

**Hai Tong Co (Pte) Ltd**  
**v**  
**Ventree Singapore Pte Ltd and another and another appeal**

Hai Tong Co (Pte) Ltd was the registered proprietor of Singapore Trade Mark No. T7048436B in Class 03 for "Perfumery, essential oils, hair lotions, hair creams and cosmetics":



Ventree Singapore Pte Ltd are in the business of importing, exporting and distributing, amongst other things, cosmetics products under the brand name "Rose Lady", which was never registered in Singapore. Sky operated a retail department store selling, amongst other things, the allegedly infringing products.

Hai Tong instituted legal proceedings against Ventree and Sky, claiming infringement to Hai Tong's mark and passing off the allegedly infringing products as Hai Tong's goods. The Defendants denied liability and counterclaimed against Hai Tong for groundless threats of trade mark infringement proceedings. The trial judge allowed Hai Tong's claim for trade mark infringement (and dismissed the Defendants' counterclaim for groundless threats of trade mark infringement proceedings), but dismissed Hai Tong's claim in the tort of passing off due to trivial goodwill.

Hai Tong filed Civil Appeal against the Judge's dismissal of its claim in passing off, while the Defendants filed a cross-appeal in Civil Appeal against the Judge's decision to allow Hai Tong's claim for trade mark infringement. The Judge found that Hai Tong had developed acquired goodwill through trading since 1960s. Given the identical field of business activity, the similarity between the marks as well as the likelihood of confusion which the Judge found in relation to the trade mark infringement claim, there was a real likelihood of damage to Hai Tong's goodwill arising from the diversion of sales of "Lady Rose" products if consumers of the relevant segment of the public were led to believe that "Rose Lady" cosmetic products were the goods of Hai Tong or were otherwise associated with or connected with Hai Tong. The Judge dismissed the Defendants' counterclaim for groundless threats of trade mark infringement proceedings and allowed the Plaintiff's appeal in claim in tort of passing off.