CLIENT NOTE

IMPUTED KNOWLEDGE SINKS TRADE MARK APPLICATION FOR BAD FAITH

I. INTRODUCTION

1. In the recent decision of *Symphony Holdings Limited v Skins IP Limited* [2025] SGIPOS 3, the Intellectual Property Office of Singapore ("**IPOS**") rejected a trade mark application for "SKINS" (the "**Application Mark**") on the ground that it was filed in bad faith.

II. BACKGROUND

2. Symphony Holdings Limited (the "**Opponent**") is engaged in sports branding and retailing businesses. It purchased the SKINS mark (the "**Earlier Mark**") from Skins International Trading AG ("**SITAG**"), a Swiss company which went bankrupt. Another company, Four Marketing Limited ("**Four Marketing**") failed in its bid to acquire the Earlier Mark.

3. Skins IP Limited (the "**Applicant**") is in the business of leasing of intellectual property. It was incorporated shortly after the Opponent purchased the Earlier Mark.

III. THE PRESENT CASE

4. The Opponent opposed the Application Mark on various grounds, including the Applicant's bad faith in filing the Application Mark. The opposition succeeded on this ground.

5. Under Singapore trade mark law, 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 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. [1]

6. The test for bad faith contains a subjective element (i.e., what the Applicant knows) and an objective element (i.e., whether that the

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[1] *Symphony Holdings Limited v Skins IP Limited* [2025] SGIPOS 3 at [12(a)] citing *Valentino Globe BV v Pacific Rim Industries Inc* [2010] 2 SLR 1203.

Applicant's dealings would be considered commercially unacceptable by reasonable experienced persons in the particular trade.[2])

7. In this case, the subjective element was proven. The tribunal found that there was a nexus between the parties, and that it was reasonable to assume that the Applicant knew of the Earlier Mark and/or the Opponent's ownership of the mark.

8. The Applicant was a company under Frasers Group, alongside Sports Direct and Four Marketing:

   (a) Sports Direct was a distributor of goods bearing the Earlier Mark;

   (b) Four Marketing was involved in the bid to purchase SITAG's IP portfolio.

9. Further, the Applicant, Sports Direct, and the parent company of Four Marketing, share identical directors and office addresses.

10. Notably, the Applicant did not deny knowledge of the Earlier Mark or that it knew that the Opponent owned the Earlier Mark.

11. The objective element was also proven, in that "*reasonable and experienced men in the relevant trade would take umbrage with the Applicant's dealings*."[3] The tribunal found that the Applicant:

   (a) took the entire word element of the Earlier Mark and applied to register it in plain ordinary font, thus amounting to "*copying with some modifications" which would cause a trade mark to be rejected*";[4] and

   (b) failed to address the allegation of bad faith, providing no explanation as to why it chose the word "SKINS" for its corporate name and the Application Mark.[5]

IV. COMMENTARY

12. Businesses should be aware that it will be futile to incorporate a new entity for the purposes of filing a mark in bad faith. In this case, the Application Mark was filed under a newly incorporated company, instead of the existing entities in the group. Perhaps this was an attempt to avail the Applicant of the argument that, technically, there is no nexus between the parties. If so, the attempt did not work. The tribunal was willing to impute knowledge of the Earlier Mark to the Applicant, even in the absence of direct evidence of the knowledge.

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[2] *Symphony Holdings Limited v Skins IP Limited* [2025] SGIPOS 3 at [26].
[3] *Symphony Holdings Limited v Skins IP Limited* [2025] SGIPOS 3 at [31].
[4] *Symphony Holdings Limited v Skins IP Limited* [2025] SGIPOS 3 at [31], following *Festina Lotus SA v Romanson Co Ltd* [2010] 4 SLR 552 and *Weir Warman Ltd v Research & Development Pty Ltd* [2007] SGHC 59 at [44].
[5] *Symphony Holdings Limited v Skins IP Limited* [2025] SGIPOS 3 at [29], following *PT Swakarya Indah Busana v Dhan International Exim Pte Ltd* [2010] 2 SLR 109 at [90].

13. Businesses should also document their decision-making process in the choice of a trade mark that they decide to use. This would be invaluable in the defence against the allegation that the trade mark is filed in bad faith. In this case, there was absence of explanation by the Applicant as to why it chose the word "SKINS" as its company name and the Application Mark and this absence was relied upon by the tribunal in its finding of bad faith by the Applicant.

14. Finally, when choosing a trade mark, businesses should be alert to potential similarities of the mark to trade marks that are already used by competitors. If in doubt, businesses should engage trade mark lawyers to conduct trade mark availability searches to manage the risk of opposition or infringement proceedings.

15. Please do not hesitate to contact us if you have any queries relating to this Client Note or require any advice on any aspect of trade mark law in Singapore.

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