IN THE HEARINGS AND MEDIATION DEPARTMENT OF THE INTELLECTUAL PROPERTY OFFICE OF SINGAPORE

[2024] SGIPOS 3

Trade Mark No. 40202112183R

IN THE MATTER OF A TRADE MARK APPLICATION

BY

(1) BIOMEDICAL RESEARCH GROUP INC.

(2) MACROPHI INC.

GROUNDS OF DECISION

In the matter of a trade mark application by BioMedical Research Group Inc. & Anor.

[2024] SGIPOS 3

Trade Mark No. 40202112183R
Principal Assistant Registrar Ong Sheng Li, Gabriel
27 February 2024

13 May 2024

Principal Assistant Registrar Ong Sheng Li, Gabriel:

Introduction

1 Two Japanese companies, BioMedical Research Group Inc. and Macrophi Inc. (the "Applicants"), are seeking to register "IP-PA1" (Trade Mark No. 40202112183R) in Class 3 (the "Application Mark") for the goods set out below.

> Class 3
>
> non-medicated toiletry preparations; bath preparations, not for medical purposes.

2 The term IP-PA1 is an abbreviation of "**i**mmuno**p**otentiator from ***P****antoea* ***a****gglomerans 1*". The word "immunopotentiator" is a portmanteau of the words "immune" and "potentiate": it refers to something that enhances a body's immune response. *Pantoea agglomerans* is a type of bacteria (belonging to the *Pantoea* genus). The number "1" behind "*Pantoea agglomerans 1*" is a reference to a specific strain of this bacterium (labelled "IG1" or "1") which may be found in wheat and other plants.

3 More than a decade ago (the exact date is unclear), a group of Japanese researchers including Gen-Ichiro Soma, Chie Kohchi and Hiroyuki Inagawa succeeded in isolating and extracting an edible lipopolysaccharide with beneficial properties from *Pantoea agglomerans 1*.[1] (These individuals are linked to Macrophi Inc. (the "Second Applicant"), and are its Chairman, President and Vice-President respectively.[2]) They were apparently the first to do so and claimed to have named the substance IP-PA1.

4 Lipopolysaccharides are a type of molecule consisting of a lipid and a polysaccharide. Without getting too technical about it, lipopolysaccharides are essentially a bacterial toxin. Despite the ominous sounding name, some of them may have useful applications. For instance, studies have shown that IP-PA1 could enhance immune-related functions (hence the label "immunopotentiator") in animals as well as humans. Research suggests that IP-PA1 may have medical as well as non-medical applications including promoting hair growth,[3] reducing atopic dermatitis,[4] and suppressing inflammation.[5]

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1 Kohchi C, Inagawa, H., Nishizawa, T. Yamaguchi, T., Nagai, S., Soma, G.I. 2006. *Applications of Lipopolysaccharide Derived from Pantoea agglomerans (IP-PA1) for Health Care Based on Macrophage Network Theory*, J. Biosci. Bioeng. 6, 485-496: see Annexure 4 of Applicants' Bundle of Authorities ("ABOA"), at p 236.

2 Applicants' Written Submissions dated 26 January 2024 ("AWS") at p 4.

3 Koji Wakame, et al, *Immunopotentiator from Pantoea agglomeras 1 (IP-PA1) Promotes Murine Hair Growth and Human Dermal Papilla Cell Gene Expression*, Anticancer Research 36: 3687-3692 (2016): ABOA at p 316

4 Jacek Dutkiewicz, et al, *Pantoea agglomerans: a mysterious bacterium of evil and good. Part IV.* Annals of Agricultural and Environmental Medicine 2016, Vol 23, No 2, 206-222: ABOA at p 317

5 *Ibid*

Background

5 On 27 May 2021 (the "Relevant Date"), the Applicants filed to register the Application Mark in Classes 3, 5, 30, 31 and 32 (the "Original Application"). The Original Application covered the Class 3 goods claimed in [1] above, as well as the goods in Classes 5, 30, 31 and 32 listed below.

> Class 5
>
> nutritional supplements; dietary supplements for humans; dietetic beverages adapted for medical purposes; dietetic foods adapted for medical purposes.
>
> Class 30
>
> tea; tea-based beverages; sweets, desserts and snacks other than fruit-based, vegetable-based, bean-based or nut-based; ice-cream cakes; gum sweets; crepes; chocolate confections; meringues; rice chips; cakes; confectionery made of sugar; rice cakes; cotton candy.
>
> Class 31
>
> animal foodstuffs.
>
> Class 32
>
> non-alcoholic beverages; soft drinks; fruit juice; vegetable juices; whey beverages.

6 The trade mark examiner for the Original Application took the view that the application to register in Classes 5, 30, 31 and 32 was objectionable under ss 7(1)(*b*) and (*c*) of the Trade Marks Act 1998 (the "Act"). However, no objections were raised against the Original Application in Class 3. The examiner's findings and conclusions were set out in an Examination Report dated 22 September 2021 (the "First Examination Report").

7 Section 7(1) of the Act provides, in material part, as follows.

> **Absolute grounds for refusal of registration**
>
> 7.—(1) The following must not be registered:
>
> (a) [omitted]

> (b) trade marks which are devoid of any distinctive character;
>
> (c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services; and
>
> (d) trade marks which consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade.

8 Underpinning the examiner's conclusion in the First Examination Report was her finding that the Original Application was devoid of any distinctive character (and hence objectionable under s 7(1)(*b*) of the Act) because, according to her internet searches, IP-PA1:

> … refers to "Immunopotentiator from Pantoea agglomerans 1" which is a lipopolysaccharide (a kind of endotoxin - a toxin present inside a bacterial cell that is released when it disintegrates). IP-PA1 is derived from Pantoea agglomerans, a symbiotic Gram-negative bacteria found in wheat and other food plants. Oral administration of IP-PA1 demonstrated macrophage activation (priming) and protective effects against infection, allergy and cancer, without any side-effects…

From this premise, the examiner reasoned that the Original Application conveys a straightforward message: namely, that the goods claimed contain IP-PA1.

9 As regards s 7(1)(*c*) of the Act, the examiner found that the Original Application was likewise objectionable in that it:

> "… consists exclusively of signs or indications which may serve, in trade, to designate the kind and essential properties of the goods concerned. As explained above, the mark would immediately conjure in the mind of the consumers that the goods claimed in Classes 5, 30, 31 and 32 contains IP-PA1 which is useful for the maintenance of health and helps to prevent and improve certain medical conditions…"

10 On 29 December 2021, the Applicants responded in writing to the First Examination Report through their trade mark agents. They did not object to the

gravamen of the report. Instead, the Applicants indicated that "[i]n response to the objections" they wished to "delete the specification of goods in Classes 5, 30, 31 and 32 of the subject application". They then filed to withdraw the application in those classes with a request that the remaining application in Class 3 (i.e. the Application Mark) be registered.

11 On 26 September 2022, the examiner issued an examination report (the "Second Examination Report") with late objections to the Application Mark on the basis that further online searches had revealed that IP-PA1 is "also used as an ingredient in topic applications, i.e. goods claimed in Class 3". Based on the information before her, the examiner opined that IP-PA1:

> …is not a mere scientific term that is known to medical professionals or users of medicated products, but a known term which ordinary traders have also used to promote their non-medicinal/topically-applied offerings. In light of this, there is a high probability that the consumers of the claimed goods in Class 03 are equally aware of the descriptive meaning of "IP-PA1" when applied to such goods.

12 On 17 January 2023, the Applicants responded to the Second Examination Report with a request for a reconsideration of the objections raised.

13 On 17 August 2023, a different examiner responded to the Applicants' request for reconsideration in writing (the "Third Examination Report"). This examiner maintained the objections under ss 7(1)(*b*) and (*c*) of the Act. I reproduce her substantive reasons in relevant part below.

> "2.2. We are of the view that as of the filling date of the application (that is, 27 May 2021), the term "IP-PA1" has become a known term for the lipopolysaccharide derived from Pantoea agglomerans 1. Consequently, the mark when used in relation to the goods claimed in Class 3 ("non-medicated toiletry preparations; bath preparations, not for medical purposes"), would serve to describe that the goods contain the lipopolysaccharide.

> 2.3. In your reply, you have submitted that our online findings (referred to in our last examination report of 26 Sept 2022) were co-authored by the Applicant's CEO, Gen-Ichiro Soma, or are from sources associated with the applicant. It was further implied that the substance was named by the applicant. It was also stated that the Applicant is directly connected with all uses of the IP-PA1.
>
> 2.4. We wish to clarify that our earlier online findings of 26 September 2022 noted that the term "IP-PA1" was not used in a manner to denote trade origin. Rather, the term "IP-PA1" was used in a descriptive manner to refer to the lipopolysaccharide derived from Pantoea agglomerans 1. We also conducted a new search on Google Scholar (the search was conducted with search parameters before the filing date) and noted that IP-PA1 was used in other articles (which appeared to be authored by researchers not affiliated with the applicant) to refer to the lipopolysaccharide in a descriptive manner. In our view, the Google Scholar results suggest there is a sizeable amount of interest amongst researchers in the relevant scientific community on the potential benefits and applications of IP-PA1, who would perceive IP-PA1 as a descriptive term and not as an indicator of trade origin.
>
> 2.5 We note from the various research articles, in particular to Online Finding 3 (referred to in our last examination report of 26 Sept 2022) that IP-PA1 could be "efficiently used for various preventive purpose, e.g. as a constituent of skin-care cosmetics and health foods to prevent and improve metabolic syndrome". We also observe that it is common in the marketplace of the Class 3 goods, for traders to highlight the active key ingredient(s) present in the product and to promote the beneficial effects of using the product. Against this backdrop in mind, we find that when the subject mark is used or intended to be used in relation to the goods claimed in Class 3, the average consumers would perceive the mark as a descriptor of the ingredient present. Accordingly, we are of the view that the mark is objectionable under section 7(1)(c).

Annexed to the Third Examination Report was an extract of a Google Scholar search for IP-PA1 in publications *before* the Relevant Date.

14 Since they were unable to persuade the examiner to waive the objections, the Applicants' remaining options were to file evidence of acquired distinctiveness or to write in to request for an *ex parte* hearing.

15 The Applicants opted for a hearing. On 26 January 2024, the Applicants filed brief written submissions and a bundle of authorities through their agents Spruson & Ferguson (Asia) Pte Ltd. Apart from citing legal authorities, their agents tendered various annexures setting out what is essentially evidence (including printouts of the Second Applicant's business page and articles written by the Applicants' affiliates or individuals associated with them). Although such documents should ordinarily have been submitted by way of a statutory declaration, I see no reason why I should not take them into account.

16 The hearing took place via videoconference. Ms Thivinia Velu, who I understand is based out of Kuala Lumpur, Malaysia, appeared on the Applicants' behalf and gave oral submissions in support of her clients' case.

Applicants' submissions

17 The core of the Applicants' case is that IP-PA1 is inherently distinctive because it does not have any ordinary English meaning.

18 Surrounding this central argument are the following inter-related contentions. First, IP-PA1 is an unusual and unique combination created by the Applicants specifically for their goods. Second, most of the academic literature referencing IP-PA1 was authored by individuals linked to the Applicants (as opposed to third parties, competitors, or consumers). Third, IP-PA1 is an uncommon scientific term which would not be considered as descriptive by the general public. Fourth, whether or not it is regarded as an independently created term or a scientific term, IP-PA1 does not describe or refer to non-medicated toiletry and bath preparations. As such, without further research or searches, one would not link the Application Mark to the claimed goods in Class 3.

IP-PA1: nature of use

19 I begin by setting out my key findings and observations concerning the origin of the term IP-PA1. They are drawn from my reading of the various examination reports, the documents referenced therein, and the material tendered by the Applicants in their bundle of authorities.

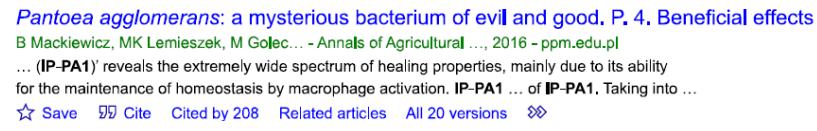
20 First, I agree with the Applicants that IP-PA1 is not an ordinary word or term, and it is not likely to be known to or by the general public. It does not appear in an English dictionary. At the Relevant Date, knowledge of IP-PA1 was confined to certain fields of microbiology as well as in connection with its possible healthcare (and healthcare adjacent) applications including, most pertinently, skincare aimed at maintaining healthy skin, improving atopic dermatitis, and resisting aging. In the circumstances, it is fair to describe IP-PA1 as an uncommon scientific term.

21 Second, I accept that Japanese researchers linked to the Applicants were the first to isolate a particular lipopolysaccharide from *Pantoea agglomerans 1* and name it IP-PA1 (see [3] above). In other words, the Applicants were arguably responsible for, or connected with, the nomenclature. It is understandable, given its possible practical applications, that their choice of name described its properties (that is: immunopotentiator) rather than the substance itself (a lipopolysaccharide). But whatever the case might be, IP-PA1 was always used by the Applicants' affiliates and the wider scientific community to refer to a component of a bacterium (and not as a trade mark).

22 Third, it *was* true that most of the academic literature referencing IP-PA1 was authored by individuals linked to the Applicants (as opposed to third parties, competitors, or consumers). However, things changed. Over time, other unrelated authors started referencing IP-PA1. Some of these unrelated parties

may have conducted their own independent research on IP-PA1 as well. Whether or not they did so, what is critical is that before the Relevant Date, unaffiliated parties were evidently also using IP-PA1 in their published articles as an abbreviation for "Immunopotentiator from *Pantoea agglomerans 1*". This fact was uncovered by the second examiner, who substantiated the point by annexing her Google Scholar search extract to the Third Examination Report (see [13] above). I provide some examples from the said extract below.

(a)


Pantoea agglomerans: a mysterious bacterium of evil and good. P. 4. Beneficial effects
B Mackiewicz, MK Lemieszek, M Golec… - Annals of Agricultural …, 2016 - ppm.edu.pl
… (**IP-PA1**)' reveals the extremely wide spectrum of healing properties, mainly due to its ability for the maintenance of homeostasis by macrophage activation. **IP-PA1** … of **IP-PA1**. Taking into …
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(b)


Bacteremia caused by Pantoea agglomerans at a medical center in Taiwan, 2000–2010
A Cheng, CY Liu, HY Tsai, MS Hsu, CJ Yang… - Journal of Microbiology …, 2013 - Elsevier
… **IP-PA1**) ameliorates chemotherapy-induced immunosuppression.29, 30 In vitro experiments showed that **IP-PA1** … in vivo experiments showed that **IP-PA1** improved survival of melanoma…
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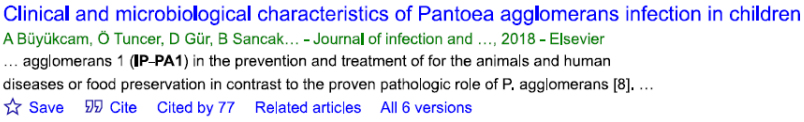
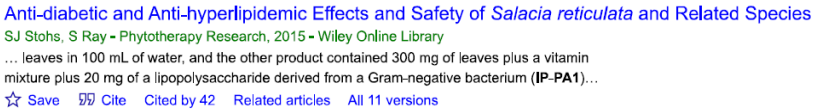
(c)


Clinical and microbiological characteristics of Pantoea agglomerans infection in children
A Büyükcam, Ö Tuncer, D Gür, B Sancak… - Journal of infection and …, 2018 - Elsevier
… agglomerans 1 (**IP-PA1**) in the prevention and treatment of for the animals and human diseases or food preservation in contrast to the proven pathologic role of P. agglomerans [8]. …
☆ Save 99 Cite Cited by 77 Related articles All 6 versions

(d)


Anti-diabetic and Anti-hyperlipidemic Effects and Safety of *Salacia reticulata* and Related Species
SJ Stohs, S Ray - Phytotherapy Research, 2015 - Wiley Online Library
… leaves in 100 mL of water, and the other product contained 300 mg of leaves plus a vitamin mixture plus 20 mg of a lipopolysaccharide derived from a Gram-negative bacterium (**IP-PA1**)…
☆ Save 99 Cite Cited by 42 Related articles All 11 versions

(e)


The synthetic parasite-derived peptide GK1 increases survival in a preclinical mouse melanoma model
A Pérez-Torres, J Vera-Aguilera… - Cancer Biotherapy …, 2013 - liebertpub.com
… Oral administration of Immunopotentiator from Pantoea agglomerans 1 (**IP-PA1**) improves the
… Oral administration of Immunopotentiator from Pantoea agglomerans 1 (**IP-PA1**) improves …
☆ Save 99 Cite Cited by 18 Related articles All 8 versions

23 Fourth, as far as I can tell, the Applicants themselves have yet to commercially exploit IP-PA1 or use the term as a trade mark. The website of the Second Applicant advertised the fact that it was the "only company in the world to provide LPS [lipopolysaccharides] blended for food and cosmetics" and that it sold LPS raw materials for use in various industrial applications such

as for food, cosmetics, companion animals (i.e. pets), and (livestock) feed. Although *Pantoea agglomerans* is listed as one of the bacteria used in the Second Applicant's LPS raw materials, IP-PA1 is not mentioned.[6] (Instead, another extract named "Somacy" is indicated.) Moreover, the Applicants have conceded that the Application Mark has yet to be used in Singapore.[7]

24 Fifth, even though the Applicants have not offered any Class 3 goods to the public in Singapore containing IP-PA1 at the Relevant Date, it seems likely that at some point in the not-so-distant future, the claimed goods in Class 3 (namely: toiletry and bath preparations) may well contain IP-PA1. Given its various lauded benefits (e.g. promoting hair growth, reducing atopic dermatitis, and supressing skin inflammation) which may be accessed through topical application (i.e. through the skin),[8] it is reasonable to assume that IP-PA1 may also be included as an ingredient in toiletry preparations and bath preparations to harness its beneficial properties.

25 Sixth, it seems that IP-PA1 has already been included as an advertised ingredient in supplement pills produced by a company known as "Shiruto". However, it is unclear whether Shiruto sources IP-PA1 from the Applicants. This fact was uncovered in an office action by the US Patent and Trade Mark Office dated 18 December 2021 referencing a blogpost dated 23 September 2020 from a blog: Mummy Jene.[9] In that post, the author claimed that "One supplement that is proven to improve immunity is Shiruto supplement. Its main ingredient is the IP-PA1 which will help eliminate the foreign and harmful

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6 ABOA at Annexure 3, pp 216-218

7 AWS at p 5

8 Okwundu N and Mercer J, *Pantoea agglomerans Cutaneous Infection*, J Dermatol Dermatol Surg 2019; 23:42-3: ABOA at p 366

9 ABOA at Annexure 6, p 413

substances from our body". This buttresses the view that IP-PA1 would be regarded and advertised descriptively, as a beneficial ingredient of the goods.

26 For completeness, I came across a press release issued by Singapore's Health Sciences Authority (HSA) dated 19 March 2020. The advisory detailed how HSA has removed listings of products making false or misleading health claims from local e-commerce platforms. One of the product listings that were removed for making false or misleading health claims was "Shiruto". (It is not clear whether the objection is solely against the manner of advertising or the product itself.) While the issue was presumably that "Shiruto" helps against coronaviruses, the advertisement also included the statement: "IP-PA1 a vitamin of immunity". Since this is an *ex parte* hearing challenging the findings of examiners who conduct such internet searches as part of their work, and it is in any event a press release issued by a Singapore government agency, I see no reason why I cannot take it into account. I reproduce the relevant part below.

Relationship between the grounds

27 Subsections 7(1)(*b*) and (*c*) of the Act exclude from registration signs that are respectively non-distinctive, descriptive, and generic in any one aspect of the characteristics of the goods or services: see *Love & Co Pte Ltd v The Carat Club Pte Ltd* [2008] 1 SLR(R) 561 ("*Love & Co*") at [44]. Each absolute ground of invalidity operates independently though the grounds may overlap (*Love & Co* at [45]). Although distinct, the grounds are connected in that they all relate to distinctiveness. Indeed, s 7(1)(*c*) has been described as a particular example of the objection in s 7(1)(*b*) (see *Han's (F&B) Pte Ltd v Gusttimo World Pte Ltd* [2015] 2 SLR 825 ("*Han's*") at [59]). Broader in scope, s 7(1)(*b*) is akin to a sweep up "exclusion from registration clause" for marks that lack inherent distinctive character (see *Love & Co* at [44]).

Section 7(1)(*c*) of the Act

28 I first address the ground of objection under s 7(1)(*c*) of the Act.

29 The purpose of this provision is to prevent the registration of signs which are descriptive of the goods or services or some characteristic of them. These descriptive marks are excluded from registration because they consist of signs or indications which honest traders either use or may wish to use without any improper motive: see J Mellor, D Llewelyn, *et al*, *Kerly's Law of Trade Marks and Trade Names* (Sweet & Maxwell, 17th Ed, 2024) ("*Kerly's*") at [10-103]).

30 A convenient restatement of the key principles applicable to this ground of objection can be found in *Marvelous AQL Inc.* [2017] SGIPOS 3 at [29] which referred to an earlier edition of *Kerly's* (the relevant paragraph in the current edition is [10-104]). In brief, the provision guards the general interest in ensuring that descriptive terms may be freely used by all. The prohibition covers

signs which may serve in normal usage from a consumer's point of view to designate, either directly or by reference to one of their essential characteristics, goods (or services) such as those in respect of which registration is sought. It extends to any characteristic whatsoever of goods or services, irrespective of how significant the characteristic may be commercially. It is not necessary that such descriptive terms are actually in use; it is sufficient that such signs and indications could be used to designate a characteristic of the goods or services. Pertinently, the property or characteristic in question must be easily recognisable by the relevant class of persons.

31 A key plank of the Applicants' case is that IP-PA1 does not describe or refer to non-medicated toiletry and bath preparations (see [18] above). However, as outlined above, a term does not have to be directly descriptive to contravene this provision. The examiners' point was that IP-PA1 is descriptive in that it indicates or refers to one of the goods' characteristics (i.e. that IP-PA1 may be a possible ingredient). The Applicants' response is essentially that end-consumers for non-medicated toiletries and bath preparations (which would be the general public) would not know what IP-PA1 means unless they are told. I must confess that I found this counter to be highly attractive at first. After all, it seems fair to say that unless the public is educated as to what IP-PA1 means, they would naturally perceive it to be a meaningless string of characters.

32 After careful consideration, I prefer the examiners' view that the Application Mark is descriptive in that it describes a possible characteristic of the goods. This conclusion naturally flows from my findings above (see [20]-[26]) and in particular the fact that unrelated researchers (and even Shiruto, which sells healthcare supplements) have used the term IP-PA1 in a descriptive manner to designate the name of a lipopolysaccharide derived from *Pantoea agglomerans 1*. The fact that others have used IP-PA1 in this way before the

Relevant Date suggests that it has become an accepted abbreviation in the relevant scientific community involved in research on the effects of beneficial lipopolysaccharides. As regards the Applicants' contention that the public would not know what IP-PA1 means unless they were told, I think it is misguided for the following reasons.

(a) On these specific facts, it is not surprising that knowledge of IP-PA1 is confined to technical persons. After all, there do not appear to be any commercial products in Class 3 containing IP-PA1 in Singapore. But assuming it is put into use, I have no doubt that traders selling toiletry and bath products featuring the ingredient will have a vested interest in telling consumers what it means — especially if the substance is highly efficacious in, for instance, improving skin conditions or aiding in hair loss. At the end of the day, the addition of such an ingredient would be a key selling point for the product. (Case in point — the Shiruto health supplements: see [25]-[26] above.) Once that happens, honest traders which are truthfully marketing goods containing the substance will want to be able to say what it is that their goods contain. They should not fear an infringement lawsuit just because they have used the term IP-PA1. A finding that the Application Mark is descriptive is consistent with the general public policy underlying s 7(1)(*c*).

(b) Consider also *Abbott Laboratories v Société des Produits Nestlé S.A.* [2019] SGIPOS 11, a case which I decided (and which was upheld on appeal by the High Court with no written grounds of decision). It concerned an opposition by Abbott to Nestlé's application to register the word mark "H-MO" for infant formula, nutritional supplements, and related products. Abbott's main objection, raised through the vehicle of ss 7(1)(*b*) and (*c*) of the Act, was that "H-MO" would be recognised as

a reference to "human milk oligosaccharides" (which are carbohydrates naturally found in human breast milk and which are beneficial to the gut microbiome and the immune system). There was evidence that "human milk oligosaccharides" was commonly abbreviated as "HMO" prior to the relevant date. It was first used by a segment of the scientific community (in academic papers), healthcare professionals, and companies in the field of infant nutrition or health supplements. Later on, efforts were made to educate the public about what HMOs are. Ultimately, I held the sign to be descriptive and non-distinctive and refused registration. The many parallels between that case and this should be self-evident.

(c) Further, it is important to bear in mind that the relevant public is not confined to end-consumers. It includes other manufacturers, middle-persons, and other people in the trade. This is also borne out by the facts of this case. The Second Applicant does not sell directly to the general public. Instead, it offers raw lipopolysaccharide products for sale to other businesses which presumably go on to include them in their products. Assuming IP-PA1 is introduced as an ingredient for consumer products, I have little doubt that those in the (non-medicated) toiletries and bath preparations trade would be aware of what it is.

33 I would therefore refuse registration under s 7(1)(*c*) of the Act.

Section 7(1)(*b*) of the Act

34 Next, I turn to s 7(1)(*b*), which prohibits the registration of signs that are devoid of any distinctive character. While a sign can contravene this provision without also being descriptive within the scope of s 7(1)(*c*), the converse is not

true. If a sign is objectionable under s 7(1)(*c*), it must necessarily be devoid of distinctive character under s 7(1)(*b*) as well.

35 Even if I am wrong in my view that IP-PA1 offends s 7(1)(*c*), I take the view that for the same reasons it is devoid of distinctive character and would therefore contravene s 7(1)(*b*). I would therefore maintain the objection here.

Conclusion

36 Allowing a trader to register and obtain a monopoly on words and phrases which other traders may wish to use in respect of their goods and services for entirely legitimate purposes (including competition) is clearly not in the public interest: see *Han's* at [65] and [79]. The Applicants' bid to register the Application Mark was fundamentally a misguided attempt to monopolise the accepted abbreviation for an organic substance. Such a term should be free for all honest traders to use. Even if the Applicants were the first to extract and commercially exploit IP-PA1, it does not follow that they should also be granted trade mark protection over it. Any intellectual property protection must necessarily lie outside of the Trade Marks Register.

37 Moreover, it is worth reiterating that the Applicants have never used the Application Mark as a trade mark. While this fact is technically not relevant in the assessment for inherent distinctiveness (because the sign must be assessed absent use), it reinforces my view that the plain IP-PA1 would not be perceived as a source identifier by the relevant public. On the other hand, it seems likely that IP-PA1 would be viewed as an ingredient: see [24]-[26] above.

38 A final word. Although the examiners did not raise any objection under s 7(1)(*d*) of the Act (and I am not suggesting they should have), I believe it can also be persuasively argued that IP-PA1 has become generic for the reasons

already stated and therefore unregistrable under that provision. Nevertheless, given my view that the Application Mark contravenes s 7(1)(*b*) and (*c*) of the Act, any discussion on s 7(1)(*d*) would be purely academic.

Ong Sheng Li, Gabriel
Principal Assistant Registrar

Ms Thivinia Velu (Spruson & Ferguson (Asia) Pte Ltd) for the Applicant