

THE TRADE MARKS ACT (CAP. 332)

IN THE MATTER OF

Singapore Trade Mark Application No.
40201804551T

"PHO RÌU logo"

In Class 43 in the name of Temptus Phoget
Pte Ltd (the "**Applicant**")

AND

IN THE MATTER OF an Opposition thereto
by Atelier Atas Pte Ltd (the "**Opponent**")

APPLICANT'S STATUTORY DECLARATION

I, **AXEL THANH CHIH MINH**, (Vietnam IC No. 196202061985, Singapore Foreign Identification No. 202061985), care of #08-88, Rose Village, 10 Rifle Range Road, Singapore 588377, do solemnly and sincerely declare that:

1. I am the Chief Executive Officer of the Applicant and am duly authorised to make this Statutory Declaration on its behalf.
2. I make this Statutory Declaration in support of the Applicant's application for the mark "**PHO RÌU** logo",



under Singapore Trade Mark Application No. 40201804551T (the “**Application Mark**”) in Class 43 for the following services: *bar services; café services; cafeteria services; canteen services; food and drink catering; self-service restaurant services; and restaurant services.*

3. The Opponent opposes the registration of the Application Mark on the following grounds:

- a. Pursuant to Section 8(1) of the Trade Marks Act (the “**Act**”), that the Application Mark is identical to the Opponent’s Trade Mark (Registration No. 40201800872Q; the “**Opposition Mark**”)



and the services for which the Application Mark is sought to be registered are identical with the services for which the Opposition Mark, “**PHÔ RÍU!**”, registered in Class 43 for the following services are protected:

Food and drink catering; information and advice in relation to the preparation of meals; personal chef services; restaurant services; and self-service restaurant services; and

- b. Pursuant to Section 8(2)(b) of the Act, that the Application Mark is similar to the Opposition Mark and the services for which the Application Mark is sought to be registered are similar with the services (above) for which the Opposition Mark is protected, and that thereby there is likelihood of confusion to the public.

A. THE APPLICANT

4. The Applicant is a private limited company incorporated in Singapore on 27 February 2018 with its registered office at 51 East Coast Road, Singapore 428770. It is a wholly-owned subsidiary of Temptus Phoget Chain (the "**Parent Company**"), a limited liability company incorporated in Vietnam in 1978, which has its headquarters at 132 Nguyen Chi Thanh Street, Hai Chau District, Da Nang, Hanoi, Vietnam.
5. The Parent Company was founded by my father to sell pho the way he had grown up eating it, using a style of cooking invented by my grandfather. My grandfather, Thanh Canh Mien, had been a forester, and during the hard times of the Vietnam War, had been so poor that the only utensil he had to cook with was the axe he used for forestry. In order to feed my father and his siblings, he sometimes had to resort to cooking the stems of banana trees after he had cut them down. He discovered that the succulent core of the stem could be beaten tender by the blunt end of his axe, and that this, when cut into strips and boiled in salt water, was tasty and nutritious.
6. My father, like all children, had wanted to enjoy the treats that his better-off friends had, and of all the dishes he most craved, he wanted to taste pho the most. My grandfather did the best he could, so my father could see that every thorn had its rose, making "pho" out of bush-meat and banana-stem noodles, all prepared using only his axe.
7. After my grandfather's death, my father incorporated the Parent Company as he did not want the love and ingenuity my grandfather had put into his cooking to be forgotten. He preserved everything, including my grandfather's way of using only his axe to cook. Even though he could eventually afford to use real beef and proper noodles as ingredients, he still insisted on using the axe to tenderise the meat, hack it into chunks, and chop the noodles to length. It was only a matter of time before my father's noodles became known as "Pho Rìu", or "Axe Noodles".

8. This method of preparation tugged at the heart-strings of Vietnamese, as it reminded them of the resilience with which their own families had survived the war, and Pho Riu became a household name in Vietnam. My father opened restaurants, all named "Pho Riu" throughout the country, and it even became popular with travellers as a "must try" taste of old Indo-China.
9. As Vietnam is a popular tourist destination for Singaporeans, we received many guests from Singapore, and they always badgered us to consider opening a branch there, a place described to us as a "paradise city". When I graduated from art school, I decided that it was time for me to seek my welcome in the concrete jungle of Singapore, and together with my father I incorporated the Applicant in Singapore on 27 February 2018, the same day we opened the Joo Chiat Restaurant.

B. THE APPLICATION MARK

10. I naturally decided to name the Joo Chiat Restaurant after the restaurants so successfully run by my father. As I wanted this sweet child of mine to stand out, when it came time to register a trade mark I not only wanted to use the name that we had been using for so many years, but also something flashier and more eye-catching.
11. I decided to incorporate the five-pointed star from the Vietnamese flag into a circular design, so the whole logo would suggest both the restaurant's Vietnamese roots, and also look like a sheriff's badge from an old cowboy film. Such badges normally feature a six-pointed star instead of a five-pointed one, but the modification would point towards Vietnam instead of America. The cowboy connotations expressed my grandfather's pioneering spirit and our rough, honest, frontier-style cooking.
12. The Applicant's branding also calls to mind my grandfather's simple ways. My father has used his image, holding the axe with which he provided for his family, as a mark of our brand for decades. I expected Singaporeans, who are relatively well-educated,

to appreciate a bit of Western wit, and so I added to it the tagline, "Cutting the knot on the question of where to eat!", alluding to how Alexander the Great cut the Gordian knot, which together with the image of the axe creates a sort of visual pun, to declare that the Joo Chiat Restaurant solves the problem of deciding where to eat.

C. THE APPLICANT'S BUSINESS

13. To exemplify my grandfather's hard work and perseverance, the Joo Chiat Restaurant stays open for long hours (till 5am), and its clientele consists largely of regulars who work the night shift in Joo Chiat and Geylang. It is popular with the Vietnamese community, and they tend to bring Singaporean friends with them. It keeps overheads low by sticking to my grandfather's simple style of using only axes to cook, and customers love its low prices and hearty cuisine.

14. Since February, the restaurant has been doing reasonably well, allowing the Applicant to cover overheads and make a modest profit.

D. THE OPPOSITION HAS NO MERIT

15. It is clear from the above that all the Opposition's objections have no merit.

16. Firstly, the Application Mark and the Opposition Marks are not identical. The Opposition Mark uses a red star, while the Application Mark uses a yellow star and a red circle. The diacritics or accent marks used for the Application Mark are entirely different from those used for the Opposition Mark, and the words mean entirely different things in Vietnamese; the Application Mark is also never used with any punctuation, while the Opposition Mark includes an exclamation point. The services which they provide are also not identical: from what I understand, the Opponent runs a high-class, high-tech restaurant employing fancy food technology to serve customers single noodles, while the Joo Chiat Restaurant is meant to be a no-frills venue serving a traditional take on a Vietnamese classic.

17. Secondly, the Application Mark and the Opposition Marks are not similar. I am informed that the honourable Tribunal analyses mark-similarity on the basis of visual, aural, and conceptual similarity, and the two Marks are not at all similar any of those bases. The visual differences between the two Marks are as I have described them above. Aurally, the use of different diacritics not only means that the Application Mark's "**PHO RÌU**" and the Opposition Mark's "**PHÔ RÍU!**" are pronounced differently, but also that they mean entirely different things as Vietnamese is a tonal language, which means that the Marks are also conceptually very different.
18. The majority of Singaporeans are also Chinese, whose Hanyu Pinyin diacritic system places emphasis on the different tones a Romanised word can take. As such, Singaporeans are particularly sensitive when diacritic marks are used, as they know it can heavily affect the intended meaning of the word. Even non-Chinese Singaporeans are well-aware that Chinese words can mean very different things when the tone shifts, and have become habituated to discerning the differences in diacritic marks when they appear. While the Marks both use Vietnamese rather than Chinese words, the principle remains the same, and Singaporeans are not likely to be confused by Marks that use different diacritics. Even if they can't pronounce either Mark with full fidelity, at the very least they would know that they are different, and be wary of conflating them.
19. In addition, the Opponent's reliance on the food blogger, MisterCopperCook's, critique of our restaurant to demonstrate actual confusion is misplaced. Anyone who reads MisterCopperCook's review will know that he was referring to the Joo Chiat Restaurant and not the Opponent's exorbitant restaurant at the Marina Bay Sands. While I disagree with his harsh criticism of the Applicant's offerings (and he is certainly entitled to his views), the fact remains that the Applicant's offerings are cheap whereas the Opponent charges an arm and a leg! The Joo Chiat Restaurant is

for the masses whereas the MBS Restaurant is for the rich. There can simply be no confusion between the two!

20. The Opponent commissioned a survey in order to shore up their weak argument, but it reeks of bias and should not be given any weight by the Court. Firstly, a significant 42% of interviewees were foreigners, of whom only 5 were from Vietnam. This does not represent the Joo Chiat Restaurant's target clientele, that being Vietnamese in Singapore and Singaporeans, the latter of which should, as I said above, be sensitive to the use of diacritics due to their exposure to Romanised tonal languages, like Mandarin.

21. Secondly, the questions were poorly designed. The key questions (e) and (f) were asked in a manner that invited only binary "yes/no" responses, and it is unclear from the responses how many interviewees felt that the Marks were the same or from the same company, as opposed to, for example, being very similar or only slightly similar.

E. CONCLUSION

22. In the premises, the Applicant prays that the opposition be dismissed in its entirety with costs and the Application Mark be allowed to proceed to registration.

23. And I make this solemn declaration by virtue of the provisions of the Oaths and Declarations Act (Cap. 211), and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

AFFIRMED BY)
the abovementioned)
AXEL THANH CHIH MINH)
in SINGAPORE)

on this the 15th day of January 2019

Declared at the offices of **CORVUS, JAY, GARRULUS AND PARTNERS LLP** this 15th day
of January 2019

Before me,

A Commissioner for Oaths