

23/84

No. 26 of 1982

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

SOCOIL CORPORATION BERHAD

Appellant
(Party affected)

- and -

NG FOO CHONG

NG FOO KOK

(Trading as Ng Brothers Import
and Export Company)

Respondents
(Applicants)

RECORD OF PROCEEDINGS

MACFARLANES
10 Norwich Street
London EC4A 1BD

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Royex House
Aldermanbury Square
London EC2V 7LD

Solicitors for the Appellant

Solicitors for the Respondents

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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RECORD OF PROCEEDINGS

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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

SOCOIL CORPORATION BERHAD

Appellant
(Party affected)

- and -

NG FOO CHONG

10 NG FOO KOK

(Trading as Ng Brothers Import
and Export Company)

Respondents
(Applicants)

RECORD OF PROCEEDINGS

No. 1

Originating Motion - 13th June 1979

In the High
Court in
Borneo

IN THE HIGH COURT IN BORNEO AT KOTA KINABALU

ORIGINATING MOTION NO. 2 OF 1979

No. 1
Originating
Motion - 13th
June 1979

20

In the matter of Ng Foo Chong and Ng Fook
Kok trading as Ng Brothers Import and
Export Company

And

In the matter of the Trade Description Act,
1972

And

30

In the matter of Trade Mark "GOLDEN DRAGON"
consisting of the device of a golden coloured
dragon enclosed in a circle registered under
the Trade Mark No. 19862 in Class 29 in
Sabah in the name of Ng Foo Chong and Ng Foo
Kok trading as Ng Brothers Import and Export
Company

Ng Foo Chong and Ng Foo Kok trading as
Ng Brothers Import and Export Company Applicants

In the High
Court in
Borneo

No. 1
Originating
Motion - 13th
June 1979
(cont'd)

NOTICE OF MOTION

TAKE NOTICE that this Honourable Court will be moved on Tuesday the 31st day of July, 1979 at 9.00 o'clock in the forenoon or so soon thereafter as can be heard by Counsel on behalf of Ng Foo Chong and Ng Foo Kok trading as Ng Brothers Import and Export Company, the applicants above-named, who are the registered proprietors of the Trade Mark "GOLDEN DRAGON" consisting of the devise of a golden coloured dragon enclosed in a simale registered under the Trade Mark No. 19862 in Class 29 in Sabah, for an Order pursuant to Section 16 of the abovenamed Act that the Trade Mark "GOLDEN DRAGON" consisting of the devise of a golden coloured dragon enclosed in a circle used in relation to edible oils and in particular to cooking oil NOT Manufactured by or distributed by NG Foo Chong and Ng Foo Kok trading as Ng Brothers Import and Export Company shall be deemed for the purposes of the Trade Description Act 1972 to be false trade description.

10

20

Dated this 13th day of June, 1979.

Sgd. Shook Lin & Bok
Advocates for the
Applicants abovenamed

Sgd. Deputy Assistant
Registrar, High Court,
Kota Kinabalu.

This Notice of Motion will be supported by the Affidavits of Ng Foo Kwan affirmed on the 14th day of December, 1979 /sic/ and filed herein.

This Notice of Motion is taken out ex-parte and is not intended to be served on anybody.

30

This Notice of Motion is filed by Messrs Shook Lin & Bok Advocates & Solicitors abovenamed applicants and whose address for service is 21st Floor, Wisma M.P.I., Jalan Raja Chulan, Kuala Lumpur.

No. 2

Affidavit of Ng Foo Kwan - 14th December
1978

In the High
Court in
Borneo

No. 2
Affidavit of
Ng Foo Kwan
14th December
1978

IN THE HIGH COURT IN BORNEO AT KOTA KINABALU

ORIGINATING MOTION NO. 2 OF 1979

In the matter of Ng Foo Chong and Ng Foo Kok
trading as Ng Brothers Import and Export
Company

And

10 In the matter of Trade Description Act,
1972

And

In the matter of Trade Mark "GOLDEN DRAGON"
consisting of the device of a golden
coloured dragon enclosed in a circle
registered under the Trade Mark No. 19862 in
Class 29 in Sabah in the name of Ng Foo Chong
and Ng Foo Kok Trading as Ng Brothers Import
and Export Company

20 Ng Foo Chong and Ng Foo Kok trading as
Ng Brothers Import and Export Company Applicants.

A F F I D A V I T

I, Ng Foo Kwan (N.R.I.C.No.4298321) of 101
Road 29, Overseas Union Garden, 5th Mile, Jalan
Klang, Kuala Lumpur and of full age do hereby
solemnly affirm and say as follows :-

1. I am the Shipping and Export Manager of Ng
Brothers Import and Export Company, a business
concern having a place of business at No. 51,
30 Overseas Union Garden, Jalan Klang, Kuala Lumpur.

2. I am authorised to make this Affidavit on
behalf of the Applicants and the matters deposed
to herein are from my own personal knowledge or
from record of the said business concern to which I
have access.

3. The applicants are the registered proprietors
of the Trade Mark consisting of the device of a
golden coloured dragon enclosed in a circle and the
words "Golden Dragon".

40 4. I append below the particulars of the
registration of the said Trade Mark:-

<u>In the High Court in Borneo</u>	<u>Terri- tory</u>	<u>Trade Mark No</u>	<u>Classifi- cation of Goods</u>	<u>Date of Regis- tration</u>
No. 2 Affidavit of Ng Foo Kwan 14th December 1978 (cont'd)	Sabah	19862 - the device of a Golden Coloured dragon enclosed in a circle and the words "GOLDEN DRAGON"	Edible Oils	22.1.76

5. Annexed hereto and marked as "GD1" is the copy of the Certificate issued under Section 39, Rule 58 of the Trade Marks Ordinance, 1949 by the Registry of trade Marks, Sabah pertaining to the said Trade Mark.

6. To the best of my knowledge and belief the said registration is and has been at all material times been valid and subsisting.

7. I verily believe that by virtue of the registration the Applicants are entitled to the exclusive use of the Trade Mark "GOLDEN DRAGON" and the devise of a golden coloured dragon enclosed in a circle and the exclusive use of the "GOLDEN DRAGON" Trade Mark thereof is further supported by the Registrar of Trade Marks' confirmation that the official search of the Trade Marks' Register in Sabah reveals that the exclusive rights over the "GOLDEN DRAGON" Trade Mark in respect of "Edible Oils" has been granted to the Applicants herein and annex herewith is the official letter dated 15th December, 1978 and marked as "GD2".

8. I annex hereto a photograph of a tin of cooking oil in respect of cooking oil NOT of the Applicants' manufacture which being sold and marked "GD3".

9. The Applicants' tin of cooking oil bears the Trade Mark "GOLDEN DRAGON" and the devise of a golden coloured dragon enclosed in a circle.

10. Since approximately a few months ago, cooking oil mentioned above NOT of the Applicants' manufacture and bearing identical Trade Mark and device of the registered Trade Mark of the Applicants are being sold in this country.

11. I am informed by my Solicitors and verily believe that the use of the Trade Mark "GOLDEN DRAGON" and device of a golden coloured dragon

enclosed in a circle in connection with the sale of cooking oil of the Applicants' registered Trade Mark and device and is calculated to deceive and to lead the public to believe that those cooking oil are the products and manufacture of the Applicants.

In the High Court in Borneo

No. 2
Affidavit of
Ng Foo Kwan
14th December
1978
(cont'd)

10 12. The acts of infringement and passing-off are continuing and in the circumstances I respectfully ask the Honourable Court to grant the relief prayed for in the Notice of Motion filed herein.

Affirmed at Kuala Lumpur in)
the Federal Territory this)
14th day of 1978 by the said) Sgd.
Ng Foo Kwan at 2.40 p.m.)

Before me,

Sgd. Hariram Jayaran
Pesuruhjaya Sumpah.

20 This Affidavit is filed by Messrs. Shook Lin & Bok, Solicitors for the Applicants abovenamed and whose address for service is 21st Floor, Wisma M.P.I. Jalan Raja Chulan, Kuala Lumpur.

In the High
Court in
Borneo

No. 3

Order - 31st July 1979

No. 3 - Order
31st July
1979

MALAYSIA

IN THE HIGH COURT IN BORNEO

KOTA KINABALU REGISTRY

ORIGINATING MOTION NO. 2 OF 1979

In the Matter of Ng Foo Chong and Ng
Foo Kok trading as Ng Brothers Import
and Export Company

AND

10

In the Matter of the Trade Description
Act, 1972

AND

In the Matter of Trade Mark "GOLDEN
DRAGON" consisting of the device of a
golden coloured dragon enclosed in a circle
registered under the trade Mark No. 19862
in Class 29 in Sabah in the name of Ng
Foo Chong and Ng Foo Kok trading as Ng
Brothers Import and Export Company

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Ng Foo Chong and
Ng Foo Kok (trading as Ng Brothers
Import and Export Company) Applicants.

BEFORE THE HONOURABLE
JUSTICE DATUK B.T.H. LEE IN OPEN COURT
SENIOR JUDGE IN BORNEO The 31st day of July, 1979

O R D E R

UPON READING the Notice of Motion dated the
13th day of June, 1979 and the supporting Affidavit
of Ng Foo Kwan affirmed on the 14th day of December, 30
1978 and filed herein AND UPON HEARING Gerard Hath
Lee Min Esq of Counsel on behalf of Ng Foo Chong
and Ng Fook Kok trading as Ng Brothers Import and
Export Company, the Applicants abovenamed who are
the registered proprietors of the Trade Mark
"GOLDEN DRAGON" consisting of the device of a
golden coloured dragon enclosed in a circle
registered under the Trade Mark No. 19862 in class
29 in Sabah IT IS ORDERED pursuant to Section 16
of the abovenamed Act that the Trade Mark "GOLDEN 40
DRAGON" consisting of the device of a golden
coloured dragon enclosed in a circle used in

relation to edible oils and in particular to cooking oil NOT manufactured by or distributed by NG Foo Chong and Ng Foo Kok trading as Ng Brothers Import and Export Company shall be deemed for the purposes of the Trade Description Act, 1972 to be false trade description.

GIVEN under my hand and Seal of the Court this 31st day of July, 1979.

In the High Court in Borneo

No. 3 - Order
31st July
1979
(cont'd)

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SGD. DEPUTY REGISTRAR
HIGH COURT IN BORNEO

In the High
Court in
Borneo

No. 4

Notice of Motion - 8th November 1979

No. 4 - Notice
of Motion
8th November
1979

MALAYSIA

IN THE HIGH COURT IN BORNEO AT KOTA KINABALU

KOTA KINABALU REGISTRY

ORIGINATING MOTION NO. 2 OF 1979

IN THE MATTER of Ng Foo Chong and Ng Foo
Kok trading as Ng Brothers Import and
Export Company

AND

10

IN THE MATTER of the Trade Description Act,
1972.

AND

IN THE MATTER of Trade Mark "GOLDEN DRAGON"
consisting of the device of a golden
coloured dragon enclosed in a circle
registered under the Trade Mark No. 19862
in Class 29 in Sabah in the name of Ng
Foo Chong and Ng Foo Kok trading as Ng
Brothers Import and Export Company

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NG FOO CHONG AND NG FOO KOK
trading as Ng Brothers Import
and Export Company

Applicants

SOCOIL CORPORATION BERHAD

A Party Affected

NOTICE OF MOTION

TAKE NOTICE that this Honourable Court will
be moved on Friday the 11th day of January 1980 at
9.00 o'clock in the forenoon or so soon thereafter
as can be heard by Counsel on behalf of Socoil
Corporation Berhad, the party affected above-named
who have a proprietary interest in the trade mark
"GOLDEN DRAGON" for an Order that the Order granted
by this Court on the 31st day of July, 1979 be dis-
charged.

30

DATED this 8th day of November 1979.

L.S.

Sgd. Illegible
ASSISTANT REGISTRAR
HIGH COURT IN BORNEO

This Notice of Motion will be supported by the
Affidavit of Mr. Khoo Chooi Leong affirmed on the
19th day of September, 1979 and filed herein.

40

This Notice of Motion is intended to be served on the Applicants herein.

This Notice of Motion is filed by Messrs. Robertson Pang & Co., Advocates for the Party Affected, whose address for service is at No. 91 Jalan Goya (1st Floor), P.O. Box 1063, Kota Kinabalu.

In the High Court in Borneo

No. 4
Notice of Motion - 8th November 1979
(cont'd)

In the High
Court in
Borneo

No. 5

Affidavit of Khoo Chooi Leong - 19th
September 1979

No. 5
Affidavit of
Khoo Chooi
Leong - 19th
September
1979

ORIGINATING MOTION NO. 2 OF 1979

In the matter of Ng Foo Chong and Ng Foo
Kok trading as Ng Brothers Import and
Export Company

And

In the matter of the Trade Description Act,
1972

10

And

In the matter of Trade Mark "GOLDEN DRAGON"
consisting of the device of a golden
coloured dragon enclosed in a circle
registered under the Trade Mark No. 19862
in Class 29 in Sabah in the name of Ng Foo
Chong and Ng Foo Kok trading as Ng Brothers
Import and Export Company.

Ng Foo Chong and Ng Foo Kok trading as
Ng Brothers Import and Export Company Applicants

20

Socoil Corporation Berhad A Party Affected

A F F I D A V I T

I, Khoo Chooi Leong (NRIC No: 4491301) of No.
12, Jalan SS 2/34 Petalin- Jaya and of full age
hereby solemnly affirm and say as follows:-

1. I am the Manager of the Party Affected,
namely, Socoil Corporation Berhad, a company
registered in the States of Malaysia and having its
registered office at Jalan Kem, Port Kelang,
Selangor (hereinafter called "the Company").

30

2. I am authorised to make this Affidavit on
behalf of the Company and the matters deposed to
herein are of my own personal knowledge or from
records of the Company to which I have access.

3. The Company is a large and well established
company involved in the extraction, processing and
refining of palm and other edible oils for sale
internationally.

4. Some time in the year 1975 the Company decided
to manufacture cooking oil for sale in the South
East Asian market.

40

5. As a result of the decision I was directed to apply to various trade mark registries for the registration of several trade marks which the company proposed to use for the sale of its cooking oils.
6. Amongst the marks which the company sought to have registered was the mark 'GOLDEN DRAGON'. A copy of the said mark is annexed hereto and marked "SCB1"
- 10 7. At the material time a Bill had just been laid before Parliament for the repeal of the existing trade mark laws in the States of Sabah, Sarawak and West Malaysia and for the passing in place thereof of a Trade Marks Act applicable throughout Malaysia.
- 20 8. As it was anticipated that the Act would soon be passed by Parliament I sought the advice of the Registrar of Trade Marks at Kuala Lumpur (who is the Registrar of Trade Marks for both West Malaysia as well as Sabah) as to whether it was necessary to apply for registration of the mark "GOLDEN DRAGON" in the Registries of all three states (i.e. Sabah, Sarawak and West Malaysia) separately.
- 30 9. I was informed by Mr. Kanagaratnam, the then Deputy Registrar of Trade Marks for both West Malaysia and Sabah, that it would not be necessary to make three separate applications as the Bill was expected to be passed very soon and there would be a central Registry for all three states. Three separate applications for the same mark would only mean unnecessary expenses for the Company and extra work for the Registries involved.
10. As a result of the advice received and in good faith I instructed the Company's solicitors to apply for registration of the mark "GOLDEN DRAGON" in West Malaysia, Singapore, Brunei and Hong Kong but not Sabah and Sarawak.
- 40 11. The Company made application for registration of the said mark in West Malaysia on the 13th of September, 1975 more than four months before the application of the Applicant, which was made on the 22nd of January 1976.
12. If the Company had not been wrongly advised by the Deputy Registrar it would certainly have applied to the Registries of Sabah and Sarawak for registration of the said mark simultaneously with the application in West Malaysia.

In the High
Court in
Borneo
No. 5
Affidavit of
Khoo Chooi
Leong - 19th
September
1979
(cont'd)

In the High
Court in
Borneo

No. 5
Affidavit of
Khoo Chooi
Leong - 19th
September
1979
(cont'd)

13. Although the Trade Marks Act, 1976 received the Royal Assent on 21st June, 1976 it has not come into operation yet.

14. The Company started selling cooking oil in Malaysia under the said Mark on 5th January 1976.

15. The total amount expended by the Company directly or through the wholly owned subsidiary, Socma Sendirian Berhad, in advertising and promoting the mark "GOLDEN DRAGON" alone for the period from 8th January 1976 to 31st August 1979 amounts to M\$4,605,428-00 made up as follows:- 10

5.1.76 to 30.9.76	\$ 681,602.00
1.10.76 to 30.9.77	863,602.27
1.10.77 to 30.9.78	1,095,842.67
1.10.78 to 31.8.79	<u>1,964,381.06</u>
	<u>M\$4,605,428.00</u>

16. The value of cooking oil sold by the Company under the mark "GOLDEN DRAGON" for the corresponding period are as follows:-

1.1.76 to 30.9.76	\$3,578,949.25	20
1.10.76 to 30.9.77	8,342,863.80	
1.10.77 to 30.9.78	11,982,090.00	
1.10.78 to 31.8.79	12,590,996.14	

17. It is evident from the figures shown above that it is through the efforts of the Company that the trade mark "GOLDEN DRAGON" has become well-known and that the said mark has become one of the leading brands for cooking oil in Malaysia.

18. The Company is now the registered proprietor of the mark "GOLDEN DRAGON" in Brunei. A copy of the Certificate issued by the Registrar of Trade Marks, Brunei is annexed hereto marked "SCB 2". 30

19. The Company's application for registration of the said mark in Hong Kong was advertised in the Government Gazette of Hong Kong on 22nd December, 1978 and the Certificate of Registration will be issued to the Company shortly.

20. The applications for West Malaysia and Singapore are still pending.

21. I am informed by the Company's solicitors and verily believe that for the reasons stated above the Company has a substantial proprietary interest in the trade mark "GOLDEN DRAGON" and should not be precluded from selling oil under the said trade mark and furthermore that the sale of 40

cooking oil by the Company under the said mark is not a false trade description.

In the High Court in Borneo

22. I therefore respectfully ask this Honourable Court to discharge the Order granted to the Applicant on the 31st July, 1979.

No. 5
Affidavit of
Khoo Chooi
Leong - 19th
September
1979
(cont'd)

Affirmed by the abovenamed)
Khoo Chooi Leong at Kota)
Kinabalu this 19th day of) Sgd. Khoo Chooi Leong
September 1979 at 3.52 p.m.)

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Before me,
Sgd. Illegible

Commissioner for Oaths

This Affidavit is filed by Messrs. Robertson Pang & Co., Solicitors for the Party Affected whose address for service is at No. 91 (1st Floor) Jalan Goya, P.O. Box No. 1063, Kota Kinabalu, Sabah.

MALAYSIA

In the High
Court in
Borneo

IN THE HIGH COURT IN BORNEO AT KOTA KINABALU

No. 6
Affidavit of
Ng Koo Kwan
20th December
1979

KOTA KINABALU REGISTRY

ORIGINATING MOTION NO. 2 OF 1979

In the Matter of Ng Foo Chong and Ng
Foo Kok trading as Ng Brothers Import
and Export Company

And

In the Matter of the Trade Description
Act, 1972;

10

And

In the Matter of Trade Mark "GOLDEN
DRAGON" consisting of the device of a
golden coloured dragon enclosed in a
circle registered under the Trade Mark
No. 19562 in Class 29 in Sabab in the name
of Ng Foo Chong and Ng Brothers Import and
Export Company.

NG FOO CHONG AND NG FOO KOK
trading as Ng Brothers Import
and Export Company

Applicants

20

SOCOIL CORPORATION BERHAD

A Party Affected

AFFIDAVIT IN REPLY

I, Ng Foo Kwan (NRIC No. 4293321) of 101,
Road 29, Overseas Union Garden, 5th Mile, Jalan
Klang, Kuala Lumpur and of full age do hereby
solemnly affirm and say as follows:-

1. I am the deponent of the Affidavit affirmed
on December 14, 1978 and filed herein (hereinafter
referred to as the "earlier Affidavit").

30

2. I have read what purports to be the Affidavit
of Khoo Chooi Leong affirmed on September 19, 1979
and filed herein (hereinafter referred to as "the
said Affidavit").

3. I crave leave to refer to paragraphs 6, 7,
8, 9, 10, 11 and 12 of the said Affidavit. Save
and except that the Party Affected's application
for registration in West Malaysia of the trade
mark "Golden Dragon" is being opposed by the
Applicants herein, I have no knowledge of the said
allegations. In any event even if the said
allegations are true (which is denied) I am
advised in law and verily believe that the reasons,

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however bona fide, for the failure to seek registration in Sabah of the mark "Golden Dragon" are immaterial and irrelevant to the question of whether the Order made by this Honourable Court on July 31, 1979 should be uphold or set aside.

In the High Court in Borneo

No. 6
Affidavit of
Ng Koo Kwan
20th December
1979
(cont'd)

10 4. I reiterate paragraphs 3, 4, 5, 6 and 7 of my earlier Affidavit and state that so long as the Applicants' registration of the trade mark "Golden Dragon" remains or subsists on the Register and no application has been made or is pending for the removal of the said trade mark, the use by the Party Affected of the trade mark "Golden Dragon" is a clear and direct infringement of the Applicants' rights, the monopoly of which has been granted by the registration of the said trade mark.

5. I crave leave to refer to paragraphs 14, 15, 16 and 17 of the said Affidavit and state:-

- 20 (i) that the Applicants have no knowledge of the said advertising and sale figures;
- (ii) that the Party Affected have not detailed the advertising and sale figures for Sabah alone but have given the figures for the whole of Malaysia;
- 30 (iii) that in any event, the advertising and sale figures are not relevant to their application because the said figures are in respect of advertising and sales after the date of the registration of the Applicants' trade mark "Golden Dragon" in Sabah.

6. I crave leave to refer to paragraphs 18, 19 and 20 of the said Affidavit and state that the allegations therein are totally irrelevant to the issue before this Honourable Court.

40 7. I crave leave to refer to paragraph 21 of the said Affidavit. I am advised in law and verily believe that the Party Affected has no or no substantial proprietary interest in the trade mark "Golden Dragon". In fact the Applicants are the registered proprietors of the said trade mark which is still valid and subsisting on the register of Trade Marks, Sabah.

8. I also aver that in addition to the "Golden Dragon" trade mark the Appellants are also the registered proprietors in Sabah since 1973 of the "Double Dragon" trade mark No. 16293, the "Dragon Phoenix" trade mark No. 16493 each of which

In the High
Court in
Borneo

No. 6
Affidavit of
Ng Koo Kwan
20th December
1979
(cont'd)

consists of the device of a dragon as a distinctive feature. I verily believe that the use of the dragon device as a distinctive feature in each of the Applicants' 3 trade marks in Sabah has resulted in the public associating the dragon device with the cooking oil products of the Applicants and no others.

9. In the premises I pray that the application herein be dismissed with costs.

AFFIRMED at Kuala Lumpur)
by the said Ng Foo Kwan) Sgd. Ng Foo Kwan
this 20th day of Decem-)
ber, 1979 at 3.40 p.m.)

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Before me,

Sgd. Treh Lian Pang
Commissioner for Oaths.

This Affidavit is filed by M/s. Shelley Yap Chong Chin & Co., solicitors for the Applicants herein whose address for service is 2nd Floor, 135 Gays Street, P.O. Box 980, Kota Kinabalu, Sabah.

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(PPR/10990-1/NFC) .

No. 7

Further Affidavit of Khoo Chooi Leong
4th January 1980

In the High
Court in
Borneo

No. 7
Further
Affidavit of
Khoo Chooi
Leong - 4th
January 1980

IN THE HIGH COURT IN BORNEO AT KOTA KINABALU

ORIGINATING MOTION NO. 2 OF 1979

In the matter of Ng Foo Chong and Ng Foo
Kok trading as Ng Brothers Import and
Export Company

And

10 In the matter of the Trade Description Act,
1972

And

In the matter of Trade Mark "GOLDEN DRAGON"
consisting of the device of a golden
coloured dragon enclosed in a circle
registered under the Trade Mark No. 19862 in
Class 29 in Sabah in the name of Ng Foo
Chong and Ng Foo Kok trading as Ng Brothers
Import and Export Company.

20 Ng Foo Chong and Ng Foo Kok trading as
Ng Brothers Import and Export Company Applicants

Socoil Corporation Berhad A Party Affected

SUPPLEMENTARY AFFIDAVIT

I, Khoo Chooi Leong (NRIC No. 4491301) of No.
12, Jalan SS 2/34, Petaling Jaya and of full age
hereby solemnly affirm and say as follows:-

1. I crave leave to refer to my affidavit dated
the 14th /sic/ of September 1979.

30 2. With regard to the application for registration
of the mark "GOLDEN DRAGON" in Hong Kong referred to
in paragraph 19 of the said affidavit the mark has
since been registered in favour of the Company. A
copy of the Certificate issued by the Registrar of
Trade Marks, Hong Kong is annexed hereto marked
"SCB 3".

40 3. With regard to the application for registration
of the mark in West Malaysia referred to in paragraph
11 of the said affidavit I have been informed by the
Company's Solicitors that the said Application (No.
14/69579) had in fact been approved by the Registrar
of Trade Marks and been gazetted in the Government
Gazette on the 31st March, 1977.

In the High Court in Borneo
No. 7
Further Affidavit of Khoo Chooi Leong - 4th January 1980 (cont'd)

4. However, upon advertisement of the said mark it was objected to by the Applicant and it was due to the objection of the Applicant that the said mark had not been registered in West Malaysia.

5. The Applicant is therefore fully aware of the proprietary interest of the Company in the said mark.

6. I am advised and verily believe that the conflicting interests of the Applicant and the Company in the said mark should properly be settled in the Trade Marks Registry and not be the subject of an application under the Trade Descriptions Act and that the Applicant has materially misled the Court by not disclosing the Applicant's dispute with the Company.

10

7. I therefore respectfully ask this Honourable Court to discharge the Order granted to the Applicant on the 31st July, 1979.

Affirmed by the abovenamed)
Khoo Chooi Leong at Kuala Lumpur this 4th day of January 1980 at 12.05 p.m.) Sgd. Khoo Chooi Leong

20

Before me,
Sgd. Illegible
Commissioner for Oaths

This affidavit is filed by Messrs Robertson Pang & Co., solicitors for The Party Affected whose address for service is at No. 91 (1st Floor) Jalan Gaya, P.O. Box 1063, Kota Kinabalu, Sabah.

No. 8

Notes of Proceedings - 11th January
1980

In the High
Court in
Borneo

No. 8
Notes of
Proceedings
11th January
1980

MALAYSIA

IN THE HIGH COURT IN BORNEO AT KOTA KINABALU

(Kota Kinabalu Registry)

ORIGINATING MOTION NO. 2 OF 1979

10 In the Matter of NG FOO CHONG and NG FOO KOK
trading as NG BROTHERS IMPORT & EXPORT
COMPANY;

And

In the Matter of the Trade Description Act,
1972;

And

20 In the Matter of Trade Mark "GOLDEN DRAGON"
consisting of the device of a golden
coloured dragon enclosed in a circle
registered under the Trade Mark No. 19862
in Class 29 in Sabah in the name of Ng
Foo Chong and Ng Brothers Import & Export
Company.

NG FOO CHONG and NG FOO KOK trading as
NG BROTHERS IMPORT & EXPORT Company Applicants

SOCOIL CORPORATION BERHAD Party Affected

CORAM: Hon'ble Justice Datuk B.T.H. Lee

For Applicants: Gerard Math, Esq.,

For Party Affected: C.I. Robertson, Esq., (assisted
by Mr. Low)

30 11th January, 1980
9.30 a.m.

MR. ROBERTSON

40 Application same as Originating Motion No.2/79
dated 8th November, 1979. Order of this Court
dated 31st July, 1979, given by Hon'ble Justice
Datuk B.T.H. Lee also in same Motion No. 2/79 be
discharged. Apply that Order given in pursuant of
Section 16 of Trade Description Act. Order was
obtained ex parte under Trade Description Act, 1972,
Section 16 which applies throughout Malaysia. Sabah
has its own Trade Marks Ordinance, Cap.142. Malaysia
has also its own Trade Marks Ordinance, 1950. Sabah

In the High Court in Borneo
No. 8
Notes of Proceedings
11th January 1980
(cont'd)

Trade Marks Ordinance, Cap.142, gives a monopoly to registered user of his mark in Sabah but no rights in West Malaysia or Sarawak. The Court granted an Order under Section 16 of Trade Description Act which is effective throughout Malaysia. Trade Marks Act, 1976 which is applicable throughout Malaysia has not been brought into force yet. This application before the Court dated 8th November, 1979 involves the Parties Affected by the Order by the Court.

10

Refers to Khoo Chooi Leong's affidavit dated 19th September, 1979, Para.6. My clients, the Applicants, sought to register the mark "GOLDEN DRAGON" under Malaysia Trade Marks Ordinance, 1950. The Applicants, i.e. Ng Brothers, have a registered mark under the Sabah Trade Marks Ordinance.

Para.7 - "At the material time a Bill had just been laid before Parliament for the repeal of the existing trade mark laws in the States of Sabah, Sarawak and West Malaysia and for the passing in place thereof of a Trade Marks Act applicable throughout Malaysia."

20

Application for registration of mark in West Malaysia made on 13th September 1974 but this was objected to by Ng Brothers. This was four months before the application of Applicants who applied for registration of "GOLDEN DRAGON" in Sabah under Trade Marks Ordinance, 1949. While they were registered under Trade Marks Ordinance they obtained an Order under Section 16 of Trade Description Act. There is no corresponding section in Trade Marks Ordinance similar to Section 16 of Trade Description Act. They however could have sued by way of Writ - infringement of trade mark or passing off and ask for injunction and for damages. If by way of Writ they have to prove user and sale of the goods under description. But they chose to invoke Section 16 of Trade Description Act. Under Section 16 the application should be inter-parte and not ex-parte. 5th January 1976 Company starts selling cooking oil in Malaysia. Ng Brothers had this mark "GOLDEN DRAGON" in their application for registration dated 22nd January, 1976 - 15 days later.

30

40

MR. LOW

Trade Marks Order apply only to a mark. Trade Description can describe pure ground-nut oil. This is pure trade description - no proprietary intent in the goods. Whilst Trade Marks protect the

50

relevant date or during the relevant period, as the case may be, bona fide use of the trade mark by any proprietor thereof for the time being in relation to goods of the same description, being goods in respect of which the trade mark is registered.

(2) Where in relation to any goods in respect of which a trade mark is registered -

(a) the matters referred to in paragraph (b) of subsection (1) are shown so far as regards non-use of the trade mark in relation to goods to be sold, or otherwise traded in, in the Colony (otherwise than for export from the Colony), or in relation to goods to be exported to a particular market outside the Colony; and 10

(b) a person has been permitted under section 33 to register an identical or nearly resembling trade mark in respect of those goods under a registration extending to use in relation to goods to be sold, or otherwise traded in, in that place (otherwise than for export from the Colony), or in relation to goods to be exported to that market, or the Court is of opinion that he might properly be permitted so to register such a trade mark; 20

on application by that person to the Court, the Court may impose on the registration of the first-mentioned trade mark such limitations as it thinks proper for securing that that registration shall cease to extend to such use as last aforesaid. 30

(3) An applicant shall not be entitled to rely for the purposes of paragraph (b) of subsection (1), or for the purposes of subsection (2), on any non-use of a trade mark which is shown to have been due to special circumstances in the trade and not to any intention not to use or to abandon the trade mark in relation to the goods to which the application relates." 40

Section 33 -

"33. 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 50

Registrar may permit the registration of trade marks which are identical or nearly resemble each other for the same goods or description of goods by more than one proprietor 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. "

In the High Court in Borneo
No. 8
Notes of Proceedings
11th January 1980
(cont'd)

Section 55 - strongest ground. Reads proviso :-

10 "55. In all legal proceedings relating to a trade mark registered in Part A of the Register (including applications under section 46) the original registration in Part A of the Register of such trade mark shall, after the expiration of seven years from the date of the original registration, be taken to be valid in all respects unless such original registration was obtained by fraud or unless the trade mark offends
20 against the provisions of section 23:

Provided that nothing in this Ordinance shall entitle the proprietor or a registered user of a registered trade mark to interfere with or restrain the use by any person of a trade mark identical with or nearly resembling it in relation to goods in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date anterior -

- 30 (a) to the use of the first-mentioned trade mark in relation to those goods by the proprietor or a predecessor in title of his; or
- (b) to the registration of the first-mentioned trade mark in respect of those goods in the name of the proprietor or a predecessor in title of his;

40 whichever is the earlier, or to object (on such use being proved) to that person being put on the Register for that identical or nearly resembling trade mark in respect of those goods under section 33."

MR. GERARD MATH

Reads Affidavit in Reply. Refers to Order of Court. Emphasis on NOT manufactured. Refers to Section 4(1)(j) of Trade Description Act. Counsel for Party Affected says it should be order under Section 16 of Trade Marks Ordinance and not

In the High Court under Trade Description Act.

No. 8
Notes of
Proceedings
11th January
1980
(cont'd)

The Order obtained - any oil NOT manufactured by or distributed by Ng Foo Chong and Ng Foo Kok trading as Ng Brothers Import & Export Company shall be deemed for the purpose of Trade Description Act, 1972 to be false trade description. Refers to Section 4(1)(j) :-

"4.(1) A trade description is an indication, direct or indirect, and by whatever means given, of any of the following matters with respect to any goods or parts of goods, that is to say -

10

(a) - (i)

(j) person by whom manufactured, produced, processed or reconditioned;

(k) "

MR. ROBERTSON

This application is not to expunge Ng Brothers' trade mark - only to set aside the Order obtained. In other words, SOCOIL will also be entitled to the trade mark. If so, it is not a false trade description. This ought first to go to Registry of Trade Marks. Undertakes to produce the relevant rules or regulations under the Trade Marks Ordinance on executive action by Registrar similar to Section 57 of Trade Marks Ordinance.

20

MR. GERARD MATH

Order given by Court is under Section 16 of Trade Description Act and what is false description is set out in Section 4.

30

MR. ROBERTSON

Asks for costs if the order of the Court is set aside.

MR. GERARD MATH

Asks for costs if application by Ng Brothers is dismissed.

MR. LOW

Distinction to be made between judgment and decree in the case of orders by Court

Both Counsel undertake to give a full written submission in due course.

40

COURT

Judgment Reserved.

Sgd. B.T.H. Lee
Sgd: Datuk B.T.H. Lee
Judge
11.01.80

In the High
Court in
Borneo
No. 8
Notes of
Proceedings
11th January
1980
(cont'd)

21st February, 1980

9.30 a.m.

Court resumes

10

Parties as before - For Applicants: Cik Mariana Teo
For Party Affected: Mr. C.I. Robertson

COURT

Reads judgment in open court. Application of the Party Affected dismissed with costs and the Order dated 31st July, 1979 is hereby confirmed.

Sgd. B.T.H. Lee
(Datuk B.T.H. Lee)
Judge
21.02.80

20

CERTIFIED TRUE COPY
10.03.80
Secretary to the Judge
High Court in Borneo

In the High
Court in
Borneo

No. 9

Judgment - 21st February 1980

No. 9
Judgment
21st February
1980

MALAYSIA

IN THE HIGH COURT IN BORNEO AT KOTA KINABALU

(Kota Kinabalu Registry)

ORIGINATING MOTION NO. 2 OF 1979

In the Matter of Ng Foo Chong and Ng Foo
Kok trading as Ng Brothers Import and
Export

And

10

In the Matter of Trade Mark "GOLDEN DRAGON"
consisting of the device of a golden
coloured dragon enclosed in a circle
registered under the Trade Mark No. 19862 in
Class 29 in Sabah in the name of Ng Foo
Chong and Ng Foo Kok trading as Ng Brothers
Import and Export Company.

BEFORE THE HON'BLE JUSTICE DATUK B.T.H. LEE

IN OPEN COURT

J U D G M E N T

20

By an Order dated 31st July, 1979 this court
declared the trade mark "GOLDEN DRAGON" consisting
of the device of a golden coloured dragon enclosed
in a circle used in relation to edible oils and in
particular to cooking oil not manufactured by or
distributed by Ng Foo Chong and Ng Fook Kok
trading as Ng Brothers Import and Export Company
(hereinafter called "the Applicants") to be deemed
to be a false trade description pursuant to Section
16 of the Trade Description Act, 1972. The Order
was made pursuant to an ex-parte application by
way of Originating Motion supported by the
Affidavit of Ng Foo Kwan affirmed on 14th December,
1978 (hereinafter referred to as "Affidavit 'A'").

30

Subsequently, Socoil Corporation Berhad
(hereinafter referred to as "the Party Affected")
applied by Notice of Motion supported by the
Affidavit of Khoo Chooi Leong affirmed on 19th
September, 1979 (hereinafter referred to as
"Affidavit 'B'") to discharge the Order dated 31st
July, 1979.

40

The Applicants filed an Affidavit in Reply

affirmed by Ng Foo Kwan on 20th December, 1979 (hereinafter referred to as "Affidavit 'C'"). A Supplementary Affidavit affirmed by Khoo Chooi Leong on 4th January, 1980 was also filed by the Party Affected (hereinafter referred to as "Affidavit 'D'").

In the High Court in Borneo
No. 9
Judgment
21st February
1980
(cont'd)

It is convenient to set out Section 16(1) of the Trade Description Act. It reads :-

10 "16.(1) Where any person being a proprietor or registered user of a registered trade mark within the meaning of any written law relating to trade marks or being otherwise entitled at law to the protection of a trade or other mark or a get up for any goods or services established -

20 (a) in the case of a registered trade mark, that his rights in respect of such trade mark are being infringed in the course of trade within the meaning of the written law; or

(b) in the case of a trade or other mark or get up for any goods or services, that his rights in respect of such trade or other mark or get up are being infringed in the course of trade as a result of which he has a right of action for passing off;

30 the High Court may on the application of such person make an order declaring that the infringing trade or other mark or get up as the case may be is for purposes of this Act a false trade description in its application to such goods as may be specified in the order."

40 It seems plain from the clear and explicit words of the above section that any person having a registered trade mark who establishes that his rights in respect of such trade mark are being infringed in the course of trade can apply to the High Court and obtain an order declaring that the infringing trade mark is a false trade description in its application to such goods as may be specified in the Order. Briefly put, a person who desires to obtain an Order under section 16(1) of the Act must show that :-

(a) he is the proprietor of a registered trade mark; and

(b) that some other person is infringing that registered trade mark in the course of trade.

In the High Court in Borneo

No. 9
Judgment
21st February
1980
(cont'd)

The question for determination is whether the Applicants have established the two ingredients.

Paragraphs 3, 4, 5, 6 and 7 of Affidavit 'A' reads:-

"3. The Applicants are the registered proprietors of the Trade Mark consisting of the device of a golden coloured dragon enclosed in a circle and the words "GOLDEN DRAGON".

4. I append below the particulars of the registration of the said Trade Mark :- 10

<u>Terri- tory</u>	<u>Trade Mark No.</u>	<u>Specifi- cation of Goods</u>	<u>Date of Regis- tration</u>
Sabah	19862 - The device of a golden coloured dragon enclosed in a circle and the words "GOLDEN DRAGON".	Edible oils.	22.1.76

5. Annexed hereto and marked as "GD.1" is the copy of the Certificate issued under section 39, Rule 58 of the Trade Marks Ordinance, 1949 by the Registry of Trade Marks, Sabah, pertaining to the said Trade Mark.. 20

6. To the best of my knowledge and belief the said registration is and has been at all material times been valid and subsisting.

7. I verily believe that by virtue of the registration the Applicants are entitled to the exclusive use of the Trade Mark "GOLDEN DRAGON" and the device of a golden coloured dragon enclosed in a circle and the exclusive use of the "GOLDEN DRAGON" Trade Mark thereof is further supported by the Registrar of Trade Marks' confirmation that the official search of the Trade Marks Register in Sabah reveals that the exclusive rights over the "GOLDEN DRAGON" Trade Mark in respect of "Edible oils" has been granted to the Applicants herein and annex herewith is the official letter dated 13th December, 1978 and marked as "GD.2". " 30 40

EXHIBIT "GD.1"

" (Naskhah Rasmi)

SABAH

PERAKUAN DIKELUARKAN DI BAWAH SEKSYEN 39 DAN
KAEDAH 58

ORDINAN CAP DAGANGAN, 1949

NO.19862

Kepada

10 NG FOO CHONG and NG FOO KOK trading as NG
BROTHERS IMPORT & EXPORT CO.,

DENGAN INI SAYA MEMPERAKUI bahawa di bawah
peruntukan-peruntukan Ordinan Cap Dagangan, 1949,
nama tuan/puan telah dimasukkan dalam Bahagian A
Daftar sebagai tuannya Cap Dagangan yang
nombornya tersebut di atas mulai dari 22hb
Januari, 1976 dalam Kelas 29 berkenaan dengan
barang-barang yang berikut:

- Edible oil -

20 Suatu contoh Cap itu dilekatkan di sini.
(tt) b.p. Pendaftar

Pejabat Pendaftaran Cap Dagangan, Sabah
Kuala Lumpur.

Pendaftaran Cap Dagangan ini akan habis tempohnya
pada..... tetapi boleh di baharui semula bagi
selama 14 tahun lagi dan apabila habis tempoh tiap-
tiap 14 tahun yang berkikutan. "

EXHIBIT "GD.2"

" PCD/3/4/S/29/78

Form Q

30

Pendaftaran Cap Dagangan,
Bukit Mahkamah,
Kuala Lumpur.

13th December, 1978.

Tuan,

With reference to your application on Form TM.4 for
search in Class 29, received here on the 2nd November,
1978 and numbered 1, I am to draw your attention to
the following registration.

In the High
Court in
Borneo
No. 9
Judgment
21st February
1980
(cont'd)

In the High Court in Borneo	No.	Class	Goods	Name and Address	Remark
No. 9. Judgment 21st February 1980 (cont'd)	19862	29	Edible oil	Ng Foo Chong and Ng Foo Kok trading as Ng Brothers Import & Export Co. of 51, Jalan Overseas Union, Overseas Union Garden, 5th Mile Klang Road, Kuala Lumpur, Malaysia.	Registered

2. A copy of the Mark is returned herewith. 10

Saya yang menurut perintah

(sgd) b.p. PENDAFTAR CHAP DAGANGAN
SABAH

Messrs. Shook Lin & Bok,
21st Floor, Wisma MPI,
Kuala Lumpur.

"

The evidence seems incontrovertible that the Applicants are the proprietors of the Trade Mark consisting of the device of a golden coloured dragon enclosed in a circle and the words "GOLDEN DRAGON". The said Trade Mark was registered in Sabah on 22nd January, 1976 and a Certificate of such registration was issued to the Applicants by the Registrar of Trade Marks, Sabah (Exhibit "GD.1"). 20

In respect of the second ingredient, paragraphs 8, 10 and 11 of Affidavit 'A' read :-

"8. I annex hereto a photograph of a tin of cooking oil in respect of cooking oil NOT of the Applicant's manufacture now being sold and marked "GD.3". 30

9.

10. Since approximately a few months ago, cooking oil mentioned above NOT of the Applicant's manufacture and bearing identical Trade Mark and device of the registered Trade Mark of the Applicants are being sold in this country.

11. I am informed by my solicitors and verily believe that the use of the Trade Mark "GOLDEN DRAGON" and device of a golden coloured dragon enclosed in a circle in connection with the sale of cooking oil NOT of the Applicant's manufacture is an infringement of the Applicants' registered Trade Mark and device and is calculated to deceive and to lead the public to believe that those cooking oil are the products and manufacture of the Applicants. " 40

It is noted that the Party Affected have not sought to deny this fact in their affidavits. The contention of the Party Affected that there is a conspicuous absence of any evidence of user or of promotion and advertisement of the mark by the Applicants in their Affidavit 'A' or Affidavit 'C' is unnecessary and indeed irrelevant in determining the above ingredients. There is nothing in Section 16(1) of the Act which imposes on the Applicant an obligation to give evidence as to user or of promotion and advertisement. Furthermore there is nothing in Section 16(1) or in any other section which requires the papers to be served on any party who will be affected or that the application must be heard inter-parties. The Court has however an inherent jurisdiction to require the Applicants to serve the papers on any party affected if the Court is not satisfied with the evidence disclosed or for other cogent or compelling reasons.

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In the instant case, the Party Affected have not shown that the Applicants had not established the entitlement to the Order. Nor indeed have they established that the Applicants were not at all material times the registered proprietor of the "GOLDEN DRAGON" trade mark. There is no denial on their part that they have not manufactured and distributed in Sabah cooking oil with the identical "GOLDEN DRAGON" trade mark. It is contended on behalf of the Party Affected that the ex-parte Order granted is analogous to an ex-parte injunction. I doubt whether the analogy sought to be drawn in the present case between an ex-parte injunction and ex-parte order is sound.

Even assuming that the analogy is applicable, it is indisputable that it was open to the Third Party to set aside or to discharge the Order. It is clear that they have not availed themselves of this opportunity. It seems obvious that the Party Affected have not advanced any cogent grounds why the ex-parte Order should be discharged.

The Party Affected have in paragraph 3 of their Affidavit 'D' alleged that their application for registration of the mark in West Malaysia had in fact been approved by the Registrar of Trade Marks, and the point was taken that the Applicant was aware of the proprietary interest of the mark of the Party Affected and that the Applicants have clearly intended to mislead the court by not disclosing the dispute between the Applicants and the Party Affected. (see paragraphs 5 and 6 thereof).

In the High
Court in
Borneo
No. 9
Judgment
21st February
1980
(cont'd)

In the High
Court in
Borneo

No. 9
Judgment
21st February
1980
(cont'd)

It seems clear that the dispute between the Applicants and the Party Affected is in respect of the registration of the mark in West Malaysia and not in Sabah. In Sabah the Applicants have been the proprietors of the registered trade mark since 22nd January, 1976 and to date no objection has been taken by the Party Affected to the registration of the said trade mark in the Sabah Registry of Trade Marks.

It falls for observation that Sabah and West Malaysia have different legislation governing trade marks and the fact that there is a dispute between the parties in one jurisdiction does not necessarily follow that there is a dispute in the other jurisdiction. Thus the dispute between the Applicants and the Party Affected in West Malaysia seems to me to be wholly irrelevant and is of no consequence in the context of Sabah.

10

Since the registration of the trade mark in Sabah by the Applicants on 22nd January, 1976, the Party Affected have not up to date availed themselves of their right under Section 27 of the Sabah Trade Marks Ordinance, 1949 (No. 14 of 1949) to oppose the registration of the "GOLDEN DRAGON" trade mark by the Applicants in Sabah. Section 27(1) of the Trade Marks Ordinance (Sabah) provides:-

20

"27.(1) Any person may, within the prescribed time from the date of the advertisement of an application for the registration of a trade mark, give notice to the Registrar of opposition to such registration. "

30

It has been pointedly emphasised that Sabah and West Malaysia have different legislation governing trade marks. Can it be said that if there is a dispute between the parties in one jurisdiction it necessarily follows that there is a dispute in the other jurisdiction. That, in the court's judgment, by no means follow that there is a dispute in the other jurisdiction.

Particular reliance was placed by Counsel for the Party Affected on Sections 33, 47 and 55 of the Sabah Trade Marks Ordinance, 1949 to discharge the Order dated 31st July, 1979. Section 33 provides for concurrent use. It reads :-

40

"33. In case of honest concurrent use, or of other special circumstances which in the opinion of the Court or of the Registrar may permit the registration of trade marks which are identical or nearly resemble each other for the same goods or description of goods by

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more than one proprietor 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. "

In the High Court in Borneo _____

No. 9
Judgment
21st February
1980
(cont'd)

and Section 31 is in these terms :-

10 "31. Subject to the provisions of section 33 of this Ordinance, no trade mark shall be registered in respect of any goods or description of goods which is identical with a trade mark belonging to a different proprietor and already on the Register in respect of the same goods or description of goods, or that so nearly resembles such a trade mark as to be likely to deceive or cause confusion. "

20 The trade mark "GOLDEN DRAGON" is registered in Sabah and the Applicants are the registered proprietors thereof. If the Party Affected desire concurrent use of the same trade mark, then it would be open to the Party Affected by such proceedings such as they may be advised to apply to the Court or the Registrar for such use. It appears that to date the Party Affected have not done so.

I now turn to consider Section 47 which makes provision as to non-user of trade mark. Section 47 provides :-

30 "47. (1) Subject to the provisions of section 48 of this Ordinance, a registered trade mark may be taken off the Register in respect of any of the goods in respect of which it is registered on application by any person aggrieved to the Court, on the ground either -

- 40 (a) that the trade mark was registered without any bona fide intention on the part of the applicant for registration that it should be used in relation to those goods by him or if it was registered under subsection (7) of section 19, by the corporation or registered user concerned, and that there has in fact been no bona fide use of the trade mark in relation to those goods by any proprietor thereof for the time being up to the date one month before the date of the application; or
- 50 (b) that up to the date one month before the date of the application a continuous period of five years or longer elapsed during which the trade mark was a registered trade mark and during which there was no bona fide use thereof in relation to those goods by any proprietor thereof for the time being:

In the High Court in Borneo
No. 9 Judgment
21st February 1980
(cont'd)

Provided (irrelevant) "

Here the party aggrieved has not applied to the court to take off the Register any trade mark which has been registered on grounds either (a) or (b) above.

Next is Section 55, the marginal note of which reads: "Registration conclusive after seven years". The proviso of this section states :-

"Provided that nothing in this Ordinance shall entitle the proprietor or a registered user of a registered trade mark to interfere with or restrain the use by any person of a trade mark identical with or nearly resembling it in relation to goods in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date anterior - 10

(a) to the use of the first-mentioned trade mark in relation to those goods by the proprietor or a predecessor in title of his; or 20

(b) to the registration of the first-mentioned trade mark in respect of those goods in the name of the proprietor or a predecessor in title of his;

whichever is the earlier, or to object (on such use being proved) to that person being put on the Register for that identical or nearly resembling trade mark in respect of those goods under section 33 of this Ordinance. " 30

The Party Affected nowhere in their affidavits claimed that they had continuously used the "GOLDEN DRAGON" trade mark in Sabah prior to 22nd January, 1976 when the mark was registered with the Applicants as proprietors thereof. In my view, for the reasons given, I do not think the Party Affected can derive any comfort either of the provisions of Section 33, 47 or 55.

Counsel for the Party Affected also contended that the trade mark relied upon was registered for Sabah under the Trade Marks Ordinance, 1949 whereas the Trade Descriptions Act, 1972 applies throughout Malaysia. To this there is a short answer. Section 16(1) reads :- 40

"16.(1) Where any person being a proprietor or registered user of a registered trade mark

within the meaning of any written law relating to trade marks or being otherwise entitled at law to the protection of a trade or other mark " (emphasis added)

In the High Court in Borneo

No. 9
Judgment
21st February
1980
(cont'd)

10 The Trade Marks Ordinance 1949 is a written law relating to trade marks. It is manifestly clear from the words underlined that Applicant can make an application under that section because they are the registered proprietor of a trade mark registered in Sabah.

Now the point is made and it is a significant one that the Applicants have only sought enforcement of their rights in Sabah over the "GOLDEN DRAGON" trade mark. They have not done so in West Malaysia or elsewhere. It may be convenient to set out the provisions of Section 23 of the Courts of Judicature Act, 1964 :-

20 "23.(1) Subject to the limitations contained in Article 128 of the Constitution every High Court shall have jurisdiction to try all civil proceedings where ;

(a) the cause of action arose; or

(b) the defendant or one of several defendants resides or has his place of business; or

(c) the facts on which the proceedings are based exist or are alleged to have occurred; or

30 (d) any land the ownership of which is disputed is situated;

within the local jurisdiction of the Court and notwithstanding anything contained in this section in any case where all parties consent in writing within the local jurisdiction of any other High Court.

(2) Without prejudice to the generality of the last preceding sub-section -

40 (a) every High Court shall have such jurisdiction as is vested in it by any written law which is in force within its local jurisdiction;

(b) the High Court in Malaya shall have such jurisdiction as was vested by any written law in the High Court of the Federation of Malaya immediately prior to Malaysia Day until the same is repealed;

In the High
Court in
Borneo

No. 9
Judgment
21st February
1980
(cont'd)

(c) the High Court in Borneo shall have such jurisdiction as was vested by any written law applicable to the States of Sabah and Sarawak as was vested in the High Court of Sarawak, North Borneo and Brunei immediately prior to Malaysia Day until the same is repealed. "

An Order made under Section 16 of the Trade Description Act cannot have application throughout the whole of Malaysia if the written law relied on in the application applied to Sabah only. 10

There is clear evidence in the Applicants' affidavits and which is uncontroverted by the Party Affected that the Applicants are the only persons having a registered trade mark in respect of "GOLDEN DRAGON" cooking oil in Sabah.

It is not in controversy that the Party Affected have been manufacturing and distributing cooking oil with the mark "GOLDEN DRAGON" in Sabah. The Party Affected's mark is not registered as a trade mark in Sabah and is therefore an infringement of the Applicants' registered trade mark. 20

It only remains to deal with two matters.

The Party Affected have made a bare averment that the Party Affected have been wrongly advised by the then Deputy Registrar of Trade Marks, Mr. Kanagaratnam, that it would not be necessary to seek registration of the trade mark in Sabah and Sarawak because it was anticipated that legislation applicable throughout Malaysia would be enacted soon thereafter. Why there is no supporting affidavit from the said Mr. Kanagaratnam has not been explained. 30

The Party Affected alleged that they have incurred over \$4½ million to advertise and promote the mark "GOLDEN DRAGON". It also claimed that they have sold more than \$36 million worth of cooking oil under the said mark. It is to be noted that the figures given are not supported by documents. In any event, the sums they have incurred or the sales they have made are again immaterial to the main issue to be decided. Who are the registered proprietors of the trade mark in Sabah? 40

The reasons why the Party Affected refrained from seeking registration of the trade mark in Sabah are immaterial and irrelevant. The fact remains that they did not seek or obtain registration of the trade mark whereas the Applicants did.

If the Party Affected felt aggrieved they are entitled to pursue such remedies under the law. But they have chosen not to. For each and all of these reasons, I am of the opinion and I am satisfied that the application of the Party Affected must be dismissed with costs and the Order dated 31st July, 1979 is hereby confirmed.

In the High Court in Borneo
No. 9
Judgment
21st February
1980
(cont'd)

Dated this 21st day of February, 1980.

10
Sgd. B.T.H. Lee
(Datuk B.T.H. Lee)
Judge
Kota Kinabalu. High Court in Borneo

CERTIFIED TRUE COPY
25.02.80
Secretary to the Judge
High Court in Borneo

Notes

20
(1) For Applicants: Messrs. Shelley Yap Chong
Chia & Co.,
Advocates & Solicitors,
2nd Floor,
135 Gaya Street,
P.O. Box 980,
Kota Kinabalu.

30
(2) For Party Affected:
Messrs. Robertson Pang & Co.,
Advocates & Solicitors,
1st Floor,
91 Jalan Gaya,
P.O. Box 1063,
Kota Kinabalu.

In the High
Court in
Borneo

No. 10

Order - 21st February, 1980

No. 10
Order - 21st
February
1980

MALAYSIA

IN THE HIGH COURT IN BORNEO AT KOTA KINABALU

KOTA KINABALU REGISTRY

ORIGINATING MOTION NO. 2 OF 1979

In the matter of Ng Foo Cheng and Ng Foo
Kok trading as Ng Brothers Import and
Export Company

And

10

In the matter of Trade Mark "Golden
Dragon" consisting of the device of a
golden dragon enclosed in a circle registered
under the Trade Mark No. 19862, Class 29 in
Sabab in the name of Ng Foo Chong and Ng
Foo Kok trading as Ng Brothers Import and
Export Company

Ng Foo Chong
Ng Foo Kok
trading as Ng Brothers Import
and Export Company

Applicants

20

Socoil Corporation Berhad

A Party Affected

BEFORE THE HONOURABLE
JUSTICE DATUK B.T.H. LEE
SENIOR JUDGE IN BORNEO

IN OPEN COURT
THE 21ST DAY OF FEBRUARY
1980

O R D E R

UPON READING the Notice of Motion together
with the Affidavit the Supplementary Affidavit of
Mr. Khoo Chooi Leong affirmed on 19th December,
1979 and 4th January, 1980 respectively in support
And the Affidavit in Reply of Mr. Ng Foo Kwan
affirmed on 20th December, 1979 AND UPON HEARING
C.I. Robertson Esq. of counsel for the Party
Affected AND UPON HEARING Gerard Hath Lee Min Esq.
of counsel for the Applicants IT IS ORDERED AND
ADJUDGED that the application of the Party
Affected be dismissed WITH COSTS and the Order
dated 31st July, 1979 be confirmed.

30

GIVEN under my hand and Seal of the Court this
21st day of February, 1980.

40

Sgd. DEPUTY REGISTRAR
HIGH COURT IN BORNEO

No. 11

Notice of Appeal - 5th March, 1980

In the
Federal
Court of
Malaysia

FORM 1

(Rule 6)

No. 11
Notice of
Appeal - 5th
March 1980

IN THE FEDERAL COURT OF MALAYSIA

HOLDEN AT KOTA KINABALU

(Appellate Jurisdiction)

CIVIL APPEAL NO. OF 1980

BETWEEN

10 SOCOIL CORPORATION BERHAD Appellant

AND

NG FOO CHONG
NG FOO KOK
(Trading as Ng Brothers Import &
Export Company) Respondents

(In the Matter of Originating Motion No. 2 of
1979, the High Court in Borneo at Kota
Kinabalu Registry

20 In the Matter of Ng Foo Chong and Ng Foo
Kok trading as Ng Brothers Import & Export
And

In the Matter of Trade Mark "GOLDEN DRAGON"
consisting of the device of a golden
coloured dragon enclosed in a circle
registered under the Trade Mark No. 19862
Class 29 in Sabah in the name of Ng Foo
Chong and Ng Foo Kok trading as Ng
Brothers Import and Export Company

30 NG FOO CHONG
NG FOO KOK
(Trading as Ng Brothers Import &
Export Company) APPLICANTS

AND

SOCOIL CORPORATION BERHAD A PARTY AFFECTED

NOTICE OF APPEAL

40 TAKE NOTICE that SOCOIL CORPORATION BERHAD
being dissatisfied with the decision of the
Honourable Justice Datuk B. T. H. Lee given at
Kota Kinabalu on the 21st day of February 1980
appeal to the Federal Court against the whole of
the said decision.

In the Federal
Court of
Malaysia

DATED this 5th day of March 1980

Sgd. Robertson Pang & Co.
Solicitors for the Appellant

No. 11
Notice of
Appeal - 5th
March 1980
(cont'd)

To: The Deputy Registrar,
High Court,
Kota Kinabalu.

To: The Registrar,
The Federal Court,
Kuala Lumpur.

and The Registrar,
To: The High Court,
Kuching.

and Messrs. Shelley Yap Chong Chia & Co.,
To: Solicitors for the Respondents,
(2nd Floor) No. 135 Jalan Gaya,
Kota Kinabalu.

10

No. 12

Memorandum of Appeal - 28th April 1980

In the Federal
Court of
Malaysia

IN THE FEDERAL COURT OF MALAYSIA

HOLDEN AT KOTA KINABLU

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. OF 1980

No. 12
Memorandum of
Appeal - 28th
April 1980

BETWEEN

SOCOIL CORPORATION BERHAD

APPELLANT

AND

10 NG FOO CHONG
NG FOO KOK
(Trading as Ng Brothers Import &
Export Company)

RESPONDENTS

(In the Matter of Originating Motion No. 2 of 1979,
the High Court in Borneo at Kota Kinabalu Registry

In the Matter of Ng Foo Chong and Ng Foo
Kok trading as Ng Brothers Import &
Export

And

20 In the Matter of Trade Mark "GOLDEN DRAGON"
consisting of the device of a golden
coloured dragon enclosed in a circle
registered under the Trade Mark No. 19862,
Class 29 in Sabah in the name of Ng Foo
Chong and Ng Foo Kok trading as Ng Brothers
Import and Export Company.

30 NG FOO CHONG
NG FOO KOK
(Trading as Ng Brothers Import &
Export Company)

APPLICANTS

SOCOIL CORPORATION BERHAD

A PARTY AFFECTED)

MEMORANDUM OF APPEAL

Socoil Corporation Berhad, the Appellants
abovenamed appeal to the Federal Court against the
whole of the decision of the Honourable Justice Datuk
B.T.H. Lee given at Kota Kinabalu on the 21st day of
February 1980 on the following grounds:-

- (1) The Learned Judge ought not have exercised
the summary powers under Section 16 of the

In the Federal
Court of
Malaysia

No. 12

Memorandum of
Appeal - 28th

April 1980

(cont'd)

- Trade Descriptions Act 1972 because the said Section was intended for plain and obvious cases where there is no challenge to the right, title and registration of the proprietor of the mark.
- (2) The Learned Judge ought to have taken into account that :-
- (a) the Appellants are registered proprietors in Hong Kong and the Sultanate of Brunei and are applicants pending registration in Malaya, Sarawak and Sabah of a similar trade mark; 10
- (b) the Appellants have promoted by way of trade and have acquired an interest in the user of and in the said mark in the said territories including Sabah;
- (c) the Appellants are the originators of the mark;
- (d) the power and jurisdiction of the several Registrars of Trade Mark under the respective Trade Mark legislations applicable to determine the existence of the Respondents' mark on the registers, their entitlement to registration, the Appellant's entitlement to the removal or expunging of the Respondents' mark or to the concurrent user of the said mark by both the Respondents and the Appellant. 20 30
- (3) The said Order under Section 16 for all practical purposes has predetermined exercise of powers by the several Registrars of Trade Mark as the latter would be bound by or give effect to the Order of the Learned Judge.
- (4) The Learned Judge in holding that the Appellants "have not availed themselves of (the) opportunity" to set aside or discharge the Order dated 31st July 1979 has completely misdirected himself as to the purpose and object of the Appellant's Motion. 40
- (5) The Learned Judge completely overlooked the sales conducted by the Appellants throughout Malaysia (which extends to Sabah) as from 5th January 1976 and erroneously held there as no evidence of user prior to 22nd

January 1976 in order to attract the provisions of Section 33, 47 or 55 of the Trade Marks Ordinance (Sabah).

In the Federal court of Malaysia

10 (6) The Learned Judge placed undue emphasis on the right of a registered proprietor or user of a registered trade mark but completely overlooked the other category of persons who can apply under Section 16 namely, "persons otherwise entitled at law to the protection of a trade or other mark" and the Appellants come under the latter category.

No-. 12
Memorandum of Appeal - 28th April 1980
(cont'd)

(7) The Learned Judge misinterpreted the provisions of Section 16 in that it had no application to the present case as the present case involves a dispute between a registered proprietor and a person otherwise entitled at law to protection of the same or similar mark or get up.

Dated this 28th day of April 1980

20 Sgd. Robertson Pang & Co.
Solicitors for the Appellants

To: (1) The Chief Registrar,
Federal Court,
Kuala Lumpur.

(2) The Registrar,
High Court in Borneo,
Kuching,
Sarawak.

30 (3) The Deputy Registrar,
High Court,
Kota Kinabalu.

(4) The Respondents abovenamed or their
Solicitors, Shelley Yap Chong Chia & Co.,
No. 135 Gaya Street (2nd Floor),
Kota Kinabalu.

The address for service of the Appellants is c/o Messrs. Robertson Pang & Co., No. 91 (1st Floor) Gaya Street, Kota Kinabalu.

In the Federal
Court in
Malaysia

No. 13

Notes of Proceedings - Lee Hun Hoe LJ
9th September 1980

No. 13
Notes of
Proceedings
Lee Hun Hoe LJ
9th September
1980

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KOTA KINABALU
(Appellate Jurisdiction)

Federal Court Civil Appeal No. 59 of 1980

Between

SOCOIL CORPORATION BERHAD

Appellant

And

10

NG FOO CHONG

NG FOO KOK

(Trading as Ng Brothers
Import & Export Company

Respondents

(In the Matter of Originating Motion No.
2 of 1979 in the High Court in Borneo
at Kota Kinabalu

In the Matter of Ng Foo Chong and Ng Foo
Kok trading as Ng Brothers Import & Export

And

20

In the Matter of Trade Mark "GOLDEN DRAGON"
consisting of the device of a golden dragon
enclosed in a circle registered under the
Trade Mark No. 19862, Class 29 in Sabah
in the name of Ng Foo Chong and Ng Foo Kok
trading as Ng Brothers Import and Export
Company

NG FOO CHONG

NG FOO KOK

(Trading as Ng Brothers Import
& Export Company

Applicants

30

SOCOIL CORPORATION BERHAD

A Party Affected)

Coram: Lee Hun Hoe, C.J. Borneo
Chang, F.J.
Syed Othman, F.J.

NOTES OF SUBMISSIONS

TUESDAY, 9TH SEPTEMBER, 1980

9.00 a.m.

Encik R.R. Sethu (Encik Low Chee Choon and
Encik Cecil Ian Robertson with him) for
appellants.

40

Encik Porres P. Royan (Encik Gerard Math Lee Min with him) for respondents.

In the Federal Court in Malaysia

APPELLANTS

No. 13
Notes of Proceedings
Lee Hun Hoe LJ
9th September 1980
(cont'd)

Page 5 - Notice of Motion.
Respondents' trade mark "Golden Dragon".
Appellants also wanted to use similar trade mark.

10 Section 16 of the Trade Descriptions Act, 1972.
Both marks dragon.
But designs different.
No proprietary interest.

Page 55 - Notice of Motion.
Order drawn up not included.

Trade Mark question of fact can only be disposed of in a trial.

Fact is that a person who registers trade mark does not mean he has exclusive rights except seven years.

20 Presumption in the Act.
Section 55 Trade Marks Ordinance (Cap.142).

Appellants did not register in Sabah as they have reason to believe the legislation in Kuala Lumpur would be extended to East Malaysia.

Appellants spent a lot of money in advertising their products.

Page 47 - "An order made under Sabah only".

30 Submit this is wrong.
No one has the proprietary right in the dragon.

RESPONDENTS

Section 55 of Trade Marks Ordinance.
Refer to section 52 of the Ordinance.
Use of trade mark.

Respondents registered golden dragon trade mark in Sabah on 22.1.76.

40 Concede appellants applied for registration of their trade mark in West Malaysia in September, 1975. Respondents opposing registration.

In the Federal
Court in
Malaysia

No. 13
Notes of
Proceedings
Lee Hun Hoe LJ
9th September
1980
(cont'd)

But dispute appellants' use of trade mark
here prior to respondents' registration.

Page 59 - Affidavit.

Paragraph 10 - "Since approximately a few
month ago country."

Page 8 - Paragraphs 14 - 16.

"The Company
..... 5th January, 1976."
Spending out itemised.

Page 13 - Affidavit in reply.
Paragraph 5.

10

"I crave Sabah."

Supplementary Affidavit not seen to answer
the question.

Impex Electrical Ltd. v. Weinbaum (1927) 44
RPC, 405. Page 410.

"It seems to me thatpurpose."

Appellants failed to show that respondents
not entitled to protection.

Respondents say appellants started selling
their goods under their trade mark in 1978.

20

Appellants have not denied this.

Page 14 - Paragraph 8.

"I also aver that in
..... noothers".

Application of Pomril Ltd. (1901) 18 RPC, 181.
Page 184.

"Now it is well settled law
.....goods".

Respondents registered two trade marks in
Sabah.

30

"Double Dragon" and "Dragon Phoenix" since
1973 and also "Golden Dragon".

In the Matter of British Lead Mills Ltd's
Application for a Trade Mark (1958) RPC.425.

Appellants relied on provisions of Trade
Marks.

They said they were entitled to concurrent use of trade mark.

In the Federal Court in Malaysia

Not sufficient to say they came within the provisions of Trade Marks Ordinance when adducing evidence.

No. 13
Notes of Proceedings
Lee Hun Hoe LJ
9th September 1980
(cont'd)

Kerly on Trade Marks, 10th Edition, 204

"The grievance
.....insufficient."

APPELLANTS

10

A lot of matters of facts are involved. Cannot be dealt with under section 16 of the Trade Descriptions Act. These can only be disposed of by a suit.

Marks must be so similar as to deceive members of the public.

Kerly on Trade Marks, 10th Edition, page 276

"In addition
.....course of trade."

20

We use dragon - a completely different device from respondents'.

(1894) A.C. 8 and 10.

"Whereveraggrieved."

Affidavit of respondents not served on us. So we could not reply. We could only rely on the order they obtained.

COURT

C.A.V.

30

(Sgd) Lee Hun Hoe
9/9/1980.

Certified true copy:

Valier Kush
P.A. to Chief Justice,
Borneo
22/12/80.

Sethu: Refusal of H.Ct. to discharge.

Original application ex parte, p. 55.

Motion to discharge - page 5.

S.16 Trade Description Act 1972 (Act 87).

Application should not be made ex parte, since other party known to applicant.

Issues of fact over user, deception, etc.

S.55 Trade Marks Ord. Cap. 142.

10 Royan: S.52 Cap. 142 - exclusive right.

Oversight to make application ex parte, visually and phonetically.

Sethu: in reply.

Court: c.a.v.

Sgd. CHANG MIN TAT
JUDGE

Sgd. Illegible

Kuala Lumpur

30/12/80

In the Federal
Court in
Malaysia

No. 14
Notes of
Proceedings
of Chang Min
Tat FJ - 9th
September
1980
(cont'd)

In the Federal
Court in
Malaysia

No. 15

Notes of Proceedings - Syed Othman FJ
9th September 1980

No. 15
Notes of
Proceedings
Syed Othman
FJ - 9th
September
1980

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KOTA
KINABALU
(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. 59 OF 1980

Between

Socoil Corporation Berhad

Appellants

And

10

Ng Foo Chong

Ng Foo Kok

(Trading as Ng Brothers Import &
Export Company)

Respondents

(In the Matter of Originating Motion No. 2
of 1979 in the High Court in Borneo at Kota
Kinabalu

In the Matter of Ng Foo Chong and Ng
Foo Kok trading as Ng Brothers Import
& Export

20

And

In the Matter of Trade Mark "GOLDEN
DRAGON" consisting of the device of a
golden dragon enclosed in a circle
registered under the Trade Mark No.
19862, Class 29 in Sabah in the Name of
Ng Foo Chong and Ng Foo Kok trading as
Ng Brothers Import and Export Company.

Ng Foo Chong

Ng Foo Kok

(Trading as Ng Brothers Import &
Export Company)

Applicants

30

Socoil Corporation Berhad

A Party Affected.

Coram: Lee Hun Hoe, CJ Borneo
Chang Min Tat, FJ
Syed Othamn, FJ

NOTES RECORDED BY SYED OTHMAN, FJ

Kota Kinabalu

9th September, 1980.

Mr. R. Sethu (Mr. Low and Mr. Robertson with him)
for appellants.

In the Federal
Court in
Malaysia

Mr. P.P. Royan (Mr. J. Math with him) for
respondents.

No. 15
Notes of
Proceedings
Syed Othman
FJ - 9th
September
1980
(cont'd)

10 Sethu - Appeal against refusal of High Court to
discharge order under s.16 Trade Description Act.
Motion by appellants. Respondents are registered
owners of trade mark "Golden Dragon" in Sabah.
Appellants also registered owner of trade mark in
W. Malaysia. Registered in Brunei and Hongkong
P.63. Our goods manufactured in W. Malaysia and
sold in Sabah as well. We will be eligible for
registration in Sabah.

20 S.16 gives right to owner and entitled to
protection at law. No similarity in the 2 marks.
No proprietary interest in dragon. Respondents
know our trade mark. P55 Notice of Motion.
Application under s.16 should not have been made
ex-parte. Questions of fact over user deception.
S.16(3) order conclusive in all proceedings.
S.32 Sabah Ord. Fact that person is registered
does not mean that he has exclusive right except
after 7 years. S.55 Cap.142. Appellants'
reasons for not registering in W. Malaysia. Law
was to be unified - not yet in force. Amount
incurred in promoting this mark. Court held that
reasons not material or relevant.

30 Article in Constitution - order from one
High Court enforceable in all parts of Malaysia.
P.47 finding here by Judge wrong. Trade mark
Federal matter. Respondents will enjoy benefit
in W. Malaysia. By reason of respondents'
registration - our rights too disappeared.

40 Royan - S.55 Sabah Trade Mark Ord. See also s.52.
Respondents registered trade mark in Sabah 22.1.76.
Appellants applied for registration in W. Malaysia
in Sept. 1975. Respondents are opposing application
in W. Malaysia. Appellants not yet registered.
p.59 para 10. This averment is not denied. S.16
does not provide inter partes. Any person
offended can come in to set aside.

Appellants using trade mark - p.8 para 14.
Nothing to show how much in Sabah. See p.13,
para 5. Appellants did not reply to this.

Impex Electrical Ltd. (1927) 44 RPC 405 at 410.

50 Appellants to show that they need protection
in Sabah. No evidence of user in Sabah before
22.1.76. Respondents stated that early in 1978

In the Federal Court in Malaysia appellants started selling in Sabah using the trade mark.

No. 15
Notes of
Proceedings
Syed Othman
FJ - 9th
September
1980
(cont'd)

P.14, para 8 appellants have no right to trade mark.

Application of Pomril, (1901) 18 RPC 181.
In 1973 Respondents registered Phoenix & Double Dragon. Appellants cannot register using the name of dragon.

British Lead Mills Application (1958) 54 RPC 425. 10

Kerly's Trade Marks & Trade Names, 10th ed. p.204, 205. See case referred to Lever Bros v. Sunnivate Products (1949) 66 RPC 84.

Sethu - S.16 is not an action for infringement. Declaration. Matters of fact involved. Should have been taken by way of action - not application under s.16.

Similarity of mark. Rights of appellants to use mark cannot be challenged. So similar that public would be deceived. See Kerly p.276. No visual or phonetical similarity. 20

William Powell v. Birmingham Vinegar (1894) AC 8. Affidavit of respondents - not served on us. We could not reply.

C.A.V.

Salinan yang di-akui benar.

Sgd. Illegible 31/7/81

Malaysia
Kuala Lumpur.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KOTA
KINABALU
(Appellate Jurisdiction)

Federal Court Civil Appeal No.59 of 1980

Between

SOCOIL CORPORATION BERHAD Appellant

10 And

NG FOO CHONG
NG FOO KOK
(Trading as Ng Brothers
Import & Export Company) Respondents

(In the Matter of Originating Motion No. 2 of
1979 in the High Court in Borneo at Kota
Kinabalu

In the Matter of Ng Foo Chong and Ng Foo Kok
trading as Ng Brothers Import & Export

20 And

In the Matter of Trade Mark "GOLDEN DRAGON"
consisting of the device of a golden dragon
enclosed in a circle registered under the Trade
Mark No. 19862, Class 29 in Sabah in the name of
Ng Foo Chong and Ng Foo Kok trading as Ng
Brothers Import and Export Company

30 NG FOO CHONG
NG FOO KOK
(Trading as Ng Brothers Import
& Export Company) Applicants

SOCOIL CORPORATION BERHAD A Party Affected)

Coram: Lee Hun Hoe, C.J. Borneo
Chang, F.J.
Syed Othman, F.J.

JUDGMENT OF THE FEDERAL COURT

This appeal is against the refusal of the
learned Judge to discharge an order made by him
earlier in respect of certain trade mark.

On 22nd January, 1976 respondents registered

In the Federal Court in Malaysia
No. 16
Judgment of the Federal Court - 5th December 1980
(cont'd)

in Sabah the trade mark of "Golden Dragon" consisting of the device of a golden coloured dragon enclosed in a circle in respect of edible oil under the Sabah Trade Marks Ordinance (Cap.142). The trade mark number is 19862 in Class 29. A certificate of the said registration was issued by the Registrar of Trade Marks, Sabah. In addition to the above trade mark respondents are also the registered proprietors in Sabah since 1973 of the "Double Dragon" trade mark No. 16293 and the "Double Phoenix" trade mark No. 16493 each of which also consists of the device of a dragon as a distinctive feature. In 1978 certain cooking oils not of respondents' manufacture and bearing identical trade mark of the "Golden Dragon" were sold in Sabah. It should be pointed out that the trade marks were only identical in the sense that the device of a dragon was used in each case but the design was dissimilar. So, by a notice of motion dated 13th June, 1979 respondents applied ex parte for an order pursuant to section 16 of the Trade Descriptions Act, 1972 that the said trade mark of the "Golden Dragon" used in relation to edible oils and in particular to cooking oil not manufactured by or distributed by respondents shall be deemed for the purposes of the said Act to be false trade description. On 31st July, 1979 the learned Judge made order in terms.

Subsequently, by a notice of motion dated 8th November, 1979 appellants who claimed to have a proprietary interest in the trade mark of the "Golden Dragon" sought to discharge the order dated 31st July, 1979. Appellants are a large and established manufacturer of palm and other edible oils. Some time in 1975 they decided to manufacture cooking oils for sale in South East Asian market. As a result of this decision they created a number of trade marks to be used for the sale of the cooking oils. One of these marks was the "Golden Dragon". At the material time a Bill was laid before Parliament to repeal the trade mark laws of Semenanjung Malaysia, Sabah and Sarawak and replacing them with a Trade Marks Act applicable throughout Malaysia. Although the Trade Marks Act, 1976 had received the Royal Assent on 21st June, 1976 it has yet to come into operation. Appellants claimed to have started selling cooking oil in Malaysia under the "Golden Dragon" trade mark on 5th January, 1976. The manager of appellant firm, Mr. Khoo Chooi Leong affirmed in his affidavit that he has advised, apparently wrongly, by one Mr. Kanagaratnam against making three separate applications as the Bill was expected to be passed soon and there would be a central Registry for Semenanjung Malaysia; Sabah and Sarawak.

10 Following this advice appellants applied for registration of the "Golden Dragon" trade mark in Semenanjung Malaysia, Brunei and Hongkong but not Sabah and Sarawak. Appellants applied for registration of the said mark in Semenanjung Malaysia on 13th September, 1975. In his supplementary affidavit Khoo Chooi Leong stated that the application had in fact been approved by the Registrar of Trade Marks and had been gazetted in the Government Gazette on 31st March, 1977. Subsequently, upon advertisement of the said mark respondents raised objection so the said mark had not been registered in Semenanjung Malaysia.

In the Federal Court in Malaysia
No. 16
Judgment of the Federal Court - 5th December 1980
(cont'd)

20 Respondents took the trouble to have their trade marks registered in Sabah as early as 1973 and the "Golden Dragon" on 22nd January, 1976. The reasons given by appellants for failing to seek registration in Sabah of the "Golden Dragon" trade mark are immaterial and irrelevant to the question before the court, that is, whether the order made on 31st July, 1979 should be discharged or not. Appellants must show their proprietary interest in the trade mark in Sabah. Respondents alleged that appellants had not used their trade mark in Sabah prior to respondents' registration of their trade mark. They further alleged that appellants started selling their goods under their trade mark in 1978. Appellants have not denied this.

40 It is the contention of appellants that the learned Judge ought not to have exercised the summary power under section 16 of the Trade Descriptions Act, 1972 as the said section was meant for plain and obvious cases where there would be no challenge to the right, title and registration of the proprietor of the mark. The right to the use of a particular trade mark depends on question of facts which can only be decided in a trial.

Section 16 of the Trade Descriptions Act, 1972 reads:-

"16. (1) Where any person being a proprietor or registered user of a registered trade mark within the meaning of any written law relating to trade marks or being otherwise entitled at law to the protection of a trade or other mark or a get-up for any goods or services established -

50 (a) in the case of a registered trade mark, that his rights in respect of such trade

mark are being infringed in the course
of trade within the meaning of the
written law; or

- (b) in the case of a trade or other mark or
get-up for any goods or services, that
his rights in respect of such trade or
other mark or get-up are being infringed
in the course of trade as a result of
which he has a right of action for passing
off, the High Court may on the application
of such person make an order declaring
that the infringing trade or other mark
or get-up as the case may be is for
purposes of this Act a false trade
description in its application to such
goods as may be specified in the order." 10

The learned Judge accepted the submission of
the respondents that under the above section
any person having a registered trade mark who can
show that his rights in such trade mark are being
infringed in the course of trade may apply to the
High Court for an order declaring that the
infringing trade mark is a false trade description
in its application to such goods as may be
specified in the order. In other words, a person
seeking to obtain an order under the said section
need to show two things, namely:- 20

- (a) that he is the proprietor of a registered
trade mark, and
- (b) that some other person is infringing that
registered trade mark in the course of
trade. 30

Both parties have filed affidavits in
support of their applications. The learned
Judge was apparently satisfied on the evidence
that respondents had established the two things
under section 16 when he made the order.
Appellants had failed to show why respondents are
not entitled to protection under section 16. The
contention that there is a conspicuous absence of
any evidence of user or of promotion and
advertisement of the mark by respondents does not
advance the application of appellants any further
as these requirements are not necessary for an
order under section 16. Also, there is nothing
requiring respondents to serve any paper on any
affected person. Further, neither section 16 nor
other section requires hearing to be inter
parties. Of course, the court may, in the
exercise of their inherent jurisdiction, direct
the papers to be served on an interested or
affected party. 40 50

10 Appellants made several points in support of their applications to discharge the order. They explained why they did not register their trade mark in Sabah and Sarawak. The fact remains that there are three sets of Trade Mark legislations in Malaysia - one in Semenanjung Malaysia and one each in Sabah and Sarawak. They complained that they had spent over \$4½ million to advertise and promote their "Golden Dragon" mark from 5th January, 1975 to 31st August, 1979. They claimed to have sold over \$36 million worth of cooking oil under the said mark. All these are not supported by documents. For all we know the money was used to advertise and promote the said mark in territories other than Sabah. In the same way the sale of cooking oil could refer to sales in other territories other than Sabah. We are concerned with the proprietary rights in Sabah. Who are the registered proprietors of the trade mark in Sabah? Are they entitled to protection? The points raised by appellants are immaterial and irrelevant to the question whether the court ought to discharge the order made on 31st July, 1979.

In the Federal Court in Malaysia

No. 16
Judgment of the Federal Court - 5th December 1980
(cont'd)

30 The fact that appellants registered their trade mark in Semenanjung Malaysia, Singapore, Hong Kong, Brunei or Timbuctu is not relevant to the issue before us. We have maintained that since we are one country we should have one law for the country in respect of federal matters. The process of achieving uniformity is a slow one. Today, our Subordinate Courts have not achieved uniformity in practice and procedure. We are working towards uniformity. Our legal professions have not achieved uniformity. These are still covered by three different sets of laws, one each for Semenanjung Malaysia, Sabah and Sarawak. In the same way there are three different sets of trade mark laws in the country. A dispute in one jurisdiction does not necessarily mean there is dispute in another jurisdiction. If there is a dispute in Semenanjung Malaysia it falls within the jurisdiction of the High Court in Malaya. But, if the dispute is in Sabah or Sarawak it would fall within the jurisdiction of the High Court in Borneo. The two High Courts have equal and co-ordinate jurisdiction.

50 The dispute between the parties in respect of the registration of the said mark is in Semenanjung Malaysia and not in Sabah. An objection was raised in Semenanjung Malaysia over the registration of the mark. It is a fact that respondents were the registered proprietors of the "Golden Dragon" mark in Sabah on 22nd January, 1976.

In the Federal Court in Malaysia
No. 16
Judgment of the Federal Court - 5th December 1980
(cont'd)

No objection was taken under section 27 of the Sabah Trade Marks Ordinance in respect of the mark. Also, any dispute between the parties in respect of a mark in Semenanjung Malaysia is entirely immaterial and irrelevant in either Sabah or Sarawak because of different legislation on the matter.

Respondents had objected to the registration of the trade mark by appellants in Semenanjung Malaysia when it was gazetted. The matter has yet to be settled. However, no objection was raised in respect of the registration of the trade mark by respondents in Sabah under the Sabah Trade Marks Ordinance. Only appellants can explain why no objection was taken. Under section 27 of the Sabah Trade Marks Ordinance an appeal lies from the decision of the Registrar to the High Court with further appeal to this Court.

10

Respondents have the right to seek whatever remedy they consider appropriate to protect their proprietorship in the trade mark in Sabah. They choose to invoke the provisions of section 16 of the Trade Descriptions Act, 1972. Appellants have failed to show that an order could not be made under that Act.

20

We consider the learned Judge was wrong to accept as correct the contention of respondents that an order made under section 16 of the said Act cannot have application throughout Malaysia if the written law, i.e. the Sabah Trade Marks Ordinance applies to Sabah only. There is nothing to prevent respondent seeking enforcement of their proprietary rights in Sabah over the "Golden Dragon" trade mark. The order made by the learned Judge has full force and effect throughout Malaysia. Subsection (2) of section 7 of the Courts of Judicature Act, 1964 clearly provides that :-

30

"(2) All writs, summonses, warrants, orders, rules, notices and other processes whatsoever, whether civil or criminal, issued or made by or by the authority of the Court respecting any cause or matter within its jurisdiction shall have full force and effect and may be served or executed anywhere within Malaysia."

40

In making the order the learned Judge would seem to be satisfied that after respondents registered their "Golden Dragon" trade mark appellants introduced goods into Sabah with identical mark upon them. Respondents have used

50

the device of a dragon as a distinctive feature in Sabah as early as 1973. This may be the reason why appellants have not objected to the registration of the trade mark by respondents in Sabah. It would be wrong to allow registration in respect of the same goods a device similar to the device of a dragon as a distinctive feature as such could lead to deception that appellants' goods and respondents' goods were the same.

In the Federal Court in Malaysia

No. 16
Judgment of the Federal Court - 5th December 1980
(cont'd)

10

Section 54 makes clear that in all legal proceedings relating to a registered trade mark the fact that a person is registered as proprietor of the trade mark shall be prima facie evidence of the validity of the original registration of the trade mark. Appellants alleged that though both marks have dragons the designs are totally different. Reference was made to section 52, particularly subsection (4) which provides that:-

20

"The use of a registered trade mark, being one of two or more registered trade marks which are identical or nearly resemble each other, in exercise of the right to the use of that trade mark given by registration as aforesaid shall not be deemed to be an infringement of the right so given to the use of any other of those trade marks."

30

Despite the fact that respondents had registered their trade mark in Sabah appellants questioned their proprietary interest. Appellants contended that under section 55 respondents could only enjoy exclusive right after seven years from date of registration. The proviso to section 55 states quite clearly that the proprietor of a registered trade mark shall not be entitled to interfere with or restrain the use by any person of an identical trade mark if the latter has continuously used the trade mark prior to the use of the trade mark by the registered proprietor or to the registration of the trade mark by the registered proprietor. The "Golden Dragon" trade mark was registered by respondents on 22nd January, 1976 in Sabah. Appellants have not claimed to have continuously used the "Golden Dragon" trade mark in Sabah prior to that date when the mark was registered. Respondents alleged that appellants used their mark only in 1978.

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50

In our judgment on the evidence before him the learned Judge was right to make the order and

In the Federal
Court in
Malaysia

No. 16

Judgment of
the Federal
Court - 5th
December 1980
(cont'd)

to dismiss the application to discharge the said
order. Accordingly, we would dismiss the appeal
with costs. Deposit to respondents on account of
taxed costs.

(Sgd) Lee Hun Hoe
Chief Justice,
Borneo.

Kota Kinabalu, 5th December, 1980

Date of Hearing: Tuesday, 9th September, 1980.

Encik R.R. Sethu (Encik Low Chee Choon and Encik
Cecil Ian Robertson with him for appellants.
Messrs. Robertson Pang & Co.

10

Encik Porres P. Royan (Encik Gerard Math Lee Min
with him) for respondents.
Messrs. Shelley Yap Chong Chia & Co.

Sgd. Valeria Kush
P/A
22.12.80

No. 17

Order of the Federal Court - 5th December
1980

In the Federal
Court in
Malaysia

No. 17 - Order
of the Federal
Court - 5th
December 1980

IN THE FEDERAL COURT IN MALAYSIA HOLDEN AT KOTA
KINABALU

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 59 OF 1980

BETWEEN

Socoil Corporation Berhad

APPELLANT

10

AND

Ng Foo Chong
Ng Foo Kok
(trading as Ng Brothers
Import & Export Company)

RESPONDENTS

(In the Matter of Originating Motion No. 2
of 1979 the High Court in Borneo at Kota
Kinabalu Registry

20

In the Matter of Ng Foo Chong and Ng
Foo Kok trading as Ng Brothers Import &
Export Company

And

In the Matter of Trade Mark "GOLDEN
DRAGON" consisting of the device of a
golden coloured dragon enclosed in a
circle registered under the Trade Mark
No. 1982, /sic/ Class 29 in Sabah in the name
of Ng Foo Chong and Ng Foo Kok trading
as Ng Brothers Import & Export Company

30

Ng Foo Chong
Ng Foo Kok
(trading as Ng Brothers
Import & Export Company)

Applicants

Socoil Corporation Berhad A party affected)

CORAM: LEE HUN HOE, CHIEF JUSTICE, HIGH COURT, BORNEO;
CHANG MIN TAT, JUDGE, FEDERAL COURT, MALAYSIA;
SYED OTHMAN, JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT

THIS 5TH DAY OF DECEMBER, 1980

O R D E R

In the Federal
Court in
Malaysia

No. 17 - Order
of the Federal
Court - 5th
December 1980
(cont'd)

THIS APPEAL coming on for hearing on the 9th
day of September, 1980 in the presence of Encik
R.R. Sethu (Encik C.C. Low and Encik C.I.
Robertson with him) of Counsel for the Appellant
and Encik Porres P. Royan (Encik Gerald Math Lee
Min with him) of Counsel for the Respondents AND
UPON READING the Record of Appeal filed herein
AND UPON HEARING the aforesaid Counsel IT WAS
ORDERED that this Appeal do stand adjourned for
Judgment AND the same coming on for Judgment
this day in the presence of Encik R.R. Sethu of
Counsel for the Appellant and Puan Marina bte Hj.
Daud Tiu of Counsel for the Respondents IT IS
ORDERED that the Appeal be and is hereby
dismissed AND IT IS ORDERED that the Appellant
do pay to the Respondents the costs of this
Appeal to be taxed by the proper officer of the
Court AND IT IS LASTLY ORDERED that the sum of
Ringgit Five Hundred (Ringgit 500-00) only
deposited by the Appellant in Court as security
for costs of this Appeal be paid to the Respondents
towards costs to be taxed.

10

20

GIVEN under my hand and the Seal of the
Court this 5th day of December, 1980.

Sgd. W.S. Tan

SENIOR ASSISTANT REGISTRAR,
FEDERAL COURT, MALAYSIA.

No. 18

Order granting final leave to Appeal
to His Majesty the Yang di Pertuan
Agong - 25th September 1981

In the Federal
Court in
Malaysia

No. 18 - Order
granting final
leave to Appeal
to His Majesty
the Yang di
Pertuan Agong
25th September
1981

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
LUMPUR

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. 59 OF 1980

Between

10 Socoil Corporation Berhad Appellant

And

Ng Foo Chong
Ng Foo Kok
(Trading as Ng Brothers Import &
Export Company) Respondents

In the Matter of Originating Motion No. 2
of 1979 the High Court in Borneo at Kota
Kinabalu

20 In the Matter of Ng Foo Chong and Ng
Foo Kok trading as Ng Brothers Import
& Export

And

In the Matter of Trade Mark "GOLDEN
DRAGON" consisting of the device of a
golden dragon enclosed in a circle
registered under the Trade Mark No.
19862, Class 29 in Sabah in the name of
Ng Foo Chong and Ng Foo Kok trading as
Ng Brothers Import and Export Company

30 Ng Foo Chong
Ng Foo Kok
(Trading as Ng Brothers Import
& Export Company) Applicants

Socoil Corporation Berhad A Party Affected

CORAM: RAJA AZLAN SHAH, AG. LORD PRESIDENT,
FEDERAL COURT MALAYSIA
SALLEH ABBAS, JUDGE FEDERAL COURT, MALAYSIA
ABDUL HAMID, JUDGE FEDERAL COURT, MALAYSIA

IN OPEN COURT

40 THIS 25TH DAY OF SEPTEMBER, 1981

In the Federal
Court in
Malaysia

O R D E R

No.. 18 - Order
granting final
leave to Appeal
to His Majesty
the Yang di
Pertuan Agong
25th September
1981
(cont'd)

UPON MOTION made unto Court this day by
Encik Tan Seng Kee of Counsel for the Appellant
abovenamed in the presence of Encik Porres P.
Royan of Counsel for the Respondents AND UPON
READING the Notice of Motion dated the 17th day
of August, 1981 and the Affidavit of Khoo Chooi
Leong dated the 14th day of August, 1981 AND UPON
HEARING Counsels as aforesaid IT IS ORDERED that
final leave be and is hereby granted to the 10
Appellant to appeal to His Majesty the Yang Di Pertuan
Agong from the whole of the decision of the Federal
Court dated the 5th day of December, 1980 AND IT IS
FURTHER ORDERED that there will be no order as to
stay of execution AND IT IS LASTLY ORDERED that
the costs of and incidental to this application be
costs in the appeal.

GIVEN under my hand and the seal of the Court
this 25th day of September, 1981.

Sgd. W.S. Tan

20

SENIOR ASSISTANT REGISTRAR,
FEDERAL COURT,
KUALA LUMPUR.

This Order is filed by M/s. Mutalib Sundra & Low,
solicitors for the Appellant whose address for
service is at 3rd Floor, No. 9, Jalan Gereja,
Kuala Lumpur.



Exhibit SCB-1 to
Affidavit of
Khoo Chooi Leong
19th September 1979

This is the Exhibit marked "SCB-1" referred to
in the Affidavit of KHOO CHOOI LEONG
of
affirmed before me this 19th day of
September 1979.....

[Signature]
Commissioner for Oaths
~~Advocate & Solicitor~~
Commissioner For Oaths
Sinh

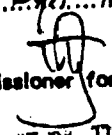
Exhibit SCB-2 to Affidavit of
Khoo Choo Leong - 19th September
1979

Dist. No. 277/2884L
Form TM No.
(Official form)

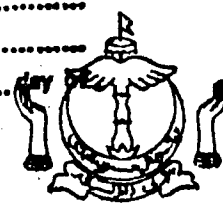
This is the Exhibit marked SCB-2 referred to in the Affidavit

of the Affidavit
Khoo Choo Leong

dated before me this 19th day of September 1979




Commissioner for Oaths



STATE OF BRUNEI

Certificate Issued under Section 19 and Rule 5B
of the Trade Marks Enactment, 1956.

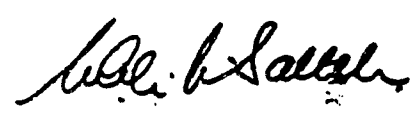
	<p>GOLDEN DRAGON BRAND</p> 	
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No. 7815

To
SOCOIL CORPORATION BERHAD, of No. 30 Jalan Telawi,
Bangsar Baru, Kuala Lumpur, West Malaysia. -----

I HEREBY CERTIFY THAT under the provisions of the Trade Marks Enactment, 1956,
your name has been entered in Part A of the Register as proprietor of the above numbered
Trade Mark as from the 1. 12. 1976 in Class 29 in respect of the following goods:
Edible fats and oil. -----

Trade Marks Registry,
State of Brunei.


Registrar

Registration of this Trade Mark will expire on the 1. 12. 1983 but may be
renewed for a further period of 14 years and upon the expiration of each succeeding period of
14 years.

(Haskhah Rasmi) SABAH

PERAKUAN DIKELUARKAN DI BAWAH SEKSYEN 39
DAN KAEDAH 58 ORDINAN CAP DAGANGAN, 1949

No. 19862

Kepada

NG FOO CHONG and NG FOO KOK trading as NG
BROTHERS IMPORT & EXPORT CO.,

10 DENGAN INI SAYA MEMPERAKUI bahawa di
bawah peruntukan-peruntukan Ordinan Cap
Dagangan, 1949, nama tuan/puan telah dimasukkan
dalam Bahagian Daftar sebagai tuanpunya Cap
Dagangan yang nombornya tersebut di atas mulai
dari 22hb. Januari, 1976 dalam Kelas 29 berkenaan
dengan barang-barang yang kerikut:
Edible oil.

Suatu contoh Cap itu dilekatkan di sini.

Sgd. Illegible

20 b.p. Pendaftar

PEJABAT PENDAFTAKAN CAP DAGANGAN,
SABAH,
KUALA LUMPUR.

Pendaftaran Cap Dagangan ini akan habis
tempohnya padatetapi boleh di bahafur
semula bagi salma 14 tahun lagi dan upabila habis
tempoh tiap-tiap 14 tahun gung beributan.

Exhibit GD-2
to the
Affidavit of
Ng Koo Kwan
14th December
1978

Exhibit GD-2 to the Affidavit of
Ng Koo Kwan - 14th December 1978

5/29/78

Form Q
Pendaftaran Chap Dagangan,
Bukit Mahkamah,
Kuala Lumpur.

13th December, 1978.

Tuan,

With reference to your application on
Form TM.4 for search in Class 29, received here
on the 2nd November 1978 and numbered 1, I am to
draw your attention to the following registration.

10

<u>No.</u>	<u>Class</u>	<u>Goods</u>	<u>Name and Address</u>	<u>Remark</u>
19862	29	Edible oil	Ng Foo Chong and Ng Foo Kok trading as Ng Brothers Import & Export Co. of 51, Jalan Overseas Union Overseas Union Garden, 5th Mile Klang Road, Kuala Lumpur, Malaysia.	Regis- tered

20

2. A copy of the Mark is returned herewith.

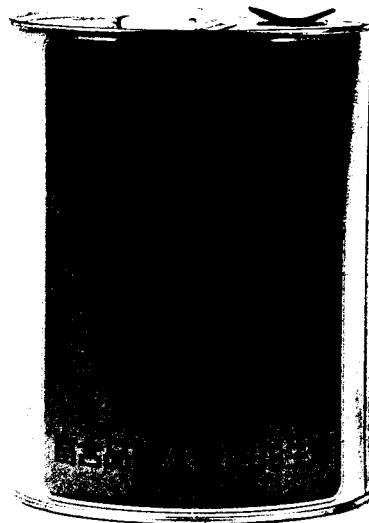
Saya yang menuru perintah,
Sgd. Illegible

b.p. PENDAFTAR CHAP DAGANGAN,
SABAH.

Messrs. Shook Lin & Bok.

Exhibit G-3 to Affidavit of Ng Koo Kwan
14th December, 1978

Exhibit G-3 to
Affidavit of
Ng Koo Kwan
14th December
1978



FORM TM—No. 10.



Exhibit SCB-3 to the
Affidavit of Khoo Chooi
Leong - 4th January 1980

Exhibit SCB-3
to the Affidavit
of Khoo Chooi
Leong - 4th
January 1980

TRADE MARKS ORDINANCE

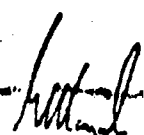
CERTIFICATE OF REGISTRATION

It is hereby certified that the Trade Mark a specimen of which is hereunto annexed has been registered in Part A of the Register in the name of SOCOIL CORPORATION BERHAD, a company duly incorporated under the laws of West Malaysia, of 30 Jalan Telawi, Bangsar Baru, Kuala Lumpur, West Malaysia,

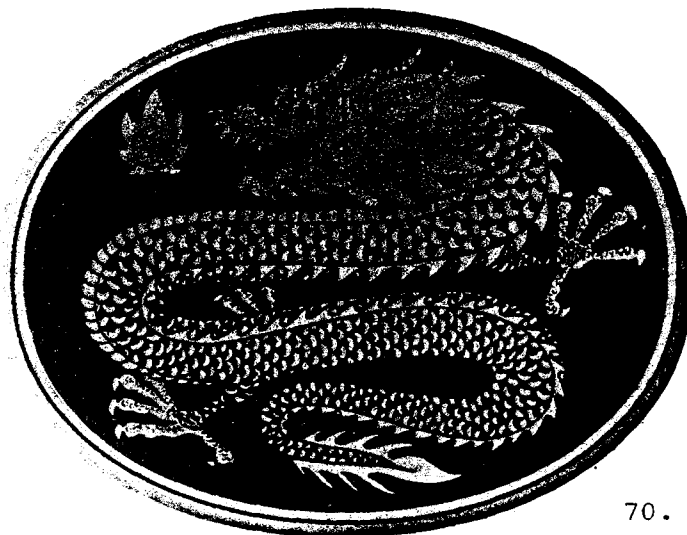
Class 29 under No. 1081 of 1979 as of the date of 26th October . 19 77 .
in respect of edible oils and fats.

Scaled at my direction this 7th day of September . 1979 .

Trade Marks Registry,
Registrar General's Department,
Hong Kong.


E.R. MAYDOCK
for Registrar General
(Registrar of Trade Marks)

GOLDEN DRAGON BRAND



The transliteration and translation of the Chinese characters appearing in the mark are "Kam Lung Biu" meaning "Golden Dragon Brand".

Exhibit SCB-3
to the
Affidavit of
Khoo Chooi
Leong - 4th
January 1980
(cont'd)

This Trade Mark has been accepted after consent of Yan Kee Shrimp Sauce and Oyster Sauce Factory, proprietors of Trade Mark No.1082 of 1979.

10 It is a condition of registration that the dragon device appearing in the mark shall be used only in gold colour.

Address for service:-

Messrs. Deacons,
Solicitors & Notaries,
Swire House, 6th floor,
Chater Road,
Hong Kong.

This is the exhibit marked SCB-3 referred to in the Affidavit of Khoo Chooi Leong sworn before me this 4th day of January 1980.

20

Sgd. Yee Soon F. Wong.
(YEE SOON F. WONG)
COMMISSIONER FOR OATHS

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

SOCOIL CORPORATION BERHAD

Appellant
(Party affected)

- and -

NG FOO CHONG

NG FOO KOK

(Trading as Ng Brothers Import
and Export Company)

Respondents
(Applicants)

RECORD OF PROCEEDINGS

MACFARLANES
10 Norwich Street
London EC4A 1BD

COWARD CHANCE
Royex House
Aldermanbury Square
London EC2V 7LD

Solicitors for the Appellant

Solicitors for the Respondents