

Guy Neale and others v Ku de Ta SG Pte Ltd
[2013] SGHC 250

Case Number : Suit No 955 of 2010
Decision Date : 18 November 2013
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Ang Cheng Hock SC, William Ong, Kristy Tan, Jacqueline Lee, Bryna Yeo (Allen & Gledhill LLP) for the 1st to 4th and 6th plaintiffs; Low Chai Chong, Foo Maw Jiun and Huang Wenshan (Rodyk & Davidson LLP) for the defendant.
Parties : Guy Neale and others — Ku de Ta SG Pte Ltd

Trade Marks and Trade Names

18 November 2013

Judgment reserved.

Judith Prakash J:

1 This action, Suit No 955 of 2010 ("Suit 955") is related to, and to some extent, its outcome depends on the outcome of, Suit No 314 of 2011 ("Suit 314"). I heard both actions together on the basis that the evidence adduced in one trial was to be admitted as evidence in the other trial.

2 The plaintiffs in both actions are the same – they are four individuals and two companies which carry on business as a partnership operating the restaurant known as "Ku De Ta" in Bali, Indonesia.

3 In Suit 314, the defendant is Nine Squares Pty Ltd ("Nine Squares"), an Australian company. It is the registered owner of two trade marks in Singapore bearing the name "KU DE TA" (collectively "the Singapore Marks"). The plaintiffs' claim in Suit 314 is for either:

- (a) a declaration that the Singapore Marks are held on trust for and should be transferred to the plaintiffs; or
- (b) an invalidation of the Singapore Marks.

4 In Suit 955, the plaintiffs' action is against Ku de Ta SG Pte Ltd ("KDTSG"), the company which operates the restaurant cum bar/ lounge/ club at the Skypark at Marina Bay Sands, styled as "Ku De Ta". The plaintiffs have two causes of actions against KDTSG: the first is under s 55 of the Trade Marks Act (Cap 332, 2005 Rev Ed) and the second is in passing off. The plaintiffs seek the following main reliefs:

- (a) orders enjoining KDTSG from using the name / mark "Ku De Ta";
- (b) damages, to be assessed; and
- (c) further and/or in the alternative, an account by KDTSG to the plaintiffs of profits made by KDTSG from the use of the name / mark "Ku De Ta", and payment by KDTSG to the plaintiffs of all sums found due upon the taking of such account.

5 KDTSG bases its use of the “Ku De Ta” name on a licence agreement dated 29 June 2009 (“the Licence Agreement”) between Nine Squares, the registered owner of the Singapore Marks, and one Chris Au, under which Nine Squares licensed to Chris Au the use of one of the Singapore Marks within Singapore. Chris Au assigned his rights under the Licence Agreement to KDTSG with effect from 10 September 2009 by way of a deed of assignment dated 23 November 2009.

6 In their closing submissions in Suit 955, the plaintiffs accept that if their action in Suit 314 is dismissed, they would have no basis on which to proceed with their action in Suit 955. By my judgment in Suit 314 dated 18 November 2013, I dismissed all the plaintiffs’ claims therein. Accordingly, this action must also be dismissed. I will hear the parties on costs.

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