



date : 20th July 2012

email : infringement@bk.com.hk

reply to : Mr. Benny Kong/ Ms. Karen Poon

our ref : 19883-C&D-FOK/712

your ref :

專利、商標及外觀設計註冊代理人
Agents for Patents, Trade Marks and Designs

香港告士打道160號
海外信託銀行大廈
19樓B室

19B, OTB Building
160 Gloucester Road
HongKong

BY REGISTERED POST

偉記號
石硤尾街市 168 號舖

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Dear Sirs,

Re: Passing Off

Respondent: 偉記號



Infringing Product:

Partners 合夥人

Benny Kong 江炳滔律師

David Tsai 蔡永杰律師

Jennifer Chong 莊敏儀律師

Foreign Lawyer 外地律師

Ada Wang 王燕中國律師

We act for Fok Hing (HK) Trading Limited of Suites 2302-03, 23rd Floor, Island Place Tower, 510 King's Road, North Point, Hong Kong.

Our client and Fok Hing Trading Co. (our client's predecessor-in-business) are the renowned food producers in Hong Kong. They have the long history for promotion and sale of the instant noodles named "Indomie Instant Noodles" in Hong Kong.

At all material times, the "Indomie Instant Noodles" packed in a distinctive packaging ("our client's Product") has been advertised and sold in Hong Kong. Particulars of our client's Product are described below:

PARTICULARS

- A photo of the said packaging ("the said Get-Up") is enclosed marked "A".
- Since mid 1990s, our client and/or Fok Hing Trading Co. have been promoting and selling our client's Product.
- A large quantity of our client's Product has been sold in hundreds of stores, including Wellcome supermarkets, in Hong Kong.

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- Since 2002, our client's Product has been widely advertised and promoted in newspapers, TV and magazines.

As a result of widespread promotion and sale of our client's Product, our client's Product has become very famous and the said Get-Up has become highly recognized by the people in Hong Kong. Our client has acquired a strong reputation and goodwill in our client's Product and the Get-Up in Hong Kong. Particulars whereof are described below:-

PARTICULARS

- Fok Hing Trading Co. has assigned to our client its ownership of the reputation and goodwill in our client's Product and the said Get-Up.
- PT. Indofood CBP Sukses Makmur T6K, the maker of the noodles in the "Indomie Instant Noodles" has confirmed and/or re-confirmed that our client is the sole owner of the reputation and goodwill in our client's Product and the said Get-Up.

It has recently come to our client's attention that you have been offering for sale and selling noodles named "Indomie Mi Instan" ("the Infringing Product") which get-up is confusingly similar to the said Get-Up. Particulars whereof are appended below:-

PARTICULARS

- You have been offering for sale and selling the Infringing Product at the shop which address is printed in the above.
- The colours, trademarks and name of the noodles that appear in the get-up of the Infringing Product are confusingly similar to those in the Get-Up. A photo of the Infringing Product is enclosed marked "B".

Such unauthorized acts in dealing with the Infringing Product amount to passing off to which our client is entitled to institute Court proceedings against you for injunctions, orders for delivery up and disclosure, legal costs and damages.

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You are demanded to **IMMEDIATELY STOP** all dealings in and with the Infringing Product and to confirm with us within the next **14 days** that you will comply with the followings:-

1. You **UNDERTAKE** to stop dealings in or with the Infringing Product in the future;
2. You **DISCLOSE** to our client the identity of the supplier of the Infringing Product, which includes, but without limitation to the address and contact numbers of the supplier together with the delivery documents;
3. You **DELIVER UP** to our client the remaining stocks of the Infringing Product; and
4. You **PAY** to our client HK\$20,000 as agreed damages and costs in this matter.

Our client will also require you to execute a Deed of Undertaking to the above effect.

Unless you forthwith stop dealing with the Infringing Product and confirm your acceptance to the above requests on or before 3rd August 2012, we shall advise our client to institute Court proceedings against you for injunctions, orders for delivery up and disclosure, legal costs and damages without further notice.

If you wish to enquire on the above matter, you may contact our Ms Karen Poon at infringement@bk.com.hk.

For your information, our client has recently commenced the below High Court Actions claiming against the defendants therein for passing off of the said Get-Up:-

- A. On 17th July 2012, our client filed a Writ of Summons with the High Court (HCA, no. 1246/2012) against So Chi Ping 蘇志平 trading as Yat Hing Trading Company 日興貿易公司; and
- B. On 19th July 2012, our client also filed a Writ of Summons with the High Court (HCA, no.1262/2012) against TOKO INDO HERO 寶盛東南亞特產 (A FIRM).



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Our client determines to injunct the supplier of the Infringing Product and will commence Court proceedings against the said supplier once its legal entity is identified.

A copy of this letter is also sent to you by ordinary post.

A purported Chinese translation of this demand letter is enclosed marked "C".

Yours faithfully,

BENNY KONG & YEUNG

Encl (A, B & C)

BK/hl

c.c. client

A



B



C

掛號

偉記號

石硤尾街市 168 號舖

敬啟者：

關於： 假冒

答辯人：偉記號



侵權產品：

本所代表復興(香港)貿易有限公司。

本所客戶及復興貿易公司(即本所客戶的原先擁有人)是香港著名的食品製造商。他們早已在香港宣傳並出售“Indomie Instant Noodles”。

一直以來,本所客戶均在香港宣傳及出售“Indomie Instant Noodles”,而“Indomie Instant Noodles”的包裝設計亦甚具特色。“Indomie Instant Noodles”的詳細資料如下:

詳細資料

- “Indomie Instant Noodles”包裝設計的相片已隨本函附上,並已標為“A”。
- 自 1990 年代中期起,本所客戶已開始宣傳及出售有關產品。
- 本所客戶之產品已在香港數百所零售商店如惠康超級市場中大量出售。
- 自 2002 年起,本所客戶開始透過報章,電視及雜誌宣傳有關產品。

本所客戶的著力宣傳及其龐大的銷售量令“Indomie Instant Noodles”的知名度與日俱增。本港的消費者亦對“Indomie Instant Noodles”有高度的評價。本所客戶從中為“Indomie Instant Noodles”建立了商譽,詳情如下:

詳細資料

- 復興貿易公司向本所客戶轉讓“Indomie Instant Noodles”的擁有權及商譽。
- “Indomie Instant Noodles”的生產商 PT. Indofood CBP Sukses Makmur T6K,已確認及/或再三確認本所客戶是“Indomie Instant Noodles”商譽的唯一擁有人。

本所客戶最近發現 貴司出售“Indomie Mi Instan”(“侵權產品”),而該產品的外觀與本所客戶的產品極為相似。詳情如下:

詳細資料

- 貴司在前文提及的地址中出售有關侵權產品。
- 侵權產品的包裝式樣,商標及名稱均與本所客戶的產品極為相似。侵權產品的相片已隨本函附上,並已標為“B”。

這種未經准許的處理侵權產品的行為等同假冒,本所客戶可隨時入稟法院申請禁制令,送達命令,披露命令,訟費命令及損失命令以停止及阻嚇侵權行為。

貴司需立即停止處理侵權產品並於十四天內回覆本所確認遵守以下各項:

1. 貴司承諾不再處理有關侵權產品。
2. 貴司向本所客戶披露侵權產品供應商的身份,當中包括但不限於供應商的地均及聯絡電話和送貨單據。
3. 貴司向本所客戶送達有關侵權產品的全數剩餘存貨。
4. 貴司向本所客戶支付港幣二萬元作為雙方同意的賠償。

本所客戶同時要求 貴司就上述各項簽署承諾契約。

除非 貴司願意停止繼續處理有關侵權產品,並於 2012 年 8 月 3 日或之前回覆本所確認遵守上述各項,否則本所會建議本所客戶向 貴司採取法律行動而不另行通知。

如 貴司有任何疑問,可電郵 infringement@bk.com.hk 聯絡本所客戶的潘小姐。

請注意,本所客戶最近於香港高等法院採取了以下法律行動來制止下列各被告人繼續出售及處理上述提及的侵權產品。

- A. 於 2012 年 7 月 17 日,本所客戶於香港高等法院提交傳票控告 So Chi Ping 蘇志平 trading as Yat Hing Trading Company 日興貿易公司(案件編號: 1246/2012)。
- B. 於 2012 年 7 月 19 日,本所客戶於香港高等法院提交傳票控告 TOKO INDO HERO 寶盛東南亞特產(A FIRM) (案件編號: 1262/2012)。

由此可知,本所客戶一直致力打擊侵權行為。本所客戶更準備向有關侵權產品的供應商採取法律行動,而現時正調查該供應商的資料。

本所同時亦以普通信件形式向 貴司寄出這封信。

隨函附上這封信的中文譯本,並已標為“C”。

謹啓

江炳滔律師事務所
附件(A,B 及 C)
BK/hl
c.c. client