

Treading Carefully: Singapore Court of Appeal Clarifies Trade Mark Law in Keyword Advertising

Businesses often invest heavily in building their brand, only to find competitors referencing their names in online ads. When does such use cross the line into trade mark infringement?

In a recent decision, the Singapore Court of Appeal in ***East Coast Podiatry Centre Pte Ltd v Family Podiatry Centre Pte Ltd [2025] SGCA 28 (“East Coast Podiatry”)*** provided important guidance on how trade mark law applies to internet advertising and signalled that Singapore is taking a different path from the UK and EU.

Background

Google’s search results display “sponsored links” – advertisements displayed in response to similar search terms by a user. Advertisers must select relevant keywords which trigger the display of an advertisement to the user.

Family Podiatry Centre Pte Ltd (“**FPC**”) operated podiatry clinics in Singapore, one of which was in the East Coast region of Singapore. FPC purchased Google Ads using keywords such as “East Coast Podiatry” (“**Keywords**”) to promote this podiatry clinic.

East Coast Podiatry Centre Pte Ltd (“**ECPC**”) also operated podiatry clinics in Singapore, and owned a registered trade mark that included the words “East Coast Podiatry”.

At trial, the High Court dismissed ECPC’s claims for trade mark infringement and passing off ([See our earlier article](#)). The High Court, having considered UK and EU decisions, reasoned that there would be no likelihood of confusion arising from FPC’s use of the Keywords for its internet advertising, as any confusion would be dispelled once internet users were directed to FPC’s website. FPC’s website did not show ECPC’s mark and prominently featured FPC’s own name. ECPC appealed against the High Court’s decision on trade mark infringement. On appeal, the Court of Appeal upheld the High Court’s decision to dismiss the claim but disagreed with the reasoning.

Requirement of “Trade Mark Use”

For trade mark infringement to be established in Singapore, the offending sign must first be “used as a trade mark”. A sign must be used as a badge of origin for goods or services (rather than descriptive or decorative uses). It is only where this threshold requirement is met that the court will proceed to consider whether there is a likelihood of confusion.

The Court of Appeal affirmed that the requirement of “trade mark use” applies in the context of keyword advertising. To assess whether there has been trade mark use in the context of keyword advertising, the Court highlighted the following factors should be considered:

1. **The objective circumstances surrounding the defendant’s use of the signs:** This includes the interaction between the defendant’s signs and the resulting advertisement. The defendant’s subjective intentions are a relevant, but not necessarily decisive, factor.
2. **The inherent distinctiveness of the signs used by the defendant:** An advertiser who uses generic keywords is more likely to have used those terms in a descriptive sense rather than as a trade mark.



3. The website which an internet user is redirected to: This targets the apparent purpose for which the signs were used, particularly where the advertisement contains few details.¹

The Court found that FPC was using “East Coast Podiatry” in a descriptive sense to refer to podiatry services offered in the East Coast geographical region. It was an accurate description of the location of FPC’s new branch. Further, it was clear from FPC’s linked website that FPC offered podiatry services under its own name. There was no trade mark use by FPC.²

In so ruling, the Court declined to adopt the “effect-centric” approach used in EU and UK jurisprudence. This approach, developed in cases like *Google France* and *Interflora*, focuses on the effect that the advertisement has on the relevant public’s ability to assess the origin of the goods or services offered in the advertisement.³

The trade mark use requirement was preferred by the Court of Appeal as the “effect-centric” approach might broaden the scope of infringing uses to include decorative or descriptive uses. It would also impermissibly import an assessment akin to whether there is a likelihood of confusion to the threshold trade mark use analysis.⁴

Confusion and the Website

A hotly debated issue in *East Coast Podiatry* was whether the court could consider the content of a defendant’s website in assessing whether there is a likelihood of confusion. Although the Court of Appeal ultimately found that there was no trade mark use and therefore did not need to assess confusion, it set out preliminary views on the issue.⁵

Under Singapore law, once similarity of marks and goods / services is established, the confusion inquiry must be based on how those similarities affects the perception of the average consumer. The court may consider contextual factors that shed light on how consumers would likely respond to these similarities. However, a court is not permitted to consider differentiating steps taken by a trader, such as an express disclaimer.⁶

That said, the Court did not entirely exclude the relevance of the content of the advertiser’s linked website. In infringement proceedings, the court can consider the actual circumstances in which the infringing signs were used. The Court acknowledged that the interactive nature of internet advertisements, and the fact that such advertisements are specifically designed to lead users to the advertiser’s website, may in some cases be relevant to how the similarity between marks and goods is likely to affect consumer perception.⁷

Key Takeaways

The Court of Appeal’s decision provides clarity on how Singapore courts will approach trade mark infringement in the context of internet advertising.

Where an allegedly infringing sign is inherently descriptive (such as one that refers to a location), a trade mark owner must be prepared to demonstrate that the sign was used in a trade mark sense, and not merely as a descriptive term. The more descriptive a sign is, the heavier the evidentiary burden to show that it was used as a trade mark.⁸

¹ East Coast Podiatry at [79].

² East Coast Podiatry at [82]-[86].

³ East Coast Podiatry at [44]-[62].

⁴ East Coast Podiatry at [79].

⁵ East Coast Podiatry at [96].

⁶ East Coast Podiatry at [97]-[99].

⁷ East Coast Podiatry at [102]-[103].

⁸ East Coast Podiatry at [85].

On the other hand, businesses conducting online marketing campaigns should exercise care when selecting keywords for sponsored advertisements, especially where those keywords reference competitors. While the use of “East Coast Podiatry” was not found to infringe in this case, the boundary between fair competition and trade mark infringement can be fine. Much depends on whether the sign functions as a trade mark and how it appears in context.

If you have questions about trade mark use in online advertising, our team would be happy to assist.



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