



Intel from Seychelles

by Pravin Barthia

A recent judgment in a trade mark opposition in Seychelles is worth a look, not only because it involves a major international brand, but because IP judgments are quite rare in certain African countries.

The opposition

The facts were that a Seychelles company called Intelvision Limited applied to register the trade mark Intelvision (a stylised version of the word together with an antenna logo) for services in class 38. The application attracted an opposition from the US company Intel Corporation. The opposition was based on a number of grounds. The grounds are quite difficult to follow from a reading of the judgment because issues of confusingly similarity have seemingly been conflated with issues of distinctiveness and deceptiveness, but essentially the argument was that the application would result in:

- confusion flowing from the fact that Intel has some 20 registrations in Seychelles for various trade marks incorporating the name Intel, including Intel (word) and Intel Inside & Device – these registrations are in classes 9, 16, 38, 41 and 42
- confusion flowing from Intel's repute. The company claimed that since its inception in 1968, it has become the world's largest semiconductor company and the manufacturer of the processor that is found in most computers. It went on to claim that Intel is one of the world's biggest brands, and that laptops bearing the trade mark are exported to Seychelles
- dilution

This sentence from the opposition document probably sums it up: The application "is likely to cause the public to mistakenly believe that the Applicant's business is part of the Opponent's group or that its goods or services originate from, are sponsored by, or are in some way associated to the Opponent (and) is likely to cause the public to be mistaken as to associate it with the international and worldwide goodwill of the Opponent."

The response

Intelvision denied it all. It claimed that the trade marks as a whole were substantially different. It said that there would be no confusion if the trade mark Intelvision was used in relation to class 38 services because the services are far removed from chips and the computers they are used in. It argued that no one in Seychelles would subscribe to Intelvision's services simply because their computer contained an Intel chip. It said that it did not compete with Intel. It made the point that there are only three telecoms service providers in Seychelles. It was, it argued, certainly not seeking to "usurp the goodwill of Intel."

The decision

The decision is again sometimes difficult to follow because of the apparent conflation of issues, but the bottom line is that the Registrar General dismissed the opposition.

The Registrar General said that "a number of factors including the similarity of signs (including analysis of visual, phonetic and conceptual similarities), similarity in goods and services, the distinctiveness of the earlier mark and relevant public" needed to be considered. The issue was "how a purchaser, who must be looked upon as an average man of ordinary intelligence, would re-act [sic] to a particular trade mark, what association he would form by looking at that trade mark and in what respect he would connect the trade mark with the goods which he would be purchasing." It was important to bear in mind that "the mark which the Applicant is seeking to register is the whole mark, not separate constituent parts of the mark, which would therefore distinguish the mark from that of the Opponent."

The Registrar General went on to say that it was relevant that "the Applicant does not compete with the Opponent." It was also relevant that there was "no evidence of confusion, despite what appears to be the co-existence of the marks in Seychelles since 2004...an adverse conclusion may also be drawn from this." The Registrar General concluded that "the mark of the Applicant is distinctive and distinguishable from the Opponent's marks." Moreover, there was "no risk of dilution."

The law

Seychelles has little trade mark jurisprudence. It's interesting to see, however, that the Registrar General considered and relied on (primarily British law) authorities from around the world. There's a reference to the very old UK decision of *Pianotist*, which deals with the comparison of trade marks. There's also a reference to the Indian decision of *National Sewing Thread Co. Ltd v James Chadwick & Bros Ltd*, which says that the onus is on the applicant to establish that the trade mark is not likely to deceive or cause confusion. There's an extensive quotation from a Canadian case, *Ultravite Laboratories Ltd v Whitehall Laboratories Ltd*, which is authority for the proposition that, when comparing trade marks, a court must not break them up into their individual elements but rather consider them in their totality. Finally, there's reference to the EU case of *Intel Corporation v CPM United Kingdom Ltd*, which deals with dilution.

Conclusion

The judgment is certainly no model of clarity. Yet, we do feel that it bodes well for the future.

Reviewed by Gaelyn Scott, head of ENSafrica's IP department.



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