfers of the Registered SOFEI Marks.

33 Applying the legal test of bad faith, the Opponent's argument on a broad

level is that SFPL did not and could not have intended to give full and irrevocable ownership of the Registered SOFEI Marks to the Applicant. For all intents and purposes, the Opponent maintained that SFPL remained the legal owner of the said marks. Objectively, ordinary persons would thus not have regarded it commercially acceptable to file the application for the Application Mark but would have made clarifications with the Opponent or SFPL's liquidator as to the propriety of the application.[29]

Applicant's case

34 The Applicant's case is that:

(a) the SPA clearly indicates that SFPL agreed to sell and transfer the SOFEI Goods Mark and SFPL's distribution business to the Applicant;

(b) the LOA indicates that SFPL agreed to transfer the ownership of the SOFEI Services Mark to the Applicant; and

(c) the Opponent had in fact recorded the transfers of ownership of the Registered SOFEI Marks.

35 Applying the legal test for bad faith, the Applicant submitted that it knew subjectively that it was the legal owner of the Registered SOFEI Marks and SFPL's distribution business at the time of the application for the Application Mark.[30] Objectively, ordinary persons would consider it commercially acceptable for a trade mark proprietor to file a trade mark application that is

[29] Opponent's Written Submissions at [27].

[30] Applicant's Written Submissions at [37].

simply a derivation of other registered trade marks that it legally owns.[31]

Application of Section 7(6) to the facts

SOFEI Goods Mark

Whether the Applicant knew that the transfer of the SOFEI Goods Mark may be invalidated for being an undervalued transaction

36 At the outset, I note that the Opponent posited in its supplementary written submissions that the validity of the SPA (and by extension, the transfer of the SOFEI Goods Mark) may "potentially be affected under the IRDA if the substance of the SPA amounted to a transaction at an undervalue".[32] The application to wind up SFPL was filed before the winding up provisions in the Companies Act (Chapter 50) ("Companies Act") were re-enacted in the Insolvency, Restructuring and Dissolution Act 2018 ("IRDA") on 30 July 2020. Section 526(1)(f) of the IRDA makes it clear that the relevant provisions of the Companies Act would continue to apply to any application for winding up filed before 30 July 2020. In the present case, the correct statutory provisions to consider with respect to undervalued transactions would not be in the IRDA, but the now repealed Section 329 of the Companies Act, read with Section 98 of the repealed Bankruptcy Act (Chapter 20).

37 In summary, the abovementioned provisions provide that only the court can make a determination as to whether a transaction is undervalued, and to order the unwinding of such transaction as it thinks fit. No evidence was adduced of any such court order to unwind or void the transfer of the SOFEI Goods Mark on the basis that such transaction was undervalued. I therefore do

[31] Applicant's Written Submissions at [38].

[32] Opponent's Supplementary Written Submissions at [5].

not find it necessary nor appropriate to take into consideration whether the transfer of the SOFEI Goods Mark pursuant to the SPA, is, or should be an undervalued transaction.

38 Notwithstanding the above, the Opponent also pointed to a Liquidator's Letter dated 14 October 2019 ("Liquidator's Letter") querying the transfer of the SOFEI Goods Mark and submitted that the Applicant would have known that the price that it had paid for the SOFEI Goods Mark and SFPL's distribution business was "undervalued and at risk of being invalidated or voided".[33] I am not persuaded by the Opponent's submission. While SFPL's liquidator had written to the Applicant to request for "documents and/or information pertaining to the sale and/or the transfer of ownership" of the Registered SOFEI Marks, the Liquidator's Letter did not suggest that the validity of the transfer of the SOFEI Goods Mark could be impugned for being an undervalued transaction. In the absence of any concrete evidence showing that the Applicant had the knowledge that the transfer of the SOFEI Goods Mark may be invalidated, I am of the view that it would not be appropriate to impute such knowledge to the Applicant.

Whether the Applicant knew that the Opponent never intended to irrevocably transfer the SOFEI Goods Mark

39 The thrust of the Opponent's contentions is that SFPL had never intended to irrevocably transfer the ownership of the SOFEI Goods Mark to the Applicant. At the hearing, counsel for the Opponent clarified that legal title to the SOFEI Goods Mark was intended only to be temporarily parked with the Applicant but remained beneficially vested in SFPL at the time of the application for the Application Mark. In support of this position, the Opponent

[33] Opponent's Supplementary Written Submissions at [12].

appeared to raise the following relevant factors:

(a) interpretation of the SPA as a three-year distribution arrangement;

(b) circumstances under which the SPA was entered into; and

(c) low price paid by the Applicant for the SOFEI Goods Mark.

40 I address each of these in turn.

(a) Interpretation of the SPA as a three-year distribution arrangement

41 First, the Opponent argued that the SPA should be understood as a three-year distribution arrangement with the right to be recorded and seen as the owner of the SOFEI Good Marks for that same period of three years.[34] This interpretation appeared to be borne out of clause 4.2 of the SPA which provides for the appointment of the Opponent as the Applicant's agent to assist the Applicant "in the sourcing, importing and on-selling" of the SOFEI Gold tea products from South Korea for a period of three years. Relatedly, the Opponent claimed that the transfer of the SOFEI Goods Mark was *only* for the purpose of allowing the Applicant to operate the distribution business for the agreed period.[35] In that regard, the transfer of the SOFEI Goods Mark was not intended to be permanent and this was known by the Applicant. The Opponent also attempted to obfuscate the effect of the SPA by suggesting that the agreement lacked complete clarity because the document was not drafted by lawyers.[36]

[34] Yap Fei Fei's Statutory Declaration in Reply at [24].

[35] Opponent's Written Submissions at [14].

[36] Opponent's Written Submissions at [19].

42 Having considered the Opponent's submissions, I am unable to accept her contention that the SPA should be interpreted to mean that the Applicant only had the right to use the SOFEI Goods Mark for the period of a three-year distribution arrangement. I note that nowhere in the SPA is such a limitation explicitly provided for. Clause 3.1 of the SPA clearly states that SFPL "**agrees to sell and transfer THE DISTRIBUTION**" to the Applicant. There is no indication, express or otherwise, that the sale and transfer of SFPL's distribution business would be for a limited period of three years. Similarly, clause 2.1 of the SPA also unambiguously provides that SFPL "**agrees to sell and transfer THE TRADEMARK**" (i.e. the SOFEI Goods Mark) to the Applicant. Again, there is no limitation imposed on such sale and transfer. The Opponent's presupposed reliance on clause 4.2 of the SPA is unfounded. The Opponent's appointment as the agent of the Applicant for three years is wholly distinct from, and also not inconsistent with, SFPL's agreement to sell and transfer both its distribution business and the SOFEI Goods Mark without any limitation.

43 I am therefore unable to agree that the Applicant knew or should have known that the Opponent had only meant to transfer the SOFEI Goods Mark for a limited period of three years.

(b) Circumstances under which the SPA was entered into

44 Second, the Opponent emphasized that the Applicant took advantage of the Opponent's state of mind, lack of legal counsel and her emotional and financial vulnerability in getting her to sign the SPA.[37] She also argued that the Applicant was much more experienced than the Opponent in trade mark matters

[37] Opponent's Written Submissions at [19]; Yap Fei Fei's Statutory Declaration at [19].

as well as in drafting commercial agreements.[38] It is not entirely clear what the legal basis of the Opponent's submissions is, although one may postulate that the Opponent may be suggesting that the transfer of the SOFEI Goods Mark was procured under some form of undue influence from the Applicant.

45 It is not necessary for me to delve into the law underlying undue influence for the purposes of this opposition. What bears mention, however, is that the final executed SPA appeared to be the result of negotiations between the Applicant and the Opponent. To this end, the Applicant adduced various drafts of the SPA that were exchanged via e-mail between Mr Edwin Chia and the Opponent. The Applicant submitted that the Opponent had in fact proposed key amendments to the drafts including removing herself as a party to the SPA, deleting clauses providing for the sale and transfer of the SOFEI Services Mark and revising the payment terms. [39] On the Applicant's evidence, I am satisfied that the Opponent had the opportunity to, and had in fact, actively engaged the Applicant in negotiations relating to the terms of the SPA. The Opponent has not adduced any evidence to show that she had been unduly pressured into signing the SPA and agreeing to sell and transfer the SOFEI Goods Mark to the Applicant.

46 The Opponent clearly knew what she was getting into and what she wanted out of the deal with the Applicant. It is glaring that apart from the abovementioned amendments proposed by the Opponent, the Opponent did not seek to amend clauses 3.1 and 2.1 if her intention was indeed to transfer SFPL's distribution business and the SOFEI Goods Mark for only 3 years. It is difficult

[38] Opponent's Written Submissions at [13]; Yap Fei Fei's Statutory Declaration in Reply at [3] and [11].

[39] Applicant's Written Submissions at [22]-[25] and [27]; Edwin's Chia Statutory Declaration at [18]-[19] and [41].

to believe that she would not have ensured that such a fundamental term is clearly and expressly written into the SPA. I am not persuaded by the oblique suggestion that the Opponent may not have understood or had misunderstood the legal effect of the SPA since she was not legally represented and was in a vulnerable state at the time she signed the SPA on behalf of SFPL. She described herself as a businesswoman and the totality of her evidence in my view showed her to be quite an astute and intelligent one. I note also that the Opponent made no mention of the amendments she had made to the SPA in her evidence and also did not refute the Applicant's evidence on this point.

(c) Low price paid by the Applicant for the SOFEI Goods Mark

47 Third, the Opponent also submitted that the price that the SOFEI Goods Mark was sold for was so disproportionately low in comparison to the profitability of her business. The Opponent described this as a "huge red flag indicator to the Applicant that the Opponent did not mean to give full and irrevocable ownership" of the SOFEI Goods Mark.[40] With respect to the profitability of her business, the Opponent claimed that:

(a) the annual revenue of her entire business was around S$1,000,000, and this was also her initial offer to the Applicant for the sale of the entire business;[41]

(b) the average monthly sales of the SOFEI Gold Tea products were approximately S$50,000;[42] and

[40] Opponent's Written Submissions at [12].

[41] Yap Fei Fei's Statutory Declaration in Reply at [4].

[42] Yap Fei Fei's Statutory Declaration at [10].

(c) the Applicant had in fact earned a 100% profit of S$45,000 on its first shipment order of the SOFEI Gold Tea products.[43]

48 Apart from her own rough calculations of the profits that the Applicant earned from its first shipment order of the SOFEI Gold Tea products, the Opponent did not provide any direct evidence to support her claims of the profitability of the products and the value of the distribution business.[44] She adduced customer billing invoices which provided an indication of how much the products had been sold for to various customers in Singapore but these invoices by themselves are inadequate for me to accept her claims. I am mindful that the Applicant did not challenge the veracity of the Opponent's claims but this in my view does not advance the Opponent's case in the absence of direct evidence.

49 In the absence of cogent evidence supporting the Opponent's claim of gross undervaluation of the transfer of the distribution business and the SOFEI Goods Marks and in contrast, given the clear and unambiguous language of the SPA, I am unable to accept the Opponent's contention that the Applicant knew or should have known that the Opponent had not intended to irrevocably transfer the ownership of the SOFEI Goods Mark.

50 I now turn to consider the transfer of the SOFEI Services Mark.

[43] Yap Fei Fei's Statutory Declaration in Reply at [8] and [13].

[44] Yap Fei Fei's Statutory Declaration in Reply at [8].

SOFEI Services Mark

Whether the Applicant knew that the disposition of the SOFEI Services Mark is void under insolvency law

51 Section 259(1) of the Companies Act reads:

> (1) Any disposition of the property of the company, including things in action, and any transfer of shares or alteration in the status of the members of the company made after the commencement of the winding up by the Court shall unless the Court otherwise orders be void.

52 In respect of a court-ordered winding up, Section 255(2) of the Companies Act provides that "the winding up shall be deemed to have commenced at the time of the making of the application for the winding up".

53 According to the Order of Court made by the High Court on 29 March 2019, the application to wind up SFPL was filed on 30 January 2019. The winding up of SFPL shall accordingly be deemed to have commenced on that same date.

54 The SOFEI Services Mark was transferred from SFPL to the Applicant on 28 February 2019. This postdates the date of the making of the application for SFPL's winding up. Pursuant to Section 259(1) of the Companies Act, the disposition of the SOFEI Services Mark is void unless the Court otherwise orders. As no evidence was adduced of any such order made by the Court, I find that the disposition of the SOFEI Services Mark is void ab initio. Legal title to the SOFEI Services Mark therefore did not belong to the Applicant at the time of the application. Instead, Section 346(1) of the Companies Act provides that where, after a company has been dissolved, there remains any outstanding property which was vested in a company, such property shall become legally and equitably vested in the Official Receiver together with all claims, rights and

remedies which the company or its liquidator had at the date the company was dissolved.

55 In coming to this conclusion, I am mindful that the transfer of ownership of the SOFEI Services Mark from SFPL to the Applicant is duly recorded on the trade marks register. Correspondingly, the Applicant is also recorded on the register as the registered proprietor of the SOFEI Services Mark. However, Section 101 of the Act states that "[i]n all legal proceedings relating to a registered trade mark or any right thereunder", the register is only "prima facie evidence of anything contained therein". I am therefore not bound by the records on the register in ascertaining the status of the legal ownership of the SOFEI Services Mark.

56 In summary, the SOFEI Services Mark could not have been and was not legally owned by the Applicant at the time of the application by virtue of the Companies Act. This raises the question as to whether the Application Mark was filed in bad faith because the Applicant knew or should have known about SFPL's winding up application and the fact that the Applicant was not actually the legal owner of the SOFEI Services Mark.[45]

57 Having considered the parties' evidence, I am satisfied that the Applicant genuinely believed that SFPL has irrevocably transferred the SOFEI Services Mark to it and it was therefore the legal owner of the mark at the time of the application for the Application Mark. This is in spite of the fact it was not actually the legal owner by virtue of the insolvency provisions in the Companies Act. I arrive at this conclusion for the following reasons.

[45] Opponent's Supplementary Written Submissions at [20].

58 First, no evidence was adduced that the Applicant was made aware by the liquidator or by any other party, of the application to wind up SFPL, the winding up order by the Court and the implications of SFPL's disposition of the SOFEI Services Mark at the time of the application for the Application Mark. Similar to my finding in respect of the SOFEI Goods Mark at [38] above, the Liquidator's Letter made no suggestion that the validity of the transfer of the SOFEI Services Mark could be called into question. In the circumstances, I am of the view that it would also not be appropriate to impute to the Applicant the knowledge that the SOFEI Services Mark was not actually legally owned by it at the time of the application for the Application Mark.

59 Second, the LOA is clear on its face that SFPL had "**agreed to transfer the ownership**" of the SOFEI Services Mark at no cost to the Applicant and this is evidenced by the application to record the transfer at IPOS on 28 February 2019 by the Opponent herself. This is consistent with the Applicant's version of the facts that the Opponent had agreed to transfer the SOFEI Services Mark from SFPL to the Applicant, but only after a few months post-signing of the SPA. While the Opponent contended that the second paragraph of the LOA indicates SFPL's intention to retain legal ownership of the mark,[46] I accept the Applicant's interpretation that this paragraph merely granted SFPL and the Opponent a license to use the SOFEI Services Mark for the stipulated period.[47] I am mindful of the difficulties with the use of the word "assign" in the second paragraph of the LOA which purportedly granted both the Applicant and SFPL the right to assign the SOFEI Services Mark to third parties. This is because the Opponent's retention of a right to assign the SOFEI Services Mark (in the legal sense) would not be consistent with a full and irrevocable transfer of ownership

[46] Opponent's Statutory Declaration in Reply at [10].

[47] Applicant's Written Submissions at [32].

of the same mark. However, I do not think the word "assign" was intended to be used by the Opponent in the legal sense here. This is especially given the fact that the Opponent had drafted the LOA on her own accord without the benefit of legal advice and the Opponent only presented the LOA to Mr Edwin Chia for signing some time *after* her application to record the transfer of ownership with IPOS. Equally, it is also unlikely that Mr Edwin Chia – who similarly did not obtain legal advice prior to signing the LOA – would have understood the use of the word "assign" to mean that the Opponent was retaining legal ownership of the SOFEI Services Mark.

60 I therefore find that the Applicant held the genuine belief that it was the legal owner of the SOFEI Services Mark at the time of the application, even though this was not actually the case. In the circumstances, objective persons would find it commercially acceptable for the Applicant to file the application without making enquiries with the Opponent or SFPL's liquidator as to the legality of the transfer of the SOFEI Services Mark.

61 For completeness, I note that the SOFEI Goods Mark was transferred from SFPL to the Applicant on 10 January 2019. As this predates the date of the making of the application for SFPL's winding up, the disposition of the SOFEI Goods Mark is not void ab initio pursuant to Section 259(1) of the Companies Act, unlike the SOFEI Services Mark.

62 Finally, as the SPA was executed by the parties on 17 December 2018, the alleged three-year distribution arrangement that is posited by the Opponent would presumably have expired on 17 December 2021. Notwithstanding the Opponent's vehement claims that the SOFEI Goods Mark was intended only to be temporarily parked with the Applicant for three years and the alleged gross undervaluation of the price of the transfer of the SOFEI Goods Mark, it is

somewhat puzzling that SFPL's liquidator did not initiate any action to secure the re-transfer of the SOFEI Goods Mark upon the expiration of the alleged three-year term. Nor were there any negotiations between the liquidator and the Applicant to extend this alleged three-year distribution arrangement.

Conclusion on opposition under Section 7(6)

63 For all the reasons given above, I am satisfied that the Applicant held the genuine belief that legal title to the Registered SOFEI Marks was vested in it at the time of the application for the Application Mark. With this belief, there is no impropriety on the Applicant's part in filing the application for the Application Mark which is simply a derivation of the SOFEI Goods Mark. Consequently, it would also not have been objectively necessary as the Opponent suggested, for the Applicant to have made enquiries with the Opponent or SFPL's liquidator as to the propriety of the application.

64 Accordingly, I find that the Opponent has not discharged her burden to make out even a prima facie case of bad faith against the Applicant.

65 The sole ground of opposition under Section 7(6) therefore fails.

Overall conclusion

66 Having considered all the pleadings and evidence filed and the submissions made in writing, I find that the opposition fails. The application will proceed to registration. The Applicant is also entitled to costs to be taxed, if not agreed.

Lee Ai Ming
IP Adjudicator

Ms Gladys Tan and Ms Estelle Moh (David Llewelyn & Co LLC) for the Applicant;
Ms Teresa O'Connor (Ghows LLC) for the Opponent.
