



“Copyright” or “Copywrong”?

What represents trade mark infringement in real life situations?

Two competing manufacturers of personal lubricants recently limbered up in the Court of Appeal to argue whose trade mark should prevail.

Geneva Marketing held a trademark for a product branded as “SYLK” whilst Johnson & Johnson had, at an earlier date, registered a trademark for “K-Y Sensual Silk”.

Geneva unsuccessfully tried to protect the use of the trade mark “SYLK” by having the “K-Y Sensual Silk” trade mark revoked.

To ascertain if the a similarity was likely to deceive or confuse buyers, the court of first instance noted who the target market was for each brand, where it was sold, how other similar products were branded and how long they had been on the market. It was found that repeat buyers were likely to be discriminating seeking the products for their own distinctive uses.

The Court of Appeal agreed with the trial judge and dismissed the appeal finding that the relevant differences of the marks were distinctly more important than their similarities. The Court felt that anyone buying “K-Y Sensual Silk” thinking it was “SYLK” could be expected to realise the mistake reasonably quickly.

Since most buyers were repeat purchasers, only a small percentage of repeat buyers would be confused. The differences in the visual appearances of the marks was found to be sufficiently significant. These differences lessened the confusion to those buyers who may have had a poor recollection of the brand they in fact wanted off the shelf.

Intellectual property issues have a major impact on daily life, the value of business and how business is conducted generally.

Our team at Govett Quilliam have a real interest in these practicalities and it is well worth talking to our team to enhance and protect the value of your business assets.



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