

World Trademark Review Daily

**Louis Vuitton defeated on appeal in 'quatrefoil' case
Singapore - One Legal LLC**

**Confusion
Passing off**

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In *City Chain Stores (S) Pte Ltd v Louis Vuitton Malletier* ([2009] SGCA 53, November 6 2009), the Court of Appeal of Singapore has overturned a decision of the trial judge in which the latter had found in favour of *Louis Vuitton Malletier* in a dispute involving its famous 'quatrefoil' device.

In November 2006 *City Chain Stores (S) Pte Ltd* launched a range of watches in Singapore bearing the trademark SOLVIL, as well as flower devices on the dials and straps. Louis Vuitton alleged that this amounted to infringement of its registered 'flower quatrefoil' mark. Louis Vuitton won the case at first instance (for further details please see "[City Chain enjoined from using 'quatrefoil' device](#)"), but the decision was overturned on appeal.

Several important issues of law were considered in this case. First, the Court of Appeal recognized that there were two approaches to the issue of what would amount to infringement:

- Under the first approach, in order to establish trademark infringement, the alleged infringing use by the defendant must constitute trademark use.
- Under the second approach (the 'broader EU approach'), the test is whether the infringing use is liable to affect the functions of the trademark. This broader approach excludes descriptive use from the scope of protection, as such use does not affect the interests that the trademark owner is entitled to protect.

The court acknowledged that the broader EU approach has the advantage of linking the protection of a registered mark to the function of that mark as a guarantee of origin. Moreover, it has the advantage of greater flexibility in allowing the courts to achieve justice in individual cases. However, this approach could lead to uncertainty in determining whether third-party use affects the functions of a trademark.

After considering both positions, the court was inclined to favour the stricter approach - namely, that the infringing use must be trademark use. However, the court was also quick to state that both approaches would yield the same result in this case. Applying the stricter approach, the court held that use of the flower devices on the Solvil watches was for decorative purposes only and did not constitute trademark use.

The court went on to consider whether there was infringement under the broader approach. First, the court considered whether the marks were identical. Applying a strict interpretation of the term 'identical', the court held that the marks at issue were not identical.

The court then considered whether the marks were similar and whether there was a likelihood of confusion among the public. Having found that the marks were similar, the court held that the issue of likelihood of confusion should be addressed globally, taking into account all the circumstances of the case, including:

- the similarity of the goods;
- the impression given by the marks;
- the possibility of imperfect recollection; and
- the risk that the public might believe that the goods come from the same source or from economically linked sources.

Other relevant factors included:

- the locations where the goods were sold;
- the respective prices of the goods;
- the packaging of the goods;
- the target consumers; and
- the steps taken by City Chain to differentiate its goods.

The court considered that luxury goods are bought after careful inspection and deliberation, and that there was no evidence of actual confusion in this case. The mere fact that the public associated the marks at issue was not in itself sufficient to conclude that there was a likelihood of confusion in the absence of any misapprehension as to the origin of the goods.

With regard to passing off, the court held that Louis Vuitton was required to show the existence of goodwill

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in the 'flower quatrefoil' mark itself. However, on the facts, the court found that the mark had never been used alone, but was used either as part of Louis Vuitton's monogram or with the trademark LOUIS VUITTON. Therefore, the court held that Louis Vuitton had failed to prove that it possessed goodwill in the 'flower quatrefoil' mark.

Finally, the court turned to the issue of whether the 'flower quatrefoil' mark was "well known to the public at large" in Singapore. The court, following established case law, held that for a mark to be considered as well known, it must be recognized by most sectors of the public. In the present case, there was no evidence of the degree in which the 'flower quatrefoil' mark, on its own, was recognized by the relevant sectors in Singapore.

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