

Trade mark opposition – bad faith; similarity of marks

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This case highlights the importance of using clear wording in settlement agreements to describe the agreed scope of use of the parties' marks. It also highlights the effect of confidentiality clauses which prevent the parties from producing the settlement agreement in legal proceedings.

Polo/Lauren Company, L.P. (**Polo/Lauren Co**) and United States Polo Association (**USPA**) have been engaged in a dispute over the rights to a logo of polo player(s) on horseback.

The parties' marks are represented below:

| Polo/Lauren Co's mark | USPA's mark |
|--|--|
|  |  |

Polo/Lauren Co opposed USPA's application to register its mark in Singapore in relation to eyewear in Class 9, alleging that (a) the application was filed in bad faith and (b) the mark is confusingly similar to Polo/Lauren Co's own registered mark.

Bad faith? No.

Polo/Lauren Co alleged that USPA acted in bad faith because its trade mark application was filed in violation of the parties' settlement agreement. The parties had conflicting interpretations of the terms of the settlement agreement. However, neither party could produce the settlement agreement in evidence because it contained confidentiality clauses that prevented the disclosure of its terms. In order to prove its case, Polo/Lauren Co. was forced to rely on a US District Court decision in which the judge commented on the settlement agreement.

The intellectual property (IP) adjudicator hearing the case found that the judge's comments did not clearly support Polo/Lauren Co's interpretation of the agreement.

She rejected Polo/Lauren Co.'s case of bad faith on the ground that it was based on inferences and not actual evidence.

Insufficient similarity

The IP adjudicator found a very low degree of visual similarity because the text "USPA" in USPA's mark significantly

reduced its similarity to Polo/Lauren Co's mark. However, both marks were conceptually identical as they both conveyed the idea of the game of polo. The IP adjudicator also confirmed that the parties' goods of interest were identical.

However, the IP adjudicator concluded that there was no likelihood of confusion on the part of the average consumer. Confusion was not likely because of the low degree of visual similarity and the fairly high degree of care and attention that a consumer would give when purchasing eyewear.

Your Key Contacts



Catherine Lee

Senior Partner, Singapore

D +65 6885 3687

catherine.lee@dentons.com



Gilbert Leong

Senior Partner, Singapore

D +65 6885 3638

gilbert.leong@dentons.com



**Woon C. (Woon Chooi)
Yew**

Senior Partner, Singapore

D +65 6885 3609

woonchooi.yew@dentons.com



Elaine Lew

Partner, Singapore

D +65 6885 3689

elaine.lew@dentons.com