

The Lost Beat

Beats Electronics, LLC lost its opposition in Singapore against the registration of LG's mark for "**QuadBeat**" applied for in Class 9 for various goods, including "*Audio Receivers; Headphones; Earphones; Headphones with microphone function; Headsets*".

In the opposition, Beats Electronics, LLC relied on nine of its registered trademarks, including the word "BEATS" for a range of audio products contained in Class 9, including headphones. Beats Electronics, LLC argued that the application for "**QuadBeat**" in Class 9 should be refused because it was made in bad faith and is confusingly similar to its "BEATS" mark.

On the issue of bad faith, LG argued that LG's "it was never aware of the opponent's marks", and pointed to several other earlier registered marks owned by other parties unrelated to either Beats or LG, for example "Beat Jam" by Sony, "Beat Spot" by Yamaha and "Backbeat" by Plantronics Inc. Taking these examples into account, the IP Adjudicator concluded that the word "beat" is "*one that honest traders may wish to use in connection with goods in Class 9*" and that "beat" is a "highly allusive" common word. Therefore, there cannot have been bad faith on the part of LG.

On the issue of confusion, the IP Adjudicator applied the step-by-step approach set out in the case of *Staywell Hospitality Group Pty Ltd v Starwood Hotels & Resorts Worldwide, Inc* [2014] 1 SLR 911, i.e.:

1. A determination as to whether the Applicant's and Opponent's marks are similar;
2. A determination as to whether the goods and/or services are identical or similar;
3. A determination as to whether as a result of the similarity and identity/similarity found in relation to the first two steps there 'exists a likelihood of confusion on the part of the public'.

The IP Adjudicator compared "**QuadBeat**" with the "BEATS" mark from a visual, aural and conceptual perspective and decided that the two marks were more dissimilar than similar. In doing so, the IP Adjudicator rejected the opposition at the first step, without addressing with the remaining two steps.

Lessons learnt:

This case is peculiar because, on the face of it, both marks do look similar since they both comprise the word "Beat" and the goods in Class 9 overlap. The likelihood of consumers confusing "QuadBeat" with "BEATS" and believing that both marks originate from the same source seems quite plausible. Furthermore, it is questionable whether LG indeed was in fact unaware of the marks owned by Beats Electronics. While it may be so that the burden of proof for bad faith is high and so Beats Electronics did not succeed on that ground, on the balance of probabilities, we feel that Beats Electronics had a good chance of winning the opposition at least on the issue of confusion.