

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

Trade Mark No. T9910601C
22 October 2019¹

IN THE MATTER OF A TRADE MARK REGISTRATION

IN THE NAME OF

AUSSINO (USA) INC.

AND

APPLICATION FOR REVOCATION THEREOF BY

AUSSINO INTERNATIONAL PTE LTD

Hearing Officer: Ms Tan Mei Lin
Principal Assistant Registrar of Trade Marks

Mr Paul Teo (Ravindran Associates LLP) for the Applicant

Mr Zachary Tay (Withers KhattarWong LLP) for the Registered Proprietor

GROUND OF DECISION

1 What constitutes “use in relation to goods” for the purposes of maintaining a trade mark registration (and resisting a non-use revocation)? Is there “use in relation to goods” if a sign is used as a trading name? If so, are there any other requirements that must be satisfied? For example, must the sign be affixed to the goods in order for it to be regarded as “use in relation to goods”? Further, to what extent does use of a variant form constitute genuine use of the trade mark as registered? These are some of the issues I have to consider in this case.

¹ The parties requested to be heard “on paper” only (i.e. without an oral hearing) and this was endorsed by way of direction. A hearing date was fixed so that the timelines for written submissions could run backwards from it.

2 Aussino (USA) Inc. is the Registered Proprietor (“the Proprietor”) of the following series of marks:



(“the Subject Mark”), in Singapore in Class 24 in respect of “Textiles and textile goods, not included in other classes; bed and table covers; bed blankets; bed clothes; bed covers; bed linen; bedspreads; all included in Class 24.” (“the Relevant Goods”). The Subject Mark was registered in Singapore on 22 September 1999.

3 On 24 July 2018, Aussino International Pte Ltd (“the Applicant”) filed an application for revocation of the Subject Mark. The Proprietor filed its counter-statement and evidence in support of the Subject Mark on 9 November 2018. The Applicant did not file any evidence in these proceedings.

4 A Pre-Hearing Review (“PHR”) was held on 25 July 2019, wherein the Registrar directed the Applicant to amend the Statement of Grounds to specify the relevant period of non-use it was relying on under section 22(1)(b) of the Trade Marks Act (Cap 332, 2005 Rev Ed) (“the Act”). The amended Statement of Grounds was filed on 1 August 2019 and the relevant period was stated as 23 July 2013 to 22 July 2018.

5 At the PHR, the parties elected to be heard “on paper” without an oral hearing. Parties’ arguments were made via written submissions filed on 16 September 2019 and written submissions in reply filed on 7 October 2019.

Grounds of Revocation

6 The Applicant seeks to revoke the Subject Mark in its entirety under Section 22(1)(b) of the Act in these proceedings. Alternatively, where grounds for revocation exist in respect of only some of the goods, the Applicant seeks revocation in relation to those goods by virtue of Section 22(6) of the Act.

Evidence

7 Only the Proprietor filed evidence in these proceedings. Its evidence comprises a Statutory Declaration made by Bertram Leslie Hendrick, Director of the Proprietor, on 5 November 2018 in Singapore (“BLH’s SD”).

Burden of Proof

8 Under Section 105 of the Act, the Proprietor has the burden of showing that it has made genuine use of the Subject Mark in Singapore.

Background

9 I briefly summarise the Proprietor’s evidence to the extent necessary to flesh out the background to this dispute.

10 The Proprietor is a company incorporated in the United States of America. It acquired the Subject Mark on 26 February 2016 after a series of ownership changes. The ownership history of the Subject Mark is as follows:

- (a) On 22 September 1999, the Subject Mark was first registered by Aussino Group Ltd, a company incorporated in Singapore (“AGL”);
- (b) On 3 March 2014, AGL assigned the Subject Mark to Aussino Inc., a company incorporated in the British Virgin Islands;
- (c) On 26 February 2016, Aussino Inc. assigned the Subject Mark to the Proprietor.

11 The Subject Mark was first used in Singapore sometime in 1995 by Aussino Home Fashions Pte Ltd (“AHF”). AHF continued to use the Subject Mark in Singapore until around 31 March 2014. AHF entered into liquidation around 6 February 2015, and was dissolved around 7 February 2017. As a consequence, use of the Subject Mark in Singapore was suspended temporarily.

12 The Applicant is a company incorporated on 3 July 2014 by a director of the Proprietor, one Anthony Lim (“Anthony”). Anthony was the Applicant’s sole shareholder and director until October 2017. Thereafter, Gao Wen Xi (“Gao”) also became a shareholder and director of the Applicant².

13 Sometime in October 2017, Anthony, as a representative of the Proprietor, entered into discussions with Gao and her husband, Benjamin Loi, concerning the revival of “Aussino” in Singapore. Parties agreed that the Applicant would be the corporate vehicle for this purpose.

14 Having obtained the Proprietor’s provisional consent to use the Subject Mark, the Applicant opened its first “Aussino” retail store in Singapore in January 2018. The Applicant also set up a Facebook page under the account name “Aussino SG” to assist in marketing the Relevant Goods.

15 The Proprietor thus relies on the Applicant’s use of the Subject Mark as its own use for part of the relevant period.

MAIN DECISION

Ground of Revocation under Section 22(1)(b)

16 Section 22(1)(a), (1)(b) and (2) of the Act reads:

² Anthony resigned as a director of the Applicant on 11 May 2018.

22. – (1) The registration of a trade mark may be revoked on any of the following grounds:

(a) that, within the period of 5 years following the date of completion of the registration procedure, it has not been put to genuine use in the course of trade in Singapore, by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use;

(b) that such use has been suspended for an uninterrupted period of 5 years, and there are no proper reasons for non-use;

...

(2) For the purposes of subsection (1), *use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered*, and use in Singapore includes applying the trade mark to goods or to materials for the labelling or packaging of goods in Singapore solely for export purposes.

(emphasis mine)

17 The Applicant alleges that the Subject Mark “has not been used for a continuous period of 5 years or used in relation to the [Relevant Goods], in particular from 23 July 2013 to 22 July 2018”.

18 The Proprietor contends that the Subject Mark had been so used during two periods of time within the relevant period. These periods are:

- (a) From 24 July 2013 to 31 March 2014 (“the First Period”); and
- (b) From October 2017 to 11 May 2018 (“the Second Period”).

19 It is the Proprietor’s case that during the First Period, the Subject Mark was used by AHF with the Proprietor’s consent and during the Second Period, the Subject Mark was used by the Applicant with the Proprietor’s consent.

Proprietor’s evidence of use

The First Period

20 The Proprietor submitted the following evidence to show that there was genuine use of the Subject Mark in relation to the Relevant Goods during the First Period:

No.	Category of Evidence	Dated	Found In
1	Extracts from the “Aussino Singapore” Facebook page, operated by AHF (“the Original FB Page”)	Last post was made on 19 February 2014	BLH’s SD, Tab 2, pp 19-26

No.	Category of Evidence	Dated	Found In
2	An article from a third-party website, www.singpromos.com	22 March 2014	BLH's SD, Tab 3, pp 28-29
3	Photos of an "Aussino" retail store at Parkway Parade Shopping Centre	Sometime in 2011	BLH's SD, Tab 4, pp 31-33

Extracts from the Original FB Page

21 The extracts from the Original FB Page show:

(a) The “*Home is where the heart is.*”³ sign featured as the Original FB Page profile photo. The account name is “Aussino Singapore” and accordingly, this name features in all of the Original FB Page's posts and comments;

(b) The signs “*Home is where the heart is.*”, “*Home is where the heart is.*” and “*Home is where the heart is.*” featured on promotional materials posted on the Original FB Page. The promotional materials are dated between 17 October 2013 and 25 November 2013, dates which fall within the First Period;

(c) The "About" section of the Original FB Page indicates that its business relates to the Relevant Goods. The following are listed under the heading of "Products": bed linen, bath linens, kids and babies bedding, pillows, bolsters, quilts, sleepwear, and home décor;

(d) The promotional materials relate to the sale of the Relevant Goods:

- i. Page 23 of BLH's SD features bed linen, towels, and linen products in the background;
- ii. Page 24 of BLH's SD provides details of a promotion for a 100% Cotton Sateen Fitted Sheet Set, bolstercase, and body pillow cover;
- iii. Page 25 of BLH's SD provides details of a new product arrival, a "high quality Cotton sateen collection", and a promotion for the said product. There are also promotions for fitted sheet sets and quilt covers.

(e) The extracts also indicate that a number of "Aussino" retail stores were being operated in Singapore during the First Period:

- i. The bottom section of each of the promotional materials contains the addresses of these retail stores. As of 17 October 2013, twelve such stores were still in operation at the following locations: Causeway

³ The words below “AUSSINO” are – “Home is where the heart is”.

Point #04-05, The Clementi Mall #04-44/45, Great World City #02-10, Hougang Mall #05-13, Junction 8 #03-11, Jurong Point #B1-89, Paragon #B1-89, Parkway Parade #04-02, Plaza Singapura #05-04, Suntec City #02-062, Tampines Mall #03-28, Westmall #02-11. These addresses are all retail shopping malls located in Singapore;

- ii. At page 23 of BLH's SD, the image indicates that there is a shop relocation sale being held at the retail store located at the Paragon Mall, and will continue until 16 November 2013. Following that date, details of the Paragon Mall retail store (as well as the Causeway Point mall retail store) no longer appear in subsequent promotional material;
- iii. The existence of these retail stores is also corroborated by comments made by the public in response to these promotional material:
 - (1) Page 22 of BLH's SD: A comment by one Evelyn Yeo, who says that she has been running to "several outlets";
 - (2) Page 22 of BLH's SD: One Matthew Lee asks "what happened to the Causeway Point outlet";
 - (3) Page 23 of BLH's SD: One Emerlda Nur Putri asks "Is aussino in paragon going to move somewhere".

Article on www.singpromos.com

22 The website www.singpromos.com is a website that collects information about sales, promotions, and discounts within Singapore. The article is dated 22 March 2014, and was subsequently updated on 28 March 2014.

23 The article indicates that "Aussino" was having a "storewide closing down sale" from 21 March 2014 to 31 March 2014 and that "Aussino's last day will be on 31 March 2014".

24 The article also features a promotional poster showing the "Aussino" sign as well as images of the Relevant Goods, specifically, pillow cases and fitted sheets.




25 The location of the "Aussino" retail stores is indicated at the bottom of the promotional poster, namely: The Clementi Mall #04-44/45, Great World City #02-10, Parkway Parade #04-02 and Westmall #02-11.

26 The poster provides a URL link to a Facebook page, <facebook.com/aussinosg>. The URL link corresponds to the Original FB Page URL. The poster also provides an email address for customer service enquiries. This email address contains the word "aussino" in the domain name.

Photographs of "Aussino" retail store

27 There are photographs of the "Aussino" retail store found on the website www.streetdirectory.com. The website is a well-known provider of online maps and related services.

28 The photographs are labelled "Aussino Home Fashions Pte Ltd (Parkway Parade)". They feature the sign " " on the shop front. They also show bedding products being sold within the store.


29 While undated, these photographs are relevant in corroborating the evidence above, in particular, the fact during the First Period, an "Aussino" retail store was being operated in the Parkway Parade shopping mall in which the Relevant Goods were being sold.

The Second Period

30 The following evidence was submitted to show use of the Subject Mark in relation to the Relevant Goods during the Second Period:

No.	Category of Evidence	Dated	Found In
1	Screenshots of the Applicant's Facebook page, ("the Applicant's FB Page") announcing the "return" of the "Aussino" brand in Singapore prominently featuring the Subject Mark and the Relevant Goods	The posts are dated 24 January 2018 and 27 January 2018	BLH' s SD, Tab 6, pp 37-38
2	Screenshots of the Applicant's FB Page featuring the Applicant's retail store at Harbourfront Centre showing the application of the Subject Mark at the store front and the sale of the Relevant Goods at the store	The posts are dated 26 January 2018, 27 January 2019, 29 January 2018 and 1 February 2018	BLH' s SD, Tab 7, pp 40-43
3	Screenshots of the Applicant's FB Page promoting discounts on the Relevant Goods at the Applicant's retail store(s).	The posts are dated 29 March 2018, 12 April 2018 and 7 May 2018.	BLH' s SD, Tab 8, pp 45-47

Post announcing the "return" of the "Aussino" brand in Singapore

31 The first post, made on 24 January 2018, features an image of the sign  "Home is where the heart is." and the Relevant Goods. It states "AUSSINO is back" and

indicates that an “Aussino” retail store will be opened on 26 January 2018 at Harbourfront Centre #03-13/14.

32 Under this post, there is a comment posted by one Jan Jan asking the Applicant whether the company “still sell[s] 100% silk comforter”.

33 In the second post, made on 27 January 2018, the Applicant shares an article from the website <https://sg.asia-city.com>. The post emphasises the return of the “Aussino” brand in Singapore and states the Applicant’s intention to be the public’s “intimate Sleeping Partner and Body-Caretaker for many many more years to come”.



Post featuring the Applicant’s retail store

34 This post features photographs, dated between 26 January 2018 and 1 February 2018, of the Applicant’s “Aussino” retail store at Harbourfront Centre.

35 The photographs show use of the Subject Mark on the shop front. They also show a variety of product displays of bed linen, pillow cases and towel products within the shop. The unit number of the store in the photo (#03-13/14) at page 41 of BLH’s SD, corresponds to the earlier Facebook post on the Applicant’s FB Page announcing the return of the “Aussino” brand at page 37 of BLH’s SD.

36 Under this post, there is a comment posted by one Viky Vidrawati saying “We miss Aussino so much ... I just can’t get the same material with the affordable price anywhere right here in Singapore”.

Promotions and discounts being offered at the Applicant’s retail store(s)

37 These promotional materials feature the signs “” and “” and the discounts being offered in relation to fitted sheet sets, quilt cover sets and bath towels. The promotional periods indicated all fall within the Second Period, namely 30 March 2018 to 12 April 2018, 13 April 2018 to 10 May 2018 and 7 May 2018 to 16 May 2018.

The Applicant’s response to the Proprietor’s evidence of use

38 The Applicant did not file any evidence to refute the Proprietor’s evidence. It also did not dispute that the Proprietor can rely on the Applicant’s use of the mark. However, it submitted as follows:

- (a) The Proprietor’s evidence originates primarily from social media and therefore lacks accountability and veracity⁴;
- (b) None of the advertisements relied on by the Proprietor show use of the Subject Mark on the Relevant Goods⁵;

⁴ Applicant’s Submissions at [12].

⁵ Applicant’s Submissions at [13]-[15].

- (c) The Proprietor has not used the Subject Mark in the form in which it was registered⁶.

39 I will address each of these points below.

Whether the Proprietor's evidence originating from social media can be accepted for the truth of the statements made

40 The Applicant relies on HMD Circular 3/2015 ("the Circular"), to challenge the veracity of the Proprietor's evidence, in particular, the evidence originating from social media. The Circular provides that apart from newspapers and other articles or publications, printouts from pages on the internet will generally not be accepted for the truth of the statements made but only for the fact that such statements have been made.

41 The rationale for the position taken in the Circular is the issue of accountability. For this reason, the Circular states that a distinction is drawn between published documents or printouts from official websites (which are generally accounted for by the publisher) and forum discussions where the contributor of the comments can hide behind a pseudonym and thus cannot be held accountable for the comments made. Nonetheless, the Circular states that "where the website... has nevertheless been recognised by users to be a reasonably reliable source of information", the website may be accepted for the truth of the statements made.

42 In the present case, I am of the view that the evidence, which comprises of information taken from the Original FB Page and the Applicant's FB Page, is reliable for the purpose of showing whether the Subject Mark is being used in Singapore. A business' Facebook page serves as a means of communication between the business and its customers. It is therefore likely to be accurate and accountable, at least, for the information which the Proprietor seeks to rely on in the instant case, such as, the products it sells, the promotions currently on and the location of its stores.

43 Further, the evidence for the Second Period is from the Applicant's own FB Page and it is disingenuous of the Applicant to dispute the veracity of this evidence.

Whether the Proprietor's evidence shows use of the Subject Mark in relation to the Relevant Goods

44 The Applicant argues that none of the advertisements relied on by the Proprietor show the Subject Mark affixed on the Relevant Goods, and that just because "Aussino" appears on the advertisement does not mean that the Subject Mark has been used in relation to every item shown in the advertisement. This is because the name of the Applicant is Aussino International Pte Ltd and the name found outside the various outlets is merely used to designate the business and does not constitute use in relation to the goods being sold inside.

45 Before I proceed further, it is to be clarified that under the Act, the burden on a registered proprietor is to show use of the registered trade mark *in relation to* the goods

⁶ Applicant's Submissions at [18]-[19].

and services for which it is registered. There is no strict requirement to show that the registered trade mark is affixed to goods.

46 The question therefore arises as to what constitutes use “in relation to goods”. In the case of *Céline SARL v Céline SA* (C-17/06), the European Court of Justice⁷ (ECJ) ruled at [22] – [23]:

... there is use ‘in relation to goods’... where a third party affixes the sign ... to the goods which he markets...

In addition, even where the sign is not affixed, there is use ‘in relation to goods or services’ within the meaning of that provision where the third party uses that sign in such a way that a link is established between the sign... and the goods marketed or the services provided by the third party.

47 Although the above case dealt with the issue of use in the context of trade mark infringement, the parties did not dispute that the ruling on what constitutes use “in relation to goods or services” is applicable to the present proceedings. I will therefore consider the evidence to see whether the sign has been used in such a way that a link is established between the Subject Mark and the Relevant Goods featured in the advertisements.

48 After a detailed examination of the evidence, I find that such a link is indeed established for the following reasons:

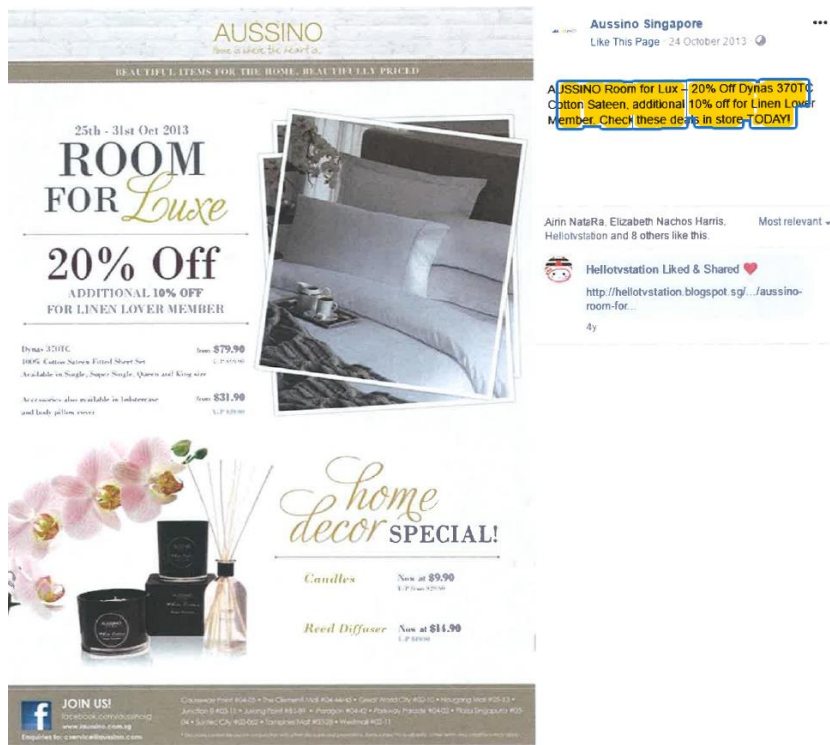
- (a) “Aussino” is the only badge of origin that appears in the advertisements. No other trade marks appear in any of the advertisements. These are some of the advertisements:



- (b) From the perspective of a consumer viewing these advertisements, a link will inevitably be established between “Aussino” and the Relevant Goods shown in the advertisements;

⁷ Now known as the Court of Justice of the European Union.

- (c) Some of the postings on the Original FB Page⁸ show that the goods are branded as “Aussino”. For example one posting states: “AUSSINO Room for Lux – 20% Off Dynas 370TC Cotton Sateen...” (see below):



- (d) It is evident from the public’s comments on the Facebook posts featuring the advertisements that the public recognise and link “Aussino” to the goods shown in the advertisements, and the Relevant Goods in general. These are some of the comments:




- i. Page 20 BLD’s SD
Comment by Aza Lysha: “For muslims around the world do not buy *aussino* product...”;
- ii. Page 22 of BLH’s SD
Comment by Evelyn Yeo: “Can you kindly tell me which outlet still has current stock for *Aussino* Reed Diffuser?”.

49 In these circumstances, I find that the use of “Aussino” is both as the Proprietor’s corporate and business name and also as a trade mark for the Relevant Goods.



Whether there is use of the Subject Mark in the form in which it was registered

50 The Applicant argues that the evidence adduced does not show use of the Subject Mark in the form in which it was registered. For ease of reference, the Subject Mark and the marks used by the Proprietor are reproduced below:

⁸ Pages 24 and 25 of BLH’s SD.

Subject Mark	Mark as Used #1 ⁹	Mark as Used #2 ¹⁰
		

51 In the case of *Swanfu Trading Pte Ltd v Beyer Electrical Enterprises Pte Ltd*

[1994] 1 SLR 625, the proprietor had registered the mark “” (with the word “SWANFU” below the device) but the evidence showed that the proprietor had only used “” without the word element. On this basis, the Court held that the proprietor had not used its registered mark during the relevant period and revoked the same.

52 The above case was, however, decided under the old Trade Marks Act (Cap 332, 1985 Rev Ed) which did not have a provision like Section 22(2) of the Act. Instead it was decided based on the old “essential feature” test, which is not the test under Section 22(2).

53 The test under Section 22(2) of the Act, is whether the form of the mark actually used by the Proprietor differs from the Subject Mark only “in elements which do not alter the distinctive character” of the Subject Mark “in the form in which it was registered”. In this connection, the learned IP Adjudicator in *The Patisserie LLP v Aalst Chocolate Pte Ltd* [2019] SGIPOS 6, articulated the following three-stage test for the application of Section 22(2) of the Act at [52]:

Identification Stage. Looking at the form in which the trade mark was registered as a whole, what should the Registrar (taking the viewpoint of the average consumer) regard as the “distinctive character” of the registered trade mark?

Comparison Stage. Turning to the form in which the trade mark was actually used, what changes have been made to the elements of the registered trade mark (including stylisation, additions, deletions, adjustments to size or other features of appearance) which differentiate it from the registered form of the trade mark?

Evaluation Stage. Looking at the differences between these two forms of the trade mark, has there been an alteration of the “distinctive character” of the registered

⁹ Used on the stop front of the “Aussino” retail stores.

¹⁰ Used as the profile photograph of both the Original FB Page and the Applicant’s FB Page as well as on promotional materials appearing during both the First Period and the Second Period.

form of the trade mark? If so, then the registered proprietor has not put the registered form of the trade mark to genuine use for the purposes of Section 22(1) of the TMA.

54 I agree with the approach set out by the learned IP Adjudicator and will adopt the approach below to assess whether the use of “Mark as Used #1” and “Mark as Used #2” (depicted above) constitutes genuine use of the Subject Mark as registered.

Identification of the distinctive character of the Subject Mark

55 The Subject Mark as registered comprises of a series of two marks. One mark is coloured, while the other is in black and white.

56 Each mark consists of two word components: (1) the word "Aussino" and (2) a combination of the plain words "London New York Paris" (“the Second Component”). The word “Aussino” is positioned directly above the Second Component. In terms of size, the word “Aussino” is much larger.



57 I would regard the distinctive character of the Subject Mark to reside in the word “Aussino” for the following reasons:

- (a) "Aussino" is an invented word and has a high degree of distinctiveness;
- (b) "Aussino" is the dominant component of the Subject Mark taking into account size as well as the relative position of the different components of the Subject Mark;
- (c) The Second Component, consisting of names of three of the fashion capitals of the world, is not distinctive. Fashion capitals are associated with quality, design and stylishness. This results in a positive feeling and an expectation with regard to the quality of the goods sold. For this reason the Second Component is not likely to be regarded as a badge of origin of the goods.

Comparison of the differences between the Subject Mark and the marks as used

Comparison with Mark as Used #1

58 For ease of comparison, the marks to be compared are:

Subject Mark	Mark as Used #1
	

59 Mark as Used #1 differs from the Subject Mark in that it only comprises the word “Aussino”. The Second Component is omitted.

Comparison with Mark as Used #2

60 For ease of comparison, the marks to be compared are:

Subject Mark	Mark as Used #2
	

61 Mark as Used #2 differs from the Subject Mark in that instead of the Second Component, it features the phrase “Home is where the heart is...” (“the Home Component”) in cursive font.

Evaluation of whether the distinctive character of the Subject Mark has been altered by the differences identified in [59] and [61]

Mark as Used #1

62 I have found at [57] that the distinctive character of the Subject Mark resides in the word “Aussino” and that the Second Component of the Subject Mark is not distinctive. Mark as Used #1 consists of the word “Aussino” in the same font as the Subject Mark. Although the Second Component is omitted, the fact is that this component is not distinctive. I find that Mark as Used #1 does not alter the distinctive character of the Subject Mark. Generally, where a trade mark contains a number of elements and one or more of them is not distinctive, the alteration of those elements or their omission is not such as to alter the distinctive character of that trade mark as a whole.

63 I find that Mark as Used #1 is an acceptable variant of the Subject Mark and use of Mark as Used #1 constitutes use of the Subject Mark.

Mark as Used #2

64 Mark as Used #2 contains the Home Component in addition to the word “Aussino” and this component replaces the Second Component in the Subject Mark. Does the Home Component alter the distinctive character of the Subject Mark? The Home Component is a relatively common proverb and is defined in www.lexico.com as “Your home will always be the place for which you feel the deepest affection, no matter where you are.” Its use in Mark as Used #2 is clearly as an advertising slogan serving a mere promotional function. In this regard, it has no distinctive character on

its own. The distinctive character of Mark as Used #2 lies in the word “Aussino”. Furthermore, the Home Component appears in much smaller font than the word “Aussino”, is positioned below it and clearly has an ancillary position in Mark as Used #2.

65 In this regard, it is to be borne in mind that for the purposes of finding out where the distinctive character of a composite sign lies, account must be taken of the relative distinctiveness of each of the components of the sign. The weaker the distinctive character of a component, the easier it will be to alter it by adding a component that is itself distinctive, and the more the sign will lose its ability to be perceived as an indication of the origin. The reverse is also true. I have found above at [57(a)] that “Aussino” has a high degree of distinctiveness. Despite its use in conjunction with the Home Component, I am satisfied that “Aussino” will still continue to be perceived as the indicator of the origin of the Relevant Goods.

66 I consider Mark as Used #2 to be an acceptable variant of the Subject Mark and use of Mark as Used #2 constitutes use of the Subject Mark.

Conclusion

67 Having considered all the pleadings and evidence filed and the submissions made in writing, I find that the Subject Mark was put to genuine use during the relevant period under consideration and in respect of the goods for which it is registered. Consequently, the action for non-use revocation fails and the Proprietor is entitled to costs to be taxed, if not agreed.

Date of Issue: 11 December 2019