

THE TRADE MARKS ACT (CAP. 332)

IN THE MATTER OF

Singapore Trade Mark Application
No. 40201400953Z

"HILL RANGER ATV logo"

In Classes 12, 39, and 41 in the
name of Hill Ranger Sdn Bhd (the
"**Applicant**")

AND

IN THE MATTER OF an Opposition
thereto by Hell Ranger (S) Pte. Ltd.
(the "**Opponent**")

OPPONENT'S STATUTORY DECLARATION

I, **TANG KAP TENG, HELMUT** (NRIC No. S6824908T), care of #27-03, 79
Anson Road, Singapore 079906 do affirm and say as follows:

1. I am the founder and Chief Executive Officer of the Opponent. I am duly authorized to make this Statutory Declaration on its behalf.
2. I make this Statutory Declaration in support of the Opponent's opposition to the registration of the Applicant's application for the trade mark "**HILL RANGER ATV logo**" in Classes 12, 39 and 41 under Singapore Trade Mark Application No. 40201400953Z (the "**Application Mark**") on the grounds that:
 - a. the Application Mark is confusingly similar to the Opponent's registered trade mark "**HELL RANGER logo**" and ought to be

refused registration pursuant to Section 8(2)(b) of the Trade Marks Act (the "**Act**");

- b. the Application Mark should be refused registration pursuant to Sections 8(4)(a) and 8(4)(b)(i) of the Act in that because the Opponent's Marks are well known in Singapore, the use of the Application Mark by the Applicant in relation to the goods or services for which the Application Mark is sought to be registered would indicate a connection between those goods or services and the Opponent, and is therefore likely to damage the interests of the Opponent;
 - c. the Application Mark should be refused registration pursuant to Section 8(7)(a) of the Act in that its use in Singapore is liable to be prevented by virtue of the law of passing off; and/or
 - d. the Application Mark should be refused registration pursuant to Section 7(6) of the Act in that the application was made in bad faith.
3. The Opponent is a company that was duly incorporated under the laws of Singapore on 5 November 1992. I first came up with the idea for this company when I was serving my National Service. I was very excited to be able to serve my country in this way, and it was truly an honour for me to be selected to train to become an Army Ranger. I was blown away by all the special operations vehicles that were used by the Rangers, and I was inspired to do well in my role.

4. Because of my fervor and my allegedly "creative" driving style, my buddies in the Army gave me the nickname "Hell Ranger". Of course, this is also because my English name is Helmut, and some of my buddies have quite a unique sense of humour.
5. Naturally, after the completion of my university degree in engineering, I set out to realise my dream of being 'the boss' of a company. One of my university professors suggested that my interest in engineering and electric motors should be the way to go. I was inspired by him, and decided to have a company incorporated in Singapore using my nickname from my Army Ranger days. This was the birth of the Opponent.
6. Over the past 25 years, I have painstakingly overseen the growth and establishment of the Opponent as the local market leader for the manufacture and distribution of electric 'commuter scooters' that enable users to travel relatively lengthy distances around the city at safe speeds. My choice to focus my research and development of electric motors for electric 'commuter scooters' was because I did not see a market demand for such motors for larger vehicles, especially for recreational use. In my mind, these electric 'commuter scooters' would be able to squeeze nicely into a niche market to provide consumers with an interesting, eco-friendly mode of personal transportation that was not previously available at this price point.
7. I am extremely proud of my team and our achievements thus far, especially since all of the Opponent's **"HELL RANGER"** brand of electric 'commuter

scooters' meet the weight, width and maximum speed limits imposed by the Land Transport Authority of Singapore pursuant to its Physical Criteria for Personal Mobility Devices. To the best of my knowledge, we are the only manufacturer of electric 'commuter scooters' in the ASEAN region that can lay claim to this.

8. The Opponent's "**HELL RANGER**" brand of electric 'commuter scooters' has also become immensely popular in Singapore because the various models that have been developed bearing this brand are all lightweight, extremely versatile, and convenient. They have proven to be an economical means of travelling around the crowded streets of Singapore. As fortune would have it, the Opponent's "**HELL RANGER**" brand of electric 'commuter scooters' has become so popular of late because of the local public's need for an alternative solution to deal with the relative uncertainty surrounding the reliability of public transport. In fact, some models of the Opponent's "**HELL RANGER**" brand of electric 'commuter scooters' are even designed to be able to work well where "ponding" occurs.
9. It was back in early 2003 that a friend of mine explained to me the importance of branding and the protection of Intellectual Property. I soon sought the help of the team at the Intellectual Property Office of Singapore, who guided me and helped me to file the Opponent's first ever trade mark application, which was Singapore Trade Mark Registration No. T0369246R for the mark "**HELL RANGER**" in Class 12.

10. Two years later, at the instigation of my friend, Richard, who is a renowned and very talented graphic designer, we came up with the "**HELL RANGER logo**" that the Opponent has proudly used for the past 12 years. This was then protected under Singapore Trade Mark Registration No. T0579135H, also in Class 12 but in relation to a broader scope of goods.
11. I like the said "**HELL RANGER logo**" very much. It very nicely ring-fences and depicts many things about me and my past, and includes references to my favourite motorcycle club, the 'Hells Angels Motorcycle Club'. Richard and I came up with the catchy tagline, "*Where Angels Fear to Tread*" and this is also features prominently in the said logo. Of course, I had to have the said logo rendered in my favourite passionate hue of red.
12. Armed with the Opponent's said two trade mark registrations, the Opponent's marketing team set out on their quest to make sure that the Opponent's brand "**HELL RANGER**" and its "**HELL RANGER logo**" would be marketed and promoted in ways that would result in them being 'burnt' into the minds of the public at large. By drumming up even more interest in the Opponent's brand of popular electric 'commuter scooters', the Opponent's aim was to strike whilst the proverbial iron remains hot. In this regard, I refer to the Statutory Declaration deposed by my external expert surveyor, Ms Mah Kiet Shere, Cherv y, in support of these Opposition proceedings, which includes information regarding the public perception of the Opponent's brand and recognition of the Opponent's Marks.

13. Around July 2012, I found out that the Applicant had launched two models of electric 'all-terrain vehicles' ("**ATVs**") under its "**HILL RANGER**" brand in Malaysia. At the time, I felt as though there was something amiss about the name of this company and its chosen brand. However, I was too busy to worry about this because I was in London at the time for meetings with potential research and development partners, and also to enjoy the festivities and excitement of the Olympic Games. I soon lost interest to look further into the Applicant because I was confident that such ATVs would not have a sustainable market here in predominantly-urban Singapore.
14. To my horror, I recently discovered that the Applicant apparently has plans to open an off-roading activity circuit in 2018 housed in the upcoming new Forest Woodlands Outdoor Activity Hub ("**FWOAH**"), which is located near to the border that Singapore shares with Malaysia. I therefore visited the Applicant's own website, where I found out that the Applicant's said activity circuit is scheduled to be launched during the grand opening of the FWOAH. Moreover, the Applicant has even commenced marketing for its said off-roading activity circuit on its website, and also begun taking online reservations for interested participants to be the first ones to try out the Applicant's "**HILL RANGER**" ATVs at the FWOAH.
15. Furthermore, I was aghast at the fact that not only is there only a single-letter difference in the corporate names "**HELL RANGER**" and "**HILL RANGER**", the Applicant even had the gall to use a very similar tagline to mine, "*Tread Without Fear*" in the Application Mark. In my view, the use of such similar names and logos, especially the shared words "Tread" and

"Fear" in the taglines, cannot possibly be a mere coincidence. In fact, I am of the view that it must surely have been specifically designed to take unfair advantage of the strength of the Opponent's **"HELL RANGER logo"**. A side-by-side comparison of the Opponent's **"HELL RANGER logo"** and the Application Mark is annexed hereto as Exhibit **"TKTH-1"**.

16. Things really came to a head very quickly after that. It was on 5 November 2017 that I had concrete, first-hand proof that my customers and the relevant sector of the public were confused between the source of the Applicant's **"HILL RANGER"** branded ATVs, and the Opponent's **"HELL RANGER"** brand of electric 'commuter scooters'.
17. It was Guy Fawkes Night, and we had organized an 'electric bonfire' to celebrate the milestone 25th Anniversary of the founding of the Opponent. Even though I had only invited the members of the Opponent's elite "Seventh Circle Club", being the 666 most loyal and fervent customers that the Opponent has, there was ample evidence during that event to show that these customers thought that the Applicant's **"HILL RANGER"** ATVs were somehow associated with the Opponent's illustrious and successful **"HELL RANGER"** brand.
18. The consensus appeared to be that a significant proportion of my customers thought that the use of the **"HILL RANGER"** brand in Malaysia may have been a way for the Opponent to better appeal to the local market, particularly in the Cameron Highlands district where such off-roading activities using ATVs are popular. In fact, I am personally aware that some

of the Opponent's "Seventh Circle Club" members have even participated in races organized by the Applicant in Malaysia themselves, some of them having mistakenly assumed that the similarity of the Opponent's and the Applicant's corporate names and logos were an indication of goods and services that emanate from a single, unitary source that has operations in both Malaysia and Singapore.

19. Moreover, I have personally experienced at least two other instances of some confusion since. On such occasions, prospective business partners had walked into the Opponent's registered office looking to seek licences for the use of the Applicant's "**HILL RANGER**" branded ATVs for outdoor events that they were organizing in Singapore. The Opponent's staff therefore had to take pains to explain that the Opponent and the Applicant are in no way affiliated to each other.

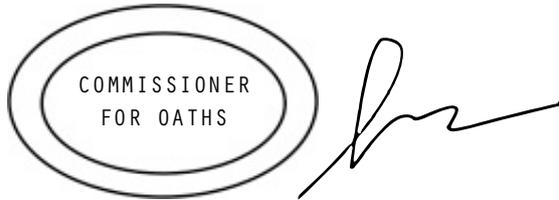
20. In light of the foregoing, I am strong in my belief that the Applicant's application to seek registration of the Application Mark is redolent of bad faith. It must surely be that the Applicant's reason for choosing the Application Mark was to hitch a ride on the Opponent's long-standing success in the market and its top-notch branding and brand protection. Given the close geographical proximity between Singapore and Malaysia, and the fact that residents of both countries would regularly travel between the two countries, it is very plausible that the Applicant had chosen its company name and corporate logo to take such underhanded advantage of the Opponent's goodwill and reputation in Singapore.

21. For all of the above reasons, I respectfully urge this Tribunal to refuse the registration of the Application Mark with costs.

AFFIRMED BY)
the abovenamed)
TANG KAP TENG, HELMUT)
in SINGAPORE)
on this 15th day of December 2017)



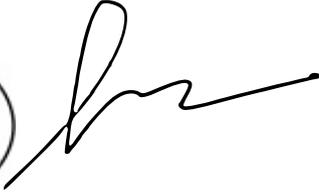
Before me,



COMMISSIONER
FOR OATHS

A Commissioner for Oaths

THIS IS THE EXHIBIT MARKED "TKTH-1"
REFERRED TO IN
THE STATUTORY DECLARATION OF TANG KAP TENG, HELMUT
AFFIRMED BEFORE ME
ON THIS 15TH DAY OF DECEMBER 2017
IN SINGAPORE

Before me,


COMMISSIONER
FOR OATHS

A COMMISSIONER FOR OATHS

